1979-1980

SENATE COMMERCE COMMITTEE

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DIVISION OF OCCUPATIONAL LICENSING, SUNSET REVIEWS - 1979

1 VOLUME - DEPARTMENT OF COMMERCE/ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING - "A SUNSET REVIEW
OF THE STATE HEALTH CARE RELATED BOARDS" JANUARY 1979

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SENATE COMMERCE COMMITTEE

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SENATE COMMERCE COMMITTEE

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SUNSET
REVIEW
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Christian Baker
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STATE OF ALASKA

Sunset Review

1979

Department of Commerce and
Economic Development

Division of Occupational Licensing

SUNSET REVIEW

1979

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

Division of Occupational Licensing

Commissioner, Department of Commerce and Economic Development	Charles Webber
Deputy Commissioner, Department of Commerce & Economic Development	Bertram L. Wagnon
Director, Division of Occupational Licensing	Ann Griggs

Prepared by: Elaine Garrett
Management Analyst

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811

January 14, 1980

The Alaska State Legislature:

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

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

Yours truly,

Bertram L. Wagnon
Deputy Commissioner

Philosophy of Evaluation

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

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STATE OF ALASKA

Department of Commerce and Economic Development

Division of Occupational Licensing

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

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

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

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

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

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

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

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

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

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

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

	FY '76		FY '77		FY '78		FY '79	
	Revenues	Expen-ditures	Revenues	Expen-ditures	Revenues	Expen-ditures	Revenues	Expen-ditures
Board of Barber Examiners	$ 4,087.00	$ 2,489.19	$ 4,970.54	$ 2,913.27	$ 4,400.18	$ 2,933.76	$ 4,274.00	$ 4,381.59
Board of Chiropractic Examiners	320.00	2,838.78	1,910.00	2,377.00	1,070.00	4,218.07	3,047.00	4,709.43
Collection Agency Board	4,164.00	--	8,064.00	811.59	6,950.00	4,126.22	3,697.55	4,670.76
Board of Dental Examiners	10,769.40	8,654.19	14,437.00	6 400.79	5,970.24	8,775.88	16,937.00	15,480.40
Board of Electrical Examiners	7,857.00	2,645.49	28,359.00	7,895.32	15,437.14	6,666.42	36,746.00	6,791.03
Board of Registration for Architects, Engineers and Land Surveyors	101,377.00	17,876.76	31,056.00	19,323.14	110,870.75	21,250.48	26,388.43	23,827.90
Board of Hairdressing and Beauty Culture Examiners	23,075.00	5,096.55	21,963.00	5,944.05	21,821.00	4,512.32	26,970.00	5,989.43
Board of Marine Pilots	990.00	2,713.52	11,122.10	5,515.11	1,780.00	3,819.64	10,722.00	8,707.44
Medical Board	14,485.00	5,553.36	62,023.00	5,855.54	17,551.25	6,346.32	69,919.00	14,979.85
Board of Nursing	54.646.00	13,931.98	40,747.00	12,606.53	72,255.87	20,098.55	36,512.50	21,529.22
Board of Dispensing Opticians	2,720.00	1,728.34	1,060.00	2,091.32	2,190.00	1,910.81	2,210.00	2,287.85
Board of Optometry	530.00	2,578.19	2,625.00	1,920.03	795.00	5,704.41	3,245.00	4,413.32
Board of Pharmacy	13,848.00	5,854.45	8,249.00	4,655.23	16,482.00	4,901.40	6,734.00	5,725.01
Board of Psychologist and Psychological Associates	1,580.00	3,303.61	1,550.00	2,369.43	2,680.00	5,637.68	4,435.00	7,617.52
Board of Public Accountancy	20,777.00	12,325.49	15,135.00	15,138.70	38,675.00	17,248.81	21,186.00	20,174.93
Real Estate Commission	178,497.50	19,188.47	119,533.00	29,648.93	285,634.92	38,177.92	142,659.72	40,652.49
Board of Veterinary Examiners	705.00	1,706.94	4,186.50	1,110.19	1,160.00	1,640.42	5,685.00	2,076.94
Nursing Home Administrators	1,100.00	1,942.91	2,000.00	2,489.84	1,830.00	1,703.66	1,435,00	4,226.97
Physical Therapy Board	1,800.00	804.38	1,455.00	673.68	3,132.00	1,745.59	1,215.00	2,293.47
Guide Licensing and Control	38,300.00	10,070.31	38,695.50	10,257.33	41,617.00	16,828.17	40,996.00	14,249.25
Board of Welding Examiners	--	2,898.01	--	4,918.99	--	2,982.25	1,815.00	4,711.91
Construction Contractors	229,175.00	1,924.60	195,638.50	1,739.75	332,895.40	2,812.54	247,124.05	2,839.58
Mortuary Science	--	--	4,485.00	24.00	802.00	451.49	3,575.00	319.91
TOTALS	$711,382.90	$126,125.42	$619,264.14	$146,679.76	$986,009.7[illegible]	$184,492.81	$717,523.25	$222,256.20
- direct expenditures	126,125.42		146,679.76		184,492.81		222,256.20	
	$585,257.48		$472,584.38		$801,516.94		$495,272.05	
DOL Budget (Actual Expenditures)	$478,100.		$648,000.		$779,500.		$901,072.	

FISCAL YEAR 1976

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

BOARD	REVENUES	# OF LICENSES	ALLOCATION PER LICENSES	+	DIRECT EXPENDITURES	=	TOTAL COST PER BOARD
Board of Barber Examiners	$ 4,097.00	275	$ 6,426.75		$ 2,489.19		$ 8,915.94
Board of Chiropractic Examiners	320.00	31	724.47		2,838.78		3,563.25
Collection Agency Board	4,164.00	47	1,098.39		---		1,098.39
Board of Dental Examiners	10,769.40	365	8,530.05		8,654.19		17,184.24
Board of Electrical Examiners	7,857.00	241	5,632.17		2,645.49		8,277.66
Board of Registration for Architects, Engineers and Land Surveyors	101,377.00	2,418	56,508.66		17,876.76		74,385.42
Board of Hairdressing and Beauty Culture Examiners	23,075.00	1,415	33,068.55		5,096.55		38,165.10
Board of Marine Pilots	990.00	46	1,075.02		2,713.52		3,788.54
Medical Board	14,485.00	786	18,368.82		5,553.36		23,922.18
Board of Nursing	54,646.00	3,324	77,681.88		13,931.98		
				(Exec. Sec.)	26,400.27		118,014.13
Board of Dispensing Opticians	2,720.00	46	1,075.02		1,728.34		2,803.36
Board of Optometry	530.00	38	888.06		2,578.19		3,466.25
Board of Pharmacy	13,848.00	324	7,571.88		5,854.45		13,426.33
Board of Psychologist and Psychological Associates	1,580.00	32	747.84		3,303.51		4,051.35
Board of Public Accountancy	20,777.00	332	7,758.84		12,325.49		20,084.33
Real Estate Commission	178,497.50	1,754	40,990.98		19,188.47		
				(Exec. Off.)	18,083.29		78,262.74
Board of Veterinary Examiners	705.00	72	1,682.64		1,706.94		3,389.58
Nursing Home Administrators	1,100.00	15	350.55		1,942.91		2,293.46
Physical Therapy Board	1,880.00	76	1,776.12		804.38		2,580.50
Guide Licensing & Control	38,800.00	911	21,290.07		10,070.31		31,360.38
Board of Welding Examiners	---	53	1,238.61		2,898.01		4,136.62
TOTALS:		12,601	$294,485.37		$168,684.38		$463,169.75

FISCAL YEAR 1977

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

BOARD	REVENUES	# OF LICENSES	ALLOCATION PER LICENSES	+	DIRECT EXPENDITURES	=	TOTAL COST PER BOARD
Board of Barber Examiners	$ 4,970.54	252	$ 7,368.48		$ 2,913.27		$ 10,281.75
Board of Chiropractic Examiners	1,910.00	30	877.20		2,377.00		3,254.20
Collection Agency Board	8,064.00	50	1,462.00		811.59		2,273.59
Board of Dental Examiners	14,437.00	316	9,239.84		6,400.79		15,640.63
Board of Electrical Examiners	28,359.00	252	7,368.48		7,895.32		15,263.80
Board of Registration for Architects, Engineers and Land Surveyors	31,056.00	2,725	79,679.00		19,323.14		99,002.14
Board of Hairdressing and Beauty Culture Examiners	21,963.00	1,638	47,895.12		5,944.05		53,839.17
Board of Marine Pilots	11,122.10	49	1,432.76		5,515.11		6,947.87
Medical Board	62,023.00	844	24,678.56		5,855.54		30,534.10
Board of Nursing	40,747.00	3,469	101,433.56	(Exec. Sec.)	12,606.53 32,339.29		146,379.38
Board of Dispensing Opticians	1,060.00	49	1,432.76		2,091.32		3,524.08
Board of Optometry	2,625.00	55	1,608.20		1,920.03		3,528.23
Board of Pharmacy	8,249.00	388	11,345.12		4,655.23		16,000.35
Board of Psychologist and Psychological Associates	1,550.00	38	1,111.12		2,369.43		3,480.55
Board of Public Accountancy	15,135.00	402	11,754.48		15,138.70		26,893.18
Real Estate Commission	119,533.00	2,833	82,836.92	(Exec. Off.)	29,648.93 29,331.19		141,817.04
Board of Veterinary Examiners	4,186.50	82	2,397.68		1,110.19		3,507.87
Nursing Home Administrators	2,000.00	30	877.20		2,489.84		3,367.04
Physical Therapy Board	1,455.00	82	2,397.68		673.68		3,071.36
Guide Licensing & Control	38,695.50	927	27,105.48		10,257.33		37,362.81
Board of Welding Examiners	---	55	1,608.20		4,918.99		6,527.19
TOTALS:		14,566	$425,909.84		$206,586.49		$632,496.33

.ISCAL YEAR 1978

DOL Actual Expenditures:	$779,500.00				
- Contractor Expenditures:	2,812.54				
- Licensing Examiner:	14,832.00				
- Mortuary Sciences:	451.49				
- Executive Officers:	23,807.99				
	30,310.73				
- Direct Board Expenditures:	181,228.78				
TOTAL:	$526,056.47	÷	17,376 Licenses	=	$30.27 per license

BOARD	REVENUES	# OF LICENSES	ALLOCATION PER LICENSES	+	DIRECT EXPENDITURES	=	TOTAL COST PER BOARD
Board of Barber Examiners	$ 4,400.18	267	$ 8,092.09		$ 2,933.76		$ 11,015.85
Board of Chiropractic Examiners	1,070.00	44	1,331.88		4,218.07		5,549.95
Collection Agency Board	6,950.00	54	1,634.58		4,126.22		5,760.80
Board of Dental Examiners	5,970.24	383	11,593.41		8,775.88		20,369.29
Board of Electrical Examiners	15,437.14	305	9,232.35		6,666.42		15,898.77
Board of Registration for Architects, Engineers and Land Surveyors	110,870.75	2,941	89,024.07		21,250.48		110,274.55
Board of Hairdressing and Beauty Culture Examiners	21,821.00	1,878	56,847.06		4,512.32		61,359.38
Board of Marine Pilots	1,780.00	85	2,572.95		3,819.64		6,392.59
Medical Board	17,551.25	910	27,545.70		6,346.32		33,892.02
Board of Nursing	72,265.87	4,245	128,496.15		20,098.55		
				(Exec. Sec.)	23,807.99		172,402.69
Board of Dispensing Opticians	2,190.00	54	1,634.58		1,910.81		3,545.39
Board of Optometry	795.00	63	1,907.01		5,704.41		7,611.42
Board of Pharmacy	16,482.00	414	12,531.78		4,901.40		17,433.18
Board of Psychologist and Psychologist Associates	2,680.00	44	1,331.88		5,637.68		6,969.56
Board of Public Accountancy	38,675.00	402	14,590.14		17,248.81		31,838.95
Real Estate Commission	285,634.92	3,615	109,426.05		38,177.92		
				(Exec. Off.)	30,310.73		177,914.70
Board of Veterinary Examiners	1,160.00	93	2,815.11		1,640.42		4,455.53
Nursing Home Administrators	1,830.00	37	1,119.99		1,703.66		2,823.65
Physical Therapy Board	3,132.00	102	3,087.54		1,745.59		4,833.13
Guide Licensing & Control	41,617.00	1,295	39,199.65		16,828.17		56,027.82
Board of Welding Examiners	---	65	1,967.55		2,982.25		4,949.80
TOTALS:		17,376	$525,971.52		$235,347.50		$761,319.02

FISCAL YEAR 1979

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

BOARD	REVENUES	# OF LICENSES	ALLOCATION PER LICENSES +	DIRECT EXPENDITURES =	TOTAL COST PER BOARD
Board of Barber Examiners	$ 4,274.00	276 244	$ 8,462.16	$ 4,381.59	$ 12,843.75
Board of Chiropractic Examiners	3,047.00	54	1,655.64	4,709.43	6,365.07
Collection Agency Board	3,697.55	61 48	1,870.26	4,670.76	6,541.02
Board of Dental Examiners	16,937.00	419	12,846.54	15,480.40	28,326.94
Board of Electrical Examiners	36,746.00	378 312	11,589.48	6,791.03	18,380.51
Board of Registration for Architects, Engineers and Land Surveyors	26,388.43	3,119 3,095	95,628.54	23,827.90	119,456.44
Board of Hairdressing and Beauty Culture Examiners	26,970.00	2,037 1,774	62,454.42	5,989.43	68,443.85
Board of Marine Pilots	10,722.00	88 52	2,698.08	8,307.44	11,005.52
Medical Board	69,919.00	1,001	30,690.66	14,979.85	45,670.51
Board of Nursing	36,512.50	4,832	148,149.12	21,529.22 (Exec. Sec.) 32,196.12	201,874.46
Board of Dispensing Opticians	2,210.00	59	1,808.94	2,287.85	4,096.79
Board of Optometry	3,245.00	72	2,207.52	4,413.32	6,620.84
Board of Pharmacy	6,734.00	429	13,153.14	5,725.01	18,878.15
Board of Psychologist and Psychological Associates	4,435.00	50	1,533.00	7,617.52	9,150.52
Board of Public Accountancy	21,186.00	562 401	17,230.92	20,174.93	37,405.85
Real Estate Commission	142,659.72	4,202 4,258	128,833.32	40,652.49 (Exec. Off.) 34,324.92	203,810.73
Board of Veterinary Examiners	5,685.00	107	3,280.62	2,076.94	5,357.56
Nursing Home Administrators	1,435.00	39	1,195.74	4,226.97	5,422.71
Physical Therapy Board	1,215.00	125	3,832.50	2,293.47	6,125.97
Guide Licensing & Control	40,996.00	1,467 - 858	44,978.22	14,249.25	59,227.47
Board of Welding Examiners	1,815.00	100 - 63	3,066.00	4,711.91	7,777.91
TOTALS:		19,477	$597,164.82	$285,096.71	$882,782.57

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

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

Unconstitutional on against some cases

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

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

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

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

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

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

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

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

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

We agree with this recommendation and the reasoning supporting it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A

STATE OF ALASKA
BOARD OF WELDING EXAMINERS
May, 1979

Findings

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

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

Welding

I. General Information

A. Regulated Parties

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

B. Definitions

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

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

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

C. Nature and Composition of Board

1. Board members and terms:

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

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

2. Representation:

Profession = 7
Public = 0

3. Qualifications:

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

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

D. Licensing Data

Current licenses (effective May, 1979)

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

Total subsidy
$10 x 63 =
$ 630.00

E. Fees

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

F. Board Revenues and Expenditures

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

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

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

Welding

Pending: 1 complaint against five individuals

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

H. Qualifications

Trade school or vocational training.

II. Analysis

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

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

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

Society. Tests are well secured and are graded by the Society. The State does not have access to its contents nor to individual scores; only "pass or fail" information is attainable if requested. Candidates for testing are charged a $50.00 fee by the American Welding Society. As of April, 1979, the Society is also requesting that the State pay $250.00 for each use the examination in addition to expenses for one of its representatives to travel to Alaska and ensure that the test is being administered properly. The AWS test is given four times a year in accordance with 12 AAC 72.085.

Elaine! which is this the national or State?

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

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

Licensure

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

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

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

Reciprocity

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

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

fees.

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

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

Reports of Board

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

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

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

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

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

Barrier to get onto the board.

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

dual power for enforcement

see page 30

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

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

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

Compliance documents are submitted to AWS, not to the State. Only the "all position welding qualification" is a State imposed and regulated requirement. State licensure in this instance amounts to notice that the inspector is AWS qualified. The services of welders and welding inspectors are utilized by members of the industry (eg., contractors and engineers), who are responsible for the work done and who are well able to judge for themselves the competence and qualifications of welders. Inspection and regulation of the type of establishment the average consumer may do business with (eg., small welding shops and marina repair facilities) is not taking place.

are regulated.

NOT Regulated

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

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

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

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

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

Board Composition

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

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

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

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

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

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

Board Composition see page 9 "Barrier"

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

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

Board function not carried out.

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

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

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

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

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

California Law!

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

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

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

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

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

Board not meeting Responsibility.

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

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

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

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

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

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

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

Fees.

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

Chapter 99. Board of Welding Examiners

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) B 31.10.0 - 1967 power piping;

(2) B 31.2 - 1968 fuel gas piping;

(3) B 31.8 - 1968 gas transmission and distribution piping system;

(4) B 31.3 - 1966 petroleum refining piping;

(5) B 31.4 - 1966 and B 31.4a - 1968 liquid petroleum transportation piping systems. (§ 6 ch 151 SLA 1970)

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

CHAPTER 72.
BOARD OF WELDING EXAMINERS

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

ARTICLE 1.
CODES

Section
5. Rating
10. (Repealed)

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

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

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

ARTICLE 2.
WELDERS

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

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

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

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

12 AAC 72.025. REQUIREMENTS FOR WELDER QUALIFICATION CERTIFICATE. (a) Testing of welders shall be done under the direct supervision of a licensed welding inspector.

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

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

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

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

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

12 AAC 72.030. TEST [illegible]LECTION. Repealed. (8/21/78, Reg. 67)

12 AAC 72.0[illegible] [illegible]R QUALIFICATION CERTIFICATI[illegible] The welding inspector shall issue the w[illegible] fication certificate in the appropriate [illegible] o the applicant or company upon th[illegible] pplicant's successful completion of the examination. (Eff. 8/21/78, Reg. 67)

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

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

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

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

(2) the welder has been continuously employed on the welding process for which he is certified.

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

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

ARTICLE 3.
WELDING INSPECTORS

Section

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) pass a demonstration of competency in the use of tools, gauges, and instruments pertaining to weld inspection; and

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

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

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

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

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

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

Authority: AS 08.99 080(a)(6) and (10)

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

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

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

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

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

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

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

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

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

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

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

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

(A) a signed statement of an employer;

(B) payroll records indicating the position held; or

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

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

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

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

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

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

(3) verify that the base materials and consumable welding materials conform to the specification requirements and that the specified welding filler metals are used on each base metal or combination of base metals;

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

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

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

(7) observe the qualification tests when qualifying welders;

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

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

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

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

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

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

(14) perform the necessary visual inspections;

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

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

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

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

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

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

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

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

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

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

(c) If the welding inspector is to perform nondestructive examinations other than visual, and there are no specified qualification requirements, he or she must be qualified and certified in accordance with the Recommended Practice No. SNT-TC-1A, "Personnel Qualification and Certification for Nondestructive Testing," June 1975. (Eff. 8/21/78, Reg. 67)

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

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

(1) signing a blank welder qualification certificate;

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4.
GENERAL PROVISIONS

Section
899. Weld qualifier license
900. Definitions

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

Authority: AS 08.99.080(a)(7)

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

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

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

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

(4) "continuous employment" means employment without interruption of more than 90 consecutive days unless otherwise specified in the code under which the certificate is being renewed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE
of ALASKA

MEMORANDUM

APPENDIX "A"

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

DATE: June 13, 1979

FILE NO.

TELEPHONE NO

FROM: AVRUM M. GROSS
ATTORNEY GENERAL
By: Norman E. Staton
Norman E. Staton
Assistant Attorney General

SUBJECT: AS 08.40 and AS 08.99
Enforcement Responsibilities

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

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

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

AS 08.01.087 provides:

> Sec. 08.01.087. Powers and duties of department. (a) The department may upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.
>
> (b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted

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

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

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

> (Applicability of Chapter.) This chapter applies to the ...
> (7) Board of Electrical Examiners;
> (17) Board of Welding Examiners

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

AS 08.40.175, regarding Electrical Examiners, provides:

> Sec. 08.40.175. Cease and desist order. (a) If the commissioner of labor determines that a person is acting as an electrical administrator in violation of this chapter, he may issue a cease and desist order prohibiting further action by the person as an electrical administrator. The cease and desist order remains in effect until the person has submitted evidence acceptable to the commissioner of labor showing that the violation has been corrected.
>
> (b) A person affected by an order issued under (a) of this section may seek equitable relief preventing the commissioner of labor from enforcing the order.

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

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

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

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

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

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

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

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

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

NES:bwb

-30-

Title 59. PROFESSIONS AND OCCUPATIONS

CHAPTER 40. OKLAHOMA WELDING ACT (NEW)

Effective October 1, 1978

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

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

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

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

§ 1626. Definitions. As used in this act:

1. "Certificate" means the document issued to an applicant upon successful examination;

2. "Certification" means the testimony of qualifications;

3. "Code" means United States of America Standard Institute Code;

4. "Committee" means the Oklahoma State Labor Department, Boiler Inspection Department, Chief Boiler Inspector;

5. "Qualification" means the successful completion of all parts of the requirements set out by the Oklahoma Department of Labor;

6. "Welding Inspector" means a person who has met the requirements of this act;

7. "Weld-testing facility" means a qualified and approved testing facility approved by the Oklahoma Department of Labor;

8. "Weldment" means a welded assembly in which the bulk of the component parts are prepared and joined by any combination of the cutting and welding processes covered by Section 5 of this act;[1] and

9. "Work" means that portion of the product or weldment that specifically involves or affects the use of welding.

[1]Section 1628 of this title.

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

1. Verify that the work which he inspects conforms to the requirements of the applicable codes, standards and job specifications;

2. Verify that the base materials and consumable welding materials conform to the specification requirements and that the specified welding filler metals are used on each base metal or combination of base metals;

3. Verify that the welding equipment to be used for the work is that which is specified in the welding procedure and has the capability to produce the specified welds;

4. Verify that the welding procedures are as specified, qualified and available to the welders for reference;

5. Verify that the welders have been properly qualified in accordance with the applicable codes and standards, and that their qualifications authorize them to use the welding procedures specified for the work. If there is evidence that the welder's work does not conform to the requirements of the applicable code, standard or specification, the welding inspector may require requalification of a welder, if that person's qualification is not current by the requirements of the applicable codes, standards or specifications;

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

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

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

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

10. Observe the technique and performance of each welder;

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

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

13. Perform the necessary visual inspections;

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

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

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

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

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

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

a. shielded metal arc welding,

b. stud arc welding,

c. submerged arc welding,

d. flux cored arc welding,

e. gas metal arc welding,

f. gas tungsten arc welding,

g. electroslag welding,

h. oxyfuel gas welding,

i. brazing,

j. thermal cutting, and

k. mechanical cutting.

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

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

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

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

[1]Section 1628 of this title.

[2]Section 1631 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The power piping code;

2. The fuel gas piping code;

3. The gas transmission and distribution piping system code;

4. The petroleum refining piping code; and

5. The liquid petroleum transportation piping system code.

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

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

1. Examine, certify and renew the certification of qualified applicants, keep a record of all such proceedings, and submit annual reports to the Governor;

2. Promulgate rules and regulations concerning the quality of welds and qualification of welders;

3. Designate and approve persons qualified to administer welding tests; and

4. Designate and approve shops, testing facilities or other establishments qualified for testing coupons and weldments.

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

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

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

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

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

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

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

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

B

STATE OF ALASKA
Guide Licensing and Control Board
May, 1979

Findings

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

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

I. General Information

A. Regulated Parties

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

B. Definitions

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

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

C. Nature and Composition of Board

1. Board members and terms:

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

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

2. Representation:

Profession = 3
Public = 4

3. Qualifications:

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

D. Licensing Data

Current licenses (effective May, 1979)

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

All licentiates in this profession are in-State.

E. Fees

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

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

F. Board Revenues and Expenditures

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

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

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

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

II. Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Statutory recommendations made by the Board have been cited previously.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 1. Guide Licensing and Control Board.

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

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

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

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

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

(1) prepare, grade and administer examinations;

(2) determine and pass on qualifications of applicants for licenses and authorize the issuance of licenses to those who qualify;

(3) establish guide performance standards and regulate activity;

(4) compile, maintain and publish a guide register of guides who have not been convicted of a violation of a federal or state sport fish, game, or guiding statute or regulation; a guide listed in the register whose license is revoked or suspended shall be removed from the register while his license is revoked or suspended;

(5) compile, maintain and publish a record of registered or master guides who have completed a contract hunt in any of three years immediately preceding the publishing of the record;

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

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

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

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

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

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

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

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

Article 2. Licensing.

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

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

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

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

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

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

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

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

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

(1) is 21 years of age or more;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 08.54.130. Privilgeges and limiations of class-A assistant guides. A class-A assistant guide

(1) may not contract for hunts;

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

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

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

(1) is 19 years of age or more;

(2) is a resident of the state;

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

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

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

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

(1) is a resident of the state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A master or registered guide who fails to renew a license is not required to requalify under § 100(2) or § 110(8) of this chapter, respectively. (§ 1 ch 17 SLA 1973; am § 12 ch 127 SLA 1974; am § 4 ch 106 SLA 1976)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 3. General Provisions.

Section
240. Definitions

Sec. 08.54.240. Definitions. In this chapter

(1) "board" means the Guide Licensing and Control Board;

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

(3) "resident" means a person who maintains a place of residence within the state; has not claimed residency in another state for

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

(4) "unethical activity" means

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

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

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

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

CHAPTER 38. GUIDE LICENSING

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

ARTICLE 1. EXAMINATIONS

Section
10. Examinations

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

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

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

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

Authority: AS 08.54.050

ARTICLE 2. GUIDE REGISTER

Section
20. Guide register

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

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

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

ARTICLE 3. GENERAL PROVISIONS

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

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

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

Authority: AS 08.54.050

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

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

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

(2) repealed 6/6/79;

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

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

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

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

(f) Notwithstanding any provision of this section, a guide may petition the board for a transfer of certification to another district if he demonstrates to the satisfaction of the board

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

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

(B) significant reclassifications of land within his district;

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

(D) other demonstrations of hardship; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) upon application for reassignment.

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

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

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

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

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

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

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

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

12 AAC 38.056. CHANGES TO GUIDING AREA PERMIT. Petitions for changes to the size or boundary of a guiding area, for reassignment of a guiding area permit, or for any other changes affecting the guiding area, will be accepted for all guide districts and will be reviewed at a regularly scheduled meeting of the board. Each petitioner will be advised of the date and place of the meeting when his or her petition is scheduled for review. A petition will not be reviewed by the board if the petitioner or a person authorized in writing by the petitioner as his or her designee fails to appear at the time of the scheduled review. If the petition concerns a joint use guiding area permit, each holder of a permit for that guiding area will be furnished a copy of the petition and advised of the date and place when the petition is scheduled to be reviewed and may appear before the board and present testimony relevant to the petition. (Eff. 5/12/78, Reg. 66)

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

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

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

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

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

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

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

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

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

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

(2) the dates of the contract hunt;

(3) the species to be hunted for;

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

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

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

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

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

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

Authority: AS 08.54.050

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

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

(1) adequate first aid supplies;

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

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

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

Authority: AS 08.54.050

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

Authority: AS 08.54.050

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

Authority: AS 08.54.050

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

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

Authority: AS 08.54.050

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

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

Authority: AS 08.54.050

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

Authority: AS 08.54.050

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

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

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

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

Authority: AS 08.54.050
AS 08.54.110(12)

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

Authority: AS 08.54.050
AS 08.54.100(5)

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

Authority: AS 08.54.050

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

Authority: AS 08.54.050

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

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

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

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

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

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

(6) not maintaining and providing stock,

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

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

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

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

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

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

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

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

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

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

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

Authority: AS 08.54.040(6)
AS 08.54.050

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

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

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

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

Authority: AS 08.54.050

Original sponsor: Bradley

Offered: 2/16/79
Referred: Rules

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 101

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

C

STATE OF ALASKA
COLLECTION AGENCY BOARD
June, 1979

Findings

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

I. General Information

A. Regulated Parties

1. Collection Agencies
2. Collection Agency Operators

B. Definitions

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

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

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

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

(4) 'collection agency' means a person licensed and authorized to engage in the collection agency business;

(5) 'operator' means a person having managerial control of a collection agency." (AS 08.24.380)

C. Nature and Composition of Board

1. Board members and terms:

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

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

2. Representation:

Profession = 2
Public = 2
Administrative Agency = 1

3. Qualifications:

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

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

D. Licensing Data

Current licenses (effective May, 1979)

Agencies = 23
Operators = 25

There are currently no out-of-State licenses.

E. Fees

Resident

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

Nonresident

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

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

F. Board Revenues and Expenditures

	FY' 76	FY '77	FY '78	FY '79
Receipts	$4,164.00	$8,364.00	$6,950.00	$3,697.55
- refunds	-	300.00	-	-
Total	$4,164.00	$8,064.00	$6,950.00	$3,697.55
Expenditures				
Transportation	-	438.83	1,830.87	2,018.48
Per Diem	-	212.50	1,621.60	1,493.55
Phone	-	20.10	49.40	950.69
Printing, Adver. & Postage	-	140.16	624.35	204.79
Fees & Services	-	-	-	
Rents, Leases	-	-	-	
Other	-	-	-	3.25
Total	-	811.59	4,126.22	$4,670.76
Surplus	$4,164.00	$7,252.41	$2,823.78	-
Deficit	-	-	-	$ 973.21

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

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

H. Professional Qualifications

No technical education or experience requirements.

II. Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 24. Collection Agencies.

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

Article 1. Collection Agency Board.

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

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

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

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

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

Article 2. Powers and Duties of the Department of Commerce

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

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

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

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

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

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

Article 3. Licensing

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

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

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

(1) conduct a collection agency business in this state;

(2) collect claims for others in this state;

(3) solicit the right to collect or receive payment of a claim for another;

(4) advertise or solicit either in print, by letter, in person or otherwise, the right to collect or receive payment of a claim for another;

(5) seek to make collection or obtain payment of a claim on behalf of another.

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

(1) attorneys at law;

(2) persons regularly employed on a regular wage or salary in the capacity of credit men or a similar capacity, except as an independent contractor;

(3) banks, including trust departments of banks, fiduciaries and financing and lending institutions;

(4) common carriers;

(5) title insurers and abstract companies while doing an escrow business;

(6) licensed real estate brokers;

(7) employees of licensees under this chapter;

(8) substation payment offices employed by or serving as independent contractors for public utilities.

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

Sec. 08.24.100. Licensed operator required, exceptions and fee. (a) Notwithstanding any other provision of this chapter, no licensee may engage in the collection agency business unless and until the collection agency, and each branch office of the agency is under the management and control of a licensed operator for each office. The department or the board may waive this requirement for a period not to exceed 90 days upon the death or disability of an operator, or for other good cause.

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

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

(1) have been a resident of this state continuously for at least one year before the time of application;

(2) be a high school graduate, or have the equivalent education of a high school graduate;

(3) be of good moral character;

(4) not have been convicted of violating this chapter, nor have any unsettled complaints under this chapter against him;

(5) not have been convicted of a felony or a crime of larceny or embezzlement or a crime involving moral turpitude;

(6) be 19 years of age or older at the time of application;

(7) not be a disbarred attorney or have filed bankruptcy;

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

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

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

(1) a complete set of fingerprints;

(2) a 2"x3" photograph showing a front view of head and shoulders;

(3) if an original application, an application fee of $40;

(4) the biennial license fee required by § 100 of this chapter.

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

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

(1) the full name and proposed business name of the applicant;

(2) the address of the applicant's principal place of business and branch offices;

(3) the names and addresses of the applicant and those associated with him; if the applicant is a corporation or association, the application shall contain the names of the officers of the corporation or association;

(4) the names and residential addresses of the applicant's operators;

(5) additional information which the department or the board, by rule or regulation, requires.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BOND

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

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

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

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

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

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

(SEAL).....Principal

(SEAL).....Surety

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

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

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

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

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

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

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

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

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

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

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

ANNUAL STATEMENT TO DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

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

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

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

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

VERIFICATION

STATE OF ALASKA) ss
THIRD DISTRICT)

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

.....

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

Notary Public in and for Alaska
My commission expires:

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

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

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

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

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

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

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

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

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

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

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

(1) the name of the debtor making payment;

(2) the amount paid;

(3) the name of the creditor to whom funds are being applied;

(4) the date and form of payment;

(5) the balance remaining due on account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the employee's residence address;

(2) the employees's length of residence in the state;

(3) a statement of his previous employment in the last year;

(4) further information which the board or department may require.

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

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

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

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

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

Sec. 08.24.380. Definitions. In this chapter

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

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

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

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

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

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

D

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

Findings

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

I. General Information

A. Regulated Parties

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

B. Definitions

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

C. Nature and Composition of Board

1. Board members and terms:

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

Hester Pumphrey,	Ends June 15, 1978
Ione Lambert, Chairman	Ends June 15, 1979
Maria Dunham	Ends June 15, 1980
Dennis Milhouse	Ends June 15, 1981

2. Representation:

Profession	=	5	(by statute)
Public	=	0	

3. Qualifications:

Board members must be adults, United States citizens and Alaska residents. Four members must have at least five years' experience as an operator, manager-operator, or owner-operator, and one member must have at least three years' experience as the owner, manager, or instructor of a licensed beauty school. All members must remain active and shall take an oath of office. (AS 08.28.030)

D. Licensing Data

Current Licenses (through May, 1979)

in-State	=	1,466
out-of-State	=	328
TOTAL	=	1,794

E. Fees

1.	schools	
	registration and initial license fee	$500.00
	biennial renewal	200.00
2.	school owner	
	registration and initial license fee	40.00
	biennial renewal	30.00
3.	instructor-operator:	
	registration and initial license fee	40.00
	biennial renewal	30.00
4.	owner-operator:	
	registration and initial license fee	25.00
	biennial renewal	20.00
5.	owner only, beauty shop:	
	registration and initial license fee	25.00
	biennial renewal	20.00

6.	manager-operator:	
	registration and initial license fee	25.00
	biennial renewal	20.00
7.	demonstrator or consultant:	
	registration and initial license fee	40.00
	biennial renewal	30.00
8.	operator:	
	registration and initial license fee	15.00
	biennial renewal	10.00
9.	apprentice or student:	
	registration and initial license fee	5.00
	annual renewal	3.00
10.	manicurist:	
	registration and initial license fee	15.00
	biennial renewal	10.00
11.	examination fee	15.00
12.	investigation fee	25.00

F. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	$23,245.00	$22,248.00	$22,237.00	$27,568.00
- refunds	170.00	285.00	416.00	598.00
Total	$23,075.00	$21,963.00	$21,821.00	$26,970.00
Expenditures				
Transportation	1,063.01	1,752.03	1,086.96	1,892.83
Per Diem	2,678.75	2,700.00	2,133.41	2,211.25
Phone	83.85	61.73	127.75	605.95
Printing, Adver. & Postage	902.44	818.79	405.70	288.52
Fees & Services	368.50	486.50	347.50	483.00
Rents, Leases & Other		125.00	411.00	507.88
Total	$ 5,096.55	$ 5,944.05	$ 4,512.32	$ 5,989.43
Surplus	$17,978.45	$16,018.95	$17,308.68	$20,980.57
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

As of June 1, 1979, five complaints remain open in agency files and six are pending closure on Board approval. Sixty-seven were purged in 1978 and are pending closure due to lack of jurisdiction or age of the complaint. One of the open cases has been on-going since

1972 with continual infractions and complaints from a number of sources. Another case alleges physical injury to a member of the public (received a year after the alleged incident).

H. Professional Qualifications

All states require vocational training as a prerequisite to licensure.

II. Analysis

A. To what extent has the Board of Hairdressing and Beauty Culture Examiners operated in the public interest?

Statutory powers and duties of the Board include examining applicants and issuing licenses. The written portion of the examination is a national test, composed and graded by a national organization (the Psychological Corporation). The Board is considering inclusion of a jurisprudence portion into this examination. A six-to-seven hour practical examination is also administered to newly graduated students. Monitoring and grading is done by the Board. Applicants must achieve a score of 75% in all portions of the examination and must retest in only the area(s) failed. The examination process is designed to demonstrate competency in a profession and helps to ensure that individuals are qualified to practice.

The Board also has responsibility for regulating and licensing schools of hairdressing and beauty culture. Four such schools exist in the State, one in Fairbanks, and three in Anchorage. The Board reviews and approves school layout, its curriculum, student-teacher ratios, necessary equipment, and other matters pertaining to training of students. Inspections of schools are conducted by the Board and by the State Department of Health and Social Services. 7 AAC 22.390 outlines the criteria by which the Department of Health and Social Services deter-

mines the sanitary status of establishments. The Board routinely inspects schools in Anchorage during the period in which it holds a scheduled meeting. It has not conducted inspections in Fairbanks; however, a board member was assigned this responsibility at the May, 1979, Board meeting. It should be noted also that the Board has consistently found infractions in one particular school which has been the subject of numerous complaints from a variety of sources since 1972. Although the school has been admonished regarding its practices, no definitive action has been taken. The Board has the authority to suspend or revoke a license for good cause.

The Board may promulgate rules and regulations necessary to carry out the purposes of AS 08.28. It is now in the process of revising and updating current regulations and adding provisions concerning application procedures, qualifications, requirements for schools, and examination and grading procedures. Members of the profession have exhibited interest in the regulation making activity.

Most licenses are issued without examination to applicants who are already licensed in another jurisdiction. This practice facilitates entry into the profession as does that of issuing temporary licenses pending examination. A review of applicant files indicates that out-of-state applicants are usually licensed about 4-5 weeks from the date of application. The Board has been relying on its examiner from the Division of Occupational Licensing to verify qualifications and issue licenses. The Board has formally authorized this procedure at its May, 1979, meeting and will review and ratify licensures during a subsequent regularly scheduled meeting.

Applicants for licensure must be at least 17 years of age, of good moral character, have completed two years of high school or its equivalent, and have the required training or work experience. These items are addressed on application forms but are not verified. No school transcripts are required; although applicants are required to list three

character references, in no case has this information been checked or used for any purpose. Also included on the application are questions regarding such matters as length of residency in Alaska and future job prospects. The Board should review its applications and procedures for licensing.

Schools are required to submit quarterly reports to the Board on student or apprentice achievement and to notify the Board of enrollments and terminations. These records are maintained by the administrative agency as are all Board and licentiate files. The agency is in the process of implementing improved file and data maintenance procedures for all boards.

Barbers are excluded from the provisions of AS 08.28.

The Board has been discussing the advantages and disadvantages of continuing education requirements but has not yet formulated a position other than to agree that members of the profession should take every opportunity to upgrade their skills.

While it was stated as past policy that apprenticeships would not be allowed in towns where schools are located, the Board reversed this position at its May, 1979, meeting. It also rescinded a previous action which required the Division to release student examination scores to schools.

The Board and regulation of the beauty culture profession could be allowed to terminate on June 30, 1980, as provided by law, probably without significant adverse impact on the consuming public. Another alternative would be termination of the Board and assumption of the licensure functions by the administrative agency. Or practitioners could simply be registered by the administrative agency.

The Board could also be reestablished for another four years or less. If it is reestablished and/or regulation of this profession continues, consideration should be given to the suggestions for efficient operation noted in this review.

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

Practices and policies which utilize standard examinations, standard endorsement procedures and the issuance of temporary permits are felt to facilitate entry of qualified applicants into the profession and to promote availability of services. Student and apprenticeship programs also function to provide career opportunities and services in the State.

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

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY '78 two investigator positions were

vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-.630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

Regulations concerning applications for licensure and examination procedures are being promulgated. A review of Board statutes indicates that changes should be considered either by the Board or by the Legislature.

The term "good moral character" should be either defined or deleted from the statutes.

AS 08.28.030 requires that all Board members also be members of the profession. Public members should be allowed on this Board, although an increase in total membership is not advocated. Members have not taken an oath of office as required.

In reference to § 090, the Board has not promulgated regulations specifically for apprentices, however, this is not mandatory. Formal procedures have been established.

The Board has requested draft legislation which would repeal § 150, admission of shop owner without examination. This statute allows a shop

owner to practice hairdressing or beauty culture without a license as long as he employs a licensed manager-operator. §§ 240, 250 and 260, all grandfather clauses, are recommended to be repealed.

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

1976 amendments added to the powers and duties of the Board and included general items of a "housekeeping" nature.

Board minutes from 1976 reflect the Board's recommendation for legislation for shampooists, facialists and manicurists. There is no record of any recommendations by the Board for statutory changes that would be of specific benefit to the public.

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

The bulk of participation at Board meetings and hearings has come from the profession. Substantial professional interest is generated by promulgation of regulations, by enforcement activities, and by quality of training facilities. Very little general "public" concern with Board functions has been demonstrated. Notices of pending meetings and new or

amended regulations are published in major newspapers in the State. Positive steps could be taken by the Board and the Division to heighten public awareness, such as public service radio announcements or utilization of other media.

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

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

Five open complaints regarding this profession were on file with the administrative agency as of June, 1979. One of these alleged physical injury to a consumer; however, it is worth noting that the complaint was referred by another division and had been received by them a year after the alleged incident occurred. Six additional cases are pending Board approval for closure and sixty-seven were purged in 1978 due to age and/or lack of jurisdiction (also pending closure). The administrative agency has been addressing the need for investigative procedures and for timely disposition of complaints.

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

One complaint against the Board is on file but Board records indicate this issue has been resolved.

F. To what extent does the Board of Hairdressing and Beauty Culture Examiners present qualified applicants to serve the public?

Individuals wishing to practice must submit fees and application to the administrative agency with relevant information regarding qualifications. 12 AAC 24.020 provides that examinations for licensure be given on a quarterly basis. Applicants who are statutorily qualified and who demonstrate the required level of knowledge and proficiency are issued a license.

Current Board practices which allow for licensure by endorsement and the issuance of temporary work permits are conducive to entry into the profession by qualified persons.

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

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible to four other regulated professions), who is hired through the State Personnel System and is subject to affirmative action requirements.

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

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

Conclusions Proposed by O.L.

Public members should be included on the Board. Statutory amendments should be introduced which would repeal §§ 150, 240, 250 and 260. through attrician add 1 public member.

The Board should explore methods of informing the general public of its existence and functions. It also should assume a more active roll in regulation and inspection of schools. The administrative agency will continue to address the need for assessment and follow through on complaints as well as record keeping procedures.

The Board should review and revise its application forms and procedures.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing administrative overhead such as staff salaries, examination expenses, and investigative services.

Chapter 28. Cosmetologists and Hairdressers.

Article
1. Board of Hairdressing and Beauty Culture Examiners (§§ 08.28.010-08.28.090)
2. Licenses (§§ 08.28.100-08.28.260)
3. Miscellaneous Provisions (§§ 08.28.270-08.28.290)
4. General Provisions (§§ 08.28.300-08.28.320)

Article 1. Board of Hairdressing and Beauty Culture Examiners.

10. Creation and membership of Board of Hairdressing and Beauty Culture Examiners
20. Term of office and removal
30. Qualifications of board members
40. Powers and duties of the board
50. Meetings of the board
60 -70. [Repealed]
80. Standards for regulations
90. Special regulations

Sec. 08.28.010. Creation and membership of Board of Hairdressing and Beauty Culture Examiners. There is created a Board of Hairdressing and Beauty Culture Examiners, referred to in this chapter as the board. The board consists of five members appointed by the governor. (§ 3(1) ch 52 SLA 1957)

Sec. 08.28.020. Term of office and removal. Members serve a term of three years and at the pleasure of the governor. (§ 3(1) ch 52 SLA 1957)

Sec. 08.28.030. Qualifications of board members. (a) To qualify for membership on the board, a member must be an adult, a citizen of the United States, and a resident of the state.

(b) The governor shall appoint persons so that four members have at least five years' experience as an operator, manager-operator, or owner-operator, and one member has at least three years' experience as the owner, manager, or instructor of a beauty school licensed under this chapter. To remain on the board, a member must remain active in an activity that would qualify him for appointment under this subsection.

(c) Each member shall take the oath provided by law for public officers. (§ 3(1) ch 52 SLA 1957; am § 1 ch 101 SLA 1963)

Sec. 08.28.040. Powers and duties of the board. The board shall exercise general control over the vocations of hairdressing and beauty culture within the state. The board

duties

(1) shall examine applicants and issue licenses;

(2) shall issue licenses for schools of hairdressing or beauty culture;

(3) may suspend or revoke a license;

(4) may promulgate rules and regulations relating to hairdressing or beauty culture, and hairdressing or beauty culture schools, necessary to effectuate the purposes of this chapter;

(5) except as provided in § 280 of this chapter, may inspect schools and shops in order to enforce the provisions of this chapter;

(6) may, on its own motion, and shall, upon receipt of a written complaint, investigate the practices of a person, shop, or school licensed under this chapter. (§ 3(2) ch 52 SLA 1957; am § 1 ch 104 SLA 1976)

Sec. 08.28.050. Meetings of the board. The board shall meet at least once each year for the conduct of its business. The annual meeting shall be held at the place designated by the majority of the board members.

The board shall, at its annual meeting, elect a president, vice-president and secretary-treasurer from its members. Board members serve without pay. However, each member is entitled to transportation and per diem allowances authorized by law. (§ 3(3) ch 52 SLA 1957)

Sec. 08.28.060. Duties of secretary-treasurer. Repealed by § 3 ch 59 SLA 1966.

Sec. 08.28.070. Salary of secretary-treasurer. Repealed by § 3 ch 59 SLA 1966.

Sec. 08.28.080. Standards for regulations. The board shall adhere as closely as possible to the rules, regulations, and standards prescribed and recommended by the "Allied Cosmetology Council of State Board, Schools, and Shops." (§ 13 ch 52 SLA 1957)

Sec. 08.28.090. Special regulations. The board may prescribe special rules and regulations for apprentices whose job training is supervised by the Department of Education under a vocational rehabilitation program. However, these apprentices, to become licensed, shall pass the standard licensing examination given by the board. (§ 14 ch 52 SLA 1957)

Article 2. Licenses

Section
100. License required
110. Qualifications of applicants
120. Examination and other requirements
130. Temporary license
140. Out-of-state licenses
150. Admission of shop owner without examination
160. [Repealed]
170. Fees
180. School license
190. Display of license
200 - 210. [Repealed]
220. Lapsed license
230. Grounds for revocation or suspension of license
240. Application of license provisions to existing operators
250. Application of license provisions to beauty schools
260. Credit to students for prior study

Sec. 08.28.100. License required. No person may engage in the practice of hairdressing or beauty culture or organize, open, or conduct a school of hairdressing and beauty culture without a license. (§ 2 ch 52 SLA 1957)

Sec. 08.28.110. Qualifications of applicants. An applicant for a license as an operator, manager-operator, demonstrator or consultant, owner-operator, or instructor-operator shall

(1) be at least 17 years of age;

(2) be of good moral character;

(3) have completed two years of high school or its equivalent;

(4) have training at least 2,000 hours, extending over a school term of not less than 50 weeks in a school of hairdressing or beauty culture approved by the board, or service as an apprentice under a licensed operator in a shop approved by the board or completed training and working experience as a hairdresser in another state or country which the board finds to meet the minimum requirements of this state. (§ 4(1) ch 52 SLA 1957; am § 2 ch 112 SLA 1959; am § 2 ch 104 SLA 1976)

Sec. 08.28.120. Examination and other requirements. An applicant shall pass an examination given by the board. The examination shall cover subjects designated by the board. The board shall fix the time and place for examination and shall give at least one examination each year. The board may delegate the power of examination to a committee of the board or a board member. The board may prescribe additional requirements for a license. (§ 4(2) ch 52 SLA 1957)

Sec. 08.28.130. Temporary license. The board may issue a temporary license or working permit to a graduate of an approved school of hairdressing or beauty culture or to an apprentice who has received on-the-job training which complies with the rules and regulations of the board. A temporary license or working permit is valid until the results of the examination given to the student or apprentice are announced. (§ 4(3) ch 52 SLA 1957)

Sec. 08.28.140. Out-of-state licenses. A person holding a current valid license from a board of cosmetology and hairdressing in another state or country is entitled to a license under this chapter without examination if he applies, accompanying his application with

(1) proof of a foreign license;

(2) proof that he has completed at least 2,000 hours of training in a hairdressing and beauty culture school or service as an apprentice under a licensed hairdresser in a shop approved by the board or completed training and working experience as a hairdresser which the board finds to meet the minimum requirements of the state;

(3) payment of an investigation fee. (§ 4(4) ch 52 SLA 1957; am § 3 ch 112 SLA 1959; am § 2 ch 101 SLA 1963; am § 1 ch 2 SLA 1965; am § 1 ch 46 SLA 1968; am § 3 ch 104 SLA 1976)

Sec. 08.28.150. Admission of shop owner without examination. A shop owner may be licensed without examination but, unless licensed as an operator, he shall not engage in the practice of hairdressing or beauty culture without employing a licensed manager-operator. (§ 4(4) ch 52 SLA 1957; am § 3 ch 112 SLA 1959)

Sec. 08.28.160. Examination fee. Repealed by § 3 ch 46 SLA 1968.

Sec. 08.28.170. Fees. The following fees shall be imposed under this chapter when applicable

(1) schools:

registration and initial license fee.....	$500
biennial renewal.....	200

(2) school owner:

registration and initial license fee.....	40
biennial renewal.....	30

(3) instructor-operator:

registration and initial license fee.....	40
biennial renewal.....	30

(4) owner-operator:

registration and initial license fee.....	25
biennial renewal.....	20

(5) owner only, beauty shop:

registration and initial license fee.....	25
biennial renewal.....	20

(6) manager-operator:

registration and initial license fee.....	25
biennial renewal.....	20

(7) demonstrator or consultant:

registration and initial license fee.....	40
biennial renewal.....	30

(8) operator:

registration and initial license fee.....	15
biennial renewal.....	10

(9) apprentice or student:

registration and one-year permit fee.....	5
annual renewal.....	3

(10) manicurist:

registration and initial license fee.....	15
biennial renewal.....	10

(11) examination fee.....	15
(12) investigation fee.....	25

(§ 4(5) cn 52 SLA 1957; am § 4 ch 112 SLA 1959; am § 2 ch 46 SLA 1968; am §§ 4, 5 ch 104 SLA 1976)

Sec. 08.28.180. School license. The board shall prescribe rules and regulations for the licensing of schools of hairdressing and beauty culture. The rules and regulations shall include the financial respon-

sibility of the owner, details of the curriculum, minimum hours of instruction, and physical condition of the school premises and facilities. (§ 5 ch 52 SLA 1957)

Sec. 08.28.190. Display of license. Every licensee shall display his license in a conspicuous place in his place of business or in his working booth. Each shop owner or manager is responsible for the display of licenses held by employees in their shops. (§ 6(1) ch 52 SLA 1957)

Sec. 08.28.200. License year. Repealed by § 3 ch 59 SLA 1966.

Sec. 08.28.210. Duplicate licenses. Repealed by § 3 ch 46 SLA 1968; § 7 ch 94 SLA 1968.

Sec. 08.28.220. Lapsed license. A lapsed license may be reinstated, if the license has not been lapsed for a period of more than five years, and all renewal and delinquent fees for the period during which the license has been lapsed are paid. (§ 6(4) ch 52 SLA 1957)

Sec. 08.28.230. Grounds for revocation or suspension of license. The board may suspend or revoke a license for failure to comply with this chapter, or a rule, regulation, or order of the board. (§ 8 ch 52 SLA 1957)

Sec. 08.28.240. Application of license provisions to existing operators. A person holding a valid license as an operator issued before March 16, 1957, is not required to obtain a new license, but shall nevertheless comply with all other provisions of this chapter. (§ 12 ch 52 SLA 1957)

Sec. 08.28.250. Application of license provisions to beauty schools. Hairdressing and beauty culture schools shall comply with the licensing provisions of this chapter and with rules and regulations issued under it. Upon application and payment of the fee by a beauty school which has been in operation and teaching a course of not less than 2,000 hours for one year before January 1, 1957, the board shall issue a license for its operation. (§ 12 ch 52 SLA 1957)

Sec. 08.28.260. Credit to students for prior study. A student of a hairdressing and beauty culture school shall receive credit for hours of instruction completed before March 16, 1957, if the school substantially met the minimum standards for curricula, the qualification of instructors, and other rules and regulations established by the board under this chapter. If the school met the prescribed minimum standards for a period of six months or more preceding March 16, 1957, all students who have satisfactorily completed the course of instruction shall receive credit for the entire period of instruction. (§ 12 ch 52 SLA 1957)

Article 3. Miscellaneous Provisions.

Section
270. Record of achievement
275. Advertising
280. Control of health and sanitary conditions
290. Applicability of Administrative Procedure Act

Sec. 08.28.270. Record of achievement. Each licensee who supervises a student or apprentice shall submit quarterly to the board a record of achievement of the student or apprentice. (§ 3 ch 52 SLA 1957)

Sec. 08.28.275. Advertising. No person, shop, or school engaged in the practice of hairdressing or beauty culture may knowingly use false or deceptive statements in advertising its services. A hairdressing or beauty culture school representing itself to be approved or accredited shall indicate the organization or agency issuing the approval or accreditation. (§ 6 ch 104 SLA 1976)

Sec. 08.28.280. Control of health and sanitary conditions. Control over health and sanitary conditions in shops and schools licensed under this chapter is in the Department of Health and Welfare. (§ 7 ch 52 SLA 1957)

Sec. 08.28.290. Applicability of Administrative Procedure Act. Procedures and rules and regulations adopted under this chapter shall comply with the Administrative Procedure Act (AS 44.62). (§ 10 ch 52 SLA 1957; am § 5 ch 112 SLA 1959)

Article 4. General Provisions.

Section
300. Barbers excluded
310. Penalties
320. Definitions

Sec. 08.28.300. Barbers excluded. This chapter does not apply to barbers exclusively engaged in the occupation of barbering. (§ 11 ch 52 SLA 1957)

Sec. 08.28.310. Penalties. A person who engages in the practice of hairdressing or beauty culture without obtaining a license, or any person who organizes, opens or conducts a school of hairdressing or beauty culture, without obtaining a license, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for a period of not more than 90 days, or by a fine of not more than $300, or by both. (§ 9 ch 52 SLA 1957)

Sec. 08.28.320. Definitions. As used in this chapter, unless the context otherwise requires,

(1) "apprentice" is a person at least 17 years of age who has completed two years of high school or equivalent education, who receives on-the-job training on licensed premises and who does not receive a wage or commission, and for whose work no charge is made until the apprentice has received at least 350 hours of training;

(2) "demonstrator" or "consultant" is a person who practices hairdressing and beauty culture upon a person acting as a subject or model when the demonstration is performed before students, operators, manager-operators, instructors or individuals, shop owners, school owners, or any other public gathering;

(3) "instructor-operator" is a person who gives instruction in the practice of hairdressing or beauty culture in a school, who has passed the qualifications of an owner-operator or manager-operator, and who has passed an examination and holds an instructor-operator license;

(4) "manager-operator" is a person of legal age who operates or manages a hairdressing or beauty culture shop or school;

(5) "manicurist" is a person who practices beauty culture by treating the hands and nails;

(6) "operator" is a person who engages in any practice defined in (10) of this section;

(7) "owner" is a person owning a hairdressing or beauty culture shop;

(8) "owner-operator" is a person who owns a hairdressing or beauty culture shop or school who is qualified under this chapter to practice the art of hairdressing and beauty culture or who is a licensed cosmetologist;

(9) "person" includes a corporation, copartnership, or unincorporated association;

(10) "practice of hairdressing and beauty culture" is engaging for compensation or other reward, in any of the following practices:

(A) arranging, dressing, curling, waving, cleansing, singeing, bleaching, coloring, or similar work on a wig or hair piece of artificial or human hair, or upon the hair of a living person by any means;

(B) trimming hair, as a part of hairdressing;

(C) utilizing cosmetic preparations, antiseptics, tonics, lotions, or creams, with the hands or with a mechanical or electrical apparatus, in massaging, cleansing, stimulating, manipulating,

exercising, or beautifying the scalp, face, neck, arms, hands, bust, or upper part of the body of a person, for the purpose of beautification;

(11) "school of hairdressing" or "school of beauty culture" is a place where a person operates and maintains a class to teach hairdressing or beauty culture;

(12) "shop" is a building or structure, or part of a building or structure, other than a school, where the practice of hairdressing or beauty culture is conducted;

(13) "student" is a person at least 16 years of age who has completed two years of high school or equivalent education, attends a licensed beauty school and does not receive a wage or comission, and for whose work no charge is made until the student has received at least 350 hours of training;

(14) "board" means the Board of Hairdressing and Beauty Culture Examiners;

(15) "department" means the Department of Commerce and Economic Development. (§ 1 ch 52 SLA 1957; am § 1 ch 112 SLA 1959; am § 1 ch 17 SLA 1966; am §§ 60, 61 ch 127 SLA 1974; am §§ 7, 8 ch 104 SLA 1976)

CHAPTER 24. BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS

Section

10. Submission of application
20. Time of examination
30. Additional requirements for licenses
40. Requirements for licenses without examination
50. Apprenticeships
60. Duties of instructor-operator and student instructor
70. Location of shops in private residence
80. Prohibition against employment of unlicensed operators
90. Notification to board of sale, lease or transfer
100. Approval of school of hairdressing and beauty culture
110. Plan and equipment requirements of schools
120. Sanitary rules and regulations
130. Curriculum requirements of school of hairdressing and beauty culture
140. Inspection of schools

12 AAC 24.010. SUBMISSION OF APPLICATION. (a) All applications shall be made under oath and all documentary evidence in support of the application, such as diplomas and foreign license, shall be verified or certified.

(b) The required fee must be submitted with the application.

(c) Applicants shall apply in writing to the secretary of the Board of Hairdressing and Beauty Culture Examiners.

(d) The board reserves the right to require additional proof of qualifications. (In effect before 7/28/59; am 2/64, Reg. 14; am 5/27/66, Reg. 21)

Authority: AS 08.28.120

12 AAC 24.020. TIME OF EXAMINATION. (a) Examination of applicants for licenses shall be given quarterly.

(b) The board shall give public notice of the date, place and time at least 30 days prior to examination.

(c) Additional examinations may be held at the discretion of the board if there are five or more applicants. (In effect before 7/28/59; am 2/64, Reg. 14; am 5/27/66, Reg. 21)

Authority: AS 08.28.120

12 AAC 24.030. ADDITIONAL REQUIREMENTS FOR LICENSES. (a) No person may be licensed as a manager-operator unless

(1) he is a licensed cosmetologist; and

(2) he has had one year practical experience as a licensed cosmetologist immediately prior to application.

(b) No person may be licensed as an instructor-operator unless

(1) he has an Alaska cosmetology license;

(2) he has had one year's practical experience; and

(3) he has engaged in the active practice of hairdressing and beauty culture for at least five years, or has completed 600 hours of student instructor training.

(c) Except that a person may be licenesed as an instructor-operator by reciprocity if he holds a current instructor-operator license from a state whose requirements were substantially equal to those provided in AS 08.28.140 at the time the license was issued. (In effect before 7/28/59; am 2/64, Reg. 41; am 5/27/66, Reg. 21)

Authority: AS 08.28.040
AS 08.28.110
AS 08.28.180
AS 08.28.120

12 AAC 24.040. REQUIREMENTS FOR LICENSES WITHOUT EXAMINATION. (a) An applicant who has a current license from a board of cosmetology in another state with less than 2,000 hours of training in an approved school of beauty culture shall be allowed credit for practical shop experience. He may be licensed without examination as follows:

(1) the training and experience must have been immediately prior to date of application and

(A) he has 1,500 hours of training and one year's experience in a licensed beauty shop; or

(B) he has 1,000 hours of training and two years' experience in a licensed beauty shop.

(b) Proof of practical experience must accompany the application for license or be furnished at the request of the board.

(c) Special consideration may be given to an applicant who can furnish proof of training in an advanced beauty culture school. (In effect before 7/28/59; am 2/64, Reg. 14; am 5/27/66, Reg. 21)

Authority: AS 08.28.130
AS 08.28.140

12 AAC 24.050. APPRENTICESHIPS. Any hairdressing or beauty culture shop may train an apprentice in the art of hairdressing or beauty culture subject to the following conditions:

(1) All apprentices shall register with the secretary of the board;

(2) A shop may have one apprentice for each five operators or fraction thereof except that an apprentice who is training under the state office of Vocational Rehabilitation may train in any shop without regard to the quota imposed by this section;

(3) Apprentices shall be instructed in both theory and practical work. Theory shall be taught from a textbook or textbooks approved by the board;

(4) An apprentice shall complete 2,000 hours of instruction over a period not exceeding two years with not more than eight hours' instruction to be given in any single day;

(5) Upon completion of the prescribed course, the apprentice shall be eligible to take an examination given by the board. If the apprentice fails to pass the examination, he shall be eligible to take another examination;

(6) An apprentice shall complete his apprenticeship in the shop in which he was registered, except that the board may authorize an apprentice's transfer to another shop where good cause is shown;

(7) When an apprentice has interrupted his apprenticeship for a continuous period of one year, no credit will be allowed for apprenticeship instruction received prior to the interruption. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.090
AS 08.28.120

12 AAC 24.060. DUTIES OF INSTRUCTOR-OPERATOR AND STUDENT INSTRUCTOR. (a) No instructor-operator may (in connection with his duties as an instructor at a licensed school) practice hairdressing and beauty culture upon members of the public, except when the work pertains directly to the instruction of students.

(b) A student-instructor in cosmetology shall be registered with the board upon enrollment in a registered school.

(c) A student-instructor shall not be permitted to instruct without a licensed instructor on the premises. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

12 AAC 24.070. LOCATION OF SHOPS IN PRIVATE RESIDENCE. (a) No shop may be opened and maintained in a private residence unless the shop is located in a separate room apart from the living quarters.

(b) The shop shall be properly equipped and shall be subject to inspection by the board and by the Alaska Department of Health and Welfare. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

12 AAC 24.080. PROHIBITION AGAINST EMPLOYMENT OF UNLICENSED OPERATORS. No manager or any other person in a position of authority shall employ an unlicensed operator. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.100

12 AAC 24.090. NOTIFICATION TO BOARD OF SALE, LEASE OR TRANSFER. In the case of a sale, lease or transfer of any school or shop, the seller, lessor or transferor shall notify the board of the transaction within 30 days of the sale, lease or transfer. The notice shall contain the name and address of the buyer, lessee or transferee. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

12 AAC 24.100. APPROVAL OF SCHOOL OF HAIRDRESSING AND BEAUTY CULTURE. No school of hairdressing or beauty culture may be approved by the board unless the school employs at least two licensed instructors, and upon approval, the school must keep on duty at least one full-time, licensed instructor for each 10 students during school hours. After enrollment of the first 20 students, the school shall employ one additional instructor for every 25 students. In addition to the foregoing requirements, such school shall teach the following minimum required operations for each student during the 2,000 hours training:

(1) shampoos – 100

(2) color rinses – 50

(3) neck trims w/clippers – 50

(4) haircuts – 200

(5) manicures – 50

(6) tweezer arches – 10

(7) wax arches – 10

(8) fingerwaves (flat) – 100

(9) iron work – 150

(10) scalp treatments – 25

(11) facials (to be completed with make-up) – 25

(12) cold waves – 60

(13) heat permanents (blocking and wrapping) – 10

(14) henna packs – 5

(15) bleaches – 25

(16) hair tints - 25

(17) hairstyles – 300 (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

12 AAC 24.110. PLAN AND EQUIPMENT REQUIREMENTS OF SCHOOLS. (a) The plans for a proposed school shall be submitted to the board for approval. A representative of the board shall review the plans and inspect the premises for the purpose of determining:

(1) suitability of location

(2) suitability of school rooms including plumbing, ventilation, lighting and adequacy of floor space (basement rooms below ground level will not be approved);

(3) adequacy of layout;

(4) adequacy of equipment; and

(5) adequacy of provisions for licensed instructors.

(b) After all equipment has been installed the premises must be inspected by a representative of the board and thereafter approved by the board before a license will be issued.

(c) The minimum requirements for a school of beauty culture enrolling 25 students or less shall consist of the following items of equipment:

(1) 10 wefts;

(2) one vibrator;

(3) six curling heaters;

(4) eight block heads;

(5) one linen cabinet;

(6) four shampoo basins and trays

(7) 10 mirrors and 10 chairs;

(8) one blackboard, 4' x 4' or equivalent;

(9) eight sanitary receptacles;

(10) eight dryers;

(11) four facial chairs;

(12) four dry sterilizers (lamps or equivalent);

(13) one therapeutic lamp installed in such manner as to permit free use of operator's hands;

(14) one permanent wave machine, croquinole (two complete sets of 32 each of rods, clips and felts), cold wave (four sets each consisting of 32 rods);

(15) one tablet armchair or usable table for each student in theory class;

(16) one beauty culture textbook for each student (book of questions and answers are not considered textbooks);

(17) three types of iron (paper curl, marcel and straghtening comb).

(d) In addition to the items of equipment listed in (c) the school shall have such supplies as wave sets, shampoo creams, hair tint, cloth towels, manicuring tables with proper lighting, chairs for at least five students, available books on anatomy, physiology and hygiene, charts 24" x 24" or equivalent, on skin, bones, muscles, nerves, and circulatory systems, and other necessary items for instruction that the board may require.

(e) The proper placement of this equipment shall require at least 1,000 square feet of floor space, excluding office, cloakroom and reception room space. In the event that the student enrollment of any school increases, additional space and equipment may be required by the board. The number of students taught in a school of beauty culture at any one time shall be limited to one for every 15 square feet of space contained in the school subject to the following limitations: space occupied by offices and lavatories shall not be used in computing maximum number of students taught.

(f) The following equipment shall be issued to each student:

(1) one shampoo cape;

(2) two brushes;

(3) one pair scissors;

(4) one pair thinning shears;

(5) one razor;

(6) six combs (four fingerwaves, one rattail, and one haircutting);

(7) one electric clipper (optional);

(8) complete tools for manicuring; cuticle oil, cuticle remover, polish, emery boards, nipper scissors, pusher and brush; and

(9) a carrying case of sufficient size to accomodate the materials used by the student. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180
AS 08.28.250

12 AAC 24.120. SANITARY RULES AND REGULATIONS. The rules and regulations of the Alaska Divison of Public Health, as set forth in Title 7, Alaska Administrative Code, Sections 1250 and 1257, are hereby adopted by reference and incorporated herein as a part of these rules and regulations. All licensees shall comply with such regulations. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.280

12 AAC 24.130. CURRICULUM REQUIREMENTS OF SCHOOL OF HAIRDRESSING AND BEAUTY CULTURE. (a) The school shall submit its proposed curriculum to the board, with the application for license. The curriculum must be approved by the board before the school is licensed. The curriculum shall provide for the use of a standard textbook approved by the board. The curriculum must include instructions on the statutes and regulations governing hairdressing and beauty culture in the State of Alaska.

(b) The curriculum shall provide for a course of at least 2,000 hours of instruction, with no more

than eight hours of instructions in any single day. The school shall, upon completion of the course by a student, issue a diploma and an academic achievement record. A copy of the academic record shall be transmitted to the board.

(c) All students shall register with the secretary of the board. It shall be the duty of the owner of each school to transmit in writing the name, age, address and the date of commencement of instructions of each student enrolled within 30 days after the student's enrollment. It shall also be the duty of the owner of each school to advise the secretary of the board, in writing, of the date of termination of instructions within 30 days after termination.

(d) There shall be a minimum requirement of 250 hours of theory study during the 2,000 hours.

(e) There shall be a minimum requirement of 350 hours of practice training.

(f) Schools must keep daily records of student attendance of all courses, and these records shall be open for inspection by any member of the Board of Hairdressing and Beauty Culture Examiners.

(g) Practice training shall consist of classwork and individual training in all subjects of each practice. All practice training shall be limited to actual practice by the student either on transformation or other devices, or on other students, for the purpose of acquiring the fundamentals and technique of such subjects.

(h) A school may make a reasonable charge for these services to persons other than student, but all services shall be of a clinical nature and under direct supervision of an instructor.

(i) School authorities shall give a student who leaves the school in good standing an "affidavit" indicating the number of hours of each type of instructions received. A student who wishes to transfer to another school must present the affidavit to the school authorities before credit may be given for past instructions.

(j) A student transferring from a school in another state may transfer his credits upon presentation of a certified affidavit of records from the state cosmetology board of the other state, or upon other proof acceptable by the board.

(k) Where a student has interrupted his schooling for a continuous period of three years, no credit will be allowed for instructions received prior to the interruption. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

12 AAC 24.140. INSPECTION OF SCHOOLS. Licensees shall permit any member of the board to inspect at any time during working hours. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

E

STATE OF ALASKA
Board of Barber Examiners
July, 1979

Findings

The Board of Barber Examiners was created in 1957. Members of this profession, and the Board, are regulated under AS 08.12; control over health and sanitation of facilities is with the Department of Health and Social Services (AS 08.12.030(2) and AS 18.05.040(9)).

Alternatives to the present operation of the Board and to State regulation of the barbering profession are discussed in this review; however, we believe that the review indicates termination of the Board and licensing.

I. General Information

A. Regulated Parties

1. Barbers

B. Definitions

"Barbering includes the following practices when performed for hire or reward:

(1) shaving or trimming the beard or cutting the hair;

(2) giving facial and scalp massages or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances;

(3) singeing, shampooing, dressing or dyeing the hair or applying hair tonics." (AS 08.12.280)

C. Nature and Composition of Board

1. Board members and terms:

(No specified length of term and no restrictions regarding consecutive terms or numbers of terms.)

Don A. Noll
Manual Norat
James Russi
Elmo Kienbaum
Maurice Smith

2. Representation:

Profession = 5 (by statute)
Public = 0

3. Qualifications:

Four members shall be from separate major senatorial districts and the fifth from the district having the largest number of practicing licensed barbers. Each member shall be a practicing barber who has engaged in barbering the State for at least five years prior to his appointment.

D. Licensing Data

Currently licensed:

in-State	=	204	
out-of-State	=	40	
	Total	244	(July, 1979)

E. Fees

1.	barber license exam	$25.00
2.	teacher license exam	75.00
3.	annual relicensure	10.00
4.	annual teaching relicensure	50.00
5.	annual school/college fee	150.00
6.	temporary permit	25.00

F. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	$4,087.00	$5,005.54	$4,410.18	$4,369.00
-Refunds	-	35.00	10.00	95.00
Total	4,087.00	4,970.54	4,400.18	$4,274.00
Expenditures				
Per Diem	1,152.50	1,714.50	1,297.75	1,227.50
Transportation	586.93	583.61	723.22	1,647.25
Phone	20.75	74.20	84.30	473.41
Printing, Adver. & Postage	558.61	425.96	228.49	272.78
Fees & Services	170.40	115.00	300.00	35.00
Rents, Leases & Other	-	-	300.00	725.65
Total	$2,489.19	$2,913.27	$2,933.76	$4,381.59
Surplus	$1,597.81	$2,057.27	$1,466.42	-
Deficit	-	-	-	$ 107.59

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

Eight of the twelve complaints filed with the administrative agency from January, 1976 through June, 1979 were complaints against the Board regarding its examination procedures. The remaining four cases consisted of complaints that individuals were practicing barbering without a license. Although these were filed in 1976 and 1977, only one has been closed. All complaints against the Board (filed in 1978) remain open.

H. Professional Qualifications

None. Most states require barber training or schooling as a prerequisite to licensure.

II. Analysis

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

The Board is statutorily required to issue licenses and permits to qualified individuals or schools, to examine applicants for a barber teacher license, and to regulate conduct and standards of teaching facilities. The Board also has general powers which it may exercise: (1) adoption of examinations in accordance with nationally recognized standards; (2) adoption of reasonable rules and regulations relative to sanitation - ultimate control over health and sanitary conditions is expressly cited as being with the Department of Health and Social Services; (3) suspension of licenses for failure to maintain sanitary standards; (4) inspection of shops; (5) adoption of rules concerning Board operations; (6) delegation of examination, inspection and enforcement powers; and (7) other acts and things necessary to carry out the purposes of AS 08.12.

The Board of Barber Examiners has experienced several problems with its past examinations and procedures. Eight of twelve complaints filed with the administrative agency from January, 1976, through June, 1979, were complaints against the Board regarding its examination.

All applicants for licensure must take an examination. No statutory authority exists by which the Board may license through endorsement or reciprocity. In addition to the written portion of the examination, a practical portion is given consisting of four parts: haircut, shampoo, shave and massage. A passing grade of 75% must be attained on the written portion and on all parts of the practical portion. If any part of the practical is failed, the applicant must retake all four parts.

The written examination given by the Board in the past has contained a variety of types of questions (i.e., multiple choice, short essay, fill-in-the-blank). No key was utlized by the Board in grading which appears to have resulted in some inconsistencies. The test utilized in April, 1979, was provided by the National Board of Barber Examiners of America. Two out of twelve applicants passed that examination and complaints were received regarding the relevancy of some questions. The Board is currently developing a pool of test questions, with answers, from which the Division of Occupational Licensing can formulate future examinations. In this way standard procedures will be established yet each exam will be different in content.

Administration of the practical examination has also met with considerable criticism. In August of 1978 a meeting was held with the Board, representatives of the Department of Law and Division of Occupational Licensing and a representative from the Office of the Governor. The purpose of the meeting was to review allegations of impropriety on the part of the Board and to develop guidelines to assist the Board in its future operations. One Board member, who owns a barber school in the State, was advised to refrain from grading students of his facility.

The member has complied with this advice, however, he has participated in grading of other applicants. Because scores are averaged, such a procedure could work to the disadvantage of "nonstudents." A review of files of applicants who have been licensed since mid-1974 (and are still active) indicate that a significant percentage (84%) were given exactly the same passing grade (75) on all parts of the practical examination by one member of the Board. In a few of these instances the proportionate points given did not total 75 and in one case proper addition would have failed the applicant.

Past Board procedure has been to review the examinations the day after they are given. Scores on some examination papers have been changed either at the time of scoring or during the Board review process. The Board has been made aware of the potential problems this procedure could generate and has been advised to discontinue this practice. The Board has also been advised to establish standard grading criteria for its own benefit as well as that of the applicants.

The Board has adopted regulations for the conduct of the practice of barbering in accordance with reasonable standards of sanitation. However, it does not inspect facilities or ensure that the regulations are being adhered to. Standards for barber schools and colleges also have been established by regulations as have application procedures and some examination information. AS 08.12.030(2) specifically provides that the Department of Health and Social Services have "ultimate control over health and sanitary conditions for all licensees under this chapter..." At its April, 1979, meeting the Board resolved not to involve itself in inspection activities but rather to leave this to other agencies.

The Board may suspend licenses for failure to maintain sanitation standards. There is no record of such an instance having come before the Board in recent years.

Applicants for licensure must submit evidence of good moral character (certified attestation by two parties), a health certificate, and "other information required" by regulation. There is no requirement that an applicant have attended barber school or training, or that (s)he have barbering experience. The Board has proposed statutory amendments which would establish an apprentice program and which would require either 1,500 hours or two years of schooling and/or training.

Statutory exemptions from licensure are licensed cosmetologists, persons engaged in barbering within a military reservation and persons barbering in a community of less than 1,000 persons, or more than 25 miles from such a community. (In analyzing the need for regulation of this profession, one may note that the public in small isolated communities apparently does not need protection.) The Board has also requested a statutory amendment which would delete the latter exception from licensure.

Temporary permits "shall" be issued by the Board to persons entering the State or transferring from exempt status who have either a barber college diploma or a license issued by another jurisdiction. While new graduates from another state may be issued a temporary permit, none is provided for in-State graduates. The Board has, however, been issuing permits to these individuals. Permits are valid until the next examination and are nonrenewable (except that those failing the April, 1979 examination were reissued permits).

We believe that termination of the Board of Barber Examiners and cessation of State regulation of this profession would not have any significant impact on public well-being. No complaints have been received from the public or regarding any threat to public safety. Barbers do not utilize strong chemical agents. Monetary costs of services to the consumer are relatively minor. A bill was introduced during the 1979

Legislative session, SB 215, which would abolish the Board and relevant statutes (See Appendix A). This bill is now in the Senate Commerce Committee.

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

The greatest impediment to efficient Board operation has been its examination procedures. As previously noted, this has been discussed with the Board and suggestions were made to correct past deficiencies. The fact that the Board can license only by examination has created problems when individuals have demanded licensure by endorsement or reciprocity.

The Board has indicated that it feels the statutory exemption for barbers in small outlying communities is inappropriate. It has also requested that barber schooling or training be made a statutory requirement for licensure.

There is no term of membership provided for board members. The restriction on Board membership for only persons who have been licensed in the State for five years should be reexamined.

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

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

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

No amendments of consequence have been made to AS 08.12 since 1960.

If regulation of the profession is determined to be of benefit to the public interest, the following amendments requested by the Board would further those interests: (1) provisions for apprenticeship programs; (2) requirements for schooling or training as licensure qualifications; and (3) deletion of exemption for persons barbering in a community having less than 1,000 persons, or more than 25 miles from such a community.

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

Notices of pending meetings and new or amended regulations are published in newspapers in the State by the administrative agency. Board regulations have not been amended since 1964. Meeting minutes for the past three years indicate no interest or participation by other than persons seeking examination privileges from the Board.

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

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

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

Twelve compliants were filed with the administrative agency from January, 1976, through June, 1979; eight were from applicants regarding Board examination procedures, and four involving unlicensed activity were initiated by the agency. One of these cases had been closed (in September of 1978) as of June 30, 1979.

The administrative agency has been addressing investigative procedures and the need for timely disposition of complaints.

F. To what extent does the Board of Barber examiners present qualified appicants to serve the public?

The only method the Board has of assuring qualification is the examination procedure. Applicants are not required to have schooling, training or experience and the Board is unable to accept verification of licensure in another jurisdiction for licensure without examination in Alaska. Past examination procedures, however, have not proved satisfactory as measurements of ability either. The administrative agency and the Board will continue to work toward valid examination and grading standards.

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

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

four other regulated professions) who is hired through the State Personnel System and is subject to affirmative action requirements.

Affirmative action requirements are not applicable to statutory criteria for licensure.

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

If the board is reestablished, the following statutory amendments are suggested: (1) deletion of the requirement that Board members come from separate senatorial districts and the five year Alaska license restriction, length of terms should be established and number of consecutive terms limited, § 010; (2) inclusion of public members on the Board while not increasing overall size, § 020; (3) requirements for schooling or training as a condition of licensure, § 070; (4) biennial rather than annual license fees, §§ 090, 100 and 110; (5) requirement of health certification as a condition of renewal; (6) provisions for issuance of temporary permits to in-State graduates pending examination, § 160; (7) endorsement of applicants licensed in another jurisdiction with similar qualifications; (8) repeal of § 180; (9) repeal of exemption for persons barbering in a community with less than 1,000 persons, or more than 25 miles from such a community, § 270; and (10) provisions for apprentice programs.

The Board should establish examination and grading standards. It should work to solicit the interest and participation of those it regulates. Temporary permits should be issued only in accordance with statutory authority until and unless an amendment is made.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing overhead such as staff salaries and investigative services.

Chapter 12. Barbers

Article
1. Board of Barber Examiners (§§ 08.12.010-08.12.050)
2. Examination and Licensing (§§ 08.12.060-08.12.190)
3. Barber Schools and Colleges (§§ 08.12.200-08.12.240)
4. Unlawful Acts and Penalties (§§ 08.12.250-08.12.260)
5. General Provisions (§§ 08.12.270-08.12.280)

Article 1. Board of Barber Examiners.

Section
10. Creation and membership of board
20. Qualifications of board members
30. General powers of board
40. Meetings and examinations
50. Board expenses

Sec. 08.12.010. Creation and membership of board. There is created the Board of Barber Examiners, referred to in this chapter as the board, composed of five members appointed by the governor. Four members of the board shall be from separate major senatorial districts. The fifth member shall be appointed from the district having the largest number of practicing licensed barbers. The members serve at the pleasure of the governor. (§ 1 art II ch 68 SLA 1957; am § 1 ch 168 SLA 1960)

Sec. 08.12.020. Qualifications of board members. Each member of the board shall be a practicing barber who has engaged in barbering in the state for at least five years prior to his appointment. Engaging in the practicing of barbering within a military reservation is not qualifying experience. (§ 2 art II ch 68 SLA 1957)

Sec. 08.12.030. General powers of board. The board may

(1) adopt examinations in accordance with standards provided by any nationally recognized manual of barber science and examine applicants for licenses to engage in the practice of barbering;

(2) adopt rules and regulations for the conduct of the practice of barbering in accordance with reasonable standards of sanitation which do not derogate from the ultimate control over health and sanitary conditions for all licensees under this chapter which is in the Department of Health and Social Services;

(3) suspend licenses for failure to maintain standards of sanitation prescribed by the board;

(4) conduct inspections of barber shops to insure that standards of sanitation are being maintained, except that the board may not

conduct a second inspection of the same shop within 90 days after the first inspection;

(5) adopt rules of procedure for its own organization and conduct of its meetings, examinations, and inspections;

(6) delegate its powers of examination, inspection, and enforcement to a member of the board to be exercised in the judical district in which he resides;

(7) do such other acts and things necessary to carry out this chapter. (§ 3 art II ch 68 SLA 1957; am § 2 ch 168 SLA 1960; am § 6 ch 104 SLA 1971)

Sec. 08.12.040. Meetings and examinations. The board shall meet as often as necessary to conduct its business but shall hold at least one examination in each year in which applications for a license have been filed. (§ 4 art II ch 68 SLA 1957)

Sec. 08.12.050. Board expenses. Members of the board receive no salary, but are entitled to per diem and expenses authorized by law. (§ 5 art II ch 68 SLA 1957)

Article 2. Examination and Licensing.

Section
60. License required
70. Application
80. Examination fees
90. License fee for barbers
100. License fee for barber teachers
110. License fee for barber schools
120. Licenses
130. Display of licenses
140. [Repealed]
150. Reinstatement of lapsed license
160. Temporary permit
170. Issuance of temporary permit
180. License for certain resident barbers
190. Deposit of receipts

Sec. 08.12.060. License required. No person may engage in the practice of, or attempt to practice, barbering without a license or permit issued by the board. (§ 1 art III ch 68 SLA 1957)

Sec. 08.12.070. Application. A person wishing to practice barbering shall apply to the board by submitting

(1) evidence of his good moral character;

(2) a certificate of health from a physician; and

(3) other information required under regulations adopted by the board. (§ 2 art III ch 68 SLA 1957)

Sec. 08.12.080. Examination fees. An applicant for examination shall submit with his application an exmaination fee as follows:

(1) examination for barber license.....$25

(2) examination for barber teacher license.....$75
(§ 3 art III ch 68 SLA 1957; am § 3 ch 168 SLA 1960)

Sec. 08.12.090. License fee for barbers. The annual fee for a license to engage in barbering is $10. (§ 5 art III ch 68 SLA 1957; am § 6 ch 168 SLA 1960; § 3A art III ch 68 SLA 1957; added by § 4 ch 168 SLA 1960)

Sec. 08.12.100. License fee for barber teachers. The annual fee for a license to engage in the teaching of barbering is $50. (§ 3A art III ch 68 SLA 1957; added by § 4 ch 168 SLA 1960)

Sec. 08.12.110. License fee for barber schools. The annual fee for a license to conduct a barber school or college is $150. (§ 2 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960; § 3A art III ch 68 SLA 1957; added by § 4 ch 168 SLA 1960)

Sec. 08.12.120. Licenses. Licenses shall be issued by the board to any applicant who passes the examination and who possesses the other necessary qualifications. Each license and temporary permit shall have a photograph of the licensee attached. (§ 4 art III ch 68 SLA 1957; am § 5 ch 168 SLA 1960)

Sec. 08.12.130. Display of licenses. Every licensee or permittee shall display his license or permit in a conspicuous place in his place of business. Owners, operators, and managers of shops and schools are responsible for the display of all licenses held by their employees. (§ 4 art III ch 68 SLA 1957; am § 5 ch 168 SLA 1960)

Sec. 08.12.140. Duplicate license or permit. Repealed by § 7 ch 94 SLA 1968.

Sec. 08.12.150. Reinstatement of lapsed license. A lapsed license may be reinstated if it has not remained lapsed for more than five years. (§ 5 art III ch 68 SLA 1957; am § 6 ch 168 SLA 1960; am § 4 ch 94 SLA 1968)

Sec. 08.12.160. Temporary permit. Any person entering the state or transferring from a practice exempt under the provisions of § 270 of this chapter, and who desires to engage in barbering who has (1) a diploma from a barber college accredited by the board or (2) a bona fide license issued by another territory or state, shall be issued a temporary permit, valid until the next examination given by the board. (§ 6 art III ch 68 SLA 1957)

Sec. 08.12.170. Issuance of temporary permit. A temporary permit may be issued by any member of the board upon application under terms and conditions established by regulations of the board, and upon the receipt of an application fee of $25. The fee shall be credited to the temporary permittee, who shall be permitted to take an examination for a regular license without any additional fee. Upon taking the examination, the holder shall surrender the temporary permit to the board or the committee conducting the examination. (§ 7 art III ch 68 SLA 1957)

Sec. 08.12.180. License for certain resident barbers. The board shall issue a license without examination to a person who was engaged in the practice of barbering in the state, before March 18, 1957. Application for a license shall be accompanied by payment of a fee of $25, an affidavit that the applicant qualifies for a license under this section, and a certificate of health from a physician that the applicant has no contagious or infectious disease. (§ 8 art III ch 68 SLA 1957)

Sec. 08.12.190. Deposit of receipts. All money received by the board shall be paid into the general fund of the state. (§ 9 art III ch 68 SLA 1957)

Article 3. Barber Schools and Colleges

Section
200. Regulation by board
210. License required
220. Application
230. Examination
240. School license

Sec. 08.12.200. Regulation by board. The board shall provide for the conduct and supervision of barber schools and colleges in the state. The board shall adopt regulations establishing standards of sanitation and skill for barber schools and colleges and the teachers and instructors. (§ 1 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Sec. 08.12.210. License required. No person may operate a barber school or college, or teach in a barber school or college, without a barber teacher license issued by the board. (§ 2 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Sec. 08.12.220. Application. A person wishing to operate a barber school or college or teach in a barber school or college shall apply for examination and licensing to the board and submit

(1) evidence of his good moral character satisfactory to the board;

(2) a certificate of health from a physician;

(3) a diploma from a nationally accredited barber school or college offering a course in barber science evidencing the applicant's qualifications as a barber teacher;

(4) such other information as may be required by regulations adopted by the board. (§ 3 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Sec. 08.12.230. Examination. Each applicant for a barber teacher license shall demonstrate to the board by passing an examination in theory and practice that he has the ability to instruct barber students in subjects necessary to qualify them as competent barbers. (§ 4 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Sec. 08.12.240. School license. No person may operate a barber school or college without a license issued by the board. The board shall issue a license if it finds that the school or college is properly staffed with licensed barbers and the premises and equipment are sufficient, sanitary, and proper. (§ 5 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Article 4. Unlawful Acts and Penalties.

Section
250. Failure to possess license
260. Suspension of license

Sec. 08.12.250. Failure to possess license. A person who practices, or attempts to practice barbering or operates a barber school or college or teaches in a barber school or college without a license is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500, or by imprisonment for a period of not more than 30 days, or by both. (§ 1 art IV ch 68 SLA 1957; am § 7 ch 168 SLA 1960)

Sec. 08.12.260. Suspension of license. The board may suspend the license or permit of a person who violates any provision of this chapter. The board shall suspend the license of a person who, by his acts, gives evidence that he is not of good moral character, or who uses narcotics or overindulges in the use of alcoholic beverages while practicing his profession, until it is satisfied that he will conduct his profession in a proper manner. (§ 2 art IV ch 68 SLA 1957)

Article 5. General Provisions.

Section
270. Application of chapter
280. Barbering defined

Sec. 08.12.270. Application of chapter. This chapter applies to a person engaged in barbering in a community in the state having a population of more than 1,000 persons, or within 25 miles of such a community. Persons engaged in barbering entirely within a military reservation and licensed cosmetologists are excepted from this chapter. (§ 2 art I ch 68 SLA 1957)

Sec. 08.12.280. Barbering defined. Barbering includes the following practices when performed for hire or reward:

(1) shaving or trimming the beard or cutting the hair;

(2) giving facial and scalp massages or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances;

(3) singeing, shampooing, dressing or dyeing the hair or applying hair tonics. (§ 1 art I ch 68 SLA 1957)

CHAPTER 08. BOARD OF BARBER EXAMINERS

Article
1. Examinations
2. Operation of Barber Shops, Barber Schools and Colleges
3. Standards for Barber Colleges and Schools

ARTICLE 1. EXAMINATIONS

Section
10. Filing of application
20. Location and date
30. Form of application
40. Applicants failing to pass
50. Disqualification during examination
60. Form of examination, required equipment, grading

12 AAC 08.010. FILING OF APPLICATION. The application for examination must be on file 10 days before the examination date. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

12 AAC 08.020. LOCATION AND DATE. The location and date of the examination shall be published by the Board of Examiners at least 30 days in advance of the date of examination. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

12 AAC 08.030. FORM OF APPLICATION. The application shall be on a form provided by the board and shall be mailed to the secretary of the board accompanied by a $25 examination fee; and two photographs signed on the front. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030
AS 08.12.070
AS 08.12.080

12 AAC 08.040. APPLICANTS FAILING TO PASS. Applicants failing to pass an examination or failing to appear for examination may take another examination by filing the required $25. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

12 AAC 08.050. DISQUALIFICATION DURING EXAMINATION. Any attempt by a school owner, manager, instructor, or any person to communicate with or help an applicant in any way while taking the examination, or any attempt by an applicant to secure information from another applicant will disqualify the applicant from completing the examination. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030
AS 08.12.220

12 AAC 08.060. FORM OF EXAMINATION, REQUIRED EQUIPMENT, GRADING. (a) Written examination. The applicant must obtain a grade of at least 75 percent on sanitation, Barber Science, sterilization, and common contagious and infectious diseases of the face, skin, and scalp.

(b) Practical examination. The applicant must obtain a grade of at least 75 percent on each of the following subjects: haircut, shave, massage, shampoo, condition of tools.

(c) Authorized textbooks. The following are the authorized textbooks to be used by applicants: *Standard Textbook of Barbering*, published by Associated Master Barbers of America, Chicago, Illinois, and *Textbook of Practical and Scientific Barbering*, published by Journeymen Barbers, Educational Department, Indianapolis, Indiana.

(d) Equipment. Each applicant must furnish his own smock, tools, and model.

(e) Standards for grading examinations. In grading each applicant, the examiners will consider the following: care and neatness of supplies and equipment; appearance and posture of applicant; time consumed in completion of each operation. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030
AS 08.12.070
AS 08.12.220

ARTICLE 2. OPERATION OF BARBER SHOPS, BARBER SCHOOLS AND COLLEGES

Section

70. Floors
80. Walls and ceilings
90. Light
100. Ventilation
110. Location
120. Hot water
130. Cold water
140. Facilities
150. Equipment
160. Linens
170. Methods
180. Cosmetics
190. Sterilization
200. Customers
210. Personnel
220. Health certificate renewal
230. Registration or permit to be displayed

12 AAC 08.070. FLOORS. Floors must be of smooth finish and easily cleanable and kept clean at all times and must be impervious to water. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.080. WALLS AND CEILINGS. Walls and ceilings of barber shops and schools for the teaching of barbering must be kept painted and cleaned and in a sanitary condition. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.090. LIGHT. All shops and schools for the teaching of barbering must have adequate light, whether natural or artificial. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.100. VENTILATION. All barber shops and schools for the teaching of barbering must have adequate ventilation. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.110. LOCATION. No barber shop or school for the teaching of barbering shall be used as living quarters, a dining or sleeping apartment or be directly connected with same, unless a solid partition of ceiling height separates portion used thereof, and there shall be no doors opening from shop or school; nor shall any barber shop or school be connected with any other type of business room without a complete partition of at least eight feet in height and partition must be flush with floor. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.120. HOT WATER. All barber shops and schools must have an adequate supply of hot water to be of a temperature of at least 170°F. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.130. COLD WATER. All barber shops and schools must have cold water in adequate amounts. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.140. FACILITIES. Barber shops and schools must have adequate plumbing, running water and sinks within the shop and school, and water may not be used from a separate container of any kind. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.150. EQUIPMENT. All barber shops and schools must have closed containers for soiled linen, closed containers for clean linen and sufficient custodial equipment or service. All shops and schools must also have adequate safe equipment for the protection of the public. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.160. LINENS. All barber shops and schools must have ample supply of laundered linens and at no time may any towel, pledget, etc., be used on more than one patron without

being relaundered. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.170. METHODS. Hands and nails must be kept clean at all times. All equipment must be kept sterilized and in a sanitary condition. Liquid or powdered astringents only may be used and must be applied with a clean linen or sterile cotton. Head rest must be covered with clean towel or paper after each customer. All methods and procedures must be sanitary and meet with the approval of the inspectors. Hands must be washed immediately before each customer. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.180. COSMETICS. Only harmless cosmetics and recognized brands of cosmetics may be used. Powder must be used from shaker type container. All types of creams must be kept under tight lids and in a sanitary conditon. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.190. STERILIZATION. All towels and applicators must be kept sterilized and cleaned in the following manner: Immersed in boiling water for half-n inute or immersed in 70 per cent denatured alcohol solution, or 5 per cent phenol, or 4 per cent aqueous solution of formaldehyde for ten minutes or hot oil at 212°F. for two minutes or other approved bactericidal method. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.200. CUSTOMERS. No barber or barber student in training shall serve or perform any service upon any customer whom he may suspect of having any communicable disease, broken skin or inflamed or weeping condition of scalp, face or neck. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.210. PERSONNEL. All personnel shall have and display a health card from a physician showing that he or she has no communicable disease. All personnel shall observe all rules and regulations governing the operation and sanitation of the shop or school where he or she is employed or in training. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.220. HEALTH CERTIFICATE RENEWAL. All barbers must have health cards renewed at least once each year. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

12 AAC 08.230. REGISTRATION OR PERMIT TO BE DISPLAYED. Every holder of a certificate of registration or permit shall display it in a conspicuous place adjacent to or near his or her work chair. (In effect before 7/28/59; am 8/27/62, Reg. 6)

Authority: AS 08.12.030
AS 08.12.200

ARTICLE 3. STANDARDS FOR BARBER COLLEGES AND SCHOOLS

Section

240. Classrooms and equipment
250. Barbering prohibited in schools and colleges
260. Requirements for application
270. Equipment requirements
280. Practical training room
290. Curriculum – hours of classes
300. Prerequisites of approved barber schools
310. Requirements for license

12 AAC 08.240. CLASSROOMS AND EQUIPMENT. All schools must have a classroom for scientific study, and the classroom shall be separate from the room used for practical training. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

12 AAC 08.250. BARBERING PROHIBITED IN SCHOOLS AND COLLEGES. No barber shall practice the science of barbering as defined

in the law in any barber school or college. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

12 AAC 08.260. REQUIREMENTS FOR APPLICATION. Any applicant for a license to operate a barber school in the State of Alaska must possess the necessary requirements as set forth in the law. (In effect before 7/28/69; am 2/64, Reg. 14)

Authority: AS 08.12.200

12 AAC 08.270. EQUIPMENT REQUIREMENTS. The classroom shall be equipped with sufficient seating capacity for all students attending the classroom and shall have the following equipment:

(1) One lavatory with hot and cold running water for every two barber chairs to be approved for scientific barbering practice classes;

(2) One blackboard not less than six feet by three and one-half feet in size;

(3) One chart of the skin and hair;

(4) One chart of the muscles of the face, head and neck;

(5) One chart of the nerves of the face, head and neck;

(6) One chart of the bones of head and face;

(7) One chart of the blood supplies to the face, head and neck;

(8) One standard dictionary;

(9) One medical dictionary;

(10) One microscope for the study of bacteria. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

12 AAC 08.280. PRACTICAL TRAINING ROOM. The floor of the practical training room shall be covered with tile or any type of first grade linoleum and shall have available the following equipment and facilities:

(1) One closed cabinet for tools and linens for each chair;

(2) One approved soiled towel container with hinged lid or door for each chair;

(3) One sterilization solution container for each chair adequate in size to accommodate all instruments to be used on each patron;

(4) One ultra-violet lamp for every 10 students or fraction thereof;

(5) One infrared generator for every 10 students or fraction thereof;

(6) One high frequency unit for every 10 students or fraction thereof;

(7) One hair drier;

(8) One time clock. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

12 AAC 08.290. CURRICULUM–HOURS OF CLASSES. (a) No school for the teaching of barbering shall be approved by the board unless at least one approved barber teacher is teaching therein at all times and in charge of each daily class in theoretical scientific study, scientific barbering practice, and general barbering practice at all times.

(b) Each school for the teaching of barbering shall require that a patron not be released from a chair after being served by a student until all the work performed by the student has been thoroughly inspected and approved by the barber teacher.

(c) Each school for the teaching of barbering shall furnish each student upon enrollment a copy of the rules and regulations governing sanitary conditions of barbershops and schools for the teaching of barbering of this state as registered with the secretary of state.

(d) Each school for the teaching of barbering shall have adequate ventilation and lighting equipment approved by the board.

(e) Each school for the teaching of barbering, having both men and women in its enrollment,

shall provide one toilet for men and one for women. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

12 AAC 08.300. PREREQUISITES OF APPROVED BARBER SCHOOLS. No school for the teaching of barbering shall enroll or admit any student thereto unless such student shall make and file, in duplicate, a duly verified application which said application shall be obtained by such student or the school from the board. One copy of such application shall be retained by the school enrolling or admitting the student and the other copy shall be filed by such school with the board. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200

12 AAC 08.310. REQUIREMENTS FOR LICENSE. No school for the teaching of barbering shall be licensed unless it has been inspected by not less than three members of the board and found in compliance with all provisions of the law and rules and regulations of the board as approved and filed with the secretary of state. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.200
AS 08.12.240

Introduced: 2/13/79
Referred: Commerce

IN THE SENATE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

SENATE BILL NO. 215

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act abolishing the Board of Barber Examiners."

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

* Section 1. AS 08.01.010(2), AS 08.03.010(b)(2), AS 08.12, and AS 44.-62.330(a)(1) are repealed.

F

BOARD OF ELECTRICAL EXAMINERS ~~(pages 1-12)~~ Sunset

KEY ~~OF~~ to REFERENCES:

(Y) - ~~(~~ yellow cover) State of Alaska Sunset Review, 1979 - Prepared by Div. of O.L.
(B) - ~~(~~ blue cover) Division of Legislative Audit Performance Review
~~of Electrical Examiners Board, May 1979.~~
(W) ~~(Testimony)~~ - Senate Commerce Committee Public Hearing Testimony ~~Minutes~~, November 7, 1979
~~1 79~~
~~(Green) - Board of Electrical Examiners Report, June 1979 to Governor J. S. Hammond~~

1. Board should not be continued
   (B) Audit - page 7, page 9, Recommendation 1; page 8 (Yellow) O.L.

~~Quote from Elaine Garrett~~

If the Board of Electrical Examiners should be continued the following changes/additions are suggested:

A. Board composed of 4 members -- 2 lay, 2 professional. Two year terms with one re-appointment.
Testimony - p. 59
(Y) - p. 10/13 O.L.
(Y) - p. 32, Board View
(B) - p. 13, Audit

ok

(3e & 2p) = 5
elect ~~cons~~ examiners public (lay) members

B. Increase the number of inspectors.
Testimony - p. 60, 6, and 10
(Y) - p. 11, O.L.
(Y) - p. 5, Board already has power to inspect
Testimony - Don Liston, Editor of "Building Alaska" ~~magazine~~

w/ letter of intent.

C. Statutory authority for ~~reciprocity~~ indorcement should exist.
Testimony - H. D. Wilson, contractor, p. 69, and ombudsman's letter, p. 80
(Y) - p. 35, Board
(B) - p. 12, Audit, Recommendation #5
(Y) - p. 7, O.L.

ok

D. Eliminate inspection power from the Department of Labor for Electrical Examiners. Commerce already has this power.
(Y) - p. 27/28, conclusive p. 30, Attorney General
Testimony - Don Liston/"Build Alaska"
SB 232

NO

SC - by request

To Labor ~~to Public Safety only~~ not Commerce

E. Licensee should not take the certificate of fitness test.
Testimony - p. 60,9
(Y) - p. 39, Board
(Y) - pp. 8, 6
(B) - p. 9 (instead of Sunset, eliminate this duplication) Audit

F. ~~Adopt~~ the National Electrical Code and the National Electrical Safety Code as a minimum standard for the State of Alaska.
(Y) - p. 36 - Board
Testimony - Tony Reid, Inspector
Administration - Memo Oct. 30, 1979 by Bill McConkey, p. 2

G. Annual report from Board to Legislature/Put authority in 08 Title.
Testimony - Michael Frith
(B) - p. 13, Audit
(Green) - p. 3, section 2, Board

H. It should not be required that electricians involved in the communications industry be licensed.
(B) - pp. 7, 10, Recommendation 2 - Audit
(Y) - p. 7, ~~Audit~~

I. In regard to fees and licensing a maximum of two-years ~~[illegible]~~e of license should be allowed before reexamination is statutorily required.
(Y) - p. 34, Board
(Y) - p. 13 - fees - O.L.
(Y) - O.L. and Audit agree on fees. Set by OL and Board. SB 94.

J. Licencees should be notified of renewal dates at least thirty days before the expiration date of their licenses.
Repeal 08.01.050 by O.L. per Elaine Garrett

Senate Bill 232

Sec. 18.60.590. Borough and city electrical safety codes. (a) The department may by regulation adopt amendments the 1971 National Electrical Code as approved and issued by the American Standards Association.

(b) This chapter does not affect the authority of any municipality or rural electrification association to prescribe by ordinance, rule, or order standards for their respective areas of jurisdiction not less stringent than the standards prescribed by the department or those established under § 580 of this chapter. (§ 1 ch 89 SLA 1969; am § 42 ch 69 SLA 1970; am § 29 ch 53 SLA 1973)

Effect of amendments. — The 1970 amendment substituted "adopt" for "incorporate into §§ 580—660 of this chapter" in subsection (a).

The 1973 amendment substituted "1971" for "1968" in subsection (a).

Legislative committee reports. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7. For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

Sec. 18.60.600. Powers and duties of the department. (a) The department may

(1) promulgate regulations to carry out the purposes of §§ 580 —660 of this chapter;

(2) inspect the electrical wiring of any place of employment or public structure in this state.

(b) The department shall

(1) keep a record of all inspection fees collected;

(2) keep a record of all electrical inspections conducted. (§ 1 ch 89 SLA 1969)

Sec. 18.60.610. Delegation of authority. Upon application to the department, a person, corporation, electric utility firm, public utility district, rural electrification association, or municipal utility district furnishing electrical current may be authorized by the commissioner to inspect the electrical wiring for a public or commercial structure as defined in § 660 of this chapter to which it is to furnish electrical current before energizing the electrical system on, in, or about the premises. Authorization by the commissioner under this section constitutes a grant of full authority to act within the provisions of §§ 580—660 of this chapter with the same immunities and privileges accorded to the state in the performance of these duties. A person or entity whose electrical wiring installation is found, by the authorized inspector, not to meet the standards prescribed has the right to appeal to the commissioner for a new inspection. The commissioner shall, within 15 days, furnish a new inspection by a designee not associated with the person, firm or utility who did the original inspection. (§ 1 ch 89 SLA 1969)

Sec. 18.60.620. Inspection fees. A person, corporation, electric utility firm, public utility district, rural electrification association or municipal utility district authorized under § 610 of this chapter to

provide inspection services may charge a fee for these services. After notice and hearing, the department shall set a schedule of maximum fees for inspection services rendered under §§ 580—660 of this chapter. The department may review the schedule every two years after giving notice and hearing. (§ 1 ch 89 SLA 1969)

Sec. 18.60.630. Enforcement of compliance. An authorized inspector under this chapter shall give written notice to the owner of constructed premises, or the contractor of premises under construction, of each violation of applicable electrical standards discovered as a result of his inspection. If within 15 days after receipt of written notice of an electrical violation, the person notified does not rectify the condition, the inspector shall notify the electric utility firm, public utility district, rural electrification association or municipality district supplying power to the premises. Upon notice in writing from the inspector, the supplier of electrical power may discontinue services to the premises where the alleged violation exists. (§ 1 ch 89 SLA 1969)

Sec. 18.60.640. Scope of work covered. (a) Sections 580—660 of this chapter cover only new installations and alterations to existing installations.

(b) These standards are the recommended minimum standards for all new structures in the state. (§ 1 ch 89 SLA 1969)

Sec. 18.60.650. Penalty for violations. A person who installs electrical wiring not in compliance with minimum electrical standards as set out in § 580 of this chapter, and who fails to correct this wiring after having been notified in writing by an authorized inspector, upon conviction, is punishable by a fine of not more than $1,000. (§ 1 ch 89 SLA 1969)

Sec. 18.60.660. Definitions. In §§ 580—660 of this chapter

(1) "department" means the Department of Labor;

(2) "commissioner" means commissioner of the Department of Labor;

(3) "Electrical wiring" means the entire electrical system, including all conducting and shielding material, all regulatory and safety apparatus, and all devices and techniques used in the process of installation;

(4) "public structures" mean buildings such as hotels, resident housing with more than one rental unit, restaurants, taverns, lodging houses, children's homes, auditoriums, town halls, or any structure designed or used for public assembly whether publicly or privately financed. (§ 1 ch 89 SLA 1969)

STATE OF ALASKA
Board of Electrical Examiners
(August, 1979)

Findings

The Board of Electrical Examiners was created in 1960 under AS 08.40. Electrical Administrators are regulated under provisions of AS 08.40, AS 18.60, and AS 08.62, and electrical work may be inspected by the appropriate city and/or borough to ensure compliance with national standards and codes.

Alternatives to the present operation of the Board and to regulation of this profession are discussed in this review.

I. General Information

A. Regulated Parties

Electrical Administrators (Contractors)

B. Statutory Definition of Regulated Profession

"(2) 'electrical administrator' means any person engaged in the business of, or purporting to be engaged in the business of, installing or repairing, or contracting to install or repair, electrical wiring, conduits, devices, fixtures, equipment, or other electrical materials for transmitting, using or consuming electrical energy;" (AS 08.40.200)

C. Purpose of Regulation

"The purpose of this chapter [08.40] is to protect the safety of people and property in the state from the danger of improperly installed electrical wiring and equipment, by providing a procedure to assure

(1) the public that persons responsible for making electrical installations in this state qualified; ied; and

(2) a sufficient number of persons are so qualified." (AS 08.40.005)

Demand

Electr.cal

D. Nature and Composition of Board

1. Board members and terms:

Three-year term (· restrictions regarding consecutive terms or number of terms/.

1 Jerome Trammer (Chairman) ends July 10, 1980
2 Hugh Macaulay ends July 10, 1981
3 Edward Schenderline ends July 10, 1982

2. Representation:

P. 11 TLP "OR"
② Profession = 3 (2) (by statute)
② Public = 0 (1) ← " " /Add 1 public by attrition. hence
=4

3. Qualifications:

Members must be licensed electrical administrators. ← Re-write to comply w/ above.

E. Licensing Data

Currently active: (through May, 1979)

in-State 259
out-of-State = 53
Total = 312

F. Fees

1.	license Fee	$100.00
2.	biennial renewal	100.00
3.	annual lapsed penalty	25.00

G. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	$8,357.00	$28,759.00	$15,912.14	$37,846.00
- Refunds	500.00	400.00	475.00	1,100.00
Total	7,857.00	28,359.00	15,437.14	36,746.00
Expenditures				
Transportation	1,053.40	1,884.37	2,232.23	2,079.70
Per Diem	823.44	2,793.28	2,412.75	3,011.48
Phone	128.71	312.50	712.90	457.27
Printing, Adver. & Postage	193.14	2,202.07	1,217.32	589.59
Fees & Services	446.80	362.85	-	461.80
Rents, Leases & Other	-	340.25	91.22	191.19
Total	$2,645.49	$7,895.32	$6,666.42	$ 6,791.03
Surplus	$5,211.51	$20,463.68	$8,770.72	$29,954.97
Deficit	-	-	-	$ 18,320.51

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

H. Complaints

Thirty-two complaint files were open as of June 30, 1979, dating from January, 1978, through that time. All regarded unlicensed activity and all came from members of the industry or related professions. Review of the files indicates: six have had no action, eight appear to have been resolved, status of two is undetermined, and sixteen are pending Board approval for closure due to lack of jurisdiction, age of complaint, or resolution of the issue. Also pending Board approval for closure are an additional one-hundred and five cases which were purged from agency files in September of 1978.

II. Analysis

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

Statutory responsibilities of the Board include adoption of regulations establishing categories of licensure relating to examination and licensure of electrical administrators. The Board is required to hold at least one meeting each year and may hold others with prior approval of the governor. It must conduct at least two examinations each year. It may make, or have made, inspections or investigations of work performed by a licensee, and may suspend, revoke or refuse a license under specified conditions.

NO Teeth IN Revocation

Meetings of the Board are scheduled by regulation (12 AAC 32.260) four times each year in February, May, August and November. Examinations are given in conjunction with meetings; Board policy is to hold two in Anchorage, one in Fairbanks and one in Juneau. Meetings are well attended by applicants and members of the industry. The number of applicants for each examination varies but always is large. In 1978, 45 examinations were administered in February, 80 in May, 46 in August and 70 in November. Failure rates also are high: 67% in February, 85% in May, 87% in August, and 67% in November.

The Board has established five categories of licensure: inside wiring, residential wiring, outside linework, inside communications and outside communications. The examinations for the first three categories consist of three parts, for the latter two categories, two parts. Applicants must achieve at least a score of 70 on all parts; however, if any part is failed, only that part must be retaken. A national examination or something similar apparently does not exist. Examinations are therefore prepared by an electrical administrator licensed in Alaska. Each test

is prepared separately and submitted to the Division of Occupational Licensing and the Board, with answers, prior to its administration. This person also assists the Board in grading of the tests which is done as soon as the applicant turns his work in. Applicants are usually notified of their test results the same day and, according to 12 AAC 32.215, may request a review of the test with the Board the following day. (Also provided by regulations is the requirement that any subsequent change(s) in score be documented and signed by a Board member and retained by the administrative agency with the examination papers.)

Regulations effective in 1977 specify applicant qualifications for each category of licensure. Two categories (outside linework and inside wiring) require that the applicant have a Certificate of Fitness issued by the Department of Labor and that the applicant ~~have worked~~ under this certificate for an additional three years. This requirement by the Board is an attempt to establish standard licensing criteria; however, the fitness card program has only been viable for approximately two years and the Board has attempted to make appropriate allowances for those who appear to qualify for examinations. Certificates of fitness are not required in the remaining three categories because those who qualify for outside linework also qualify for outside communications, and those who qualify for inside wiring also qualify for inside communications and residential wiring.

Violation of Statute

Licensees are prohibited by statute from operating as an electrical administrator for more than one registered contractor. This prohibition, however, is not enforced. There also seems to be problems with utilization of another's license for work in lieu of obtaining one properly. Licenses are renewed biennially upon application and receipt of the renewal fee unless lapsed more than three years, in which case the Board may require reexamination. At the present time nothing else is required for renewal but the Board is discussing methods by which licensees must submit information verifying their continued competency,

such as employer certification that the individual has been active in the trade.

Statutory exemptions from licensure are provided under specified conditions for municipalities and utilities, for the manufacture or repair of electrical apparatus or equipment, for some electrical work under $5,000 in outlying communities, for use by the installer or his immediate family, for radio or television broadcasting systems, for some elevator work, and for telephone systems. All such work is subject to inspection under AS 08.40.070, as well as to the provisions of AS 18.60.

Elaine! Should Communicators be regulated

All applicants for licensure must take the appropriate examination(s). There are no endorsement or reciprocity provisions, nor any provision for temporary permits pending examination. The overwhelming majority of complaints regarding this profession are complaints from the industry about unlicensed activity. The existence of interim measures to allow apparently qualified people to work might function to reduce the amount of unlicensed electrical work allegedly being done. Interviews conducted during the course of this review indicated widespread dissatisfaction with the enforcement administration of the Department of Commerce and Economic Development, the Department of Labor, and the municipalities. All licensees stated that "80-90%" of the work done, even by licensees, is defective and dangerous. Almost all indicated that a considerable number of applicants had been approved for examination without being qualified and expressed objection that qualifications were not verified by the Board. Almost all declined to make formal complaints about substandard work. Many expressed a desire to serve on the Board but felt there were statutory and practical restrictions to their doing so, i.e., that appointments are made on a geographical basis and/or are lifetime appointments.

Dangerous electrical work is most certainly a matter of public concern. In 1977, there were 125 electrical systems fires in Alaska resulting in 10 injuries; in 1978, there were 110 electrical systems fires resulting in 6 injuries.[1] By authority of AS 18.60 (Electrical Safety) the Department of Labor has adopted the 1978 National Electrical Safety Code as the minimum electrical and safety standards of the State. Local governments may also adopt standards for themselves as long as they are not less stringent than those adopted by the Department of Labor.

Some alternate regulatory procedures exist within the State. In connection with work performed under established standards, no person may be employed to perform the work without a certificate of fitness issued by the Department of Labor under AS 18.62. This certificate of fitness is a prerequisite to approval for examination by the Board of Electrical Examiners. Centralization of electrical regulation under one State agency should be given consideration. Further suggestions are made in this report in the event the Board is reestablished.

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

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[1] 1978 Annual Report, State of Alaska, Department of Public Safety, Division of Fire Prevention.

The Board of Electrical Examiners is given wide latitude in its operations. It is able to establish categories and standards of licensing, to make or request inspections or investigations, to formulate and administer examinations and to promulgate appropriate regulations. The Board thus has almost no restrictions on its authority other than those self imposed.

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

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

2/07/80 is filled per Clause G.

to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

AS 08.40.010 requires that all Board members be licensed electrical admi istrators. (1) Public members should be provided for as a media of public participation in regulation procedures and decision making. (2) Terms of membership for all members should be limited.

Statute

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

Board did not comply with

The purpose of AS 08.40 was added to Board statutes in 1977. General "housekeeping" amendments were also made and the term "electrical contractor" was replaced with "electrical administrator." The stated purpose of the chapter is to "protect the safety of people and property in the state..."

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

Meetings and hearings of the Board are attended by applicants, union representatives and other interested parties. General "public" interest is negligible. Notices of pending meetings and new or amended regulations are published in major newspapers in the State.

Public interests would be furthered by the presence of public members on the Board. "In recent years a number of states have added one or more

public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decision-making."[2] The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding. In August of 1977 the Board indicated that it would like to have two public members.

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

By memorandum of June 13, 1979 (see Appendix A), the Department of Law advised that "AS 08.01.87 and AS 08.40.175 grant Commerce and Labor concurrent discretionary authority to investigate and enforce the provisions of AS 08 40..." The Department of Labor has two electrical inspectors in the State, one in Anchorage and one in Fairbanks.

Routine correspondence regarding Board activities may be handled by the Department of Labor, the Divison of Occupational Licensing or the Board itself depending on the nature of the inquiry. Review of Board files indicates that, except in some enforcement cases, responses are generally made in an appropriate and timely manner.

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

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[2]Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

The Board has delineated qualifications for each licensure category in its regulations. It does not, however, verify qualifications cited in individual applications. Interviewees generally felt the tests administered were fair and valid although quite difficult (failure rates from 67% to 87% in 1978).

The Board has provided a procedure by which individuals failing the test may review it with the Board the following day. Any changes made as a result of this review are required to be documented and retained with the examination materials. Applicants who have failed the examination may be reexamined at the next scheduled time. Applicants who appear to be qualified and who pass the appropriate examination(s) are issued a license.

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

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible to three other regulated professions), who is hired through the State Personnel System and is subject to affirmative action requirements.

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

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

Conclusions -

(1) Public members should be included in Board membership and terms of service should be limited. The Board has been actively recommending statutory changes (see Appendix B) and promulgating regulations. p. 32

The Board has indicated that it would prefer to have the electrical inspector from the Department of Labor more closely associated with the Board and its activities. It also feels that one such inspector for the entire State is inadequate, particularly when the position is not assigned exclusively to electrical duties.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing administrative overhead such as staff salaries and examination expenses. fees

Chapter 40. Electrical Administrators.

Article
1. Board of Electrical Examiners (§§ 08.40.005-08.40.080)
2. Licensing (§§ 08.40.090-08.40.180)
3. General Provisions (§§ 08.40.190-08.40.200)

Article 1. Board of Electrical Examiners.

Section
05. Purpose of chapter
10. Creation and membership of board
20. Appointment and term of office
30. Chairman of board
40. Board meetings
45. Categories of licenses
50. Regulations
60. Examinations
70. Inspection or investigation by board
80. Compensation of board members

Sec. 08.40.005. Purpose of chapter. The purpose of this chapter is to protect the safety of people and property in the state from the danger of improperly installed electrical wiring and equipment, by providing a procedure to assure

(1) the public that persons responsible for making electrical installations in this state are qualified; and

(2) a sufficient number of persons are so qualified. (§ 2 ch 53 SLA 1977)

Sec. 08.40.010. Creation and membership of board. There is hereby created a Board of Electrical Examiners consisting of three members who are licensed electrical administrators. (§ 1 ch 158 SLA 1960; am § 3 ch 53 SLA 1977)

Sec. 08.40.020. Appointment and term of office. The members of the board shall be appointed by the governor and confirmed by the legislature for staggered terms of three years, or until their successors are appointed. A member may be removed at the pleasure of the governor. (§ 1 ch 158 SLA 1960)

Sec. 08.40.030. Chairman of board. The board shall elect one of its members as chairman. (§1 ch 158 SLA 1960)

Sec. 08.40.040. Board meetings. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. Two members constitute a quorum. (§ 2 ch 158 SLA 1960)

Sec. 08.40.045. Categories of licenses. The board may adopt regulations establishing categories of electrical administrators, establishing qualifications for those categories and the content of examinations for applicants for each category. (§ 4 ch 53 SLA 1977)

Sec. 08.40.050. Regulations. The board shall adopt regulations subject to the Administrative Procedure Act (AS 44.62), relating to the examination and licensing of electrical administrators and the suspension or revocation of licenses. (§ 2 ch 158 SLA 1960; am § 5 ch 53 SLA 1977)

Sec. 08.40.060. Examinations. A licensing examination, under the supervision of the chairman of the board or his designee, shall be conducted at least twice during each year at appropriate places in the state. (§ 2 ch 158 SLA 1960)

Sec. 08.40.070. Inspection or investigation by board. The board may make or have made a special inspection or investigation into the work of a licensee which it considers necessary, may issue subpoenas and process compelling the attendance of any person and the production of any papers or books, for the purpose of the investigation and examination, may administer oaths when required, and may petition a court of the state to enforce subpoenas and process or to compel testimony. (§ 5 ch 158 SLA 1960)

Sec. 08.40.080. Compensation of board members. Members of the board are entitled to payments, per diem allowances and transportation expenses allowed by law and paid members of other state examining and licensing boards. (§ 6 ch 158 SLA 1960)

Article 2. Licensing.

Section
90. License required
100. [Repealed]
110. Application for license
120. Examination of applicant
130. Administrator limited to one licensed contractor
135. Renewal and reinstatement
140. Issuance and display of license
150. Fees
160. [Repealed]
170. Denial, suspension and revocation of license
175. Cease and desist order
178. Injunctive relief
180. Violation of chapter

Sec. 08.40.090. License required. (a) No person may act as an electrical administrator in the state without a license issued by the board.

(b) A person licensed under this chapter may perform work only in a category for which he is licensed. (§ 3 (c) ch 158 SLA 1960; am § 6 ch 53 SLA 1977)

Sec. 08.40.100. Exclusion. Repealed by § 14 ch 53 SLA 1977.

Sec. 08.40.110. Application for license. An applicant for a license shall apply upon a form prescribed by the board. (§ 3 (d) ch 158 SLA 1960)

Sec. 08.40.120. Examination of applicant. Each applicant shall be examined to determine his knowledge of electrical installations and wiring, familiarity with the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American Standards Association, other installation and safety regulations approved by the American Standards Association, and his personal skill and ability. (§ 3(d) ch 158 SLA 1960)

Sec. 08.40.130. Administrator limited to one licensed contractor. No person may qualify for or operate as an electrical administrator for more than one registered contractor. (§ 3(e) ch 158 SLA 1960; am § 1 ch 30 SLA 1969; am § 7 ch 53 SLA 1977)

Sec. 08.40.135. Renewal and reinstatement. (a) A license issued under this chapter, unless revoked or suspended, is nontransferable and may be renewed on a date set by the department, without examination, by appropriate application.

(b) A lapsed license may be reinstated by payment of all unpaid renewal fees and a penalty fee of $25 for each year the license has been lapsed unless the license has been lapsed for more than three years and the board has reason to believe that it may be necessary to require the licensee to take and pass the examination given under § 120 of this chapter. (§ 2 ch 30 SLA 1969; am § 8 ch 53 SLA 1977)

Sec. 08.40.140. Issuance and display of license. An applicant who successfully passes the examination shall recieve a certificate of license. The certificate shall be prominently displayed, while in effect, in the holder's principal place of business. (§ 3(f) ch 158 SLA 1960)

Sec. 08.40.150. Fees. (a) Each applicant shall pay an original license fee of $100.

(b) The fee for biennial renewal of a license is $100. (§ 3 (f) ch 158 SLA 1960; am § 3 ch 30 SLA 1969)

Sec. 08.40.160. Waiver of examination. Repealed by § 14 ch 53 SLA 1977.

Sec. 08.40.170. Denial, suspension and revocation of license. (a) The board may suspend, revoke or refuse to grant a license upon a finding that

(1) the application is fraudulent or misleading;

(2) the licensee has knowingly violated this chapter or a lawful rule, order or regulation of the board;

(3) the licensee is incompetent, or has engaged in fraudulent practices.

(b) Notice of a proposed denial, suspension or revocation of license shall be given in writing, stating the grounds.

(c) Proceedings for the denial, suspension or revocation of a license shall be governed by the Administrative Procedure Act (AS 44.62). (§ 4 ch 158 SLA 1960; am § 4 ch 30 SLA 1969)

Sec. 08.40.175. Cease and desist order. (a) If the commissioner of labor determines that a person is acting as an electrical administrator in violation of this chapter, he may issue a cease and desist order prohibiting further action by the person as an electrical administrator. The cease and desist order remains in effect until the person has submitted evidence acceptable to the commissioner of labor showing that the violation has been corrected.

(b) A person affected by an order issued under (a) of this section may seek equitable relief preventing the commissioner of labor from enforcing the order. (§ 1 ch 39 SLA 1972; am § 9 ch 53 SLA 1977)

Sec. 08.40.178. Injunctive relief. The commissioner of labor may seek an injunction in the superior court to enjoin a person from violating this chapter. (§ 1 ch 39 SLA 1972)

Sec. 08.40.180. Violation of chapter. A person who knowingly violates this chapter, or who knowingly violates a valid rule, regulation or order of the board, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $300, or by imprisonment for not more than 60 days or by both. (§ 10 ch 158 SLA 1960)

Article 3. General Provisions

Section
190. Exclusions
200. Definitions

Sec. 08.40.190. Exclusions. (a) This chapter does not apply to any utility or municipality engaged in

(1) electrical construction and maintenance of electrical wiring for the generation and distribution of electrical current where the wiring is an integral part of a system owned and operated by that utility or municipal light and power department;

(2) the installation, operation, maintenance, or repair of telephone, telegraph, signal or communication systems when the work is performed by the employees of the utility.

(b) This chapter does not apply to any person engaged in

(1) the manufacture or repair of electrical apparatus or equipment;

(2) electrical work, the cost of which does not exceed $5,000 involving residences or small commercial establishments in communities

(A) which have a population of under 500; or

(B) which are over 50 miles by air or water transportation from the business place of an electrical administrator licensed under this chapter;

(3) electrical installation on residential property which is owned by the installer or a member of his immediate family and not intended for sale at the time of making the installation;

(4) the operation, maintenance or repair of a television or radio broadcasting system and the installation of a radio broadcasting system under 500 watts input power except for A.C. power supply and wiring;

(5) the installation, maintenace and repair of elevators so long as the work is performed by an agent or employee of the elevator industry and is confined to the elevator control system, which system does not include the power supply, wiring and motor connection;

(6) the maintenance or repair of telephone systems.

(c) Work within the exclusionary provisions of this section is nevertheless subject to the inspection provisions of § 70 of this chapter and must follow the regulations regarding workmanship adopted by the board. (§ 8 ch 158 SLA 1960; am § 1 ch 79 SLA 1967; am § 10 ch 53 SLA 1977)

Sec. 08.50.200. Definitions. As used in this chapter

(1) "board" means the Board of Electrical Examiners;

(2) "electrical administrator" means any person engaged in the business of, or purporting to be engaged in the business of, installing or repairing, or contracting to install or repair, electrical wiring, conduits, devices, fixtures, equipment, or other electrical materials for transmitting, using or consuming electrical energy;

(3) "electrical wiring" means and includes wiring, fixtures, conduits, appliances, devices, equipment, overhead or underground wiring systems, or other equipment in connection with the general distribution or utilization of electrical energy;

(4) "manufacture" means fabrication or completion of a product or electrical apparatus exclusive of its completion or installation at a job site;

(5) "utility" means every corporation (whether public, cooperative or otherwise), company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant or system for

(A) furnishing, by generation, transmission or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation. (§ 3(a)(b) ch 158 SLA 1960; am §§ 12, 13 ch 53 SLA 1977)

CHAPTER 32.
BOARD OF ELECTRICAL EXAMINERS

Article

1. Outside Linework Category (12 AAC 32.010–12 AAC 32.040)
2. Outside Communications Category (12 AAC 32.050–12 AAC 32.080)
3. Inside Wiring Category (12 AAC 32.090–12 AAC 32.110)
4. Inside Communications Category (12 AAC 32.130–12 AAC 32.150)
5. Residential Wiring Category (12 AAC 32.170–12 AAC 32.190)
6. Examinations (12 AAC 32.210–12 AAC 32.240)
7. Applications (12 AAC 32.250–12 AAC 32.260)
8. General Provisions (12 AAC 32.900–12 AAC 32.910)

ARTICLE 1.
OUTSIDE LINEWORK CATEGORY

Section

10. (Repealed)
11. Qualifications for an electrical administrator license in the outside linework category
20. (Repealed)
21. Examination for an electrical administrator license in the outside linework category
30. (Repealed)
31. Scope of an electrical administrator license in the outside linework category
40. (Repealed)

12 AAC 32.010. APPLICATION. Repealed 7/28/77.

12 AAC 32.011. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE LINEWORK CATEGORY. (a) An applicant for an electrical administrator license in the outside linework category shall furnish proof satisfactory to the board that he or she has

(1) three years of current practical experience as a journeyman lineman in outside linework;

(2) four years of current management experience in outside linework as field superintendent, office engineer or similar position; or

(3) a degree in electrical engineering from an accredited college or university plus one year of current practical experience as a journeyman lineman in outside linework. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050

12 AAC 32.020. NOTIFICATION. Repealed 7/28/77.

12 AAC 32.021. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE LINEWORK CATEGORY. An applicant for an electrical administrator license in the outside linework category will be examined to determine his or her knowledge of outside linework, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in outside linework. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045 AS 08.40.060
AS 08.40.050 AS 08.40.120

12 AAC 32.030. EXAMINATIONS. Repealed 7/28/77.

12 AAC 32.031. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE LINEWORK CATEGORY. (a) The holder of an electrical administrator license in the outside linework category may supervise all work defined in (b) of this section. A person holding a current valid license in outside linework on the effective date of the amendment to this section will be granted a license in outside communications without examination.

(b) Outside linework includes

(1) all work necessary to the assembling, installation, erection, operation, maintenance or repair of all electrical apparatus, devices, wires, cables, supports, insulators, conductors, ducts,

and raceways when part of distributing systems outside of buildings;

(2) all underground ducts and cables when they are part of a system of a distributing company or utility;

(3) all outdoor substations and electrical connections up to and including the setting of transformers and the connecting of the primary busses to them;

(4) all outdoor street lighting on public thoroughfares, roadways, and rights-of-way; and

(5) all linework consisting of wood, concrete or metal, or substitutes for those materials; poles or towers, including wires, cables, or other apparatus supported by them. (Eff. 7/28/77, Reg. 63; am 4/11/79, Reg. 70)

Authority: AS 08.40.045
AS 08.40.050
AS 08.40.090

12 AAC 32.040. NOTIFICATION OF RESULTS. Repealed 7/28/77.

ARTICLE 2.
OUTSIDE COMMUNICATIONS CATEGORY

Section
50. (Repealed)
51. Qualifications for an electrical administrator license in the outside communications category
60. (Repealed)
61. Examination for an electrical administrator license in the outside communications category
70. (Repealed)
71. Scope of an electrical administrator license in the outside communications category
80. (Repealed)

12 AAC 32.050. REEXAMINATION. Repealed 7/28/77.

12 AAC 32.051. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE COMMUNICATIONS CATEGORY. An applicant for an electrical administrator license in the outside communications category shall furnish proof satisfactory to the board that he or she

(1) has had two years of current practical experience in outside communications; or

(2) is a graduate of an accredited college or trade school in outside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050

12 AAC 32.060. FAILURE TO APPEAR FOR EXAMINATION. Repealed 7/28/77.

12 AAC 32.061. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE COMMUNICATIONS CATEGORY. An applicant for an electrical administrator license in the outside communications category will be examined to determine his or her knowledge of outside communications, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in outside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045 AS 08.40.060
AS 08.40.050 AS 08.40.120

12 AAC 32.070. ISSUANCE OF LICENSE. Repealed 7/28/77.

12 AAC 32.071. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE COMMUNICATIONS CATEGORY. (a) The holder of an electrical administrator license in the outside communications category may supervise all work defined in (b) of this section.

(b) Outside communications includes

(1) outside linework as defined by sec. 31(b) of this chapter but limited to the installation, operation, maintenance and repair of telephone, telegraph, and intercommunication facilities, up to the first point of distribution or the first terminal inside of building or property lines; and

(2) the installation, maintenance and repair of fire alarm, intrusion alarm or other low voltage signaling systems of 48 volts to ground or less, outside of buildings or property lines where aerial wires or cables are used between buildings or structures up to the first point of attachment of such conductors to those buildings or structures. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050
AS 08.40.090

12 AAC 32.080. ADMINISTRATOR OF LICENSE. Repealed 7/28/77.

ARTICLE 3.
INSIDE WIRING CATEGORY

Section

90. Qualifications for an electrical administrator license in the inside wiring category
100. Examination for an electrical administrator license in the inside wiring category
110. Scope of an electrical administrator license in the inside wiring category

12 AAC 32.090. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE WIRING CATEGORY. An applicant for an electrical administrator license in the inside wiring category shall furnish proof satisfactory to the board that he or she has

(1) three years of current practical experience as a journeyman electrician in inside wiring;

(2) four years of current management experience in inside wiring as field superintendent, office engineer or similar position; or

(3) a degree in electrical engineering from an accredited college or university plus one year of current practical experience as a journeyman electrician in inside wiring. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050

12 AAC 32.100. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE WIRING CATEGORY. An applicant for an electrical administrator license in the inside wiring category will be examined to determine his or her knowledge of inside wiring, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in inside wiring. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045 AS 08.40.060
AS 08.40.050 AS 08.40.120

12 AAC 32.110. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE WIRING CATEGORY. (a) The holder of an electrical administrator license in the inside wiring category may supervise all work defined in (b) of this section and the work defined under the residential wiring category in sec. 190(b) of this chapter. A person holding a current valid license in inside wiring on the effective date of the amendment to this section will be granted a license in inside examination.

(b) Inside wiring includes

(1) installation, construction, operation, maintenance and repair of all electrical work within buildings and within property lines of any given property, and beginning at the secondary side of the transformer, except linework consisting of poles and towers, including wires or cables and other apparatus supported by them, and except outdoor substations as defined under outside linework jurisdiction; and

(2) work starting immediately after the first point of attachment of aerial conductors to buildings when aerial wires or cables are used to provide power for buildings or structures within the property lines of any given property. (Eff. 7/28/77, Reg. 63; am 4/11/79, Reg. 70)

Authority: AS 08.40.045
AS 08.40.050
AS 08.40.090

ARTICLE 4.
INSIDE COMMUNICATIONS CATEGORY

Section
130. Qualifications for an electrical administrator license in the inside communications category
140. Examination for an electrical administrator license in the inside communications category
150. Scope of an electrical administrator license in the inside communications category

12 AAC 32.130. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE COMMUNICATIONS CATEGORY. An applicant for an electrical administrator license in the inside communications category shall furnish proof satisfactory to the board that he or she

(1) has had two years of current practical experience in inside communications; or

(2) is a graduate of an accredited college or trade school in inside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

12 AAC 32.140. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE COMMUNICATIONS CATEGORY. An applicant for an electrical administrator license in the inside communications category will be examined to determine his or her knowledge of inside communications, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in inside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050
AS 08.40.060
AS 08.40.120

12 AAC 32.150. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE COMMUNICATIONS CATEGORY. (a) The holder of an electrical administrator license in the inside communications category may perform all work defined in (b) of this section.

(b) Inside communications includes

(1) work within the inside wiring jurisdiction but limited to the installation, operation, maintenance and repair of telephone, telegraph and intercommunication facilities, beginning at the first point of distribution or the first terminal inside of building or property lines; and

(2) the installation, maintenance and repair of fire alarm, intrusion alarm or other low voltage signaling systems of 48 volts to ground or less, within buildings or within lines, except as defined under sec. 110(b)(2) of this chapter. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050
AS 08.40.090

ARTICLE 5.
RESIDENTIAL WIRING CATEGORY

Section
170. Qualifications for an electrical administrator license in the residential wiring category
180. Examination for an electrical administrator license in the residential wiring category
190. Scope of an electrical administrator license in the residential wiring category

12 AAC 32.170. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE RESIDENTIAL WIRING CATEGORY. An applicant for an electrical administrator license in the residential wiring category shall furnish proof satisfactory to the board that he or she has two years of current practical experience in residential wiring as a residential wireman. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

12 AAC 32.180. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE RESIDENTIAL WIRING CATEGORY. An applicant for an electrical administrator license in the residential wiring category will be examined to determine his or her knowledge of residential wiring, familiarity with the applicable

portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in residential wiring. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050
AS 08.40.060
AS 08.40.120

12 AAC 32.190. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE RESIDENTIAL WIRING CATEGORY. (a) The holder of an electrical administrator license in the residential wiring category may supervise all work defined in (b) of this section on a residential dwelling unit not exceeding two stories in height and no larger than a four-plex.

(b) Residential wiring includes inside wiring and inside communications work as defined in secs. 110(b) and 150, respectively, of this chapter, but is limited to residential occupancies described in (a) of this section. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050
AS 08.40.090

ARTICLE 6.
EXAMINATIONS

Section
210. Examination
215. Examination review
220. Reexamination
230. Notice of examination
240. Examination papers

12 AAC 32.210. EXAMINATION. (a) Each part of an examination must be passed with a minimum score of 70 percent.

(b) An applicant may not be examined for more than two electrical administrator license categories at any one scheduled examination. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050
AS 08.40.120

12 AAC 32.215. EXAMINATION REVIEW. (a) A person receiving a failing score may review his or her examination in the presence of at least one board member if he or she makes a request to the board before the recess of the board's regularly scheduled meeting the day immediately following the examination.

(b) An examination review shall be conducted the day the request for review is made or the following day.

(c) Upon completion of an examination review with an applicant, the board member reviewing the examination will prepare a written and signed statement of any changes the board member determines should be made to the original examination score.

(d) The board will review and act upon all written statements of recommended changes before the adjournment of the board's regularly scheduled meeting immediately following the examination.

(e) The written and signed statement of recommended changes will be returned with the original and unaltered examination papers to the department following the board's meeting. (Eff. 5/25/79, Reg. 70)

Authority: AS 08.40.050
AS 08.40.120

12 AAC 32.220. REEXAMINATION. (a) An applicant failing part of the examination will be allowed to retake the parts failed if he or she notifies the department of his or her intent to retake the examination at least 30 days before the next scheduled examination.

(b) An applicant who fails to retake the parts failed within one year must retake the entire examination. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

12 AAC 32.230. NOTICE OF EXAMINATION. Candidates whose applications for examination have been accepted will be notified of the time and place of examination at least two weeks before the examination. Notice of the examination will also be published in major newspapers at least 30 days before the examination. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050
AS 08.40.060

12 AAC 32.240. EXAMINATION PAPERS. All examination papers will be preserved for a period of at least six months after notification of grade results, during which time any candidate who has failed the examination may inspect his papers in the presence of a board member or his designee. However, no person may inspect examination papers during the 30 days immediately preceding any examination. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050
AS 08.40.060
AS 08.40 120

ARTICLE 7.
APPLICATIONS

Section
250. Application; forms, supporting evidence, and fee
260. Time and place for filing applications

12 AAC 32.250. APPLICATION; FORMS, SUPPORTING EVIDENCE, AND FEE. (a) An application for initial licensure must be submitted on a form provided by the department with

(1) a check or money order in the amount specified in (b) of this section;

(2) transcripts from an accredited school or trade school attended by applicant;

(3) a certified copy of the applicant's degree awarded by an accredited school or certificate from trade school;

(4) evidence of experience required by this chapter.

(b) The appropriate fee under AS 08.40.150 or 08.40.135(b) must accompany an application. The fees under AS 08.40.150 for original license and renewal must be paid for each category applied for. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050
AS 08.40.110
AS 08.40.150

12 AAC 32.260. TIME AND PLACE FOR FILING APPLICATIONS. An application together with the required fee must be filed at least 10 days before a regularly scheduled board meeting in order to be considered at that meeting. Regular meetings are held in the months of February, May, August, and November. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050
AS 08.40.110
AS 08.40.150

ARTICLE 8.
GENERAL PROVISIONS

Section
900. Licensed electrical administrator is responsible for completed project
910. Definitions

12 AAC 32.900. LICENSED ELECTRICAL ADMINISTRATOR IS RESPONSIBLE FOR COMPLETED PROJECT. Completion of a project conducted under an electrical administrator's license constitutes certification by the administrator that work performed and materials used conform to applicable codes and standards. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050
AS 08.40.130

12 AAC 32.910. DEFINITIONS. In this chapter

(1) "board" means the Board of Electrical Examiners;

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

(3) "four-plex" means a building containing four dwelling units erected on a common foundation;

(4) "journeyman lineman" or "journeyman electrician" means a person who has at least four years or 8,000 hours experience in the electrical trade and holds a certificate of fitness as issued by the Department of Labor under AS 18.62;

(5) "residential wireman" means a person who has at least two years or 4,000 hours experience in the residential wiring trade and holds or is otherwise entitled to hold a certificate of fitness as issued by the Department of Labor under AS 18.62. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

APPENDIX "A"

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

DATE: June 13, 1979

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

By: Norman E. Staton
Norman E. Staton
Assistant Attorney General

SUBJECT: AS 08.40 and AS 08.99
Enforcement Responsibilities

You have requested an opinion as to which department has the authority and responsibility for enforcing the provisions contained in AS 08.99, regarding the Board of Welding Examiners and the Board of Electrical Examiners. - 08.01.

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

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

AS 08.01.087 provides:

> Sec. 08.01.087. Powers and duties of department. (a) The department may upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.
>
> (b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted

Electrical

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

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

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

> (Applicability of Chapter.) This chapter applies to the ...
> (7) Board of Electrical Examiners;
> (17) Board of Welding Examiners

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

AS 08.40.175, regarding Electrical Examiners, provides:

> Sec. 08.40.175. Cease and desist order. (a) If the commissioner of labor determines that a person is acting as an electrical administrator in violation of this chapter, he may issue a cease and desist order prohibiting further action by the person as an electrical administrator. The cease and desist order remains in effect until the person has submitted evidence acceptable to the commissioner of labor showing that the violation has been corrected.
>
> (b) A person affected by an order issued under (a) of this section may seek equitable relief preventing the commissioner of labor from enforcing the order.

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

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

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

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

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

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

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

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

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

NES:bwb

ATTACHMENT I

EXHIBIT A

BOARD OF ELECTRICAL EXAMINERS

1978 ANNUAL REPORT

EXHIBIT "A"

5 members

* Section 1.AS 08.40.010 is ammended to read:

Sec 08.40.010. Creation and membership of the board. There is hereby created a board of Electrical Examiners consisting of three members who are licensed electrical administrators and two members drawn from the public at large.

YES

Rationale: Since regulation affects the vital interests of consumers, it is incumbent upon the legislature to develop a forum upon which public views can be heard.

* Section 2.AS 08.40.030 is ammended to read:

Sec 08.40.030 Chairman of the board. The board shall elect one of its members as chairman. The chairman shall be a licensed electrical administrator.

NO

California Example p.11

Rationale: The Board rejects the philosophy that only members of our occupational group are qualified to make judgements about entrance standards, examination content, or disciplinary matters. We do feel, however, that the technical nature of our industry requires the presence of a knowledgeable, technically qualified chair person to represent the Board on a day to day basis.

Parliamentarian

* Section 3.AS 08.40.040 is ammended to read:

YES

Sec 08.40.040 Board meetings. The Board shall hold a regular quarterly (annual) meeting. The Board may hold special meetings at the call of the

Electrical

Chairman with prior approval of the Governor. Three (two) members constitute a quarom.

Rationale: The board regularly holds 4 meetings a year a, this is the minimum necessary to satisfy the public need. The quorum limitation must be increased to accomodate the public members requested in Section 1, above.

* Section 4.AS 08.40.090

Sec 08.40.090 License required (A) No person may act as an electrical admistrator in the state without a license issued by the board.

NO { 1. No person may submit a bid or offer to perform electrical work in the state without a license issued by the board.

(B) A person licensed under this chapter may perform or offer to perform electrical work only in a catagory for which he is licensed.

Rationale: A person who responds to an invitation for bids is proporting to be engaged in the business of electrical contracting unless, as an unlicensed practitioner, he acknowledges his inability to perform the work until he is licensed. Without this contingency, an offer made or contract entered into is, in effect, an agreement to commit a crime and is in violation of the public policy of the state.

Ask Blanc...

* Section 5.AS 08.40.120 is ammended to read:

Sec 08.40.120 Examination of applicant. Each applicant shall be examined to determine his knowledge of electrical installations and wiring, familiarity with the regulatiors contained in the National Electrical Code and the National Electrical Safety Code, as (approved by the American National Standards Association) adopted and ammended by title 18, Electrical

article 6 of the Alaska Health and Safety Code, other appropriate installation and safety regulations (approved by the American Standards Assoc.), and his personal skill and ability.

Rationale: The legislature of the state of Alaska enacts statutory regulations dealing with occupational health and safety. These statutes are not approved by the American Standards Association and as a consequence of the wording of this section, applicants can not be examined on their content. (Yet) knowledge of these (and other similar) requirements will directly affect the quality and safety of contractor's work.

* Section 6. AS 08.40.135 is ammended to read:

Sec 08.40.135 Renewal and Reinstatement.

(a) A license issued under this chapter, unless revoked or suspended, is non-transferrable and may be renewed biennially on a ~~date set~~ by the department without examination, upon submission of adequate proof of activity to the board and by appropriate application.

(b) A lapsed license may be reinstated by payment of all unpaid renewal fees and a penalty fee $25.00 for each year the license has been lapsed, unless the license has been lapsed for more than two (three) years (and the Board has reason to believe that it may be necessary to require) in which case the licensee will be required to take and pass the examination given under section 120 of this chapter.

(c) A licensee who fails to submit adequate proof of activity to the board for more than two consecutive years will be required to take and pass the examination given under section 120 of this chapter to renew his license.

Rationale: At present most inactive practitioners can preserve their right to practice by simply paying the renewal fee. By keeping their licenses in force, they are able to resume practice at any time even though they may have failed to retain their competence.

Reciprocity

* Section 7. AS 08.40.165 Is enacted to read:

Sec 08.40.165 Licensure by endorsement. An applicant who is a licensed electrical administrator in another state may apply for licensure without examination upon providing proof satisfactory to the board that;

(A) he is currently actively engaged in the electrical contracting industry and,

(B) The standards of entry in his state of licensure are at least equal to those of this state. How is this equality determined.

Rationale: In order to encourage the competitive process, it is necessary to provide out of state applicants with fair and reasonable access to our credentialing procedures.

* Section 8.AS 08.40.170 is ammended by enacting sub-section (a)(4) to read:

Sec 08.40.170 Denial, Suspension, and revocation of license.

A man can lose his licensee if someone 'tells' on him ---- to much like Big Brother.

(a) (4), The licensee has knowingly permitted electrical work to be accomplished in this state under the guise of his license and without his supervision.

Rationale: The accomplishment of electrical work by an unlicensed person is a crime against the state. Persons who deliberately allow other, unlicensed persons to accomplish electrical work under the fraudulent "unbrella" of licensed activity are themselves guilty of violating this statute.

* Section 9.AS 08.400.200 (5)(B) is ammended to read:

Sec 9 AS 08.40.200 (5)(B) Definitions. Furnishing (telecommunications) <u>telephone or telegraph</u> service to the public for compenstation.

Rationale: When this definition was added to the statute in 1977, the intent of both the Board and the Legislature was to exclude the activities of Public Service corporations (ie: Municipal Utilities, long lines carriers, etc.,) from the requirements of this chapter. Unfortunately, the wording

we jointly selected has resulted in considerable controversey and needs to be clarified.

* Section 10.AS 08.40.200 is ammended by enacting sub-section 6 to read:

Sec 08.40.200 (6) Definitions "repair" means the performance or accomplishment of work, of a routine recurring nature or otherwise, on an integral electrical circuit component which is or is capable of being energized, when such work involves the removal, replacement, disconnection or reconnection of that integral component.

Rationale: There has been a great deal of controversy over the last several years revolving around the legislative intent of the word "repair". Only by adding a firm definition for this word can we hope to achieve uniform comprehension and enforcement of this statute.

National Code

O/C

* Section 11.AS 18.60.580 is repealed and re-enacted to read:

Sec 18.60.580. Minimum electrical standards. The latest published editions of the National Electrical Code and the National Electrical Safety Code, both as approved by the American National Standards Institute constitute the minimum Electrical Safety standards of the state.

Rationale: It is both ridiculous and expensive for the legislature to have to review this act every two to three years to change a date so that we may once again be in tune with the rest of the U.S.A.

* Section 12.AS 18.60.590 is ammended to read:

Sec 12.AS 18.60.590 State, Borough and City electrical Codes

Sec 12. AS 18.60.590 Electrical Codes

(A) The (department) Board of Electrical Examiners may be regulation adopt ammendments to the (1971) National Electrical Code and/or the National Electrical Safety Code (as approved and issued by the American Standards Association) provided such ammendments result in standards no less stringent than those prescribed by section 580 of this chapter.

(B) This chapter does not affect the authority of any organized borough, municipality or rural electrification association to prescribe by ordinance, rule or order, standards for their respective areas of jurisdiction no less stringent than the standards prescribed by the (department) Board or those established by section 580 of this chapter.

Rationale: The Department of Labor employes electrical inspectors, not administrators. The technical expertise necessary to formulate ammendments to the National Standards more properly sites with the Board. Additionally, as this statute is now worded, no one can ammend the National Electrical Safety-Code regardless of the rationale behind such an ammendment. Please see attachment 1 to the exhibit for an example of why the Board needs this authority.

* Section 13.AS 18.60.600 is repealed and re-enacted to read:

Sec 18.60.600 Powers and duties of the Board and the Department;

(A) The Board may:

1. Promulgate regulations to carry out the purposes of section 580-610 of this chapter.
2. Inspect, or cause to be inspected, the electrical wiring of any place of employment or public structure in the state.

leave regulations w/ the Board

(B) The department shall:

1. Promulgate regulations to carry out the purposes of section 620-660 of this chapter.
2. Keep a record of all inspection fees collected.
3. Keep a record of all electrical inspections conducted.

Rationale: This revision is necessary to accomodate the other contemplated changes to this chapter.

NO its not!

* Section 14.AS 18.60.610 is ammended to read:

Sec 18.60.610 Delegation of Authority. Upon application to and approval of the Board (department), a person, corporation, electric utility firm, public utility district, Rural Electrification Association, or Municipal-Utility District furnishing electrical current may be authorized (by the commisioner) to inspect the electrical wiring for a public or commercial structure as defined in section 660 of this chapter to which it is to furnish electrical current before energizing the electrical system on, in, or about the premises. Authorization by the Board (commissioner) under this section constitutes a grant of full authority to act within the provisions of sections 580-660 of this chapter with the same immunities and privelages accorded to the state in the performance of these duties. A person or entity whose electrical wiring installation is found, by the authorized inspector, not to meet the standards prescribed, has the right to appeal to the Board (commissioner) for a new inspection. The Board (commissioner) shall, within 15 days, furnish a new inspection by a designee not associated with the person, firm, or utility who did the original inspectior

Rationale: The board has the authority (Granted by AS.08.40.070) to conduct inspections but lacks the tool to implement it. Additionally, the technical direction required by the State Electrical Inspectors must come from the Board as the department has no source of expertise other than the inspectors themselves.

* Section 15.AS 18.60.640 is ammended to read:

Sec 18.60.640 Scope of work covered;

(A) Sections 580-660 of this chapter apply to (cover only) new installations and alterations to existing installations.

18.60.580

(B) These standards are the required (recommended) minimum standards for all new structures in the state

Rationale: The wording changes are necessary to bring this section into agreement with other sections of this chapter.

* Section 16.AS 18.60.660 (4) is ammended to read:

Sec 18.60.660 Definitions in sections 580-660 of this chapter. (4) "Public Structures" means buildings such as hotels, resident housing, except homes owned by the installer and not intended for sale at the time of making the installation, (with more than one rental unit) restaurants, taverns, lodging houses, children's homes, auditoriums, town halls, or any structure designed or used for public assembly whether publicly or privately owned or financed.

Rationale: This change would allow for inspection of residential occupancies built by contractors and any other dwelling unit intended for rental occupancy regardless of the number of units involved. This authority is required to allow us to comply with the intent of AS 08.40 which again, is to protect the public.

OK to add.

* Section 17. AS 18.60.660 is ammended by enacting sub-section 5 to read:

Sec 18.60.660(5) "Board" means the board of Electrical Examiners as created by Alaska Statute AS 08.40.

Rationale: The necessity for this revision is self evident.

is already stated this way. p 44

* Section 18.AS 18.62.010 is ammended to read:

Sec 18.62.010 Certificate of fitness required. In connection with work performed subject to the standards established in (AS 18.60.580 and) AS 18.60.705, no person may be employed without a certificate of fitness to perform work.

Electrical

Rationale: The board considers the certificate of fitness program to be an abrogation of an individual's constitutional right to work at his trade. Additionally, there is absolutely no need for two licensing programs within the same occupation. If the contractor is licensed and responsible for the work accomplished under his license, why then regulate the workman? "There is little justification for licensure if practitioners work under supervision. If regulation is needed, it should be the supervisor who is regulated".[1]

Cost Impact:

The net result of the foregoing legislative package would be a cost increase of approximately $2,500.00 a year to support the two new board members and a cost decrease of untold magnetude in the reduction of administrative costs pertinant to the certificate of fitness program. The machinery for supporting the balance of this legislative package already exists and would neither expand nor contract as a result of these changes.

good pt.

1. Occupational licensing: questions a legislator should ask, Page 15; Shimberg & Roederer, 1978.

D

(Health and Safety)
Article 6. Electrical Safety.

Section
580. Minimum electrical standards
590. Borough and city electrical safety codes
600. Powers and duties of the department
610. Delegation of authority
620. Inspection fees
630. Enforcement of compliance
640. Scope of work covered
650. Penalty for violations
660. Definitions

Sec. 18.60.580. Minimum electrical standards. The Department of Labor shall adopt the 1971 published edition of the National Electrical Code approved by the American Standards Association, and the lastest published edition as of August 5, 1969 of the National Electrical Safety Code issued by the U.S. Department of Commerce, Bureau of Standards, as the minimum electrical safety standards of the state. (§ 1 ch 89 SLA 1969; am § 1 ch 37 SLA 1972)

Sec. 18.60.590. Borough and city electrical safety codes. (a) The department may by regulation adopt amendments to the 1971 National Electrical Code as approved and issued by the American Standards Association.

(b) This chapter does not affect the authority of any municipality or rural electrification association to prescribe by ordinance, rule, or order standards for their respective areas of jurisdiction not less stringent than the standards prescribed by the department or those established under § 580 of this chapter. (§ 1 ch 89 SLA 1969; am § 42 ch 69 SLA 1970; am § 29 ch 53 SLA 1973)

Sec. 18.60.600. Powers and duties of the department. (a) The department may

(1) promulgate regulations to carry out the purposes of §§ 580-660 of this chapter;

(2) inspect the electrical wiring of any place of employment or public structure in this state.

SB-232 would Repeal this

(b) The department shall

(1) keep a record of all inspection fees collected;

(2) keep a record of all electrical inspections conducted. (§ 1 ch 89 SLA 1969)

Sec. 18.60.610. Delegation of authority. Upon application to the department, a person, corporation, electric utility firm, public utility district, rural electrification association, or municipal utility district furnishing electrical current may be authorized by the commissioner to inspect the electrical wiring for a public or commercial structure as defined in § 660 of this chapter to which it is to furnish electrical current before energizing the electrical system on, in, or about the premises. Authorization by the commissioner under this section constitutes a grant of full authority to act within the provisions of §§ 580-660 of this chapter with the same immunities and privileges accorded to the state in the performance of these duties. A person or entity whose electrical wiring installation is found, by the authorized inspector, not to meet the standards prescribed has the right to appeal to the commissioner for a new inspection. The commissioner shall, within 15 days, furnish a new inspection by a designee not associated with the person, firm or utility who did the original inspection. (§ 1 ch 89 SLA 1969)

Sec. 18.60.620. Inspection fees. A person, corporation, electric utility firm, public utility district, rural electrification association or municipal utility district authorized under § 610 of this chapter to provide inspection services may charge a fee for these services. After notice and hearing, the department shall set a schedule of maximum fees for inspection services rendered under §§ 580-660 of this chapter. The department may review the schedule every two years after giving notice and hearing. (§ 1 ch 89 SLA 1969)

Sec. 18.60.630. Enforcement of compliance. An authorized inspector under this chapter shall give written notice to the owner of constructed premises, or the contractor of premises under construction, of each violation of applicable electrical standards discovered as a result of his inspection. If within 15 days after receipt of written notice of an electrical violation, the person notified does not rectify the condition, the inspector shall notify the electric utility firm, public utility district, rural electrification association or municipality district supplying power to the premises. Upon notice in writing from the inspector, the supplier of electrical power may discontinue services to the premises where the alleged violation exists. (§ 1 ch 89 SLA 1969)

Sec. 18.60.640. Scope of work covered. (a) Sections 580-660 of this chapter cover only new installations and alterations to existing installations.

(b) These standards are the recommended minimum standards for all new structures in the state. (§ 1 ch 89 SLA 1969)

Sec. 18.60.650. Penalty for violations. A person who installs electrical wiring not in compliance with minimum electrical standards as set out in § 580 of this chapter, and who fails to correct this wiring

after having been notified in writing by an authorized inspector, upon conviction, is punishable by a fine of not more than $1,000. (§ 1 ch 89 SLA 1969)

Sec. 18.60.660. Definitions. In §§ 580-660 of this chapter

(1) "department" means the Department of Labor;

(2) "commissioner" means commissioner of the Department of Labor;

(3) "electrical wiring" means the entire electrical system, including all conducting and shielding material, all regulatory and safety apparatus, and all devices and techniques used in the process of installation;

(4) "public structures" mean buildings such as hotels, resident housing with more than one rental unit, restaurants, taverns, lodging houses, children's homes, auditoriums, town halls, or any structure designed or used for public assembly whether publicly or privately financed. (§ 1 ch 89 SLA 1969)

(Health and Safety)
Chapter 62. Certificates of Fitness.

Section
10. Certificate of fitness required
20. Application for and issuance of certificate
30. Fee
40. Duration of certificate
50. Issuance and contents of certificate
60. Power of the department
70. Persons required to obtain certificate
80. Penalty

Sec. 18.62.010. Certificate of fitness required. In connection with work performed subject to the standards established in AS 18.60.580 and AS 18.60.705, no person may be employed without a certificate of fitness to perform the work. (§ 1 ch 12 SLA 1974)

Sec. 18.62.020. Application for and issuance of certificate. The department shall issue certificates of fitness. The certificate shall be issued only to an individual. An applicant for a certificate shall apply in writing, under oath, on a form prescribed by the department containing

(1) the name and address of the applicant;

(2) his age;

(3) his citizenship; and

(4) other information relevant to licensing which the department requires. (§ 1 ch 12 SLA 1974)

Sec. 18.62.030. Fee. An applicant shall pay an initial fee of $15 with his application. (§ 1 ch 12 SLA 1974)

Sec. 18.62.040. Duration of certificate. The department may cancel a certificate for cause. Certificates, if not cancelled for cause, are renewable upon payment of an annual renewal fee of $5. (§ 1 ch 12 SLA 1974)

Sec. 18.62.050. Issuance and contents of certificate. (a) If, upon investigation and examination by the department, the applicant is found competent by reason of training and experience, the department shall issue a certificate of fitness. The certificate shall set out the competency of the applicant and provide for his positive identification, and shall be carried on the person engaged in work subject to the requirement of a certificate of fitness under this chapter.

(b) An applicant who engaged in a trade subject to the requirement of a certificate of fitness under this chapter who has been engaged in that trade in the state for one year or more before January 1, 1973, upon making a satisfactory showing of qualifications to the department, shall be issued a certificate without examination.

(c) Verification by an Alaska-based labor union of a member's qualification to meet the requirements for a certificate of fitness may be accepted in lieu of examination or other requirement for issuing a certificate under this chapter. (§ 1 ch 12 SLA 1974)

Sec. 18.62.060. Power of the department. The department shall issue orders, rules and regulations necessary to carry out the purposes of this chapter. (§ 1 ch 12 SLA 1974)

Sec. 18.62.070. Persons required to obtain certificate. A person engaged in one of the following trades shall first obtain from the department the appropriate certificate of fitness in that trade:

(1) electrical wiring subject to the standards established in AS 18.60.580; and

(2) plumbing subject to the uniform plumbing code, as established in AS 18.60.705. (§ 1 ch 12 SLA 1974)

Sec. 18.62.080. Penalty. A person, either an employer or employee, who violates a provision of this chapter or of a regulation issued under this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $500. (§ 1 ch 12 SLA 1974)

G

STATE OF ALASKA
Real Estate Commission
August, 1979

Findings

Review of the responsibilities and activities of the Real Estate Commission indicates that regulation of this profession is in the public interest and should continue. Substantial amounts of money may be involved in real estate transactions which are often difficult for the consuming public to interpret and rely upon. The Commission is carrying out its functions in a responsible manner and appears to be meeting needs and demands reasonably.

I. General Information

A. Regulated Parties

1. Real Estate Brokers
2. Associate Real Estate Brokers
3. Real Estate Salesmen

B. Definitions

"(1) 'real estate' means an interest or estate in land, corporeal or incorporeal;" (AS 08.88.431)

C. Nature and Composition of Commission

1. Commission members and terms:

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

Lance Youngquist (Chairman)	ends January 31, 1981
Karen Morris	ends January 31, 1981
Carol Maser	ends January 31, 1980
Ken Calhoon	ends January 31, 1983
Frank Austin	ends January 31, 1980
Gary Wilkin	ends January 31, 1983
Gail Glad	ends January 31, 1983

2. Representation:

Profession = 5
Public = 2

3. Qualifications:

"(a) Five members of the commission must be real estate brokers or associate brokers who have been licensed real estate brokers or licensed associate brokers in Alaska for at least three years before appointment. Two members of the board must be public members in accordance with AS 08.01.025.

(b) One member of the commission shall be from the First Judicial District, one shall be from the Second Judicial District, one shall be from the Third Judicial District, one shall be from the Fourth Judicial District and one shall be from the state at large. However, if no person is eligible or available for appointment from the Second Judicial District, then two shall be from the state at large." (AS 08.88.041)

D. Licensing Data

Current active licenses (effective through July, 1979)

Brokers	=	449
Associate Brokers	=	342
Salesmen	=	1,967
Total		2,758

All licentiates are in-State.

E. Fees

Real estate broker or associate broker

1.	examination	$ 50.00
2.	reciprocity	50.00
3.	initial license	100.00
4.	biennial renewal - active license	100.00
5.	beinnial renewal - inactive license	25.00
6.	surety fee	125.00

Real estate salesmen

1.	examination	$ 50.00
2.	reciprocity	50.00
3.	initial license	50.00
4.	biennial renewal - active license	50.00
5.	biennial renewal - inactive license	25.00
6.	surety fee	40.00

For amended license 2.00

F. Examination Information

1976

Month	Broker Passed	Salesman Passed	Broker Failed	Salesman Failed	No Shows	Total Registered
January	18	116	50	101	65	350
April	27	118	31	118	86	380
July	(126)		32	109	88	355
October	20	93	37	103	55	308

1977

Month	Broker Passed	Salesman Passed	Broker Failed	Salesman Failed	No Shows	Total Registered
January	52	126	24	127	68	397
April	46	218	15	133	83	495
July	48	223	13	113	123	520
October	31	181	13	153	117	495
Nov.	16	66	2	26	54	164

1978

Month	Broker Passed	Salesman Passed	Broker Failed	Salesman Failed	No Shows	Total Registered
January	11	130	11	104	79	335
February	4	21	1	13	13	52
March	28	112	11	90	69	310
April	20	135	9	92	68	324
May	17	76	8	75	91	267
June	12	49	9	45	40	155
July	7	83	14	48	30	182
August	3	55	0	51	41	150
September	7	22	6	38	33	106
October	28	52	7	107	51	245
November	13	71	10	62	54	210

1979

Month	Broker Passed	Salesman Passed	Broker Failed	Salesman Failed	No Shows	Total Registered
January	19	91	17	124	57	308
February	9	18	3	15	13	58
March	24	82	6	62	48	222
April	30	83	0	66	66	245
May	24	59	9	48	36	176
June	12	46	5	37	50	150

G. Commission Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	$183,184.50	$129,017.00	$299,849.00	$156,135.72
- refunds	4,687.00	9,484.00	14,214.08	13,476.00
Total	$178,497.50	$119,533.00	$285,634.92	$142,659.72
Expenditures				
Transportation	$ 3,153.63	$ 3,213.48	$ 4,079.75	$ 5,824.75
Per Diem	3,157.15	5,230.50	6,035.89	7,623.76
Phone	800.82	1,334.15	1,687.91	3,118.78
Printing, Adver. & Postage	1,781.13	4,281.35	4,622.51	1,831.61
Fees & Services	10,054.55	15,500.47	20,517.25	20,072.50
Rents, Leases & Other	171.19	89.00	1,234.61	2,131.09
Exec. Officer (Salary & Benefits)	13,083.29	29,331.19	30,310.73	34,324.92
Total	$ 37,201.76	$ 58,980.14	$ 68,488.65	$ 74,977.41
Surplus	$141,295.74	$ 60,552.86	$217,146.27	$ 67,682.31
Deficit	--	--	--	--

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

H. Complaints*

FY '78 Received 107 written complaints
Closed 91

Two licenses were revoked.
One license was denied.
One applicant was denied admittance to the examination.
One hearing on two licensees is in progress.
One exam score was cancelled (cheating - 2 applicants).
One hearing was requested on 9/1/78 by the commission but has not occurred.

FY '79 Received 127 written complaints
Closed 56

43 referred to investigations.
14 inactive.
One revoked license.
One referred to Banking and Securities.
Four advisory (letters but not actual complaints - no action is taken on these unless writter follows up).
Two conflict of interest - cases involving family, friends or commission members.

Six cases are still with the Executive Secretary pending receipt and/or evaluation of responses.

*See Appendix F

II. Analysis

A. To what extent has the Real Estate Commission operated in the public interest?

Duties of the Commission include passing on applicant qualifications, preparation and grading of examinations, suspension and/or revocation of licenses, prosecutions of licensing violations, and publication of subsequent disciplinary actions.

Activities by a licensee which constitute grounds for disciplinary action are detailed in Commission statutes and regulations. Enforcement and complaint procedures for real estate matters differ somewhat from the procedures delineated for other boards and commissions supported by the Division of Occupational Licensing. Those procedures (see Appendix A) are acceptable to all concerned parties but apparently are not being completely adhered to and, as a result, are not as effective as they might otherwise be. The Real Estate Commission, in contrast to all other boards and commissions except the Board of Nursing, enjoys the services of an Executive Secretary who is a Division of Occupational Licensing employee assigned specific duties with respect to the Commission (see Appendix B). This person is in a particularly significant position in that (s)he serves as liaison among Commission members, licensees and the public. Many questions and/or complaints can be and have been resolved at this level.

As of July 31, 1979, there were 2,758 active licenses in this profession. While the number of applicants per test has not particularly increased, the number of tests given each year has. In 1976, four examinations were given; in 1977, five; and in 1978, eleven. Total registered applicants for examination in 1978 was 2,636. Initial application forms and fees are received and processed by the Division of

Occupational Licensing. Information is submitted by that agency to the examination proctor(s) and to the Educational Testing Service, which provides the examination to this State and several others. If the individual subsequently passes the examination, (s)he then submits application and fee for a license. ETS has recently offered to take over the entire examination procedure and to provide results to the Division for licensure of those individuals who have passed. The fee owed by the applicant to ETS would be $11.00 as opposed to the $50 fee now being paid to the Division which is nonrefundable. By memorandum of July 5, 1979 (see Appendix C), the Department of Law, indicates that the $11 could be credited toward the $50 examination fee to "be consistent with the statute." Of course, if the statute were amended, this problem would be resolved. Adoption of the ETS proposal would eliminate a considerable amount of paperwork, would be less expensive for the applicant, and would require license application only after passing the examination.

Another pending issue is that of allowing reciprocity among all states utilizing the ETS examination. Under such a program, applicants from another jurisdiction would only be required to pass the Alaska law portion of the exam. Although AS 08.88.261 allows for licensure by reciprocity, the Commission does not use this method and has, in fact, cancelled its previous agreements with other states. Under reciprocity, only applicants from states with which agreements have been established may be admitted without examination regardless of individual qualifications. Endorsement, however, would allow licensure of those persons whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence.

The Commission has taken positive action to inform and educate licensees and the public. Articles regarding real estate transactions and laws are prepared by the Executive Secretary and published in major newspapers as well as in the industry newsletter. Several references are

found in Commission minutes to development of seminars and educational programs. AS 08.88.091 provides that the Commission "may conduct and assist in conducting real estate clinics, meetings, courses or institutes" and may "assist libraries and education institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees." AS 45.85 (Real Estate Surety Fund) creates a special account into which payments are made by licensed real estate brokers and salesmen. Funds in excess of $250,000 may be appropriated for real estate educational purposes. In 1979, $75,000 was provided from these funds.

The surety fund provides financial recourse against licensees who have been adjudicated liable on grounds of fraud, misrepresentation, deceit or conversion of trust funds in a maximum amount of $10,000 for each transaction. A court order must be obtained directing payment from the fund and application for payment must be served upon the Commissioner of the Department of Commerce and Economic Development.

In the first half of 1979 four claims were settled in the amounts of $7,052.00, $1,112.65, $10,000.00, and $8,070.95. The balance of the fund on July 30, 1979 was $310,925.40.

The Commission has discussed at length the advisability of mandatory continuing education; however, no consensus of opinion has been reached. No evidence has been shown regarding the positive benefits of such requirements and administration aspects would have to be considered. The Commission also feels that upgrading of the profession is important. CSSB 212 (see Appendix D) addresses the matter of continuing education. The bill was introduced during the 1979 session of the Legislature and is in Committee.

The Real Estate Commission will hold five regular meetings in 1979. Meeting minutes are formulated by the Commission secretary rather than by its Executive Secretary or licensing examiner. Meetings are not tape

recorded. Several subcommittees of the Commission have been appointed to focus on special projects such as legislation, Sunset preparation and budget submission.

It is felt that the Commission has operated in the public interest through its examination, education and enforcement efforts. This Commission is actively concerned about enforcement of the laws and has requested assistance from the Division and Department of Law on numerous occasions. One of the Commission's more effective enforcement tools is education as a preventative measure. Public interests are served by making people more cognizant of the profession and disseminating information regarding common real estate practices and transactions.

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

The Real Estate Commission has the same operational impediments as do all boards: not enough money, time, support, or investigative services. It does, however, have an Executive Secretary and access to the Anchorage and Juneau Departments of Law. These factors have put the Real Estate Commission in a considerably better position than other boards and commissions with respect to its operations and accomplishments. Additional support staff provided by the Division of Occupational Licensing includes a licensing examiner whose time is almost entirely devoted to real estate. It is worth noting that almost 3,000 individuals are currently licensed in this profession statewide.

Fees and revenues for all boards and commissions under the jursidiction of the Division are collected through the Division and are deposited into the general fund. Monies deposited and withdrawn are identified by codes so that direct revenues and expenses may be determined.

Members of the real estate profession are regulated by portions of Title 34 (Property) as well as by AS 08.88 (Real Estate Commission) and AS 45.85 (Real Estate Surety Fund). Extensive regulations have been promulgated and adopted by the Commission. Bills for statutory amendments have been sponsored by the Commission and by the professional association.

The Division would support a transfer of examination responsibilities to the Educational Testing Service as being less cumbersome for the Commission, the Division, and the applicants. The Commission has elected not to have its meetings tape recorded. Goals and objectives have been established by the Commission but no Performance Report for FY '79 has been submitted as of this writing.

C. To what extent has the Real Estate Commission recommended statutory changes which are generally of benefit to the public interest?

The Commission has recommended and supported numerous changes that are designed to clarify the law and improve services by licensees. As previously noted, CSSB 212 is currently in Committee. HB 328 (regarding exemptions from licensing) is also in Committee and is not supported by the Commission in its present form. HB 494 (an Act repealing the prohibition on licensng felons) is still in Committee. Proposed statutory amendments submitted by administration in 1978 are delineated in Appendix E.

D. To what extent has the Real Estate Commission encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of services which it has provided?

The Commission appears to be conscientious and sensitive to the public interests; however, the bulk of participation concerning its affairs and services has come from individuals with particular problems. According to the Executive Secretary, a large portion of his time is spend with persons who are dissatisfied with, or seeking clarification of, real estate transactions. That person also feels that public awareness is increasing as well as that of licensees. Public media has been used to help accomplish this.

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

E. How efficiently are public inquiries or complaints regarding the activities of the Real Estate Commission processed and resolved?

[1] Shimberg, B. and Roederer, D., Occupational Licensing Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March 1978, p. 20.

As discussed elsewhere, complaints and investigative procedures have been established which were agreed upon by all concerned parties. Those procedures appear to be reasonable and workable but delays are encountered through the administrative process and as a result of complaint prioritization based on seriousness of offenses. Public inquiries are handled by Commission members and by Division personnel as appropriate.

F. To what extent does the Real Estate Commission present qualified applicants to serve the public?

One method of assuring qualified applicants is through an examination procedure. Individuals who pass the exam are then required to submit application and fees for licensure. All qualifications are outlined in AS 08.88; those who demonstrate compliance and a satisfactory level of knowledge are granted a license.

The Commission has previously terminated all reciprocity agreements with other states and will not license by this method. While there is not felt to be a shortgage of licensees within the State, this should not be a basis upon which restrictions on entry into the field are postulated. Neither should the presumption that out-of-State licensees are not familiar with Alaska law; this could be addressed by utilization of a jurisprudence examination.

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

Commission staff consists of the support services of an Executive Secretary as well as a licensing examiner (most of whose time is spent on real estate matters). These individuals are employed by the Division of Occupational Licensing and are subject to the requirements and procedures of the State Personnel System.

Licenses in this profession are issued on the basis of specific statutory criteria to which affirmative action requirements are not applicable.

H. To what extent are statutory, budgetary or other changes necessary to enable the Real Estate Commission to better serve the interests of the public?

As 08.88.026, regarding terms of office of initial Commission members should be repealed. A limitation on consecutive numbers of terms may also be considered. The Department has not been issuing inactive license certificates as cited in § 251, nor is this felt to be necessary in practice. CSSB 212 deletes this requirement and outlines appropriate procedures for reactivating a license. This bill also allows for endorsement of out-of-State licensees who pass an examination on Alaska law.

Statutory qualifications for examination require that the applicant not have been convicted of a felony involving "moral turpitude" within the previous ten years. This term has not been defined and should be either defined or deleted. Actions which constitute "unethical conduct" are cited in Commission regulations.

Sec. 08.88.241 provides that only those individuals who were licensed by examination can be reexamined if their license has lapsed for more than three years. It is not reasonable to exempt those persons licensed in

another manner, such as reciprocity or endorsement, should their license lapse.

Commission statutes require 90 days residency of applicants for licensure. This condition is not considered to serve any valid licensing purpose.

The Division has not been charging a $2 fee for amendments to licenses, such as reactivation or changes of employment (§221).

The Division and the Commission are in favor of allowing ETS to take over examinations entirely provided that benefit would result as indicated in the current proposal.

Entensive regulations have been promulgated by the Commission as a result of problems encountered in its activities and operations.

Chapter 88. Real Estate Brokers and Salesmen.

Article
1. Real Estate Commission (§§ 08.88.011-08.88.141)
2. Licensing (§§ 08.88.161-08.88.261)
3. Miscellaneous Provisions (§§ 08.88.281-08.88.401)
4. General Provisions (§§ 08.88.421-08.88.431)

Article 1. Real Estate Commission.

Section
11. Creation and membership of commission
21. Appointment and terms of office
26. Initial terms of office
31. Executive secretary of commission
41. Qualifications of commission members
51. Commission meetings and officers
61. Assistants
71. Duties of the commission
81. Commission regulations
91. Education
101. Administrative duties of department
111. Department regulations
121. Sale of register
131. Applicability of the Administrative Procedure Act
141. Compensation

Sec. 08.88.011. Creation and membership of commission. There is created a Real Estate Commission. It consists of seven members. (§ 1 ch 95 SLA 1964; am § 9 ch 258 SLA 1976)

Sec. 08.88.021. Appointment and terms of office. The governor shall appoint the members of the commission, with the confirmation of the legislature, for staggered terms of four years. A member serves at the pleasure of the governor. The governor shall fill a vacancy by appointment for the unexpired term. A member serves until his successor is appointed. (§ 1 ch 95 SLA 1964)

Sec. 08.88.026. Initial terms of office. Initial appointments of members are as follows: one member for one year, one member for two years, one member for three years, and two members for four years. Initial terms date from February 1 after appointment. (§ 1 ch 37 SLA 1965)

Sec. 08.88.031. Executive secretary of commission. The commissioner of commerce and economic development shall appoint a full-time staff administrator and delineate his authority and duties. He shall serve as the executive secretary of the Real Estate Commission. (§ 1 ch 95 SLA 1964; am § 1 ch 28 SLA 1974; am § 56 ch 218 SLA 1976)

Sec. 08.88.041. Qualifications of commission members. (a) Five members of the commission must be real estate brokers or associate brokers who have been licensed real estate brokers or licensed associate brokers in Alaska for at least three years before appointment. Two members of the board must be public members in accordance with AS 08.01.025.

(b) One member of the commission shall be from the First Judicial District, one shall be from the Second Judicial District, one shall be from the Third Judicial District, one shall be from the Fourth Judicial District and one shall be from the state at large. However, if no person is eligible or available for appointment from the Second Judical District, then two shall be from the state at large. (§ 1 ch 95 SLA 1964; am § 1 ch 130 SLA 1966; am § 1 ch 14 SLA 1972; am § 10 ch 258 SLA 1976)

Sec. 08.88.051. Commission meetings and officers. (a) The commission shall hold a regular annual meeting. It may hold a special meeting at the call of the chairman or at the request of three commission members.

(b) At least two judicial districts shall be represented and at least a majority of the commission members shall be present in order to conduct business.

(c) The commission shall elect its officers. (§ 1 ch 95 SLA 1964; am § 2 ch 130 SLA 1966; am § 11 ch 258 SLA 1976)

Sec. 08.88.061. Assistants. The commission, with the approval of the commissioner of commerce and economic development, may employ assistants to

(1) prepare questions on examinations;

(2) grade examinations;

(3) investigate alleged violations of this chapter. (§ 1 ch 95 SLA 1964; am § 57 ch 218 SLA 1976)

Sec. 08.88.071. Duties of the commission. (a) The commission shall

(1) pass on qualifications of applicants for licenses and issue licenses to those who qualify;

(2) prepare and grade examinations;

(3) after hearing, have the authority to suspend or revoke the license of a licensee who

(A) with respect to a real estate transaction;

(i) made a substantial misrepresentation;

(ii) made a false promise likely to influence, persuade, or induce;

(iii) in the case of a real estate broker, pursued a flagrant course of misrepresentation or made a false promise through an agent, associate real estate broker, or real estate salesman;

(iv) has engaged in conduct that is fraudulent or dishonest;

(v) violates § 391 of this chapter;

(B) procures his license by deceiving the commission, or aids another to do so;

(C) has engaged in conduct of which the commission had no knowledge at the time he was licensed demonstrating his unfitness to engage in the business for which he is licensed;

(D) knowingly authorizes, directs, connives at or aids in publishing, distributing, or circulating a material false statement or misrepresentation concerning his business or concerning real estate for sale in his business in this or any other state;

(E) if a real estate broker, wilfully violates § 171(d) or § 291 of this chapter;

(F) if an associate real estate broker, claims to be a real estate broker, or, if a real estate salesman, claims to be a real estate broker or associate real estate broker;

(G) if a real estate broker, employs an unlicensed associate real estate broker or real estate salesman;

(H) if an associate real estate broker or real estate salesman, fails immediately to turn money collected in a real estate transaction over to the employing real estate broker;

(4) prosecute, through the Department of Law, violations of the provisions of this chapter or lawful regulations promulgated under this chapter;

(5) publish, on three consecutive weekends in a newspaper of general circulation in the locale of the offending person's principal office licensed under this chapter, any disciplinary action taken by the commission against a person licensed under this chapter.

(b) When a payment is made from the real estate surety fund under AS 45.85 in settlement of a claim or toward satisfaction of a judgment against a licensed broker, associate broker or salesman for fraud, misrepresentation, deceit or conversion of trust funds, the commission, after a proper hearing establishing the misconduct, shall suspend or revoke the license of the broker, associate broker or salesman. The broker, associate broker or salesman may not be reinstated until he has satisfied in full any judgment based on any of the grounds listed in AS 45.85.030. (§ 1 ch 95 SLA 1964; am §§ 2, 3 ch 28 SLA 1974; § 3 ch 143 SLA 1974)

Sec. 08.88.081. Commission regulations. The commission shall adopt substantive regulations making more specific the general grounds for revoking or suspending a license. (§ 1 ch 95 SLA 1964)

Sec. 08.88.091. Education. The commission may conduct and assist in conducting real estate clinics, meetings, courses, or institutes. The commission may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees. (§ 1 ch 95 SLA 1964)

Sec. 08.88.101. Administrative duties of department. (a) The department shall furnish the commission with administrative services, including collecting fees and issuing receipts; keeping records of receipts and disbursements; distributing and receiving application forms; notifying an applicant whether or not the commission has accepted his application; designating the dates on which examinations are to be held; at least 30 days before an examination is to be held, publishing notice that it is to be held; printing examinations; providing space for holding examinations; proctoring examinations; notifying applicants of the results of the examination; printing and distributing uniform license certificates, duplicate certificates to replace lost ones, and pocket-sized recognition cards; sending notice, before December 1 of each year, that licenses must be renewed; keeping a current register of licensees; employing secretarial assistants; replying to routine requests for information; printing and distributing forms and informational bulletins; maintaining records and completed examinations; recording suspensions and revocations of licenses; and recording office registrations.

(b) The department shall allow members of the commission free access to its records concerning the commission's activities. (§ 1 ch 95 SLA 1964)

Sec. 08.88.111. Department regulations. The department shall adopt procedural regulations describing

(1) how it conducts an examination;

(2) how a person applies to take an examination, applies for a license, and registers his office. (§ 1 ch 95 SLA 1964)

Sec. 08.88.121. Sale of register. The department shall offer for sale to the public publications containing the names, addresses, license classifications, and business associations of persons licensed by the commission. The department shall sell the publications at a price designed to recover costs of compilation, publication, and distribution. (1 ch 95 SLA 1964)

Sec. 08.88.131. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (§ 1 ch 95 SLA 1964)

Sec. 08.88.141. Compensation. A commission member is entitled to transportation expenses and per diem allowances specified in AS 39.20.180. (§ 1 ch 95 SLA 1964)

Article 2. Licensing.

Section
161. License required
171. Entitlement to license
181. Content of examination
191. Administration of examination
201. Reexamination
211. Qualification for examination
221. Fees
231. Deposit in general fund
241. Reinstatement of lapsed license
251. Inactive license
261. Out-of-state licenses

Sec. 08.88.161. License required. Unless licensed as a real estate broker, associate real estate broker, or real estate salesman, no natural person, foreign or domestic corporation, or partnership, or limited partnership, or other entity may

(1) sell, exchange, rent lease, auction, or purchase real estate;

(2) list real estate for sale, exchange, rent, lease, auction, or purchase;

(3) collect rent for the use of real estate;

(4) as a business, buy, sell, or deal in

(A) options in real estate, or

(B) options in improvements to real estate;

(5) assist in or direct the procuring of prospective buyers or the negotiation of a transaction which results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate;

(6) hold himself out to the public as being engaged in the business of doing any of the things listed in this section;

(7) attempt or offer to do any of the things listed in this section.

(8) (deleted) (§ 1 ch 95 SLA 1964; am § 1 ch 108 SLA 1970; am § 4 ch 28 SLA 1974)

Sec. 08.88.171. Entitlement to license. (a) A person is entitled to a real estate broker licnese if he has been a resident of the state for 90 days and if he applies for his license within six months after receipt of notice that he has passed the real estate examination, files the required bond, and is an owner of a real estate business or employed as a real estate broker by a corporation or a partnership, if the corporation or partnership does not have an existing licensed broker. Unless he fails to pay the biennial renewal fee or his license is suspended or revoked to pay the biennial renewal fee or his license is suspended or revoked under § 71(3) of this chapter, a real estate broker's license continues in effect so long as he is an owner of a real estate business, or he is employed as a real estate broker by a corporation or a partnership. If he stops being an owner of a real estate business, or stops being employed as a real estate broker by a corporation or partnership, his license is suspended from the time he stops until

(1) he again becomes an owner of a real estate business or is again employed as a real estate broker by a corporation or a partnership; or

(2) he is employed by a licensed real estate broker, in which case his real estate broker license is returned to the department, and the department issues him an associate real estate broker license.

(b) A person is entitled to an assoicate real estate broker license if he has been a resident of the state for 90 days and if he passes the real estate examination, applies for his license within six months after receipt of notice that he has passed the examination, files the required bond, and is employed by a licensed real estate broker.

Unless he fails to pay the biennial renewal fee or his license is suspended or revoked under § 71(3) of this chapter, an associate real estate broker's license continues in effect so long as he is employed by a licensed real estate broker. If he stops being employed by a licensed real estate broker, his license is suspended from the time he stops until

(1) he again is employed by a real estate broker, or

(2) he becomes an owner of a real estate business, in which case his associate real estate broker license is returned to the department, and the department issues him a real estate broker license.

(c) A person is entitled to a real estate salesman license if he has been a resident of the state for 90 days and if he passes the real estate saleman examination, applies for his license within six months after receipt of notice that he has passed the examination, files the required bond, and is employed by a real estate broker. Unless he fails to pay the biennial renewal fee or his license is suspended or revoked under § 71(3) of this chapter, a real estate salesman's license continues in effect so long as he is employed by a licensed real estate broker, his license is suspended from the time he stops until he again is employed by a licensed real estate broker.

(d) A licensee shall promptly inform the department of a change in his business association that affects the status of his license under this section. (§ 1 ch 95 SLA 1964; am § 3 ch 130 SLA 1966; am § 1 ch 55 SLA 1969; am §§ 5-7 ch 28 SLA 1974)

Sec. 08.88.181. Content of examination. (a) The real estate examination includes questions on business ethics; arithmetic; elementary principles of land economics and appraisal; the general principles in state statutes relating to deeds, mortgages, real estate contracts, subdivisions, legal descriptions, building restrictions, agency and brokerage; and the general provisions in this chapter and in regulations of the commission.

(b) The real estate salesman examination covers the same subjects as the real estate broker examination, but is less difficult.

(c) The only purpose of an examination under this chapter is to disqualify those whose lack of ability to participate in real estate transactions would create a serious risk of serious financial loss to members of the public. (§ 1 ch 95 SLA 1964; am § 2 ch 55 SLA 1969)

Sec. 08.88.191. Administration of examination. (a) The department shall offer examinations at least one a year and more frequently if more than two persons who are qualified to take an examination petition the department for an additional examination.

(b) Examinations shall be so administered that one who grades an examination does not know whose paper he is grading.

(c) The department shall maintain files of examination papers. A person, at any reasonable time within two months of the date he is notified of the results of the examination, is entitled to inspect his examination paper for the purpose of challenging the propriety of its questions, the method of grading, or the accuracy of grading.

(d) If a person fails to take an examination after he has paid the application fee, the department shall refund one-half of the fee.

(e) The provisions of (c) of this section are inapplicable if a nationally recognized testing service prepares and grades the examination provided the national testing service, if requested, will evaluate the examination results for an applicant. (§ 1 ch 95 SLA 1964; am § 2 ch 108 SLA 1970; am §§ 1, 2 ch 24 SLA 1972; am § 8 ch 28 SLA 1974)

Sec. 08.88.201. Reexamination. A person who fails an examination may apply for a subsequent examination, but shall pay the application fee each time he applies. He may not petition for an additional examination under § 191(a) of this chapter, but may take one if it is offered. (§ 1 ch 95 SLA 1964)

Sec. 08.88.211. Qualification for examination. (a) A person is entitled to take a real estate broker or associate broker examination if he

(1) has had at least 24 months of active and continuous experience as a licensed real estate saleman;

(2) Repealed by § 10 ch 28 SLA 1974.

(3) Repealed by § 25 ch 245 SLA 1970.

(4) has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate broker;

(5) Repealed by § 17 ch 127 SLA 1974.

(6) Repealed by § 4 ch 55 SLA 1969.

(b) A person is entitled to take a real estate salesman examination if he

(1) is at least 19 years old;

(2) Repealed by § 11 ch 28 SLA 1974.

(3) has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate salesman;

(4) Repealed by § 17 ch 127 SLA 1974.

(5) Repealed by § 4 ch 55 SLA 1969.

(c) In addition to the requirements of (a) or (b) of this section, to be qualified to take an examination a person must

(1) within the time specified by a department regulation, return application forms to the department showing information specified in regulations of the commission;

(2) pay the application fee.

(d) Repealed by § 9 ch 108 SLA 1970. (§ 1 ch 95 SLA 1964; am § 4 ch 130 SLA 1966; am § 1 ch 31 SLA 1968; am § 4 ch 55 SLA 1969; am §§ 3-5, 9 ch 108 SLA 1970; am § 25 ch 245 SLA 1970; am §§ 9-11 ch 28 SLA 1974; am § 17 ch 127 SLA 1974)

Sec. 08.88.221. Fees. (a) The following fees shall be charged a real estate broker or associate broker licensee or applicant when applicable:

(1)	examination.....	$ 50
(2)	reciprocity.....	50
(3)	initial license.....	100
(4)	biennial renewal - active license.....	100
(5)	biennial renewal - inactive license.....	25

(b) The following fees shall be charged a saleman licensee or applicant when applicable:

(1)	examination.....	$ 50
(2)	reciprocity.....	50
(3)	initial license.....	50

(4) biennial renewal - active license..... $ 50

(5) biennial renewal - inactive license..... 25

(c) The fee for amending a license is $2. (§ 1 ch 95 SLA 1964; am § 2 ch 31 SLA 1968; am §§ 12, 13 ch 28 SLA 1974)

Sec. 08.88.231. Deposit in general fund. The department shall deposit money collected under this chapter in the general fund. (§ 1 ch 95 SLA 1964)

Sec. 08.88.241. Reinstatement of lapsed license. A licensee who was required to take an examination before receiving a license and whose license has lapsed for more than three years shall be reexamined before reinstatement. (§ 1 ch 95 SLA 1964; am § 5 ch 130 SLA 1966; am § 3 ch 31 SLA 1968; am § 6 ch 94 SLA 1968; am § 6 ch 108 SLA 1970)

Sec. 08.88.251. Inactive license. (a) A person licensed by the commission may become inactive by returning to the department his license certificate and a form provided by the department. In the form, he shall state the date on which he intends to become inactive. His inactive status begins on the date stated. The department shall issue him an inactive license certificate.

(b) An inactive licensee may not do any of the things § 161 of this chaper authorizes an active licensee to do, nor is he required to have a bond.

(c) A person who is inactive may become active by returning to the department his inactive license certificate, the active license biennial renewal fee, if he becomes active more than five months before January 1 following, and a completed form provided by the department. In the form he shall state the date on which he intends to become active. His active status begins on the date stated. The department shall send him a license certificate. A person is entitled to change from an inactive to an active status without examination if he has not been inactive more than three years. If he has been inactive more than three years, he is required to take an examination. (§ 1 ch 95 SLA 1964; am § 4 ch 31 SLA 1968; am § 7 ch 108 SLA 1970)

Sec. 08.88.261. Out-of-state licenses. A person who holds a valid, active license from another state which grants an equivalent right to Alaskan licensees is entitled to a license of the kind he holds there without examination if he

(1) meets the requirements of § 211(a)(2)-(5) of this chapter for brokers or § 211(b) for salesmen, and files the required bond;

(2) passed an examination in the other state; and

(3) has actively practiced his profession for at least five out of the previous six years before filing his application. (§ 1 ch 95 SLA 1964; am § 3 ch 55 SLA 1969)

Article 3. Miscellaneous Provisions.

Section
281. Real estate surety fund
291. Location
301. Change of location
311. Branch offices
321. Possession and display of license certificates
331. Making of transactions
341. Listings
351. Record of transaction
361. When commission is earned
371. Conduct by employee
381. Signs
391. Conflict of interest
401. Prohibited conduct

Sec. 08.88.281. Real estate surety fund. Before issuing a license to an applicant under this chapter, the board shall determine that the applicant has complied with the provisions of AS 45.85.020 and is covered by the real estate surety fund established in AS 45.85. (§ 1 ch 95 SLA 1964; am § 1 ch 54 SLA 1968; am § 2 ch 143 SLA 1974)

Sec. 08.88.291. Location. A licensed real estate broker shall inform the commission of his principal office and of any branch offices he has. He and the associate real estate brokers and real estate brokers and real estate salesmen he employs may do business only in or out of his principal office and his branch offices. Failure of a real estate broker to maintain a place of business or inform the department of its location and the names and addresses of all licensees under his jurisdiction at the location are grounds for the suspension or revocation of his broker license. (§ 1 ch 95 SLA 1964; am § 14 ch 28 SLA 1974)

Sec. 08.88.301. Change of location. If a real estate broker changes the location of his principal office or of a branch office, he shall immediately notify the department. (§ 1 ch 95 SLA 1964; am § 15 ch 28 SLA 1974)

Sec. 08.88.311. Branch offices. (a) A branch offices shall be under the direct supervision of a broker or an associate real estate broker whose principal place of business is that office and who is licensed under this chapter. An associate real estate broker may serve in the capacity of direct supervisor at one office only.

(b) All branch offices shall bear and be advertised only in the name of the principal office but may indicate that they are branch offices of the principal office. (§ 1 ch 95 SLA 1964; am § 8 ch 108 SLA 1970; am § 16 ch 28 SLA 1974; am § 1 ch 174 SLA 1976)

Sec. 08.88.321. Possession and display of license certificates. A real estate salesman or an associate real estate broker shall turn his license certificate over to the real estate broker who employs him. The employing real estate broker shall display his license certificate in his principal office and the license certificates of those he employs in the office where they do most of their work. (§ 1 ch 95 SLA 1964)

Sec. 08.88.331. Making of transaction. A real estate salesman or associate real estate broker may make a real estate transaction only through the real estate broker who employs him. All money collected on behalf of the broker shall immediately be turned over to the broker or his agent. All transactions in real estate by a real estate salesman or associate real estate broker shall be processed through his employing real estate broker's office, whether the transactions are for the real estate salesman's or associate real estate broker's own use or the use of a client. (§ 1 ch 95 SLA 1964)

Sec. 08.88.341. Listings. All real estate listings must be in writing and must be signed by the seller or by an agent of the seller. All exclusive listings must have a definite expiration date. (§ 1 ch 95 SLA 1964)

Sec. 08.88.351. Record of transaction. A real estate broker shall

(1) keep a complete record of all real estate transactions made by himself or persons in his employ for at least three years;

(2) make a closing statement showing disbursements and accounting for all money in the transaction;

(3) keep a separate trust account in a bank, into which he shall deposit all earnest money deposits and purchase money until it is proper for him to distribute the money to the proper persons;

(4) make available to the commission, on request, records and all other documents relating to transactions under (3) of this section which the commission may require in order to conduct a complete audit of trust accounts. (§ 1 ch 95 SLA 1964; am § 17 ch 28 SLA 1974)

Sec. 08.88.361. When commission is earned. A commission is earned when the real estate broker finds a buyer willing and able to purchase at a price and on terms set by the seller, providing negotiations with the buyer were initiated during the term of a valid listing agreement and within the time limit of the listing. (§ 1 ch 95 SLA 1964)

Sec. 08.88.371. Conduct by employee. For the purpose of § 71(3) of this chapter, the conduct of an employee is not attributable to a real estate broker unless the real estate broker has actual knowledge that the employee is going to engage in the conduct and agrees to the conduct, either actively or by remaining silent, or ratifies the conduct after it is engaged in. (§ 1 ch 95 SLA 1964)

Sec. 08.88.381. Signs. A licensed real estate broker shall maintain a sign at each of his offices, prominently showing the name of his business. (§ 1 ch 95 SLA 1964)

Sec. 08.88.391. Conflict of interest. A licensed real estate broker, associate real estate broker, or real estate salesman who has a personal financial interest in a real estate transaction shall disclose that interest to every person involved in the transaction. (§ 1 ch 95 SLA 1964)

Sec. 08.88.401. Prohibited conduct. (a) No licensee may use the term "Realtor" unless he is entitled to use it.

(b) No person, even though he is an obligor or escrow holder, may pay or deliver compensation to a person who is not licensed in this state or who does not hold a valid broker license in another state for doing work for which a license is required under this chapter.

(c) No person may

(1) knowingly authorize, direct, or aid in the publication of a false statement or misrepresentation concerning land or a subdivision or other real estate offered for sale or lease;

(2) with knowledge that an advertisement, pamphlet, or letter concerning land or a subdivision or other real estate contains a written statement that is false or fraudulent, issue, circulate, publish, or distribute it or cause it to be issued, circulated, published, or distributed.

(d) A person who violates a provision of this section or § 161 of this chapter is guilty of a misdemeanor. (1 ch 95 SLA 1964; am § 6 ch 130 SLA 1966; am § 18 ch 28 SLA 1974; am § 4 ch 143 SLA 1974)

Article 4. General Provisions.

Section
421. Exceptions
431. Definitions

Sec. 08.88.421. Exceptions. This chapter does not apply to

(1) a person making a real estate transaction with respect to real estate he owns or on his own behalf, unless the transaction involves land defined in AS 34.55.044(6);

(2) an attorney in fact under a power of attorney authorizing the consummation of a specific real estate transaction; an attorney in fact may not act as such for more than two transactions in a calendar year;

(3) a lawyer performing his duties as a lawyer;

(4) a public official in the conduct of his official duties;

(5) a person acting as receiver, trustee, administrator, executor or guardian;

(6) a person acting under court order;

(7) a person acting under the authority of a will or trust instrument;

(8) a person dealing in mineral rights transactions;

(9) a domestic or foriegn corporation, general or limited partnership, or a partner or regular employee of one of these, when performing acts described in § 161 of this chapter in the regular course, or as an incident to, the management, sale or other disposition of real estate owned by the corporation or partnership; however, the person may not perform these acts as a vocation or for compensation if the amount of the compensation is dependent upon or directly related to the value of the real estate with respect to which the acts are performed. (§ 1 ch 95 SLA 1964; am § 1 ch 38 SLA 1969; am § 19 ch 28 SLA 1974)

Sec. 08.88.431. Definitions. In this chapter

(1) "real estate" means an interest or estate in land, corporeal or incorporeal;

(2) "commission" means the Real Estate Commission;

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

(4) "lease" includes a lease that is a part of another transaction. (§ 1 ch 95 SLA 1964; am § 58 ch 218 SLA 1976)

CHAPTER 64.
REAL ESTATE COMMISSION

Article
1. Examinations
2. Licensing
3. Place of Business
4. Prohibited Conduct
5. Trust Accounts

ARTICLE 1.
EXAMINATIONS

Section
10. Applications for examination
20. Time and places
30. (Repealed)
40. Notification of applicant
50. Appeals

12 AAC 64.010. APPLICATIONS FOR EXAMINATION. (a) All applicants for examination to act as real estate broker, associate real estate broker, or real estate salesman, shall be in writing to the Commissioner of Commerce upon a form to be prescribed and furnished by the Commissioner of Commerce. The fee required by law shall accompany the application.

(b) The applicant may be required to furnish additional information to demonstrate that he meets the minimum qualification of the law as to age, residence, citizenship, and has not engaged in conduct that demonstrates that he is unfit to be licensed.

(c) Applications for examination must reach the office of the Commissioner of Commerce not later than 45 days prior to the examination date. (Eff. 8/6/67, Reg. 24; am 8/9/72, Reg. 43)

Authority: AS 08.88.111
AS 08.88.211

12 AAC 64.020. TIME AND PLACES. (a) Examinations shall be given at least three times each year at times and places to be designated by the Commissioner of Commerce, such notice to be given to the public as required by law.

(b) The Commissioner of Commerce shall arrange for space in which the examinations will be given and arrange for persons to proctor the examination. Such proctors shall be paid for their services, and conduct the examination

under instructions issued by the Commissioner of Commerce. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.101
AS 08.88.111

12 AAC 64.030. METHOD OF CONDUCTING. Repealed 8/9/72, Reg. 43.

12 AAC 64.040. NOTIFICATION OF APPLICANT. (a) All applicants will be notified in writing of the time and place of examination by the Commissioner of Commerce at least seven days prior to the examination.

(b) The applicant will be advised of his grade in writing no later than 10 days following the grading of examinations by the commission. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.101
AS 08.88.111

12 AAC 64.050. APPEALS. A contested scoring of an examination will be hand scored upon request in writing directly to Educational Testing Service, Princeton, New Jersey 08540. (Eff. 8/6/67, Reg. 24; am 8/9/72, Reg. 43; am 1/13/73, Reg. 44)

Authority: AS 08.88.191(e)

ARTICLE 2. LICENSING

Section

60. Applications for licenses
70. License year
80. Suspension and revocation of active licenses
90. Surrender of suspended or revoked licenses
100. Reissuance of a suspended license

12 AAC 64.060. APPLICATIONS FOR LICENSES. (a) All applications for license to act as real estate broker, associate real estate broker, or real estate salesman, shall be made in writing to the Commissioner of Commerce upon a form to be prescribed and furnished by the Commissioner of Commerce. The fee required by law shall accompany the application.

(b) The applicant may be required to furnish additional information to demonstrate that he meets the minimum qualification of the law as to age, residence, citizenship, and has not engaged in conduct that demonstrates that he is unfit to be licensed. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.111
AS 08.88.171
AS 08.88.211

12 AAC 64.070. LICENSE YEAR. (a) The license year begins January 1 and ends December 31, on a biennial basis, to be effective January 1, 1968 and fees are not prorated for a fractional portion of the year.

(b) All licenses expire December 31, of the appropriate year, regardless of the date the license was issued. It shall be the duty of all persons licensed as a real estate broker, associate real estate broker, or a real estate salesman to register biennially with the Commissioner of Commerce and to renew their license, by paying for each biennial registration the fee for license, as set forth in the act, section, etc. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.111
AS 08.88.221

12 AAC 64.080. SUSPENSION AND REVOCATION OF ACTIVE LICENSES. An active license is defined as a license which has been duly issued by the Department of Commerce for the purposes expressed in AS 08.88.161. An active license is one which has neither lapsed nor been exchanged for an inactive license. An active license shall be suspended or revoked under the following conditions:

(1) it shall be suspended when the licensee ceases to act in the capacity of or be employed as a real estate broker, associate real estate broker or real estate salesman as required under AS 08.88.171;

(2) it shall be revoked

(A) if the license is that of a real estate broker and he becomes employed by a licensed real estate broker (AS 08.88.171(a)(2);

(B) if the license is that of an associate real estate broker and he becomes an owner of a real estate business (AS 08.88.171(b)(2);

(3) it is suspended or revoked when, after hearing, it has been declared suspended or revoked by the commission as provided in AS 08.88.071 and these regulations;

(4) upon the suspension or revocation of a real estate broker's license, the license of every associate real estate broker, or real estate salesman employed by such broker is automatically suspended. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.071
AS 08.88.081
AS 08.88.111
AS 08.88.161
AS 08.88.171

12 AAC 64.090. SURRENDER OF SUSPENDED OR REVOKED LICENSES. (a) Every license which has been suspended or revoked, and the pocket part of such license shall be immediately surrendered by the employing broker to the Commissioner of Commerce; or if such license and pocket part are not in the possession of a broker, they shall be surrendered by the licensee. A license and pocket part have been surrendered when they have been placed in the United States mail, postage prepaid and properly addressed to the Commissioner of Commerce or when they have been delivered to the Commissioner of Commerce or his authorized agent.

(b) When a real estate broker surrenders his license, he shall at the same time surrender all licenses and pocket parts within his possession of all associate real estate brokers and salesmen employed by him.

(c) When an associate real estate broker or real estate salesman is discharged or otherwise terminates his employment with a broker, the broker shall inscribe the date and reason for termination on the reverse side of the license to be surrendered.

(d) The surrender of a license does not entitle the licensee to any refund of license fees and no refund shall be made by the department or the commission.

(e) A licensee whose license has been suspended or revoked may not engage in any of the activities authorized by AS 08.88.161 until his license has been reissued. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081
AS 08.88.111
AS 08.88.161

12 AAC 64.100. REISSUANCE OF A SUSPENDED LICENSE. A license which has been suspended and surrendered, together with its pocket part, will be reissued, without charge, for the unexpired balance of the license period, under the following conditions:

(1) if suspended by the commission for cause as provided in AS 08.88.071(3) or these regulations, the license will be reissued when the conditions imposed in the suspension order have been met and the licensee complies with the appropriate subsections (2) and (3) or (2) and (4) of this section;

(2) submission to the department of satisfactory evidence that the licensee's required bond is in full force and effect; and

(3) if the suspended license is that of an associate real estate broker or real estate salesman, he has met the employment requirements of AS 08.88.171(b) or (c) and has completed and returned to the department the required notice of release, transfer and re-employment; or

(4) if the suspended license is that of a real estate broker, he has met the ownership or employment requirements of AS 08.88.181(a) and he has completed and returned to the department his notice of compliance with Section 08.88.171 as to issuance of a broker license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.071(3)
AS 08.88.111
AS 08.88.171

ARTICLE 3. PLACE OF BUSINESS

Section
110. Defined
120. Branch offices

12 AAC 64.110. DEFINED. The commission recommends that the office of licensed real estate brokers be established in an office or

headquarters where the real estate broker conspicuously displays his license and the licenses of his employees, if any, and at or from which a real estate broker, either through his own efforts or through his employees, regularly transacts the business of a real estate broker as defined in the law, and where he or his employees can receive business calls and direct business calls to be made. (Eff. 8/6/67, Reg. 34)

Authority: AS 08.88.111
AS 08.88.291

12 AAC 64.120 BRANCH OFFICES. Branch offices shall be applied for on a form provided by the Commissioner of Commerce. Each application shall contain the following:

(1) address of the branch office;

(2) the name of the person in charge of the branch office;

(3) a branch office must be staffed at all times. Failure to staff a branch office will be grounds for withdrawing permission to operate a branch office. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.111
AS 08.88.311

ARTICLE 4.
PROHIBITED CONDUCT

Section
130. Business ethics
140. Employment of unlicensed personnel
150. Failure to maintain a place of business
160. False or misstatement in obtaining a license
170. Investigation by commission

12 AAC 64.130. BUSINESS ETHICS. The following acts will be grounds for revocation or suspension of licenses for unethical business practices:

(1) those grounds specifically enumerated in AS 08.88.071(3);

(2) acting for more than one party in a real estate transaction without the knowledge of all parties for whom he acts;

(3) failure to account for or to remit or surrender to the person entitled thereto, any money, documents, or other property of value coming into the possession or control of the licensee in the course of a real estate transaction;

(4) paying or receiving any rebate, profit, compensation or commission in violation of these regulations;

(5) forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or other like offenses committed in the course of employment as a real estate broker, associate real estate broker or real estate salesman and who has been convicted thereof in a court of competent jurisdiction of this or any other state;

(6) placing a sign on a property offering it for sale, lease or rent without first obtaining the written authority of the owner or his authorized agent to sell, lease or rent the property;

(7) splitting fees with or otherwise compensating others not licensed here under AS 08.88 for referring business;

(8) advertising to buy, sell, rent or exchange any real property for another or others without including in the advertisement the name of the employing or selling real estate broker. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081
AS 08.88.111
AS 08.88.401

12 AAC 64.140. EMPLOYMENT OF UNLICENSED PERSONNEL. Grounds for revocation or suspension of licenses for employment of unlicensed personnel are as follows:

(1) retaining the services of any person as a real estate salesman or an associate real estate broker who is unlicensed under Alaska Statutes;

(2) accepting a commission or valuable consideration as a real estate salesman for the performance of any of the acts specified in the

laws or these regulations from any person except the real estate broker whose name appears on his license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081
AS 08.88.111
AS 08.88.401

12 AAC 64.150. FAILURE TO MAINTAIN A PLACE OF BUSINESS. Failure of a real estate broker to maintain a place of business is grounds for suspension or revocation of his broker's license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081
AS 08.88.111
AS 08.88.401

12 AAC 64.160. FALSE OR MISSTATEMENT IN OBTAINING A LICENSE. Obtaining a license through false or fraudulent representation or making a material misstatement on his application for license or renewal or application for examination will be grounds for revocation or suspension of a license. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.081
AS 08.88.111
AS 08.88.401

12 AAC 64.170. INVESTIGATION BY COMMISSION. Reference to Section 08.88.261 - Applications under this section shall be processed at the next regular meeting of the commission following receipt of such application. (Eff. 8/6/67, Reg. 24)

Authority: AS 08.88.071
AS 08.88.081
AS 08.88.111
AS 08.88.261

ARTICLE 5.
TRUST ACCOUNTS

Section
180. Establishment of trust account
190. Trust funds exempt from attachment, other process
200. Deposit to trust account
210. Trust account interest
220. Record of trust account transactions
230. Trust funds other than earnest money
240. Broker's commission
250. Prohibited activity
260. Violation

12 AAC 64.180. ESTABLISHMENT OF TRUST ACCOUNT. (a) Every real estate broker shall establish a trust account in a bank authorized to do business in this state, and the name of the account so established must include the words "trust account" or "trustee account."

(b) Every real estate broker shall file with the Department of Commerce and Economic Development the name of the account, the account number, and the name of the bank which holds the account for all trust accounts held by the broker.

(c) The broker who establishes the account shall be trustee of the account and responsible for all signatories to that account.

(d) If maintenance expenses are charged against a trust account, the broker shall deposit a sum of money not exceeding $100 to the trust account for the purpose of paying the maintenance expenses of the account and shall make additional deposits when necessary, but not to exceed $100 on deposit.

(e) All trust accounts must be demand accounts only. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.081
AS 08.88.351

12 AAC 64.190. TRUST FUNDS EXEMPT FROM ATTACHMENT, OTHER PROCESS. No provision may be made for a bank to withhold issue of funds from a trust account except upon a court order. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.081
AS 08.88.351

12 AAC 64.200. DEPOSIT TO TRUST ACCOUNT. All money deposited with the broker or person employed by or affiliated with the broker as trustee in real estate transactions must be deposited in or mailed to the trust account within five days following receipt unless factors such as geographical location, weather conditions, or transportation facilities make such depositing impossible or unreasonable. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.081
AS 08.88.351

12 AAC 64.210. TRUST ACCOUNT INTEREST. If a trust account bears interest,

that fact and the rate of interest must be disclosed to the trustor. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.081
AS 08.88.351

12 AAC 64.220. RECORD OF TRUST ACCOUNT TRANSACTIONS. (a) A broker shall keep a complete record of all trust account transactions and assign a transaction account number to each transaction. The broker shall assign a transaction number to all written offers on real estate. For property management transactions, the broker shall assign a transaction number to each landlord for whom property is managed or to each property managed.

(b) The record of the trust transactions must include

(1) deposit slips showing date, transaction account number, amount of deposit, and trustor's name;

(2) all checks and check records, including voided checks, written on the trust account, showing the date, the payee, and the transaction account number; and

(3) a ledger or its equivalent showing transaction number, all deposits to the trust account, and all withdrawals from the trust account identified by check number and payee.

(c) Trust accounts must be reconciled monthly.

(d) A complete record must be kept in the trust ledger of all transactions in which deposits are not made to the broker's trust account, including direct deposits to an escrow agent's trust account. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.081
AS 08.88.351

12 AAC 64.230. TRUST FUNDS OTHER THAN EARNEST MONEY. (a) For trust funds other than earnest money including, but not limited to, rents or mortgage payments, records must be kept consistent with the requirements of sec. 220 of this chapter.

(b) Failure of a licensee engaged in property management to comply with the provisions of AS 34.03 is considered fraudulent or dishonest conduct within the meaning of AS 08.88.071(a)(3)(A)(iv). (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.071
AS 08.88.081
AS 08.88.351

12 AAC 64.240. BROKER'S COMMISSION. (a) Each withdrawal of a broker's commission from a trust account must be separate and separate and identified as to the specific transaction.

(b) A broker shall withdraw his or her commission from a trust account within 15 days after the date that the transaction has been closed or otherwise settled. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.071
AS 08.88.081
AS 08.88.351

12 AAC 64.250. PROHIBITED ACTIVITY. No broker may

(1) pay a salesman's commission directly from the trust account;

(2) pay bills for his or her business or personal obligations from the trust funds;

(3) use trust funds to pay the maintenance expenses of a trust account;

(4) deposit funds belonging to him or her in a trust account, except those described in sec. 180(d) of this chapter; or

(5) withdraw funds from a trust account without fully complying with the recordkeeping requirements of sec. 220 of this chapter. (Eff. 1/19/78, Reg. 65)

Authority: AS 08.88.071
AS 08.88.081
AS 08.88.351

12 AAC 64.260. VIOLATION. Failure to comply with secs. 180 – 260 of this chapter or the withholding of records or trust property which a broker is required to maintain, from that broker, or failure to turn over to the Real Estate Commission, upon the request of the commission, records that are required by this chapter is considered fraudulent and dishonest conduct within the meaning of AS

08.88.071(a)(3)(A)(iv). (Eff. 1/19/78, Reg. 65)
Authority: AS 08.88.071
AS 08.88.081
AS 08.88.351

All Members, Real Estate Commission
Jim Magowan, Executive Secretary
Richard H. Long, Chief Investigator

January 17, 1979

Don Hostak, Director
Division of Occupational Licensing
Department of Commerce &
Economic Development

Complaint Handling/
Investigations
Real Estate Licensees

This shall serve to clarify and establish the procedure for processing complaints received against real estate licensees only.

I. RECEIPTING

A. All complaints received, whether received at the Juneau or Anchorage office, will be date-time stamped immediately on receipt and assigned a file control number, thereby entering the complaint into the main control system maintained by the Investigations Section. All complaints against real estate licensees are to be forwarded at the same time to the executive secretary for initial review and processing.

B. A carbon copy of the complaint will be retained by the Investigations Section with no other action to be taken by the Investigations Section at this point. The executive secretary may continue to utilize whatever case number/control system which best applies to his purpose.

II. EXECUTIVE SECRETARY REVIEW

A. The executive secretary will conduct the initial review of all complaints received against real estate licensees. The executive secretary will consider and attempt to establish jurisdictional authority and whether or not it appears that a violation has or may have occurred and proceed as follows:

1. Matters determined not to be within the Commission's jurisdiction, no violation, or matters which may be closed informally will be brought before the Commission for formal concurrence to close.

2. If the matter cannot be closed informally initially, the ten-day letter will be sent to the respondent to determine the respondent's position in the issue. Discretion should be used, as all complaints would not dictate the use of this letter.

3. At this time, after receiving response to the ten-day letter, if the matter is to be closed informally, it will be brought before the Commission for formal concurrence to close.

4. As such matters are closed, a report of closure will be prepared and entered as a matter of record as the last transaction in the file.

5. Matters not to be closed, which involve violations, will be transferred to the Investigations Section for further processing.

B. The executive secretary will not receipt, review, or retain any complaint concerning possible conflicts of interest, i.e. complaints concerning the executive secretary or a Commission member or their relatives or business partners, past or present, or any matter involving unlicensed activity. These complaints will be immediately referred to the Investigations Section. The executive secretary will not be involved with these complaints.

III. REFERRALS TO THE INVESTIGATIONS SECTION

At any time following receipt of a complaint it becomes evident that a violation has or may have occurred, it is to be transferred in its entirety to the Investigations Section with a cover memorandum. This memorandum will serve to provide a record of the transfer and will include a brief synopsis of the matter, a priority recommendation and an index of the record developed to that point. Details of the information developed to that point will not be exposed to the members of the Commission. Full responsibility for all files and case handling thereafter rests with the Investigations Section. The executive secretary will not be further involved except at the request of the Investigations Section, usually to provide input, advice or other appropriate assistance relating to the field of real estate or particular real estate matters.

IV. INVESTIGATIONS SECTION - PROCESSING

A. If the Investigations Section determines that no violation or jurisdiction exists, the Section will provide a full report and/or the investigative file, as appropriate, to the Commission for their formal concurrence to close.

B. If the Investigations Section determines that a violation has occurred, the completed investigation file will be referred to the Department of Law for appropriate preparation for litigation. At the time an accusation is served on the respondent, a copy will be sent to the Commission members by the Investigations Section. This is a function of the Chief Investigator.

C. If the Department of Law determines that a matter is not adequately supported, or if a matter is determined to be of such

insignificance not to warrant process in litigation, that matter will be otherwise processed by the Investigations Section for resolution or closure. This may be accomplished by the Department of Law, or will be in accordance with recommendations by that department which will probably include resolution directly by the Commission. Regardless, these matters will be brought before the Commission for formal concurrence to close or for the Commission to resolve and close.

V. CLOSURES, WITHOUT HEARINGS

All cases closed that do not require hearing or other litigation process by the Commission, whether closed by the executive secretary or the Investigations Section, will contain a report of closure as the last document in the file. This report of closure will include as a minimum the date closed before the Commission and a clear, but brief, explanation why the Commission closed the matter. Recommendations for referral, as appropriate, will also be written into the report of closure. The closed file will then be transferred with the cover memorandum (see III above) to the Investigations Section. The Investigations Section will then proceed to close the matter from the main Investigations Section files maintained by the Chief Investigator.

VI. REPORTS TO THE REAL ESTATE COMMISSION

A. The Real Estate Commission will receive a written status report prior to each meeting on all cases currently handled by the Investigations Section. A similar report will be provided on all cases currently being handled by the executive secretary. This will consist of stating the number of cases open since the last report, number in progress, and the number closed since the last report.

B. Status reports, whether prepared by the Investigations Section or the executive secretary, will not contain investigative details or developments or inferences of guilt or innocence. The Commission members will not be exposed to such information until the case is presented for closure by the Commission or presented in hearing.

VII. GENERAL

Cases currently under process by the executive secretary will be retained by the executive secretary until resolved or documented in detail what has been done to date pursuant to III above.

This procedure is effective on receipt and follows discussion before the Real Estate Commission during the meeting of December 6, 1978. Any problems which may develop on implementation of this procedure, or any requests for changes or additions, should be sent to this office immediately for consideration.

DH/mh/5/12

cc: Frank Moore, Investigator, Anchorage Field Office
Bob Barton, Investigator, Anchorage Field Office

Executive Secretary to the Real Estate Commission
Description of Duties

Administer and supervise the activities and functions of the Real Estate Commission office, arranging for efficient operation of office procedures in accordance with the law and policies set by the Real Estate Commission.

Resolve complaints from the public and the profession regarding violations of the Real Estate Act, AS 08.88, and provide for settlement or refer the matter to the proper court for appropriate action.

Interpret and administer the statutes (AS 08.88) and Regulations (12 AAC 64) in order to properly apply them to the functions of the office in the best interest of the public. Recommend any needed additions or amendments to regulations and/or statutes.

Establish policies to assure that the provisions of the statutes and regulations will be adequately administered for the protection of the public.

Assist the Office of the Attorney General and/or the District Attorney to compile and provide evidence to support and prosecute claims of violations of AS 08.88, Real Estate Act.

Attend and participate in professional meetings of District, State, and regional levels, and report in writing back to Commission and Department. Attend all regular Real Estate Commission meetings.

Approve real estate schools or classes in collaboration with the Real Estate Commission and review their curriculum to assure that it corresponds to the statutes, regulations and accepted real estate practices current in the State. Require reports by the schools as are deemed necessary to determine the students' course of study.

Keep the public alerted of the services available and to publicize violations.

Prepare figures on estimated expenditures to assist the Division in preparing the annual budget.

Compile and file a quarterly consolidated activities report with the Real Estate Commission and Department of Commerce.

Perform other duties as may be required by the Department of Commerce or the Real Estate Commission.

STATE of ALASKA

MEMORANDUM

TO: Elaine Garrett
Dept. of Commerce
Div. of Occupational Licensing

DATE: July 5, 1979

FILE NO: J-66-776-79

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL
By: Norman E. Staton
Norman E. Staton
Assistant Attorney General

SUBJECT: Educational Testing Service Contract

You have requested us to review the $50 examination fee of the Alaska Real Estate Commission in light of the proposed change of the Educational Testing Service conducting the examination and charging $11.

From the letter of James L. Magowan, Executive Secretary of the Alaska Real Estate Commission, we assume the following facts. Presently, each applicant is charged a $50 examination fee by the Division of Occupational Licensing. In the future, the Educational Testing Service will be responsible for the total administration of the examination and will directly charge each applicant $11 to take the exam. This change raises the issue of whether the commission should credit the $11 examination fee charged by ETS to the general $50 examination fee or in the alternative have the $11 examination fee be in addition to the general $50 examination fee.

We recommend that ETS's $11 examination fee be credited to the general $50 examination fee. Although Mr. Magowan proposes that the regulations could be drafted either way, we remind you that the regulations must be consistent with the statute. Under AS 08.88.111, 1/ the Department of Commerce shall adopt procedural regulations regarding examination. The proposed change appears consistent with AS 08.88.111, in that the examination will be separated into two parts. The first, a written examination of the applicant's minimum competence and the second, examination of the applicant's qualifications.

1/ AS 08.88.111. Department Regulations. The department shall adopt procedural regulations describing
(1) how it conducts an examination;
(2) how a person applies to take an examination, applies for a license, and registers his office.

However, under AS 44.62.030 2/ the proposed regulation must be consistent with the statute. AS 08.88.221 3/ provides for a $50 examination fee and as a result of AS 44.62.030, the proposed regulation must not exceed that amount or it will be invalid.

Therefore, we recommend the proposed regulation provide that the ETS examination fee be credited to the general $50 examination fee.

In addition, we feel it appropriate to comment on Mr. Magowan's statement that the regulations could be adopted on an emergency basis. The proposed regulation would not seem to be "necessary for the immediate preservation of the public peace, health, safety or general welfare" and as a result, would not qualify as a emergency regulation of AS 44.62.250. We recommend that you coordinate the time sequence for your regulations with your need requirements without the use of emergency regulations.

2/ AS 44.62.030. Consistency between regulation and statute. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

3/ AS 08.88.221. Fees. (a) The following fees shall be charged a real estate broker or associate broker licensee or applicant when applicable: (1) examination ... $50.

* * *

NES:bwb

Original sponsor: Bennett by request

Offered: 4/16/79
Referred: Rules

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 212 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of real estate brokers and salesmen; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.88.041(b) is amended to read:

(b) Of the five members of the commission who must be real estate brokers or associate brokers, one [ONE] member [OF THE COMMISSION] shall be from the First Judicial District, one shall be from the Second Judicial District, one shall be from the Third Judicial District, one shall be from the Fourth Judicial District and one shall be from the state at large. However, if no licensed real estate broker or licensed associate broker [PERSON] is eligible or available for appointment from the Second Judicial District, then two licensed real estate brokers or licensed associate brokers shall be appointed from the state at large.

* Sec. 2. AS 08.88.071(a) is amended by adding a new paragraph to read:

(6) issue a temporary permit to the executor, administrator, or personal representative of the estate of a deceased broker or to some other person designated by the commission in order to secure proper administration in concluding the affairs of decedent broker's real estate business.

* Sec. 3. AS 08.88.091 is repealed and re-enacted to read:

Sec. 08.88.091. EDUCATION. The commission shall

(1) initiate and maintain a program of continuing education in real estate by

(A) reviewing and, when applicable, granting approval to courses of instruction which provide opportunity to persons engaged in the real estate business to gain knowledge and reasonable proficiency in current real estate practices and procedures;

(B) defining course standards, to include a variety of subject material covering general and special areas of real estate practice and procedure in courses presented by

(i) accredited educational institutions;

(ii) private vocational schools;

(iii) correspondence schools; or

(iv) educational programs, seminars, and workshops offered by institutes, professional societies and organizations, and equivalent offerings;

(C) qualifying instructors to present approved courses of instruction based on the academic qualifications and practical experience in real estate of the instructor and the specific course to be offered;

(2) assist in conducting real estate clinics, meetings, courses, or institutes;

(3) assist educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees; and

(4) maintain a list of those educational programs which receive approval under (1) of this subsection.

* Sec. 4. AS 08.88.171(a) is amended to read:

(a) A person is entitled to a real estate broker license if he has been a resident of the state for 90 days and if he applies for his license within six months after <u>the date he completed the real estate examination, furnishes satisfactory proof that he has successfully com-</u>

pleted all requirements imposed by AS 08.88.173 [RECEIPT OF NOTICE THAT HE HAS PASSED THE REAL ESTATE EXAMINATION, FILES THE REQUIRED BOND], and is an owner of a real estate business or employed as a real estate broker by a corporation or a partnership, if the corporation or partnership does not have an existing licensed broker. Unless the broker [HE] fails to pay the biennial renewal fee or fails to furnish satisfactory proof that he has complied with all continuing educational requirements under AS 08.88.175, or unless his license is suspended or revoked under AS 08.88.071(3), the [A] real estate broker's license continues in effect so long as he is an owner of a real estate business, or he is employed as a real estate broker by a corporation or a partnership. If he stops being an owner of a real estate business, or stops being employed as a real estate broker by a corporation or partnership, his license is suspended from the time he stops until

(1) he again becomes an owner of a real estate business or is again employed as a real estate broker by a corporation or a partnership; or

(2) he is employed by a licensed real estate broker, in which case his real estate broker license is returned to the department, and the department issues him an associate real estate broker license.

* Sec. 5. AS 08.88.171(b) is amended to read:

(b) A person is entitled to an associate real estate broker license if he has been a resident of the state for 90 days and if he passes the real estate examination, applies for his license within six months after the date he completed the real estate examination, furnishes satisfactory proof that he has successfully completed all requirements imposed by AS 08.88.173 [RECEIPT OF NOTICE THAT HE HAS PASSED THE EXAMINATION, FILES THE REQUIRED BOND], and is employed by a licensed real estate broker. Unless the associate broker [HE] fails to pay the

biennial renewal fee or fails to furnish satisfactory proof that he has complied with all continuing educational requirements under AS 08.88.175, or unless his license is suspended or revoked under AS 08.88.071(3), the [AN] associate real estate broker's license continues in effect so long as he is employed by a licensed real estate broker. If he stops being employed by a licensed real estate broker, his license is suspended from the time he stops until

(1) he again is employed by a real estate broker; or

(2) he becomes an owner of a real estate business, in which case his associate real estate broker license is returned to the department, and the department issues him a real estate broker license.

* Sec. 6. AS 08.88.171(c) is amended to read:

(c) A person is entitled to a real estate salesman license if he has been a resident of the state for 90 days and if he passes the real estate salesman examination, applies for his license within six months after the date he completed the real estate examination, furnishes satisfactory proof that he has successfully completed all requirements imposed by AS 08.88.173 [RECEIPT OF NOTICE THAT HE HAS PASSED THE EXAMINATION, FILES THE REQUIRED BOND], and is employed by a real estate broker. Unless the salesman [HE] fails to pay the biennial renewal fee or fails to furnish satisfactory proof that he has complied with all continuing educational requirements under AS 08.88.175, or unless his license is suspended or revoked under AS 08.88.071(3), the [A] real estate salesman's license continues in effect so long as he is employed by a licensed real estate broker. If he stops being employed as a real estate salesman, his license is suspended from the time he stops until he again is employed by a licensed real estate broker.

* Sec. 7. AS 08.88 is amended by adding new sections to read:

Sec. 08.88.173. PREPARATORY REQUIREMENTS. (a) An applicant for

an initial license as a real estate broker or associate real estate broker shall provide evidence that he has passed the real estate examination and, during the two years preceding submission of his license application, successfully completed 60 hours of courses, workshops, seminars, institutes or programs approved by the commission under AS 08.88.091(1).

(b) An applicant for an initial license as a real estate salesman shall provide evidence that he has passed the real estate examination and, during the two years preceding submission of his license application, successfully completed 30 hours of courses, workshops, seminars, institutes or programs approved by the commission under AS 08.88.091(1).

Sec. 08.88.175. CONTINUING EDUCATION REQUIREMENTS. (a) A real estate broker, associate real estate broker, or real estate salesman who holds an active license or who seeks reinstatement of an inactive license shall provide evidence that he has, during the two years preceding the biennial renewal period, successfully completed 30 hours of courses, workshops, seminars, institutes or programs approved by the commission under AS 08.88.091(1).

(b) The provisions of (a) of this section do not apply to a person renewing an inactive license within two years of the date on which his license becomes inactive.

Sec. 08.88.177. CREDIT FOR INSTRUCTION. A real estate broker, associate real estate broker, or real estate salesman who provides evidence that he has been an instructor in a course, workshop, seminar, institute or program approved by the commission under AS 08.88.091(1) shall receive credit for his hours as an instructor against the requirements of AS 08.88.175. The commission may give course instruction credit under this section only once for the same course of instruction.

* Sec. 8. AS 08.88.211(a)(4) is amended to read:

(4) has not been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or similar offense or of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate broker;

* Sec. 9. AS 08.88.211(b) 3) is amended to read:

(3) has not been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or similar offense or of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate salesman;

* Sec. 10. AS 08.88.241 is amended to read:

Sec. 08.88.241. REINSTATEMENT OF LAPSED LICENSE. A licensee who was required to take an examination before receiving a license and whose license has lapsed for more than six months [THREE YEARS] shall be re-examined before reinstatement.

* Sec. 11. AS 08.88.251(b) is amended to read:

(b) An inactive licensee may not do anything authorized by [ANY OF THE THINGS] AS 08.88.161 for [AUTHORIZES] an active licensee [TO DO, NOR IS HE REQUIRED TO HAVE A BOND].

* Sec. 12. AS 08.88.251(c) is amended to read:

(c) A person who is inactive may become active by applying for an active license, paying the required fees, and providing evidence of completion of educational requirements, when required [BY RETURNING TO THE DEPARTMENT HIS INACTIVE LICENSE CERTIFICATE, THE ACTIVE LICENSE BIENNIAL RENEWAL FEE, IF HE BECOMES ACTIVE MORE THAN FIVE MONTHS BEFORE JANUARY 1 FOLLOWING, AND A COMPLETED FORM PROVIDED BY THE DEPARTMENT]. In the

application form he shall state the date on which he intends to become active. His active status begins on the date stated. The department shall send him a license certificate. A person is entitled to change from an inactive to an active status without examination if he has not been inactive more than three years. If he has been inactive more than three years, he is required to take an examination.

* Sec. 13. AS 08.88. is amended by adding a new section to read:

Sec. 08.88.263. LICENSE BY ENDORSEMENT. A person who holds a valid active real estate license issued by another state shall be granted an equivalent Alaska real estate license if he

(1) passes the portion of the real estate examination which examines on Alaska law; and

(2) meets the requirements of AS 08.88.171 and 08.88.211.

* Sec. 14. AS 08.88.361 is amended to read:

Sec. 08.88.361. WHEN COMMISSION IS EARNED. A commission is earned when the real estate broker fulfills the terms of a written agreement [FINDS A BUYER WILLING AND ABLE TO PURCHASE AT A PRICE AND ON TERMS SET BY THE SELLER, PROVIDING NEGOTIATIONS WITH THE BUYER WERE INITIATED DURING THE TERM OF A VALID LISTING AGREEMENT AND WITHIN THE TIME LIMIT OF THE LISTING].

* Sec. 15. AS 08.88.261 is repealed.

* Sec. 16. Section 1 of this Act takes effect February 1, 1981. Sections 2, 3, 8 - 11, and 13 - 15 of this Act take effect immediately in accordance with AS 01.10.070(c). Sections 4 - 7 and 12 of this Act take effect February 1, 1980.

1978 Proposed Amendments by Commission

Add new statute
08.88.176 Death of a Broker. In the event of a death of a broker, the real estate commission shall have the authority to issue a temporary permit to the executor, administrator, or representative of the estate of the deceased broker or to some person designated by the real estate commission to continue to transact business for the sole purpose of concluding the affairs of the deceased broker.

Change Sec. 08.88.361. When commission is earned. To read: A commission is earned when the real estate broker fulfills the terms of a written employment agreement.

Change Sec. 08.88.091. Education. To read: The commission shall establish and assist in conducting real estate clinics, meetings, courses, or institutes. The commission shall assist educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

Add new statute
08.88.036. Educational Coordinator of Commission. The Commissioner of Commerce and Economic Development shall appoint a full time staff administrator whose duties shall be to serve with the Real Estate Commission to carry out the requirements of Sec. 08.88.091 of this chapter.

Change Sec. 08.88.171. Entitlement to license. To read: (a) A person is entitled to a real estate broker license if he has been a resident of the state for 90 days and if he applies for his license within six months after the date he took the exam, furnishes satisfactory proof that he has completed successfully all educational requirements adopted by the commission, and is an owner of a real estate business or employed as a real estate broker by a corporation or a partnership.....(all of the rest of (a)(1)(2) remain the same)

(b) A person is entitled to an associate real estate broker license if he has been a resident of the state for 90 days and if he passes the real estate examination, applies for his license within six months after the date he took the exam, furnishes satisfactory proof that he has completed sucesssfully all educational requirements adopted by the commission, and is employed by a licensed real estate broker..... (all of the rest of (b)(1)(2) remain the same)

(c) A person is entitled to a real estate saleman license if he has been a resident of the state for 90 days and if he passes the real estate salesman examination, applies for his license within six months after the date he took the exam, furnishes satisfactory proof that he has completed successfully all educational requirements adopted by the commission, and is employed by a real estate broker.....(all of the rest of (c)(d) remain the same)

Delete Sec. 08.88.261

Add new statute
08.88.177. Reciprocity. A person who holds a valid active real estate license from another state shall be granted an equivalent Alaska real estate license upon passing the Alaska law portion of the exam and meeting the requirements of Sec. 171 and 211 of this chapter.

Delete from Sec. 08.88.251(b) nor is he required to have a bond.

Change Sec. 08.88.211(a)(4) to read: has not been convicted of forgery, embezzlement, obtaining money under false pretences, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate broker;

Change Sec. 08.88.211(b)(3) to read: has not been convicted of forgery, embezzlement, obtaining money under false pretences, larceny, extortion, conspiracy to defraud, or any other similar offense or offenses or has not been convicted of a felony involving moral turpitude within the past 10 years, is not under indictment for fraud or embezzlement and has not engaged in conduct that demonstrates that he is unfit to be a real estate saleman;

Delete from Sec. 08.88.251(c), if he becomes active more than five months before January 1 following,

Change Sec. 08.88.251(c) to read: A person is inactive may become active by applying for an active license and paying the required fees, and a completed form provided by the Department. (The rest of the section remains the same)

Change Sec. 08.88.241. Reinstatement of lapsed license. A licensee who was required to take an examination before receiving a license and whose license has lapsed for more than six months shall be re-examined before reinstatement.

STATE of ALASKA

MEMORANDUM

TO: Elaine Garrett
Management Analyst

DATE: August 29, 1979

FILE NO:

TELEPHONE NO:

FROM: James L. Magowan
Executive Secretary
Real Estate Commission

SUBJECT: Real Estate Investigation/ Complaints (Memo of 8/23/79)

There is apparently some confusion of terms in regard to "investigations." Most cases before the real estate commission have not been investigated in great depth. What has been done since 1976 is as follows:

1. Receipt of written complaint
2. All licenses implicated are sent "10 day letter"
3. Response and complaint are evaluated - if there is reason to continue at this point. Further investigation is made - occasionally interviews etc., are conducted.
4. If response satisfies us the case is recommended to the commission for closing.
5. If case's further investigated or file is prepared for Attorney General to issue accusation

As far as I have been concerned all written complaints are investigated - even if only to the extent of requiring a response to a 10-day letter.

The 10-day letter automatically requests trust account records - this is our only form of random "auditing."

Most "complaints" or inquiries are not written and no record of them exists. I receive many phone calls each day from persons who are not

pleased with real estate transactions. Most complaints - both written and phoned are from the public. We receive a few from licensees. Sometimes the caller is able to resolve the problem by calling the licensee and telling them what I said. Sometimes I make a call or two to find out "what is going on" which results in problems disappearing.

I estimate the phone complaints at better than 3 or 4 times the number of written complaints.

There are also innumerable calls from licensees asking clarification of the law with respect to specific situations. The phone inquiries absorb most of my time. Over the past four years I have been able to thoroughly investigate few cases because the initial receipt of cases and the phone inquiries have taken most of my time.

The following is a tabulation of written complaints for FY 78 and FY 79.

FY 1978 Received 107 written complaints

Closed 94

Two licenses were revoked.

One license was denied.

One applicant was denied admittance to the examination.

One hearing on two licensees is in progress.

One exam score was cancelled (cheating - 2 applicants)

One hearing was requested on 9/1/78 by the commission but this has not occurred.

Six cases are classed as inactive. This means that to all appearances violations occurred but we are unable to do anything about them. Most cases involving unlicensed activity or requiring an audit go into this category. We have not been able to interest the Attorney General's office in prosecuting unlicensed activity and we do not have auditors available.

It should be noted that in the past we have used Revenue Auditors on several occasions. This has not proven effective because the books often balance. The licnesees simply do not maintain proper records for the problem transactions. It requires investigative auditors to uncover our violations.

FY 79 Received 127 written complaints

Closed 56

43 referred to investigations

14 inactive

1 revoked license

1 referred to B & S

4 advisory (letters but not actual complaints - no action is taken on these unless writer follows up)

2 Conflict of Interest - cases involving family, friends or commission members.

Six cases still with the Executive Secretary pending receipt and/or evaluation of responses.

Total for 2 years 234 written complaints

150 Closed

84 referred to investigations or inactive.

We are closing about 60% of our cases. A number of these have died of old age.

It should be noted that a number of serious cases have had hearings requested by the commission but there has been no action to proceed with hearings on most of these.

Most of our serious cases involve misrepresentation, fraud or embezzling. Misrepresentation, fraud and embezzling all require a considerable amount of investigation.

We know of brokers and salesmen who are repeat offenders but nothing happens.

Example: We currently are awaiting an accusation against [redacted], Broker. [redacted] confessed judgement in a $45,000 embezzlement.

Over a year ago the commission requested a hearing against [redacted] in another complaint. Last October in an inspection of her trust account I found a $7,000 embezzlement and again requested a hearing through the investigation section. There are about three other "old" complaints against her. Nothing has happened on these.

One case against her was referred to the ombudsman's office due to delay. The Legislative Audit felt the charge of delay was justified - and this case is the most difficult to prove and the most minor offense filed against her.

We get some complaints from licensees--usually difficulty in collecting earned commissions from brokers. Most of these are considered civil disputes and out of commission jurisdiction. The majority of our complaints are from aggrieved buyers and/or sellers.

H

STATE OF ALASKA
Board of Public Accountancy
(October, 1979)

Findings

The Board of Public Accountancy operates under AS 08.04 to license qualified applicants and regulate individuals within the profession. It is to the benefit of the public that business entities within communities can be competently evaluated and subsequently perpetuated on the basis of economic viability. The Board of Public Accountancy has demonstrated responsibility and conscientiousness in performing its duties. We believe that the Board and State regulation of the profession should continue.

I. General Information

A. Regulated Parties

1. Certified Public Accountants
2. Public Accountants
3. Partnerships and Corporations

B. Definitions

"(1) 'accountant' means any person licensed in the state as either a certified public accountant or public accountant under AS 08.04;

(7) 'practice of public accounting' means the holding of a CPA certificate or a PA license and the performance for the general public of any auditing services, accounting services, tax services, management services or special accounting services for compensation; this definition does not apply to acts of public officials or public employees in the performance of their duties, or to any officer, employee, partner, or principal except for those employed as an employee, partner, principal, or practitioner of a certified public accountant firm or public accountant firm;" (12 AAC 04.290)

C. Nature and Composition of Board

1. Board members and terms:

   Three-year term; no person who has served two successive complete terms may be reappointed until one year from the expiration of his term.

Charlotte Stuart, C.P.A., Inactive (Chairman)	ends April 25, 1981
James Dieringer, C.P.A. & P.A.	ends April 25, 1981
Vern Johnson, C.P.A. & P.A.	ends April 25, 1981
L. Pete Hogan, C.P.A.	ends April 25, 1980
Roxana Kemp (public member)	ends April 25, 1981
(professional member vacancy)	
(public member vacancy)	

2. Representation:

Profession = 5 (by statute)
Public = 2 (by statute)

3. Qualifications:

"Each member shall be a resident of this state for at least one year. Three members shall be certified public accountants, two members shall be public members in accordance with AS 08.01.025, and the remaining members shall be public accountants." All professional members must hold a current certificate or license or must be eligible to receive a permit. (AS 08.04.020)

D. Licensing Data

Current Licenses (through September, 1979)

in-State	364
out-of-State	37
Total	401

E. Fees

1.	examination	$ 50.00
2.	partnership change	5.00
3.	biennial permit (partnership or corporate practice)	60.00
4.	annual permit	100.00

F. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Recepits	$21,437.00	$15,780.00	$39,265.00	$21,471.00
- refunds	660.00	645.00	590.00	285.00
Total	$20,777.00	15,135.00	$38,675.00	$21,186.00
Expenditures				
Transportation	2,399.90	2,645.48	4,263.76	4,022.26
Per Diem	2,051.53	3,117.17	2,723.50	3,638.00
Phone	131.26	316.55	393.17	875.08
Printing, Adver. & Postage	897.75	2,091.24	854.25	767.43
Fees & Services	6,773.90	6,532.17	8,356.70	10,370.01
Rents, Leases & Other	71.15	436.09	657.43	562.15
Total	$12,325.49	$15,138.70	$17,248.81	$20,174.93
Surplus	$ 8,451.51	-	$21,426.19	$ 1,011.07
Deficit	-	$ 3.70	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

One case remains open since August, 1976; this case went to litigation and in March, 1978, the individual's license was revoked. A March, 1977 case involving misuse of funds was responded to in August by the individual against whom the complaint was made; apparently no further action has been taken. Six complaints remain open from 1978: four show no action in the files, one is pending receipt of further information from the complainant, and one was resolved in July, 1978. Four complaints were received in 1979, all of which are pending investigation. Thirty-three cases have been purged from agency files and will be taken before the Board with a recommendation for closure due to age of complaint and lack of jurisdiction. (The Board considered and closed a number of these cases at its October, 1979 meeting.)

The twelve open cases consist of complaints regarding unlicensed activity, overcharging, misuse of funds, and criminal activities. Five were received from members of the profession and the remainder from the profession and/or Board.

II. Analysis

A. To what extent has the Board of Public Accountancy operated in the public interest?

The Board of Public Accountancy has acted in the public interest in assuring qualified practitioners and availability of services throughout the State. Recommendations and observations made in this review are designed to enhance Board operations in regulating the profession in a manner which is most desirable for the continued protection of the public.

The Board is given broad authority in its affairs under AS 08.04.070(b) which provides that the Board "may adopt and amend regulations for the orderly conduct of its affairs and for the administration of this chapter." Extensive regulations have been adopted by the Board (and more are being promulgated) concerning rules of professional conduct, meetings of the Board, requirements for certificate or license, examination procedures, reciprocity (endorsement), general provisions, and continuing education.

Applicants for licensure as Certified Public Accountants or Public Accountants must be at least 19 years old, Alaska residents, and of good moral character. They must also meet the education and experience requirements prescribed by the Board. All applicants for initial licensure in Alaska (who are not licensed by endorsement) must take the uniform CPA examination prepared and graded by the American Institute of Certified Public Accountants. The applicant may take and pass all parts of the CPA examination prior to obtaining the necessary experience. The examination consists of four major parts: auditing, theory, business law, and accounting practice; accounting practice consists of two "subparts." Applicants who have passed all of the accounting practice portion of any other two parts are considered to be "conditioned," and may retake all or any one of the remaining parts at subsequent examinations. The ability of Alaska applicants to take only portions of the test has been a matter of concern to the Board because some states require the "all or nothing" procedure; licensees who obtained their certificates in another manner may not be eligible for reciprocity or endorsement in those states. Alaska proctors for other states' candidates and most states proctor for Alaska candidates. The Board will also be requiring applicants who have passed the Uniform CPA examination to take and pass an ethics examination, graded by the American Institute.

As of September, 1979, there were 27 resident and 11 nonresident partnerships registered with the Department of Commerce and Economic Development, and 16 corporations. Eight individuals are licensed Public

Accountants, two of which are Board members, yet AS 08.04.020 requires two Public Accountants to serve on the Board. The Board is supposed to consist of seven members, three CPAs, two PAs, and two public members. Five members is considered to be adequate but is not in keeping with statutes.

Temporary certifications are statutorily provided for CPA applicants who do not meet residency requirements, or who do not have a place of business in the State, or are not regularly employed in the State. The Board does not issue temporary certificates. Residency requirements have not been shown to affect the job performance of licensees and have no relationship to their professional ability. It is suggested that all such requirements be deleted from Board statutes.

AS 08.04.425 mandates Board regulations prescribing criteria for continuing education as a condition of relicensure. Regulations effective January 18, 1978 accomplished this and will be utilized for December 31, 1979 renewals. Based upon a memorandum from the Department of Law dated October 27, 1978, renewal applicants will be required to have completed 58.5 hours of continuing education in 1979 and 60 hours each renewal prior thereafter (see Appendix A). Exceptions to continuing education requirements are instances of chronic illness, retirement, military service or as individually determined by the Board.

The Board has the authority to revoke or suspend certificates, licenses, registrations or permits. This has been done in some cases. The Board is actively concerned about enforcement and has suggested development and implementation of a positive enforcement program which would, of course, require additional funding.

Maintenance of records and supporting documents by the administrative agency is an area of some concern. Minutes clearly reflect approval and denial of applicants, Board policies and resolutions, and indications of

intent for actions (or inaction). Agency records, however, are lacking some pertinent information and follow through material. Steps have recently been taken to organize records and files for all boards and commissions, and relevant statistics on activity are being maintained. Efforts in this area will continue.

B. To what extent has the operation of the Board of Public Accountancy been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Generally speaking, the Board of Public Accountancy has done very well with the resources provided to it. As with all boards and commissions for which support services are furnished by the Department, it has been adversely affected by limitations in budget and personnel. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs; however, past employee turnover has impeded continuity and follow-up on Board requests. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY '78 two investigator positions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal ser-

vice category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-.630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

Statutory authority given the Board allows it to develop regulations, policies and procedures suitable and appropriate for its operations. The Board actively formulates and institutes changes as necessary. Further regulations are now pending hearings, approval and adoption.

C. To what extent has the Board of Public Accountancy recommended statutory changes which are generally of benefit to the public interest?

Two public members were added to the Board in 1976; the examination fee was increased from $25 to $50; continuing education requirements were added; and several clarifying and housekeeping amendments were made. The Board supports CSSB 185, now in Senate Rules Committee, which concerns issuance of temporary permits. As previously noted, the Board reviews its statutes and regulations routinely.

D. To what extent has the Board of Public Accountancy encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The bulk of participation at Board meetings and hearings has come from applicants for certification and/or members of the profession. Among these, substantial interest has been demonstrated in proposed regulations, particularly with respect to experience requirements. As a result of professional participation, changes were incorporated into experience provisions prior to final adoption of regulations in August, 1979.

The Board has considered methods of encouraging public interest in its activities. Effective August, 1979, form letters to applicants will contain a statement inviting them to attend Board meetings. There is also a requirement under AS 08.04.080 that all licensees be notified of proposed Board rules.

Public interests are furthered by a presence of public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decision-making."[1] The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Public Accountancy processed and resolved?

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[1] Shimberg, B and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

General inquiries regarding the activities of the Board are responded to by Department staff and by members of the Board. Indications are that these responses are both accurate and timely and that efforts are made to disseminate appropriate information.

Twelve open cases involving the profession were delineated earlier in this review, as were cases pending closure. Several were closed by the Board at its October, 1979, meeting.

F. To what extent does the Board of Public Accountancy present qualified applicants to serve the public?

Individuals wishing certification must submit fees and application to the administrative agency. They must have passed the CPA examination and meet the experience requirements. The examination and qualification procedure is designed to insure competency.

The Board is also making an active effort to insure quality service subsequent to certification through continuing education requirements and enforcement against abuses in practice.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Public Accountancy in its own activities, and in its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible to two other boards), who is hired through the State Personnel System and is subject to affirmative action requirements.

Licenses in this profession are issued on the basis of specific statutory criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, budgetary or other changes necessary to enable the Board of Public Accountancy to better serve the interests of the public?

Recommended statutory changes include: reduction of Board membership from seven to five and deletion of requirement for two Public Accountants on the Board (§ 200); deletion of requirement for notice of proposed rules to all licentiates (§ 080); repeal of residency and age requirements (§§ 110 and 280); repeal of § 120(1) as outdated; and repeal of § 260, regarding temporary certificates, as unnecessary.

Investigation and complaint procedures are being addressed by the administrative agency with emphasis being placed on magnitude of offense and public safety.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing administrative overhead such as staff salaries, examination expenses, and investigative services.

180. Prior applicants
190. Examination fee
200. Use of title "certified public accountant"
210. Effect on existing certificates
220. Certification of foreign accountants
230. [Repealed]
240. Registration of partnerships and corporations composed of certified public accountants
250. [Repealed]
260. Temporary certificate as certified public accountant

Sec. 08.04.100. Certificate granted. The certificate of "Certified Public Accountant" shall be granted by the board to any person who meets the requirements of §§ 110-130 of this chapter. (§ 3(1) ch 187 SLA 1960)

Sec. 08.04.110. Personal requirements. An applicant for the certified public accountant certificate shall be

(1) Repealed by § 3 ch 127 SLA 1974.

(2) a resident of this state;

(3) at least 19 years of age; and

(4) of good moral character. (§ 3(2) ch 187 SLA 1960; am § 3 ch 127 SLA 1974)

Sec. 08.04.120. Educational and experience requirements. An applicant shall meet the following requirements of education and experience.

(1) During the period from April 26, 1960, to and including April 26, 1965, the educational requirement is graduation from a high school or the substantial equivalent thereof. The experience requirement is four years of accounting experience satisfactory to the board.

(2) After April 26, 1965, the educational requirement is

(A) satisfactory completion of two years of study at one or more colleges or universities recognized by the board, or

(B) graduation from a junior or community college in Alaska or otherwise recognized by the board, or

(C) the substantial equivalent of (2)(A) or (B) of this section.

The experience requirement is four years of accounting experience satisfactory to the board.

(3) After April 26, 1960, the education and experience requirements may also be satisfied by

(A) the satisfactory completion of four years of study with a nonaccounting major at one or more colleges or universities recognized by the board, and three years of accounting experience satisfactory to the board, or

(B) the satisfactory completion of four years of study with an accounting major at one or more colleges or universities recognized by the board, and two years of accounting experience satisfactory to the board. (§ 3(3)-(6) ch 187 SLA 1960)

Sec. 08.04.130. Examination. An applicant shall pass a written examination in theory of accounts, in accounting practice, in auditing and in other related subjects which the board determines appropriate. The examination shall be designated in advance by the board as an examination for the certificate of certified public accountant. The board shall use the uniform certified public accountants' examination and advisory grading service, if available. (§ 3(7) ch 187 SLA 1960)

Sec. 08.04.140. Frequency of examination. The examination shall be held by the board as often as it determines desirable but not more than three times each year. If the uniform certified public accountants' examination is available less frequently, an examination shall be held not less than once each year. (§ 3(8) ch 187 SLA 1960)

Sec. 08.04.150. Experience prerequisite for certificate. An applicant who meets the educational requirements of § 120 of this chapter may take the examination whether or not he has met the experience requirements of that section. However an applicant shall meet the experience requirements of § 120 of this chapter before he is entitled to receive a certificate. (§ 3(9) ch 187 SLA 1960)

Sec. 08.04.160. Re-examination. An applicant who fails an examination may take as many examinations as he chooses. An applicant who receives a passing grade in accounting practice or in at least two of the other subjects has the right to be re-examined in only the remaining subjects at succeeding examinations within five years after the first examination, if he takes an examination in the remaining subjects at least once each calendar year unless excused by the board for good cause. If the applicant receives a passing grade in the remaining subjects he has passed the entire examination. (§ 3(10) ch 187 SLA 1960)

Sec. 08.04.170. Examination standards. An applicant passes the examination by attaining a grade of at least 75 in each subject in which he is examined. The board may give credit to an applicant who has passed all or part of the examination in another state if the board determines that the standards under which the examination was held are

as high as the standards established for the examination in this State. (§ 3(10) ch 187 SLA 1960)

Sec. 08.04.180. Prior applicants. Any applicant who, before April 26, 1960, applied to take an examination for the certificate of certified public accountant, or held a valid license as a public accountant, or was regularly enrolled in any college or correspondence course in accounting, or any person whose registration under this chapter is accepted by the board, shall receive a certificate when he has met either the requirements of this chapter, or the requirements which were effective at the time his first application was filed, at the option of the applicant. (§ 3(11) ch 187 SLA 1960)

Sec. 08.04.190. Examination fee. The board shall charge each application a fee of $50 for the initial examination and for each reexamination. The applicant shall pay the fee at the time he applies for examination or reexamination. (§ 3(12 ch 187 SLA 1960; am § 1 ch 147 SLA 1976)

Sec. 08.04.200. Use of title "certified public accountant". A person who has received a certificate from the board as a certified public accountant and who holds a current permit issued under §§ 390-440 of this chapter shall be known as a certified public accountant and may use the abbreviation "CPA". (§ 3(13) ch 187 SLA 1960)

Sec. 08.04.210. Effect on existing certificates. A person who, on April 26, 1960, held a certificate as a certified public accountant issued under the laws of the Territory or State of Alaska is not required to obtain a certificate under this chapter but is otherwise subject to this chapter. Certificates issued before April 26, 1960, shall be considered certificates issued under this chapter. (§ 3(14) ch 187 SLA 1960)

Sec. 08.04.220. Certification of foreign accountants. Upon finding that an applicant meets the requirements of §§ 110 and 120 of this chapter the board may issue a certified public accountant certificate to an applicant who holds a certified public accountant certificate in effect under the laws of any state, or who holds a certificate, license or degree in effect in a foreign country which constitutes a recognized qualification for the practice of public accounting in that country comparable to that of a certied public accountant in this state. (§ 3(15) ch 187 SLA 1960)

Sec. 08.04.230. Registration of foreign accountants. Repealed by § 2 ch 147 SLA 1976.

Sec. 08.04.240. Registration of partnerships and corporations composed of certified public accountants. (a) A partnership engaged in this state in the practice of public accounting may register with the board as a partnership of certified public accountants if it meets the following requirements:

(1) at least one general partner must be a certified public accountant of this state in good standing;

(2) each partner must be a certified public accountant of some state in good standing; and

(3) except as otherwise provided in this chapter, each resident manager in charge of an office of a firm in this state, and each partner personally engaged in this state in the practice of public accounting as a member of that firm must be a certified public accountant of this state in good standing.

(b) A corporation organized for the practice of public accounting may register with the board as a corporation of certified public accountants if it meets the following requirements:

(1) the sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the regulations promulgated under it by the board; however, the corporation may invest its funds in a manner not incompatible with the practice of public accounting;

(2) each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business; no other person may have any interest in the stock of the corporation; the principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be a certified public accountant of some state in good standing;

(3) at least one shareholder of the corporation must be a certified public accountant of this state in good standing;

(4) except as otherwise provided in this chapter, each resident manager in charge of an office of the corporation in this state and each shareholder or director personally engaged in this state in the practice of public accounting must be a certified public accountant of this state in good standing;

(5) to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder and binding a holder not a qualified shareholder to sell these shares to the corporation or the qualified shareholders; the agreement must be noticed on each certificate of corporate stock; the corporation may purchase any amount of its stock for this purpose, notwithstanding any impairment of capital, so long as one share remains outstanding;

(6) the corporation must be in compliance with those other regulations pertaining to corporations practicing public accounting in this state that the board may prescribe.

(c) Application for registration must be made upon the affidavit of a general partner or shareholder who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership or corporation which is so registered and which holds a permit issued under § 400 of this chapter may use the words "certified public accountants" or the abbreviation "CPA's" in connection with its partnership or corporate name. Notification shall be given the board, within one month, after the admission or withdrawal of a partner or shareholder from a partnership or corporation registered under this section. (§§ 5(1), 10(3) ch 187 SLA 1960; § 3 ch 147 SLA 1976)

Sec. 08.04.250. Requirements for registration. Repealed by § 4 ch 147 SLA 1976.

Sec. 08.04.260. Temporary certificate as certified public accountant. If an applicant for a certificate as a certified public accountant meets all the requirements for a certificate except the residence requirement, or the requirement that he have a place of business in the state or be an employee regularly employed in this state, the board may issue a temporary certificate as a certified public accountant. The certificate is effective until the board notifies the applicant that his application has been granted or rejected. A temporary certificate is effective for a period not exceeding six months. No fee may be charged for the issuance of a temporary certificate. (§ 6 ch 187 SLA 1960)

Article 3. Public Accountants.

Section
270. License granted
280. Personal requirements
290. Educational and experience requirements
300. Examination for license
310. Use of term "public accountant"
320. Effect on existing licenses
330. Partnerships of public accountants
340. Requirements for registration

Sec. 08.04.270. License granted. A license as a public accountant shall be granted by the board to a person who meets the requirements of §§ 280-320 of this chapter. (§ 7(1) ch 187 SLA 1960)

Sec. 08.04.280. Personal requirements. Any person is qualified to apply for a license who

(1) Repealed by § 4 ch 127 SLA 1974.

(2) is a resident of this state or has a place of business in this state or is an employee regularly employed in this state;

(3) is at least 19 years of age; and

(4) is of good moral character. (§ 7(2) ch 187 SLA 1960; am § 4 ch 127 SLA 1974)

Sec. 08.04.290. Educational and experience requirements. The requirements of education and experience shall be

(1) graduation from a high school or the substantial equivalent, and

(2) four years of accounting experience satisfactory to the board. (§ 7(3) ch 187 SLA 1960)

Sec. 08.04.300. Examination for license. (a) An applicant shall pass a written examination on subjects the board determines appropriate. The board shall designate the examination in advance as an examination for the license of public accountant.

(b) The examination shall be given by the board as often as it considers desirable but not less than once each year.

(c) The board shall charge each applicant a fee of $50 for an initial examination and for each reexamination. The applicant shall pay the fee at the time he applies for examination or reexamination. (§ 7(4)-(6) ch 187 SLA 1960; am § 5 ch 147 SLA 1976)

Sec. 08.04.310. Use of term "public accountant". A person who receives a license as a public accountant and who holds a permit issued under §§ 390-440 of this chapter, which are both in effect, shall be known as a public accountant and may use the abbreviation "PA." (§ 7(7) ch 187 SLA 1960)

Sec. 08.04.320. Effect on existing licenses. A person who, on April 26, 1960, held a license as public accountant issued under the laws of this state or the Territory of Alaska is not required to obtain a license under this chapter but is otherwise subject to this chapter. A license issued prior to April 26, 1960, shall be considered a license issued under this chapter. (§ 7(8) ch 187 SLA 1960)

Sec. 08.04.330. Partnerships of public accountants. A partnership engaged in this state in the practice of public accounting may register with the board as a partnership of public accountants, if it meets the requirements of § 340 of this chapter. In each case the board shall determine whether the applicant is eligible for registration. Applica-

tion for registration of a partnership shall be made upon the affidavit of a general partner of the partnership who is a certified public accountant or public accountant of this state in good standing. A partnership which is registered and holds a permit issued under §§ 390-440 of this chapter may use the words "public accountants" or the abbreviation "PA's" in connection with its partnership name. The partnership shall notify the board of any change in partners within one month from the date of the change, and pay a fee of $5. The board shall prescribe registration procedure by regulation. (§§ 8(1), 10(3) ch 187 SLA 1960)

Sec. 08.04.340. Requirements for registration. The board shall register a partnership if

(1) at least one general partner is a certified public accountant or public accountant of this state in good standing;

(2) each partner personally engaged in this state in the practice of public accounting is a certified public accountant or public accountant in good standing and holds a valid permit to practice issued under §§ 390-440 of this chapter;

(3) each nonresident partner is a certified public accountant in good standing in any state; and

(4) all offices of a partnership established or maintained in this state for the practice of public accounting in this state are maintained and registered as required by §§ 350-380 of this chapter. (§ 8(2) ch 187 SLA 1960)

Article 4. Regulation of Accountants.

Section
350. Registration of offices
360. Supervision required
370. Use of title "certified public accountant" by registered office
380. Waiver of requirements
390. Permit for individual practice as a public accountant
400. Permit for partnership or corporate practice as a public accountant
410. Permit for person not engaged in practice
420. Permit for general practice as a certified public accountant
425. Continuing education
430. Expiration and renewal
440. Effect of failure to obtain permit
450. Revocation or suspension of certificate, license, registration or permit
460. Suspension or revocation of license revokes permit
470. Revocation or suspension of partnership or corporate registration or permit
480. Grounds for revocation or suspension of partnership or corporate permit

490. Reinstatement

Sec. 08.04.350. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state

(1) by a certified public accountant, partnership or corporation of certified public accountants, or

(2) by a public accountant, partnership or corporation of public accountants, shall registered annually with the board. No fee may be charged for registration. The board shall prescribe registration procedure by regulation. (§ 9(1) ch 187 SLA 1960; am § 6 ch 147 SLA 1976)

Sec. 08.04.360. Supervision required. Each office established or maintained in this state for the practice of public accounting shall be under the direct supervision of a person in residence who holds a permit under §§ 390-440 of this chapter. The supervisor may be either a sole proprietor, partner, principal or staff employee. A supervisor may serve in this capacity at one office only. (§ 9(2) ch 187 SLA 1960)

Sec. 08.04.370. Use of title "certified public accountant" by registered office. The title "certified public accountant" or the abbreviation "CPA" shall not be used in connection with an office registered under this chapter unless the "person in residence" required by § 360 of this chapter is a certified public accountant in this state. (§ 9(3) ch 187 SLA 1960)

Sec. 08.04.380. Waiver of requirements. The board may waive the requirements of §§ 240(a)(3) and (b)(4), 360 and 370 of this chapter if

(1) the community has a population of 2,000 or less; and

(2) the firm opening or maintaining the office maintains another office in the state which meets the requirements outlined in §§ 360 and 370 of this chapter. (§ 9(4) ch 187 SLA 1960; am § 2 ch 70 SLA 1964; am § 7 ch 147 SLA 1976)

Sec. 08.04.390. Permit for individual practice as a public accountant. The board shall issue a permit to engage in the practice of public accounting to a holder of a certificate or license if all offices of the certificate holder or licensee are maintained and registered as required by §§ 350-380 of this chapter. The biennial permit fee is $60. (§ 10(1), (2) ch 187 SLA 1960; am § 8 ch 147 SLA 1976)

Sec. 08.04.400. Permit for partnership or corporate practice as a public accountant. The board shall issue a permit to engage in the practice of public accounting as a partnership or as a corporation to a

partnership or corporation registered under §§ 240 or 330-340 of this chapter. The biennial permit fee is $60. A permit is valid only for practice under the registered name of the partnership or corporation. (§ 10(3) ch 187 SLA 1960; am § 9 ch 147 SLA 1976)

Sec. 08.04.410. Permit for person not engaged in practice. A person holding a certificate or license not engaged in the practice of public accounting may maintain his certificate or license in good standing by registering with the board and paying an annual registration fee of $10. (§ 10(4) ch 187 SLA 1960; am § 10 ch 147 SLA 1976)

Sec. 08.04.420. Permit for general practice as a certified public accountant. A certified public accountant, or a partnership or corporation of certified public accountants in good standing in a state, not holding a permit under §§ 390 or 400 of this chapter nor maintaining an office in this state but engaging in the practice of public accounting in this state, shall apply to the board for a permit to practice. The board shall determine whether the applicant is eligible for the permit. The annual fee for the issuance of a permit is $100. (§ 10(5) ch 187 SLA 1960; am § 11 ch 147 SLA 1976)

Sec. 08.04.425. Continuing education. (a) the board shall by regulation prescribe requirements for continuing education for persons licensed to practice as certified public accountants under this chapter. In adopting these regulations, the board may

(1) use and rely upon guidelines and pronouncements with respect to continuing education issued by recognized educational and professional associations in the field; and

(2) prescribe content, duration and organization of courses or programs that will satisfy the continuing education requirements.

(b) After the expiration of two years immediately following the effective date of regulations promulgated by the board under (a) of this section, every application for renewal of a permit to practice as a certified public accountant by a person who has held a certificate as a certified public accountant for two years or more shall be accompanied or supported by documents or other evidence indicating satisfaction of the continuing education requirements prescribed by the board during the two years immediately preceding the application.

(c) Failure by an applicant for renewal of a permit to practice to furnish that evidence constitutes grounds for revocation, suspension or refusal to renew the permit under § 450 of this chapter, unless the board determines that failure to have been due to reasonable cause or excusable neglect. However, the board may renew a permit to practice despite failure to furnish evidence of satisfaction of the continuing education requirements established under (a) of this section if the applicant agrees to follow a particular program or schedule of continuing education prescribed by the board.

(d) In adopting regulations under (a) of this section, or in issuing individual orders under (c) of this section,

(1) the board shall consider

(A) the accessibility of applicants to the continuing education courses or programs that it may require; and

(B) any impediments to interstate practice of public accountancy which may result from differences in continuing education requirements prescribed by other states; and

(2) the board may relax or suspend the continuing education requirements

(A) for applicants who certify that they do not intend to engage in the practice of public accountancy; or

(B) in instances of individual hardship. (§ 12 ch 147 SLA 1976)

Sec. 08.04.430. Expiration and renewal. A permit or registration under §§ 390-420 of this chapter, unless revoked or suspended, shall be renewed biennially upon payment of a renewal fee in the same amount as the initial biennial fee. (§ 10(6) ch 187 SLA 1960; am § 3 ch 94 SLA 1968)

Sec. 08.04.440. Effect of failure to obtain permit. Failure of a person, partnership or corporation to apply for the annual permit to practice or to pay the annual fee within (1) three years from the expiration date of the permit to practice or annual registration last obtained or renewed, or (2) three years from the date upon which the certificate holder or licensee was granted his certificate as a certified public accountant or license as a public accountant deprives him of the right to a permit or annual registration or renewal of a permit, unless the board determines that the failure is excusable. In case of excusable failure, the fee shall not exceed three times the annual fee. (§ 10(7) ch 187 SLA 1960; am § 13 ch 147 SLA 1976)

Sec. 08.04.450. Revocation or suspension of certificate, license, registration or permit. The board may revoke or suspend a certificate or license, or may revoke, suspend, or refuse to renew any permit, or may censure any certificate holder, licensee, registrant, or permit holder for

(1) fraud or deceit in obtaining any certificate, license, registration, or permit required by this chapter;

(2) dishonesty or gross negligence in the practice of public accounting, or other acts discreditable to the accounting profession;

(3) violation of any provision of §§ 500-610 of this chapter;

(4) violation of a rule of professional conduct or other regulation promulgated by the board;

(5) conviction of a felony under the laws of any state or of the United States;

(6) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or public accountant in any other state for any cause other than failure to pay an annual registration fee;

(8) suspension or revocation of the right to practice before any state or federal agency; or

(9) [delete]

(10) failure of a certified public accountant to satisfy the continuing education requirements prescribed by the board under § 425 of this chapter, except as conditioned, relaxed or suspended by the board under § 425(c) and (d) of this chapter. (§ 11(1) ch 187 SLA 1960; am § 14 ch 147 SLA 1976)

Sec. 08.04.460. Suspension or revocation of license revokes permit. Revocation or suspension of a certificate, license, or registration required for the issuance of a permit under §§ 390-440 of this chapter revokes or suspends the permit. (§ 11(2) ch 187 SLA 1960)

Sec. 08.04.470. Revocation or suspension of partnership or corporate registration or permit. The board shall revoke the registration and permit to practice of a partnership or corporation if at any time it does not meet the qualifications prescribed by the sections of this chapter under which it qualified for registration. (§ 12(1) ch 187 SLA 1960; am § 15 ch 147 SLA 1976)

Sec. 08.04.480. Grounds for revocation or suspension of partnership or corporate permit. The board may revoke or suspend the registration and permit to practice of a partnership or corporation, may revoke, suspend or refuse to renew its permit to practice or may censure the partnership or corporation for any of the causes enumerated in §§ 450 and 460 of this chapter, or for the following additional causes:

(1) the revocation or suspension of the certificate, license or registration of any partner or shareholder;

(2) the revocation, suspension, or refusal to renew the permit to practice of any partner or shareholder;

(3) the cancellation, revocation, suspension, or refusal to renew the authority of the partnership or any partner or the corporation or a shareholder to practice public accounting in any other state for any cause other than failure to pay an annual registration fee in that state. (§ 12(2) ch 187 SLA 1960; am § 16 ch 147 SLA 1976)

Sec. 08.04.490. Reinstatement. Upon application in writing and after a hearing, the board may issue a new certificate to a certified public accountant whose certificate has been revoked, or may permit reregistration of one whose registration has been revoked, or may modify the suspension of or may reissue any certificate, license, or permit to practice public accounting which has been revoked or suspended. (§ 14 ch 197 SLA 1960)

Article 5. Unlawful Acts and Penalties.

Section
500. Individual posing as a certified public accountant
510. Partnership or corporation posing as a certified public accountant
520. Individual posing as public accountant
530. Partnership or corporation posing as public accountant
540. Use of deceptive title or abbreviation
550. [Repealed]
560. Individual may not assume title
570. Persons not affected
580. Partnership posing as accountants or auditors
590. Use of title with corporate name
600. Disclosure of lack of permit
610. Deceptive use of partnership or corporation title
620. Exceptions
630. Injunction against unlawful act
640. Penalty
650. Single act evidence of practice

Sec. 08.04.500. Individual posing as a certified public accountant. (a) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that he is a certified public accountant, unless he has received a certificate, holds a permit issued under §§ 390-440 of this chapter, hereinafter referred to as a "live" permit, and all of his offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter.

(b) This section does not prohibit

(1) a certified public accountant in good standing in any state holding a permit under § 420 of this chapter from using the title certified public accountant;

(2) Repealed by § 17 ch 147 SLA 1976. (§ 15(1) ch 187 SLA 1960; am § 17 ch 147 SLA 1976)

Sec. 08.04.510. Partnership or corporation posing as a certified public accountant. (a) No partnership or corporation may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that it is composed of certified public accountants, unless the partnership or corporation is registered and holds a live permit, is practicing under its registered name, and its offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter.

(b) A partnership or corporation of certified public accountants in good standing in any state, not registered as a partnership or corporation of certified public accountants under §§ 240 and 250 of this chapter but holding a permit under § 420 of this chapter, may use the title or designation "certified public accountants." (§ 15(2) ch 187 SLA 1960; am § 18 ch 147 SLA 1976)

Sec. 08.04.520. Individual posing as public accountant. No person may assume or use the title or designation "public accountant" or the abbreviation "PA" or other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that he is a public accountant, unless he holds a live permit and his offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter. (§ 15(3) ch 187 SLA 1960)

Sec. 08.04.530. Partnership or corporation posing as public accountant. No partnership or corporation may assume or use the designation "public accountant" or the abbreviation "PA" or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the partnership or corporation is composed of public accountants, unless the partnership or corporation holds a live permit, is practicing under its registered name, and its office in this state for the practice of public accounting is maintained and registered as required by §§ 350-380 of this chapter. (§ 15(4) ch 187 SLA 1960; am § 19 ch 147 SLA 1976)

Sec. 08.04.540. Use of deceptive title or abbreviation. No person, partnership or corporation may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant," "registered accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant," or any of the abbreviations "CA," "EA," "LA," "RA", or similar abbreviations likely to be confused with

"CPA", or "PA"; however, a person, partnership or corporation holding a live permit and whose offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter may hold himself or itself out to the public as an accountant or auditor. (§ 15(5) ch 187 SLA 1960; am § 20 ch 147 SLA 1976)

Sec. 08.04.550. Corporation may not assume title. Repealed by § 21 ch 147 SLA 1976.

Sec. 08.04.560. Individual may not assume title. No person may sign or affix his name or any trade or assumed name used by him to any accounting or financial statement, or opinion or report on any accounting or financial statement with any wording indicating that he is a certified public accountant or public accountant or with any wording indicating that he has expert knowledge in accounting or auditing, unless he holds a live permit and his offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter. (§ 15(7) ch 187 SLA 1960)

Sec. 08.04.570. Persons not affected. Section 560 does not prohibit

(1) an officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of the organization together with any wording designating the postion, title or office which he holds;

(2) an act of a public official or public employee in the performance of his duties;

(3) a person maintaining a bookkeeping or tax service from affixing his signature to any record, statement or report maintained or prepared by him. (§ 15(7) ch 187 SLA 1960)

Sec. 08.04.580. Partnership posing as accountants or auditors. No person may sign or affix a partership name with any wording indicating that it is a partnership composed of accountants or auditors or persons having expert knowledge in accounting or auditing to any accounting or financial statement, or to any opinion, on, report on or certificate to any accounting or financial statement unless the partnership holds a live permit, is practicing under its registered name, and its offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter. (§ 15(8) ch 187 SLA 1960)

Sec. 08.04.590. Use of title with corporate name. No person may sign or affix a corporate name with any wording indicating that it is a corporation performing services as accountants or auditors, or composed of accountants or auditors or persons having expert knowledge in accounting or auditing to any accounting or financial statement, or to any

opinion or report on or certificate to any accounting or financial statement unless the corporation holds a live permit, is practicing under its registered name, and its offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter. (§ 15(9) ch 187 SLA 1960; am § 22 ch 147 SLA 1976)

Sec. 08.04.600. Disclosure of lack of permit. No person, partnership or corporation not holding a live permit may hold himself or itself out to the public as a certified public accountant or public accountant by use of such words or abbreviations on any sign, card, letterhead or in any advertisement or directory, without indicating that the person, partnership, or corporation does not hold a permit. This section does not prohibit (1) an officer, employee, partner, or principal of an organization from describing himself by the position, title, or office which he holds in the organization, (2) an act of a public official or public employee in the performance of his duties, or (3) any person from maintaining a bookkeeping or tax service. (§ 15(10) ch 187 SLA 1960; am § 23 ch 147 SLA 1976)

Sec. 08.04.610. Deceptive use of partnership or corporation title. No person may assume or use the title or designation "certified public accountant" or "public accountant" or an abbreviation of them, in conjunction with a name indicating or implying that there is a partnership or corporation, or in conjunction with the designation "and Company" or "and Co." or any similar designation unless there is a bona fide partnership or corporation registered under that name. However, a sole proprietor or partnership lawfully using the title or designation "certified public accountant" or "public accountant" or an abbreviation of them in conjunction with such names or designation on April 26, 1960, may continue to do so if the person or partnership otherwise complies with this chapter. (§ 15(11) ch 187 SLA 1960; am § 24 ch 147 SLA 1976)

Sec. 08.04.620. Exceptions. Nothing in this chapter prohibits

(1) a person not a certified public accountant or public accountant from serving as an employee of or as an assistant to any person, partnership or corporation holding a live permit so long as the employee or assistant does not use his name in connection with any accounting or financial statement,

(2) a certified public accountant or public accountant from indicating that he holds a certificate or license entitling him to that designation if he holds a valid certificate or license in any state, but the person shall not indicate that his services are available to the public unless he holds a live permit issued under this chapter;

(3) a holder of a certificate, license, or degree from a foreign country which constitutes a recognized qualification for the practice of public accounting in that country from indicating that he

holds the certificate, license, or degree, but the person shall not indicate that his services are available to the public unless he holds a live permit issued under this chapter. (§ 16 ch 187 SLA 1960; am § 25 ch 147 SLA 1976)

Sec. 08.04.630. Injunction against unlawful act. Whenever, in the judgement of the board, any person has engaged in any act which constitutes a violation of §§ 500-610 of this chapter, the board may apply to the appropriate court for an order enjoining the act. Upon a showing by the board that a person has engaged in the act, the court shall grant an injunction or any other appropriate order without bond. (§ 17 ch 187 SLA 1960; am § 3 ch 70 SLA 1964)

Sec. 08.04.640. Penalty. Any person who violates any provision of §§ 500-610 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500, or by imprisonment for not more than one year, or by both. Whenever the board has reason to believe that any person has violated any provision of §§ 500-610 of this chapter it may certify the facts to the attorney general of this state or other appropriate enforcement officer, who may cause appropriate proceedings to be brought. (§ 18 ch 187 SLA 1960)

Sec. 08.04.650. Single act evidence of practice. The display or uttering by a person of a card, sign, advertisement or other printed, engraved, or written instrument or device, bearing a person's name in conjunction with the words "certified public accountant," or any abbreviation thereof, or with the words "public accountant," or any abbreviation thereof, or any words or abbreviations likely to be confused with any of them is prima facie evidence in any action brought under §§ 630 or 640 of this chapter that the person whose name is displayed caused the display or uttering of the card, sign, advertisement or written instrument or device, and that the person is holding himself out to be a certified public accountant or public accountant. In any action, evidence of the commission of a single act prohibited by this chapter is sufficient to justify an injunction or a conviction without evidence of a general course of conduct. (§ 18 ch 187 SLA 1960)

Article 6. Miscellaneous Provisions.

Section
660. Ownership of accountant's working papers
670. Construction

Sec. 08.04.660. Ownership of accountant's working papers. Statements, records, schedules, working papers, and memoranda made by a certified public accountant, public accountant, or registered foreign accountant incident to or in the course of professional service to a client, except reports submitted to a client, are the property of the accountant, in the absence of an express agreement between the accountant and the client to the contrary. No statement, record, schedule,

working paper, or memorandum may be sold, transferred, or bequeathed to a person other than a partner of the accountant without the consent of the client or his personal representative or assignee. (§ 20 ch 187 SLA 1960)

Sec. 08.04.670. Construction. If any provision of this chapter or the application of any provision to any person or to any circumstances is invalid, the remainder shall not be affected. (§ 22 ch 187 SLA 1960)

Article 7. General Provisions.

Section
680. Definitions
690. Short title

Sec. 08.04.680. Definitions. As used in this chapter

(1) "board" means the Alaska State Board of Public Accountancy;

(2) "certificate" means certificate as a certified public accountant;

(3) "license" means license as a public accountant. (§ 21 ch 187 SLA 1960)

Sec. 08.04.690. Short title. This chapter may be cited as the Accountancy Act. (§ 1 ch 167 SLA 1960; am § 5 ch 127 SLA 1974; am § 26 ch 147 SLA 1976)

CHAPTER 04.
BOARD OF PUBLIC ACCOUNTANCY

Article
1. Rules of Professional Conduct
2. The Board
3. Requirements for Certificate or License
4. Examination
5. Certificates and Licenses
6. General Provisions
7. Continuing Education

ARTICLE 1.
RULES OF PROFESSIONAL CONDUCT

Section
05. Integrity and objectivity
10. Independence
15. Competence
20. Confidential relationship
30. Contingent fees
33. Accounting principles
36. Auditing standards
40. Use of work of others
50. Responsibility and disclosure
60. Form of opinions and reports
70. Forecasts
80. Advertising
90. Solicitation
100. Commissions
110. Services performed by employees
120. Referrals

12 AAC 04.005. INTEGRITY AND OBJECTIVITY. An accountant may not knowingly misrepresent facts, and when engaged in the practice of public accounting, including the rendering of tax and management advisory services, may not subordinate his or her judgment to others in matters relating to professional accounting decisions. In tax practice, an accountant may resolve doubt in favor of his or her client as long as there is reasonable support for his or her position. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.010. INDEPENDENCE. (a) An accountant or accounting firm shall express a disclaimer of an opinion on financial statements of any enterprise if he or she or the firm is not independent of that enterprise and shall disclose the lack of independence.

(b) An accountant or accounting firm is not independent if

(1) during the period of professional engagement or at the time of expressing an opinion he or any member of the firm had or was committed to acquire a direct or indirect financial interest in the enterprise; or

(2) during the period of professional engagement or the period covered by the

financial statements or at the time of expressing an opinion he or any member of the firm was connected with the enterprise as a promoter, underwriter, voting trustee, director, officer, or employee.

(c) For purposes of this section, the word "director" shall not include gratuitous service to a charitable, religious, or nonprofit organization. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43; am 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.015. COMPETENCE. An accountant may not undertake any engagement which he or she or his or her firm cannot reasonably expect to complete with professional competence. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.020. CONFIDENTIAL RELATIONSHIP. Unless required by law or court order, an accountant shall not violate a confidence of his client. A confidence is violated when information gained through the professional relationship is disclosed to another without the client's consent. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.030. CONTINGENT FEES. Unless imposed by a court of law, no accountant may render or offer professional services for a fee which is contingent upon his findings. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.033. ACCOUNTING PRINCIPLES. (a) An accountant may not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if those statements contain any departure from a generally accepted accounting principle which has a material effect on the statements taken as a whole unless the accountant can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In such cases his or her report must describe the departure, the approximate effects of it, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

(b) Generally accepted accounting principles include, but are not limited to,

(1) statements of financial accounting standards adopted by the Financial Accounting Standards Board which are in effect when the financial statements are issued;

(2) accounting research bulletins and opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants which are not superseded by action of the Financial Accounting Standards Board. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.036. AUDITING STANDARDS. (a) An accountant may not permit his or her name to be associated with financial statements in such a manner as to imply that he or she is acting as an independent public accountant unless he or she has complied with generally accepted auditing standards or can justify departure from them.

(b) Generally accepted auditing standards include, but are not limited to, statements of auditing standards issued by the American Institute of Certified Public Accountants in effect when financial statements are examined. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.040. USE OF WORK OF OTHERS. No accountant may express an opinion on financial statements which is based in part upon work performed by another accountant unless

(1) such work was performed in accordance with generally accepted auditing standards; and

(2) employed generally accepted accounting principles; and

(3) was performed by an independent accountant as defined in sec. 10 of this chapter. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.050. RESPONSIBILITY AND DISCLOSURE. An accountant may not issue an opinion on representations in financial statements he has examined unless he

(1) discloses any relevant, material fact known to him which is not disclosed in the financial statements; and

(2) discloses any material misstatement contained in the financial statements; and

(3) has exercised that degree of skill which is customary in the profession; and

(4) discloses any deviation in the financial statements from customary accounting procedures. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.060. FORM OF OPINIONS AND REPORTS. (a) In every report and opinion, an accountant shall clearly state the scope of responsibilities undertaken, all material information used, all audited facts, and when unaudited financial statements are included, the fact that they were not audited.

(b) An accountant shall not permit his name to be associated with financial statements unless he has with regard to those statements

(1) expressed an unqualified opinion; or

(2) expressed a qualified opinion which clearly specifies the reason for the qualification; or

(3) expressed an adverse opinion; or

(4) disclaimed an opinion on the statements which clearly indicates his reasons therefor. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.070. FORECASTS. An accountant shall not permit his name to be used with a forecast or prediction of future events in a manner which may lead to a belief that he vouches or warrants that the events will in fact occur. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.080. ADVERTISING. Advertising and other public communication by an accountant must not

(1) misrepresent facts or fail to disclose relevant facts;

(2) create false or unjustified expectations of favorable results;

(3) imply abilities not supported by valid educational or professional attainments or licensing recognition;

(4) set forth fees without disclosing all variables and other relevant factors;

(5) imply the ability to influence improperly any court, tribunal or other public body or official; or

(6) contain any other representation or implication that is false, fraudulent or unfair, or that probably would deceive or mislead an ordinarily prudent person. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43; am 2/10/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.090. SOLICITATION. An accountant may not solicit clients or offer professional services to anyone who has not explicitly indicated a desire for such services. (Eff. 1/20/63, Reg. 7, am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.100. COMMISSIONS. (a) Commissions, brokerage, or other participation in the fees or profits of professional work shall not be paid by an accountant to any person not regularly engaged in the practice of accounting.

(b) Commissions, brokerage, or other participation in the fees or profits or work recommended or turned over to any person not regularly engaged in the practice of accounting

shall not be accepted by an accountant. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.110. SERVICES PERFORMED BY EMPLOYEES. An accountant shall not permit an employee to perform any services which the accountant himself or his firm is not permitted to perform. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)
AS 08.04.080

12 AAC 04.120. REFERRALS. An accountant who receives an engagement for services by referral from another accountant shall not discuss or accept an extension of his services beyond the specific engagement without first consulting with the referring accountant. (Eff. 1/20/63, Reg. 7; am 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)
AS 08.04.080

ARTICLE 2.
THE BOARD

Section
130. Annual meeting
140. Special meeting

12 AAC 04.130. ANNUAL MEETING. The board shall hold an annual meeting at such time and place as may be designated by the present. Notice of such annual meeting shall be given at least 30 days prior to the date designated unless such notice is waived by unanimous consent of all board members. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

12 AAC 04.140. SPECIAL MEETING. Special meetings may be held upon the call of the president or a majority of the members of the board, at the time and place as may be designated in the call. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

ARTICLE 3.
REQUIREMENTS FOR CERTIFICATE OR LICENSE

Section
150. (Repealed)
160. References
170. Resident defined
180. Experience
181. Experience requirement point system
185. Education defined for certified public accountant applicants
187. Education verified

12 AAC 04.150. CITIZENSHIP. Repealed 2/10/78.

12 AAC 04.160. REFERENCES. Every candidate must submit names of at least three persons, one of whom must be a resident of the state who can vouch for his moral character. The board may make such other inquiries as it deems appropriate to satisfy itself that the candidate is of good moral character. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

12 AAC 04.170. RESIDENT DEFINED. (a) The term "resident" as used in AS 08.04 shall include only a person who actually resides in the state. Any applicant who has not so resided for a period of at least one year may be required to furnish the board evidence that he is in fact a bona fide resident.

(b) An applicant may meet the resident requirement by having a place of business in this state or being an employee regularly employed in the state. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

12 AAC 04.180. EXPERIENCE. (a) In order to fulfill the experience requirements set out in AS 08.04.120 and AS 08.04.290, an applicant shall show to the satisfaction of the board that his or her audit experience includes all of the following:

(1) experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records;

(2) experience in preparation of audit working papers covering the examination of the accounts usually found in accounting records;

(3) experience in planning programs of audit work and selecting the procedures to be followed;

(4) experience in the preparation of written explanation and comments on the findings of

the examination and on the content of the accounting records; and

(5) experience in the analysis, review, or preparation of audited or unaudited financial statements and of explanations and notes on them.

(b) Each year of experience required by AS 08.04.290 must consist of 12 calendar months' cumulative work experience, but not necessarily consecutive. (Eff. 9/9/72, Reg. 43; am 8/3/79, Reg. 70)

Authority: AS 08.04.070(b)

12 AAC 04.181. EXPERIENCE REQUIREMENT POINT SYSTEM. (a) In evaluating the experience of an applicant for a certified public accounting certificate, one of the following is required:

(1) a minimum of four experience points for an applicant with a four-year accounting degree recognized by the board, including 850 hours performing the attest function under the direct supervision of a CPA of which

(A) 50 hours include experience in planning programs of audit work and procedures to be followed; and

(B) 150 hours include experience in the analysis, review, or preparation of audited or unaudited financial statements and of explanations and notes on them; or

(2) a minimum of six experience points for an applicant with a four-year nonaccounting degree recognized by the board, including 850 hours performing the attest function under the direct supervision of a CPA of which

(A) 50 hours include experience in planning programs of audit work and procedures to be followed; and

(B) 150 hours include experience in the analysis, review, or preparation of audited or unaudited financial statements and of explanations and notes on them; or

(3) a minimum of eight experience points for an applicant with 60 college semester hours recognized by the board including 850 hours performing the attest function under the direct supervision of a CPA of which

(A) 50 hours include experience in planning programs of audit work and procedures to be followed; and

(B) 150 hours include experience in the analysis, review, or preparation of audited or unaudited financial statements and of explanations and notes on them.

(b) Experience points are allocated as follows:

(1) one year experience working in public accounting under the direct supervision of a certified public accountant two experience points;

(2) one year experience working in private accounting or governmental accounting under the direct supervision of a certified public accountant, one and one-third experience points; or

(3) one year experience working as an accountant not under the direct supervision of a certified public accountant, one experience point.

(c) The board will, in its discretion, require an applicant for a certified public accountant certificate to provide work papers or other documentation to substantiate the statement of accounting experience.

(d) The requirements of this section apply to all applicants for certified public accountant certificates after January 1, 1980. (Eff. 8/3/79, Reg. 70)

Authority: AS 08.04.070(b)

12 AAC 04.185. EDUCATION DEFINED FOR CERTIFIED PUBLIC ACCOUNTANT APPLICANTS. (a) As used in AS 08.04.120(2), "two years of study at one or more colleges or universities recognized by the board" and "graduation from a junior or community college" means the accumulation, from a college or university whose credits would be accepted by the University of Alaska toward a degree granted by it, of

(1) 60 semester credit hours, 12 of which are in accounting subjects; or

(2) 90 quarter credit hours, 18 of which are in accounting subjects.

(b) AS used in AS 08.04.120(3)(B), an accounting major consists of not less than

(1) 24 semester credit hours or 36 quarter credit hours in subjects such as, but not limited to

(A) accounting principles;

(B) intermediate accounting;

(C) income tax;

(D) cost accounting;

(E) auditing;

(F) advanced accounting; or

(G) accounting theory;

(2) three semester credit hours or five quarter credit hours of business law;

(3) three semester credit hours of five quarter credit hours of economics; and

(4) three semester credit hours or five quarter credit hours of

(A) statistics;

(B) computer science; or

(C) algebra.

(c) The requirements of (a) of this section apply to a person making initial application for examination after January 18, 1978.

(d) The requirments of (b) of this section apply to a person applying for a certified public accountant certificate after January 18, 1978. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.120(2) and (3)

12 AAC 04.187. EDUCATION VERIFIED. (a) An applicant for a public accountant examination or license shall submit a transcript from his or her high school of graduation.

(b) An applicant for a certified public accountant examination or certificate shall submit a transcript or transcripts from colleges or universities necessary to verify that he or she meets the appropriate education requirements of sec. 185 of this chapter.

(c) A transcript submitted by an applicant for examination need not be certified. A transcript submitted by an applicant for a public accountant license or certified public accountant certificate must be certified unless considered impossible or impracticable by the board.

(d) If an applicant cannot submit a transcript as required by this section, the board may accept as evidence of education

(1) verification from the licensing authority of accountants in another jurisdiction;

(2) verification from a governmental agency, employer, or association which

(A) previously required documentary evidence of education; or

(B) directly verified education;

(3) oral testimony and sworn statements of the applicant and other parties; and

(4) other documentary evidence.

(e) An applicant applying under the substantially equivalent provisions of AS 08.04.120(2)(C) or AS 08.04.290(1) shall provide the board with such documentary evidence, sworn statements, and oral testimony as it requires. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.120(2) and (3)
AS 08.04.290(1)

ARTICLE 4.
EXAMINATION

Section
190. Time and place for filing applications
200. Examination
210. Time and place of examination
220. Notice of examination
230. Examination papers

12 AAC 04.190. TIME AND PLACE FOR FILING APPLICATIONS. (a) Each candidate must file a written application on forms furnished on request by the department.

(b) The application, together with the required fee, must be received in the department not less than 60 days before the date set for the examination except that the applications received after that date may be accepted upon a showing of good cause.

(c) Candidates who will not be in the state on the date set for the examination may request the department to arrange for the examination to be proctored in another state.

(d) If a candidate fails to take an examination without notifying the department in writing 30 days before the examination date, the candidate's examination fee will be forfeited except upon a showing of good cause. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64; am 8/3/79, Reg. 70)

Authority: AS 08.04.070(b)

12 AAC 04.200. EXAMINATION. The examination for certified public accountant and public accountant is the Uniform Certified Public Accountant Examination prepared by the American Institute of Certified Public Accountants. A grade of at least 75 in each subject of the examination , considered passing. In the absence of exceptional circumstances, grades are those reported by the Advisory Grading Service of the American Institute of Certified Public Accountants. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.130
AS 08.04.300(a)

12 AAC 04.210. TIME AND PLACE OF EXAMINATION. Examinations will be offered semiannually on dates set by the American Institute of Certified Public Accountants in, but not limited to, Juneau, Anchorage and Fairbanks. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.140
AS 08.04.300(b)

12 AAC 04.220. NOTICE OF EXAMINATION. Candidates whose applications for examination have been accepted will be notified of the time and place of examination at least two weeks before the examination. Notice of the examination will also be published in major newspapers at least 90 days before the examination. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64)

Authority: AS 08.04.070(b)

12 AAC 04.230. EXAMINATION PAPERS. All examination papers remain the property of the board and none will be returned to the candidate. All examination papers shall be preserved for a period of at least six months after notification of grading at which time any candidate shall have the right to inspect his papers only in the presence of a board member or his designee. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

ARTICLE 5.
CERTIFICATES AND LICENSES

Section
240. (Repealed)
250. Registration
260. Roster
270. Reciprocity for CPA's

12 AAC 04.240. WHEN ALL REQUIREMENTS ARE MET. Repealed 2/10/78.

12 AAC 04.250. REGISTRATION. Registration prescribed by AS 08.04.350, 390, 400, 410 and 420 shall be on forms provided by the department and shall be due on December 31 of each biennium. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

12 AAC 04.260. ROSTER. By March 15 following each biennial licensing period, the department shall prepare a roster of all registered individuals and partnerships. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

12 AAC 04.270. RECIPROCITY FOR CPA'S. Certificates will be granted to the holders of certified public accountant certificates granted by other states or of equivalent certificates granted by the recognized authority of foreign countries provided

(1) the applicant meets all of the personal and education requirements of AS 08.04;

(2) the applicant holds a currently valid and unrevoked certificate as a certified public accountant, or its equivalent, issued under the laws of any state or foreign country; and

(3) that the standards under which the applicant received the certificate or equivalent, on which he bases his application for a certificate are, in the opinion of the board, equivalent to those established by this state for the issuance of a certificate as a certified public accountant. (Eff. 9/9/72, Reg. 43)

Authority: AS 08.04.070(b)

ARTICLE 6.
GENERAL PROVISIONS

Section
280. Complaints
290. Definitions

12 AAC 04.280. COMPLAINTS. A complaint against a licensed or unlicensed person or firm must be made to the department in compliance with the established complaint procedures of the department. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64)

Authority: AS 08.04.070(b)

12 AAC 04.290. DEFINITIONS. In this chapter

(1) "accountant" means any person licensed in the state as either a certified public accountant or public accountant under AS 08.04;

(2) "board" means the Board of Public Accountancy;

(3) "department" means the Department of Commerce and Economic Development;

(4) "attest function" means the ordinary examination of financial statements by a CPA or PA resulting in the expression of an opinion on the fairness with which the financial statement presents the financial position, results of operations, and changes in financial position in conformity with generally accepted accounting principles; the CPA's or PA's report is the medium through which he or she expresses his or her opinion or, if circumstances require, disclaim an opinion;

(5) "financial statement" includes, but is not limited to, a statement of position, a statement of operation, a statement of change in equity and notes, a balance sheet, an income statement, a statement of change in financial position, a statement of assets and liabilities, a statement of change in excess of assets over liabilities, and any other statement which purports to represent a statement of position or operation;

(6) "opinion" means a written conclusion, based on the use of expert knowledge in accounting and auditing, in matters for which advice is sought or required;

(7) "practice of public accounting" means the holding of a CPA certificate or a PA license and the performance for the general public of any auditing services, accounting services, tax services, management services or special accounting services for compensation; this definitions does not apply to acts of public officials or public employees in the performance of their duties, or to any officer, employee, partner, or principal except for those employed as an employee, partner, principal, or practitioner of a certified public accountant firm or public accountant firm;

(8) "report" means a written presentation containing a record of facts derived from review, investigation and examination;

(9) "statement" means a financial statement. (Eff. 9/9/72, Reg. 43; am 2/10/78, Reg. 64; am 8/3/79, Reg. 70)

Authority: AS 08.04.070(b)

ARTICLE 7.
CONTINUING EDUCATION

Section
300. Hours of continuing education required
310. Computation of nonacademic continuing education hours
320. Computation of academic continuing education hours
330. Challenged courses
340. Approved subjects
350. Nonacademic program criteria

360. Approved nonacademic continuing education programs
370. Individual study
380. Instructor or discussion leader
390. Publications
400. Report of continuing education
410. "Reasonable cause or excusable neglect" defined
420. Applicability of continuing education requirement
430. Reentry to practice

12 AAC 04.300. HOURS OF CONTINUING EDUCATION REQUIRED. Except as provided for in sec. 430 of this chapter, an applicant for renewal of a license to practice as a certified public accountant must have completed 60 hours of approved continuing education during the two years immediately preceding the application. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(a)

12 AAC 04.310. COMPUTATION OF NONACADEMIC CONTINUING EDUCATION HOURS. (a) For the purpose of secs. 300 -430 of this chapter, 50 minutes of instruction constitutes one hour.

(b) Credit is given only for full hours of instruction and not for a fraction of an hour.

(c) Credit is given only for class hours and not for hours devoted to class preparation. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(a)

12 AAC 04.320. COMPUTATION OF ACADEMIC CONTINUING EDUCATION HOURS. (a) One quarter hour academic credit from college or university constitutes 10 hours of continuing education.

(b) One semester hour academic credit from a college or university constitutes 15 hours of continuing education. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(a)

12 AAC 04.330. CHALLENGED COURSES. Academic credit earned for a challenged course is not acceptable for continuing education. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(a)

12 AAC 04.340. APPROVED SUBJECTS. In order to be approved by the board, a subject must contribute directly to the professional competence of a person licensed to practice as a certified public accountant. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(a)

12 AAC 04.350. NONACADEMIC PROGRAM CRITERIA. (a) Nonacademic continuing education programs requiring class attendance are approved by the board if

(1) a course outline is prepared in advance and preserved;

(2) the program is at least one hour in length;

(3) the program is conducted by a qualified instructor; and

(4) a record of registration or attendance is maintained.

(b) A qualified instructor or discussion leader is anyone whose background, training, education, or experience makes it appropriate for him to lead a discussion on the subject matter of the particular program. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(a)

12 AAC 04.360. APPROVED NONACADEMIC CONTINUING EDUCATION PROGRAMS. The following programs are approved by the board if they meet the requirements of secs. 340 and 350 of this chapter:

(1) professional development programs of the American Institute of Certified Public Accountants and its state societies;

(2) technical sessions at meetings of the American Institute of Certified Public Accountants and its state societies;

(3) formal, organized, in-firm education programs;

(4) college or university short courses not carrying academic credit;

(5) other accounting, industrial, or professional programs. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(a)

12 AAC 04.370. INDIVIDUAL STUDY. The number of hours of continuing education credit awarded for completion of a formal correspondence or other individual study program which requires registration and provides evidence of satisfactory completion will be determined by the board on an individual basis. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(a)

12 AAC 04.380. INSTRUCTOR OR DISCUSSION LEADER. (a) One hour of continuing education credit is awarded for each hour completed in preparation for instruction or discussion as an instructor or discussion leader of educational programs meeting the requirements of secs. 300–430 of this chapter. The number of hours of credit so awarded may

not exceed twice the number of hours awarded under (b) of this section.

(b) One hour of continuing education credit is awarded for each hour completed as an instructor or discussion leader of educational programs meeting the requirements of secs. 300–430 of this chapter. Credit is awarded only for the initial course of instruction of the subject matter unless there have been substantial new developments in the subject since the prior presentation.

(c) Credit awarded under (a) and (b) of this section may not exceed 30 hours in any two-year period. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(a)

12 AAC 04.390. PUBLICATIONS. Continuing education credit may be awarded for publication of articles or books. The amount of credit so awarded will be determined by the board on an individual basis. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(a)

12 AAC 04.400. REPORT OF CONTINUING EDUCATION. An applicant for renewal of a license to practice public accounting shall submit, on a form provided by the department, a sworn statement of the continuing education in which he or she has participated. The statement must indicate

(1) the sponsoring organization;

(2) the location of the course or correspondent;

(3) the title or description of the course or both;

(4) the principal instructor;

(5) the dates of attendance or period of correspondence; and

(6) the hours of continuing education credit claimed. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(b)

12 AAC 04.410. "REASONABLE CAUSE OR EXCUSABLE NEGLECT" DEFINED. For the purpose of AS 08.04.425(c), "reasonable cause or excusable neglect" includes, but is not limited to

(1) chronic illness;

(2) retirement;

(3) military service; and

(4) hardships as individually determined by the board. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(c)

12 AAC 04.420. APPLICABILITY OF CONTINUING EDUCATION REQUIREMENT. The continuing education requirement of AS 08.04.425(a) does not apply to a person registered under the provisions of AS 08.04.410. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(d)(2)(A)

12 AAC 04.430. REENTRY TO PRACTICE. A person licensed under AS 08.04.410 applying for reentry as a holder of an active biennial permit to practice as a Certified Public Accountant under AS 08.04.390 may be granted an active permit on the condition that he or she complete ten hours of continuing education for each full calendar quarter between the date of reentry and the next biennial renewal date up to a maximum of 60 hours. Forty of the hours required under this section and sec. 300 of this chapter for the subsequent biennial period must be completed within six months following the date of reentry. (Eff. 1/18/78, Reg. 64)

Authority: AS 08.04.070(b)
AS 08.04.425(c)

CHAPTER 08. BOARD OF BARBER EXAMINERS

Article

1. Examinations
2. Operation of Barber Shops, Barber Schools and Colleges
3. Standards for Barber Colleges and Schools

ARTICLE 1. EXAMINATIONS

Section

10. Filing of application
20. Location and date
30. Form of application
40. Applicants failing to pass
50. Disqualification during examination
60. Form of examination, required equipment, grading

12 AAC 08.010. FILING OF APPLICATION. The application for examination must be on file 10 days before the examination date. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

12 AAC 08.020. LOCATION AND DATE. The location and date of the examination shall be published by the Board of Examiners at least 30 days in advance of the date of examination. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

12 AAC 08.030. FORM OF APPLICATION. The application shall be on a form provided by the board and shall be mailed to the secretary of the board accompanied by a $25 examination fee; and two photographs signed on the front. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030
AS 08.12.070
AS 08.12.080

12 AAC 08.040. APPLICANTS FAILING TO PASS. Applicants failing to pass an examination or failing to appear for examination may take another examination by filing the required $25. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030

12 AAC 08.050. DISQUALIFICATION DURING EXAMINATION. Any attempt by a school owner, manager, instructor, or any person to communicate with or help an applicant in any way while taking the examination, or any attempt by an applicant to secure information from another applicant will disqualify the applicant from completing the examination. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030
AS 08.12.220

12 AAC 08.060. FORM OF EXAMINATION, REQUIRED EQUIPMENT, GRADING. (a) Written examination. The applicant must obtain a grade of at least 75 percent on sanitation, Barber Science, sterilization, and common contagious and infectious diseases of the face, skin, and scalp.

(b) Practical examination. The applicant must obtain a grade of at least 75 percent on each of the following subjects: haircut, shave, massage, shampoo, condition of tools.

(c) Authorized textbooks. The following are the authorized textbooks to be used by applicants: *Standard Textbook of Barbering*, published by Associated Master Barbers of America, Chicago, Illinois, and *Textbook of Practical and Scientific Barbering*, published by Journeymen Barbers, Educational Department, Indianapolis, Indiana.

(d) Equipment. Each applicant must furnish his own smock, tools, and model.

(e) Standards for grading examinations. In grading each applicant, the examiners will consider the following: care and neatness of supplies and equipment; appearance and posture of applicant; time consumed in completion of each operation. (In effect before 7/28/59; am 2/64, Reg. 14)

Authority: AS 08.12.030
AS 08.12.070
AS 08.12.220

02-001B (Rev. 10/76)

STATE
of ALASKA

MEMORANDUM

APPENDIX "A"

TO: Don Hostak
Director
Division of Occupational Licensing
Department of Commerce and Economic Development

DATE: October 27, 1978

FILE NO: J-66-183-79

TELEPHONE NO.

FROM: Bruce M. Botelho BMB
Assistant Attorney General

SUBJECT: Education Regulations for Accountants

OCT 31 '78

This memorandum is in response to your request for a determination as to whether 12 AAC 04.400, effective on January 18, 1978, will apply to those licenses expiring on December 31, 1979.

12 AAC 04.300 requires that an applicant for renewal of a license to practice as a certified public accountant complete 60 hours of approved continuing education during the two years immediately preceeding the application. 12 AAC 04.400, in turn, requires that an applicant for renewal of a license to practice public accounting submit, on a form provided by the department, a sworn statement of the continuing education in which he or she has participated. The issue which you pose is, then, whether 12 AAC 04.400 may be applied to the current registration period which expires on December 31, 1979 in view of the fact that applicants for renewal will not have had an entire two year period within which to satisfy the requirements of 12 AAC 04.300.

It is our opinion that the continuing education requirements should be imposed on licensees whose licenses expire on December 31, 1979. While the effective date of 12 AAC 04.400 and the date upon which licenses will expire (December 31, 1979), is 18 days short of two years, we regard this time period to substantially satisfy the requirements of 12 AAC 04.400. However, in order to avoid any inference of unfairness in application, we propose that the board pro-rate the credit hour requirement so that an applicant for renewal of licensure who has completed 58.5 hours of continuing education on or before December 31, 1979 may be deemed to have satisfied the requirements of 12 AAC 04.300.

BMB:cb

STATE OF ALASKA
Board of Registration for Architects,
Engineers and Land Surveyors
October, 1979

Findings

Present statutes (enacted in 1972) regulating Architects, Engineers and Land Surveyors supplanted a 1949 Act which provided for registration and licensing of professional architects and engineers.

The current Board of Registration for Architects, Engineers and Land Surveyors operates under AS 08.48 to license qualified applicants and regulate individuals within the professions. Support services are provided by the Department of Commerce and Economic Development, Division of Occupational Licensing.

The stated purpose of the Act is to safeguard life, health and property and to promote the public welfare. In its operations and application of the Act the Board has demonstrated compliance with, and furtherance of, this purpose. We believe that the Board and State regulation of these professions is in the public interest and should continue.

I. General Information

A. Regulated Parties

1. Architects
2. Land Surveyors
3. Engineers (Chemical, Civil, Electrical, Mechanical, Mining, Petroleum)
4. Corporate Authorizations

B. Definitions

"(7) 'practice of architecture' means professional services or creative work in the functional and aesthetic design of structures, the teaching of advanced architectural courses in institutions of higher learning, consultation, investigation, evaluation, planning, design and professional observation of construction of public or private structures, buildings, works or projects, and architectural review of plans and specifications by regulatory agencies; it may by regulation of the board include mechanical, electrical or structural design of relatively minor importance to the project as a whole;

(8) 'practice of engineering' means professional or creative work, the adequate performance of which requires the application of specialized knowledge of mathematics and sciences, dealing with the functional and economic design of buildings, structures, machines, equipment, utilities systems, materials, processes, works or projects, public or private; the teaching of advanced engineering courses in institutions of higher learning, the direction of or the performance of engineering surveys, consultation, investigation, evaluation, planning, design, and professional observation of construction of public and private structures, buildings, works or

projects and engineering review of plans and specifications by regulatory agencies; it may by regulation of the board include architectural design of relatively minor importance to the project as a whole, but it does not include comprehensive architectural services;

(9) 'practice of land surveying' means any service or work the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related sciences, and the relevant requirements of law for adequate evidence of the act of measuring and locating land, geodetic and cadastral surveys for the location and monumentation of property boundaries, for the platting and planning of land and subdivisions, and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys;" (AS 08.48.341)

C. Purpose of Regulation

"The object of this Act is to safeguard life, health and property, and to promote the public welfare." (Section 2, ch. 179, SLA 1972)

D. Nature and Composition of Board

1. Board members and terms:

Six-year term (no restrictions regarding consecutive terms or number of terms).

Wallace DeBoff (Chairman)	ends July 1, 1982
Wayne Jensen	ends July 1, 1984
Jim Bridges	ends July 1, 1980
Donald Cook	ends July 1, 1981
James Lake	ends July 1, 1981
Loren Lounsbury	ends July 1, 1982
Paul Stutzman	ends July 1, 1984
Gordon Unwin	ends July 1, 1980
Wallace Wellenstein	ends July , 1983

The combined licenses of these members provides representation by three architects, three civil engineers, three land surveyors, one mechanical engineer, one electrical engineer, and one mining engineer.

2. Representation:

Profession = 9
Public = 0

3. Qualifications:

The Board consists of two civil engineers, one land surveyor, one mining engineer, two engineers from other branches of the profession, and three architects. Members must have been a resident in the State for three consecutive years immediately preceding appointment, must be registered, and must have a minimum of five years' professional practice in their fields.

E. Licensing Data

Current licenses (effective Sept[illegible]r 30, 1979)

Architects	in-State	160
	out-of-State	204
Land Surveyors	in-State	423
	out-of-State	220
Engineers	in-State	841
	out-of-State	1,129
Corporate Authorizations	in-State	59
	out-of-State	59
		3,095

F. Fees

1.	examination	$ 50.00
2.	reexamination	50.00
3.	application by comity	50.00
4.	corporate authorization	100.00
5.	registration fee	15.00
6.	corporate authorization registration fee	50.00
7.	registration renewal (biennially)	30.00
8.	corporate authorization renewal (biennially)	100.00
9.	amendment to corporate authorization	20.00
10.	delinquent renewal fee	30.00
11.	postponement of examination	20.00
12.	duplicate certificate	10.00

G. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	$101,502.00	$31,086.00	$112,970.75	$27,608.35
- refunds	125.00	30.00	2,100.00	219.92
Total	$101,377.00	$31,056.00	$110,870.75	$27,388.43
Expenditures				
Transportation	4,879.28	5,180.64	6,740.23	5,909.11
Per Diem	5,719.75	7,062.50	7,021.73	4,874.64
Phone	166.49	304.42	452.26	930.58
Printing, Adver. & Postage	3,020.76	2,268.31	1,823.13	866.35
Fees & Services	4,054.98	4,307.27	5,099.23	5,956.24
Rents, Leases & Other	35.50	-	113.90	5,290.98
Total	$ 17,876.76	$19,323.14	$ 21,250.48	$23,827.90
Surplus	$ 83,500.24	$11,732.86	$ 89,620.27	$ 3,560.53
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

H. Complaints

1.	Number of cases received in FY '78 and FY '79	39
2.	Number of cases closed in FY '78 and FY '79	4
3.	Number of cases to litigation in FY '79	0
4.	Number of cases pending closure by board	63
5.	Total cases open effective September 30, 1979 (includes cases prior to FY '78)	121

Of the 39 cases received in FY '78 and '79, 8 concerned architects, 23 concerned engineers, and 8 concerned land surveyors.

I. Useful Abbreviations

1. NCARB = National Council of Architectural Registration Boards
2. NCEE = National Council of Engineering Examiners
3. NAAB = National Architectural Accrediting Board
4. ECPD = Engineer's Council for Professional Development
5. PE = Professional Engineer
6. PLS = Professional Land Surveyor
7. EIT = Engineer in Training
8. LSIT = Land Surveyor in Training
9. AKLS = Alaska Land Surveying (examination)
10. ETS = Educational Testing Service

II. Analysis

A. To what extent has the Board of Registration for Architects, Engineers and Land Surveyors operated in the public interest?

Statutory duties of the Board include: holding at least four regular meetings each year, submission of an annual (fiscal year) report to the Governor, holding written examinations at least twice each year, adoption of regulations, disciplinary actions when warranted, authority to request injunctions, and passing on applicant qualifications.

During calendar year 1978, the Board held five meetings; in 1979 six will be held with one special meeting having been financed by a particular company which requested the meeting for the purpose of reviewing its employees' qualifications. An annual report was submitted by the Board for FY'79 but this has not been done in the past few years. Examinations for engineers and land surveyors are given twice each year; two different examinations for architects are given once each year. With one exception (the Alaska Land Surveyor exam) all examinations are prepared and graded nationally.

In comparision to some other boards, this one has almost unlimited latitude in promulgating and adopting regulations, the only limitations being legality and reasonableness. Regulations currently in effect outline the application and examination procedures, eligibility requirements, fees charged, rules of conduct, and definitions of terms.

Because the professions under discussion are highly technical in many aspects, the following breakdowns were prepared to condense an otherwise lengthy and involved narrative. Consideration of each profession separately may serve to clarify individual classifications as well as their interrelationships.

ARCHITECTS

A. Two Categories

1. Qualifying Category

A. those with no degree must take <u>qualifying exam</u>

1. given once each year

2. consists of four sections

a. A through D

3. passing score is 75

4. may retake only failed sections

5. graded by ETS

2. Professional Category*

A. those holding degrees or passed qualifying take <u>professional exam</u>

1. given once each year

2. consists of two parts

A. part "A" is design

*If graduated from NAAB approved school, may take part "A" immediately; three years' experience needed for part "B"

1. graded "pass-fail" by region members of NCARB

b. part "B" has four subparts

1. must pass or retake all

2. passing score is 75

3. graded by ETS

3. All applicants must submit treatise on sub-arctic conditions

B. Applicants for Comity

1. must have taken NCARB examination

2. must submit treatise on sub-arctic conditions

a. must also submit treatise on seismic forces if:

1. registered in California before May, 1933

2. registered by exam in Washington before 1963

3. registered in any other state before 1964

ENGINEERS

A. Two categories

1. Fundamentals of Engineering Catenory (EIT - Engineer in Training)

a. one examination

1. waived for 20 years professional experience

2. must pass entire examination

a. given twice each year

b. graded by ETS

b. if waived, or passed, may take Professional Exam

2. Professional Engineer Category

a. two years professional experience in responsible charge under a PE

b. must have passed or received waiver for EIT exam to be eligible

1. six branches of engineering and examination

a. chemical engineering

b. civil engineering

c. electrical engineering

d. mechanical engineering

e. mining engineering

f. petroleum engineering

2. one examination

a. must pass entire examination

1. given twice each year

2. graded by NCEE

3. All applicants must submit treatise on sub-arctic conditions

B. Applicants for Comity

1. must have taken 16 hour NCEE examination

2. must have four years professional experience

3. must submit treatise on sub-arctic conditions

LAND SURVEYORS

A. Two categories

1. Fundamentals of Land Surveying Category (LSIT) - Land Surveyor in Training)

a. must have four years professional experience and/or education

1. one examination

a. no exemptions or waivers

b. must pass entire examination

1. given twice each year

2. graded by NCEE

2. Professional Land Surveyor Category

a. must have passed or be approved for LSIT

b appropriate professional experience and/or education

c. three years professional experience in responsible charge under a registered Land Surveyor

1. professional examination portion

a. must pass entire examination

1. given twice each year

2. graded by NCEE

2. Alaska examination portion

a. must pass entire examination

1. given twice each year

2. prepared and graded by University of Alaska professor

3. may take LSIT, PLS and Alaska portion at the same exam

B. Applicants for Comity

1. must have taken 12 hour NCEE examination, and

2. must take 4 hour Alaska Land Surveyor examination

Applications submitted to the Board must be timely and complete and are evaluated by the Board during a regular meeting. There is no indication that the Board has acted in an arbitrary or capricious manner in approving or denying applications. On the contrary, applicants are encouraged to appear before the Board to address any questions or present additional information.

In general, the Board has operated in the public interest assuring qualified practitioners through its qualification and examination procedures and by its efforts in maintaining integrity of the profession through regulation.

B. To what extent has the operation of the Board of Registration for Architects, Engineers and Land Surveyors been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Board minutes reflect its ongoing concern regarding inadequacy of operating funds and its dissatisfaction with complaint and investigative procedures. The Board wants to be as active as possible in enforcement and disciplinary actions but is frustrated by what it feels is slow action on the part of the Departments of Law and Commerce and Economic Development. The possibility of obtaining an Executive Secretary has been discussed by the Board as one way of improving its efficiency in this and other activities. It should, however, be noted that a licensing examiner from the Division of Occupational Licensing is assigned only to this Board rather than to three to five boards which is usually the case. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY'78 two investigator pos tions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

Consideration should be given to restructuring of the Board to provide more equitable representation of the professions regulated and to provide for public representation.

C. To what extent has the Board of Registration for Architects, Engineers and Land Surveyors recommended statutory changes which are generally of benefit to the public interest?

The Board is opposed to SB 257 (now in the Senate Commerce Committee) which would add Landscape Architects as another regulated profession under the Board, as being unnecessary for the health, welfare and safety of the public.

Board minutes for 1978 and 1979 cite no recommended statutory changes; minutes from the September, 1979 meeting state that the Board is concerned about ability to budget its own dollars, an executive secretary and enforcement powers (as statutory concerns.) The board would also like to have some legislative clarification of AS 08.48.261 as it pertains to waiver requirements for State employees.

D. To what extent has the Board of Registration for Architects, Engineers and Land Surveyors encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

Participation concerning Board affairs has come from the professions and users of professional services. Very little "public" interest has been shown in the form of attendance at meetings or hearings although schedules are published in newspapers in the State. It may be assumed that members of the public are somewhat reluctant to involve themselves in areas of a technical nature which may be seen as too complex for consideration by laypersons. A technical and professional barrier therefore exists, due to the natures of the professions involved, which probably tends to deter public participation and knowledgeability.

The Board has not reacted favorably to the proposals for public membership; however, we believe public interests would be furthered by the presence of public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public

would be represented in decisionmaking."[1] The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Registration for Architects, Engineers and Land Surveyors processed and resolved?

Inquiries reagarding Board activities may be answered by members of the Board, the Board as a whole, or by personnel from the Department of Commerce and Economic Development. Review of files indicates that responses made are timely, appropriate and informative.

F. To what extent does the Board of Registration for Architects, Engineers and Land Surveyors present qualified applicants to serve the public?

The Board has established definitive qualification criteria to which it adheres on a consistent basis. Applicants are encouraged to appear before the Board to discuss their qualifications and must present further information in cases of irregularities or questions. Only when the Board is satisfied that the applicant is truly qualified is (s)he approved examination or licensure. This process, in conjunction with viable enforcement and regulation elements, helps to insure initial and on-going competence in professional services.

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[1] Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Registration for Architects, Engineers and Land Surveyors in its own activities, and in its area of activity or interest?

Board staff consists of the support services of a licensing examiner (responsible only to this Board) employed by the Division of Occupational Licensing. This position and others, such as Division Director, Regulations Specialist, etc., are hired through the State personnel system and are subject to affirmative action.

Examination and licensing privileges in these professions are based on specific criteria to which affirmative action requirements are not applicable.

H. To what extent are statutory, budgetary or other changes necessary to enable the Board of Registration for Architects, Engineers and Land Surveyors to better serve the interests of the public?

Public members should be included on the Board and numbers of consecutive terms should be limited for all members. The Board should submit its fiscal report annually as required by statute; goals and objectives and a performance report were submitted by the Board this year.

AS 08.48.081 requires that a complete roster showing names and last known addresses of all licentiates be published at least once each year and mailed to each person registered, and that it may be distributed or sold to the public. The cost of printing 4,000 rosters in April, 1979 was $2,536.00 (free of charge to registrants); postage fees for 3,000 registrants at $.40 each would be approximately $1,200.00; estimated time involved for labeling and mailing is ten days for one person. We believe that this information could be made available to those desiring

it without statutory requirements and taking into consideration less costly and time consuming methods.

Chapter 48. Architects, Engineers and Land Surveyors.

Article
1. Board of Registration (§§ 08.48.011-08.48.141)
2. Registration and Practice (§§ 08.48.171-08.48.261)
3. Unlawful Acts (§§ 08.48.281-08.48.291)
4. General Provisions (§§ 08.48.311-08.48.351)

Article 1. Board of Registration.

Section
11. Board created
21. Appointments and terms
31. Qualifications
41. Removal of members
51. Organization and meetings
61. Finances
71. Records and reports
81. Roster
91. Written examinations and examination fees
101. Regulations; bylaws; code of ethics
111. Power to revoke, suspend, or reissue certificate
121. Disciplinary action and procedure
131. Injunction
141. Legal counsel

Sec. 08.48.011. Board created. (a) There is created the State Board of Registration for Architects, Engineers and Land Surveyors. The board shall administer the provisions of this chapter and comply with the Administrative Procedure Act (AS 44.62).

(b) The board consists of nine members appointed by the governor having the qualifications as set out in § 31 of this chapter. The board consists of two civil engineers, one land surveyor, one mining engineer, two engineers from other branches of the profession of engineering, and three architects. (§ 3 ch 179 SLA 1972; am § 1 ch 44 SLA 1975)

Sec. 08.48.021. Appointments and terms. (a) The governor shall give each member of the board a certificate of his appointment, and the member shall file with the lieutenant governor his written oath or affirmation for faithful discharge of his official duty.

(b) The term of office for board members is six years. The first board shall be appointed with two members having two-years terms, two members having three-year terms, two members having four-year terms, one member having a five-year term and two members having six-year terms. A member of the board may be appointed to succeed himself. Each member shall hold office until the expiration of the term for which he is

appointed or until his successor has been appointed. If a vacancy occurs on the board due to resignation, death or other cause, the governor shall appoint a qualified person to serve the unexpired term. (§ 3 ch 179 SLA 1972)

Sec. 08.48.031. Qualifications. Each member of the board must have been a resident in the state for three consecutive years immediately preceding his appointment and must be registered and have a minimum of five years of professional practice in his respective field. (§ 3 ch 179 SLA 1972; am § 2 ch 44 SLA 1975)

Sec. 08.48.041. Removal of members. The governor may remove a member of the board for misconduct, incompetency or neglect of duty. (§ 3 ch 179 SLA 1972)

Sec. 08.48.051. Organization and meetings. The board shall hold at least four regular meetings each year. Special meetings may be held as the bylaws of the board provide. The board shall elect or appoint annually from its members the following officers: president, vice-president and secretary. A quorum of the board consists of not less than five members. (§ 3 ch 179 SLA 1972)

Sec. 08.48.061. Finances. (a) All money derived under the provisions of this chapter shall be deposited in the general fund.

(b) Each member of the board is entitled to receive per diem and travel expenses as authorized by law for other boards and commissions.

(c) The board may make expenditures from appropriated funds for any purpose which is reasonably necessary for the proper performance of its duties under this chapter. This may include the expenses of the board delegates to meetings of councils of architect examiners, engineering examiners, or land surveyor examiners, or any of their subdivisions. The total amount of warrants issued in payment of the expenses incurred under this chapter may not exceed the amount of money appropriated by the legislature. (§ 3 ch 179 SLA 1972)

Sec. 08.48.071. Records and reports. (a) The following record of the board's proceedings and of all applications for registration or authorization shall be kept by the Department of Commerce and Economic Development under AS 08.01.050:

(1) the name, age and last known address of each applicant;

(2) the date of application;

(3) the place of business of the applicant;

(4) the education, experience and other qualifications;

(5) the type of examination required;

(6) whether or not the applicant was rejected;

(7) whether or not a certificate of registration or authorization was granted or endorsed;

(8) the date of the action of the board;

(9) other action taken by the board;

(10) other information which may be considered necessary by the board.

(b) The record of the board is prima facie evidence of the proceedings of the board, and a transcript, certified by the secretary, is admissible as evidence with the same effect as if the original were produced.

(c) Annually, at the end of the fiscal year, the board shall submit to the governor a report of its transactions of the preceding year, and shall transmit to him a complete statement of the receipts and expenditures of the board, attested by affidavits of its president and its secretary. Board records and papers of the following class are of a confidential nature and are not public records: examination material for examinations not yet given, file records of examination problems, solutions, letters of inquiry and reference concerning applicants, board inquiry forms concerning applicants, investigation files if an investigation is still pending, and all other matters of a like confidential nature. (§ 3 ch 179 SLA 1972; am § 46 ch 218 SLA 1976)

Sec. 08.48.081. Roster. A complete roster showing the names and last known addresses of all architects, engineers and land surveyors, based on the register prepared under AS 08.01.050(12), shall be published by the secretary of the board once each year, or at lesser intervals as established by board regulations, and shall include the registrants' authorization numbers if applicable. Copies of this roster shall be mailed to each person registered, placed on file with the lieutenant governor and borough and city officials, and, upon request, may be distributed or sold to the public. (§ 3 ch 179 SLA 1972)

Sec. 08.48.091. Written examinations and examination fees. Written examinations shall be held at least twice each year at places determined by the board. A candidate failing an examination may apply for reexamination. The examination fee for applicants shall be established by the board in an amount not to exceed $50 and shall accompany the application. (§ 3 ch 179 SLA 1972)

Sec. 08.48.101. Regulations; bylaws; code of ethics. (a) The board may adopt regulations to carry out the purpose of this chapter, including, but not limited to

(1) describing the contents of an examination;

(2) establishing the conduct of an examination;

(3) establishing a minimum score for passing an examination;

(4) establishing bylaws governing its meetings and activities;

(5) publishing a code of ethics or professional conduct for those persons regulated by this chapter, including corporations under § 241 of this chapter.

(b) The regulations, bylaws and code of ethics or professional conduct promulgated by the board shall be published in the annual report to the governor. (§ 3 ch 179 SLA 1972)

Sec. 08.48.111. Power to revoke, suspend, or reissue certificate. The board may suspend, refuse to renew, or revoke the certificate of or reprimand a registrant or corporation who is found guilty of (1) fraud or deceit in obtaining a certificate; (2) gross negligence, incompetence, or misconduct in the practice of architecture, engineering or land surveying; (3) violation of this chapter, a regulation adopted under it, or the code of ethics or professional conduct as promulgated by the board; or (4) a crime involving moral turpitude relevant to one of those professions. The code of ethics or professional conduct shall be made known in writing to every registrant and applicant for registration under this chapter, and shall be published with the roster provided for in § 81 of this chapter. This publication constitutes due notice to all registrants. The board may revise and amend its code and, upon doing so, shall immediately notify each registrant in writing of the revisions or amendments. The board may, upon petition of the registrant or corporation, reissue a certificate if a majority of the members of the board vote in favor of the reissuance. (§ 3 ch 179 SLA 1972)

Sec. 08.48.121. Disciplinary action and procedure. Any person may file with the secretary of the board a charge of fraud, deceit, gross negligence, incompetence, misconduct or violation of this chapter, a regulation adopted under it, or the code of ethics of the board. Such a charge, constituting an accusation under the Administrative Procedure Act (AS 44.62), shall be in writing and sworn to by the person making it. A charge may be dismissed by the board as unfounded or trivial. (§ 3 ch 179 SLA 1972)

Sec. 08.48.131. Injunction. The board may bring an action in the superior court to enforce compliance with this chapter or an order of

the board, or to enjoin a person from doing an act that violates this chapter. (§ 3 ch 179 SLA 1972)

Sec. 08.48.141. Legal counsel. The attorney general of the state shall act as legal advisor to the board and render legal assistance upon request of its president. (§ 3 ch 179 SLA 1972)

Article 2. Registration and Practice.

Section
171. General requirements and qualifications for registration
181. Registration upon examination
191. Registration by comity or endorsement
201. Application and fees for registration
211. Certificate of registration
221. Seals
231. Expirations and renewals
241. Corporations
251. Partnerships
261. State employees

Sec. 08.48.171. General requirements and qualifications for registration. An applicant for registration as an architect, engineer or land surveyor must be of good character and reputation and must submit evidence satisfactory to the board of his education, training and experience. (§ 3 ch 179 SLA 1972)

Sec. 08.48.181. Registration upon examination. Except as provided in § 191 of this chapter, for registration as a professional architect, professional engineer or professional land surveyor, a person shall be examined in this state in accordance with the regulations of procedure and standards adopted by the board in accordance with the Administrative Procedure Act (AS 44.62), which procedure and standards shall at least meet the requirements adopted by recognized national examining councils for these professions. (§ 3 ch 179 SLA 1972)

Sec. 08.48.191. Registration by comity or endorsement. (a) A person holding a certificate of registration authorizing him to practice architecture in a state, territory or possession of the United States, the District of Columbia, or a foreign country, or holding a certificate of qualification issued by the national Council of Architectural Registration Board, which, in the opinion of the board, meets the requirements of this chapter, based on verified evidence, may, upon application, be registered in accordance with the regulations of the board.

(b) A person holding a certificate of registration authorizing him to practice engineering in a state, territory or possession of the United States, the District of Columbia, or a foreign country, which, in the opinion of the board meets the requirements of this chapter, based on verified evidence, may, upon application, be registered in accordance

with regulations of the board. A person holding a certificate of qualification issued by the National Council of Engineering Examiners Committee on National Engineering Certification may, upon application, be registered in accordance with the regulations of the board.

(c) A person holding a certificate of registration authorizing him to practice land surveying in a state, territory or possession of the United States, the District of Columbia, or a foreign country, may, upon application, be registered in accordance with the regulations of the board if his certificate was issued under requirements comparable to those in this state. (§ 3 ch 179 SLA 1972)

Sec. 08.48.201. Application and fees for registration. (a) Application for registration as a professional architect, a professional engineer or a professional land surveyor shall (1) be on a form prescribed and furnished by the board; (2) contain statements made under oath, showing the applicant's education and a detailed summary of his technical experience; and (3) contain five references, three of whom must be architects for architectural registration, engineers for engineering registration and land surveyors for land surveying registration, having personal knowledge of the applicant's architectural, engineering or land surveying education, training or experience.

(b) The registration fee for professional architects, professional engineers and professional land surveyors shall be established by the board in an amount not to exceed $100 and shall accompany the application for registration. (§ 3 ch 179 SLA 1972)

Sec. 08.48.211. Certificate of registration. (a) An applicant who fulfills the requirements set out by the board shall be awarded a certificate of registration as a professional architect, engineer or land surveyor, authorizing the holder to offer or perform architectural, engineering or land surveying services or work for the public, or to certify or sign architectural, engineering or land surveying documents. Certificate of registration issued under this section shall be inscribed on their face in a manner determined by the board.

(b) The certificate of registration sealed by the board is prima facie evidence that the person named in it is entitled to all rights and privileges of a professional architect, professional engineer or professional land surveyor, while the certificate remains unrevoked or unexpired. (§ 3 ch 179 SLA 1972)

Sec. 08.48.221. Seals. Each registrant may obtain a seal of the design authorized by the board, bearing the registrant's name, registration number, and the legend, "Registered Professional Architect," "Registered Professional Engineer," or "Registered Professional Land Surveyor," as appropriate. Final drawings, specifications, surveys, plats, plates, reports and other similar documents shall, when issued,

be signed and stamped with the seal. It is unlawful for an architect, engineer or land surveyor to affix or permit his seal and signature to be affixed to an instrument after the expiration of a certificate or for the purpose of aiding or abetting another person to evade or attempt to evade a provision of this chapter. The registrant, by affixing his seal to final drawings, specifications, surveys, plats, plates, reports and other similar documents, and signing them, certifies that these documents were prepared by or under his direct supervision, unless he certifies on the face of the document to the extent of his responsibility. (§ 3 ch 179 SLA 1972)

Sec. 08.48.231. Expirations and renewals. (a) To remain valid, certificate shall be renewed in accordance with AS 08.01.100. Notice of renewal dates, given under AS 08.01.050(11), shall be mailed to the registrant or corporation at his or its last known address at least one month in advance of the date of the expiration of the certificate. If the certificate has been suspended or revoked, the board may take action independent of this section.

(b) The renewal of a certificate does not require reapplication if the certificate has not expired or has not been suspended or revoked. The renewal fee for a certificate may not exceed $100.

(c) Renewal of an expired certificate may be effected under regulations promulgated by the board regarding requirements of reexamination and penalty fees. (§ 3 ch 179 SLA 1972)

Sec. 08.48.241. Corporations. (a) This chapter does not prevent a corporation from offering architectural, engineering or land surveying services; however, the corporation shall file with the board

(1) an application for a certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether the corporation is qualified in accordance with the provisions of this chapter to offer to practice architecture, engineering or land surveying in this state;

(2) a certified copy of a resolution of the board of directors of the corporation designating persons holding certificates of registration under this chapter as responsible for the practice of architecture, engineering or land surveying by the corporation in this state and providing that full authority to make all final architectural, engineering or land surveying decisions on behalf of the corporation with respect to work performed by the corporation in this state is granted by the board of directors to the persons designated in the resolution; however, the filing of this resolution does not relieve the corporation of any responsibility or liability imposed upon it by law or by contract;

(3) a designation in writing setting out the name of one or more persons holding certificates of registration under this chapter who are in responsible charge of each major branch of the architectural, engineering or land surveying activities in which the corporation specializes in this state; if a change is made in the person in responsible charge of a major branch of the architectural, engineering or land surveying activities, the change shall be designated in writing and filed with the board within 30 days after the effective date of the change.

(b) Upon filing with the board the application for certificate of authorization, certified copy of resolution, affidavit, and designation of persons specified in this section, the board shall, subject to (c) of this section, issue to the corporation a certificate of authorization to practice architecture, engineering or land surveying in this state upon a determination by the board that

(1) the bylaws of the corporation contain provisions that all architectural, engineering or land surveying decisions pertaining to architectural, engineering or land surveying activities in this state will be made by the specified architect, engineer or land surveyor in responsible charge, or other registered architects, engineers or land surveyors under his direction or supervision;

(2) the application for certificate of authorization states the type of architecture, engineering or land surveying practiced or to be practiced by the corporation;

(3) the applicant corporation has the ability to provide architectural, engineering or land surveying services;

(4) the application for certificate of authorization states the professional records of the designated person who is in responsible charge of each major branch of architectural, engineering or land surveying activities in which the corporation specializes;

(5) the application for certificate of authorization states the experience of the corporation, if any, in furnishing architectural, engineering or land surveying services during the preceding five-year period;

(6) the applicant corporation meets other requirements related to professional competence in the furnishing of architectural, engineering or land surveying services as may be established and promulgated by the board in furtherance of the objectives and provisions of this chapter.

(c) The board may, in the exercise of its discretion, refuse to issue, or may suspend or revoke a certificate of authorization to a corporation if the board finds that any of the officers, directors,

incorporators or the stockholders holding a majority of the stock of the corporation has committed misconduct or malpractice, or has been found personally responsible for misconduct or malpractice under the provisions of this chapter.

(d) The certificate of authorization shall specify the major branches of architecture, engineering or land surveying of which the corporation has designated a person in responsible charge as provided in this section. The certificate of authorization shall be conspicuously displayed in the place of business of the corporation, together with the names of persons designated as being in responsible charge of the professional activities.

(e) If a corporation, organized solely by either a group of architects, a group of engineers, or a group of land surveyors, each holding a certificate of registration under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to the corporation based on a review of the professional records of the incorporators, in place of the required qualifications set out in this section. If the ownership of the corporation is altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners, if exclusively architects, engineers or land surveyors, or otherwise under the qualifications required by (b)(1)-(4) of this section.

(f) A corporation authorized to offer architectural, engineering or land surveying services under this chapter, together with its directors and officers for their own individual acts, is responsible to the same degree as the designated individual registered architect, engineer or land surveyor, and must conduct its business without misconduct or malpractice in the practice of architecture, engineering or land surveying as defined in this chapter.

(g) If the board, after a proper hearing, finds that a corporation holding a certificate of authorization has committed misconduct or malpractice, the board shall suspend or revoke the certificate of authorization. The board shall also suspend or revoke the certificate of registration of any registered individual architect, engineer or land surveyor who, after a proper hearing, is found by the board to have participated in committing the misconduct or malpractice.

(h) Plans, specifications, designs and reports, when issued in connection with work performed by a corporation under its certificate of authorization, shall be prepared by or under the responsible charge of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued to a corporation under the provisions of this chapter, there shall be paid an initial fee not to exceed $300. (§ 3 ch 179 SLA 1972)

Sec. 08.48.251. Partnerships. This chapter does not prevent the practice of architecture, engineering or land surveying by partnership if all of the members of the partnership are architects, engineers or land surveyors legally registered under this chapter. (§ 3 ch 179 SLA 1972)

Sec. 08.48.261. State employees. The head of each principal department in which there are positions necessitating use of architectural, engineering, or land surveying knowledge or skills shall specify, in the job descriptions, the positions for which registration under this chapter is required. This requirement for any position in a department may be waived by the head of the department. When the requirement is waived, the head of the department shall transmit to the division of personnel a written statement to the effect that the person filling the position is qualified to perform the duties of that position and a statement of the reasons for waiving the requirement, explaining why the employee was hired or was retained as an employee even though not registered under this chapter. The head of the department shall send a copy of the statement to the board. (§ 3 ch 179 SLA 1972)

Article 3. Unlawful Acts.

Section
281. Prohibited practice
291. Violations and penalties

Sec. 08.48.281. Prohibited practice. No person may practice or offer to practice the profession of architecture, engineering or land surveying in Alaska, as defined in this chapter, or use in connection with his name or otherwise assume or advertise a title or description tending to convey the impression that he is a registered architect, engineer or land surveyor unless he has been registered under the provisions of this chapter or is a person to whom these provisions do not apply, or, in the case of a corporation, unless it has been authorized under this chapter. (§ 3 ch 179 SLA 1972)

Sec. 08.48.291. Violations and penalties. A person who practices or offers to practice architecture, engineering or land surveying in Alaska without being registered or authorized to practice in accordance with the provisions of this chapter, or a person presenting or attempting to use the certificate or the seal of another, or a person who gives false or forged evidence of any kind to the board or to a member of the board in obtaining or attempting to obtain a certificate, or a person who impersonates a registrant, or a person who uses or attempts to use an expired or revoked or nonexistent certificate, knowing of the certificate's status, or a person who falsely claims that he is registered and authorized to practice under this chapter, or a person who violates any of the provisions of this chapter, is guilty of a misdeanor and upon conviction is punishable by a fine of not more than $10,000, or by imprisonment for not more than one year, or by both. (§ 3 ch 179 SLA 1972)

Article 4. General Provisions.

Section
311. Individual right
321. Evidence of practice
331. Exemptions
341. Definitions
351. Short title

Sec. 08.48.311. Individual right. The right to engage in the practice of architecture, engineering or land surveying is considered a personal and individual right, based on the qualifications of the individual as evidenced by his certificate of registration, which is not transferable. (§ 3 ch 179 SLA 1972)

Sec. 08.48.321. Evidence of practice. A person practices or offers to practice architecture, engineering or land surveying who

(1) practices a branch of the profession of architecture, engineering or land surveying as defined in § 341 of this chapter;

(2) by verbal claim, sign, advertisement, letterhead, card, or other means represents himself to be an architect, engineer or land surveyor, or through the use of some other title implies that he is an architect, engineer or land surveyor;

(3) holds himself out as able to perform or who does perform an architectural, engineering or land surveying service recognized by the professions covered by this chapter, and specified in regulations of the board, as architectural, engineering or land surveying. (§ 3 ch 179 SLA 1972)

Sec. 08.48.331. Exemptions. This chapter does not apply to

(1) the execution as a contractor of work designed by a professional architect or engineer, or the supervision of the construction of this work as a foreman or superintendent for a contractor;

(2) superintendents, foremen, inspectors, or building trades craftsmen in the performance of their customary duties;

(3) an officer or employee of the United States government practicing architecture, engineering or land surveying as required by his official capacity;

(4) an officer or employee of the state practicing architecture, engineering or land surveying as required by his official capacity and registration is not required in his job description;

(5) the work of an employee or a subordinate of a person legally registered under this chapter, if the work or service does not include final designs or decisions or surveys, and is done under the direct supervision of and verified by a person legally registered under this chapter;

(6) the services ordinarily performed by locomotive, stationary and marine engine men, power plant operators, and manufacturers who supervise the operation of or operate machinery or equipment, or supervise construction within their own plant which affects only the property or interest of the manufacturer, unless the public health or safety is involved;

(7) the practice of any other lawfully recognized profession;

(8) associates, consultants or specialists retained by an individual, a partnership of legally registered individuals, or a corporation authorized under this chapter, in the performance of the professional services offered by the legally registered individual, partnership, or authorized corporation if responsible charge of the work remains with the individual, partnership or designated representative of the corporation;

(9) a person preparing plans, drawings, or specifications for

(A) a building for his own use and occupancy unless the public health, safety, or welfare is substantially involved;

(B) farm or ranch buildings unless the public health, safety, or welfare is substantially involved;

(C) a building intended to be used only as a residence by not more than four families and not more than two stories high;

(D) a building with a total of not more than 500 square feet of floor space;

(10) a specialty contractor licensed under appropriate Alaska Statutes, while engaged in the business of contracting, designing systems or facilities as otherwise permitted by law for work within the specialty for which his license was issued to be performed or supervised by the contractor, or any licensed contractor preparing shop or field drawings for work which he has contracted to perform;

(11) a person furnishing, either alone or with subcontractors, labor and materials, with or without plans, drawings, specifications, instruments of service, or other data covering the labor and materials to be used for any of the following:

(A) storefronts (facades), interior alterations or additions, fixtures, cabinetwork, furniture, or other appliances or equipment;

(B) work necessary to provide for installation of an item listed in (A) of this paragraph;

(C) alterations or additions to a building necessary to or attendant upon installation of an item listed in (A) of this paragraph, if the alteration or addition does not change or affect the structural system or safety of the building;

(12) an officer or employee of an individual, firm, partnership, association or corporation which officer or employee practices architecture, engineering or land surveying when required by his official capacity or work duties connected with his employment if the individual firm, partnership, association or corporation is not engaged in the business of offering architectural, engineering or land surveying services to the public. (§ 3 ch 179 SLA 1972)

Sec. 08.48.341. Definitions. In this chapter

(1) "architect" means a professional architect;

(2) "board" means the State Board of Registration for Architects, Engineers and Land Surveyors;

(3) "certificate of authorization" means a certificate issued by the board authorizing a corporation to provide professional services in architecture, engineering or land surveying through individuals legally registered by the board;

(4) "certificate of registration" means a certificate issued by the board recognizing the individual named in the certificate as meeting the requirements for registration under this chapter;

(5) "engineer" means a professional engineer;

(6) "land surveyor" means a professional land surveyor;

(7) "practice of architecture" means professional service or creative work in the functional and aesthetic design of structures, the teaching of advanced architectural courses in institutions of higher learning, consultation, investigation, evaluation, planning, design and professional observation of construction of public or private structures, buildings, works or projects, and architectural review of plans and specifications by regulatory agencies; it may by regulation of the board include mechanical, electrical or structural design of relatively minor importance to the project as a whole;

(8) "practice of engineering" means professional or creative work, the adequate performance of which requires the application of specialized knowledge of mathematics and sciences, dealing with the functional and economic design of buildings, structures, machines, equipment, utilities systems, materials, processes, works or projects, public or private; the teaching of advanced engineering courses in institutions of higher learning, the direction of or the performance of engineering surveys, consultation, investigation, evaluation, planning, design, and professional observation of construction of public and private structures, buildings, works or projects and engineering review of plans and specifications by regulatory agencies; it may by regulation of the board include architectural design of relatively minor importance to the project as a whole, but it does not include comprehensive architectural services;

(9) "practice of land surveying" means any service or work the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related sciences, and the relevant requirements of law for adequate evidence of the act of measuring and locating land, geodetic and cadastral surveys for the location and monumentation of property boundaries, for the platting and planning of land and subdivisions, and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys;

(10) "professional architect" means a person who has been legally registered as a professional architect by the board;

(11) "professional engineer" means a person who has been legally registered as a professional engineer by the board;

(12) "professional land surveyor" means a person who has been legally registered as a professional land surveyor by the board;

(13) "responsible charge" means the direct control and personal supervision of work. (§ 3 ch 179 SLA 1972)

Sec. 08.48.351. Short title. This chapter may be cited as the Architects, Engineers and Land Surveyors Registration Act. (§ 3 ch 179 SLA 1972)

CHAPTER 36. STATE BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS

Article

1. Registration and Licensing
2. Rules of Professional Conduct
3. General Provisions

ARTICLE 1. REGISTRATION AND LICENSING

Section

10. Applications
20. Abandoned applications
30. Refund when application withdrawn
40. Reexamination application
50. Final filing dates
60. Eligibility for professional architect examination or architect's qualifying examination
62. Eligibility for fundamentals of engineering examination
63. Engineer education and experience requirements
64. Eligibility for fundamentals of land surveying examination
65. Eligibility for professional land surveyor examination
67. Date of experience
70. Postponements
80. Authorization to take examination
90. Waiver of fundamentals of engineering examination
100. Content of examination
105. Registration by comity
110. Treatise required for registration
120. (Repealed)
130. (Repealed)
140. (Repealed)
150. (Repealed)
160. Duplicate certificate
170. Fees
180. Seal
190. Testing laboratory reports

12 AAC 36.010. APPLICATIONS. (a) An application for registration or examination for registration must be typewritten and filed with the board on a form prescribed by the board, accompanied by the required fee and a recent, frontal photograph, 2" x 2½" in size.

(b) No candidate will be admitted to an examination or approved for registration until his qualifications are accepted by the board. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.171
AS 08.48.191
AS 08.48.201

12 AAC 36.020. ABANDONED APPLICATIONS. (a) In the absence of special circumstances, the board will consider an examination application abandoned if

(1) the applicant fails to appear for examination at the time fixed without obtaining a postponement as set out in sec. 70 of this chapter;

(2) the applicant, after two postponements, fails to appear for examination at the time fixed.

(b) An applicant whose application is considered abandoned will have his application denied without prejudice and his application fee will be forfeited.

(c) An application is considered abandoned if 18 months have elapsed since correspondence was last received from the applicant. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

12 AAC 36.030. REFUND WHEN APPLICATION WITHDRAWN. An applicant who withdraws his application before board action will be refunded his application fee except for five dollars. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101

12 AAC 36.040. REEXAMINATION APPLICATION. An applicant who has failed the examination may, within 18 months of notification of the failed examination, reapply for examination. Another examination fee is required. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.091
AS 08.48.101(a)
AS 08.48.171

12 AAC 36.050. FINAL FILING DATES. (a) The final filing date for applications for examination is 60 days before the examination

and will be advertised as such by the board at least 30 days before that date.

(b) Repealed. (9/30/78, Reg. 67)

(c) Whenever the final filing date for an examination falls upon a Saturday, Sunday or holiday, it will be extended to the next business day.

(d) If an application is filed with the board through the United States mail, it will be considered filed on the date shown by the Post Office cancellation mark stamped on the envelope containing it, or on the date mailed if satisfactory proof is made that the mailing occurred on an earlier date. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101

12 AAC 36.060. ELIGIBILITY FOR PROFESSIONAL ARCHITECT EXAMINATION OR ARCHITECT'S QUALIFYING EXAMINATION. To be eligible for the professional architect examination or the architect's qualifying examination, an applicant must meet the education and experience requirements adopted by the NCARB. An applicant for examination may receive a copy of the requirements upon submission of a written request to the board. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.171
AS 08.48.181

12 AAC 36.062. ELIGIBILITY FOR FUNDAMENTALS OF ENGINEERING EXAMINATION. To be eligible for the fundamentals of engineering examination, an applicant must

(1) have successfully completed at least 85 percent of the required courses leading to an undergraduate degree in an engineering curriculum accredited by ECPD; or

(2) have been engaged in engineering work acceptable to the board for a period of not less than four years; or

(3) submit to the board satisfactory evidence that his education or experience or both are equivalent to the requirements as set out in the following EIT table of equivalent experience:

ENGINEER IN TRAINING TABLE OF EQUIVALENT EXPERIENCE

Classification	Education In Years	Experience In Years	Total Education And Experience
Graduate of ECPD accredited engineer curriculum 4 or 5 year course w/B.S.	4	–0–	4
Graduate of non-ECPD accredited engineer curriculum 4 or 5 year course w/B.S.	2	2	4
No formal education	–0–	6	6

(Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101
AS 08.48.171

12 AAC 36.063. ENGINEER EDUCATION AND EXPERIENCE REQUIREMENTS. (a) To be eligible for a professional engineering examination, an applicant must

(1) have been approved for or have passed the fundamentals of engineering examination or had these requirements waived under sec. 90(a) of this chapter; and

(2) apply for examination in a branch of engineering recognized by sec. 250(17) of this chapter; and

(3) be a graduate of an engineering curriculum accredited by ECPD within the branch of engineering applied for and have been engaged in professional engineering work in the applicant's branch for at least four years and during that period have had direct personal supervision or responsible charge of professional engineering work as a supervisor or assistant under the supervision of a registered professional engineer in the applicant's branch, for not less than two years; or

(4) have been engaged in professional engineering work in the applicant's branch for a period of not less than 12 years and during that

period have had direct personal supervision or responsible charge of professional engineering work as a supervisor or assistant under the supervision of a registered professional engineer in the applicant's branch, for not less than two years; or

(5) submit to the board satisfactory evidence that his education or experience or both are equivalent to the requirements as set out in the following professional engineer table of equivalent experience:

PROFESSIONAL ENGINEER TABLE OF EQUIVALENT EXPERIENCE

(Education and experience for initial registration must be in the branch in which the applicant seeks registration for full credit to be given. If the education experience is not in the branch in which the applicant seeks registration, any credit in excess of 1/2 will be determined by the board.)

Classification	Education In Years	Experience In Years	Responsible Charge Under P.E.	Total Education And Experience
Graduate of ECPD accredited engineering curriculum with M.S. or Ph.D.	5	3	2	8
Graduate of ECPD accredited 4 or 5 year course w/B.S.	4	4	2	8
Graduate of non-ECPD accredited engineering curriculum 4 or 5 year course	2	6	2	8
No formal education	-0-	12	2	12

(b) For registration in more than one branch of engineering, professional work experience used in securing registration in one branch of engineering will be evaluated by the board in considering an application for registration in another branch or field of engineering. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.171
AS 08.48.181

12 AAC 36.064. ELIGIBILITY FOR FUNDAMENTALS OF LAND SURVEYING EXAMINATION. To be eligible for the fundamentals of land surveying examination, an applicant must have four years of experience. The required experience may be any combination of the experience credit set forth in the professional land surveyor table of equivalent experience in sec. 65(a)(2) of this chapter. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

12 AAC 36.065. ELIGIBILITY FOR PROFESSIONAL LAND SURVEYOR EXAMINATION. (a) To be eligible for the professional land surveyor examination, an applicant must

(1) have been approved for or have passed the fundamentals of land surveying examination; and

(2) submit to the board satisfactory evidence that his education or experience or both are equivalent to the requirements set out in the following professional land surveyor table of equivalent experience:

PROFESSIONAL LAND SURVEYORS TABLE OF EQUIVALENT EXPERIENCE

Classification	Education Credit Allowed In Years	Experience Credit Allowed In Years	Responsible Charge Under R.L.S. In a Land Surveying Capacity	Total Education And Experience Required
Graduate of a board approved surveying curriculum 4-year course	4	4	3	8
Graduate of a board approved surveying curriculum 2-year course	2	6	3	8

Classification	Education Credit Allowed In Years	Experience Credit Allowed In Years	Responsible Charge Under R.L.S. In a Land Surveying Capacity	Total Education And Experience Required
Graduate of an E.C.P.D. accredited curriculum in civil engineering or related engineering sciences	2	6	3	8
No formal education	-0-	12	3	12

(b) Responsible charge of professional land surveying work as a supervisor under the direct supervision of a registered land surveyor, and working in a land surveying capacity. The remainder of the required experience must be derived from office or field work involving the activities listed in AS 08.48.341(9). Partial completion of a curriculum leading to a degree in land surveying, civil engineering, or mining engineering will, in the discretion of the board, be considered by the board in determining applicable experience. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.171
AS 08.48.181

12 AAC 36.067. DATE OF EXPERIENCE. Computation of qualifying experience for admission to the examination as an architect, engineer, or land surveyor is up to the date of the examination. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.171

12 AAC 36.070. POSTPONEMENTS. The board will, in its discretion, grant postponements, not to exceed two postponements for each type of examination given, to any applicant who, for reasonable cause, is prevented from appearing for the examination at the time fixed, if the applicant's request for postponement and the reason for it are filed with the board not later than 10 days immediately following the date of the examination. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

12 AAC 36.080. AUTHORIZATION TO TAKE EXAMINATION. Notification of the applicant's authorization to take the examination will be made at least 30 days before the examination. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

12 AAC 36.090. WAIVER OF FUNDAMENTALS OF ENGINEERING EXAMINATION. (a) An applicant for registration as a professional engineer who has not passed the fundamentals of engineering examination need not take that examination if satisfactory evidence is submitted to the board to verify 20 years of professional experience.

(b) An applicant for registration in any branch of engineering who holds a valid registration in another branch of engineering meeting this state's requirements will not be required to take the fundamentals of engineering examination. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

12 AAC 36.100. CONTENT OF EXAMINATION. Except as provided in AS 08.48.191, an applicant for registration as an architect, engineer or land surveyor is required to take and pass an examination either as currently prepared by NCEE, NCARB, or for those cases where no national examination is prepared, as prepared or selected by the board. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101
AS 08.48.171
AS 08.48.181

12 AAC 36.105. REGISTRATION BY COMITY. (a) A person holding a certificate of registration to engage in the practice of engineering issued to him by a proper authority of a state or possession of the United States, the District of Columbia or any foreign country based on requirements that do not conflict with the provisions of AS 08.48 and were of a standard not lower than that specified in the applicable registration Act in effect in this state at the time that certificate was issued, will upon application be registered without further examination.

(b) A person, holding a valid certificate issued by the Committee on National Engineering

Certification of the National Council of Engineering Examiners, whose qualifications as evidenced by his council record meet the requirements of AS 08.48, will upon application be registered without further examination.

(c) A person holding a valid certificate of registration to practice land surveying issued on comparable qualification from a state, territory or possession of the United States, the District of Columbia or a foreign country with experience satisfactory to the board, is required to pass a written examination of not less than four hours' duration which includes questions on laws, procedures, and practices pertaining to land surveying in this state. The board will, in its discretion, require additional examination unless the examination requirements under which the applicant was initially registered, were equivalent to this state's examination requirements at the time of the initial registration.

(d) The board will not grant temporary registration under any circumstances.

(e) The board will not recognize or grant professional registration by eminence. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.191

12 AAC 36.110. TREATISE REQUIRED FOR REGISTRATION. (a) An applicant for architectural registration must

(1) submit a treatise on construction under arctic and subarctic conditions acceptable to the board prior to the issuance of a certificate of registration; or

(2) have successfully completed either a course or seminar in arctic engineering approved by the board.

(b) An applicant for architectural registration by comity must also submit a treatise on seismic forces, except for an applicant

(1) registered in California in May, 1933 or later;

(2) registered by examination in Washington State in 1963 or later;

(3) registered by examination in any other state in 1964 or later.

(c) An applicant for engineering registration must

(1) submit a treatise on construction under arctic and subarctic conditions, emphasizing his specific branch, that is acceptable to the board; or

(2) have successfully completed either a course or seminar in arctic engineering approved by the board. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.171

12 AAC 36.120. EXPERIENCE CREDIT. Repealed. (9/30/78, Reg. 67)

12 AAC 36.130. DATE OF EXPERIENCE. Repealed. (9/30/78, Reg. 67)

12 AAC 36.140. ARCHITECTURAL CURRICULA APPROVED BY THE BOARD. Repealed. (9/30/78, Reg. 67)

12 AAC 36.150. ENGINEERING CURRICULA APPROVED BY THE BOARD. Repealed. (9/30/78, Reg. 67)

12 AAC 36.160. DUPLICATE CERTIFICATE. Duplicate certificates will be issued by the board to registrants and corporations upon written request and payment of a $10 fee. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.211

12 AAC 36.170. FEES. Following are the prescribed fees:

(1) application by examination, $50 per examination;

(2) reexamination fee, $50 per examination;

(3) application by comity, $50;

(4) application for corporate authorization, $100;

(5) registration fee, $15 per year for balance of biennial period;

(6) corporate authorization registration fee, $50 per year;

(7) registration renewal, $15 annually, payable biennially by December 31 of odd-numbered years;

(8) corporate authorization renewal, $50 annually, payable biennially by December 31 of odd-numbered years;

(9) amendment to corporate authorization, $20;

(10) delinquent renewal fee for reinstatement of expired registration, $30;

(11) postponement of examination, $20. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.01.100
AS 08.48.091
AS 08.48.101(a)
AS 08.48.201(b)
AS 08.48.231(b) and (c)
AS 08.48.241(i)

12 AAC 36.180. SEAL. (a) The seal authorized for use by professional architects is of the following design:

(b) The seal authorized for use by professional engineers is of the following design:

and must reflect the branch of engineering authorized by the board. This identification is to be placed below the registrant's number on the seal as noted:

EC – Chemical engineer
CE – Civil engineer
EE – Electrical engineer
ME – Mechanical engineer
EM – Mining engineer
EP – Petroleum engineer

(c) The seal authorized for use by professional land surveyors is of the following design:

(Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.221

12 AAC 36.190. TESTING LABORATORY REPORTS. Reports issued by testing laboratories shall be prepared by or under the supervision of a registered engineer and signed or sealed by him whenever such reports go beyond the tabulation of test data (compositions of material, breaking stress, etc.) by

(1) interpreting the data to draw conclusions as to the characteristics of a civil engineering structure or parts of one;

(2) expressing engineering judgment in the form of recommendations derived from the results of the test; or

(3) performing design work in the preparation of plans, specifications and other instruments requiring registration as an engineer. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101

ARTICLE 2.
RULES OF PROFESSIONAL CONDUCT

Section
200. Integrity
210. Responsibility to the public
220. Conflict of interest
225. Public service
230. Solicitation of employment
235. Advertising
240. Improper conduct

12 AAC 36.200. INTEGRITY. An architect, engineer or land surveyor shall act with complete integrity in professional matters for each client or employer as a faithful agent or trustee and shall be honest and impartial in serving the public, his client and his employer. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101
AS 08.48.111

12 AAC 36.210. RESPONSIBILITY TO THE PUBLIC. (a) In order to establish and maintain a high standard of integrity, skills, and practice in the professions of architecture, engineering and land surveying, and to safeguard the life, health, property and welfare of the public, the following rules of professional conduct are adopted and are binding upon every individual holding a certificate of registration as an architect, engineer, or land surveyor and upon all partnerships or corporations or other legal entities authorized to offer or perform architectural, engineering, or land surveying services in the state.

(b) Each architect, engineer, or land surveyor shall

(1) at all times recognize his primary obligation to protect the safety, health, property, and welfare of the public in the performance of his professional duties; if his professional judgment is overruled under circumstances where the safety, health, and welfare of the public are endangered, he shall inform his employer or client of the possible consequence and notify such other proper authority of the situation as may be appropriate; and

(2) undertake to perform assignments only when he or his associates, consultants, or employees are qualified by education, training, experience, and licensing in the specific technical branches or fields involved;

(3) be completely objective and truthful in all professional reports, statements, or testimony and shall include all relevant and pertinent information in such reports, statements, or testimony when the result of an omission would, or reasonably could, lead to a fallacious conclusion; and

(4) not affix his signature or seal to any plan or document dealing with professional services in which he is not qualified by virtue of education, experience, and licensing; and

(5) issue no statements, criticisms, or arguments on architectural, engineering, or land surveying matters connected with public interests which are inspired or paid for by his interested party or parties unless he has prefaced his comment by explicitly identifying himself by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.111

12 AAC 36.220. CONFLICT OF INTEREST. (a) Each architect, engineer or land surveyor shall avoid conflicts of interest with his employer or client but, when unavoidable, the architect, engineer, or land surveyor shall promptly inform his employer or client of any business association, interests, or circumstances and identify any circumstances which could influence his judgment or the quality of his service to his employer or client.

(b) An architect, engineer, or land surveyor may not accept compensation, financial or otherwise, from more than one party for services on the same project or for services pertaining to the same project unless the circumstances are fully disclosed to and agreed to by all interested parties or their authorized agents.

(c) An architect, engineer, or land surveyor may not solicit or accept financial or other valuable consideration from suppliers for specifying their products.

(d) An architect, engineer, or land surveyor may not solicit or accept gratuities from other parties dealing with his client or employer in connection with the work for which he is responsible. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

12 AAC 36.225. PUBLIC SERVICE. When in public service as a member, advisor, or employee of a government body, an architect, engineer, or land surveyor may not participate in considerations or actions with respect to services provided by him or his organization. An architect, engineer, or land surveyor, in his capacity as an elected, retained, or employed public official, may not review or approve work that he has performed, whether it was under his direction or on behalf of another employer or client. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

12 AAC 36.230. SOLICITATION OF EMPLOYMENT. (a) An architect, engineer or land surveyor may not pay, solicit nor offer, directly or indirectly, any bribe or commission for professional employment with the exception of his payment of the usual commission for securing salaried positions through licensed employment agencies.

(b) Each architect, engineer, or land surveyor shall seek professional employment on the basis of qualifications and competence for proper accomplishment of the work. He may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding.

(c) An architect, engineer or land surveyor may not falsify or permit misrepresentation of his or his associates' academic or professional qualifications. He may not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments.

(d) Brochures or other presentations incident to an architect's engineer's or land surveyor's solicitation of employment may not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101
AS 08.48.111

12 AAC 36.235. ADVERTISING. An architect, engineer, or land surveyor may not advertise his or her services in a deceptive, self-laudatorial, or untruthful manner. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

12 AAC 36.240. IMPROPER CONDUCT. (a) An architect, engineer, or land surveyor may not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows or has reason to believe is engaging in business or professional practices in a fraudulent or dishonest manner.

(b) If an architect, engineer, or land surveyor has knowledge or reason to believe that another person or firm may be in violation of the provisions of AS 08.48, or any of these rules of professional conduct, he or she shall present that information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

ARTICLE 3.
GENERAL PROVISIONS

Section
250. Definitions

12 AAC 36.250. DEFINITIONS. For the purposes of this chapter and AS 08.48, unless the context requires otherwise

(1) "advanced courses" means courses in institutes of higher learning beyond the second academic year;

(2) "board" means the State Board of Registration for Architects, Engineers and Land Surveyors;

(3) "chemical engineering" means that branch of professional engineering which embraces studies and activities relating to applied chemistry, both industrial and nonindustrial, concerned with chemical materials, their composition, locations, transportation, and storage; chemical and physical-chemical processes naturally occurring or artificially operated, their matter and energy changes, the conditions of temperature, concentration and media for those changes including apparatus and analytical control; chemical products, their quality, quantity, applications, uses, and values; preparation of materials for public or industrial use including water supply, waste abatement, and pollution control;

(4) "civil engineering" means that branch of professional engineering which embraces studies and activities in connection with research, design, and construction of fixed works for irrigation, drainage, waterpower, water supply and treatment, flood control, inland waterways, harbors, municipal improvements, railroads, highways, tunnels, airports and airways, sewerage, refuse disposal, foundations, structures, or bridges;

(5) "design" means the original and unique application of basic aesthetic, mathematical and physical and chemical principles to provide an acceptable solution of a problem or project;

(6) "direct supervision" means personal control, at the working level, of the preparation of professional documents;

(7) "ECPD" means Engineers' Council for Professional Development;

(8) "electrical engineering" means that branch of professional engineering which embraces studies and activities relating to generation, transmission and utilization of electrical energy and to telecommunications systems and facilities, including the design of electrical, electronic and magnetic circuits and components, and the technical control of their operation and of the design of electrical and telecommunications gear; it is concerned with the research, organizational and economic aspects of these studies and activities;

(9) "mechanical engineering" means that branch of professional engineering which deals with engineering problems relating to generation, transmission and utilization of energy in the thermal or mechanical form, and also with engineering problems relating to the production of tools, machinery and their products and to mechanical processes, heating, air conditioning, refrigeration and plumbing; it is concerned with the research, design, production, operational, organizational and economic aspects of these studies and activities;

(10) "mining engineering" means that branch of professional engineering which embraces studies or activities relating to the exploration, location, and recovery of mineral commodities; it is concerned with research, design, construction, and development of structures, devices, and facilities of production and the economic aspects related to these studies and activities;

(11) "NAAB" means the National Architectural Accrediting Board;

(12) "NCARB" means the National Council of Architectural Registration Boards;

(13) "NCEE" means the National Council of Engineering Examiners;

(14) "petroleum engineering" means that branch of professional engineering which embraces studies or activities relating to the exploration, location, and recovery of natural fluid hydrocarbons; it is concerned with research, design, production, and operations of devices, and the economic aspects of these studies and activities;

(15) repealed (9/30/78, Reg. 67);

(16) repealed (9/30/78, Reg. 67);

(17) "professional engineering" includes the branches of

(A) chemical engineering;

(B) civil engineering;

(C) electrical engineering;

(D) mechanical engineering;

(E) mining engineering;

(F) petroleum engineering;

(18) "professional work" means the time the applicant has been occupied in architecture, engineering or land surveying work of higher grade and responsibility than that of subprofessional work;

(19) "responsible charge of work in the field" means the direction of work, the successful accomplishment of which rested upon the applicant, where the applicant has to decide questions of methods of execution and suitability of materials without relying upon advice or instructions from his superiors and where the applicant has to supply solutions to deficiencies in plans or has to correct errors in designs without first referring them to higher authority for approval, except where the approval is a matter of form;

(20) "responsible charge" as it pertains to "work in the office" means undertaking investigations or carrying out assignments, which demand resourcefulness and originality, or making plans, writing specifications, and directing drafting and computations for the design of architectural, engineering or land surveying work with only rough sketches, general information and field measurements for reference;

(21) "state" means the State of Alaska;

(22) "subprofessional work" means time spent working as rodman, chainman, recorder, draftsman, clerk of works, instrument man, inspector, or similar work where personal responsibility and technical knowledge are slight;

(23) "speciality contractor" means a contractor registered to offer not more than two labor trades;

(24) "registration by comity" means registration by recognition of the applicant's credentials accepted by another jurisdiction.

(Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

J

STATE OF ALASKA
Board of Marine Pilots
(October, 1979)

Findings

Review of the responsibilities and activities of the Board of Marine Pilots indicates that regulation of this profession is in the public interest and should be continued.

Observations made in the review are designed to enhance Board operation and efficiency.

The Board functions under AS 08.62 to license qualified applicants and regulate individuals within the profession. Support services are provided by the Department of Commerce and Economic Development, Division of Occupational Licensing.

I. General Information

A. Regulated Parties

1. Marine Pilots
2. Vessels subject to AS 08.62 must register with the Board

B. Definitions

"Pilotage waters" includes all inside Alaska waters, with exceptions noted in Board regulations (12 AAC 56.110).

C. Purpose of Regulation

AS 08.62.040 requires the Board to "provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property..."

D. Nature and Composition of Board

1. Board members and terms:

Four-year term (no restrictions regarding consecutive terms or number of terms).

Charles R. Webber, Commissioner
Department of Commerce & Economic Development (Chairman)

Capt. Donald Oldow	ends June 1, 1980
Capt. Jack Maroni	ends June 1, 1979
Charles Stover (Agent)	ends June 1, 1980
Marvin Taylor (Agent)	ends June 1, 1979
Kenneth Peavyhouse (public)	ends June 1, 1983
(public member vacancy)	

2. Representation:

Profession = 4
State Government = 1
Public = 2

3. Qualifications:

The Board "consists of two pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, two agents or managers of vessels subject to this chapter, two public members in accordance with AS 08.01.025, and the commissioner or his designee. Not more than one pilot and one agent or manager shall be from any one judicial district. All members of the board shall be residents of the state." (AS 08.62.010)

E. Licensing Data

Current licenses (effective September 30, 1979)

in-State = 36
out-of-State = 16
Total = 52

F. Fees

1.	application fee	$ 10.00
2.	biennial license fee	200.00
3.	temporary license fee	50.00

G. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	$ 990.00	$11,122.10	$1,830.00	$10,722.00
- refunds	-	-	50.00	-
Total	990.00	11,122.10	1,780.00	10,722.00
Expenditures				
Transportation	865.50	2,444.46	1,648.74	3,549.00
Per Diem	1,313.75	2,271.68	1,692.00	3,105.75
Phone	32.98	42.12	49.96	463.56
Printing, Adver. & Postage	501.29	706.10	358.94	750.79
Fees & Services	-	35.00	-	70.00
Rents, Leases & Other	-	15.75	70.00	173.57
Total	$2,713.52	$ 5,515.11	$3,819.64	$ 8,112.67
Surplus	-	$ 5,606.99	-	$ 2,609.33
Deficit	$1,723.52	-	$2,039.64	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

H. Complaints

Cases received during FY '78 and FY '79	= 14
Cases closed during FY '78 and FY '79	= 16
Cases to litigiation during FY '78 and FY '79	= 1
Cases pending closure before the Board	= 0
Cases on file for investigation	= 12

All twelve open cases were filed by members of the profession or industry; seven concern unlicensed activity, three pertain to failure to report accidents, and two are of an undetermined nature.

II. Analysis

A. To what extent has the Board of Marine Pilots operated in the public interest?

The Board assures competency of Marine Pilots through its qualifications for licensure as outlined in Board regulations. The Board meets in May and December of each year to pass on applicant qualifications, conduct examinations, and consider other Board business.

Temporary permits are available (pending full examination at a regular meeting) for qualified applicants for unlimited, limited or channel pilot licenses, subsequent to submission of qualifications and brief examination by two members of the Board. These two members have traditionally been either the pilot and agent from Scuthwest Alaska or the pilot and agent from Southeast Alaska. Authorization of the temporary permit is documented by these members and forwarded to the administrative agency for issuance of the permit.

Regular examinations held during Board meetings consist of written and oral testing. Content of the written exam is cited in 12 AAC 56.070 and appears to be similar in nature to the examination given for a license by the U.S. Coast Guard; a Coast Guard license is a prerequisite for a State license. Applicants are also tested orally by the Board regarding specific conditions and situations of vessels and maneuvers in the particular geographical area for which licensure is being sought. In view of the fact that there appears to be redundancy in the Coast

Guard and State tests, and the fact that applicants must have a Coast Guard license, the Board should consider eliminating some or all of the written portion of its examination.

Marine Pilot licenses are renewed biennially on December 31 of even-numbered years. Recent professional activity and certification of physical fitness are renewal requirements. Licentiates are required by regulations to file with the administrative agency quarterly reports on all vessels served; however, in many instances this has not been done on a consistent basis.

The Board has not kept a register of vessels, operators, agents or managers as required by AS 08.62.040(a)(3).

The Board has adopted substantive regulations pursuant to its mandate to provide for competent service in the protection of shipping and safety of human life and property.

B. To what extent has the operation of the Board of Marine Pilots been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

As with all boards and commissions for which support services are provided by the Division of Occupational Licensing, this Board functions within strict budgetary and personnel limitations. Direct staff support is provided by a licensing examiner who is also responsible for two other boards. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined. Revenues for this Board are not sufficient to support its operation.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY'78 two investigator positions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

Although the Board of Marine Pilots usually holds two meetings each year, two additional special meetings were held early in 1979 relative to the statutory provision (AS 08.62.040(a)(4)) that the Board "regulate pilotage fees." One of the two Marine Pilot associations representing a portion of Alaska licensees had requested a hearing before the Board on a proposed tariff increase, which was finally denied by the Board in June of 1979 but has been scheduled again for the December, 1979 meeting. Representatives from the Southwest Alaska Pilots' Association, the shipping industry, the Department of Commerce and Economic Development, and the Department of Law, as well as most members of the Board, were actively involved in these hearings.

Because no definitive guidelines or procedures for tariff hearings have been established, there is a considerable amount of time consuming confusion related to this Board activity. A number of areas of concern

regarding tariff hearings have been cited by the Department of Law including possible antitrust suits arising from negotiated uniform fees to be charged by the association on behalf of "independent" pilots and the potential for conflict of interest in that the Board membership includes two pilots and two shipping agents who constitute a majority of the Board and without whom there could be no quorum (see Appendices A and B).

A number of suggestions were made by the Department of Law to establish hearing procedures and guidelines; however, this has not been done. Regulations proposed by the Department of Law (see Appendix C) addressing some of these problem areas were rejected by the Board at its last meeting.

We do not believe that a State board should involve itself in "labor negotiations" or in fee setting for industry and would recommend statutory amendments which would resolve the conflicts seen in present hearing procedures, whether it be specific authority to permit prehearing negotiations between pilots and shippers, reconstitution of the Board, delegation of tariff hearing authority, or complete disassociation as a State regulatory function.

If no statutory amendments are made, it is suggested that the Board immediately proceed in setting up specific hearing procedures. The Board should also reconsider its position on needed regulatory amendments.

C. To what extent has the Board of Marine Pilots recommended statutory changes which are generally of benefit to the public interest?

Two public members were added to the Board in 1976; in 1979 penalties for unlicensed activity were increased from a minimum of $500 and maximum of $1,000 to a minimum of $1,000 and maximum of $5,000 (with Board approval).

Review of Board minutes for the past two years indicates no other recommended statutory changes either specifically in the public interest or otherwise.

D. To what extent has the Board of Marine Pilots encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy and availability of service which it has provided?

Participation concerning Board affairs has come from the profession and related industries. No "public" interest in Board activities has been demonstrated. Efforts could be made by the Board to promote public awareness but probably would have minimal effect.

Public interests are furthered by a presence of public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decision-making."[1] The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Marine Pilots processed and resolved?

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[1] Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

General inquiries regarding the activities of the Board are responded to by Department staff and by members of the Board. Indications are that these responses are both accurate and timely and that information disseminated is appropriate.

Efforts are being made by the Division of Occupational Licensing to further organize and expedite the complaint and investigation process for all boards and commissions.

F. To what extent does the Board of Marine Pilots present qualified applicants to serve the public?

Regulations regarding licensure qualifications have been adopted to insure competency of pilots, and are adhered to by the Board. This process, in conjunction with viable enforcement provisions, functions to assure initial and on-going professional ability.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Marine Pilots in its own activities, and in its area of activity or interest?

Board staff consists of the support services of a licensing examiner (also responsible to two other boards), employed by the Division of Occupational Licensing. This position and others, such as Division Director, Management Analyst, Regulations Specialist, etc., are hired through the State Personnel System and are subject to affirmative action requirements.

Examination and licensing privileges in this profession are based on specific criteria to which affirmative action requirements are not applicable.

H. To what extent are statutory, budgetary or other changes necessary tc enable the Board of Marine Pilots to better serve the interests of the public?

Investigation and complaint procedures are being addressed by the administrative agency with emphasis being placed on magnitude of offense and public safety.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing administrative overhead such as staff salaries, examination expenses, and investigative services.

AS 08.62.110 may be repealed as well as a portion of §120. Fees could be increased, particularly the $10 application fee. Statutory terms such as "incompetent" and "misconduct" should be defined. The Board should revise its regulations with respect to quorums for the conduct of its business and, as a matter of general policy, follow through on advice given it by the Department of Law.

Significant decisions need to be made with regard to the Board's role in tariff hearings. Continued confusion or inaction is not a suitable alternative to the many potential problems faced by the Board in its present situation. It is hoped that clarification and direction will be provided as a result of Legislative consideration.

Chapter 62. Marine Pilots.

Article
1. Board of Marine Pilots (§§ 08.62.010-08.62.040)
2. Licensing (§§ 08.62.080-08.62.150)
3. General Provisions (§§ 08.62.160-08.62.200)

Article 1. Board of Marine Pilots.

Section
10. Creation and membership of board
20. Appointment and term of office
30. Meetings
40. Powers and duties

Sec. 08.62.010. Creation and membership of board. There is created the Board of Marine Pilots. It consists of two pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, two agents or managers of vessels subject to this chapter, two public members in accordance with AS 08.01.025, and the commissioner or his designee. Not more than one pilot and one agent or manager shall be from any one judicial district. All members of the board shall be residents of the state. (§ 2 ch 106 SLA 1970; am § 8 ch 258 SLA 1976)

Sec. 08.62.020. Appointment and term of office. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session, for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (§ 2 ch 106 SLA 1970)

Sec. 08.62.030. Meetings. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (§ 2 ch 106 SLA 1970)

Sec. 08.62.040. Powers and duties. (a) The board shall

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;

(2) consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots, vessels, operators, agents, and managers;

(4) regulate pilotage fees;

(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (§ 2 ch 106 SLA 1970)

Article 2. Licensing.

Section
80. License requirement
90. Application
100. Qualifications
110. Previous licensure
120. Duration, renewal
130. Lapsed license
140. Fees
150. Denial, revocation or suspension

Sec. 08.62.080. License requirement. No person may pilot a vessel subject to this chapter unless he is licensed under this chapter. (§ 2 ch 106 SLA 1970)

Sec 08.62.090. Application. (a) A person who desires to be licensed under this chapter shall apply in writing to the department.

(b) The application shall provide the information and be made on a form prescribed by the board. (§ 2 ch 106 SLA 1970)

Sec. 08.62.100. Qualifications. A person is entitled to a license under this chapter if he

(1) is of good moral character;

(2) is a citizen of the United States;

(3) passes the examination given by the board; and

(4) qualifies under the regulations adopted under § 40(a)(2) and (b) of this chapter. (§ 2 ch 106 SLA 1970)

Sec. 08.62.110. Previous licensure. A license that was issued under AS 30.10 is considered as having been issued under this chapter. (§ 2 ch 106 SLA 1970)

Sec. 08.62.120. Duration, renewal. A license issued under this chapter shall be renewed biennially on dates set by the department. A license issued under AS 30.10 lapses at the end of calendar year 1970.

A license issued between May 7, 1970 and the end of 1970 shall be issued for a fee of $100. A license shall be renewed without examination upon the payment of the biennial license fee. (§ 2 ch 106 SLA 1970)

Sec. 08.62.130. Lapsed license. A lapsed license may be reinstated without examination if it has not remained lapsed for more than two years. However, it the license is lapsed for less than two years and the board has reason to believe that the person applying for reinstatement of his license is incapable or incompetent to carry out the duties of a licensed marine pilot, the board may require the applicant to take and pass the examination given by the board. (§ 2 ch 106 SLA 1970; am § 1 ch 22 SLA 1973)

Sec. 08.62.140. Fees. The following fees shall be imposed under this chapter when applicable:

(1) application fee.....	$ 10
(2) biennial license fee.....	200

(§ 2 ch 106 SLA 1970)

Sec. 08.62.150. Denial, revocation or suspension. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

(1) is incompetent in the performance of his pilotage duties;

(2) is habitually intoxicated;

(3) illegally uses or sells narcotic or hallucinogenic drugs;

(4) makes a false statement to obtain a license;

(5) violates a provision of this chapter or a regulation adopted under it; or

(6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

(1) the reason for the license denial, revocation or suspension has been remedied; and

(2) the period of suspension has been served and all fines imposed under this chapter have been paid. (§ 2 ch 106 SLA 1970)

Article 3. General Provisions.

Section
160. Mandatory employment of licensed pilots
170. Pilot's lien for compensation
180. Exemptions
185. Certain licensed pilots required for oil tankers
190. Penalty
200. Definitions

Sec. 08.62.160. Mandatory employment of licensed pilots. A vessel subject to this chapter navigating the inside coastal waters of Alaska as determined by regulation shall employ a pilot holding a valid license under this chapter. (§ 2 ch 106 SLA 1970)

Sec. 08.62.170. Pilot's lien for compensation. Each vessel, its tackle, apparel and furniture and the owner of the vessel are jointly and severally liable for the compensation of a pilot employed on the vessel and the pilot has a lien on the vessel, her tackle, apparel and furniture for his compensation. (§ 2 ch 106 SLA 1970)

Sec. 08.62.180. Exemptions. This chapter does not apply to

(1) vessels under enrollment, except as provided in § 185 of this chapter;

(2) fishing vessels registered in the United States or in British Columbia, Canada;

(3) motorboats as defined in sec. 1 of the federal Motor Boat Act of 1940 (54 Stat. 163; 46 U.S.C., sec. 526 et seq.);

(4) vessels of United States registry of less than 300 gross tons and tow boats of United States registry and vessels owned by the State of Alaska, engaged exclusively

(A) on the rivers of Alaska, or

(B) in the coastwise trade on the west coast of the United States including Alaska, Hawaii, and British Columbia, Canada;

(5) vessels of Canada, including Canadian cruise ships, engaged in frequent trade between British Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those of United States registry; and

(6) pleasure craft. (§ 2 ch 106 SLA 1970; am § 1 ch 43 SLA 1972; am § 2 ch 78 SLA 1977)

Sec. 08.62.185. Certain licensed pilots required for oil tankers. (a) Any oil tanker, whether enrolled or registered, of 50,000 dead weight tons or greater, shall, when navigating in state waters beyond Alaska pilot stations either

(1) employ a pilot licensed by the state under this chapter, or

(2) utilize a federally licensed pilot whose duty station has been on that tanker throughout that specific voyage.

(b) The pilot required in (a) of this sectoin shall control the vessel during all docketing operations. (§ 3 ch 78 SLA 1977)

Sec. 08.62.190. Penalty. A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot, is gulity of a misdemeanor and, upon conviction, is punishable by a fine of not less than $1,000 nor more than $5,000. A person who violates any other provisoin of this chapter or a regulation adopted under it is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $1,000 nor more than $5,000. (§ 2 ch 106 SLA 1970; am § 1 ch 34 SLA 1979)

Sec. 08.62.200. Definitions. In this chapter

(1) "board" means the Board of Marine Pilots;

(2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;

(3) "department" means the Department of Commerce and Economic Development;

(4) "vessel" means all vessels not exempt under § 180 of this chapter. (§ 2 ch 106 SLA 1970; am § 48 ch 218 SLA 1976)

CHAPTER 56.
BOARD OF MARINE PILOTS

Article

1. Administration of Board
2. Licensing
3. Inside Waters
4. Rates
5. General Provisions

ARTICLE 1.
ADMINISTRATION OF BOARD

Section

10. Quorum
20. Meetings

12 AAC 56.010. QUORUM. (a) For the purpose of approving applications for examination and administering the examination for a temporary license, two members of the board are a quorum.

(b) For the purpose of board meetings, hearings, examinations and for conducting all other board business, three members are a quorum. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42)

Authority: AS 08.62.040(b)

12 AAC 56.020. MEETINGS. The annual meeting of the board shall be in December on the date, time and place designated by the chairman. Special meetings will be held at times and places designated by the chairman with approval of the governor and members of the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.030
AS 08.62.040(b)

ARTICLE 2.
LICENSING

Section

30. Qualifications for unlimited pilot's license
40. Qualifications for limited pilot's license
50. Qualifications for channel pilot's license
60. Temporary license
70. Examinations
80. Biennial license renewal

12 AAC 56.030. QUALIFICATIONS FOR UNLIMITED PILOT'S LICENSE. An applicant for an unlimited pilot's license shall apply on a form provided by the Department of Commerce

(1) pay the required fee; and

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license as first-class pilot upon the waters for which applying; and

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels; and

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the waters for which he is applying, which will be determined by oral and written examination before the board from topics listed in sec. 70 of this chapter; and

(5) have met the following requirements

(A) have a minimum of one year as a master or pilot of a vessel in the waters for which applying, and have executed under the direct supervision of a pilot holding an unlimited pilot's license under AS 08.62.100 a minimum of 10 dockings and 10 undockings while holding a United States Coast Guard license as a first-class pilot upon the waters for which applying and a United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels. No more than five of the required dockings or undockings may have been under the direct supervision of the same supervisory pilot; or

(B) have executed under the direct supervision of a pilot holding an unlimited pilot's license under AS 08.62.100 a minimum of 20 dockings and 20 undockings while holding a United States Coast Guard license as a first-class pilot upon the waters for which applying and a United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels. No more than five of the required dockings or undockings may have been under the direct supervision of the same supervisory pilot; and

(C) all dockings and undockings must be certified as having been made within two years prior to the date of application; and

(6) have satisfactorily completed a physical examination within 30 days of the date of application. The physical examination required of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(7) be at least 25 years of age. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42)

Authority: AS 08.62.040(a)(2)

12 AAC 56.040. QUALIFICATIONS FOR LIMITED PILOT'S LICENSE. (a) A limited pilot's license is a license to pilot vessels of 2,000 gross tons or less.

(b) An applicant for a limited pilot's license shall apply on a form provided by the Department of Commerce

(1) pay the required fee; and

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license for first-class pilot upon the waters for which applying; and

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master; and

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the waters for which he is applying, which will be determined by oral and written examination before the board from topics listed in sec. 70(b) and (c) of this chapter; and

(5) have satisfactorily completed a physical examination within 30 days of the date of application; the physical examination required of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(6) be at least 25 years of age.

(c) An applicant for a limited pilot's license not meeting the requirements of (b)(2) and (3) of this section may be issued a limited license, if in the opinion of the board he has submitted sufficient proof of experience and knowledge for the area in which he is applying. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42)

Authority: AS 08.62.040(a)(2)

12 AAC 56.050. QUALIFICATIONS FOR CHANNEL PILOT'S LICENSE. A channel pilot's license is a license to pilot in main ship channels only. A channel pilot may perform docking and undockings only under the direct supervision of a pilot holding an unlimited pilot's license. An applicant for a channel pilot's license shall apply on forms provided by the Department of Commerce. An applicant shall

(1) pay the required fee; and

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license for first-class pilot upon the waters for which applying; and

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master of steam or motor vessel of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels; and

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the water for which he is applying, which will be determined by oral and written examination before the board from topics listed in sec. 70(b) and (c) of this chapter; and

(5) have completed satisfactorily a physical examination within 30 days of the date of application; the physical examination required of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(6) be at least 25 years of age. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg.50)

Authority: AS 08.62.040(a)(2)

12 AAC 56.060. TEMPORARY LICENSE. (a) A temporary license may be issued to a person applying for an unlimited, limited or channel pilot's license upon

(1) submission of the required application; and

(2) submission of the temporary license fee of $50; and

(3) submission of proof that he meets all requirements for the license for which he is applying except the examination requirement; and

(4) successful passing of a written examination consisting of 20 questions with a score of at least 75 percent; the questions will be taken from a list of 100 questions prepared previously by the board; this examination will not be considered as part of the oral and written examination given by the board under sec. 70 of this chapter, but will cover the same topics.

(b) A temporary license will be valid until the results of the next scheduled examination are received. If for a valid reason the applicant was unable to appear for the next scheduled examination, the board may extend the temporary license until the next scheduled examination after the one for which the applicant was unable to appear. The temporary license shall not be extended more than once nor shall a second temporary license be issued.

(c) An applicant for an extension of route may receive a temporary permit by appearing before two board members and taking a written and oral examination for the requested area. If the applicant passes the examination, a temporary extension of route permit will be issued which

will remain in effect until the next scheduled meeting of the board when the application will be reviewed for permanent licensure. The applicant need not appear at the scheduled meeting. If permanent licensure is approved, the area will be added to the license; if it is disapproved, the temporary permit is void as of the date of disapproval. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50; am 6/30/78, Reg. 66)

Authority: AS 08.62.040(a)(2)

12 AAC 56.070. EXAMINATIONS. (a) The examination required by secs. 30, 40 and 50 of this chapter will be given at least once a year at the time and place designated by the chairman of the board with prior approval of the other board members. All applications for examination must be submitted to the board at least 60 days before the date of examination.

(b) Applicants must pass the written portion of the examination with a score of at least 75 percent in each topic with the exception of (1) of this subsection, inland and pilot rules, which must be passed with a score of at least 90 percent. The written examination may consist of, but not be limited to, the following topics:

(1) inland and pilot rules;

(2) aids to navigation;

(3) courses, distances, and distances passed abeam at change of course points between given points;

(4) important and essential cable areas;

(5) dredged channel widths and depths;

(6) bridge signals, widths, regulations, and closing periods;

(7) ship handling, docking problems, seamanship by actual observation, use of tow boats and anchors;

(8) Alaska Pilotage Act and rules of the board;

(9) location of anchorages;

(10) duties of a pilot;

(11) relationship between master and pilot;

(12) practical operation and use of marine radar, including use of maneuvering board;

(13) currents and tides;

(14) dock headings, lengths, depths of water alongside pier locations and berth numbers;

(15) U.S. Government Public Health Quarantine regulations;

(16) prohibited areas, restricted areas, explosive anchorages;

(17) chart knowledge, including chart symbols and abbreviations;

(18) use of navigational and bridge instruments;

(19) engine order and rudder commands for

(A) U.S. merchant vessels;

(B) U.S. naval vessels;

(C) foreign flag merchant vessels.

(c) An applicant for licensure as an unlimited, limited or channel pilot will be orally interviewed by the board on his safety record and elaboration of his seagoing background as listed on his application. In addition, the applicant must pass the oral examination required by secs. 30, 40 and 50 of this chapter with a score of at least 75 percent in the following topics:

(1) knowledge of the local harbor conditions and local regulations in the area applied for;

(2) signals; and

(3) rules of the road. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 6/19/74, Reg. 50)

Authority: AS 08.62.040(a)(2)

12 AAC 56.080. BIENNIAL LICENSE RENEWAL. (a) All licenses expire on December 31 of even-numbered years. In order to renew the biennial license, all licensees must submit the renewal application with

(1) proof of having satisfactorily completed a physical examination within 30 days of the renewal date; and

(2) the biennial license fee of $200.

(b) In addition, a licensee

(1) holding an unlimited pilot's license must submit proof of having worked in a licensed deck officer capacity for two months in the area for which he was licensed during the last biennial period;

(2) holding either a limited pilot's license or a channel pilot's license must have worked in a capacity which in the opinion of the board has kept him currently knowledgeable in the area for which his license was originally issued;

(3) who has not worked during the last two biennial periods in an area for which he was licensed shall petition the board to determine that he has sufficient knowledge and experience to resume pilotage in that area and is restricted from doing so until such a determination has been made. (Eff. 6/11/71, Reg. 38; am 6/19/74, Reg. 50; am 5/12/78, Reg. 66)

Authority: AS 08.62.040(a)(2) and (b)

ARTICLE 3.
INSIDE WATERS

Section

90. General rule for determining boundaries of inside waters of Alaska
100. Established boundaries of inside waters of Alaska
110. Exclusions for entering inside waters of Alaska
120. Pilot stations or pickup points

12 AAC 56.090. GENERAL RULE FOR DETERMINING BOUNDARIES OF INSIDE WATERS OF ALASKA. At all buoyed entrances from seaward to bays, sounds, rivers, or other estuaries for which specific lines are not described in this chapter, the waters inshore of a line drawn approximately parallel with the general trend of the shore, drawn through the outermost buoy or other aid to navigation of any system of aids, are inside waters. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(1) and (b)

12 AAC 56.100. ESTABLISHED BOUNDARIES OF INSIDE WATERS OF ALASKA. (a) The boundaries for Southeastern inside waters are as follows: A line drawn from Cape Spenser Light due south to a point of intersection which is due west of the southernmost extremity of Cape Cross; thence to Cape Edgecumbe Light; thence through Cape Bartolome Light and extended to a point of intersection which is due west of Cape Muzon Light; thence due east to Cape Muzon Light; thence to a point which is one mile, 180° true, from Cape Chacon Light; thence to Barren Island Light; thence to Lord Rock Light; thence to the southernmost extremity of Garnet Point, Kanagunut Island; thence to the southeasternmost extremity of Island Point, Sitklan Island. A line drawn from the northeasternmost extremity of Point Mansfield, Sitklan Island, 40° true, to where it intersects the mainland.

(b) The boundaries for Southwestern inside waters are as follows:

(1) Prince William Sound. All waters of Prince William Sound inside a line drawn from Cape Puget to Point Elrington; thence to Cape Clear; thence Zaikof Point to Cape Hinchinbrook Light; thence Point Bentinch Light to Point Whitshed;

(2) Resurrection Bay. The waters of Resurrection Bay north of latitude 59° 59.0′ north;

(3) Cook Inlet. All waters of Cook Inlet inside a line drawn from Cape Douglas (latitude 58° 51.2′ north, longitude 153° 14.9′ west) through Cape Elizabeth Light at latitude 59° 08.9′ north, longitude 151° 52.5′ west to the Kenai Peninsula shoreline. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(1) and (b)

12 AAC 56.110. EXCLUSIONS FOR ENTERING INSIDE WATERS OF ALASKA. Vessels are excluded from the use of a licensed marine pilot for inside waters only when proceeding directly from points outside Alaska inside waters to an established pilot station or pickup point. These exclusions are as follows:

(1) Southeastern Alaska:

(A) travel via Clarence Strait to Guard Island at a point located at latitude 55° 26.7′ north, longitude 131° 52.8′ west;

(B) travel via Clarence Strait to a point located approximately one mile east of Point McCartey Light at latitude 55° 06.8′ north, longitude 131° 42.3′ west;

(C) travel via Cape Bartolome in Bucareli Bay to Cabras Island located at latitude 55° 20.3′ north, longitude 133° 23.4′ west;

(D) travel via Cape Ommaney in Chatham Strait to a point in the vicinity of Point Retreat located at latitude 58° 25.0′ north, longitude 134° 59.0′ west;

(E) travel via Sitka Sound to a vicinity close aboard Eckholms Light at latitude 57° 00.6′ north, longitude 135° 21.4′ west. This exclusion applies only to those vessels going to the port of Sitka; and

(2) Southwestern Alaska:

(A) travel via Prince William Sound to the Cordova Pilot Station located approximately two miles south of Sheeps Point at latitude 60° 37.0′ north, longitude 146° 00.0′ west;

(B) travel via Prince William Sound to the Valdez Pilot Station located approximately 2.3 miles north of Busby Island Light (60° 53.8′ north, 146° 48.9′ west);

(C) travel via Prince William Sound to the Whittier Pilot Station located approximately one mile south of Pigot Point Light (60° 48.1′ north, 148° 21.3′ west);

(D) travel via Cook Inlet to the Homer Pilot Station located approximately one mile south of Homer Spit Light on Coal Point (59° 36.2′ north, 151° 24.5′ west); and

(E) travel to the Kodiak City or Womens Bay Pilot Station located approximately one mile eastward of St. Paul Harbor lighted buoy No. 14 (57° 44.5′ north, 152° 24.3′ west).

(Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42)

Authority: AS 08.62.040(a)(1) and (b)

12 AAC 56.120. PILOT STATIONS OR PICKUP POINTS. (a) The established pilot stations for Southeastern Alaska are as follows:

(1) Guard Island (55° 26.7′ north, 131° 52.8′ west);

(2) Point McCartey – located approximately one mile east of Point McCartey (55° 06.8′ north, 131° 42.3′ west);

(3) Cabras Island, Bucareli Bay (55° 20.3′ north, 133° 23.4′ west);

(4) Sitka Sound – to a point close aboard Eckholms Light (57° 00.6′ north, 135° 21.4′ west);

(5) Point Retreat – to a point in the vicinity of Point Retreat (58° 25.0′ north, 134° 59.0′ west); and

(6) repealed. (6/30/78, Reg. 66)

(b) The established pilot stations for Southwestern Alaska are as follows:

(1) Cordova – located approximately two miles south of Sheeps Point (60° 37.0′ north, 146° 00.0′ west);

(2) Valdez – located approximately 2.3 miles north of Busby Island Light (60° 53.8′ north, 146° 48.9′ west);

(3) Whittier – located approximately one mile south of Pigot Point Light (60° 48.1′ north, 148° 21.3′ west);

(4) Seaward – located one mile southeasterly from Caines Head Light (59° 59.0′ north, 149° 23.1′ west);

(5) Cook Inlet – located near Homer approximately one mile south of Homer Spit Light on Coal Point (59° 36.2′ north, 151° 24.5′ west);

(6) Kodiak (city) or Womens Bay – located approximately two miles 100° true from St. Paul Harbor entrance light (57° 44.4′ north, 152° 25.7′ west);

(7) Cold Bay – located approximately three miles southward of Cold Bay entrance buoy No. 1 (55° 05.6′ north, 162° 31.8′ west);

(8) Dutch Harbor – located one mile east of Ulakta Head Light (53° 55.5′ north, 166° 30.4′ west); and

(9) Adak – located two miles east of Gannet Rocks Light (51° 52.1′ north, 176° 36.4′ west).

(c) For those areas not having an established pilot station or pickup point, pickups will be made only by specific arrangement with the ship's agent and pilots. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 5/12/78 and 6/30/78, Reg. 66)

Authority: AS 08.62.040(a)(1) and (b)

ARTICLE 4.
RATES

Section
130. General rule for determining rates
140. Consent to rate deviation
150. Rate adjustment

12 AAC 56.130. GENERAL RULE FOR DETERMINING RATES. If no rate for an area has been established, the rate mutually agreed on by the parties will be used until a rate is established by the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(4) and (b)

12 AAC 56.140. CONSENT TO RATE DEVIATION. If parties to a piloting contract are dissatisfied with the rates established for an area, the parties may agree to a higher rate. This rate mutually agreed upon must be submitted to the board for approval. No deviations from the published rate may be used until approved by the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(1)(4)(a) and (b)

12 AAC 56.150. RATE ADJUSTMENT. Any party having a material interest in the rate structure desiring a rate change for an area must file a request for a rate adjustment at least 60 days before the next meeting of the board. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(4) and (b)

ARTICLE 5.
GENERAL PROVISIONS

Section
160. Duties of pilots
170. Physical incapacitation
180. Registration of operators
190. Definitions

12 AAC 56.160 DUTIES OF PILOTS. (a) A pilot shall be on duty piloting the vessel at all times when the vessel is in transit in pilotage waters.

(b) Passenger vessels in transit of the inside waters of Southeast Alaska except as set forth in sec. 110 of this chapter are required to carry two pilots on board for continuous alternating duty.

(c) In any case where a vessel being piloted by a state licensed pilot goes aground, collides with another vessel or dock, or meets with any casualty, or is injured or damaged in any way, the pilot shall, within ten days thereafter, make written report thereof to the board, and the board may thereupon, either with or without complaint being made against the pilot, investigate the matter reported upon. In any case of apparent damage being sustained or caused by a vessel under his charge the pilot shall file his report as soon as possible after returning to shore.

(d) Pilots will report to the Aids to Navigation officer of the United States Coast Guard, all changes in lights, range lights, buoys, and any dangers to navigation that may come to their knowledge.

(e) Any pilot who fails, neglects or refuses to make a report to the board as required by the pilotage laws of the state, or by this chapter, for a period of ten days after the date when the report is required to be made, is subject to having his license suspended at the discretion of the board.

(f) Pilots when so notified in writing shall report in person to the board at any meeting specified in the notice.

(g) Any pilot summoned to testify before the board shall appear in accordance with the summons and shall answer, under oath, any questions put to him which deal with any matter connected with the pilot service, or of the pilotage waters over which he is licensed to act. He is entitled to have his attorney or advisor present during any such appearance and testimony.

(h) A pilot on boarding a ship, if required by the master, shall exhibit his state license or photostatic copy of it.

(i) Pilots on board passenger vessels shall be provided access to an operable radio on the bridge at all times to use on frequency 2182 kHz for security purposes.

(j) Repealed. (5/12/78, Reg. 66)

(k) All pilots shall report on a quarterly basis

the names of all vessels served that were subject to the services of a licensed pilot. (Eff. 6/11/71, Reg. 38; am 6/19/74, Reg. 50; am 5/12/78, Reg. 66)

Authority: AS 08.62.040(a)

12 AAC 56.170. PHYSICAL INCAPACITATION. Any pilot who is physically incapacitated as a pilot for a period of 90 days or more shall not return to service as an active pilot until he has passed a physical examination by a physician approved by the board. (Eff. 6/11/71, Reg. 38; am 8/2/73, Reg. 47)

Authority: AS 08.62.040(a)(1) and (2) AS 08.62.040(b)

12 AAC 56.180. REGISTRATION OF OPERATORS. All ship owners, operators and agents of owners and operators whose vessels are subject to AS 08.62 must register with the board and keep the board advised of any changes of names and addresses. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(a)(3)

12 AAC 56.190. DEFINITIONS. For the purpose of this chapter "pilotage waters" means all inside waters of Alaska except those described in sec. 110 of this chapter. (Eff. 6/11/71, Reg. 38)

Authority: AS 08.62.040(b)

STATE
of ALASKA

MEMORANDUM

APPENDIX "A"

TO: Charles Webber, Chairman,
Board of Marine Pilots
Commissioner, Commerce &
Economic Development

DATE: February 8, 1979

FILE NO:

TELEPHONE NO.

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Applicability of AS 44.62 to the rate-making proceeding; Participation of Absent Board Members in the proceeding; Ex Parte Contacts.
Our File: J-66-458-79

By: Joseph K. Donohue
Joseph K. Donohue
Assistant Attorney General

You have requested our advice generally concerning the proper conduct of the rate-making proceeding presently designated the Proposed Tariff Increase filed by Southwest Alaska Pilots Association, BMP Rate Case No. 78-1. This office has reviewed the course of the proceeding thus far and wishes to give the board members several general instructions concerning the proper conduct of a rate-making proceeding. Many of these rules of conduct are of general application and the Director of the Division of Occupational Licensing should instruct members of other boards along similar lines whenever he deems it appropriate.

1. Applicability of AS 44.62.330 - .620

The Southwest Alaska Pilots Association filed a request for rate adjustment prior to the December 5th meeting of the Board of Marine Pilots in accordance with 12 AAC 56.150. */ In doing so, they initiated a rate making proceeding under the Board's general authority to "regulate pilotage fees." AS 08.62.040(a)(4). The hearing was subsequently continued until January 30, 1979. The question arises as to whether the administrative adjudication provisions of the Administrative Procedure Act (APA), AS 44.62.330 - .630 apply to a rate-making proceeding. AS 44.62.330(a)(33) expressly states that the Board of Marine Pilots is subject to this article of the APA. A review of those provisions clearly demonstrate that they are designed to establish the proper procedure for license revocation proceedings. There can be no question but that the Board is subject to the APA in any case involving the denial, suspension or revocation of a marine pilot's license.

However, it is also clear that the accusation, notice of defense and other provisions of the APA are not readily adapted

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*/ That regulation provides that "[a]ny party having a material interest in the rate structure desiring a rate change for an area must file a request for rate adjustment at least 60 days prior to the next meeting of the board."

to a rate-making proceeding. Each of the regulatory commissions created under state law -- the Alaska Public Utilities Commission, AS 42.05, the Alaska Pipeline Commission, AS 42.06, and the Alaska Transportation Commission, AS 42.07, provide entirely separate procedures for the filing of tariffs and for protesting rate increases by interested parties. These procedures which are implemented by statutory provisions and regulations enacted by those commissions insure procedural due process in the context of a hearing which is both adversary and legislative in nature. */

A review of the tariff filing and protest procedures by other rate-making or regulatory commissions demonstrates the inapplicability of the administrative adjudication provisions of the Administrative Procedure Act to this particular function of the Board of Marine Pilots. It is therefore the opinion of this office that the present rate-making hearing before the board need not be held in strict compliance with those latter provisions. However, the board must conduct its rate-making hearing in a fair and equitable manner which utilizes the APA provisions as appropriate guidelines, wherever possible, and which benefits from rate-making procedures of those agencies assigned comparable regulatory responsibilities with regard to determination of rates.

In light of the foregoing, this department recommends that the Board of Marine Pilots take all appropriate steps to promulgate procedural regulations and regulations setting forth the substantive criteria which it will consider in formulation of pilotage fees as soon as possible. In the meantime, the board should take every action within its authority to insure the parties to the instant proceedings are afforded ample opportunity to fully present their case and argue their position.

2. Participation of Absent Members

The Board of Marine Pilots is presently composed of seven members -- the Commissioner of Commerce and Economic Development, two shipping agents (one from Southeastern Alaska and one from Southwestern Alaska), two marine pilots (also one from Southeastern Alaska and one from Southwestern Alaska) and two public members. Presently one of the public member positions is vacant. At the January 30, 1979, hearing only four members were in attendance i.e. the Commissioner, both pilot members and the shipping agent from Southwestern Alaska. At that hearing, the board issued an order requiring document production and setting a briefing schedule. At the next board meeting in April, the board intends to deliberate

*/ It is legislative to the extent that the commissions are independently charged with setting just and reasonable rates.

and issue a decision with regard to the request for rate adjustment. The question arose whether the absent members would be able to participate in those deliberations should they attend the April meeting.

Traditionally, it has been the common judicial practice for a judge or commissioner to refuse to participate in a decision unless he has heard all of the testimony and been given an opportunity to review the entire record in the proceeding. This concept is expressly incorporated in AS 42.05.171 which states that a commissioner of the Alaska Public Utilities Commission "who has not heard the testimony, including the argument, may not participate in making a decision of the commission." See also AS 42.06.180 (APC). This should be compared with the present practice of the Alaska Supreme Court with regard to members of the panel who are absent during oral argument of an appeal. It is the practice of our state court to notify the parties that the absent justice has requested the parties' consent that he be allowed to participate in the proceeding upon his review of the tapes of the oral argument. The question is presented in such a way as to indicate that an objection by either party to the appeal would automatically be upheld and thus disqualify the absent member.

This office feels that this latter procedure adequately comports with the idea of a fair and impartial hearing on the record and that no party to the proceeding would be prejudiced by its adoption. Thus, any absent member of the board who wishes to participate in the rate-making decision should make his desire known formally by letter to the chairman with copies to all interested parties to the proceeding. The interested parties would thus have an opportunity to object to the participation of any of the absent members. Obviously, if there are no objections, the absent members can participate in subsequent deliberations assuming they have had an opportunity to review the tapes of the hearing held on January 30, 1979, and otherwise review the entire written record before the Board.

The conflict of interest question should be addressed in the same context. That is, is there a duty of a board member to disqualify himself in the face of an obvious conflict of interest? The pilot member from Southwest Alaska clearly stood to materially benefit from the rate-making decision before the board should that tariff increase be approved. It is equally true that the board member representing the shipping interests of Southwest Alaska had a direct interest in the case.

The Administrative Procedure Act expressly addresses this particular problem. AS 44.62.450(c) states in relevant

part:

> A hearing officer or agency member shall voluntarily disqualify himself and withdraw from a case in which he cannot accord a fair and impartial hearing or consideration. A party may request the disqualification of a hearing officer or agency member by filing an affidavit, before the taking of evidence at a hearing, stating with particularity the grounds upon which it has claimed that a fair and impartial hearing cannot be accorded. . . No agency member may withdraw voluntarily or be disqualified if his disqualification would prevent the existence of a quorum qualified to act in the particular case.

Again, we feel that the Administrative Procedure Act has incorporated a sound rule which comports with the due process notions guaranteed by the state and federal constitutions and that that guideline should be observed in this hearing and in future hearings. It could be also argued that the statutory composition of the board contemplates a conflict of interest and attempts to balance that conflict by requiring that there be a pilot member and shipping industry representative from each pilotage region of the state. However, this office has in the past and reiterates here that in the interest of a fair and impartial hearing that unless necessary for a quorum, members with conflicts should disqualify themselves. This was the advice given the board by the undersigned in response to a similar question at its meeting on April 21, 1976. See Minutes of Meeting Board of Marine Pilots, April 20 and 21, 1976.

Thus, in the context of the January 30, 1979, hearing at which the statutory quorum was in attendance, it was proper for the two members from Southwest Alaska to refuse to voluntarily disqualify themselves from the hearing. Likewise, they would not have been susceptible to a motion to disqualify, had such a motion been made, given the fact that their absence would have rendered the board unable to act.

3. Ex parte contacts

As a final cautionary matter, this office hereby advises each member of the Board of Marine Pilots that, in his capacity as a board member, he is serving in a quasi-judicial capacity in reviewing the tariff application of the Southwest Alaska Marine Pilots Association. Therefore, each member should refrain from communications with any interested party concerning the merits of the case. If any interested party

or his attorney */ approaches a member of the board, the board member should merely refrain from discussing any matter pertinent to the proceeding and request that the interested party refrain from discussing the case. Ex parte contacts between board members and parties interested in the outcome of the litigation arguably violate constitutional due process rendering that member subject to disqualification and possibly invalidating the entire proceeding. See Moss v. CAB, 430 F.2d 891 (D.C. Cir. 1970); Sangamon Valley v. United States, 269 F.2d 221 (D.C. Cir. 1959).

A corollary of the rule prohibiting ex parte contacts is the rule concerning the confidentiality of the board's deliberation process. The importance of flexible and open debate in such closed session is expressly recognized and promoted in AS 44.62.310. That section provides two general exceptions to the open meeting requirement for board meetings. First, certain topics which are carefully delimited in subsection (c) may be discussed in executive session e.g. matters which would prejudice the reputation of any person. Second, subsection (d) exempts meetings of judicial or quasi-judicial bodies holding a meeting to make a decision in any adjudicatory proceeding e.g. in rate-making proceeding. In both cases, the matters discussed should be confidential. Obviously, no one is prejudiced by this confidentiality since the board cannot act in the absence of a public decision with related findings and conclusions supported by the record.

This office requests strict compliance with these latter rules of conduct. This advice is of general application to any member of a professional licensing board participating in, or likely to review the result of, an adjudicative proceeding involving licensing, rates etc.

JKD:mll

cc: All Board Members

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*/ Such ex parte contacts by an attorney would in most cases be deemed an unethical practice. See Code of Professional Responsibility, Canon 7; EC 7-35.

STATE of ALASKA

MEMORANDUM

APPENDIX "B"

TO: Don Hostak, Director
Division of Occupational Licensing
Department of Commerce and Economic Development

DATE: February 5, 1979

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Meeting and Necessary Quorum for the Board of Marine Pilots
Our File: J-66-458-79

By: Joseph K. Donohue
Joseph K. Donohue
Assistant Attorney General

On January 30, 1979, I attended a Board of Marine Pilots meeting at which two technical procedural questions were raised. The first question relates to the proper manner in which to call a special meeting of the Board. AS 08.62.030 provides that the Board shall hold a regular annual meeting and in addition the Board may hold special meetings "at the call of the chairman with prior approval of the Governor". I inquired as to whether or not former Commissioner Hubbard had obtained the prior approval of the Governor when he called the meeting scheduled for January 30th. You indicated that you were uncertain as to whether that formality had been observed. In order to avoid any questions being raised in the future concerning this question, I would recommend that you prepare a form letter for the Governor's signature indicating his approval of each special meeting of the Board as well as a form letter for the Commissioner of Commerce and Economic Development's signature indicating that he has obtained the prior approval of the Governor and calling the special meeting for the specific dates involved. These letters could be entered into the record and minutes of each meeting to indicate that the Board had been properly convened.

You also inquired concerning the proper quorum requirements of the Board of Marine Pilots and what majority of that quorum was necessary for a resolution to pass and be duly approved by the Board. AS 08.62.010 creates a seven member board consisting of the Commissioner of Commerce and Economic Development, two marine pilot members, two shipping agent members and two public members. AS 08.01.030 provides that a majority of a membership of a board constitutes a quorum unless otherwise provided. There being no different quorum requirement established by AS 08.62 four members of the Board must be present at the meeting before the Board of Marine Pilots can conduct business. In turn, a majority of that quorum is necessary for the Board to take binding legal action. Thus the idea of the quorum is to establish a threshold number of the members of the board which when present at the meeting are competent to transact business in the name of the Board but in the absence of the other members. It is traditionally defined as a majority of the membership of the Board unless otherwise provided by statute. On the other hand, it takes only a

majority of that quorum to bind the Board as a whole. Benintendi v. Kenton Hotel, 60 N.E. 2d 829, 831 (New York 1945). This will at times be a minority of the entire membership of the Board.

In this context, I wish to bring to the attention of the Board its regulation 12 AAC 56.010 which states:

> (a) For the purpose of approving applications for examination and administering the examination for a temporary license, two members of the board are a quorum.
>
> (b) For the purposes of board meetings, hearings, examinations and for conducting all other board business, three members are a quorum.

Prior to 1976 subsection (b) was a correct statement of the law. In 1976 with the addition of two public members, the quorum requirement of the Board of Marine Pilots was increased to four members. (see sec. 8, ch. 258 SLA 1976) Thus this regulation has been superseded by a statutory amendment and is no longer valid.

With regard to subsection (a) it appears as though the proper authority for that subsection is found in AS 08.62.040(a)(2) which states that the Board can by regulation provide for the examination of pilots and the issuance of pilot licenses to qualified persons. Under that provision it would appear that the Board would have the discretion to provide for issuance of a temporary license on the basis of the approval of two members of the Board. Thus strictly speaking it does not appear to be a quorum requirement or it is a quorum requirement limited exclusively to the Board's examination and licensing authority. In any event, the Board should consider making these minor revisions outlined above in its next set of proposed regulations.

JKD:mll

TO: Joseph K. Donohue
Assistant Attorney General
AGO
Juneau, Alaska

DATE: April 17, 1979

FILE NO:

TELEPHONE NO:

SUBJECT: Marine Pilots Regulations

FROM: H. Russ McKeever
Paralegal
AGO
Juneau, Alaska

HRMS.

Per your request, I have examined the material available in AS 08.62.010 - 08.62.190 as well as the regulations promulgated by the Board of Marine Pilots pursuant to the Alaska Administrative Procedure Act and contained in 12 AAC 56.010 - 56.190. I have also reviewed similar laws and regulations from the United States Coast Guard and the states of Washington, Oregon, and California. Following are my observations and suggestions which the Alaska Board of Marine Pilots may wish to consider.

The board, composed of representatives of marine pilots and shipping companies establishes pilotage tariffs which determine the salaries received by the pilots and the costs incurred by shipping companies. The board relies to a great degree on the information provided by the pilots whenever they anticipate altering the tariff rate. It is of extreme importance that the information be accurate, be provided on a regular basis and disclose all potential sources of income and conflicts-of-interest on the part of the pilots. The operations of the pilots individually, as well as the operation of their respective associations (Southwest Pilots Association and Southeast Pilots Association) should be open to maximum scrutiny by the Board. I would recommend that the Board consider adopting the following provisions relating to reporting income and pilotage activities and requiring disclosure of related interests and sources of income.

12 AAC 56.161. CONFLICT OF INTEREST. Without express written authority of the board, no pilot shall either

(1) own, or have any fiduciary interest in, any shipping or marine transportation business or concern;

(2) own an interest in, or have any fiduciary interest in, any boats used as pilot boats; or

(3) accept any form of compensation from the owner or operator of any pilot boat.

Authority: AS 08.62.040

12 AAC 56.162. REPORT OF FINANCIAL AND BUSINESS INTERESTS. A licensed pilot shall file a statement giving his income sources and business interests, under oath and on penalty of perjury, no later than April 15, or 15 days after the pilot files his federal income tax return in each year.

Authority: AS 08.62.040

12 AAC 56.163. CONTENTS OF STATEMENT. (a) Each statement shall be an accurate representation of the financial affairs of the pilot and shall contain the same information for each member of his family, as specified in (b) of this section. An asset or liability under $500, household goods, and personal effects need not be identified.

(b) Each statement filed by a pilot under this chapter shall include:

(1) The source of all income over $500 including capital gains, whether or not taxable, received by him or his spouse or dependent child of his or non-dependent child who is living with him, during the preceding calendar year;

(2) The identity by name and address, of each business in which he or his spouse or dependent child of his or non-dependent child of his who is living with him was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year,

(3) The identity and nature of each interest owned by him or his spouse or dependent child of his or non-dependent child of his who is living with him in any business during the preceding calendar year. 1/

Authority: AS 08.62.040

1/ Both 12 AAC 56.162 and 163 are taken in part from AS 39.50.020 and 030 which deals with public officers and employees.

Although the matter of conflict-of-interest and financial accountability have not been previously addressed by the Boards of Marine Pilots either in Alaska or the other Western states, it is not without some precedent in Alaska law. To cite just a few examples; AS 27.05.020 Officials of the Department of Natural Resources, AS 21.06.040 Executives/ Employees of Division of Insurance, AS 24.20.291 Legislative Finance and Audit Personnel, AS 39.50.020 Public Officials, etc.

12 AAC 56.164. PILOTS TO FILE QUARTERLY REPORTS. (a) Every pilot shall file with the board not later than the tenth of January, April, July and October of each year a report for the preceding quarter. The report shall contain an account of all moneys received for pilotage by him or by any other person for him or on his account or for his benefit. The report shall contain:

(1) the name of each vessel piloted;
(2) the name of the vessel's master;
(3) Tthe name of each vessel for which pilotage has been charged or collected;
(4) the amount charged to or collected from each;
(5) any rebates made and allowed and for what amounts;
(6) where the vessel is registered;
(7) whether the vessel was inward or outward bound;
(8) the depth of each vessel's draft and its highest gross tonnage; and
(9) the name of the pilot boat used.

(b) In addition, each report shall contain a daily work log setting forth the following:

(1) All transportation and subsistence charges;
(2) Amount of time spent on pilot boats in travel to or from vessels;
(3) Actual piloting time aboard these vessels.[2/3/]

2/RCW 88.16.110 Pilots to File Quarterly Report Contents. Every pilot licensed under this chapter shall file with the board not later than the tenth day of January, April, July and October of each year a report for the preceding quarter. Said report shall contain an account of all moneys received for pilotage by him or by any other persons for him or on his account or for his

12 AAC 56.166. AUDIT. The marine pilots associations shall have their records audited annually by a certified public accountant approved by the board and submit the audit report to the board.

Authority: AS 08.62.040

In the "definitions" sections under both AS 08.62.200 and under 12 AAC 56.190 there is no reference to the word "pilots". I would suggest amending §190 with the addition of . . .

> "pilot" means a marine pilot licensed under the provisions of this chapter.

Section 12 AAC 56.010 dealing with a board quorum appears to be in some need of revision. It seems more appropriate that (a) of that section should be placed under Article 2, Licensing.

12 AAC 56.065 Application and Temporary Licenses. § 10(a).

Since I believe the quorum requirements specified in 12 AAC 56.010 appear to be out of keeping with requirements imposed by other Western states, I would suggest the complete rewriting of this section to read:

12 AAC 56.010. Quorum. (a) For the purpose of board meetings, hearings, and conducting all other board business, except under (b) of this section, four members are a quorum as long as one member is a pilot, one member is an agent of managers of vessels subject to this chapter, and one is a public member.

(b) For the purpose of fixing pilotage rates, six

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benefit. Said report shall state the name of each vessel piloted, the amount charged to and/or collected from each vessel, the port of registry of such vessel, its dead weight amount so received, collected, or charged is in full payment of pilotage and such other information as the board shall by regulation prescribe.

A similar report is required of California pilots.

3/ Adoption of 12 AAC 56.164 would necessitate repeal of 12 AAC 56.160(k).

members is a quorum.

For comparison purposes, the state of California has three board members and two are required to transact any business. The state of Washington specifies that five of the seven members must be present for all matters. Oregon has five members on the board with a simple majority required as long as one pilot and one ship owner representative are included. The state of Oregon specifies further that for consideration of pilotage rates, the entire board must be in attendance.

Also, for your information I have attached copies of excerpts of California, Oregon, and Washington laws or regulations dealing with the subject of board hearings and license suspension or revocation.

HRMc:nnk

STATE OF WASHINGTON
Dixy Lee Ray
Governor

DEPARTMENT OF TRANSPORTATION
Washington State Ferries, Seattle Ferry Terminal
Seattle, Washington 98104 206-464-7800
BOARD OF PILOTAGE COMMISSIONERS

October 23, 1979

Ms. Elaine Garrett
Department of Commerce & Economic
Development
Division of Occupational Licensing
Pouch D
Juneau, AK 99811

Dear Ms. Elaine Garrett:

This letter responds to your telephone inquiry as to how pilotage tariffs are set in Washington State.

The Board of Pilotage Commissioners is charged with the annual setting of pilotage fees (RCW 88.16.035(4)). A copy of the current pilotage act is attached. For many years it has been the practice that the pilots associations, and the Puget Sound Steamship Operators Association (their pilotage committee) will negotiate a level of fees to which both sides ultimately come to an agreement. With previous communication, as the negotiations progress, the Board will set a hearing date to hear testimony and ask questions of the two sides as to how the agreement was reached. Because of the agreement between the parties, the Board is usually inclined to adopt the rates as proposed. The rate hearings are therefore usually very short in duration and when completed the usual monthly meeting is commenced (the hearing is set on the day of the regular meeting).

Last year the Grays Harbor pilots received a 7% increase; the Puget Sound pilots received a rate increase of 8.3%, covering an 18 months period. Negotiations are commencing now for the next round.

As you can see the Board spends very little time in the actual tariff making process. We feel this is better handled by the parties directly involved, i.e., the ones providing the services and the ones paying the bills.

Copies of the two current tariffs are attached along with copies of minutes of the two hearings at which they were adopted.

We hope this information will be of assistance to you in your efforts to establish your next set of tariff changes. If any members of the Commission or your staff are interested, our Board meetings are held the second Thursday of each month. We would be delighted to have you attend so as to exchange matters of mutual interest and concern.

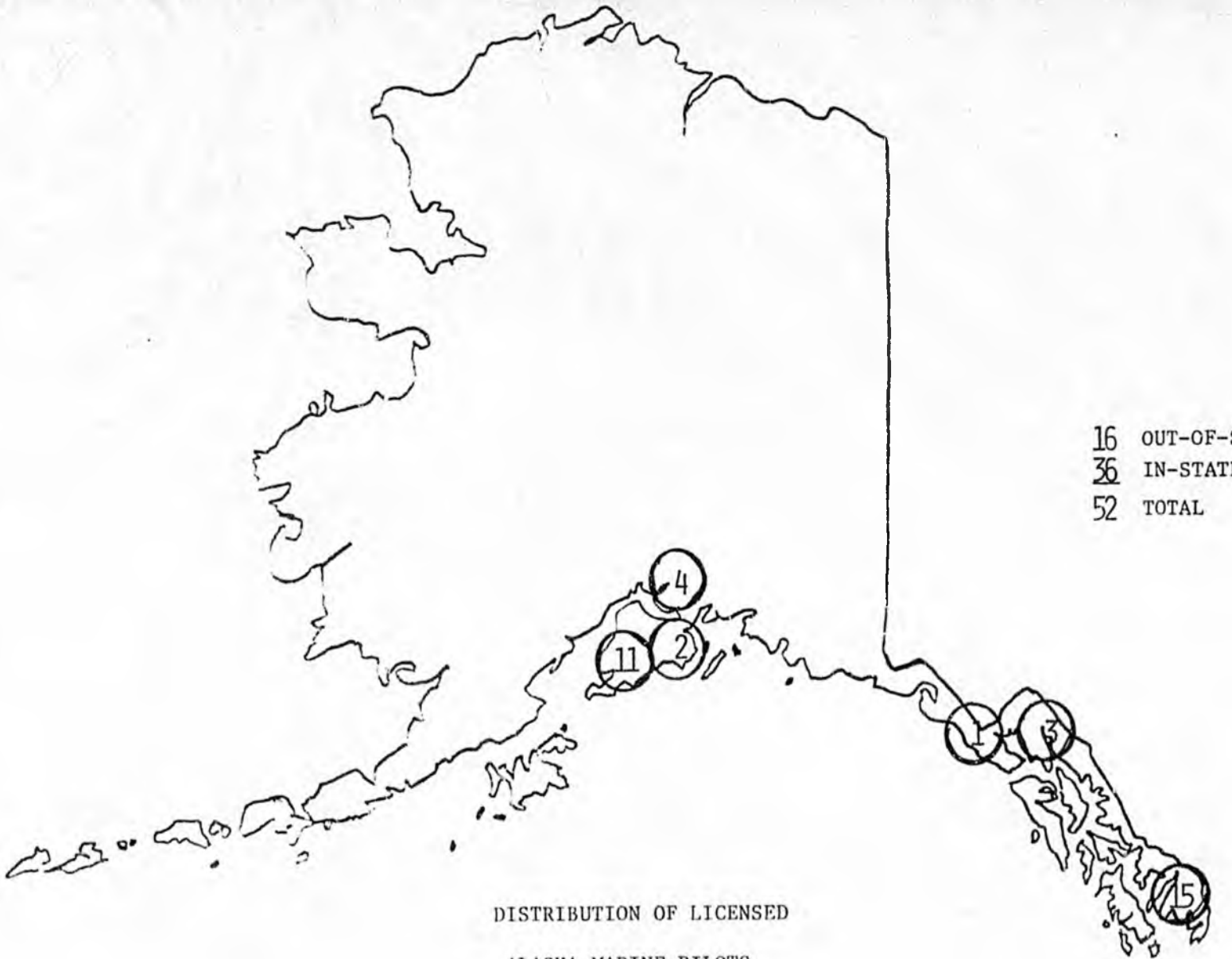
Please let us know if we can be of further assistance.

Sincerely,

BOARD OF PILOTAGE COMMISSIONERS

Richard A. Berg
Chairman

RAB: ht
enc.



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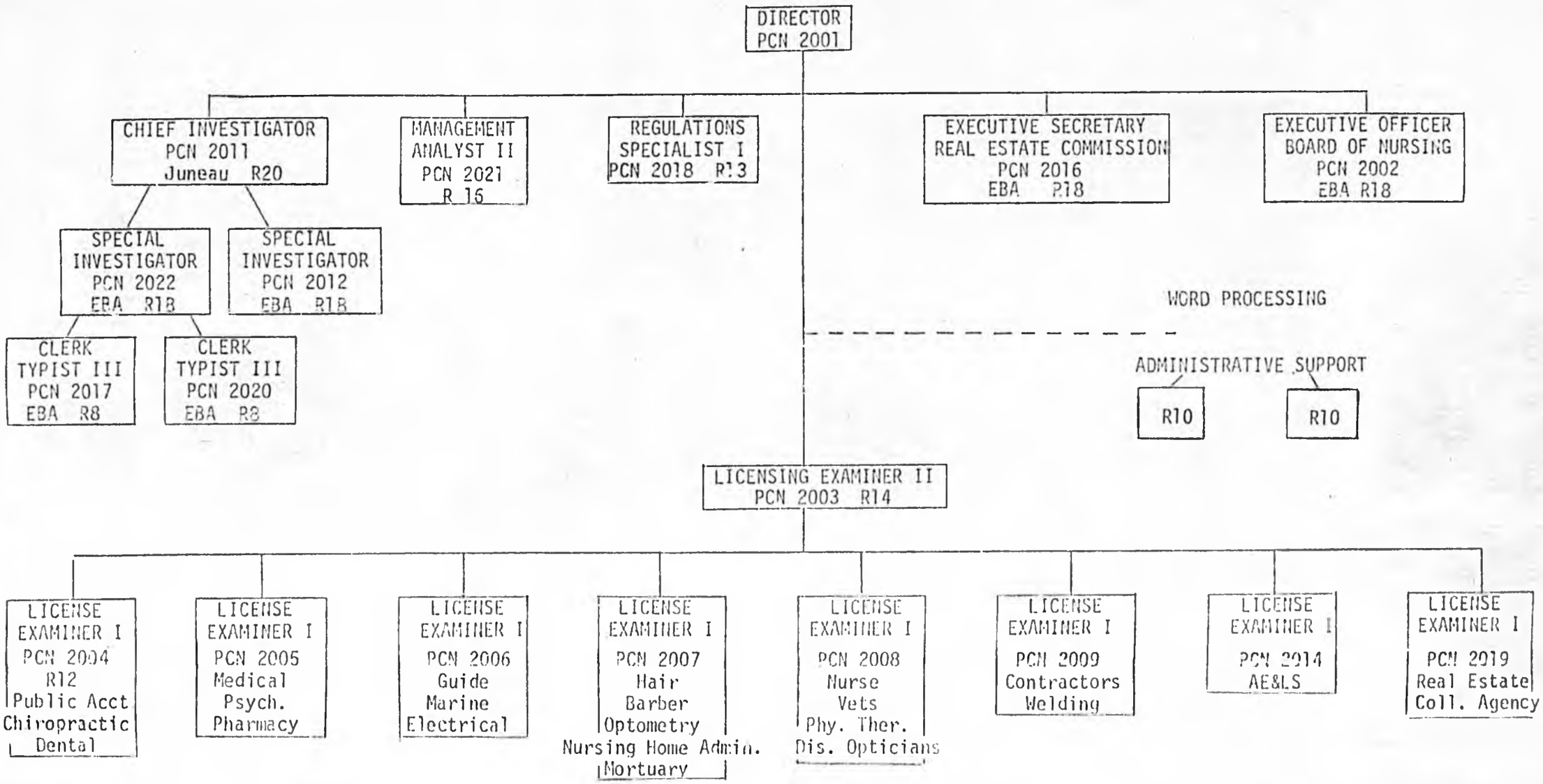

Rev. 1/79

- Optometry Board
- Chiropractic Board

Pat Connolly
~~Conn~~
Connolly
(789-7956)

SUNSET REVIEW
Prepared by

The Department of Commerce &
Economic Development
Division of Occupational Licensing

A SUNSET REVIEW OF THE

STATE HEALTH CARE RELATED BOARDS

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
Division of Occupational Licensing

Commissioner, Department of Commerce and Economic Development — Charles Webber

Deputy Commissioner, Department of Commerce and Economic Development — Bertram L. Wagnon

Director, Division of Occupational Licensing — Don Hostak

Prepared by: Elaine Garrett
Management Analyst

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

January 15, 1979

The Alaska State Legislature:

Transmitted herewith, pursuant to AS 44.66.050, are the reports of the Alaska State Board of Dental Examiners, Board of Nursing, Board of Dispensing Opticians, Board of Examiners in Optometry, Board of Pharmacy, Board of Veterinary Examiners, Board of Psychologist and Psychological Associate Examiners, Board of Nursing Home Administrators, Physical Therapy Board, Board of Chiropractic Examiners and State Medical Board.

This evaluation, supplemental to my oral testimony before the Legislature, serves to focus attention upon the question of whether or not the boards are best serving the interests of the public. Data as provided by the Division of Occupational Licensing, the board members, licensees and members of the public has been received, reviewed and evaluated. Specific proposals are made on the basis of this data achieving increased effectiveness and protection to the consuming public.

Yours truly,

Charles Webber,
Commissioner

Philosophy of Evaluation

This review and evaluation has been undertaken to determine whether continued regulation of an industry or occupation under State auspices can be justified in terms of protection of public health, safety and welfare. State boards and regulatory agencies should be continually cognizant of the public's right to a government acting responsibly in licensing competent practitioners and doing so only in the best interests of the people. Evidence must clearly indicate that the primary goal of regulation is to promote the public good rather than that of the industry or profession. The absence of such evidence indicates cessation of State regulation. Where public benefit or a potential for benefit can be shown to exist, recommendations are made with respect to possible alternatives in the regulatory process which will serve to enhance public health, safety, welfare and accountability.

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STATE OF ALASKA
Board of Dental Examiners
(July, 1978)

Findings

Dissolution of the Board of Dental Examiners and subsequent governmental deregulation of the dentistry profession would subject the public to the possibility of persons practicing dentistry who are not compelled to meet requisite minimum standards of proficiency. Lack of control could result in financial loss, physical injury or death among members of the general public. With the abrogation of governmental regulation and investigative follow-up on complaints of alleged dental malpractice, unqualified practitioners would be unhindered in their practices on an unaware public, even though previous violations such as overcharging or physical harm had occurred. Therefore, it is recommended that the Board of Dental Examiners be reestablished for an additional four-year period.

I. General Information

A. Regulated Parties

1. Dentists
2. Dental Hygienists

B. Statutory Definition of Regulated Profession

"A person engages in the practice of dentistry who

(1) performs or holds himself out to the public as being able to perform dental operations;

(2) diagnoses, treats, operates on, corrects or attempts to correct, or prescribes for, a disease, lesion, pain, injury, deficiency, deformity, or physical condition, malocclusion or malposition of the human teeth, alveolar process, gums or jaws and adjacent tissues;

(3) performs or attempts to perform an operation incident to the replacement of teeth;

(4) furnishes, supplies, constructs, reproduces, or repairs prosthetic dentures, bridges, appliances or other structures to be used and worn as substitutes for natural teeth, except on prescription of a duly licensed and registered dentist and by the use of impressions or casts made by a duly licensed and registered dentist;

(5) uses the word 'dentist' or 'dental surgeon' or the letters D.D.S. or D.M.D. or other letter or title which represents him as engaging in the practice of dentisty;

(6) extracts or attempts to extract human teeth;

(7) owns, manages or operates a place where the acts and things described in this section are performed or done." (AS 08.36.360)

C. Purpose of Regulation

"The practice of dentistry in the state is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists be permitted to practice dentistry in the state. All provisions of this chapter relating to the practice of dentistry and dental hygiene and to the registration of dental laboratories shall be liberally construed to carry out these objects and purposes." (Section 1, Chapter 155, SLA 1968)

D. Nature and Composition of Board

1. Board members and terms:

Five-year term (no restrictions regarding consecutive terms or number of terms).

Arthur Hansen, DDS (Chairman)	ends February 1, 1982
Wayne Putman, DMD	ends February 1, 1983
Leonard Yuknis, DDS	ends February 1, 1979
Claude Rick, DDS	ends February 1, 1981
John Kobylarz, DMD (Secretary)	ends February 1, 1980
Jana Varrati, RDH	ends February 1, 1981
John R. Beard, Attorney	ends February 1, 1981

2. Representation:

Profession = 6 (includes one dental hygienist)
Public = 1

3. Qualifications:

"Five members shall be qualified resident dentists who have been engaged in the practice of dentistry in the state for five years immediately preceding appointment, one member shall be a dental hygienist licensed under AS 08.32, and one member with no direct financial interest in the health care industry." (AS 08.36.010)

E. Licensing Data

DENTISTS

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1974	26	15	11	58	42
1975	33	16	17	48	52
1976	31	25	6	81	19
1977	28	23	5	82	18
1978	25	12	13	48	52

Currently licensed:

in-State	=	203	(through June 1978)
out-of-State	=	172	(through June 1978)
	Total	375	

(includes 23 specialist licenses)

DENTAL HYGIENISTS

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1974	7	6	1	86	14
1975	9	8	1	89	11
1976	11	11	-	100	-
1977	28	28	-	100	-
1978	15	15	-	100	-

Currently licensed: 142 (issued through July 13, 1978)

F. Fees

DENTISTS

1.	original license	$30.00
2.	examination	50.00
3.	reexamination	50.00
4.	biennial registration	40.00
5.	branch office biennial registration	40.00
6.	temporary permit	25.00
7.	reinstatement	10.00
8.	specialty license	30.00
9.	duplicate license	10.00

1.	application	$25.00
2.	initial registration	20.00
3.	biennial registration	20.00
4.	reinstatement	25.00

G. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	$11,040.00	$11,524.40	$14,707.00	$6,040.24
-Refunds	100.00	755.00	270.00	70.00
Total	10,940.00	10,769.40	14,437.00	5,970.24
Expenditures				
Per Diem	-	3,998.75	3,471.16	3,202.50
Transportation	130.40	2,480.75	1,493.10	3,371.97
Phone	209.30	638.04	588.88	741.07
Printing, Adver. & Postage	172.30	939.46	657.30	394.74
Fees & Services	-	476.50	50.00	914.20
Rents, Leases & Other	50.00	120.69	140.35	151.40
Total	$ 562.00	$ 8,654.19	$ 6,400.79	$ 8,775.88
Surplus	$10,378.00	$ 2,115.21	$ 8,036.21	-
Deficit	-	-	-	$ 2,805.64

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

H. Complaints

	Received	Closed	To Litigation
1975	5	4	0
1976	7	2	2
1977	12	2	1
1978 (through June 30)	1	0	0

Pending: 16

I. Qualifications

1. Dentists:

Applicants applying for licensure by examination are required to be of good moral character and to have graduated from an approved dental college. College requirements may vary, however, six to eight years of post high school education is obligatory. Examination is required by every state prior to initial licensure.

2. Dental Hygienists:

Applicants must be at least 18 years of age, of good moral character, a graduate from both high school and an approved training school with at least a two-year program and must pass an examination prior to initial licensure.

II. Criteria and Analysis

A. To what extent has the Board of Dental Examiners operated in the public interest?

A major function of the Board is to examine and license qualified applicants to practice dentistry and dental hygiene throughout the State. While some qualifications are provided by statute (i.e., graduation from an approved dental college), the Board is given wide latitude in setting standards by which professional competence is judged.

One method of judging competency of applicants is through an examination, now given once each year, consisting of either written testing, clinical testing, or a combination of both at the discretion of the Board. Applicants who have completed the National Board written examination may or may not be required to successfully complete an additional written examination for Alaska. The Board has consistently required clinical examination of applicants, however, written examination requirements have been inconsistent. The 1975 dental examination included a written test, no longer in use, composed by the Board of Dental Examiners. In 1976 and 1977 no written examination was administered. In 1978, applicants were required to successfully complete the American Association of Dental Examiners' written test. The Board recently resolved to implement the June, 1978 requirements cited through adoption as regulations. This lack of continuity obviously contributed to the litigations instituted against the Board by unsuccessful candidates during this period.

Applicants who do not exhibit the prescribed level of knowledge and proficiency remain unlicensed until reexamination is successfully completed. It should be noted that an applicant who has failed to pass the examination on two separate occasions must submit proof of further study before reexamination.

Public interests are protected by requiring that applicants demonstrate professional proficiency. Incompetence could result in financial loss, physical harm and perhaps death. By licensing and registering dentists in the State, the Board is certifying to the public that the practitioner is at least minimally competent by its standards.

In contrast to other health care board statutes (i.e. State Medical Board, Board of Pharmacy, Board of Nursing), those of the Board of Dental Examiners do not specifically provide that an applicant for licensure shall meet specific requirements or substitutes. Rather, applicants may follow alternative procedures which the Board may designate at its discretion. It is, therefore, recommended that a separate, short term task force be created with the specific directive and goal of reviewing, revising and recommending concise and definitive statutory language. This task force should be represented by members of the dental profession, the legal profession, and knowledgeable lay persons, and should be dissolved immediately upon completion of this single directive.

Continued competency is not assured by initial testing procedures. No review or reexamination procedures exist. Valid arguments may be made against mandatory continuing education. One is the fact that if ongoing education is required, provisions must be made to allow compliance. The practicality of implementation in a rural state or of requiring professionals to go out of state to obtain education must be weighed against

whatever assurance there may be that incompetency will be significantly reduced or avoided by this method. Pending further study of this issue, one opinion[1] seems to indicate that vigorous investigation and enforcement programs may be an effective course of action.

It must be recognized that there is a widespread trend toward continuing education requirements as a condition of license renewal. Alaska is one of only 12 states not presently considering mandatory implementation of such requirements.[2] The American Dental Association supports continuing education. Continuing dental education requirements in the State of Minnesota have resulted in voluntary termination of licensure by out-of-state, semi-retired, and retired dentists and in suspension of 1.2% of all licenses for failure to meet reassessment requirements.[3] The recommended statutory review task force could appropriately address this subject as it relates to dental and other health care related boards.

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[1] Shimberg, B., Improving Occupational Regulation, "Officials from 30 states discuss common problems and search for solutions," Educational Testing Service, Princeton, N.J. 1976, p. 35.

[2] Dunn, R. and Porter, D., A Performance Audit of Dental Licensing in Utah. Office of Legislative Auditor General, Salt Lake City, Utah, June, 1978, p. 7.

[3] Ibid.

In the event that reassessment advantages are determined to outweigh the disadvantages, alternatives are:

1. certification of completion of approved courses to provide a basis for public selection of practitioners;

2. periodic in-office review of client records, dental practices and procedures;

3. mandatory reexamination by methods such as written tests, records and x-ray review;

4. routine periodic oral interviews before the Board, a member, or a selected committee;

5. review and analysis of quantity, type and disposition of complaints;

6. well developed and effective peer review mechanisms; and/or

7. programs that may be offered by the Alaska branch of the National Dentistry Association.

The problem of providing dental care to outlying communities is a very real one within the State. Permits for isolated areas may be issued upon recommendation by the Department of Health and Social Services and a "pool" of licensed dentists exists in some areas to provide periodic dental care to remote communities under contract. The Board has discontinued, as a matter of policy, the issuance of temporary permits prior to successful completion of the dental examination.

Formal licensure is not necessarily a guarantee against malpractice. Safeguards exist which can be utilized as measurements of ability, and as bases for revocation or limitation of temporary permits. Graduation from dental college should be indicative of ability and knowledge sufficient to have completed stringent academic and practical curricula. Additionally statutory provisions for issuance of a temporary permit require: That the permittee practice in a city or rural village where there is no actively practicing resident dentist; that the applicant have a license in good standing in a state, district, territory or possession of the U.S.; that the Board may issue one year permits only for a maximum of two years by which time the applicant must pass a Board examination; and that the Board may revoke, suspend or annul the license or take disciplinary action if necessary during that period.

The Board of Dental Examiners, at its discretion, also does not license by waiver or reciprocity, nor does it permit out-of-state proctoring, nor does it allow for examination in out-of-state dental colleges. Regional examinations in which several states may participate and which provide reciprocity among those states are not accepted or being considered as alternatives by the Board at this time.

The current practice of the Board in examining candidates annually, in conjunction with restrictive policies against reciprocity and the issuance of temporary permits, is not conducive to opportunity for entry into dentistry in the State. A review of reciprocity provisions indicates that such requirements restrict interstate entry into professions. Only applicants from states with which agreements have been established may be admitted without examination regardless of their qualifications. Endorsement allows licensure of those individuals licensed elsewhere whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence. Endorsement provisions are felt to be more in keeping with the principle of licensing

qualified applicants and with providing services of practitioners. It is recommended that statutory changes be made to allow for licensure by endorsement and that the Board take positive steps toward implementation of all methods which would allow additional availability of services to the public.

B. To what extent has the operation of the Board of Dental Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The functions of the Board have been limited and impeded by the lack of specific criteria and guidelines relevant to its operation. Much Board time is consumed with clarification and refinement of regulations. Recent revisions in Board regulations and policies have largely evolved out of court cases in which unsuccessful applicants allege nonuniformity of standards and failure of the Board to establish specific guidelines.

In an attempt to clarify its functions and requirements and to provide specific guidelines, the Board approved updated regulations delineating examination procedures, content, criteria for grading, and notification procedures (which were subsequently invalidated because formal adoption procedures were faulty). This continual refinement process has also contributed to confusion in interpretation and some conflict with statutes. Those regulations (12 AAC 28.100) stated: "Before each clinical examination the board will appoint three to five persons (who may be but are not required to be members of the board) as examiners for that examination." AS 08.36.130 states in part: "At least once each year the board shall appoint from its membership an examination committee of at least three persons." There also existed some ambiguity in the regulations covering examination procedures as to what constitutes a testing "section," a "subject" and a "part" as they pertain to reexamination provisions.

A general review of the statutes applicable to dentists and dental hygienists indicates a need to reexamine statutory language and continuity. Statutory consistency and standardization covering the functions and operations applicable to all health care boards could be expected to produce the following results:

1. a reduction in time expended in attempting to clarify Board functions and requirements;

2. a reduction in litigation, costs and time;

3. a reduction in time expended by the administrative agency in research, documentation and interpretation,

4. formalization of the Board's relationship with the public and with the administrative agency; and

5. formalization of the Board's scope of authority and support for its subsequent activities.

As previously noted, it is recommended that a separate, short-term task force be created with the specific directive and goal of reviewing, revising, and recommending concise and definitive statutory language. The task force would be dissolved immediately upon completion of this single task.

The Board of Dental Examiners has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions, with the exception of investigative services. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

The Board of Dental Examiners has experienced the same difficulties as other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

It is undeniably in the public interest to enforce the laws promulgated for the protection of public health and welfare and to take expeditious action upon receipt of potentially serious complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Board of Dental Examiners recommended statutory changes which are generally of benefit to the public interest?

Health care legislation enacted in 1976 provided several amendments and additions to existing statutes relating to Dental Hygienists and the Board of Dental Examiners:

AS 08.32.165 and 08.36.325 expand on previous sections which provide for revocation or suspension of licenses. The additions enumerate less severe disciolinary measures that may be enforced to limit or place conditions on a practitioner (i.e., reprimand, censure, probation, practice restrictions, or requirements for additional education or training).

AS 08.01.050(a)(19) was added to "provide investigative services" to boards for assistance in "matters of professional discipline." The Enforcement and Investigation Section of the Division of Occupational Licensing handles complaints received in which licensing violations are alleged. Complaints which are determined not to be this type of violation are referred to appropriate agencies while cases within Division jurisdiction are investigated and processed. Two investigators (including the chief investigator) currently are responsible to twenty-four (24) boards, commissions and interest groups.

AS 08.02.020 provided immunity from personal liability for licensing board members acting within their scope of authority.

AS 08.36.010 amended Board membership from five (5) to seven (7) members adding one dental hygienist and one member with no direct financial interest in the health care industry to the then existing five qualified resident dentist members.

AS 08.36.020 deleted the requirement that nominations for appointment to the Board be made by, and restricted to, the Alaska Dental Society.

1978 amendments relating to the practice of dental hygiene consisted for the most part of "housekeeping items," clarification and updating of existing statutes.

No statutory recommendations have been made by the Board of Dental Examiners that would be of specific benefit to the public.

D. To what extent has the Board of Dental Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is generally sensitive to public concern and to aspects of public health and welfare. However, very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written comment. Most public concern is expressed as a result of controversial issues arousing publicity or by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers in the State. It can be assumed that members of the public are somewhat reluctant to involve themselves in areas of a technical or scientific nature which may be considered too complex for anything but minimal scrutinization by a layperson. A technical and professional "barrier" of sorts exists, due to the nature of the occupation involved, which probably tends to deter public knowledgeability and participation.

The Board has not taken any overt action to solicit general public response to the quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.[4]

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[4]Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Dental Examiners processed and resolved?

No complaints were received which were specifically directed at individual members of the Board of Dental Examiners. Current and recent litigations have charged that the Board as a whole has been arbitrary and capricious in its examination requirements and grading standards. Two such cases were resolved through determination by a hearing officer that a special examination be held eight months later to accommodate the candidates (both passed and were subsequently licensed). In another instance, the hearing officer determined that the candidate should be reexamined on the failed portion of the test and that all costs of this procedure be borne by the Board.

Over the past three years only one complaint was received by the Office of the Ombudsman relating to Board activities. This complaint involved a delay in the receipt of a hygiene certificate and was resolved satisfactorily.

F. To what extent does the Board of Dental Examiners present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Dental Examiners. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. One examination each year is currently conducted, monitored and graded by the Board. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Because examinations are given only once each year, it may be of some public benefit to increase examination schedules. Applicants who have failed the examination or a portion, or who apply too late to be scheduled for an examination, would not be required to wait as long as a

year. A second examination could be scheduled providing that a minimum number of applications are received 30 days prior to the examination date. This increase in scheduling, once established, could be expected to increase the availability of licensed practitioners within the State. It should be noted that an applicant who has failed to pass the examination on two separate occasions must submit proof of further study before being reexamined (AS 08.36.180).

The current practice of the Board in examining candidates once each year, in conjunction with restrictive policies against reciprocity and the issuance of temporary permits, is not conducive to encouraging entry into the profession. It is again recommended that the Board review its regulatory alternatives, including the possibility of endorsement, and that it make every effort in providing opportunities for availability of dental services to the public.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Dental Examiners in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for two other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Dental Examiners issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Dental Examiners to better serve the interests of the public?

Recent litigation and interpretation difficulties have led to attempts at refining Board regulations. The Board is cognizant of the need for standardization and specificity within its regulations and is continually reviewing and revising them to provide more definite guidelines. Board policies with respect to examination criteria and uniformity in grading are also subject to continual scrutiny.

Changes in statutory language need to be enacted upon which the Board, the applicants, and the public may rely. While Board discretion may be advantageous in some functional aspects, it also exposes Board judgment and decisions to challenge. This latitude results in lengthy discussions and time-consuming attention to interpretation, primarily concerning matters of qualifications for licensure. More Board time could be provided addressing matters such as examinations, temporary permits and reciprocity or endorsement provisions if its functions and standards were more clearly defined by statute.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead such as staff salary, examination expenses, investigative services and litigation.

The Board presently consists of seven members, five qualified resident dentists who have practiced in the State for the five years preceding appointment, one licensed hygienist, and one public member with no interest in the health care industry. Because of recent concern regarding the need for occupational licensing, the questions raised concerning public welfare versus professional interests and concern regarding proliferation of regulated and licensed groups, appointment of knowledgeable laymembers is a widely advocated step. "There has been a growing movement to place public members on regulatory boards to ensure

that there will be input from groups other than those representing the regulated occupation."[5] Shimberg and Roederer further indicate that, "... if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to ten members." It is recommended that public Board membership be increased to three with three qualified resident dentists and one dental hygienist and that number of terms or of consecutive terms be limited for all members.

III. Conclusion

The Board of Dental Examiners and regulation of this profession does function to protect the public health, safety and welfare.

IV. Summary of Recommendations

The Board of Dental Examiners should be reauthorized for another four-year period. The following recommendations are made:

1. It is recommended that a short term task force be created with the specific direction and goal of reviewing, revising and recommending concise and definitive statutory language, such task force to be represented by members of the dental profession, the legal profession, and knowledgeable lay persons, and to be dissolved immediately upon completion of this single task. This task force should also review the area of continuing education requirements upon which license renewal would be contingent. (See discussion on p. 9)

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[5]Ibid, Shimberg & Roderer, p. 9.

2. The Board should request statutory changes or adopt regulations requiring continuing education as a condition of relicensure. Acceptable compliance methods should be outlined and adopted through Board regulations. (See discussion on p. 9)

3. The Board should not take a blanket position against the issuance of any and all temporary permits. Board policy should allow for consideration of temporary permits on an individual basis. The statutory provision requiring that temporary permits be only in areas where there is no licensed resident dentist should be deleted. (See discussion on p. 11)

4. Statutory changes should be made which allow for licensure by endorsement rather than reciprocity. If this is not done, the Board should take positive steps to establish reciprocal agreements with other states wherever possible. If qualifications in Alaska are substantially dissimilar to those of other states, they should be carefully reviewed for validity and appropriate recommendations made. (See discussion on p. 12)

5. The Board and the administrative agency should take positive steps to inform the public of Board and profession activities. (See discussion on p. 17)

6. The Board should schedule two examinations each year provided that a minimum number of applications are received 30 days prior to the second examination date. This would eliminate the year-long waiting period if enough candidates are available and would allow more frequent opportunity for entry into practice. (See discussion on p. 18)

7. Board membership should be changed to consist of three licensed resident dentists, one dental hygienist and three public members. (See discussion on p. 20)

Jurisdictions with Mandatory Continuing Education

1. Alabama					
2. Alaska					
3. Arizona	XXXXXXXXX				
4. Arkansas					
5. California	XXXXXXXXX				
6. Colorado					
7. Connecticut					
8. Delaware					
9. District of Columbia					
10. Florida	XXXXXXXXX	(For Dental Hygienists only)			
11. Georgia					
12. Hawaii					
13. Idaho					
14. Illinois					
15. Indiana					
16. Iowa	XXXXXXXXX				
17. Kansas	XXXXXXXXX				
18. Kentucky	XXXXXXXXX				
19. Louisiana					
20. Maine					
21. Maryland					
22. Massachusetts					
23. Michigan					
24. Minnesota	XXXXXXXXX				
25. Mississippi					
26. Missouri					
27. Montana					
28. Nebraska					
29. Nevada					
30. New Hampshire					
31. New Jersey					
32. New Mexico	XXXXXXXXX				
33. New York					
34. North Carolina					
35. North Dakota	XXXXXXXXX				
36. Ohio					
37. Oklahoma	XXXXXXXXX				
38. Oregon	XXXXXXXXX				
39. Pennsylvania					
40. Rhode Island					
41. South Carolina					
42. South Dakota	XXXXXXXXX				
43. Tennessee					
44. Texas	XXXXXXXXX				
45. Utah	XXXXXXXXX				
46. Vermont					
47. Virginia					
48. Washington					
49. West Virginia					
50. Wisconsin					
51. Wyoming					
52. Guam					
53. Puerto Rico	XXXXXXXXX				
54. Virgin Islands					

Member Jurisdictions in Regional Testing Agencies

	NERB East	SRTA South	CRDTS Central	WREB West	
1. Alabama					
2. Alaska					
3. Arizona				XXXXXXXXX	
4. Arkansas		XXXXXXXXX			
5. California					
6. Colorado			XXXXXXXXX		
7. Connecticut	XXXXXXXXX				
8. Delaware					
9. District of Columbia	XXXXXXXXX				
10. Florida					
11. Georgia					
12. Hawaii					
13. Idaho					
14. Illinois	XXXXXXXXX				
15. Indiana					
16. Iowa			XXXXXXXXX		
17. Kansas			XXXXXXXXX		
18. Kentucky		XXXXXXXXX			
19. Louisiana					
20. Maine	XXXXXXXXX				
21. Maryland	XXXXXXXXX				
22. Massachusetts	XXXXXXXXX				
23. Michigan	XXXXXXXXX				
24. Minnesota			XXXXXXXXX		
25. Mississippi					
26. Missouri			XXXXXXXXX		
27. Montana					
28. Nebraska			XXXXXXXXX		
29. Nevada					
30. New Hampshire	XXXXXXXXX				
31. New Jersey	XXXXXXXXX				
32. New Mexico					
33. New York	XXXXXXXXX				
34. North Carolina					
35. North Dakota			XXXXXXXXX		
36. Ohio	XXXXXXXXX				
37. Oklahoma			XXXXXXXXX		
38. Oregon				XXXXXXXXX	
39. Pennsylvania	XXXXXXXXX				
40. Rhode Island	XXXXXXXXX				
41. South Carolina					
42. South Dakota			XXXXXXXXX		
43. Tennessee		XXXXXXXXX			
44. Texas					
45. Utah				XXXXXXXXX	
46. Vermont	XXXXXXXXX				
47. Virginia		XXXXXXXXX			
48. Washington					
49. West Virginia	XXXXXXXXX				
50. Wisconsin			XXXXXXXXX		
51. Wyoming			XXXXXXXXX		
52. Guam					
53. Puerto Rico					
54. Virgin Islands					

Chapter 32. Dental Hygienists.

Article
1. Examination and Licensing (§§ 08.32.010 — 08.32.090)
2. Regulation of Dental Hygienists (§§ 08.32.100 — 08.32.180)
3. General Provisions (§ 08.32.190)

Article 1. Examination and Licensing.

Section
10. License required
15. Malpractice insurance
20. Examination required
30. Examination waived
40. Application and fee
50. Disposition of fees
60. Frequency and content of examination
70. Registration and licensing of dental hygienists
80. [Repealed]
81. Lapse and reinstatement of license
90. Temporary license

Sec. 08.32.010. License required. No person may practice, offer or attempt to practice, or advertise or announce himself as prepared or qualified to practice dental hygiene without a license. (§ 1 ch 78 SLA 1953)

Sec. 08.32.015. Malpractice insurance. If medical malpractice insurance for dental hygienists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of dental hygiene services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 7 ch 102 SLA 1976)

Sec. 08.32.020. Examination required. (a) An applicant for examination shall be

(1) of good moral character;

(2) at least 18 years of age;

(3) a graduate of an accredited high school;

(4) a graduate of an American training school for dental hygienists which requires at least a two-year course and is accredited and recognized by the board; and

(5) an examinee who has successfully completed the National Board Examination or the written examination given by the board.

(b) An applicant for examination shall apply in writing to the secretary of the board at least 30 days before the date selected by the board for the examination. (§ 1 ch 78 SLA 1953; am § 1 ch 36 SLA 1969; am § 1 ch 99 SLA 1970)

Sec. 08.32.030. Examination waived. A dental hygienist who holds a certificate from a school accredited by the American Dental Association and who has had two years of practical experience is qualified to practice in the state without examination upon registering with the board. (§ 1 ch 78 SLA 1953)

Sec. 08.32.040. Application and fee. An application for qualification shall be accompanied by the applicant's certificate of graduation, and a fee of $25. (§ 1 ch 78 SLA 1953; am § 2 ch 36 SLA 1969)

Sec. 08.32.050. Disposition of fees. All fees and charges shall be deposited in the general fund of the state. (§ 1 ch. 78 SLA 1953)

Sec. 08.32.060. Frequency and content of examination. The examination shall be held once each year at the same time as the examination of dentists. The examination shall cover subjects considered essential by the board for a dental hygienist, including a practical examination on the removal of deposits or stains from the exposed surfaces of the teeth. (§ 1 ch. 78 SLA 1953)

Sec. 08.32.070. Registration and licensing of dental hygienists. If the applicant passes the examination, the board shall register him and issue a certificate. The fee for registration is $20. Before May 1 of every other year after the year of registration, every registered dental hygienist shall pay a registration fee of $20. (§ 1 ch. 78 SLA 1953; am § 3 ch. 36 SLA 1969)

Sec. 08.32.080. Lapse and reinstatement of license.
Repealed by § 7 ch. 94 SLA 1968.

Sec. 08.32.081. Lapse and reinstatement of license. The failure, neglect, or refusal of a licensed dental hygienist to pay the biennial registration fee constitutes a forfeiture of the license. The board may reinstate the license within three years upon written application and payment of $25. (§ 4 ch 36 SLA 1969)

Revisor's note (1969). — "Annual" was changed to "biennial" in this section in order to make it consistent with the change in sec. 70 of this chapter. In ch. 36, SLA 1969, this section was numbered AS 08.32.080.

Sec. 08.32.090. Temporary license. The board may issue a temporary license, without examination, to a person qualified to take the examination who has a license to practice in another state. The temporary license granted to a hygienist in the employ of a privately practicing dentist terminates at the time of notification of the results of the next board examination. The board may revoke a temporary license at any time. Time spent on a temporary license does not count toward license by reciprocity. (§ 2 ch. 75 SLA 1953; am § 5 ch 36 SLA 1969)

Article 2. Regulation of Dental Hygienists.

Section
100. Employment of dental hygienists
110. Scope of work of dental hygienists
120. Place of employment
130. Information required
140. Supervision required
150. Revocation of dentist's license
160. Suspension or revocation of license
165. Limits or conditions on license; discipline
170. Procedure followed
180. Violation

Sec. 08.32.100. Employment of dental hygienists. A licensed dentist, incorporated eleemosynary dental dispensary or infirmary, private school or welfare center, the United States of America or the state may employ a licensed dental hygienist. (§ 3 ch 78 SLA 1953)

Sec. 08.32.110. Scope of work of dental hygienists. The role of the dental hygienist is to assist members of the dental profession in providing oral health care to the public. He may not perform any of the following functions dealing with dentistry:

(1) diagnosis, treatment planning, or prescription;

(2) operative or surgical procedures on hard or soft tissues;

(3) restorative, prosthetic, orthodontic or other procedures which require the knowledge and skill of a dentist and constitute the practice of dentistry;

(4) prescription for drugs, medicament or work authorization. (§ 3 ch 78 SLA 1953; am § 6 ch 36 SLA 1969)

Sec. 08.32.120. Place of employment. A dental hygienist may operate in the office of a licensed dentist, or legally incorporated eleemosynary dental dispensary or infirmary, private school or welfare center, or in a building owned or occupied by the state and under the direct or general supervision of a licensed dentist. (§ 3 ch 78 SLA 1953)

Sec. 08.32.130. Information required. Every dental hygienist shall furnish the board with the name and address of his employer. (§ 1 ch 78 SLA 1953)

Sec. 08.32.140. Supervision required. A dental hygienist may not practice except under the supervision of a licensed dentist. (§ 1 ch 78 SLA 1953)

Sec. 08.32.150. Revocation of dentist's license. The board may revoke the license of a dentist who permits a dental hygienist, employed by him or working under his supervision, to perform a dental operation other than that permitted under this chapter. (§ 4 ch 78 SLA 1953)

Sec. 08.32.160. Suspension or revocation of license. The board may suspend or revoke, with power to reinstate, the license of a dental hygienist who violates this chapter or who is guilty of professional misbehavior, or is not of good moral character. (§ 6 ch 78 SLA 1953)

Sec. 08.32.165. Limits or conditions on license; discipline. (a) In addition to action under § 160 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 7 ch 102 SLA 1976)

Sec. 08.32.170. Procedure followed. Procedures for the revocation or suspension of a license under §§ 150 and 160 of this chapter shall comply with the Administrative Procedure Act (AS 44.62). (§ 4 ch 78 SLA 1953)

Sec. 08.32.180. Violation. A person who violates this chapter or who fails to comply with the requirements of this chapter, a penalty for which is not otherwise provided, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $100. (§ 5 ch. 78 SLA 1953)

Article 3. General Provisions.

Section
190. "Board" defined

Sec. 08.32.190. "Board" defined. Board means the Board of Dental Examiners.

Chapter 36. Dentistry.

Article
1. Board of Dental Examiners (§§ 08.36.010—08.36.091)
2. Examination and Licensing (§§ 08.36.100—08.36.300)
3. Unlawful Acts (§§ 08.36.310—08.36.340)
4. General Provisions (§§ 08.36.350—08.36.360)

Article 1. Board of Dental Examiners.

Section
10. Creation and membership of board
20. Appointment and term of service of members
30. Election of officers
40. Meetings
50. Quorum
60. [Repealed]
70. General powers
80. Applicability of Administrative Procedure Act
90. [Repealed]
91. Records and reports

Sec. 08.36.010. Creation and membership of board. There is created the Board of Dental Examiners, referred to in this chapter as the board, consisting of seven members. Five members shall be qualified resident dentists who have been engaged in the practice of dentistry in the state for five years immediately preceding appointment, one member shall be a dental hygienist licensed under AS 08.32, and one member with no direct financial interest in the health care industry. (§ 1 art II ch 186 SLA 1955; am § 2 ch 155 SLA 1968; am § 8 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "seven members" for "five members" at the end of the first sentence and rewrote the second sentence.

Editor's note. — Section 1, ch. 155, SLA 1968, provides: "**Purposes.** The practice of dentistry in the state is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists be permitted to practice dentistry in the state. All provisions of this chapter relating to the practice of dentistry and dental hygiene and to the registration of dental laboratories shall be liberally construed to carry out these objects and purposes."

Am. Jur., ALR and C.J.S. references. — 41 Am. Jur., Physicians and Surgeons, §§ 13, 23.

Dentist as within statutes pertaining to physician or surgeon, 115 ALR 261.

70 C.J.S. Physicians and Surgeons §§ 1 to 5.

Sec. 08.36.020. Appointment and term of service of members. Members of the board are appointed by the governor, subject to confirmation by the legislature in joint session. Each board member serves for a term of five years, and until his successor is appointed and qualified. The term begins on February 1. An appointment to a vacancy

is for the unexpired term. (§ 2 art II ch 186 SLA 1955; am § 1 ch 59 SLA 1964; am § 9 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment deleted "assembled" from the end of the first sentence and deleted the former fifth through eighth sentences, which related to a list of names from which appointments were to be made.

Sec. 08.36.030. Election of officers. The board shall elect a president and a secretary from among its members, each to serve for a term not to exceed two years. (§ 3 art II ch 186 SLA 1955; am § 1 ch 121 SLA 1972)

Sec. 08.36.040. Meetings. The board shall meet as often as, and at the times and places, necessary to conduct its business. (§ 3 art II ch 186 SLA 1955)

Sec. 08.36.050. Quorum. A majority of the board constitutes a quorum for the transaction of business. (§ 4 art II ch 186 SLA 1955)

Sec. 08.36.060. Expenses and salary.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.36.070. General powers. The board shall have, but not by way of limitation, the following powers and duties:

(1) to examine and issue licenses to applicants;

(2) to register licensed dentists in good standing;

(3) to submit an annual report of its proceedings to the governor and to members of the Alaska Dental Society, containing a statement of money received and disbursed;

(4) to affiliate with the American Association of Dental Examiners, and pay annual dues to the association;

(5) to hold hearings, revoke, annul, or suspend the license of a person who violates this chapter or the rules and regulations of the board;

(6) to supply forms for applications, licenses, permits, certificates, and other papers and records;

(7) to enforce the provisions of this chapter and make, alter, or amend the rules and regulations necessary or desirable to make the provisions of this chapter effective. (§ 5 art II ch 186 SLA 1955; am § 6 ch 69 SLA 1970)

Legislative committee report. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 08.36.080. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62).

Sec. 08.36.090. Records and reports.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.36.091. Records and reports. The board shall maintain

(1) a record of its proceedings;

(2) a register containing the name, office and home addresses, and other information considered necessary by the board, of each person licensed as a dentist or dental hygienist, and a register of the licenses revoked by the board, and information on the status of each licensee. (§ 3 ch 155 SLA 1968)

Article 2. Examination and Licensing.

Section

100. License required
110. Qualifications of applicants
115. Malpractice insurance
120. Photograph and filing date of application
130. Examination
140. Out-of-state examination
150. Examination in out-of-state dental schools
160. Contents of examination
170. Partial examination
180. Re-examination
190. Grading of examination
200. Waiver of written examination
210. Waiver of examination by reciprocity
220. Issuance of license by reciprocity
230. Practice outside the state
240. Issuance of license; recordation; display
244. License to practice as specialist required
246. Qualification for a specialist license
247. Limitation of special practice
248. Suspension or revocation of specialty licenses
250. Biennial registration
260. Branch office registration
270. [Repealed]
271. Permits for isolated areas.
280. Temporary permit
285. [Repealed]
290. Fees and penalties
300. [Repealed]

Sec. 08.36.100. License required. No person, except those specifically exempted from the application of this chapter, may practice, or attempt to practice, dentistry without a license or permit, and a current certificate of registration. (§ 1 art III ch 186 SLA 1955; am § 4 ch 155 SLA 1968)

ALR and C.J.S. references. — Unlicensed dentist's right to recover for services, 30 ALR 860; 118 ALR 661.

Right of corporation or individual not himself licensed, to practice dentistry through licensed employees, 103 ALR 1240.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry from owning, maintaining, or operating an office therefor, 20 ALR2d 808.

70 C.J.S. Physicians and Surgeons §§ 6 to 23.

Sec. 08.36.110. Qualifications of applicants. An applicant for a license to practice dentistry may apply to the board for an examination and license by submitting information that he is

(1) Repealed by § 25 ch 245 SLA 1970.

(2) of good moral character;

(3) Repealed by § 10 ch 127 SLA 1974.

(4) a graduate of a dental college approved by the Council on Dental Education of the American Dental Association at the time of graduation, and holds a D.D.S. or D.M.D. degree or the equivalent;

(5) Repealed by § 1 ch 36 SLA 1970. (§ 2 art III ch 186 SLA 1955; am § 1 ch 26 SLA 1965; am § 1 ch 36 SLA 1970; am § 7 ch 69 SLA 1970; am § 25 ch 245 SLA 1970; am § 10 ch 127 SLA 1974)

Effect of amendment. — The 1974 amendment repealed paragraph (3).

Legislative committee reports. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7. Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.36.115. Malpractice insurance. If medical malpractice insurance for dentists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of dental services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are statisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 10 ch 102 SLA 1976)

Sec. 08.36.120. Photograph and filing date of application. Each applicant shall submit a recent unmounted, autographed photograph of himself. Applications shall be filed at least 30 days before the date scheduled for an examination. (§ 2 art III ch 186 SLA 1955)

Sec. 08.36.130. Examination. An examination shall be given at times and places determined by the board to be convenient and economical for the applicants and the state. At least once each year the board shall appoint from its membership an examination committee of at least three persons. The examination committee shall conduct an examination at least once a year and report the results to the board for official action. (§ 3 art III ch 186 SLA 1955; am § 5 ch 155 SLA 1968)

Sec. 08.36.140. Out-of-state examination. If an applicant requests the board to hold an examination outside the state, the board may require the applicant to pay the transportation costs to the members of the committee conducting the examination. (§ 3 art III ch 186 SLA 1955)

Sec. 08.36.150. Examination in out-of-state dental schools. The examination committee, with the approval of the board, may conduct an examination in the clinic of an approved dental school within the continental limits of the United States and admit to the examination a dental student in his last year of school who would otherwise be eligible

for admission to examination and licensing in the state upon completion of his education. (§ 3 art III ch 186 SLA 1955)

Sec. 08.36.160. Contents of examination. The examination shall be clinical and written and of such a character as to test in a satisfactory manner the qualifications of the applicant to practice dentistry. The examination shall consist of the following:

(1) The subjects of the written examination shall be selected in accordance with the trend of dental education as determined by the Council of Dental Education of the American Dental Association.

(2) The applicant shall give demonstration of his skill in operative and the prosthetic dentistry or any procedures as recommended by the American Association of Dental Examiners. (§ 4 art III ch 186 SLA 1955; am § 6 ch 155 SLA 1968)

Sec. 08.36.170. Partial examination. A student at least 19 years of age who has satisfactorily completed regular courses of instruction in dentistry in at least two different school years at an approved dental school, and who is certified by the dean of the college as having satisfactorily completed the subjects included in section I of the examination may take section I of the examination. If the student passes section I and subsequently takes the full examination, the requirements of section I are waived. (§ 5 art III ch 186 SLA 1955)

Sec. 08.36.180. Re-examination. An applicant shall pass each subject of each section of the examination with a score of at least 75 per cent. If an applicant fails in one subject in each section, he may be re-examined in that subject. If an applicant fails in more than one subject in any section, he shall be re-examined in the whole section. If an applicant fails the examination or any section of it on two separate occasions, the board shall refuse to examine him further until he produces evidence satisfactory to the board that he has pursued further study in preparation for the examination. (§ 6 art III ch 186 SLA 1955)

Sec. 08.36.190. Grading of examination. Upon the conclusion of the written examination and as soon as practicable, the papers shall be rated by an examiner. The examiner shall prepare a report in duplicate on each written examination and a report in duplicate on each practical examination. The examiner shall forward one copy of each report on each candidate to the secretary of the board and one copy to the division of occupational licensing. The secretary shall prepare a composite report on each applicant and file one copy of his report with the division of occupational licensing. As soon as practicable the division of occupational licensing shall notify each candidate of the results of the examination. (§ 7 art III ch 186 SLA 1955; am § 2 ch 121 SLA 1972)

Sec. 08.36.200. Waiver of written examination. The board may waive the requirement for written examination for an applicant who holds a certificate from the National Board of Dental Examiners that

he has passed the theoretical or written examination given by the national board. (§ 8(a) art III ch 186 SLA 1955)

Sec. 08.36.210. Waiver of examination by reciprocity. The board may waive the requirement for written examination for a graduate of an approved dental school who has been licensed, and has been in legal and reputable practice of dentistry in a state, territory, district or possession of the United States which has requirements for licensing, and give reciprocal rights, equivalent to those of this state, if the applicant meets the requirements of § 110 of this chapter. (§ 8(b) art III ch 186 SLA 1955; am § 3 ch 121 SLA 1972)

Sec. 08.36.220. Issuance of license by reciprocity. If an applicant having the qualifications contained in §§ 110 and 210 of this chapter has been engaged in the practice of dentistry for a period of five years in the state, territory, district or possession of the United States, immediately preceding his application to practice in the state, the board may license the applicant without examination. (§ 9 art III ch 186 SLA 1955; am § 2 ch 26 SLA 1965; am § 7 ch 155 SLA 1968; am § 4 ch 121 SLA 1972)

Sec. 08.36.230. Practice outside the state. A dentist licensed to practice in this state and residing and practicing dentistry outside of this state, may maintain his eligibility to practice in this state by biennially registering his name and place of residence with the division of occupational licensing. If the dentist fails to register, the board may reinstate his license without examination upon payment of a penalty of $25, payment of all delinquent registration fees, and presentation of proof of active practice at his place of residence, certified by the dental board having jurisdiction at his place of residence, or, if there is no board, by evidence satisfactory to the board. (§ 10 art III ch 186 SLA 1955; am § 5 ch 121 SLA 1972)

Sec. 08.36.240. Issuance of license; recordation; display. The board shall issue a license to each successful applicant who has paid the required fees. The holder of a license shall register it in the office of the clerk of the superior court in the judicial district of his place of residence. The licensee shall display the license in a conspicuous place where he practices. (§ 11 art III ch 186 SLA 1955; am § 6 ch 121 SLA 1972)

Sec. 08.36.244. License to practice as specialist required. No licensed dentist may hold himself out to the public as being especially qualified in a branch of dentistry by announcing through the press, sign, card, letterhead or printed matter, or any means of public advertising, using such terms as "specialist," or inserting the name of the specialty, or using other phrases customarily used by qualified specialists that would imply to the public that he is so qualified, without first securing a specialist's license as provided in this chapter. (§ 8 ch 155 SLA 1968)

Sec. 08.36.246. Qualification for a specialist license. (a) An applicant for a specialty license must

(1) possess a license to practice dentistry in the state, and

(2) have completed two or more academic years of advanced education in the specialty.

(b) The provision of (a) (2) of this section does not apply to dentists who have limited their practice exclusively and who ethically announced limitation of practice in accordance with American Dental Association policy before July 23, 1968. (§ 8 ch 155 SLA 1968)

Sec. 08.36.247. Limitation of special practice. (a) No specialty license may be issued unless the applicant presents proof satisfactory to the board that he is qualified to practice that specialty.

(b) This section may not be construed as limiting or preventing a licensed and qualified dentist from performing, without a specialty license, dental acts or services to the public in any of the branches of dentistry, except that no dentist may administer a general anesthetic to a patient without a valid permit as required by regulations of the dental examiners board. (§ 8 ch 155 SLA 1968)

Sec. 08.36.248. Suspension or revocation of specialty licenses. The board may suspend or revoke a specialty license upon any grounds set out in § 310 of this chapter, and the procedure for suspensions and revocations shall be the same as for the revocation or suspension of a regular license to practice dentistry. (§ 8 ch 155 SLA 1968)

Sec. 08.36.250. Biennial registration. At least 60 days before January 1 of every other year, the division of occupational licensing shall mail a form for biennial registration to each licensed dentist. Each licensee shall complete the form and return it together with the registration fee. The division of occupational licensing shall, as soon as practicable, issue a registration certificate valid for the years for which issued. Each licensee shall keep the registration certificate beside or attached to his license. Failure to receive the registration form does not exempt a dentist from biennial registration. (§ 12 art III ch 186 SLA 1955; am § 9 ch 155 SLA 1968; am § 7 ch 121 SLA 1972)

Sec. 08.36.260. Branch office registration. A licensee who practices in an established office with an address other than that address for which his biennial registration certificate is issued shall obtain a branch office registration certificate for each office. (§ 13 art III ch 186 SLA 1955; am § 10 ch 155 SLA 1968)

Sec. 08.36.270. Permits for isolated areas.

Repealed by § 3 ch 26 SLA 1965; § 5 ch 93 SLA 1965.

Sec. 08.36.271. Permits for isolated areas. (a) The Department of Health and Social Services shall designate as isolated areas those specific places and regions remote from major population centers which

are not served by dentists licensed under this chapter and which have a geographical location which works financial hardship, extended loss of time, or arduous and costly travel upon residents needing dental care.

(b) The board shall, upon recommendation of the Department of Health and Social Services, issue an annual permit authorizing the treatment of residents in an area designated under (a) of this section, who are not entitled to dental care by the state or federal government, by a dentist employed by the United States Public Health Service or qualified member of the armed services who serves in that area. (§ 1 ch 93 SLA 1965; am § 11 ch 155 SLA 1968; am § 6 ch 104 SLA 1971)

Sec. 08.36.280. Temporary permit. (a) The board may issue a one year temporary permit without examination to an applicant to practice dentistry in a locality requested by the applicant if the locality is of the type specified in (2) of this subsection and the applicant

(1) meets the requirements of § 110 of this chapter;

(2) desires to practice dentistry in a city or rural village which does not have a resident licensed dentist in active general practice;

(3) has a license in good standing to practice dentistry in a state, territory, district or possession of the United States;

(4) tenders and pays the fee prescribed in § 290 (6) of this chapter.

(b) The board may authorize a temporary permittee to practice dentistry in more than one city or rural village of the type specified in (a) (2) of this section.

(c) The board may annually renew a temporary permit upon written application of an applicant and upon payment of the prescribed fee if the applicant has not committed an act which is a ground for revocation in § 310 of this chapter, but in any case, within two years from issuance of his first temporary permit, the applicant must pass a board exam.

(d) A temporary permit may be revoked, suspended or annulled, or the permittee may be reprimanded, censured or disciplined by the board in the same manner and for the same cause as a licensed dentist under § 310 of this chapter.

(e) The board shall grant or deny an application for a temporary permit within 60 days after it is received. (§ 15 art III ch 186 SLA 1955; am § 4 ch 26 SLA 1965; am §§ 8, 9 ch 121 SLA 1972)

Sec. 08.36.285. Licensing a permittee.
Repealed by § 10 ch 121 SLA 1972.

Editor's note. — The repealed section derived from § 5, ch. 26, SLA 1965.

Sec. 08.36.290. Fees and penalties. The board shall impose and collect the following fees and penalties:

(1) for the issuance of an original license, $30;

(2) for the examination of an applicant, $50;

(3) for re-examination of an applicant, $50;

(4) for biennial registration, $40;

(5) for each branch office biennial registration, $40;

(6) for a temporary permit, $25;

(7) Repealed by § 7 ch 94 SLA 1968.

(8) for re-instatement as provided in § 230 of this chapter a penalty of $10;

(9) for a specialty license, $30;

(10) for a duplicate license, $10. (§ 16 art III ch 186 SLA 1955; am § 7 ch 94 SLA 1968; am § 12 ch 155 SLA 1968)

For history of taxation of profession of dentistry, see United States v. Dasher, 9 Alaska 719 (1940).

C.J.S. references. — 53 C.J.S. Licenses § 34; 70 C.J.S. Physicians and Surgeons §§ 2 to 4, 6 to 8.

Sec. 08.36.300. Deposit of fees and payment of expenses. Repealed by § 3 ch 59 SLA 1966.

Article 3. Unlawful Acts.

Section		Section	
310.	Grounds for revocation of license	330.	Injunction
320.	Order of reprimand, suspension and revocation	340.	Penalties
325.	Limits or conditions on license; discipline		

Sec. 08.36.310. Grounds for revocation of license. A license and registration may be revoked, suspended, or annulled, or the licensee may be reprimanded, censured, or disciplined by the board after hearing when he

(1) secures a license through deceit, fraud, or wilful misrepresentation of a material fact;

(2) is convicted of a crime involving moral turpitude;

(3) has a chronic or persistent inebriety or addiction to habit-forming drugs which renders him incompetent to continue the practice of dentistry;

(4) commits wilful or gross malpractice or wilful or gross neglect in the practice of dentistry;

(5) hires, supervises, permits or aids unlicensed persons to practice dentistry;

(6) is insane or has a contagious or infectious disease making him an improper person to continue in the practice of dentistry;

(7) practices or offers to practice dentistry under a name other than the name in which the license is issued;

(8) uses the name of a company, association, corporation, trade name, dental clinic, or business name in connection with the practice of dentistry;

(9) knowingly practices in the employment of or in association with a person who is practicing in an unlawful manner;

(10) uses an advertising solicitor or free-publicity press agent;

(11) wilfully deceives or attempts to deceive the board with reference to any matter under investigation by it;

(12) advertises professional superiority;

(13) advertises free dental work or free examination;

(14) advertises prices for professional service;

(15) advertises to perform any dental operation painlessly;

(16) advertises by means of a large display, glaring light sign, or sign containing as a part of it the representation of a tooth, bridgework, or any portion of the human head;

(17) advertises by a medium other than the carrying or publishing of a modest professional card or the display of a modest window or street sign at the licensee's office containing the name, address, profession, office hours, telephone number and specialty;

(18). permits the use of his name as a dentist by others in the sale or advertisement of products;

(19) violates a provision of this chapter or a regulation of the board promulgated under authority of this chapter;

(20) advertises as a specialist in any branch of dentistry, unless he devotes a major portion of his practice to that branch;

(21) engages in the practice of fee-splitting;

(22) engages in unprofessional conduct;

(23) obtains a fee by fraud;

(24) directly or indirectly advertises or solicits for dental hygiene business;

(25) advertises as a specialist in a branch of dentistry without first obtaining a specialty license;

(26) fails to report a death that occurred on premises used for the practice of dentistry to the office of the secretary-treasurer of the board within 72 hours;

(27) administers a general anesthetic without a valid permit required by regulations of the dental board. (§ 1 art IV ch 186 SLA 1955; am §§ 13—15 ch 155 SLA 1968)

Cross reference. — As to malpractice actions, see AS 09.55.530—09.55.560.

ALR references. — Ground for revocation, 54 ALR 1504; 82 ALR 1184.

What amounts to conviction within statute making conviction ground for cancelling license, 113 ALR 1179.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 ALR 1138.

Admissibility and necessity of expert evidence in proceeding for revocation of license, 6 ALR2d 675.

Sec. 08.36.320. Order of reprimand, suspension and revocation. The board may, by a majority vote, evidenced by the signatures of the members on the order, reprimand a licensee or revoke or suspend a license. (§ 5 art IV ch 186 SLA 1955)

Sec. 08.36.325. Limits or conditions on license; discipline. (a) In addition to actions under §§ 310 and 320 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health, the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action take by the board under this section. (§ 10 ch 102 SLA 1976)

Sec. 08.36.330. Injunction. The board may sue in its own name in a competent court to enjoin any person from doing an act consituting a violation of this chapter. (§ 7 art IV ch 186 SLA 1955)

Sec. 08.36.340. Penalties. A person who violates any provision of this chapter for which no specific penalty is provided, is guilty of a misdemeanor and is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both. (§ 8 art IV ch 186 SLA 1955)

Article 4. General Provisions.

Section

350. Application of chapter
360. Practice of dentistry defined

Sec. 08.36.350. Application of chapter. This chapter applies to a person who practices, offers or attempts to practice dentistry in the state except

(1) dental surgeons or dentists in the military service in the discharge of official duties;

(2) licensed dental hygienists in the performance of duties authorized by law;

(3) dentists in the employ of the United States Public Health Service, United States Veterans' Administration, Alaska Native Service, or Department of Health and Social Services, in the discharge of official duties;

(4) clinicians demonstrating at meetings of dentists approved by the board;

(5) physicians and surgeons;

(6) dentists in the employ of the United States Public Health Service providing care by authority of a permit issued under § 271 of this chapter. (§ 2 art I ch 186 SLA 1955; am § 2 ch 93 SLA 1965; am § 6 ch 104 SLA 1971)

Sec. 08.36.360. Practice of dentistry defined. A person engages in the practice of dentistry who

(1) performs or holds himself out to the public as being able to perform dental operations;

(2) diagnoses, treats, operates on, corrects or attempts to correct, or prescribes for, a disease, lesion, pain, injury, deficiency, deformity, or physical condition, malocclusion or malposition of the human teeth, alveolar process, gums or jaws and adjacent tissues;

(3) performs or attempts to perform an operation incident to the replacement of teeth;

(4) furnishes, supplies, constructs, reproduces, or repairs prosthetic dentures, bridges, appliances or other structures to be used and worn as substitutes for natural teeth, except on prescription of a duly licensed and registered dentist and by the use of impressions or casts made by a duly licensed and registered dentist;

(5) uses the word "dentist" or "dental surgeon" or the letters D.D.S. or D.M.D. or other letter or title which represents him as engaging in the practice of dentistry;

(6) extracts or attempts to extract human teeth;

(7) owns, manages or operates a place where the acts and things described in this section are performed or done. (§ 1 art I ch 186 SLA 1955)

CHAPTER 28.
BOARD OF DENTAL EXAMINERS

Article
1. Administering of Anesthetic Agent
2. Clinical Examination for Licensure

ARTICLE 1.
ADMINISTERING OF ANESTHETIC AGENT

Section
10. Permit requirements
20. Operative procedure
30. Other than permit holders
40. Written consent
50. Medical history
60. Requirements for administering general anesthetic
70. Suspension or revocation of permit
80. Filing report
90. Definition

12 AAC 28.010. PERMIT REQUIREMENTS. The Alaska Board of Dental Examiners shall issue a permit to a dentist licensed in Alaska for the administration of an anesthetic agent or agents for the purpose of inducing general anesthetic if the applicant offers certified proof that he

(1) is a diplomate of the American Board of Oral Surgery; or

(2) is a member of the American Society of Oral Surgery; or

(3) has fulfilled not less than 36 months of oral surgery advanced education approved by the Council on Dental Education of the American Dental Association; or

(4) is a certified member of an American Dental Association Specialty Board and meets the minimum requirement in anesthesiology as recommended by the American Board of Oral Surgery; or

(5) has completed a minimum of one year of advanced training in anesthesiology in an accredited program beyond the undergraduate dental school level. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)
AS 08.36.247(b)

12 AAC 28.020. OPERATIVE PROCEDURE. A dentist administering a general anesthetic may not perform any operative procedures for the duration of the anesthesia. "Operative procedure" means surgical or restorative manipulations in or about the oral cavity. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)

12 AAC 28.030. OTHER THAN PERMIT HOLDERS. In addition to a dentist holding a valid permit for the administration of an anesthetic agent or agents for the purpose of inducing general anesthesia, as provided in sec. 10 of this chapter, the following persons may administer an anesthetic agent:

(1) a registered nurse certified by the Association of Nurse Anesthetists who while in a dental office administers the anesthetic agent under the direct supervision of a dentist holding a valid permit under sec. 10 of this chapter;

(2) a board-eligible anesthesiologist who while in a dental office administers the anesthetic agent while under the direct supervision of a dentist holding a valid permit under sec. 10 of this chapter;

(3) a dentist who administers an anesthetic agent under the direct supervision of a medical doctor in a licensed hospital even though the dentist does not have a valid permit to do so under sec. 10 of this chapter. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)
AS 08.36.247(b)

12 AAC 28.040. WRITTEN CONSENT. Written consent of the patient shall be obtained prior to the administration of a general anesthetic. In the case of a minor, the consent shall be obtained from his parent or legal guardian. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)

12 AAC 28.050. MEDICAL HISTORY. (a) A medical history shall be taken before the administration of a general anesthetic. Patients should be asked to describe any current treatments, including drugs, impending operations, and pregnancies and to give other information that may be helpful to the person administering the anesthetic agent. The dentist is

not required to make a medical examination of the patient and draw medical diagnostic conclusions; therefore, if the dentist suspects a problem and calls in a physician for an examination and evaluation, he may then rely upon that conclusion and the diagnosis.

(b) Questions asked of and answers received from the patient shall be permanently recorded and signed by the patient before the administration of any general anesthetic and this record shall become a permanent part of the patient's treatment record. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)

12 AAC 28.060. REQUIREMENTS FOR ADMINISTERING GENERAL ANESTHETIC. A holder of a permit to administer a general anesthetic for the purpose of inducing surgical anesthesia shall

(1) obtain and maintain an adequate airway for the patient;

(2) use an oxygen machine and have it available for maintaining the ventilation of the lungs;

(3) have the knowledge of and be able to skillfully place needles into veins for the administration of drugs; and

(4) maintain in his office at all times appropriate drugs and medicines for emergencies. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)
AS 08.36.247(b)

12 AAC 28.070. SUSPENSION OR REVOCATION OF PERMIT. A permit to administer a general anesthetic for the purpose of inducing surgical anesthesia shall automatically become revoked upon the suspension or revocation of the holder's license to practice dentistry in the state. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)
AS 08.36.320

12 AAC 28.080. FILING REPORT. In reporting a death as required under AS 08.36.310(26), each member of the anesthesia team that administered the anesthetic agent or agents, shall file an individual report which includes his individual findings. Within two weeks of the receipt of these reports by the board, the board will review them and make a determination in writing as to whether further investigation by the board should be made. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)
AS 08.36.310(26)

12 AAC 28.090. DEFINITION. "General anesthesia" means surgical or the third stage of anesthesia. The use of an anesthetic agent for introduction of analgesia (first state) or amnesia is not to be construed as the practice or use of general anesthesia. (Eff. 4/10/70, Reg. 34)

Authority: AS 08.36.070(7)

STATE OF ALASKA
Board of Dispensing Opticians
(August, 1978)

Findings

Dissolution of the Board of Dispensing Opticians and subsequent governmental deregulation of this profession would have little if any adverse impact on the physical health of the general public. Information obtained in the process of this review indicated that the potential for visual damage to the consumer by a licensed or unlicensed practitioner is minimal to non-existent except under the most extreme and ungovernable circumstances. Additionally, Board and regulatory control which results in endorsement of monopolistic practices only serves to promote the profession by restricting services that have assumed the sanction of government licensing. In accordance with the Sunset criteria, it is recommended that the Board of Dispensing Opticians and State support in regulation and licensing of this profession be allowed to terminate on June 30, 1979.

I. General Information

A. Regulated Parties

1. Dispensing opticians
2. Apprentice dispensing opticians

B. Statutory Definition of Regulated Profession

"(3) 'dispensing optician' means a person who prepares duplications of or prepares and dispenses lenses, spectacles, eyeglasses, artificial eyes, and their appurtenances, to the intended wearers of them on written prescriptions from physicians or optometrists; and in accordance with those prescriptions, measures, adapts, adjusts and fabricates lenses, spectacles, eyeglasses, artificial eyes, and their appurtenances, to the human face for the aid or correction of visual or ocular anomalies of the human eye." (AS 08.71.240)

A dispensing optician's apprentice shall be in training and under direct supervision for a period not to exceed six years (unless mitigating circumstances occur). A licensed dispensing optician may have no more than two apprentices under his/her supervision at the same time.

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Philip A. Lampert (Chairman)	Ends June 14, 1979
George Tresnak	Ends June 14, 1979
Dick Kleinkopf	Ends June 14, 1978
Edna M. Lyon	Ends June 14, 1978
John W. Greiff	Ends June 14, 1977
Robert Sherwood	Ends June 14, 1980
Harry J. Lang	Ends June 14, 1979

2. Representation:

Profession	=	5
Public	=	2

3. Qualifications:

"Five board members shall be licensed, practicing dispensing opticians residing in the state. Two shall be persons with no direct financial interest in the health care industry." (AS 08.71.030)

D. Licensing Data

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1975	n/a	n/a	n/a	n/a	n/a
1976	7	3	4	43	57
1977	8	6	2	75	25
1978	(not given until 10-30-78)				

Currently licensed:

in-State	=	40	(through June, 1978)
out-of-State	=	5	(through June, 1978)
Total		45	

E. Fees

1.	examination fee	$50.00
2.	initial license	50.00
3.	biennial renewal	50.00
4.	penalty-failure to renew	10.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	$ 750.00	$2,720.00	$1,060.00	$2,190.00
- refunds	-	-	-	-
Total	$ 750.00	$2,720.00	$1,060.00	$2,190.00
Expenditures				
Per Diem	892.25	846.25	745.00	751.25
Transportation	1,108.48	494.23	712.16	517.10
Phone	332.50	95.53	91.00	60.55
Printing, Advert., Postage	100.22	212.88	543.16	284.51
Fees & Services	-	63.70	-	297.00
Rents, Leases, Other	9.75	15.75	-	-
Total	$2,443.20	$1,728.34	$2,091.32	$1,910.81
Surplus	-	$ 991.66	-	$ 279.19
Deficit	$1,693.20	-	$1,031.32	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINSTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	0	1	0
1976	7	3	0
1977	6	0	0
1978 (through August 31)	1	10	0

Pending: 1

Most complaints involving dispensing opticians related to nondisplay of licenses and charges by the public of defective workmanship. Five complaints were received from the public at large. None were found to be statutory violations and all but one has been closed as of this writing. None alleged physical harm or danger to the consumer.

H. Qualifications

Training for this profession usually consists of "on-the-job" or apprenticeship training, which lasts for approximately four to five years depending on experience gained and on individual ability. Formal institutional training is becoming more common and programs are offered through several vocational schools. High school graduation is usually a prerequisite for apprenticeship.

II. Criteria and Analysis

A. To what extent has the Board of Dispensing Opticians operated in the public interest?

The stated functions of the Board include assuring professional competency, governing the practice of opticianry and preventing conduct which would tend to harm the public's "visual health." Information obtained through discussions with several optometrists and dispensing opticians indicated that while visual damage to an individual by a dispensing optician may be possible in some extreme cases, it is highly unlikely. The consumer may become nauseated or perhaps have a headache but will usually be able to recognize that something is wrong. Further by statutory safeguard, a prescription calling for fitting of contact lenses must also require that the patient return to see the prescibing physician or optometrist as a check on the work done. Optometrists and ophthalmologists may also dispense, and may employ any person under their supervision, without State regulation or licensure, to dispense. It was noted that 39 out of

the 40 licensed in-State dispensing opticians practice in, or in the immediate vicinity of, Anchorage and Fairbanks. One individual licentiate is located in Homer. (See Figure 1) It must be assumed that the remainder of the State is serviced by an ophthalmologist, an optometrist, a traveling clinic or by mail. This type of geographic concentration must be questioned in analyzing "public" interest in relation to regulation by an agency funded Statewide.

Through regulations and by statutory directive the Board has established continuing education requirements designed to help assure continuing competency. Biennial relicensure is contingent on compliance with those requirements. If, however, it is improbable that incompetence could result in visual damage to the public, these regulations may be considered superfluous. Concurrently, examinations which test competency of candidates for licensure would not be valid measurements of public protection.

Other factors exist which contributed to the recommendation for termination of regulation and the Board. Less than half of the states regulate and license dispensing opticians; Alaska does not have a reciprocal agreement with any although this is provided by statute. There are more members of the Board than there were individuals licensed to practice in any one of the last three years. Six licenses were issued in 1975 and in 1977, four in 1976 and none through August of 1978. Additionally, none of the complaints received regarding this profession were determined to be statutory violations and none involved physical harm or damage to a member of the public.

All of the preceding factors indicate that State regulation and licensing of this profession is inappropriate and does not serve to protect the public interest in terms of health, safety or welfare. There can be no justification for regulation in the absence of potential harm or danger to public health, safety, or welfare.

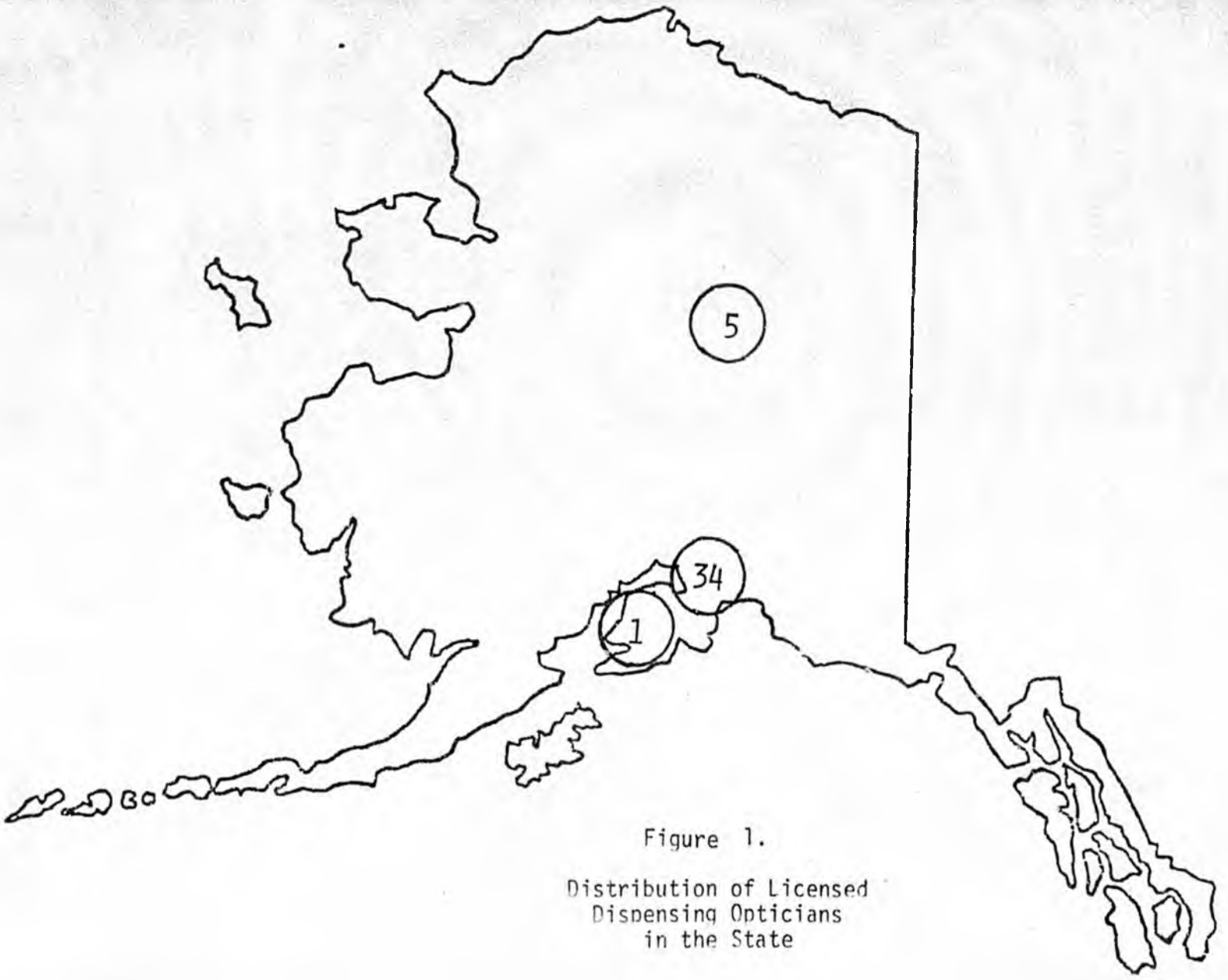

Figure 1.

Distribution of Licensed
Dispensing Opticians
in the State

The Opticians Association of Alaska is headquartered in Anchorage and claims most licensed dispensing opticians in its membership. Association membership also includes unlicensed dispensers who are supervised by an ophthalmologist or optometrist. The major function of the Association is educational, to disseminate updated professional information. The Association may receive complaints regarding the profession for referral to the Board of Dispensing Opticians and encompasses a type of peer review process. In the event of governmental deregulation, the association membership could certainly expand its scope to accomplish self-regulation consistent with desirable professional standards as determined by a broader base of practitioners.

If continued regulation and licensing of this profession is determined to be beneficial and in the public interest, it is recommended that these functions be vested with the administrative agency. Practical examinations, now given once each year, may be proctored by licensed dispensing opticians selected specifically for that purpose or may be eliminated. All support services including administration of a written examination may be provided by the administrative agency and licenses issued by it as authorized by exam results and compliance with statutory qualifications. Should the Board of Dispensing Opticians be reestablished, recommendations are made throughout the body of this report that are based on that premise.

B. To what extent has the operation of the Board of Dispensing Opticians been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

This Board has no statutory or regulatory provisions which would allow issuance of a temporary permit to an otherwise qualified applicant pending examination. It may also happen that an applicant has failed only the practical portion of the examination and must wait another year

before being reexamined. If this Board is reestablished, it should be given the authority to promulgate and adopt regulations by which it may issue a temporary permit pending examination or reexamination of the practical portion, one time only. It should also consider provisions for practical reexamination of a candidate, within a prescribed period of time, by two licensed Board members, at the discretion of the Board. Temporary permits thus issued would become invalid at the time of examination or reexamination and would not be renewed if an applicant failed a specially scheduled practical portion a second time. Due to the low number of candidates for examinations, an increase in routine scheduling is not recommended.

AS 08.71.150 allows reciprocity between states with equivalent requirements. Only two states were reviewed to this end in 1974 and 1975, prior to utilization of a national written examination. Alaska does not have reciprocity in this profession with any other state and no overtures have been made by the Board since 1975 to open this avenue of entry into practice. A review of reciprocity provisions indicates that such requirements restrict interstate entry into professions. Only applicants from states with which agreements have been established may be admitted without examination regardless of their qualifications. Endorsement allows licensure of those individuals licensed elsewhere whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence. Endorsement provisions are felt to be more in keeping with the principle of licensing qualified applicants and with providing services of practitioners. It is recommended that statutory changes be made to allow for licensure by endorsement rather than reciprocity. If this is not done, the question of reciprocity should be thoroughly addressed by the Board. In that a national written examination is now being utilized, other states may be more receptive to such an agreement. If they are not, qualifications and policies may need to be reviewed or revised for validity and to facilitate entry into the profession in this manner.

The Board also should adopt specific regulations for practice and supervision of apprentice dispensing opticians. Much concern has been expressed by members of the profession and the Board regarding "adequate supervision" but this concept has not been defined as a regulation or policy.

The statutes provide for seven Board members; it is noted that there are more members of this Board than there were individuals initially licensed to practice with or without examination in any of the last three years. If the Board of Dispensing Opticians is continued, it is recommended that membership be reduced from seven to five individuals, three of whom should be licensed practicing dispensing opticians and two of whom should be lay persons. This membership could adequately regulate the profession with the support services provided by the administrative agency. Members should not serve consecutive terms unless appointed initially to an unexpired term, but may be reappointed following a term of absence.

The Board of Dispensing Opticians has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs. All fees and revenues are collected through the Division and are deposited into the general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

The Board of Dispensing Opticians has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency.

During the past year, two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Ajudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time and nature of alleged offense mandates that only the most flagrant and potentially injurious licensing complaints are pursued.

C. To what extent has the Board of Dispensing Opticians recommended statutory changes which are generally of benefit to the public interest?

Recent statutory changes with respect to the Board of Dispensing Opticians concerned: (1) Board membership, appointment and term of office; (2) addition of lay persons to membership; (3) Medical Indemnity requirements; (4) disciplinary matters, and (5) applicability of the Administrative Procedure Act to the Board and the licentiates.

The Board itself has recommended no statutory changes since its creation in 1973 that would be of direct benefit to the public.

D. To what extent has the Board of Dispensing Opticians encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

Very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Public concern, if any, is probably expressed by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers in the State.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Public interests are furthered by the existence of public members in professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.[1]

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Dispensing Opticians processed and resolved?

No complaints were received which were specifically directed at individual members of the Board. No complaints were received by the Office of the Ombudsman against the Board or members of this profession.

For the period from January, 1975 through August, 1978 fourteen complaints were logged by the administrative agency which concerned this profession. None of these were found to be statutory violations and none alleged physical damage or danger to an individual. Until recently, there has been a considerable time lag between receipt of a complaint and its resolution, however, due to lack of validity or jurisdiction, ten cases were closed within the month of August, 1978. Investigative services to all boards and commissions under the jurisdiction of the administrative agency are expected to improve.

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[1]Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

F. To what extent does the Board of Dispensing Opticians present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Dispensing Opticians but apprentices preparing for licensure may very well be serving under and trained by a Board member. Preparation for a career in dispensing opticianry, unlike in other health related fields, can be accomplished within the State of Alaska by serving a specific apprenticeship. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. One examination each year is currently given. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Board policies which would allow issuance of temporary permits and which would allow for special reexamination of the practical portion of the test as previously cited, and overt efforts to establish endorsement provisions or reciprocal agreements wherever possible, would increase the opportunity for licensure of practitioners within the State.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Dispensing Opticians in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for three other boards), who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Dispensing Opticians issues licenses on the basis of specific eduation and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Dispensing Opticians to better serve the interests of the public.

In view of the functions of this Board and the relatively few professional members that are regulated (45), it is felt that present statutes are generally adequate with the exception of the number of members that serve on the Board. If the Board of Dispensing Opticians is continued, membership should be reduced to three professional members and two lay members.

Regulations need to be adopted which specifically outline supervision and practice of the dispensing optician's apprentice. Provisions for the issuance of temporary permits on an individual basis and at Board discretion should be authorized, formulated and adopted.

The Board should introduce legislation which would allow for licensure by endorsement. If unsuccessful, it should take positive and overt steps toward establishing reciprocal relationships with other states wherever possible.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead, such as staff salary, examination expenses and investigative services.

III. Conclusion

The regulatory functions of the Board of Dispensing Opticians and administration of those functions by the Department of Commerce and Economic Development are not determined to be justified in terms of protection of public health, safety and welfare.

IV. Summary of Recommendations

A. The Board of Dispensing Opticians, and State regulation of the profession, should be allowed to terminate on June 30, 1979.

B. In the event that State regulation is determined to be justified, the Board should terminate and the functions of examining and licensing members of this profession should be vested within the administrative agency. Two dispensing opticians may be selected to proctor a practical examination, if necessary, and support services (including administration of the written national examination) could be provided by the adminstrative agency.

C. If the Board of Dispensing Opticians is continued, the following recommendations are made:

1. The Board should adopt regulations which would allow for the issuance of temporary permits on an individual basis and at the discretion of the Board. This would allow an otherwise qualified person to practice pending examination and should be invalidated at the time the next scheduled examination results are final. (See discussion on p. 8)

2. The Board should consider regulations which would allow for reexamination of a candidate who has failed only the practical portion of the test, within a prescribed time period, by two or three licensed Board members, at the discretion of the Board. There is no requirement that all Board members be present at an examination. The practical portion is generally not more than 1/2 hour in length and private facilities may be available within the

profession. An applicant who has failed only the practical portion of the examination need not wait another full year under this system. (See discussion on p. 8)

3. The Board should adopt regulations which specifically outline grading and scoring procedures for the practical examination. While this has been agreed on in the past among Board members, written procedures would help to eliminate potential inconsistencies or allegations of arbitrary grading.

4. Statutory changes should be made which allow for licensure by endorsement rather than reciprocity. If this is not done, the Board should explore the possibility of reciprocal agreements with other states. If Alaska's qualifications are substantially different from those of other states (less than half licensed dispensing opticians), they should then be reviewed for validity and appropriate recommendations made. (See discussion on p. 9)

5. The Board should adopt regulations governing the practice of apprentice dispensing opticians and defining the scope of supervision desirable and necessary for apprenticeship. (See discussion on p. 10)

6. Board composition should be reduced to three professional members and two lay members. Members should not serve consecutive terms unless appointed initially to an unexpired term, but may be reappointed following a three-year term of absence. (See discussion on p. 10)

Chapter 71. Dispensing Opticians.

Article
1. Board of Dispensing Opticians (§§ 08.71.010 — 08.71.070)
2. Licensing (§§ 08.71.080 — 08.71.160)
3. Unlawful Acts (§§ 08.71.170 — 08.71.180)
4. Miscellaneous Provisions (§ 08.71.200)
5. General Provisions (§§ 08.71.220 — 08.71.240)

Article 1. Board of Dispensing Opticians.

Section
10. Creation of board
20. Membership of board; source of appointments; term of office
30. Qualifications of board members
40. Election of officers
50. Board regulations
60. Record of proceedings
70. Applicability of Administrative Procedure Act

Sec. 08.71.010. Creation of board. There is created the Board of Dispensing Opticians. (§ 1 ch 45 SLA 1973)

Sec. 08.71.020. Membership of board; source of appointments; term of office. The board consists of seven persons appointed by the governor. Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term. (§ 1 ch 45 SLA 1973; am § 19 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment rewrote this section.

Sec. 08.71.030. Qualifications of board members. Five board members shall be licensed, practicing dispensing opticians residing in the state. Two shall be persons with no direct financial interest in the health care industry. (§ 1 ch 45 SLA 1973; am § 20 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "Five board members" for "A board member" at the beginning of the first sentence, and deleted "a" preceding "licensed" and substituted "opticians" for "optician" in that sentence, and added the second sentence.

Sec. 08.71.040. Election of officers. The board shall elect a chairman and secretary from among its members. The officers may administer oaths. (§ 1 ch 45 SLA 1973)

Sec. 08.71.050. Board regulations. The board may adopt regulations:

(1) necessary or advisable to carry out the provisions of this chapter and which help to assure the competency of dispensing opticians and prevent conduct on their part which would tend to do harm to the visual health of the public;

(2) governing the practice of dispensing opticians;

(3) specifying the subject matter to be covered in examinations for dispensing opticians. (§ 1 ch 45 SLA 1973)

Sec. 08.71.060. Record of proceedings. The secretary shall keep a record of all proceedings, including the name of each applicant for examination and licensing. These records shall be open for public inspection. (§ 1 ch 45 SLA 1973)

Sec. 08.71.070. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62). (§ 1 ch 45 SLA 1973)

Article 2. Licensing.

Section		Section	
80.	License required	120.	Fees
85.	Malpractice insurance	130.	Renewal of license
90.	Content of examination	140.	Display of license
100.	Administration of examination	150.	Issuance of license by reciprocity
110.	Qualifications of applicants for examination	160.	Dispensing optician's apprentice

Sec. 08.71.080. License required. No person may act as a dispensing optician in the state unless he is licensed under this chapter. In order to be licensed under this chapter, a person shall pass an examination given by the board, unless he is eligible for licensing without examination under § 150 of this chapter. A license shall be issued for (1) the dispensing of contact lenses, or (2) the dispensing of other lenses, eyeglasses, spectacles, artificial eyes, and their appurtenances, or (3) both. The board shall by endorsement on the license designate for which aspect of dispensing opticianry the license is issued. The board shall license successful examinees. (§ 1 ch 45 SLA 1973; am § 14 ch 127 SLA 1974)

Effect of amendment. — The 1974 amendment added "unless he is eligible for licensing without examination under § 150 of this chapter" to the end of the first sentence.

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.71.085. Malpractice insurance. If medical malpractice insurance for opticians becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of optician services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 21 ch 102 SLA 1976)

Sec. 08.71.090. Content of examination. To be licensed as a dispensing optician a person, unless eligible for licensing without examination under § 150 of this chapter, shall pass an examination given by the board. At the discretion of the board, the examination may test orally, in writing, or otherwise, knowledge and skills in any or all of the following subjects: optics, anatomy, laboratory technology, ophthalmic dispensing, contact lens technology, technical mathematics and physics, and business concepts of optical dispensing. (§ 1 ch 45 SLA 1973; am § 15 ch 127 SLA 1974)

Effect of amendment. — The 1974 amendment inserted "unless eligible for licensing without examination under § 150 of this chapter" in the first sentence.

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.71.100. Administration of examination. The board shall offer an examination at least once a year. Examinations shall be administered so that one who grades the written part of the examination does not know whose paper he is grading. (§ 1 ch 45 SLA 1973)

Sec. 08.71.110. Qualifications of applicants for examination. A person is entitled to take the examination who

(1) has either

(A) completed at least 6,000 hours of training as an apprentice, or

(B) been engaged for at least 10,000 hours as a practicing optician in good standing in a state, territory, district or possession of the United States; and

(2) has paid the required examination fee. (§ 1 ch 45 SLA 1973)

Sec. 08.71.120. Fees. The following fees shall be imposed under this chapter when applicable:

(1) examination fee	$50
(2) initial dispensing optician license fee	50
(3) biennial renewal fee	50

(§ 1 ch 45 SLA 1973)

Sec. 08.71.130. Renewal of license. (a) A licensed dispensing optician shall renew his license biennially with the Department of Commerce on or before the date set by the department under AS 08.01.100.

(b) If the license is not renewed on or before that date, if shall lapse. A penalty of $10 shall be charged, in addition to all delinquent fees, for the reinstatement of a license which remains lapsed for more than 60 days.

(c) If the license remains lapsed for more than one year, the board may require the applicant to be examined under § 90 of this chapter.

(d) Before a license may be renewed the licensee shall submit to the board evidence of 15 hours of continuing competence in optical dispensing as prescribed by regulations of the board. (§ 1 ch 45 SLA 1973)

Sec. 08.71.140. Display of license. A licensed dispensing optician shall conspicuously display his license in his place of business. (§ 1 ch 45 SLA 1973)

Sec. 08.71.150. Issuance of license by reciprocity. An applicant who has been licensed and has been practicing as a dispensing optician in a state, territory, district or possession of the United States which has requirements for licensing and gives reciprocal rights equivalent to those of this state, and who otherwise meets the requirements of § 110 of this chapter, shall be licensed by the board without examination. (§ 1 ch 45 SLA 1973)

Sec. 08.71.160. Dispensing optician's apprentice. (a) A person may be employed by a licensed dispensing optician as an apprentice. An apprentice shall be designated as such in the records of the board at the request of a licensed physician, optometrist or dispensing optician and shall be in training and under the direct supervision of a licensed physician, optometrist or dispensing optician. No apprentice may be employed under this section for longer than six years unless the board determines that an apprentice is prevented by circumstances beyond his control from obtaining a license as a dispensing optician within that time.

(b) No more than two apprentices may be under the direct supervision of one licensed dispensing optician at the same time. (§ 1 ch 45 SLA 1973)

Article 3. Unlawful Acts.

Section

170. Grounds for revocation, suspension or denial of license
175. Limits or conditions on license; discipline
180. Practicing without a license

Sec. 08.71.170. Grounds for revocation, suspension or denial of license. The board, after compliance with the Administrative Procedure Act (AS 44.62), may revoke, suspend or deny the license of a person who

(1) has been convicted of a felony involving moral turpitude;

(2) is addicted to the use of alcohol or any other drug;

(3) has used advertising, whether printed, radio, display, or of any other nature, which is fraudulent, misleading or inaccurate in any material particular, or misrepresents in any way goods, services or credit terms, values, policies, services or the nature or form of the business conducted;

(4) has practiced fraud or deception in his application for or in his examination for a license;

(5) has used the word "licensed", "registered", or any of their synonyms publicly, except as provided in § 140 of this chapter;

(6) has displayed or published directly or indirectly by any means, a price, terms of payment, or a discount, or a policy or practice of generally underselling competitors, or any reference to the benefits available to the subscribers to any prepaid health plan;

(7) has participated in the division, assignment, rebate or refund of fees to a physician or optometrist in consideration of patient referrals;

(8) has bartered or given away as premiums in any manner either on his own account or as agent or representative for another person, firm or corporation, any eyeglasses, spectacles, lenses or frames;

(9) has advertised the "free examinations of eyes", "free consultation", "consultation without obligation", "free advice", or any words or phrases of similar import which convey the impression to the public that eyes are examined free or are of a character tending to deceive or mislead the public, or are in the nature of "bait advertising";

(10) has employed either directly or indirectly any person commonly known as a "capper" or a "steerer" to obtain business;

(11) has solicited or employed any person to solicit from house to house;

(12) has used advertising offering a service to the public for which he is not licensed under this chapter; however, nothing in this section prohibits the optician from advertising merchandise for which the license which is the subject of this chapter is not required;

(13) has engaged in a group contract for the duplication of eyeglasses or spectacles without a written prescription from an optometrist or physician; or

(14) has advertised the services of any other segment of the healing arts. (§ 1 ch 45 SLA 1973)

Sec. 08.71.175. Limits or conditions on license; discipline. (a) In addition to action under § 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 21 ch 102 SLA 1976)

Sec. 08.71.180. Practicing without a license. It is unlawful for a person to practice as a dispensing optician without a license issued under this chapter or while his license is suspended or revoked. A person who violates this section is guility of a misdemeanor. (§ 1 ch 45 SLA 1973)

Article 4. Miscellaneous Provisions.

Section

200. Contact lenses

Sec. 08.71.200. Contact lenses. Contact lenses shall be fitted in conjunction with and under the supervision of a licensed physician or an optometrist and with a written contact-lens prescription showing that the prescription may be filled for contact lenses and requiring that the patient return to see the prescribing physician or optometrist. In no case may contact lenses be prepared by neutralizing a person's eyeglasses or spectacles. (§ 1 ch 45 SLA 1973)

Revisor's note (1973).—In ch. 45, SLA 1973, this section appeared as part of what was designated there as AS 08.71.210(3) (now AS 08.71.240(3)).

Article 5. General Provisions.

Section

220. Persons practicing as dispensing opticians before July 1, 1973

230. Exemptions from and limitations on the application of this chapter

Section

240. Definitions

Revisor's note (1973).—In ch. 45, SLA 1973, this article appeared as Article 4, and AS 08.71.220—08.71.240 appeared as AS 08.71.190—08.71.210.

Sec. 08.71.220. Persons practicing as dispensing opticians before July 1, 1973. (a) Within 60 days after July 1, 1973, a person who has been engaged in practice in Alaska as a dispensing optician for a period of at least six months immediately preceding July 1, 1973 shall be issued a license without examination upon the payment of a fee of $50 and a certification to the board under oath that he is of good moral character and that

(1) he has been engaged as a dispensing optician for not less than 3,000 hours; or

(2) he has been engaged as a dispensing optician in contact lens fitting for not less than 6 000 hours.

(b) If a person qualifies for a license under (a) (1) or (2) of this section, the board shall by endorsement on the license designate for which aspect of dispensing opticianry the license is issued. If a person qualifies for a license under (a) (1) and (2) of this section, the board shall by endorsement on the license so designate.

(c) Within eight months after July 1, 1973, a person who has been engaged in practice in Alaska as a dispensing optician for a period of at least six months immediately preceding July 1, 1973 but who is not otherwise qualified for licensing under (a) (1) or (2) of this section may take the examination required under § 90 of this chapter. A person who has not been engaged in practice in Alaska as a dispensing optician for a period of at least six months immediately preceding July 1, 1973 must qualify to take the examination under § 110 of this chapter. (§ 1 ch 45 SLA 1973)

Sec. 08.71.230. Exemptions from and limitations on the application of this chapter. This chapter may not be construed to

(1) limit or restrict a licensed physician or optometrist or employees working under the personal supervision of a licensed physician or optometrist from the practices enumerated in this chapter, and each licensed physician and optometrist has all the rights and privileges which may accrue under this chapter to dispensing opticians licensed under it;

(2) prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory or shop;

(3) prohibit an unlicensed person from engaging in the sale of eyeglasses, spectacles, magnifying glasses, goggles, sunglasses, telescopes, binoculars, or any like articles which are completely preassembled and sold only as merchandise;

(4) authorize or permit a licensee under this chapter to hold himself out as being able to, or to offer to, or to attempt by any means, to refract or exercise eyes, diagnose, treat, correct, relieve, operate or prescribe for any human ailment, deficiency, deformity, disease or injury. (§ 1 ch 45 SLA 1973)

Sec. 08.71.240. Definitions. In this chapter

(1) "board" means the Board of Dispensing Opticians;

(2) "department" means the Department of Commerce and Economic Development;

(3) "dispensing optician" means a person who prepares duplications of or prepares and dispenses lenses, spectacles, eyeglasses, artificial eyes, and their appurtenances, to the intended wearers of them on written prescriptions from physicians or optometrists; and in accordance with those prescriptions, measures, adapts, adjusts and fabricates lenses, spectacles, eyeglasses, artificial eyes, and their appurtenances, to the human face for the aid or correction of visual or ocular anomalies of the human eye. (§ 1 ch 45 SLA 1973; am § 52 ch 218 SLA 1976)

Revisor's note (1973).—In ch. 45, SLA 1973, paragraph (3) of this section included what is now AS 08.71.200.

Effect of amendment. — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

CHAPTER 30.
BOARD OF DISPENSING OPTICIANS

Article
1. Continuing Competence

ARTICLE 1.
CONTINUING COMPETENCE

Section
10. Definition of "continuing competence"
20. Evidence of continuing competence
30. Date of continuing competence
40. Field in which continuing competence is obtained
50. Continuing competence required for renewal of initial license

12 AAC 30.010. DEFINITION OF "CONTINUING COMPETENCE." For the purpose of AS 08.71.130(d) and this chapter, "continuing competence" means

(1) attendance at a seminar or course conducted by

(A) the Opticians Association of America;

(B) the Contact Lens Society;

(C) the American Optometric Association;

(D) the Academy of Ophthalmology;

(E) the Optical Wholesalers Association;

(F) the Opticians Association of Alaska, Incorporated; or

(G) other recognized professional organizations in the field of opticianry;

(2) satisfactory completion of a course conducted by a recognized school of opticianry;

(3) attendance at an exhibit conducted for the optical public; or

(4) individual instruction by a licensed ophthalmologist, optometrist, dispensing optician or optical manufacturer outside of the normal work situation. (Eff. 6/23/78, Reg. 66)

Authority: AS 08.71.050(1)
AS 08.71.130(d)

12 AAC 30.020. EVIDENCE OF CONTINUING COMPETENCE. (a) Evidence of continuing competence is

(1) a seminar or course program indicating the sponsor and signed by the instructor;

(2) the original or a copy of a certificate of completion of a seminar or course;

(3) the original or a copy of a diploma;

(4) the original or a copy of a receipt for payment of a seminar or course registration fee;

(5) a sworn affidavit from an instructor attesting to the instruction given; or

(6) a form provided by the department validated by the instructor.

(b) Evidence of continuing competence must state the number of hours spent.

(c) A copy of a document must be certified by a notary public to be a true copy of the original document. (Eff. 6/23/78, Reg. 66)

Authority: AS 08.71.050(1)
AS 08.71.130(d)

12 AAC 30.030. DATE OF CONTINUING COMPETENCE. Continuing competence must be obtained within two years preceding the date of application for license renewal or since the date of initial licensure, whichever is sooner. (Eff. 6/23/78, Reg. 66)

Authority: AS 08.01.100
AS 08.71.050(1) and (2)
AS 08.71.130(d)

12 AAC 30.040. FIELD IN WHICH CONTINUING COMPETENCE IS OBTAINED. Continuing competence shall be in the aspect of dispensing opticianry for which the licensee is licensed. A person licensed to dispense both spectacles and contact lenses shall meet the requirement of AS 08.71.130(d) for each of those aspects of opticianry. (Eff. 6/23/78, Reg. 66)

Authority: AS 08.71.050(1) and (2)
AS 08.71.080
AS 08.71.130(d)

12 AAC 30.050. **CONTINUING COMPETENCE REQUIRED FOR RENEWAL OF INITIAL LICENSE.** A person receiving his or her initial license under AS 08.71

(1) within six months of that date by which it must be renewed need not comply with the continuing competence requirement of AS 08.71.130(d) until the second and subsequent renewal dates;

(2) within 14 months of but more than six months before the date by which it must be renewed need obtain only eight of the 15 hours of continuing competence required by AS 08.71.130(d) for the first renewal period; or

(3) more than 14 months before the date by which it must be renewed must comply with the continuing competence requirement of AS 08.71.130(d). (Eff. 6/23/78, Reg. 66)

Authority: AS 08.01.100
AS 08.71.050(1) and (2)
AS 08.71.130(d)

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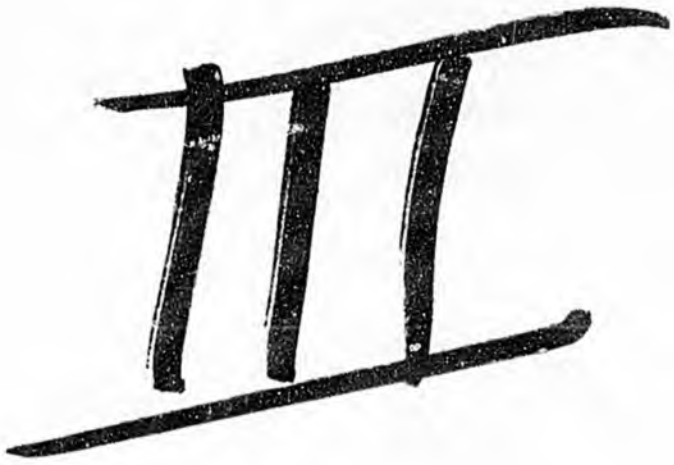

STATE OF ALASKA
Board of Veterinary Examiners
(August, 1978)

Findings

The Board of Veterinary Examiners regulates a profession involved in treatment of diseased and injured animals which may include administration of medication or controlled substances. Federal authorization to prescribe controlled substances and to issue health certificates for interstate and international transportation of animals is contingent on State licensure. Disease prevention, control, and treatment and restrictions on prescriptive authority for drugs are legitimate areas of governmental concern in protecting public health, safety and welfare. It is the determination of this review that State licensure and regulation of this profession is justifiable and that the Board of Veterinary Examiners should be reestablished for an additional four-year period.

I. General Information

A. Regulated Parties

1. Veterinarians

B. Statutory Definition of Regulated Profession

"(1) a person who practices veterinary medicine, surgery, or dentistry is one who does any of the following:

(A) appends to his name a title or abbreviation indicating to the public that he is a veterinarian;

(B) for compensation, diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(C) holds himself out to the public as one who diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(D) maintains premises for receiving, examining, and treating a domesticated animal for compensation;
(AS 08.98.250)

C. Nature and Composition of the Board

1. Board members and terms:

Four-year term (no restrictions regarding consecutive terms or number of terms).

Berton A. Gore, DVM	ends January 31, 1980
Clifford D. Lobaugh, DVM	ends January 1, 1981
David Howe, DVM	ends January 31, 1979

2. Representation:

Professional = 3
Public = -0-

3. Qualifications:

Members must be licensed veterinarians.

D. Licensing Data

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1974	5	4	1	80	20
1975	12	11	1	92	8
1976	11	9	2	82	18
1977	8	8	-0-	100	-0-
1978 (through June)	8	5	3	62	38

Currently licensed:

in-State =	66	(through June, 1978)
out-of-State =	34	(through June, 1978)
Total -	100	

E. Fees

1)	examination fee	$25.00
2)	reciprocity fee	25.00
3)	initial license fee	25.00
4)	biennial renewal	50.00
5)	temporary license	10.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	$3,570.00	$ 705.00	$4,236.50	$1,160.00
- Refunds	25.00	-	50.00	-
Total	3,545.00	705.00	4,186.50	1,160.00
Expenditures				
Per Diem	70.00	493.00	37.50	808.75
Transportation	32.00	355.15	85.14	170.05
Phone	34.05	88.45	83.35	21.00
Printing, Advert. & Postage	240.86	230.34	304.54	280.62
Fees & Services	320.00	540.00	588.32	360.00
Rents, Leases, Other	-	-	11.34	-
Total	696.91	1,706.94	1,110.19	1,640.42
Surplus	$2,848.09	-	$3,076.31	-
Deficit	-	$1,001.94	-	$ 480.42

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	-	-	-
1976	-	-	-
1977	2	-	-
1978	3	-	-

Pending: 5

These complaints involve allegations of over-charging and malpractice through neglect of animals resulting in death and injury. There are two complaints against one practitioner and three against another, both of whom are established in the same office. No action has been taken at this writing and resolution is pending.

H. Qualifications

Veterinarians are generally required to have from two to four years of preprofessional course work at an accredited university. Veterinary colleges usually require some 5,000 classroom hours over a four-year period. Individuals must successfully complete examination prior to initial licensure.

II. Criteria and Analysis

A. To what extent has the Board of Veterinary Examiners operated in the public interest?

The Board of Veterinary Examiners has statutory authority to pass on qualifications of applicants, to issue licenses, to administer and grade examinations and to revoke or suspend licenses. Public interests are protected by requiring that applicants be qualified and demonstrate proficiency in their profession and by providing methods by which incompetence or abuse may be disciplined.

For the past several years the Board has utilized a national written examination. This examination is administered only if the applicant has not taken and passed it within the last three years. An applicant may also choose to take this examination a second time as the Board will accept the higher of the two scores. Applicants are required to take and pass additional written and practical examinations composed by the Board. An average score of 72.5% has been established as the minimum passing score. The Board is required to offer at least one examination each year and this has been its practice. 1978 is the first year in which two examinations were scheduled.

Other qualifications for licensure include graduation from an approved school of veterinary medicine and a requirement that the applicant must not have had his license revoked in the past. By examining and licensing veterinarians in the State, based on these qualifications, the Board is certifying to the public that the practitioner is at least minimally competent.

The Board has adopted regulations which define incompetence, require full disclosure of facts in instances of potential conflict of interest and require the exercise of care, skill and diligence in practice.

No statutory provisions are made for continuing education requirements. Regulatory powers of the Board are restrictive (in comparison to those of other health care boards) and specify the subject matter to be regulated. Continuing education is not one of these specified subjects.

Valid arguments may be made against mandatory continuing education. One is the fact that if ongoing education is required, provisions must be made to allow compliance. The practicality of implementation in a State where well developed systems of higher and/or professional education are limited, or of requiring professionals to go out of State to obtain education must be weighed against whatever assurance there might be that incompetency will be significantly avoided or reduced by this method. Pending further study of this issue, one opinion[1] seems to indicate that vigorous investigation and enforcement programs may be an effective course of action.

It must be recognized, however, that there is a widespread trend toward continuing education requirements within health care professions. Eighteen states presently have such requirements for the veterinary profession. In the event that reassessment advantages are determined to outweigh the disadvantages, alternatives are:

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[1] Shimberg, B., Improving Occupational Regulation, "Officials from 30 states discuss common problems and search for solutions," Educational Testing Service, Princeton, N.J., 1976.

1. certification of completion of approved courses to provide a basis for public selection of practioners;

2. periodic in-office review of client records and/or actual veterinary practices and procedures;

3. mandatory reexamination by such methods as written tests, records and/or x-ray review;

4. routine periodic oral interviews before the Board, a member, or a selected committee;

5. review and analysis of quantity, type and disposition of complaints;

6. well developed and effective peer review mechanisms; and/or

7. programs that may be developed by the Alaska State Veterinary Association.

It is recommended that the Board of Veterinary Examiners be given the authority to adopt regulatons which are necessary and advisable to carry into effect the chapter provisions. One of these should address the matter of continuing education as a condition of relicensure.

The Board must allow entry into the profession and has no latitude under statutory temporary permit procedures. Candidates for licensure have obtained a temporary permit pending the examination, moved into the State, set up individual practice and then failed the examination (temporary permits are not renewable). In response to concern by the Board over instances such as this, an Attorney General's opinion in February of 1978 indicated that the Board may not decline to issue permits nor

does it have any legal responsibility to the candidate. Temporary permits are authorized as a means of expediting entry into a profession and of providing increased availability of qualified services to the public. The Board has indicated a desire to restrict the practice of permittees to an existing clinic but has no authority to do so. Provisions for reexamination in all or a portion of the test areas which were failed are advisable but would require clarification regarding procedures and scheduling.

Endorsement is also utilized by the Board as a means of allowing entry into the profession.

B. To what extent has the operation of the Board of Veterinary Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The statutes governing the Board of Veterinary Examiners and the veterinarian profession are perhaps the most restrictive of all Alaska health care statutes. There have been no statutory changes made since 1970 and none of major significance since the Board was created in 1963.

No public members serve on this Board as was provided by statute for all other health care boards in 1976. The Board has discussed this subject and requested in June of 1978, through the administrative agency, that a public member be allowed to attend Board meetings. No response or further action was taken on this request. Board membership consists of three licensed veterinarians. One member whose term expired in January of 1978 had moved from the State leaving a quorum of two professional members until September when a new member was appointed.

Regular annual meetings are required. However, any special meetings may only be held "with prior approval of the governor" (AS 08.98.040). "The commissioner of commerce and economic development is the executive secretary of the board" (AS 08.98.030).

Violations specified as causes for revocation or suspension of license include the terms "chronically drunk," "drug addict" and moral turpitude." Such terminology is considered to be outdated, somewhat ambiguous and difficult to charge in a legal proceeding.

Regulations may be adopted by the Board only if they define incompetence, specify approved schools of veterinary medicine or if they specify subject matter to be covered in examinations. In contrast to most health care boards, it may not specifically adopt regulations necessary or advisable to govern the practice of veterinary medicine within statutory guidelines.

Statutes for this Board and profession contain no provisions for veterinary assistants or technicians, no provisions for foreign graduates of veterinary medicine, no requirement for an annual report, no continuing education provisions, no penalties in the form of fines or designation as a misdemeanor of violations, and no provisions for emergency care or services under the "good samaritan" principle.

The Board of Veterinary Examiners, in conjunction with the professional association has drafted a complete "Proposed Alaska Veterinary Practice Act." Minutes of Board meetings indicate that at least since 1969 and every year thereafter, requests have been made to the administrative agency for assistance in introducing revised drafts. There is no record of any action having been taken. Separate requests for assistance in introducing changes in individual statutes (i.e., temporary permit changes) have apparently met the same fate.

It is recommended that a separate, short-term task force be created with specific directive and goal of reviewing, revising, and recommending concise and thorough statutory construction, such task force to be represented by members of the veterinary and legal professions, and knowledgeable lay persons, and to be dissolved immediately upon completion of this task.

The Board of Veterinary Examiners has experienced little difficulty in its general administrative operations with respect to personnel or budgetary restrictions with the exception of investigative services and technical assistance as previously noted. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

The Board of Veterinary Examiners has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

It is undeniably in the public interest to enforce the laws promulgated for the protection of public health and welfare and to take expeditious action upon receipt of potentially serious complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Board of Veterinary Examiners recommended statutory changes which are generally of benefit to the public interest?

As previously cited, no major changes have taken place in the profession's statutes since creation of the Board in 1963. Since 1968 numerous requests have been made by the Board for assistance in implementing statutory and regulatory changes. These changes involved Board discretion in issuing temporary permits and in licensing out-of-State practitioners by waiver of examination. The Board and the Alaska Veterinary Association have jointly drafted a proposed new practice act which they have been attempting to obtain assistance with.

No recommendations have been made by the Board of Veterinary Examiners relating to statutory changes that would be of specific direct benefit to the public, however, efficient administration and regulation of the profession would have an overall beneficial public effect.

D. To what extent has the Board of Veterinary Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is generally sensitive to public concern and to aspects of public health and welfare. However, very little public interest or participation in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

The absence of public members on this Board is not felt to encourage public participation or to further public interests. Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.[2]

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Veterinary Examiners processed and resolved?

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[2]Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

No complaints were received which were specifically directed at individual members of the Board of Veterinary Examiners and no complaints regarding the Board or profession have been received by the Office of the Ombudsman. Five complaints received in the last past two years involve allegations of over-charging and malpractice through neglect of animals resulting in injury and death. All were against two practitioners in the same clinic and none have been acted upon.

F. To what extent does the Board of Veterinary Examiners present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Veterinary Examiners. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. State examinations are conducted, monitored and graded by the Board. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Every statutory authority is currently being exercised to screen qualified applicants and provide acceptable practitioners. The Board is already licensing by endorsement, issuing temporary permits and conducting examinations as warranted. These procedures help to expedite entry into the profession and to increase availability of services to the public.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Veterinary Examiners in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for three other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Veterinary Examiners issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Veterinary Examiners to better serve the interests of the public?

Several changes need to be made to the statutes governing this Board. All have been previously noted as have the recommendations for upgrading terminology and content. Needed regulatory changes cannot take place unless and until the Board is given authority to adopt such regulations as are advisable in governing the profession. The Board has repeatedly requested assistance with, and revised, statutory changes and a complete new practice act. Appropriate steps are now being taken by the administrative agency to provide the assistance requested by the Board.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead, such as staff salary and examination expenses.

Because of recent concern regarding the need for occupational licensing, the questions raised concerning public welfare versus professional interests and concern regarding proliferation of regulated and licensed groups, appointment of knowledgeable laymembers is a widely advocated step. "There has been a growing movement to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation."[3] Shimberg and Roederer further indicate that, "... if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to ten members." It is recommended that Board membership be increased to five to include two public members.

III. Conclusion

Veterinarians have the responsibility for detecting and controlling animal diseases; they have the authority to issue prescriptions for controlled substances; federal authorization for a Drug Enforcement Agency number (necessary if prescribing controlled substances) is contingent on State licensure as is federal authorization to issue health certificates for interstate and international transportation of animals. It must also be recognized that many members of the public have a substantial economic and/or emotional investment in their animals. Continuation of the Board of Veterinary Examiners and State regulation is determined to be justified in terms of protection of public health, safety and welfare.

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[3]Ibid, Shimberg & Roederer, p. 9.

IV. Summary of Recommendations

The Board of Veterinary Examiners should be continued for an additional four-year period. The following recommendations are made:

It is recommended that a complete review and revision of these statutes take place in order that they be updated and extend the authority necessary and adequate to govern the practice of veterinary medicine in the State. (See discussion beginning on p. 9)

a. The Board should be given authority to adopt regulations necessary to govern the practice of veterinary medicine in the State. (See discussion on p. 9)

b. Mandatory continuing education requirements, and possible exceptions, should be imposed by statute. The Board should then adopt regulations delineating compliance methods and criteria. (See discussion on p. 7)

c. Public members should be included in the composition of the Board. The statutory restriction precluding lay members on the Board has not encouraged public participation or interest in its regulations or decisions. (See discussion on p. 9, 13 and 16)

d. The Board, in conjunction with the administrative agency, should be given the authority to establish a necessary and reasonable fee structure. (See discussion on p. 15)

Chapter 98. Veterinarians.

Article
1. Board of Veterinary Examiners (§§ 08.98.010 — 08.98.100)
2. Licensing (§§ 08.98.120 — 08.98.210)
3. Enforcement (§ 08.98.230)
4. General Provisions (§ 08.98.250)

Article 1. Board of Veterinary Examiners.

Section
10. Creation and membership of board
20. Appointment and term of office
30. Executive secretary of board
40. Board meetings
50. Duties of the board
60. Board regulations
70. Duties of the department
80. Department regulations
90. Applicability of the Administrative Procedure Act
100. Compensation

Sec. 08.98.010. Creation and membership of board. There is a Board of Veterinary Examiners. It consists of three licensed veterinarians. (§ 1 ch 91 SLA 1963; am § 1 ch 94 SLA 1966)

Sec. 08.98.020. Appointment and term of office. The governor shall appoint the members of the board, with the confirmation of the legislature, for terms of four years, or until their successors are appointed. A member serves at the pleasure of the governor. The first members shall be initially appointed for two-, three- and four-year terms. (§ 1 ch 91 SLA 1963)

Sec. 08.98.030. Executive secretary of board. The commissioner of commerce and economic development is the executive secretary of the board. (§ 1 ch 91 SLA 1963; am § 59 ch 218 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "commissioner of commerce and economic development" for "commissioner of commerce."

Sec. 08.98.040. Board meetings. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (§ 1 ch 91 SLA 1963)

Sec. 08.98.050. Duties of the board. The board shall

(1) pass on qualifications of applicants for licenses and issue licenses to those who quality;

(2) prepare and grade examinations, provided that the board may use examinations prepared by the National Board of Veterinary Examiners;

(3) after hearing, have the authority to suspend or revoke the license of a licensed veterinarian who

(A) obtained his license by fraud, misrepresentation, or deception;

(B) is chronically drunk or is a drug addict;

(C) makes untruthful statements about his professional ability, to solicit business;

(D) distributes alcohol or drugs except as required by the practice of veterinary medicine, surgery, or dentistry;

(E) in his professional capacity, conducts himself in a way that indicates he is not a competent veterinarian;

(F) is convicted of a felony or any crime involving moral turpitude;

(G) falsifies an official state or federal certificate relating to veterinary medicine. (§ 1 ch 91 SLA 1963; am § 2 94 SLA 1966; am § 1 ch 54 SLA 1967)

Sec. 08.98.060. Board regulations. (a) The board shall adopt procedural regulations describing how a person applies for and takes an examination under this chapter.

(b) The board shall adopt substantive regulations

(1) defining conduct which, if engaged in by a veterinarian, is evidence of incompetence;

(2) specifying approved schools under § 170(1) of this chapter;

(3) specifying the subject matter to be covered in an examination for veterinarians. (§ 1 ch 91 SLA 1963)

Sec. 08.98.070. Duties of the department. The department shall furnish the board with administrative services, including renting space for holding examinations, printing and mailing licenses, sending notices, before December 1 of each year, that licenses must be renewed, collecting fees and issuing receipts, keeping a current register of licensees, employing secretarial assistants, replying to routine requests for information, printing forms and informational bulletins, typing all matter to be reproduced, maintaining records and completed examinations, and keeping records of receipts and disbursements. (§ 1 ch 91 SLA 1963; am § 3 ch 94 SLA 1966)

Sec. 08.98.080. Department regulations. The department shall adopt procedural regulations necessary to carry out the duties imposed on it by § 70 of this chapter. (§ 1 ch 91 SLA 1963)

Sec. 08.98.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (§ 1 ch 91 SLA 1963)

Sec. 08.98.100. Compensation. Members of the board are entitled to per diem allowances and transportation expenses allowed by law and paid members of other state examining boards. (§ 1 ch 91 SLA 1963)

Article 2. Licensing.

Section		Section	
120.	License required	170.	Qualification for examination
130.	Examination	180.	Temporary license
140.	Content of examination	190.	Fees
150.	Administration of examination	200.	Reinstatement of lapsed license
160.	Reexamination	210.	Out-of-state veterinarian

Sec. 08.98.120. License required. No person may practice veterinary medicine, surgery, or dentistry unless he is licensed under this chapter. (§ 1 ch 91 SLA 1963)

Sec. 08.98.130. Examination. A person who passes the examination given by the board is entitled to be licensed as a veterinarian. (§ 1 ch 91 SLA 1963)

Sec. 08.98.140. Content of examination. The examination shall be in veterinary anatomy, surgery, medicine, obstetrics, pathology, chemistry, diagnosis, materia medica, therapeutics, physiology, sanitary medicine, dentistry, and other scientific subjects related to the practice of veterinary medicine surgery, and dentistry. (§ 1 ch 91 SLA 1963)

Sec. 08.98.150. Administration of examination. The board shall offer examinations at least once a year. Examinations shall be so administered that, whenever possible, one who grades a written examination does not know whose paper he is grading. (§ 1 ch 91 SLA 1963; am § 4 ch 94 SLA 1966)

Sec. 08.98.160. Reexamination. A person who fails an examination may apply for a subsequent examination, but shall pay the examination fee each time he applies. (§ 1 ch 91 SLA 1963)

Sec. 08.98.170. Qualification for examination. A person is entitled to take the examination who

(1) was graduated from a school of veterinary medicine approved by the board;

(2) Repealed by § 25 ch 245 SLA 1970.

(3) has completed application forms and returned them to the board;

(4) has paid the fee specified in § 190 of this chapter;

(5) has not had a veterinarian license revoked for cause in another jurisdiction;

(6) is of good moral character. (§ 1 ch 91 SLA 1963; am §§ 5, 6 ch 94 SLA 1966; am § 25 ch 245 SLA 1970)

Legislative committee report. — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.) For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

Sec. 08.98.180. Temporary license. A person who meets the requirements of § 170 of this chapter is entitled to be licensed. A license issued under this section is valid until the results of the examination following the issuance of the license are published. No person may receive more than one license under this section. (§ 1 ch 91 SLA 1963; am § 8 ch 94 SLA 1966)

Sec. 08.98.190. Fees. The following fees shall be imposed under this chapter when applicable:

(1) examination fee	$25
(2) reciprocity fee	25
(3) initial license fee	25
(4) biennial renewal	50
(5) temporary license	10

(§ 1 ch 91 SLA 1963; am § 1 ch 53 SLA 1968)

Sec. 08.98.200. Reinstatement of lapsed license. A person whose license has lapsed is entitled to have his license reinstated without taking an examination unless his license has remained lapsed more than five years. (§ 1 ch 91 SLA 1963; am § 2 ch 53 SLA 1968)

Sec. 08.98.210. Out-of-state veterinarian. A veterinarian in good standing in a veterinary association of another state or territory or the District of Columbia which licenses veterinarians to practice veterinary medicine may be licensed without examination and otherwise upon substantially the same terms and conditions as are fixed in the jurisdiction from which he has come for the licensure of a veterinarian from this state. As a prerequisite to licensure the board shall require a veterinarian to take and pass an examination, unless the applicant has

(1) passed a state veterinarian examination;

(2) engaged in the active practice of veterinary medicine for at least five out of the previous seven years before filing the application excluding time spent in the military service of the United States;

(3) graduated from an accredited school of veterinary medicine;

(4) met the character requirements established by the board. (§ 1 ch 91 SLA 1963; am § 8 ch 94 SLA 1966; am § 2 ch 54 SLA 1967)

Article 3. Enforcement.

Section
230. Injunction

Sec. 08.98.230. Injunction. When it appears that a person has engaged in or is about to engage in an act constituting a violation of § 120 of this chapter, the board, through its executive secretary, shall bring an action in the superior court to enjoin the act and to enforce compliance with § 120 of this chapter. (§ 1 ch 91 SLA 1963)

Article 4. General Provisions.

Section
250. Definitions

Sec. 08.98.250. Definitions. In this chapter

(1) a person who practices veterinary medicine, surgery, or dentistry is one who does any of the following:

(A) appends to his name a title or abbreviation indicating to the public that he is a veterinarian;

(B) for compensation, diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(C) holds himself out to the public as one who diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(D) maintains premises for receiving, examining, and treating a domesticated animal for compensation;

(2) "board" means the Board of Veterinary Examiners;

(3) "department" means the Department of Commerce and Economic Development. (§ 1 ch 91 SLA 1963; am § 60 ch 218 SLA 1976)

Revisor's note (1973). — In light of the 1966 amendment of AS 08.98.010, "Veterinarian" has been changed to "Veterinary" in paragraph (2) of this section.

Effect of amendment. — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (3).

CHAPTER 68.
BOARD OF VETERINARY EXAMINERS

Article
1. Examinations
2. Evidence of Incompetence

ARTICLE 1.
EXAMINATIONS

Section
10. Applications
20. Time and place of examination
30. Notification of applicants
40. Application for license

12 AAC 68.010. APPLICATIONS. (a) An application for examination to practice veterinary medicine, surgery, or dentistry shall be made in writing to the Department of Commerce on a form prescribed and furnished by the Department. The fee required by AS 08.98.190 shall accompany the application form.

(b) An applicant may be required to furnish other information to demonstrate that he meets the minimum qualifications of AS 08.98.170.

(c) An application for examination must be postmarked no later than 60 days before the examination date. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(a)
AS 08.98.070

12 AAC 68.020. TIME AND PLACE OF EXAMINATION. (a) The time and place of the examination will be published by all major newspapers, in the State of Alaska, at least six months before the examination date.

(b) The Department of Commerce will arrange for space in which the examination is given. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(a)
AS 08.98.070

12 AAC 68.030. NOTIFICATION OF APPLICANTS. (a) All applicants will be notified in writing of the time and place of the examination by the Department of Commerce at least 10 days before the examination.

(b) An applicant will be advised by the department of his grade in writing no later than 60 days following the grading of the examination by the board. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(a)

12 AAC 68.040. APPLICATION FOR LICENSE. An application for a license is included on the same form used for the application for examination. Space is provided on the form to indicate whether licensing will be by examination or by waiver of examination. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060
AS 08.98.210

ARTICLE 2. EVIDENCE OF INCOMPETENCE.

Section
50. Evidence of incompetence
60. Approved schools
70. Conflict of interest
80. Treatment of patients
90. Certificate of health
100. Confidential relationship
110. Testimonials
120. Soliciting

12 AAC 68.050. EVIDENCE OF INCOMPETENCE. The following conduct is considered evidence of incompetence of an applicant:

(1) a judgment of insanity by any competent court;

(2) a conviction of a violation of a federal or state law relating to narcotic drugs;

(3) a conviction of malpractice in veterinary medicine, surgery or dentistry. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060

12 AAC 68.060. APPROVED SCHOOLS. A school of veterinary medicine that is recognized and approved by the American Veterinary Medical Association is approved by the board. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.060(b)(2)

Editor's Note: A list of approved schools may be obtained from the American Veterinary Medical Association.

12 AAC 68.070. CONFLICT OF INTEREST. It is unprofessional to represent conflicting interest, except by express consent of all concerned, given after a full disclosure of the facts. A conflict of interest results when a veterinarian is employed by a buyer to inspect an animal for soundness or other reason, and he accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is evidence of unprofessional conduct for the purposes of AS 08.98.050. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050 (3) (E)
AS 08.98.060 (b) (1)

12 AAC 68.080. TREATMENT OF PATIENTS. A licensed veterinarian shall exercise the degree of care, skill and diligence in treating patients that is ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in the community in which he practices. Failure to comply with this section constitutes incompetence for the purpose of AS 08.98.050(3)(E). (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.090. CERTIFICATE OF HEALTH. No licensed veterinarian may issue a certificate of health for an animal unless he performs the inspection and the appropriate tests it required. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.100. CONFIDENTIAL RELATIONSHIP. A licensed veterinarian shall maintain a confidential personal relationship between himself and his client, or his client's authorized agent. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.110. TESTIMONIALS. No licensed veterinarian may write testimonials endorsing proprietary remedies, instruments, equipment or food except that reports of the results of properly controlled experiments or clinical studies are permitted if given publicity through scientific journals or meetings. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.120. SOLICITING. (a) No member of the veterinary profession may utilize the services of solicitors. No licensed veterinarian may participate in arrangements which share th proceeds from professional services with individuals who may have been instrumental in his having been selected to perform the particular service.

(b) A licensed veterinarian shall avoid the impropriety of employing questionable methods to attract public attention or claim to possess superior knowledge or skill in the treatment or prevention of a disease. (Eff. 3/27/71, Reg. 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

STATE OF ALASKA
Physical Therapy Board
(August, 1978)

Findings

Governmental deregulation of the physical therapy profession would subject the public to potential danger from persons who are not required to meet minimum standards of proficiency. Physicial therapy is performed at the direction of a physician and can be a prolonged process characterized by gradual physical improvement and frequently accompanied by substantial investments of time and money. Lack of quality control could result in considerable financial loss or physical injury among members of the general public. Unregulated and unqualified practitioners would be unhindered in practice and promises of physical aid that may be unrealistic or blatantly false. Regulation of this profession could, however, be accomplished without a State board by the administrative agency with appropriate statutory guidelines. If the Board is continued, recommendations are contained herein that would enhance its efficient functioning.

I. General Information

A. Regulated Parties

1. Physical Therapists
2. Physical Therapy Assistants

B. Statutory Definition of Regulated Profession

"(2) 'physical therapist' means a person who practices physical therapy;

(3) 'physical therapy' means the treatment of a bodily or mental condition of a person by the use of the properties of heat, light, water, electricity, massage, therapeutic exercise including physical rehabilitation procedures, and physical therapy evaluation, treatment planning, instruction and consultative services; the use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not included within the term 'physical therapy';

(4) 'physical therapy assistant' means a person who assists in the practice of physical therapy or portions of it as initiated, supervised, and terminated by a registered physical therapist; his reponsibilities do not include testing or evaluation." (AS 08.84.190)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Recently resigned Chairman	ends September 1, 1977
Donna Klokkevold, RPT (Secy)	ends September 1, 1978
Richard Alsop, RPT	ends September 1, 1979
J. Michael James, M.D.	ends September 1, 1977
Edward Heuston	ends September 1, 1977

2. Representation:

Profession = 4 (includes one licensed physician)
Public = 1

3. Qualifications:

"...The membership consists of one physician licensed to practice medicine in the state, three physical therapists registered in the state, and one lay person..." (AS 08.84.010)

D. Registration Data

Physical Therapists

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1975	3	3	0	100	-0-
1976	1	1	0	100	-0-
1977	3	2	1	67	33
1978 (through June 30)	2	1	1	50	50

Physical Therapy Assistants

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1975	0	0	0	-0-	-0-
1976	1	1	0	100	-0-
1977	0	0	0	-0-	-0-
1978 (through June 30)	1	1	0	100	-0-

Currently Registered:

Physical Therapists

in-State	=	87	(through June, 1978)
out-of State	=	14	(through June, 1978)
Total		101	

in-State	= 2
Total	2

E. Fees

1.	application	$25.00
2.	registration by examination	25.00
3.	registration be endorsement	25.00
4.	biennial renewal	25.00
5.	temporary permit	10.00
6.	delinquent penalty	10.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	$750.00	$1,880.00	$1,455.00	$3,132.00
- refunds	-	-	-	-
Total	$750.00	$1,880.00	$1,455.00	$3,132.00
Expenditures				
Per Diem	-	45.00	125.00	475.00
Transportation	-	168.30	86.64	516.51
Phone	16.20	43.75	74.52	107.95
Printing, Advert., Postage	-	212.33	242.52	371.13
Fees & Services	35.00	335.00	145.00	275.00
Rents, Leases, Other	16.30	-	-	-
Total	$ 67.50	$ 804.38	$ 673.68	$1,745.59
Surplus	$682.50	$1,075.62	$ 781.32	$1,386.41
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	1	1	0
1976	0	0	0
1977	0	0	0
1978 (through June)	0	0	0

Pending: 0

One complaint was received by the Office of the Ombudsman. This complaint was from an applicant charging that s/he was improperly denied licensure; the charge was determined to be justified and was rectified. One other complaint for practicing without a license received in 1975 had previously been referred to the Medical Board and is still pending.

H. Qualifications

Practitioners are required to have a Bachelor's degree (four-year program) from an approved school and work only under physician direction.

II. Criteria and Analysis

A. To what extent has the Physical Therapy Board operated in the public interest?

The statutory duties of the Board are to conduct examinations, control all matters pertaining to professional registration, issue, suspend or revoke registration certification, maintain current registration listings, and maintain records of its proceedings. The Board has no regulatory authority and, hence, has operated under the restrictive limitations of the foregoing duties.

A national examination for applicants has consistently been utilized by the Board. All applicants for registration, including those who are requesting licensure by endorsement, must have taken and passed this written examination with a minimal score of 70. The examination is given twice each year, is proctored by one or more members of the Board and is graded by the national testing service. No practical examination is given. The testing function could be assumed by the administrative agency.

Assuring competency of practitioners by utilizing nationally established testing standards and procedures is one method by which regulation operates in the public interest. Handicapped individuals or their relatives may be tempted to place their well being in the care of unqualified or unscrupulous persons who promise unrealistic help or cures. The result could be the loss of literally thousands of dollars and no assistance to the individual while actual physical harm could occur in the incorrect application of treatments such as those utilizing muscular exercise, heat, and electricity. The general public must be supplied with a measure for determining the qualifications of a person providing such services. Compliance with State requirements and subsequent registration controlling applicants for this profession function to protect the public health and safety.

Provisions for registration by endorsement and for issuance of temporary permits are found in the Board's statutes. These avenues of expeditious entry into the profession are utilized by the Board and are felt to be in keeping with the public interest by allowing opportunities for access to practitioners. Most licentiates within the State have been licensed by endorsement. Endorsement is allowed from any state whose registration requirements were substantially equal to those of Alaska at the date of the applicants' registration. Temporary permits may be, and are, issued to applicants who are otherwise qualified pending examination. Permits are valid for eight months or until the next examination results are

published - or until the endorsement application is considered by the Board - whichever occurs first. Foreign graduates must first be licensed in another state and must have passed the national examination to be eligible for endorsement in Alaska.

The Board has established a policy by which an applicant may take the examination an unlimited number of times. While it is felt to be advisable that an applicant who has failed the examination twice must obtain further qualifying training and/or experience, there is no authority for the Board to impose requirements of this kind.

There also is no authority for the Board to consider the subject of continuing education except as a policy matter. Valid arguments may be made against continuing education. One is the fact that if ongoing education is required, provisions must be made to allow compliance. The practicality of this in a rural State where well developed systems of higher and/or professional education are virtually nonexistent, or of requiring professionals to go out-of-State to obtain education they cannot get here, must be weighed against whatever assurance there might be that incompetency will be significantly avoided or reduced by this method. It must be recognized, however, that there is a widespread trend toward continuing education requirements as a condition of license renewal and the Board should have the authority to consider the implications and implementation of such action.

If the Physical Therapy Board is allowed to terminate, continuing education should be delineated by statute to allow administration and determination of qualifications by the agency. If continued, it is recommended that the Physical Therapy Board by given the statutory authority to adopt regulations necessary and advisable to govern the practice of the profession within statutory limitations, including the matter of continuing education.

B. To what extent has the operation of the Physical Therapy Board been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The operation of the Physical Therapy Board has been limited by the absence of statutory authority necessary to adopt regulations governing the profession and its practitioners. Procedures covering application for registration, codes of ethics, training functions and utilization of physical therapy assistants, and clarification of a supervisory relationship have been formulated as Board policies. These policies do not, however, have the sanctity of regulations. As previously noted, the Board may not consider or require continuing education as a condition for relicensure.

Present Board composition requires that only one public member may be appointed. This is not considered to enhance the public interest and accountability of the Board's operation. Because of recent concern regarding the need for occupational licensing, the questions raised concerning public welfare versus professional interests and concern regarding proliferation of regulated and licensed groups, appointment of knowledgeable lay members is a widely advocated step. "There has been a growing movement to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation."[1] Shimberg and Roederer further indicate that,

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[1]Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 9.

"... if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to ten members." Public representation on the Board should be increased to two members for a public-profession ratio of 2:3.

A general review of Board statutes indicates a need to refine and define terms such as "habitually drunk," "immoral or unprofessional conduct," "moral turpitude" and "gross negligence." (AS 08.84.120)

The Physical Therapy Board has experienced some difficulty in its administrative operations with respect to budgetary matters. In an attempt to recognize and alleviate limitations, the Board recently resolved that a licensing examiner from the administrative agency need not be present at all Board meetings. (This is not in keeping with the policy of the administrative agency but is intended to demonstrate Board efforts with respect to minimizing expenditures.) The Board also has recently discussed the possibility of members not requesting transportation or per diem for meetings and has in fact refused this. (Again, this is contrary to administrative policy.) It is noted that prior to a 1977 statutory amendment, members of this Board were not entitled to a travel or per diem allowance by the Physical Therapist practice act.

Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs although employee turnover has not enhanced Board operations. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

Complaints received in relation to this profession would encounter the same difficulties as have those of all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

C. To what extent has the Physical Therapy Board recommended statutory changes which are generally of benefit to the public interest?

As with general statutory amendments recently made to many health care related boards, recent changes to these statutes included: deletion of the requirement that nominations to the Board be made only by the professional association, Medical Indemnity Corporation of Alaska provisions, applicability of the Administrative Procedure Act and minor "housekeeping" items.

No recommendations have been made by the Physical Therapy Board relating to statutory changes that would be of specific benefit to the public.

D. To what extent has the Physical Therapy Board encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is sensitive to public concern and to aspects of public health and welfare. However, very little public interest in the activities of the Board has been shown in the form of attendance or participation at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members.

The Board has not taken any overt action to solicit public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

E. How efficiently are public inquiries or complaints regarding the activities of the Physical Therapy Board processed and resolved?

One complaint was received by the Office of the Ombudsman (in 1975) charging that an applicant was improperly denied licensure. This complaint was justified and resolved in a timely manner. Several references are found in the files of complaints made against a particular individual since 1975. These complaints also involve allegations of violations concerning the medical and chiropractic professions and action is still pending under jurisdiction of the Medical Board.

F. To what extent does the Physical Therapy Board present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Physical Therapy Board or any of its members. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. Two examinations each year are currently conducted and endorsement provisions are utilized. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Current Board practices which allow registration through endorsement and the issuance of temporary permits are conducive to entry into the profession, provide opportunity for availability and public access to services and could as well be agency administered. Qualifications delineated for these methods are designed to assure competency sufficient to meet minimal practicing standards.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Physicial Therapy Board in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for three other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Physical Therapy Board issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Physical Therapy Board to better serve the interests of the public?

If continued, the Board should be authorized to promulgate and adopt regulations necessary and advisable to govern the practice of physical therapists and physical therapy assistants in the State within statutory guidelines. Areas which should be considered by the Board include: a limitation on the number of times an applicant may fail the examination before further study is required, continuing education/competency requirements, functions and training of physical therapy assistants and definitions of "supervision," "immoral or unprofessional conduct," "moral turpitude" and "gross negligence."

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.[2] It is, therefore, recommended that public membership on the board be increased to two, with three professional members and that number of terms or of consecutive terms be limited.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations and the costs of Division of Occupational Licensing administrative overhead, such as staff salary and examination expenses.

III. Conclusion

Regulation of this profession is determined to function in the protection of the public health, safety and welfare and could be accomplished by the adminstrative agency.

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[2]Ibid, Shimberg & Roederer, p. 20.

IV. Summary of Recommendations

A. The Physical Therapy Board should be allowed to terminate and the functions of examining and licensing should be assumed by the administrative agency with appropriate statutory guidelines.

B. If the Physicial Therapy Board is reestablished for an additional four-year period, the following recommendations are made:

1. It is recommended that the Physical Therapy Board be given authority to promulgate and adopt appropriate regulations. The Board may then consider advisable and needed regulations such as those concerning:

   a. a limitation on the number of times an applicant may fail an examination before s/he must obtain further training, (See discussion on p. 9)

   b. continuing education requirements, (See discussion on p. 9)

   c. form and procedures for licensure applications,

   d. the functions and scope of activities for physical therapy assistants, and

   e. the definition and scope of activity of a supervisory relationship. (See discussion on p. 10)

2. Terms such as "habitually drunk," "immoral or unprofessional conduct," "moral turpitude," and "gross negligence," should be refined and/or defined. (See discussion on p. 11)

3. The ratio of lay persons to professional members of the board should be increased. It is recommended that public membership be increased to two and that number of terms or consecutive terms be limited. (See discussion on p. 10)

Chapter 84. Physical Therapists Practice Act.

Article
1. State Medical Board (§§ 08.84.010 — 08.84.020)
2. Registration (§§ 08.84.030 — 08.84.120)
3. Unlawful Acts (§§ 08.84.130 — 08.84.185)
4. General Provisions (§§ 08.84.190 — 08.84.200)

Article 1. State Medical Board.

Section
10. State Physical Therapy Board
20. Applicability of Administrative Procedure Act

Sec. 08.84.010. State Physical Therapy Board. (a) There is created the State Physical Therapy Board, which consists of five members appointed by the governor. The membership consists of one physician licensed to practice medicine in the state, three physical therapists registered in the state, and one lay person. Members of the board shall be appointed for terms of one, two and three years, respectively; all subsequent appointments shall be made for a term of three years and until their successors are appointed.

(b) The Physical Therapy Board shall conduct examinations for applicants and shall control all matters pertaining to the registration of physical therapists and physical therapy assistants and the practice of physical therapy. The board shall

(1) pass upon the qualifications of applicants;

(2) conduct examinations;

(3) issue temporary permits and registration certificates to physical therapists and physical therapy assistants qualified under this chapter;

(4) suspend or revoke registration certificates, when necessary;

(5) keep a current register listing the name, business address, date and number of registration certificate of each physical therapist and physical therapy assistant who is registered to practice in this state;

(6) keep a record and minutes of its meetings, proceedings and hearings. (§ 15 ch 74 SLA 1957; am § 8 ch 49 SLA 1969; am § 1 ch 71 SLA 1974; am § 1 ch 208 SLA 1975; am § 2 ch 43 SLA 1977)

Effect of amendments. — The 1974 amendment rewrote this section.

The 1975 amendment substituted "American Physical Therapy Association" for "American Physical Therapist Association" at the end of the former third sentence of subsection (a).

The 1977 amendment, in subsection (a), deleted the former third, fifth, and sixth sentences, which read, respectively, "The members shall be selected from a list of 10 persons which shall be submitted by the Alaska Chapter of the American Physical Therapy Association", "Vacancies on the board shall be filled by appointment in like manner", and "Board members are not entitled to a travel or per diem allowance."

Legislative committee report. — For report on ch. 43, SLA 1977 (SB 110), see 1977 Senate Journal, p. 173.

Am. Jur. reference. — 41 Am. Jur., Physicians and Surgeons, § 31.

Sec. 08.84.020. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62).

Article 2. Registration.

Section
30. Qualifications for registration
35. Malpractice insurance
40. Application for registration
50. Fees
60. Registration by endorsement
65. Temporary permit
70. [Repealed]
80. Examinations
90. Registration
100. Renewal of registration
110. [Repealed]
120. Refusal, revocation and suspension of registration

Sec. 08.84.030. Qualifications for registration. To be eligible for registration by the board as a physical therapist or physical therapy assistant, an applicant shall

(1) be of good moral character;

(2) have graduated from a school of physical therapy approved by the Council on Medical Education and Hospitals of the American Medical Association, or the American Physical Therapy Association;

(3) pass to the satisfaction of the board an examination from the Professional Examination Service Association, to determine his fitness for practice as a physical therapist or physical therapy assistant, or be entitled to registration without examination as provided in § 60 of this chapter. (§ 3 ch 74 SLA 1957; am §§ 1, 8 ch 49 SLA 1969; am §§ 1, 2 ch 26 SLA 1970; am § 25 ch 245 SLA 1970; am § 2 ch 71 SLA 1974; am § 2 ch 208 SLA 1975)

Effect of amendments. — The 1974 amendment repealed and re-enacted this section, renumbering the paragraphs and inserting "or physical therapy assistant" in the introductory language and in present paragraph (3).

The 1975 amendment substituted "Professional Examination Service Association" for "professional examination service of the American Public Health Association" in paragraph (3).

Legislative committee report. — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

Sec. 08.84.035. Malpractice insurance. If medical malpractice insurance for physical therapists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of physical therapist services to the public, the director of insurance may require all persons registered under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of registration under this chapter. The provisions of this section are satisfied if the registrant's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 29 ch 102 SLA 1976)

Sec. 08.84.040. Application for registration. To be registered as a physical therapist or physical therapy assistant, an applicant shall apply to the board on a form prescribed by the board. An applicant shall include in his application, evidence under oath that he possesses the qualifications required by § 30 of this chapter. (§ 4 ch 74 SLA 1957; am § 3 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment inserted "or physical therapy assistant" in the first sentence.

Sec. 08.84.050. Fees. The following fees shall be imposed under this chapter when applicable:

(1) application	$25
(2) registration by examination	25
(3) registration by endorsement	25
(4) biennial renewal	25
(5) temporary permit	10

(§ 4 ch 74 SLA 1957; am § 2 ch 49 SLA 1969; am § 3 ch 26 SLA 1970)

Sec. 08.84.060. Registration by endorsement. The board may register without examination an applicant who is a physical therapist or physical therapy assistant registered under the laws of another state or territory, if the requirements for registration in that state or territory were, at the date of his registration, substantially equal to the requirements in this state. (§ 6 ch 74 SLA 1957, am § 4 ch 26 SLA 1970; am § 4 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment inserted "or physical therapy assistant" near the middle of the section.

Sec. 08.84.065. Temporary permit. (a) The board may issue a nonrenewable temporary permit to an applicant for registration by endorsement or by examination who meets the requirements of § 30(1) and (2) of this chapter and pays the required fee.

(b) A temporary permit issued to an applicant for registration by endorsement is valid for eight months or until the board considers the applicant's endorsement application, whichever occurs first.

(c) A temporary permit issued to an applicant for registration by examination is valid for eights months or until the results of the first examination for which the applicant is scheduled are published, whichever occurs first. If the applicant fails to take the first examination for which he is scheduled his temporary permit lapses on the day of the examination. (§ 5 ch 26 SLA 1970; am § 5 ch 71 SLA 1974; am § 3 ch 208 SLA 1975)

Effect of amendments. — The 1974 amendment substituted "registration" for "licensure" in subsections (a) and (b) and in the first sentence of subsection (c). The 1975 amendment substituted "§ 30(1) and (2)" for "§ 30(1), (2) and (3)" in subsection (a).

Sec. 08.84.070. Registration fee.
Repealed by § 8 ch 49 SLA 1969.

Editor's note. — The repealed section derived from § 6, ch. 74, SLA 1957.

Sec. 08.84.080. Examinations. (a) The board shall examine applicants for registration as physical therapists or physical therapy assistants at the times and places it determines.

(b) An application for examination shall be submitted to the department at least 40 days before the examination date. (§ 7 ch 74 SLA 1957; am § 3 ch 49 SLA 1969; am § 6 ch 26 SLA 1970; am § 6 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment, in subsection (a), inserted "or physical therapy assistants" and deleted the former second sentence.

Sec. 08.84.090. Registration. The board shall register an applicant who meets the qualifications for registration under this chapter. It shall issue a certificate of registration to each person registered. A certificate of registration is prima facie evidence of the right of the person to represent himself as a registered physical therapist or registered physical therapy assistant. (§ 8 ch 74 SLA 1957; am § 7 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment added "or registered physical therapy assistant" to the end of the third sentence.

Sec. 08.84.100. Renewal of registration. (a) A registered physical therapist or physical therapy assistant shall renew his registration biennially with the Department of Commerce and Economic Development on or before the date set by the department under AS 08.01.100(a). If the registration is not renewed on or before that date, it lapses.

(b) A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of registration which remains lapsed for more than 60 days. If the registration remains lapsed for more than three years, the board may require the applicant to take and pass the examination given under § 30(3) of this chapter. (§ 9 ch 74 SLA 1957; am § 4 ch 49 SLA 1969; am § 8 ch 71 SLA 1974; am § 4 ch 208 SLA 1975; am § 54 ch 218 SLA 1976)

Effect of amendments. — The 1974 amendment inserted "or physical therapy assistant" near the beginning of the first sentence of subsection (a).

The 1975 amendment substituted "§ 30(3)" for "§ 30(4)" in the second sentence of subsection (b).

The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the first sentence of subsection (a).

Sec. 08.84.110. Renewal fee.
Repealed by § 8 ch 49 SLA 1969.

Editor's note. — The repealed section derived from § 9, ch. 74, SLA 1957.

Sec. 08.84.120. Refusal, revocation and suspension of registration. The board may refuse to register an applicant, may refuse to renew the registration of a person, and may suspend or revoke the registration of a person who

(1) is habitually drunk or addicted to the use of narcotic drugs;

(2) is, in the judgment of the board, guilty of immoral or unprofessional conduct;

(3) has been convicted of violating a state or federal narcotic law;

(4) has been convicted of a crime involving moral turpitude;

(5) is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;

(6) has obtained or attempted to obtain registration by fraud or material misrepresentation;

(7) has been declared mentally ill by a court and has not thereafter been lawfully declared sane; or

(8) has treated or attempted to treat ailments of human beings otherwise than by physical therapy, or has attempted to practice independent of the prescription and direction of a person licensed to practice medicine or osteopathy;

(9) as a physical therapy assistant, has attempted to practice physicai therapy which has not been initiated, supervised and terminated by a registered physical therapist. (§ 10 ch 74 SLA 1957; am § 5 ch 49 SLA 1969; am § 9 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment added paragraph (9).

Cited in Leege v. Martin, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

Article 3. Unlawful Acts.

Section
130. False claim of registration forbidden
140. Penalty for fraud in obtaining registration
150. Registration of physical therapists
160. Practice of registered physical therapist
170. Penalty
180. Investigation by board
185. Limits or conditions on license; discipline

Sec. 08.84.130. False claim of registration forbidden. (a) A person not registered as a physical therapist, or whose registration is suspended or revoked, or whose registration is lapsed, who uses in connection with his name the words or letters "R.P.T.," "Registered Physical Therapist," or other letters, words, or insignia indicating or implying that he is a registered physical therapist, or who in any way, orally, or in writing, directly or by implication, represents himself as a registered physical therapist is guilty of a misdemeanor.

(b) A person not registered as a physical therapy assistant, or whose registration is suspended or revoked, or whose registration is lapsed, who in any way, orally, or in writing, directly or by implication, represents himself as a registered physical therapy assistant is guilty of a misdemeanor. (§ 11 ch 74 SLA 1957; am § 10 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment designated the provisions of this section as subsection (a) and added subsection (b).

Sec. 08.84.140. Penalty for fraud in obtaining registration. A person who wilfully makes a false oath or affirmation or who obtains or attempts to obtain registration by a fraudulent representation is guilty of a misdemeanor. (§ 12 ch 74 SLA 1957)

Sec. 08.84.150. Registration of physical therapists. (a) It is unlawful for anyone to practice physical therapy without being registered in accordance with this chapter.

(b) A person practicing physical therapy without being registered on April 27, 1969 may continue to practice for a period of six months. At the end of that period he must be registered under § 90 of this chapter in order to continue to practice physical therapy in the state. (§ 14 ch 74 SLA 1957; am § 6 ch 49 SLA 1969)

Sec. 08.84.160. Practice of registered physical therapist. A person registered under this chapter may not treat human ailments by physical therapy or otherwise except under the prescription and direction of a person licensed to practice medicine or osteopathy. This chapter does not authorize any person to practice medicine, osteopathy, chiropractic, or other method of healing. A person who violates this section is guilty of a misdemeanor. (§ 13 ch 74 SLA 1957; am § 7 ch 49 SLA 1969)

Sec. 08.84.170. Penalty. A person who violates this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than $50 nor more than $500, or by imprisonment for not more than 30 days. (§ 17 ch 74 SLA 1957)

Sec. 08.84.180. Investigation by board. The board shall investigate every supposed violation of this chapter coming to its notice and shall report all cases which in the judgment of the board warrant prosecution to the proper law enforcement officials. (§ 17 ch 74 SLA 1957)

Sec. 08.84.185. Limits or conditions on license; discipline. (a) In addition to action under § 180 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a registration.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 29 ch 102 SLA 1976)

Article 4. General Provisions.

Section
190. Definitions
200. Short title

Sec. 08.84.190. Definitions. As used in this chapter, unless the context otherwise requires,

(1) "board" means the State Physical Therapy Board;

(2) "physical therapist" means a person who practices physical therapy;

(3) "physical therapy" means the treatment of a bodily or mental condition of a person by the use of the properties of heat, light, water, electricity, massage, therapeutic exercise including physical rehabilitation procedures, and physical therapy evaluation, treatment planning, instruction and consultative services; the use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not included within the term "physical therapy";

(4) "physical therapy assistant" means a person who assists in the practice of physical therapy or portions of it as initiated, supervised, and terminated by a registered physical therapist; his responsibilities do not include testing or evaluation. (§ 2 ch 74 SLA 1957; am § 11 ch 71 SLA 1974)

Effect of amendment. — The 1974 amendment substituted "State Physical Therapy Board" for "State Medical Board" in paragraph (1), inserted "and physical therapy evaluation, treatment planning, instruction and consultative services" in paragraph (3), and added paragraph (4).

Sec. 08.84.200. Short title. This chapter may be cited as the Physical Therapists Practice Act. (§ 1 ch 74 SLA 1957)

STATE OF ALASKA
Board of Examiners in Optometry
(September, 1978)

Findings

Research and interviews conducted in the preparation of this review indicated that State regulation of this profession is justified, however, regulation through a Board of Optometry is unnecessary. Potential damage to a consumer is possible in some cases. The financial investment is not unduly large. The total number of licensees is small (37 in-State). Dissolution of the Board of Examiners in Optometry and assumption of the examination and licensing functions by the administrative agency would adequately serve the physical health and well being of the general public. It is therefore recommended that the Board of Examiners in Optometry be allowed to terminate on June 30, 1979. However, should retention and reestablishment of the Board be determined to be in the public interests, recommendations are made throughout this report which would contribute to efficiency of its operation.

I. General Information

A. Regulated Parties

1. Optometrists

B. Statutory Definition of Regulated Profession

"(2) 'optometry' is the employment of means or methods, other than the use of drugs, for the diagnosis of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription or application of lenses, prisms or ocular exercises for the correction or relief of the human eye;

(3) 'practicing optometry' means the diagnosis by means or methods other than the use of drugs, of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription of lenses, prisms or ocular exercises for the correction or relief of the human eye, or the holding of oneself out as being able to do so;" (AS 08.72.300)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Curtis M. Johnson, OD (Chairman)	ends June 15, 1978
Timothy B. Mc'.aughlin, OD	ends June 15, 1979
John T. Shank, OD	ends June 15, 1980
Thomas Kinsella	ends June 15, 1978
(Unfilled term since 11-76)	

2. Representation:

Profession = 3
Public = 2 (by statute)

3. Qualifications:

"Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry." (AS 08.72.040)

D. Registration Data

By Examination

Year	# of Candidates	# passed	# failed	% passed	% failed
1975	2	1	1	50	50
1976	7	7	0	100	0
1977	5	5	0	100	0
1978	4	4	0	100	0

Currently registered:

in-State	=	37	(through June, 1978)
out-of-State	=	8	(through June, 1978)
Total		45	

E. Fees

1.	examination	$35.00
2.	reexamination	25.00
3.	waiver	25.00
4.	certificate	50.00
5.	biennial renewal	50.00
6.	branch office registration	25.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	$2,190.00	$ 630.00	$2,800.00	$ 795.00
- Refunds	110.00	100.00	175.00	-
Total	2,080.00	530.00	2,625.00	795.00
Expenditures				
Per Diem	558.00	900.00	837.50	1,991.84
Transportation	722.15	577.93	613.07	2,306.22
Phone	20.50	5.10	40.30	67.70
Printing, Advert. & Postage	25.40	330.16	179.16	488.65
Fees & Services	50.00	765.00	50.00	50.00
Rents, Leases, Other	400.00	-	200.00	800.00
Total	$1,776.05	$2,578.19	$1,920.03	$5,704.41
Surplus	303.95	-	704.97	-
Deficit	-	2,048.19	-	4,909.41

(EXCLUDING DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	3	0	0
1976	2	1	0
1977	10	0	0
1978 (through June)	3	0	0

Pending: 17

An additional complaint was filed against the Board by an unsuccessful applicant for licensure. The applicant was given a failing grade, the case went to litigation and the Board agreed to pass and license the applicant largely because the oral examination contained unspecified subject matter that the candidate had not been notified would be included.

II. Criteria and Analysis

A. To what extent has the Board of Examiners in Optometry operated in the public interest?

The Board of Examiners in Optometry has the authority to adopt rules and regulations necessary for the performance of its duties, governing applicants and applications, registering of optometrists and governing the practice of optometry. It may define and adopt rules of professional conduct.

Included in statutory powers given to the Board is the authority to issue branch office certificates of registration to "an Alaskan licensee who maintains a full-time practice in the state but who serves other communities in the state on a part-time basis..." (AS 08.72.125). The Board is charged with the responsibility of prescribing factors to be considered in the issuance of branch office certificates. It appears, however, that the Board has far exceeded its authority in regulations and practices concerning branch office certificates the issuance of which is intended to provide public services.

Board files indicate that a number of applications for branch office registration have been turned down by the Board on the basis that another practitioner already has a branch office in the subject community. A review of current branch office licenses revealed that two practicing optometrists have branch offices in the same two communities. Another

application was refused because the Board determined that the community which was to be served was accessible to a larger community by road. A branch office registration was subsequently issued to another applicant for the same community. Additionally, the Board has periodically demanded that an applicant "explain his reasons" for wanting to establish a branch office practice but this requirement has not been applied to all applicants. Pertaining to branch office certificates, 12 AAC 48.030(a) states in part, "A branch office certificate may be issued for the purpose of serving some community in the state which cannot support an optometrist and which can be shown to the satisfaction of the board to need the service of a licensed optometrist on a part-time basis may be issued a semiannual branch office certificate of registration..." (emphasis added). 12 AAC 48.030(b) states: "No branch office certificate will be issued in a community where a full-time optometric practice is available, and any certificate in force when a full-time practice is established will not be renewed." In October of 1977, an Attorney General's opinion was issued in which the Board was advised that such "obvious anticompetitive implications" restrict part-time practice to communities incapable of supporting a full-time practice and prevent a part-time practice in a community capable of supporting a full-time practice. This opinion further advised "that the board conduct a thorough review of its branching regulations so that it might consider the anticompetitive consequences of its regulations, weigh them against the public interest in maintaining the restrictions in their present form and consider substituting less restrictive alternatives in their stead." The Board has apparently chosen to ignore this advice and continues to restrict the availability of optometric services to the public. It also appears to have gone even further in inconsistent application of its restrictive practices by arbitrarily denying one application and granting another as previously noted.

Branch office certificates have also been transferred or sold with a practice by one practitioner to another. This is in conflict with statutes in that certificates are issued to a licensee, not a practice. If a certificate holder discontinues his practice for some reason, his successor or any other interested licensee should be allowed and required to apply for certification.

AS 08.72.140 sets out qualifications of an applicant for examination which require that (s)he must have "normal color perception and a visual acuity of a standard of at least 20/40 in at least one eye as corrected" and that (s)he must not be "afflicted with a contagious or infectious disease." Application forms do not address these items and there is no record of any applicant ever having complied or having submitted evidence of compliance with the statute. There also is no record of Board consideration and/or approval based on any evidence or statement of compliance from the applicant nor is there any record of continued compliance.

An applicant for examination must also be a graduate of a "recognized" school or college of optometry. Applicants may be, and have been, approved for examination without a Doctor of Optometry degree. These applicants have graduated from science curriculums with a major in optometry. The Board has never formally established what is considered to be a "recognized" school or college, however, it has rejected applicants who (1) did not graduate from an "accredited" school or (2) did not graduate from a "United States" school. In the absence of regulations specifying "accredited" or "recognized" schools, the Board has again exceeded its authority in the arbitrary granting of examination privileges.

"The examination shall be written, practical, and oral in nature. The oral portion of the examination shall be recorded and retained for two years" AS 08.72.160(a). It is difficult to comment on observed aspects of the Board administered examinations because licensing examiners from the administrative agency have been overtly and specifically barred from this procedure by the Board. Files maintained by the agency present the only substantive record of examination proceedings and are inadequate in documentation. Again, the Board has not adopted formal regulations and/or procedures covering the content or grading of examinations.

The first record in Board minutes of a Board administered written examination appears in 1976. However, this may be because the Board previously required only that the applicant had taken and passed the national examination. One unsuccessful candidate filed charges and was ultimately granted a license because the national examination may have been improperly scored and because he had not been notified that the Board would be testing on Alaska Statutes. Questions asked by the Board, and on which candidates are graded, include: (1) "How many members on the Optometry Board?", and (2) "What are the qualifications to be a member of the Board?". These types of questions do not constitute valid measures of competency nor do they elicit an applicant's knowledge of his responsibilities under the law.

While there is no requirement that applicants must have taken and passed the National Board Examination, some have been denied the Alaska examination on that basis. Portions of examination and scoring sheets are at times missing from the files and some scoring sheets were not completed by the examiners. The statutory requirement that oral examinations be recorded and retained for two years has apparently not been complied with.

"Before a license may be renewed the licensee shall submit to the board evidence of 24 hours post graduate education as prescribed by regulations of the board" AS 08.72.181(d). The Board has adopted broad criteria for acceptable post graduate education, including all those programs recognized and approved by the Board. The Board has never refused or questioned any submission. While the statute plainly states that 24 hours of post graduate education shall be submitted as a condition of relicensure, the Board has chosen to waive this requirement. Requirements for licensees who were initially licensed within the two year period prior to renewal have been waived. In a few instances, relicensure was granted to those who either did not comply with the requirements or who submitted a fewer number of hours than those required

without any documentation showing that they were prevented from compliance. "24 hours" has apparently been interpreted to mean either clock hours or credit hours. Forms submitted to verify completion of courses have been accepted without the licensees' name, without the licensees' signature and without an instructor's signature or initials. Notes and letters from various sources have been accepted as verification of attendance. The authority to adopt regulations exempting recent licensees and those who have compelling reasons prohibiting compliance is questionable under the statutory wording. This type of regulation is considered to be reasonable, however, it has not been done. The Board presently has no authority to waive the statutory requirements for continuing education as a condition of relicensure.

Arbitrary standards and procedures by which the Board purports to determine qualifications and competency of applicants and practitioners do not operate in the public interest. Statutory requirements, such as those concerning continuing education and health standards for applicants, are designed to insure a satisfactory level of care quality and availability which is not achieved unless applied consistently as directed.

In response to recent court decisions and concern regarding anticompetitive advertising restrictions, the Federal Trade Commission in May of 1978 adopted a final Trade Regulation Rule:

> "It is an unfair act or practice under Section 5 of the Federal Trade Commission Act for any state or local government entity or any subdivision thereof, state instrumentality, or state or local governmental official to enforce any:
>
> (a) prohibition, limitation or burden on the dissemination of information concerning ophthalmic goods and services by any seller or group of sellers, or

(b) prohibition, limitation or burden on the dissemination of information concerning eye examinations by any refractionist." 16 C.F.R. § 456.3

Recent regulations adopted by the Board in April, 1978 are designed to allow competitive but ethical and professional advertising. This subject is being further addressed by the administrative agency with respect to all boards and commissions under its jurisdiction.

B. To what extent has the operation of the Board of Examiners in Optometry been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Statutory provisions for the Board and the profession are considered to be adequate. The public participation intended for this Board has been somewhat limited by the presence of only one public member as opposed to two authorized by the Legislature in 1976.

Restrictive policies of the Board in issuing branch office certificates are not conducive to provision of services to the public. Practitioners are discouraged from competing in the profession and in the quality of services offered. Some communities either have no choice of practitioners or are only served sporadically.

The Board of Examiners in Optometry has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions, with the exception of investigative services. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs except that employee turnover has impeded continuity and follow through on Board requests and actions. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Research and record keeping procedures within the administrative agency are now being developed. Noted deficiencies are partially due to the fact that some materials have been forwarded to the Board rather than to the administrative agency. Organization of records, forms and examination information would better enable the Board to perform its functions.

The Board of Examiners in Optometry has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

C. To what extent has the Board of Examiners in Optometry recommended statutory changes which are generally of benefit to the public interest?

Legislation enacted recently with respect to this profession concerned: (1) Board membership, appointment and term of office; (2) Medical Indemnity provisions; (3) applicability of the Administrative Procedure Act; and (4) general "housekeeping" items.

In the 1978 Legislative session, a bill was introduced which would have given selective authority for optometrists to administer diagnostic drugs. This bill did not get out of the committee and was not acted upon.

No recommendations were made by the Board of Examiners in Optometry relating to statutory changes that would be of specific benefit to the public.

D. To what extent has the Board of Examiners in Optometry encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is generally sensitive to public concern and to aspects of public health and welfare. However, very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Public interest and participation in Board activities has been hampered by the absence of one of the public members authorized by the Legislature in 1976.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.[1]

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[1] Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Examiners in Optometry processed and resolved?

Most complaints received against members of the optometry profession were allegations of improper prescriptions or fit, over charging, and prescribing glasses unnecessarily. One unsuccessful candidate for licensure filed charges against the Board and was subsequently licensed due to questionable testing procedures. Only one case out of 18 received since 1975 had been closed as of June 30, 1978. None of the complaints involved physical damage or danger to members of the public.

F. To what extent does the Board of Examiners in Optometry present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Examiners in Optometry. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. One examination each year is currently conducted, monitored and graded by the Board. Applicants who demonstrate a required level of knowledge and proficiency are issued a license.

Current regulations of the Board which restrict temporary permits, restrict services to communities that are incapable of supporting a full-time practice and prohibit practice under a corporation or voluntary association, in conjunction with arbitrary granting of examination and licensure privileges, do not function to present qualified applicants and availability of services to the public.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Examiners in Optometry in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for four other regulated professions) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Examiners in Optometry issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Examiners in Optometry to better serve the interests of the public?

In view of the functions of this Board and the relatively few professional members that are regulated (45 in-and out-of-State), it is felt that present statutes are generally adequate with minor exceptions if the Board is reestablished. Specific statutory language which would grant appropriate exemptions under the continuing education requirements would eliminate any misinterpretation of its applicability. The Board should promulgate and adopt regulations covering examination content and grading procedures and what is considered to be an approved school when applying for licensure.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead, such as staff salary, examination expenses, and investigative services.

III. Conclusion

The regulatory functions of the Board of Optometry could be adequately performed by the administrative agency. Examination and licensure of practitioners is determined to be desirable due to the nature of the profession and the fact that optometrists may diagnose deficiencies, deformities or anomalies of the eye.

IV. Summary of Recommendations

A. The Board of Examiners in Optometry should be allowed to terminate on June 30, 1979, and the functions of examining and licensing should be assumed by the administrative agency.

Technical expertise could be provided by members of the profession if needed periodically.

B. If the Board of Examiners in Optometry is reestablished for an additional four-year period, the following recommendations are made:

1. The Board should consistently and appropriately grant examination and licensing privileges based on statutory qualifications for applicants. (See discussion beginning on p. 5)

2. Examination tapes, records and materials should be maintained by the administrative agency as should all records pertaining to Board activities and licensees.

a. Procedures should be established which cover procedures for content and grading of examinations.

b. Only questions relevant to competency and job performance should be included in examination. (See discussion on p. 7 & 8)

3. All restrictions regarding the issuance of branch office certificates should be deleted from Board regulations and certificates should be issued only as allowed by statute.

   The Board should also reconsider its regulatory prohibition against employment of optometrists by a corporation or voluntary association. (See discussion on p. 5)

4. The Board should enforce statutory requirements with respect to visual and health standards for licentiates and should consider methods of ongoing compliance documentation. (See discussion on p. 7)

5. The Board should define what will be accepted as a "recognized school or college of optometry" and do so in consideration of AS 08.72.170(2) which allows waiver of examination to qualified applicants licensed in a foreign country. (See discussion on p. 7)

6. Definite statutory language should be implemented which specifically addresses possible exceptions to the requirements for continuing education as a consideration of relicensure. (See discussion on p. 8)

7. Operation of the Board and public representation/participation would be enhanced by inclusion on the Board of the second public member authorized by the Legislature in 1976. Terms of all members should be restricted to one unless initially appointed to fill a vacancy or following a term of absence. (See discussion on p. 10 and 12)

16 C.F.R. Part 456

Advertising of Ophthalmic Goods and Services

§ 456.1 Definitions

(a) A "buyer" is any person who has had an eye examination.

(b) The "dissemination of information" is the use of newspapers, telephone directories, window displays, signs, television, radio, or any other medium to communicate to the public any information, including information concerning the cost and availability of a product or service.

(c) An "eye examination" is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective or subjective tests.

(d) "Ophthalmic goods" consist of eyeglasses, or any component of eyeglasses and contact lenses.

(e) "Ophthalmic services" are the measuring, fitting, and adjusting of ophthalmic goods to the face subsequent to an eye examination.

(f) A "person" means any party over which the Federal Trade Commission has jurisdiction. This includes individuals, partnerships, corporations, and professional associations.

(g) A "prescription" is the written specifications for ophthalmic lenses which are derived from an eye examination. The prescription shall contain all of the information necessary to permit the buyer to obtain the necessary ophthalmic goods from the seller of his choice. In the case of a prescription for contact lenses, the refractionist must include in the prescription only those measurements and directions which would be included in a prescription for spectacle lenses.

All prescriptions shall include all of the information specified by state law, if any.

(h) A "refractionist" is any Doctor of Medicine, Osteopathy or Optometry or any other person authorized by state law to perform eye examination.

(i) A "seller" is any person, or his employee or agent, who sells or provides ophthalmic goods and services directly to the public.

§ 456.2 Private Conduct

(a) It is an unfair act or practice for sellers to fail to disseminate information concerning ophthalmic goods and services notwithstanding state or local law to the contrary. PROVIDED: Violation of this subpart by any seller acting alone shall not be deemed to be a violation of Section 5(a)(1) of the Federal Trade Commission Act.

To prevent this unfair act or practice, any seller may engage in the dissemination of information concerning ophthalmic goods and services subject to the limitations expressed in Section 456.5 below.

(b) It is an unfair act or practice for refractionists to fail to disseminate information concerning eye examinations notwithstanding state or local law to the contrary. PROVIDED: Violation of this subpart by any refractionist acting alone shall not be deemed to be a violation of Section 5(a)(1) of the Federal Trade Commission Act.

To prevent this unfair act or practice, any refractionist may engage in the dissemination of information concerning eye examinations. Nothing in this subpart shall excuse a refractionist from compliance with any state or local law which permits the dissemination of information concerning eye examinations, including information on the cost

and availability of those examinations, but requires that specified affirmative disclosures also be included.

§ 456.3 Public Restraints

It is an unfair act or practice under Section 5 of the Federal Trade Commission Act for any state or local government entity or any subdivision thereof, state instrumentality, or state or local governmental official to enforce any:

(a) prohibition, limitation or burden on the dissemination of information concerning ophthalmic goods and services by any seller or group of sellers, or

(b) prohibition, limitation or burden on the dissemination of information concerning eye examinations by any refractionist. PROVIDED: Nothing in subpart (b) shall be construed to prohibit the enforcement of a state or local law which permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, but requires that specified affirmative disclosure also be included.

Violation of subparts (a) and (b) shall not be deemed for purposes of Section 5(m)(1)(A) or Section 19 of the Federal Trade Commission Act to be a violation of Section 5(a)(1) of the Act.

§ 456.4 Conformance to State Law

It is an unfair act or practice under Section 5 of the Federal Trade Commission Act:

(a) for any seller to reduce, limit, or burden the dissemination of information concerning ophthalmic goods and services in order to comply with any law, rule, regulation or code of conduct of any non-

federal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information, or

(b) for any refractionist to reduce, limit, or burden the dissemination of information concerning eye examinations in order to comply with any law, rule, regulation or code of conduct of any nonfederal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information. PROVIDED: To the extent that a state or local law, rule, or regulation permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, compliance with that law or regulation shall not be construed to reduce, limit or burden the dissemination of information concerning eye examinations.

§ 456.5 Permissable State Limitations

(a) To the extent that a state or local law, rule, or regulation requires that any or all of the following items be included within any dissemination of information concerning ophthalmic goods and services, such a law, rule, or regulation shall not be considered to prohibit, limit, or burden the dissemination of information:

(1) whether an advertised price includes single vision and/or multifocal lenses;

(2) whether an advertised price for contact lenses refers to soft and/or hard contact lenses;

(3) whether an advertised price for ophthalmic goods includes an eye examination;

(4) whether an advertised price for ophthalmic goods includes all dispensing fees; and

(5) whether an advertised price for eyeglasses includes both frames and lenses.

(b) Where a state or local law, rule or regulation applies to all retail advertisements of consumer goods and services (including a law, rule, or regulation which requires the affirmative disclosure of information or imposes reasonable time, place and manner restrictions), such a law, rule, or regulation shall not be considered to prohibit, limit, or burden the dissemination of information.

(c) If, upon application of an appropriate state or local governmental agency, the Commission determines that any additional requirement of any such state or local governmental agency deemed by that agency to be necessary to prevent deception or unfairness is reasonable and does not unduly burden the dissemination of information, then that requirement shall be permitted to the extent specified by the Commission.

§ 456.6 Private Restraints

(a) It is an unfair act or practice for any person, other than a state or a political subdivision of agency thereof, to prohibit, limit or burden:

(1) the dissemination of information concerning ophthalmic goods and services by any seller;

(2) the dissemination of information concerning eye examinations by any refractionist. PROVIDED: Nothing in this subpart shall be construed to pronibit any person from imposing reasonable affirmative disclosure requirements on the dissemination of information concerning eye examinations.

(b) Any organization or association which is not composed primarily of sellers and/or refractionists, which adopts or enforces self-regulatory guidelines for the dissemination of information which apply to all retail advertisements of consumer goods and services, shall not be deemed to be in violation of this subpart.

(c) The conditioning of membership in a professional or trade association of sellers or refractionists on a requirement that members or prospective members of that association not engage in the dissemination of information concerning ophthalmic goods and services and eye examinations or a requirement that ophthalmic goods and services be advertised only in a prescribed manner shall be deemed to prohibit, limit or burden the dissemination of that information.

§ 456.7 Separation of Examination and Dispensing

In connection with the performance of eye examinations, it is an unfair act or practice for a refractionist to:

(a) fail to give to the buyer a copy of the buyer's prescription immediately after the eye examination is completed. PROVIDED: A refractionist may refuse to give the buyer a copy of the buyer's prescription until the buyer has paid for the eye examination but only if that refractionist would have required immediate payment from that buyer had the examination revealed that no ophthalmic goods were required;

(b) condition the availability of an eye examination to any person on a requirement that that person agree to purchase any ophthalmic goods from the refractionist;

(c) charge the buyer any fee in addition to the refractionist's examination fee as a condition to releasing the prescription to the buyer. PROVIDED: A refractionist may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or

(d) place on the prescription, or require the buyer to sign, or deliver to the buyer a form or notice waiving or disclaiming the liability or responsibility of the refractionist for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

§ 456.8 Federal or State Employees

Nothing in this part shall be construed to prohibit any federal, state or local governmental entity from adopting and enforcing standards or requirements concerning the dissemination of information and release of prescriptions by sellers or refractionists employed by those governmental entities.

§ 456.9 Declaration of Commission Intent

(a) It is the purpose of this part to allow retail sellers of ophthalmic goods and services to disseminate information concerning those goods and services in a fair and nondeceptive manner to prospective purchasers. This part is intended to eliminate certain restraints, burdens, and controls imposed by state and local governmental action as well as by private action on the dissemination of information, including advertising, concerning ophthalmic goods and services.

It is the intent of the Commission that this part shall preempt all state and local laws, rules, or regulations that are repugnant to this part, and that would in any way prevent or burden the dissemination of information by retail sellers of ophthalmic goods and services to prospective purchasers, except to the extent specifically permitted by this part. All state or local laws, rules, or regulations which burden the dissemination of information by requiring affirmative disclosure specifically addressed to ophthalmic goods and services are preempted, except for those specifically permitted by this part. State and local laws,

rules, o regulations which apply to advertising of all consumer goods and services, including those that require affirmative disclosure of information, are not preempted.

(b) It is the Commission's intent that state laws which do not permit refractionists to disseminate information concerning eye examinations, including information concerning the cost and availability of those examinations, be preempted. State and local laws, rules or regulations which require affirmative disclosure of information in all disseminations of information concerning eye examinations are not preempted.

(c) The Commission intends this part to be as self-enforcing as possible. To that end, it is the Commission's intent that this part may be used, among other ways, as a defense to any proceeding of any kind which may be brought against any retail seller of ophthalmic goods and services or refractionist who advertises in a nondeceptive and fair manner.

(d) It is not the Commission's intent to compel any seller or refractionist to disseminate information by virtue of this part. On the contrary, the provisions of this part are intended solely for the protection of those sellers and refractionists who want to disseminate information but have been restrained or prevented from advertising due to the prohibitions and restrictions of state and local laws and regulations, or by private action.

(e) In prohibiting the use of waivers and disclaimers of liability in Section 456.4(d), it is not the Commission's intent to impose liability on a refractionist for the ophthalmic goods and services dispensed by another seller pursuant to that refractionist's prescription.

(f) In this part, the Rule, each subpart, and the Declaration of Commission Intent and their application are separate and severable.

Chapter 72. Optometry Law.

Article
1. Board of Examiners in Optometry (§§ 08.72.010—08.72.100)
2. Licensing and Registration (§§ 08.72.110—08.72.270)
3. Unlawful Acts (§§ 08.72.275—08.72.290)
4. General Provisions (§§ 08.72.300—08.72.310)

Article 1. Board of Examiners in Optometry.

Section
10. Creation of board of examiners
20. Membership of board and terms of office
30. Vacancies
40. Qualifications
50. Power of board to adopt regulations
60. Miscellaneous powers and duties of board
70. Applicability of Administrative Procedure Act
80. [Repealed]
90. Record of proceedings
100. [Repealed]

Sec. 08.72.010. Creation of board of examiners. There is created the Board of Examiners in Optometry. (§ 35-3-132 ACLA 1949)

Am. Jur., ALR and C.J.S. references.— 41 Am. Jur., Physicians and Surgeons, § 28.

Optometrist within statute relating to practice of medicine, 22 ALR 1173.

Constitutionality of statute prescribing conditions of practicing medicine as affected by discrimination against or in favor of optometrists, 37 ALR 682.

Constitutionality of statutes and validity of regulations relating to optometry, 98 ALR 905; 22 ALR2d 939.

Right of corporation, or individual not himself licensed, to practice optometry through licensed employee, 102 ALR 343; 128 ALR 585.

One who fills prescription under reciprocal arrangement with optometrist, as subject to charge of practice of optometry without license, 121 ALR 1455.

What constitutes practice of "optometry," 141 ALR 883.

70 C.J.S. Physicians and Surgeons §§ 1, 3, 5, 6, 8, 10, 12.

Sec. 08.72.020. Membership of board and terms of office. The board consists of five persons, appointed by the governor. Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time. (§ 35-3-132 ACLA 1949; am § 22 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "five persons" for "three persons" in the first sentence and rewrote the second and third sentences.

Sec. 08.72.030. Vacancies. The governor shall fill vacancies on the board by appointment for the unexpired term. (§ 35-3-132 ACLA 1949)

Sec. 08.72.040. Qualifications. Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry. (§ 35-3-132 ACLA 1949; am § 23 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment rewrote this section.

Sec. 08.72.050. Power of board to adopt regulations. The board shall adopt rules and regulations

(1) necessary for the proper performances of its duties;

(2) governing the applicants and applications for licensing;

(3) for the registration of optometrists;

(4) necessary to govern the practice of optometry. (§ 35-3-133 ACLA 1949)

Chapter contains sole powers of board. — The board, being purely a creature of the legislature, has no powers other than those contained in this chapter. Edmunds v. Board of Exmrs. in Optometry, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

And must be strictly construed.—This chapter and the powers invested in the board are to be strictly construed. Edmunds v. Board of Exmrs. in Optometry, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Sec. 08.72.060. Miscellaneous powers and duties of board. (a) The board or a member designated by the board, may issue subpoenas, administer oaths and take testimony concerning any matter within its jurisdiction.

(b) The board may adopt a seal.

(c) The board shall elect a president and secretary from among its members.

(d) Repealed by § 3 ch 59 SLA 1966.

(e) The board may define professional conduct and adopt rules of professional conduct.

(f) Repealed by § 3 ch 59 SLA 1966. (§§ 35-3-133, 35-3-140 ACLA 1949; am § 3 ch 59 SLA 1966)

Sec. 08.72.070. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62).

Sec. 08.72.080. Compensation of board and secretary.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.72.090. Record of proceedings. The Department of Commerce shall keep a record of all proceedings, including the name of each applicant for examination and registration. These records shall be open for public inspection. (§ 35-3-133 ACLA 1949; am § 1 ch 76 SLA 1969)

Sec. 08.72.100. Bond of secretary.
Repealed by § 3 ch 59 SLA 1966.

Article 2. Licensing and Registration.

Section
110. License required
115. Malpractice insurance
120. Registration
125. Registration of branch offices
130. Optometry register
140. Qualifications for examination
150. Application for examination and issuance of certificate
160. Examination
170. Issuance of certificate by waiver of written examination
180. [Repealed]
181. Renewal of license
190. [Repealed]
191. Fees
200—220. [Repealed]
230. Fees and disbursements
240. Revocation of registration certificate or exemption
250. Board action on revocation and renewal
255. Limits or conditions on license; discipline
260. Revocation of license by court
270. Practice not at place of business

Sec. 08.72.110. License required. No person not licensed as an optometrist may fit, sell, or dispose of or take, receive or solicit an order for fitting, sale or disposition of spectacles, eyeglasses or lenses for the correction or relief of an optical or visual defect of the human eye or sell spectacles, eyeglasses or lenses from house to house, or in the streets or highways. This chapter does not apply to the sale of toy glasses, goggles consisting of plano-white or plano-colored lenses or ordinary colored glasses, or complete ready-made spectacles and eyeglasses sold only as merchandise, or the sale or repair of eyeglass frames, or repair or replacement of lenses without pretense of adapting them to the eyes. (§ 35-3-134 ACLA 1949)

Sec. 08.72.115. Malpractice insurance. If medical malpractice insurance for optometrists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of optometrist services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance

on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 24 ch 102 SLA 1976)

Sec. 08.72.120. Registration. It is unlawful for a person to practice, or attempt, or offer to practice, optometry without first obtaining a certificate of registration from the board, and without filing the certificate with the clerk of the superior court in each judicial district in which he practices. (§ 35-3-135 ACLA 1949)

C.J.S. reference.—70 C.J.S. Physicians and Surgeons § 10

Sec. 08.72.125. Registration of branch offices. (a) The board may issue to an Alaskan licensee who maintains a full-time practice in the state but who serves other communities in the state on a part-time basis a branch office certificate of registration.

(b) It is unlawful for a person to practice, or to attempt or offer to practice, optometry in communities on a part-time basis without obtaining a branch office certificate of registration from the board, and without filing the certificate with the clerk of the superior court in each judicial district in which he maintains a branch office.

(c) The board shall prescribe in the regulations the factors to be considered in issuing a branch office certificate of registration. (§ 2 ch 76 SLA 1969)

Sec. 08.72.130. Optometry register. The clerk of the superior court in each judicial district shall keep a record known as the "Optometry Register" and record the certificate of registration of each optometrist who files his certificate. The clerk shall charge the regular filing fee for registration. When an optometrist dies, or when his certificate is suspended or revoked, the clerk shall note that fact on the record. (§ 35-3-147 ACLA 1949)

Sec. 08.72.140. Qualifications for examination. The board shall admit to the examination a person who furnishes proof that

(1) Repealed by § 3 ch 76 SLA 1969.

(2) he has normal color perception and a visual acuity of a standard of at least 20/40 in at least one eye as corrected;

(3) he is not afflicted with a contagious or infectious disease;

(4) he has had education equivalent to four years attendance at a state high school;

(5) he is a graduate of a recognized school or college of optometry;

(6) he is of good moral character. (§ 35-3-141 ACLA 1949; am § 1 ch 95 SLA 1966; am §§ 3—5 ch 76 SLA 1969)

Cited in Edmunds v. Board of Exmrs. in Optometry, 9 Alaska 627, 106 F.2d (904 (9th Cir. 1939).

C.J.S. references. — 53 C.J.S. Licenses § 34; 70 C.J.S. Physicians and Surgeons § 12.

Sec. 08.72.150. Application for examination and issuance of certificate. An applicant shall apply for the examination by filing an application with the department together with the examination fee at least 15 days before the examination. Upon successful completion of the examination by the applicant and payment of the fee, the board shall issue a certificate of registration as a licensed optometrist to the applicant. After the applicant has properly filed his certificate of registration he may practice optometry in the state. (§ 35-3-141 ACLA 1949; am § 6 ch 76 SLA 1969)

Sec. 08.72.160. Examination. (a) The examination shall be written, practical, and oral in nature. The oral portion of the examination shall be recorded and retained for two years.

(b) An applicant who fails the practical or the oral portion of the examination may take a re-examination in that portion without paying an additional examination fee.

(c) An applicant who fails the written portion of the examination may take a re-examination in the written portion upon payment of an additional examination fee.

(d) An applicant who fails more than one portion of the examination must retake the entire examination and pay the full examination fee. (§ 35-3-141 ACLA 1949; am § 7 ch 76 SLA 1969)

Sec. 08.72.170. Issuance of certificate by waiver of written examination. (a) The board may waive the written portion of the examination requirement for an applicant who:

(1) meets the qualifications of § 140 of this chapter;

(2) holds a current license by examination in another state, territory or foreign country and has been established in ethical optometric practice for at least three years before the application, or shows satisfactory evidence of having passed the written portion of the examination given by the National Board of Examiners in Optometry; and

(3) has not had a certificate or license revoked for cause in any state, territory or foreign country.

(b) No waiver of the practical or oral portions of the examinations may be given. (§ 35-3-142 ACLA 1949; am § 8 ch 76 SLA 1969)

Cited in Edmunds v. Board of Exmrs. in Optometry, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Sec. 08.72.180. Annual renewal of license.

Repealed by § 7 ch 94 SLA 1968.

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Sec. 08.72.181. Renewal of license. (a) To remain in force a license must be renewed biennially.

(b) An optometrist licensed in this state and serving in the military service of the United States, while in the discharge of his official duties, may maintain his eligibility to practice in this state without paying a renewal fee by registering his name and place of residence with the department.

(c) An application for license renewal shall contain the name, office and post office address, date and license number of the licensee, and other information the board considers necessary.

(d) Before a license may be renewed the licensee shall submit to the board evidence of 24 hours post graduate education as prescribed by regulations of the board. (§ 9 ch 76 SLA 1969)

Sec. 08.72.190. Fee for license by reciprocity.
Repealed by § 10 ch 76 SLA 1969.

Editor's note. — The repealed section derived from § 35-3-149, ACLA 1949.

Sec. 08.72.191. Fees. The following fees shall be imposed under this chapter when applicable:

(1) examination fee	$35
(2) re-examination fee for written portion	25
(3) waiver of examination fee	25
(4) certificate fee	50
(5) biennial renewal fee	50
(6) branch office biennial registration fee	25

(§ 11 ch 76 SLA 1969)

Sec. 08.72.200. Examination fee.
Repealed by § 10 ch 76 SLA 1969.

Editor's note. — The repealed section derived from § 35-3-149, ACLA 1949.

Sec. 08.72.210. Certificate fee.
Repealed by § 10 ch 76 SLA 1969.

Editor's note. — The repealed section derived from § 35-3-149, ACLA 1949; § 1, ch. 12, SLA 1963.

Sec. 08.72.220. Renewal fee.
Repealed by § 10 ch 76 SLA 1969.

Editor's note. — The repealed section derived from § 35-3-149, ACLA 1949; § 2, ch. 12, SLA 1963.

Sec. 08.72.230. Fees and disbursements. The department shall collect all fees and keep a record of each transaction, and shall remit to the Department of Revenue all money received. (§ 35-3-138 ACLA 1949; am § 12 ch 76 SLA 1969)

Sec. 08.72.240. Revocation of registration certificate or exemption. The board may revoke a certificate of registration or exemption granted by it if the holder

(1) has violated a rule, order or regulation of the board; or

(2) has violated this chapter or is guilty of a crime; or

(3) is grossly incompetent, afflicted with a contagious disease, habitually drunk or guilty of unprofessional conduct. (§ 35-3-140 ACLA 1949)

C.J.S. references. — 53 C.J.S. Licenses § 44; 70 C.J.S. Physicians and Surgeons §§ 10, 15.

Sec. 08.72.250. Board action on revocation and renewal. In a proceeding for the revocation of a certificate of registration or for the annulment of registration the board shall make a complete written report of its findings, and if the board finds that any of the charges are sustained, the board may revoke the certificate of the accused, or annul his registration, or both. If the board annuls the registration, it shall transmit to the clerk of the judicial district in which the accused is registered as an optometrist, a certificate under its seal, certifying that his registration has been annulled. The clerk shall, upon receipt of the certificate, file it and mark the registration "annulled." The board may, after the expiration of one year, entertain an application for the renewal of a revoked certificate, in the same manner as an original application for a certificate and may exempt the applicant from the examination. (§ 35-3-140 ACLA 1949)

Full and substantial hearing.—It is not necessary that the board follow technical legal procedure. A full and substantial hearing of the charges, where denied, is all that is required. Edmunds v. Board of Exmrs. in Optometry, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Under this section the board may not entertain an application until the expiration of one year. Edmunds v. Board of Exmrs. in Optometry, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Order revoking renewal certificate cannot be set aside in a mandamus proceeding. Edmunds v. Board of Exmrs. in Optometry, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Conduct justifying treatment of charge as confessed.—Where a written complaint and notice were served on an optometrist requiring him to appear and answer charges against him by the board, but where no answer, denial or appearance was ever made, it was not incumbent upon the board to call any witnesses or receive any evidence in support of the charges, and the board was justified in treating the charge as confessed and entering its findings accordingly. Edmunds v. Board of Exmrs. Optometry, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Sec. 08.72.255. Limits or conditions on license; discipline. (a) In addition to action under §§ 240 and 250 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice optometry under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 24 ch 102 SLA 1976)

Sec. 08.72.260. Revocation of license by court. A license may be revoked by the superior court upon proof of violation of law or for a cause for which the board may refuse admittance to its examination. The attorney general shall prosecute appropriate judicial proceedings upon request of a member of the board. (§ 35-3-146 ACLA 1949)

Sec. 08.72.270. Practice not at place of business. (a) A registered optometrist, who temporarily practices optometry away from his regular place of business, shall display his registration certificate and deliver to each patient or person fitted or supplied with glasses a receipt with his signature showing his permanent place of business or post office address, certificate number, and the amount charged. A licensee who fails to comply with any of the foregoing provisions for six months after issuance of the certificate shall forfeit his certificate.

(b) Nothing contained in this section shall be construed as permitting peddling or canvassing by licensed optometrists. (§ 35-3-136 ACLA 1949)

Article 3. Unlawful Acts.

Section		Section	
275.	Lenses and frames for eyeglasses and sunglasses	280.	Violations
		290.	Penalty

Sec. 08.72.275. Lenses and frames for eyeglasses and sunglasses. (a) No person may fabricate, distribute, sell, exchange, deliver or have in his possession with intent to distribute, sell, exchange or deliver eyeglasses or sunglasses unless they are fitted with plastic lenses, laminated lenses, heat-treated glass lenses, or glass lenses made impact resistant by other methods. All plastic and heat-treated glass lenses, before they are mounted in frames, shall be capable of withstanding the impact of a five-eighths inch steel ball dropped on the lens from a height of 50 inches. The impact test shall be conducted at room temperature, with the lens supported by a plastic tube one inch inside diameter, one and one-fourth inch outside diameter, with a one-eighth inch by one-eighth inch neoprene gasket on the top edge.

(b) No person may fabricate, distribute, sell, exchange, deliver or have in his possession with intent to distribute, sell, exchange or deliver eyeglasses or sunglasses having frames manufactured from cellulose nitrate or other highly flammable materials.

(c) A person who violates this section is punishable by a fine of not less than $50 nor more than $100. (§ 1 ch 220 SLA 1968; am § 1 ch 48 SLA 1973)

Effect of amendment. — The 1973 amendment rewrote subsection (a).

Sec. 08.72.280. Violations. No person may falsely personate a registered optometrist, nor buy, sell or fraudulently obtain a certificate of registration issued to another or advertise the practice of optometry in violation of rules of the board. Practicing or offering to practice optometry is sufficient evidence of a violation of this chapter. (§ 35-3-144 ACLA 1949)

Sec. 08.72.290. Penalty. A person who violates this chapter is guilty of a misdemeanor and is punishable by a fine of not less than $50 nor more than $500, or by imprisonment for a term of not less than 10 days nor more than 90 days, or by both. (§ 35-3-145 ACLA 1949)

C.J.S. references. — 53 C.J.S. Licenses §§ 62 to 65.

Article 4. General Provisions.

Section
300. Definitions
310. Short title

Sec. 08.72.300. Definitions. As used in this chapter

(1) "board" means the Board of Examiners in Optometry;

(2) "optometry" is the employment of means or methods, other than the use of drugs, for the diagnosis of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription or application of lenses, prisms or ocular exercises for the correction or relief of the human eye;

(3) "practicing optometry" means the diagnosis, by means or methods other than the use of drugs, of an optical deficiency or deformity, visual or muscular anomaly of the human eye, or the prescription of lenses, prisms or ocular exercises for the correction or relief of the human eye, or the holding of oneself out as being able to do so;

(4) "lenses" means conventional or contact lenses;

(5) "recognized school or college of optometry" is one which is approved by the American Optometric Association or one of its committees;

(6) "department" means the Department of Commerce and Economic Development. (§ 35-3-131 ACLA 1949; am § 2 ch 95 SLA 1966; am § 13 ch 76 SLA 1969; am § 53 ch 218 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (6).

This chapter is a valid exercise of the legislative power. Edmunds v. Board of Exmrs. in Optometry, 9 Alaska 462, aff'd, 9 Alaska 627, 106 F.2d 904 (9th Cir. 1939).

Sec. 08.72.310. Short title. This chapter may be cited as the Optometry Law. (§ 35-3-150 ACLA 1949)

CHAPTER 48.
BOARD OF EXAMINERS IN OPTOMETRY

Section

10. Board membership
20. Biennial license renewals and reinstatement
30. Branch office certificates
40. Display of certificate
50. When a practice is conveyed to another
60. Visual analysis records
63. Advertising
65. Routine vision examination
70. Unprofessional conduct
80. Definitions

12 AAC 48.010. BOARD MEMBERSHIP. The secretary shall notify the office of the governor of Alaska whenever a vacancy occurs. The secretary shall supply the governor with a list of all Alaska-registered optometrists who have resided in Alaska for a period of three years or more, and are qualified as the statute provides, AS 08.72.040. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.030
AS 08.72.050(1)

12 AAC 48.020. BIENNIAL LICENSE RENEWALS AND REINSTATEMENT. (a) The postgraduate education may be obtained any time within the two-year renewal period, but may not be carried over from one renewal period to the other.

(b) Courses that will be accepted are: educational courses given at the American Optometric Association Annual Convention or any AOA affiliate state optometric convention; seminars held by committees of the American Optometric Association or organized regional Optometric Extension Program Foundation seminars for educational purposes; postgraduate courses offered by recognized schools or colleges of optometry. Other postgraduate courses may be approved by the board if course titles, instructors' names, and a brief description of the course material is submitted to the board 30 days before the commencement of the educational program. Licensees who submit satisfactory proof that they were prevented from attending an educational program because of illness or other reasons may be exempted from this requirement. A form shall be provided with the biennial renewal application that must be validated by the instructor teaching the course. Correspondence courses will not be accepted as fulfilling the requirements of AS 08.72.181. (Eff. 4/24/71, Reg. 37)

Authority: AS 08.72.181

12 AAC 48.030. BRANCH OFFICE CERTIFICATES. (a) A branch office certificate may be issued for the purpose of serving some community in the state which cannot support an optometrist and which can be shown to the satisfaction of the board to need the service of a licensed optometrist on a part-time basis may be issued a semiannual branch office certificate of registration. The name of an associate practicing in a branch office shall appear on the entrance door to the office used and upon all stationery; no commercial name or designation may be used in connection with any branch office nor may such a practice have any commercial lay connections, nor may there be anything in the nature of "chain exploitation" of licenses. Nothing in this section requires an active licensee to obtain a branch office certificate for the purpose of rendering necessary optometric services for his patients confined to their homes.

(b) No branch office certificate will be issued in a community where a full-time optometric practice is available, and any certificate in force when a full-time practice is established will not be renewed.

(c) No branch office certificate will be required for a licensee to participate in bona fide vision and eye-screening projects outside of his regular or branch office. Vision and eye-screening projects must be organized under the auspices of an established service organization not composed primarily of optometrists.

(d) Optometrists who participate in vision and eye-screening projects may not receive remuneration for their services other than for travel and living expenses and for emergency care as required. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.125(c)

12 AAC 48.040. DISPLAY OF CERTIFICATE. A licensee's registration certificate and renewal certificate shall be

displayed in the office in which the holder practices optometry, but not in such a manner that the certificate may be seen from the street. Every licensee, whenever requested, shall exhibit the certificate to a member of the board or person authorized to represent the board and shall notify the department or board of his address and changes of his address. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.050(4)

12 AAC 48.050. WHEN A PRACTICE IS CONVEYED TO ANOTHER. When an optometrist disposes of his established practice to a successor, the successor shall, within a reasonable time, remove from all signs, cards, stationery, and directories connected with the practice he has acquired or is acquiring, all words or phrases such as "successor to," "associate of," or words of like import. Under no circumstances may the use of these signs, cards, stationery or advertising continue for more than two years. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.050(4)

12 AAC 48.060. VISUAL ANALYSIS RECORDS. Every optometrist shall keep a record of examinations and visual analyses made and prescriptions issued and for whom the prescriptions were prepared. The record shall be preserved for a period of at least five years from the date services were rendered, except in the case of death of the patient. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.050(4)

12 AAC 48.063. ADVERTISING. (a) An advertisement concerning the availability, sale or price of frames or mountings for spectacle lenses must contain a readily legible statement, in the same type size as the main body of the advertisement, which specifies the

(1) name of the manufacturer;

(2) material from which the frames or mountings are made;

(3) country of origin; and

(4) style name or model number.

(b) An advertisement concerning the availability, sale, or price of spectacle or contact lenses must contain a readily legible statement, in the same type size as the main body of the advertisement, which specifies the

(1) name of the manufacturer;

(2) material from which the lenses are made;

(3) country of origin;

(4) absorptive property of the lenses, whether clear or tint;

(5) refractive powers of the lenses, whether low, medium or high; and

(6) type or style, whether single vision, bifocal or trifocal.

(c) An advertisement concerning the fees charged for optometric services, other than for an initial routine vision examination, must contain a readily legible statement in the same type size as the main body of the advertisement, which specifies the tests and measurements to be performed.

(d) An advertisement for a routine vision examination or complete eye examination or which uses language of similar import, need not specify the tests and measurements to be performed so long as the optometrist providing the advertised services complies with the examining and recording standards established by sec. 65 of this chapter. Failure to comply with the standards is unprofessional conduct within the meaning of AS 08.72.240(3).

(e) Advertising permitted by this section may only appear in newspapers, periodicals, and professional directories and must include the name of the licensed optometrist. (Eff. 2/14/78, Reg. 65)

Authority: AS 08.72.050(4)
AS 08.72.060(e)

12 AAC 48.065. ROUTINE VISION EXAMINATION. For the purposes of this chapter, an advertisement for a routine vision examination means that the optometrist shall at a minimum adhere to the following standards in the intial examination of the patient:

(1) the optometrist shall, in accordance with professionally recognized standards, make and record the following findings of the condition of the patient:

(A) a complete case history including ocular, physical, occupational and medical data and other pertinent information concerning the patient;

(B) aided and unaided visual acuity at both near and far;

(C) external examination of the eyes and adnexa;

(D) internal ophthalmoscopic examination;

(E) ocular motility and neurological integrity;

(F) a far point subjective examination, a static retinoscopy, and a subjective refraction;

(G) a near point subjective examination, a dynamic retinoscopy and a subjective refraction;

(H) tests of accommodation and convergence and binocular coordination at far and near, preferably made with a phoropter; and

(I) confrontation fields and tonometry tests;

(2) if contact lenses are prescribed, a routine vision examination includes, in addition to the requirements of subsection (1):

(A) a slit lamp evaluation;

(B) a fluorescein examination;

(C) a diagnostic evaluation when soft lenses are prescribed; and

(D) reexamination and reevaluation within three months in the case of firm lenses and within six months in the case of soft lenses. (Eff. 2/14/78, Reg. 65)

Authority: AS 08.72.050(4)
AS 08.72.060(c)

12 AAC 48.070. UNPROFESSIONAL CONDUCT. (a) An optometrist may not engage in unprofessional conduct within the meaning of AS 08.72.240(3). Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) except as provided by sec. 63 of this chapter, soliciting patients by advertising of any nature or description regardless of means or media employed; however, upon the opening, reopening or removal of any office for the practice of optometry, an optometrist may publish, in local newspapers, an announcement, which announcement is limited to a statement of his name, title, profession, degrees, specialty, address, telephone number and office hours; the announcement may not be published for more than 90 days after the opening, reopening, or removal of the office; the announcement may not exceed eight square inches in area;

(2) displaying any spectacle, eyeglasses or eyeglass or spectacle frames or mountings, goggles, lenses, prisms, spectacle or eyeglass cases, ophthalmic material of any kind, optometric instruments or optical tools or machinery, or any merchandise, material or displays of a commercial nature in office windows or reception rooms or display cases outside the office, where the display of the merchandise, material or display would make it visible from outside the office;

(3) using display or boldface type or type that is in any way dissimilar in size, shape or color to that used for others of the healing arts in the same directory;

(4) using any false, deceptive, or misleading representation in connection with any advertising concerning ophthalmic prosthetic products or optometric services;

(5) using "bait" advertising;

(6) using signs whether painted, neon, decalcomania, colored or otherwise, and whether constructed in the form of eyes or structures resembling them, or frames or mountings for any type of lenses or other ophthalmic prosthetic products displayed in any manner or place connected with the practice of optometry;

(7) using publicly, a sign, card, stationery, or other publicity medium which fails to clearly identify the individual optometrist or optometrists engaged in practice in an office or practice location, or using a name other than the name under which the optometrist is licensed including such designations as "optical company," "optical laboratory," or words or pharses of like import which are out of keeping with the use of the title "Doctor of Optometry" and the practice of optometry as a profession;

(8) soliciting, personally or through agents, from house to house for the rendering of optometric services or sale of ophthalmic prosthetic products;

(9) advertising self-styled superiority or the performance of services in a manner presumed to be superior, or the making of untruthful, improbable or impossible claims regarding treatments, cures, or values;

(10) lending, leasing, renting, or in any other manner placing a certificate of registration at the disposal of or in the service of any person not licensed to practice optometry in this state.

(b) An optometrist may not associate with a corporation or voluntary association for the practice of optometry, or in any manner practice the profession, on a salary or commission basis, for a corporation or voluntary association. However, this subsection does not prohibit professional incorporation under the Professional Corporation Act, AS 10.45. The fact that an officer, trustee, director, agent, or employee of a corporation or voluntary association is an optometrist does not permit the corporation or voluntary association to do the acts prohibited in this section, nor is that fact a defense to board action against any of the persons mentioned in this subsection for a violation of this section; however, this subsection does not apply to a partnership of two or more registered and licensed optometrists who practice under their own names.

(c) It is unlawful for an optometrist to practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or to practice optometry in connection with one, or to advertise either in person or through a commercial or mercantile establishment that he is a registered practitioner and is practicing or will practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or in connection with one. Nothing in this subsection prohibits the rendering of professional services to the officers and employees of a person, firm, or corporation by an optometrist, whether or not the compensation for the services is paid by the officers and employees or by the employer or jointly by all or any of them.

(d) No optometrist may practice in or on premises where any materials other than those necessary to render his professional services are dispensed to the public.

(e) No optometrist may display a sign containing other than his name, profession, recognized specialty, and office hours, which sign may be used only on office windows or at an entrance to his office. Letters may not be luminous or illuminated.

(f) No optometrist may represent himself or herself as a specialist in an optometric field unless he or she is certified, as a diplomate of the American Academy of Optometry or as a fellow of the College of Vision Development, in a recognized specialty. The board recognizes American Academy certification in contact lenses, binocular vision, geriatric care, and low vision, and College of Vision Development fellowships in vision training and developmental vision. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37; am 2/14/78, Reg. 65; am 7/6/78, Reg. 67)

Authority: AS 08.72.050(4)
AS 08.72.060(e)
AS 08.72.240(3)

12 AAC 48.080. DEFINITIONS. Unless the content in this chapter otherwise states:

(1) "Act," "law," or "statute" refers to AS 08.72.;

(2) "regulations" referred to are those made by the board in keeping with AS 08.72.;

(3) "registration" means registration under AS 08.72.;

(4) "chain exploitation" means establish-

ments that provide vision care in various locations either in one community or throughout a geographic area, where the service is provided by one or more than one optometrist in each or more than one location, and who is under the employ or have an agreement based on a lease, rental agreement partnership, stockholder, or other binding agreement; where control over these establishments are exercised by an individual or group of individuals;

(5) "established service organizations" means an organization who holds a charter from a parent organization whose primary established goal is public service without profit;

(6) "vision and eye-screening projects" means a project organized with the intent of identification and referral of vision and eye disorders;

(7) "prescription" means a written formula prepared by a person licensed under AS 08.72 and which contains the following essential elements when applicable to eyeglasses, contact lenses or other visual therapy: diopric power of spheres, cylinders and prisms, axis of cylinders and position of prism base; designation of inter-pupillary distances; size, base curve, power, color and type, when a contact lens; and the name of the patient, date of prescription and name and office location of prescriber;

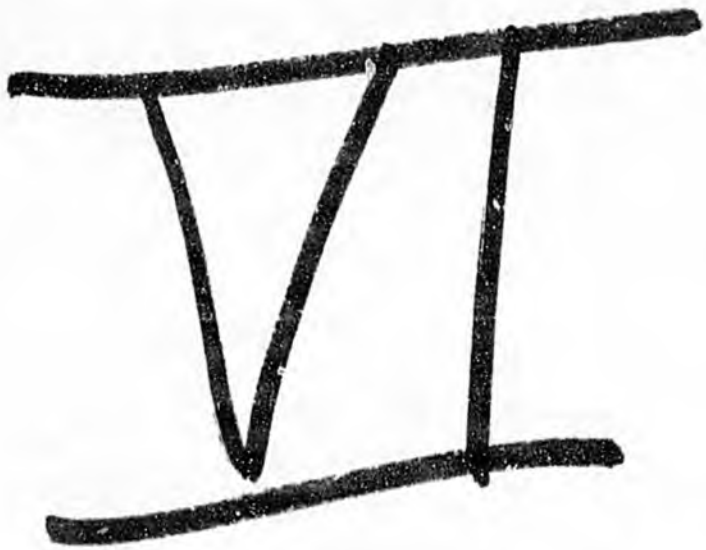
(8) "ophthalmic prosthetic products" means eye-glasses, lenses, contact lenses, frames or any component thereof or any other device used for or incident to the correction of any visual anomaly;

(9) "optometric services" means the measuring, fitting and adjusting of ophthalmic prosthetic products to the face and eyes; and

(10) "routine vision examination" is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective and subjective tests. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37; am 2/14/78, Reg. 65)

Authority: AS 08.72.050(1) and (4)

12 AAC 48.1100 – 12 AAC 48.1121. Repealed. (4/24/71, Reg. 37)



STATE OF ALASKA
Board of Psychologist and Psychological
Associate Examiners
(September, 1978)

Findings

In contrast to most health care professions, services of a psychological nature often cannot be measured in terms of imminent physical improvement or tangible results. Methods are employed in the treatment of illnesses of the mind and emotions which should be used only by properly educated and certified individuals.

Persons with emotional handicaps should be given a choice in the type of treatment which is available. Mental therapy is available in two general forms: through the use of drugs by a psychiatrist and without the use of drugs by a psychologist. The choice of methods, in theory, results in the same end. It is the method of treatment which differs and, in the case of the mind and emotions, both methods require regulation by the State. State regulation and certification of this profession is necessitated by the need to assure the public of practitioner competency so that whatever form of therapy is chosen, the practitioner has been determined to be qualified.

The Board of Psychologist and Psychological Associate Examiners, in practice, has been arbitrary and capricious in the application of the laws contained in its practice act to applicants for examination and licensure. The Board also has repeatedly ignored Attorney General advice relating to various applicants. In accordance with the criteria established within the Sunset Act, it is recommended that the Board of Psychologist and Psychological Associate Examiners be allowed to terminate on June 30, 1979. In

light of the Board's past performance, the availability of standardized examinations offered by a Professional Examination Service and statutorily defined minimum qualifications, regulatory functions necessary for this profession could be assumed by the administrative agency.

I. General Information

A. Regulated Parties

1. Psychologists
2. Psychological Associates

B. Statutory Definition of Regulated Profession

"(2) 'to practice psychology' means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personnel evaluation, group relations, and behavior adjustment, including

(A) counseling and guidance;
(B) using psychotherapeutic techniques with persons or groups at school, or at work;
(C) measuring and testing of personality, intelligence, aptitudes, emotions, and attitudes and skills;
(D) conducting research on human behavior;"

"(5) 'psychological associate' includes a counselor and psychometrist;"

"(7) 'to practice counseling' means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of group relations, and behavior adjustment,

(A) counseling and guidance;

(B) using counseling techniques with persons or groups of persons who have adjustment problems in the family, school or at work;

(C) limited use of testing including tests of intelligence or tests of motor skills;"

"(9) 'to practic psychometrics' means to apply the recognized principles, methods and procedures of the science and profession of psychology, but limited to the administering, scoring, and interpreting of tests of mental abilities, aptitudes, interests, motor skills and objective tests of personality characteristics for purposes such as psychological evaluation or for educational or vocational education, guidance or placement;"
(AS 08.86.230)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Dorothy Whitmore, Ed.D. (Chairman)	ends July 1, 1980
Pamela Delys-Baglien, Ph.D	ends July 1, 1981
James C. Parsons, Ed.D.	ends July 1, 1979
Dick L. Madson	ends July 1, 1980
Robert D. Bowers	ends July 1, 1981

2. Representation:

Profession = 3
Public = 2

3. Qualifications:

Professional members must be licensed; public members must have no direct financial interest in the health care industry.

D. Licensing Data

Psychologists Examined

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1974	2	1	1	50	50
1975	4	3	1	73	27
1976	5	4	1	80	20
1977	3	2	1	67	33
1978 (through June)	6	5	1	83	17

Currently Licensed

Psychologists

in-State = 46 (through June 1978)

out-of-State = 6 (through June 1978)

52

Psychological Associates

in-State = 3

out-of-State = 0

3

E. Fees:

1)	application	$50.00
2)	renewal	50.00
3)	biennial	50.00
4)	out-of-state	50.00
5)	temporary license	10.00
6)	duplicate license	2.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	$1,580.00	$1,600.00	$1,700.00	$2,780.00
- Refunds	10.00	20.00	150.00	100.00
Total	$1,570.00	$1,580.00	$1,550.00	$2,680.00
Expenditures				
Per Diem	35.00	750.12	443.33	2,385.25
Transportation	168.90	1,405.62	530.85	1,933.63
Phone	207.45	314.63	122.24	138.51
Printing, Advertising & Postage	39.11	594.14	866.01	660.29
Fees and Services	56.00	239.00	407.00	500.00
Rents, Leases, Other	-	-	-	20.00
Total	506.46	3,303.51	2,369.43	5,637.68
Surplus	1,063.54	-	-	-
Deficit	-	1,723.51	819.43	2,957.68

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	3	0	0
1976	5	1	0
1977	1	0	0
1978 (through June)	1	0	1

Pending: 9

The only case closed was closed by virtue of the fact that the party against whom the complaint was lodged left the State. In 1976 three complaints were received against a single practitioner; potential litigation is pending in this case. Most complaints involved allegations of practicing without a license and of false advertising. None were received in recent years from the public and none were determined to have resulted in harm to the public. The case referred to litigation was brought by an unsuccessful applicant for licensure charging that the board is arbitrary and capricious in its application of examination and scoring procedures.

II. Criteria and Analysis

A. To what extent has the Board of Psychologist and Psychological Associate Examiners operated in the public interest?

The Board is statutorily charged with responsibility for passing on applicant qualifications; for preparation, administration and grading of written examinations; for revocation or suspension of licenses as a result of statutory violations; and for setting associate fees (AS 08.86.070). "Passing on qualifications of applicants" has been a problem with this Board for a number of years. A 1975 Division of Legislative Audit report recommended that the Board "should apply Alaska Statute 08.86 consistently to all applicants for licensing." Specific examples

of arbitrary granting of examination and licensure privileges are cited within the report. That recommendation and the examples cited are still relevant and could alone be the basis of this report.

The Board has continued to approve one applicant by waiving standards for examination while denying another with equal qualifications for not complying with the standard. Applications for licensure by endorsement are held pending information on licensure from another state which is already contained in the applicant's file. While statutes require a doctoral degree with emphasis on psychology from an accredited school, the Board has held action or refused examination or licensure to candidates meeting this requirement who did not take specific courses or who took courses which the Board did not approve of. At least one applicant who held a doctoral degree in education was allowed to sit for the exam while another was denied because his doctoral emphasis was not in psychology. The Board approved one applicant for examination pending receipt of a letter from his supervisor. This applicant was advised the day before the examination that he would not be allowed to take the examination because the information had not been received. A review of the applicant's file indicates that the information was received and the applicant so notified several months before the examination date. This applicant has since left the State. One applicant was refused because he had not resided in Alaska for thirty days preceding the date of examination. Another applicant was approved by a previous Board, took and passed the examination, and was subsequently denied licensure because he had not graduated from an "accredited" school, a criteria which has not yet been formally defined through Board regulations nor consistently applied through Board policy.

The Board has adopted a policy in Board minutes whereby the requirement for one year's experience acceptable to the Board is defined as one year's post doctoral experience under the supervision of a licensed psychologist. However, enforcement of this policy has also been con-

sistently inconsistent. One candidate who was initially refused licensure under this policy was subsequently licensed by intervention from the Office of the Attorney General. It is interesting to note that the Board will not accept supervision by a licensed psychiatrist to fulfill this post graduate requirement. At its September, 1978 meeting the Board considered two particular candidates for examination, both of whom met the statutory requirements and neither of whom met the post doctoral experience policy requirements. One was approved, the other was not. The only apparent differences in these two candidates were the specific courses taken though both graduated from American Psychology Association "fully approved programs."

If this Board is continued, recommendations are noted herein which should be considered for implementation.

Examination procedures need to be improved with respect to conduct of the examination and to anonymity of applicants. Answer sheets found in files contain the name of the applicant and at least one 1978 applicant made references to his current employment status and professional associations. Applicant anonymity should be maintained to the extent possible to help insure complete objectivity in scoring. The Board constructed written examination is of the essay type. During the time period in past examinations in which some candidates were writing their responses they were also interviewed orally by the Board on those same questions. Candidates should not be interrupted during the examination and should not be given the opportunity to test their own responses against Board reaction during this interview. Additionally, the Board does not have the statutory authority to give an oral interview as part of the examination, only to prepare, administer and grade written examinations.

The Board should discontinue the practice of approving applications for examination prior to receipt of all application materials. This procedure has created a number of problems when an applicant is notified that he is approved and scheduled and then finds at a late date that a reference has not been received or a transcript is missing from his file. Regulations currently being processed require that an applicant's file be complete "at least 45 days before a scheduled examination," and, once adopted, should be complied with.

Statutes provide that the Board may issue a temporary permit to an otherwise qualified applicant pending examination. This provision has been utilized in granting temporary permits to individuals who have not yet submitted proof that they are qualified, such as official transcripts which indicate a doctoral degree. Statutes applicable to applicants already licensed in an authority other than Alaska provide that the applicant is entitled to be licensed if he holds a doctoral degree with emphasis on psychology and if the other authority's qualifications were similar to Alaska's at the time he was licensed. One applicant was initially denied by the Board because the other state's qualifications at the time he was initially licensed were different from those presently in effect in Alaska. Another was required to take the Board's written examination because he did not have the experience required by the other state although he had worked for two years following the date of his degree. Another was approved for endorsement without examination but did not meet the endorsement requirements. Another applicant for endorsement was denied but approved for examination and did not meet requirements for either one.

Lack of continuity and standardization in Board policies and practices does not operate in the public interest. Statutes regarding qualifications for licensure and Board responsibilities in regulation of the profession are designed to assure competency of practitioners and to allow methods by which services may be made available to the public.

The Board has been aware of these problems for some time and pending Board regulations address many of the points raised in this report. If, however, the Board has failed to apply existing statutes and policies consistently in the past, the effect of future regulatory provisions is questionable.

The Board has authority to adopt regulations to carry out the purposes of 08.86. A recent resolution was made expressing the intent of the board to draft mandatory continuing education requirements. If the board is reestablished, it should pursue this subject. A statutory change, however, would be advisable if relicensure or exemptions are contingent on compliance with board outlined criteria.

Regulatory functions for this profession could be carried out by the administrative agency with utilization of professional expertise where necessary.

B. To what extent has the operation of the Board of Psychologist and Psychological Associate Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Existing statutes have not particularly impeded or enhanced the operation of the Board. Inconsistent application of statutory provisions, as previously cited, has impeded impartial examination and licensure of qualified applicants. Arbitrary Board policies and practices restrict

the quality and quantity of services to the public. If adhered to, present statutes and pending regulations would be generally adequate to govern this profession.

The Board of Psychologist and Psychological Associate Examiners has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs except that high turnover of agency personnel has in some respects prevented continuity of services to all boards. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better assist the Board and the agency in carrying out its functions.

This Board has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense mandates that only the most flagrant and potentially injurious licensing complaints are pursued.

Complaints regarding this profession are in the nature of unethical advertising and practicing without a license. There also were no complaints received from the public at large, only from the Board, the profession, or a related profession.

C. To what extent has the Board of Psychologist and Psychological Associate Examiners recommended statutory changes which are generally of benefit to the public interest?

Recent statutory changes with respect to the profession concerned: (1) addition of lay persons to Board membership; (2) Medical Indemnity provisions; (3) applicability of the Administrative Procedure Act; and (4) general "housekeeping" items.

Records of Board meetings reflect a desire of the Board to require a one-year State residency clause as a licensure qualification. There is also indication that the Board wishes to regulate unlicensed governmental employees and counselors. No recommended changes were made by the Board which would be of specific public benefit.

D. To what extent has the Board of Psychologist and Psychological Associate Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

Very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input although notices of pending meetings and new or changing regulations are published in major newspapers in the State. It may be that members of the public are somewhat reluctant to involve themselves

in areas of a technical or scientific nature and which may be considered too complex for anything but minimal scrutinization by a layperson. A technical and professional "barrier" of sorts exists which probably tends to deter public knowledgeability and participation. This barrier appears to be perpetuated by the Board through the use of professional terminology and the aura of secrecy that is conveyed at Board meetings. The licensing examiner from the administrative agency has been instructed not to record large portions of "public" Board meetings. Additionally, minutes of those meetings are edited and reworded by individual Board members at the time the draft is circulated for perusal. This practice has resulted in questions regarding past Board considerations and does not lend credence to the minutes as written.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.[1] If this Board is continued, consideration should be given to a public membership majority.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Psychologist and Psychological Associate Examiners processed and resolved?

No complaints have been received which were directed against individual members of the Board. However, on at least four occasions the Board as a whole was threatened with litigation by applicants for licensure, another applicant was licensed after intervention by the Attorney General's

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[1] Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

Office and litigation was initiated by another applicant charging capricious and arbitrary conduct by the Board.

One of the ten cases received during the past four years had been closed through June, 1978. No recent complaints have been received which were lodged by a member of the general public or which were determined to have resulted in actual danger to the public. The administrative agency is currently addressing complaints and investigative procedures and the need for timely disposition of issues. Investigative services to all boards and commissions under its jurisdiction are expected to improve.

F. To what extent does the Board of Psychologist and Psychological Associate Examiners present qualified applicants to serve the public?

Applicants for examination and/or licensure are not sponsored by the Board. Individuals wishing to practice within the State must submit fees and application with documentation of qualifications. Unfortunately, as is noted previously in this report, compliance with statutory requirements does not necessarily insure an applicant that (s)he will be examined and/or licensed in a timely manner if at all. Review of files for recent years revealed that applicants generally must wait several months from the time of initial application to final licensure. One applicant was licensed seven years after the date of application. Another waited over three years.

Board practices which would allow for the issuance of temporary permits and expeditious licensing by endorsement or examination for all applicants who are qualified would be conducive to entry into the profession and to increased availability of practitioners within the State.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Psychologist and Psychological Associate Examiners ir its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for two other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

This Board is responsible for issuing licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Psychologist and Psychological Associate Examiners to better serve the interests of the public?

If the Board is reestablished, the statutes should specifically delineate Board duties and applicant qualifications in a manner that precludes Board latitude in interpretation beyond statutes. For instance, the Board should not be able to deny examination to an applicant who meets the degree requirements of AS 08.86.130(2) because it does not approve of specific courses taken in pursuit of the degree. Continuing education requirements, if desirable, should be set down by statute as should any exceptions to those requirements.

The Board should consistently apply its own standards as set forth in pending regulations. For instance, if "one year's experience acceptable to the board" is defined as one year's post doctoral supervised experience, the Board should apply this regulation to all cases regardless of other background factors.

The Board should issue temporary permits only in compliance with statutes and should take positive steps toward utilizing endorsement provisions wherever possible. If Alaska's examination and qualification requirements are determined to be substantially different than those of other states, they should then be reviewed for validity as measures of professional competency.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead such as staff salary, examination costs and investigative services. The need for a State Board has not been demonstrated to justify expenses of regulation in this instance.

III. Conclusion

No public need has been demonstrated which would mandate continuation of regulation of this profession by an established oard. Aside from this main consideration, restrictive and monopolistic practices by a board which serve to protect and perpetuate only a small interest group should not have the sanction of State authority and should not continue under its auspices.

IV. Summary of Recommendations

A. The Board of Psychologist and Psychological Associate Examiners should be allowed to terminate on June 30, 1979.

The functions of examining and licensing should be assumed by the administrative agency with appropriate statutory guidelines and regulatory authority.

B. In the event that the Board of Psychologist and Psychological Associate Examiners is continued, the following recommendations are made:

1. Statutory amendments should be made which outline specific qualifications and examination criteria. Content and language should be such that the Board is precluded from arbitrary granting or withholding of these privileges. (See discussion on pp. 8 & 9)

2. The Board should act consistently in applying its own policies and regulations within statutory authority. Standardization of examination procedures should be formulated, and observed, and applicant anonymity should be maintained to the extent possible. The Board should refrain from practices which imply an oral examination and from interrupting candidates while being tested. (See discussion on p. 9)

3. The Board should discontinue past practice of approving and notifying candidates for examination prior to completion of the application. (See discussion on p. 10)

4. The Board should review its policies with respect to the issuance of temporary permits and grant these only as allowed by statute. (See discussion on p. 10)

5. Continuing competency requirements as a condition of licensure, should be addressed by statute as should any exemptions from the requirements. (See discussion on p. 11)

6. The Board should confine its activities in regulating the profession to those over which it has regulatory authority. This does not include government employees or unlicensed counselors within the State. (See discussion on p. 13)

7. The Board should utilize endorsement provisions wherever possible. If Alaska's qualifications are found to be substantially different from those of other states, they should be reviewed for validity and appropriate recommendations made. (See discussion on p. 10)

8. Consideration should be given to placing a majority of public members on this Board. Professional members would provide advice and expertise and would review written examination sheets. Members should not serve consecutive terms unless initially appointed to an unexpired term, but may be reappointed following a term of absence.

9. The Board should refrain from giving the appearance of concealing information during meetings that should properly be a matter of public record. It should also refrain from making substantive changes in minutes of Board meetings. (See discussion on p. 14)

Chapter 86. Psychologists and Psychological Associates.

Article
1. Board of Psychologist and Psychological Associate Examiners (§§ 08.86.010 — 08.86.050)
2. Administration of Board Affairs (§§ 08.86.070 — 08.86.100)
3. Licensing of Psychologists (§§ 08.86.120 — 08.86.150)
3A. Licensing of Psychological Associates (§§ 08.86.160 — 08.86.162)
4. Prohibitions and Penalties (§§ 08.86.170 — 08.86.220)
5. General Provisions (§ 08.86.230)

Article 1. Board of Psychologist and Psychological Associate Examiners.

Section
10. Creation and membership of board
20. Appointment and term of office
30. Board meetings
40. Assistants
50. [Repealed]

Sec. 08.86.010. Creation and membership of board. There is created a Board of Psychologist and Psychological Associate Examiners. It consists of three licensed psychologists, and two persons who have no direct financial interest in the health care industry. (§ 1 ch 136 SLA 1967; am § 1 ch 65 SLA 1973; am § 30 ch 102 SLA 1976)

Effect of amendments. — The 1973 amendment inserted "and Psychological Associate" in the first sentence.

The 1976 amendment added "and two persons who have no direct financial interest in the health care industry" to the end of the second sentence.

Sec. 08.86.020. Appointment and term of office. Members of the board are appointed by the governor and confirmed by the legislature for staggered terms of three years. The terms of the public members shall be set so that they do not expire at the same time. A member serves at the pleasure of the governor. (§ 1 ch 136 SLA 1967; am § 31 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment added the present second sentence.

Sec. 08.86.030. Board meetings. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman or of two board members. (§ 1 ch 136 SLA 1967)

Sec. 08.86.040. Assistants. The board may employ assistants to prepare and grade examinations and to investigate alleged violations of this chapter. (§ 1 ch 136 SLA 1967)

Sec. 08.86.050. Transportation and per diem.
Repealed by § 1 ch 42 SLA 1977.

Editor's note. — The repealed section derived from § 1, ch. 136, SLA 1967.

Article 2. Administration of Board Affairs.

Section
70. Duties of the board
80. Board regulations
90. Administrative duties of the department
100. Applicability of the Administrative Procedure Act

Sec. 08.86.070. Duties of the board. The board shall
(1) pass on qualifications of applicants for licenses;
(2) prepare, administer and grade written examinations;
(3) after hearing, suspend or revoke the license of a licensed psychologist or psychological associate who violates a regulation of the board;
(4) set fees which are charged for psychological associates. (§ 1 ch 136 SLA 1967; am §§ 2, 3 ch 65 SLA 1973)

Effect of amendment. — The 1973 amendment inserted "or psychological associate" in paragraph (3) and added paragraph (4).

Sec. 08.86.080. Board regulations. The board shall adopt regulations to carry out the purposes of this chapter. (§ 1 ch 136 SLA 1967)

Cited in Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.090. Administrative duties of the department. The department shall furnish administrative services for the board. (§ 1 ch 136 SLA 1967)

Sec. 08.86.100. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (§ 1 ch 136 SLA 1967)

Article 3. Licensing of Psychologists.

Section	Section
120. Entitlement to licensure	135. Temporary license
125. Malpractice insurance	140. Fees
130. Qualification for examination	150. Out-of-state license

Sec. 08.86.120. Entitlement to licensure. A person who passes the examination given by the board is entitled to be licensed as a psychologist. (§ 1 ch 136 SLA 1967)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.125. Malpractice insurance. If medical malpractice insurance for psychologists or psychological associates becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of psychologist or psychological associate services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 32 ch 102 SLA 1976)

Sec. 08.86.130. Qualification for examination. A person is entitled to take an examination if the board finds he

(1) has not engaged in dishonorable conduct relevant to the practice of psychology;

(2) holds a doctoral degree with primary emphasis on psychology from an accredited school;

(3) has at least one year's experience acceptable to the board. (§ 1 ch 136 SLA 1967)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.135. Temporary license. The board may issue a temporary license to a person who meets the requirements of § 130 of this chapter. A temporary license issued under this section is valid until the results of the examination following the issuance of the temporary license are published. (§ 1 ch 38 SLA 1970)

Sec. 08.86.140. Fees. Each application fee, renewal fee, biennial and out-of-state license fee is $50. The fee for a temporary license is $10. The fee for a duplicate license is $2. (§ 1 ch 136 SLA 1967; am § 2 ch 38 SLA 1970)

Revisor's note (1970). — In ch. 38, SLA 1970, "biannual" was used instead of "biennial" in the first sentence of this section. The correction was made in light of AS 08.01.100(a) (which requires biennial renewal) and the statement in Webster's Third New International Dictionary that the two words are "sometimes" synonymous. Such a usage was clearly the intent of ch. 38, SLA 1970.

Sec. 08.86.150. Out-of-state license. A person who is licensed or certified as a psychologist by an authority other than Alaska is entitled to be licensed in Alaska without examination if

(1) he holds a doctoral degree with primary emphasis on psychology from an accredited school;

(2) the examination and qualification requirements for his out-of-state license or certificate were essentially similar to the examination and qualification requirements for licensure in Alaska at the time he was licensed; or

(3) he is a diplomate in good standing of the American Board of Examiners in Professional Psychology;

(4) he completes and returns the proper application forms, and pays the out-of-state certificate fee. (§ 1 ch 136 SLA 1967)

Article 3A. Licensing of Psychological Associates.

Section

160. Associates: Entitlement to licensure
162. Associates: Qualification for examination

Sec. 08.86.160. Associates: Entitlement to licensure. A person who passes the examination given by the board is entitled to be licensed as a psychological associate. (§ 5 ch 65 SLA 1973)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.162. Associates: Qualification for examination. A person is entitled to take a psychological associate examination if the board finds that he:

(1) has not engaged in dishonorable conduct related to the practice of counseling or psychometry;

(2) holds a master's degree from an accredited or approved educational institution, with at least 24 credit hours of course work directly related to counseling or another specialized area in which licensure is requested, including a practicum;

(3) has at least three years' experience within the past ten years, two of which are in Alaska, and including one year's supervised postgraduate experience acceptable to the board;

(4) has the recommendation of his immediate supervisor if a licensed psychologist, or two licensed psychologists who hold doctoral degrees;

(5) has not within the preceding six months failed an examination given by the board. (§ 5 ch 65 SLA 1973)

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Article 4. Prohibitions and Penalties.

Section
170. Use of title
180. Practice of psychology
185. Practice of counseling and psychometrics
190. Name under which person practices
200. Confidentiality of communication
210. Penalty
220. Limits or conditions on license; discipline

Sec. 08.86.170. Use of title. (a) Unless he is licensed under this chapter, no person may use the title "psychologist" or a title, designation, or device indicating or tending to indicate that he is a psychologist or practices psychology.

(b) Unless he is licensed under this chapter, no person may use the title "psychological associate" or a title, designation, or device indicating or tending to indicate that he is a psychological associate or practices counseling or psychometrics. (§ 1 ch 136 SLA 1967; am § 6 ch 65 SLA 1973)

Effect of amendment. — The 1973 amendment added subsection (b).

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseli..g. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.180. Practice of psychology. (a) Unless he is licensed under this chapter, no person may practice psychology, or offer to practice psychology, or represent to the public that he is a psychologist or that he practices psychology.

(b) This section does not apply to

(1) a person employed by a governmental unit, educational institution or private agency who may be required to engage in some phase of work of a psychological nature in the course of his employment, if the employer maintains appropriate supervision of psychological activities and professional conduct;

(2) a student, intern, or resident in psychology pursuing a course of study approved by the board is qualifying training and experience for psychologist, if his activities constitute a part of his supervised course of study and he is designated by titles such as "psychology intern" or "psychology trainee";

(3) a qualified member of another profession, such as a social worker, or pastoral counselor, in doing work of a psychological nature consistent with his training and consistent with the code of ethics of his profession;

(4) Repealed by § 15 ch 65 SLA 1973.

(5) a person practicing medicine, if he is licensed to practice medicine.

(c) Nothing in this chapter authorizes a person licensed as a psychologist to engage in the practice of medicine, as defined by the laws of the state. (§ 1 ch 136 SLA 1967; am § 10 ch 69 SLA 1970; am §§ 7, 15 ch 65 SLA 1973)

Effect of amendment. — The 1973 amendment deleted "or" preceding "educational institution" in paragraph (1) of subsection (b) inserted "or private agency" and the proviso, and repealed paragraph (4) of that subsection.

Legislative committee report. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 08.86.185. Practice of counseling and psychometrics. (a) Unless he is licensed under this chapter, no person may practice counseling or psychometrics, offer to practice counseling or psychometry, or represent to the public that he is a counselor or psychometrist.

(b) This sections does not apply to:

(1) a person employed by a governmental unit, educational institution or private agency who may be required to engage in some phase of work of a counseling nature in the course of his employment, if the employer

maintains appropriate supervision of psychological activities and professional conduct;

(2) a student, intern or resident in psychology pursuing a course of study approved by the board as qualified training and experience for counseling, if his activities constitute a part of his supervised course of study;

(3) pastoral counselors.

(c) Nothing in this chapter authorizes a person licensed as a psychological associate to engage in the practice of medicine, as defined by the laws of the state. (§ 8 ch 65 SLA 1973)

Sec. 08.86.190. Name under which person practices. (a) A licensed psychologist may practice psychology only under his own name.

(b) A licensed psychological associate may practice counseling or psychometry only under his own name. (§ 1 ch 136 SLA 1967; am § 9 ch 65 SLA 1973)

Effect of amendment. — The 1973 amendment added subsection (b).

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.200. Confidentiality of communication. No psychologist or psychological associate may reveal to another person a communication made to him by a client of his about a matter concerning which the client has employed the psychologist or psychological associate in a professional capacity. This section does not apply to a case conference with other psychologists, psychological associates or with physicians and surgeons, or in the case in which the client in writing authorized the psychologist or psychological associate to reveal a communication. (§ 1 ch 136 SLA 1967; am § 10 ch 65 SLA 1973)

Effect of amendment. The 1973 amendment, in the first sentence, inserted "or psychological associate" twice and, in the second sentence, inserted "psychological associates" and "or psychological associate."

This section does not provide a statutory psychotherapist privilege in criminal cases. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

This section nowhere states that it was intended as creating a privilege. It does not refer to courtroom testimony. The general thrust of its language seems to point towards "anti-gossip" consideration. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

The legislature's failure to create expressly an evidentiary privilege for psychotherapists while doing so for newspapermen during the same session as the Psychological Licensure Act was enacted indicates a legislative intent that psychotherapists were not to be so favored. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

It is only as an "anti-gossip" measure that this section makes sense. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

This section provides that only a writing may waive whatever rights a patient acquires under the section. But evidentiary privileges are traditionally much more easily waived, in light of the strong

competing policy in favor of compulsory testimony. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Effect of enacting this section as "anti-gossip" measure. — By enacting this section as an "anti-gossip" measure the legislature has opened the door to professional licensing sanctions and possibly broadened the scope of common-law duty in suits against indiscreet psychotherapists. Allred v. State. Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

The supreme court recognizes a common-law privilege, belonging to the patient, which protects communications made to psychotherapists in the course of treatment. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

As to the scope of the common-law privilege, see Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.210. Penalty. A person who violates §§ 170, 180, 185, or 190 of this chapter is guilty of a misdemeanor. (§ 1 ch 136 SLA 1967; am § 11 ch 65 SLA 1973)

Effect of amendment. — The 1973 amendment inserted "185."

Cited in Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Sec. 08.86.220. Limits or conditions on license; discipline. (a) Upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 32 ch 102 SLA 1976)

Article 5. General Provisions.

Section
230. Definitions

Sec. 08.86.230. Definitions. In this chapter

(1) "psychologist" means a person who practices psychology;

(2) "to practice psychology" means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personnel evaluation, group relations, and behavior adjustment, including

(A) counseling and guidance;

(B) using psychotherapeutic techniques with persons or groups of persons who have adjustment problems in the family, at school, or at work;

(C) measuring and testing of personality, intelligence, aptitudes, emotions, and attitudes and skills;

(D) conducting research on human behavior;

(3) "board" means the Board of Psychologist and Psychological Associate Examiners;

(4) "department" means the Department of Commerce and Economic Development;

(5) "psychological associate" includes a counselor and psychometrist;

(6) "counselor" means a person who practices counseling;

(7) "to practice counseling" means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of group relations, and behavior adjustment,

(A) counseling and guidance;

(B) using counseling techniques with persons or groups of persons who have adjustment problems in the family, school or at work;

(C) limited use of testing including tests of intelligence or tests of motor skills;

(8) "psychometrist" means a person who practices psychometrics;

(9) "to practice psychometrics" means to apply the recognized principles, methods and procedures of the science and profession of psychology, but limited to the administering, scoring, and interpreting of tests of mental abilities, aptitudes, interests, motor skills and objective tests of personality characteristics for purposes such as psychological evaluation or for educational or vocational selection, guidance or placement;

(10) "private agency" means a clinic or private practice under the direction of a licensed psychologist, psychiatrist, or a custodial, rehabilitative or health care organization which is acceptable to the board;

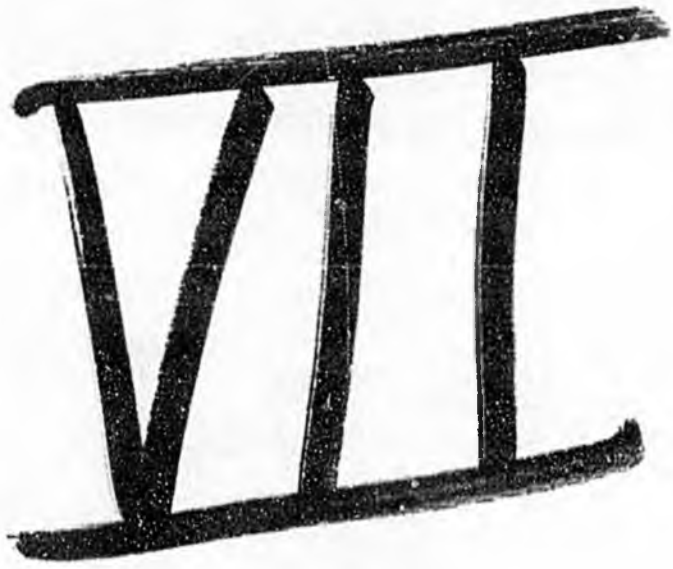
(11) "supervision" means at least one hour a week of personal interview with a supervisor whose educational qualifications are consistent with the level of activity being supervised; a supervisor is responsible for insuring that the extent, kind and quality of the psychological and counseling services performed are consistent with a psychological associate's training and experience, as well as his obedience to the provisions of this chapter. (§ 1 ch 136 SLA 1967; am §§ 12, 13 ch 65 SLA 1973; am § 55 ch 218 SLA 1976)

Effect of amendments. — The 1973 amendment inserted "and Psychological Associate" in paragraph (3) and added paragraphs (5) to (11).

The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (4).

The statutes evince a policy that psychotherapy be practiced only by licensed psychologists, and that others such as psychological associates be limited to the practice of counseling. Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Distinctions between psychotherapy and counseling. — See Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).



STATE OF ALASKA
Board of Chiropractic Examiners
(October, 1978)

Findings

Manipulation of the human body in such a way as to relieve pain rather than increase pain or cause injury requires a degree of skill that can only be obtained through specialized study and training. The practice of chiropractic includes the taking of x-rays and administration of treatments such as those utilizing heat, water, and electricity. Unqualified practitioners present a danger to the public health, safety and well-being in that the possibility of inappropriate application of treatment methods would be increased by deregulation of the profession. Regulation of the chiropractic profession by a State Board should continue. Recommendations to enhance efficient functioning of the Board are made in this report.

I. General Information

A. Regulated Parties

1. Chiropractors
2. Associate Chiropractors

B. Statutory Definition of Regulated Profession

"Chiropractic is the science of locating and correcting interference with nerve energy transmission and expression within the human body, and the employment and practice of drugless therapeutics, including physiotherapy, hydrotherapy, mechanotherapy, phytotherapy, electrotherapy, chromotherapy, thermotherapy, thalmotherapy, correcting and orthopedic gymnastics, and dietetics which includes the use of foods and those biochemical tissue building products and cell salts found within the normal human body, without the use of drugs or surgery." (AS 08.20.220)

An associate chiropractor serves in an existing clinic or office under direct supervision of a licensed chiropractor for a period not to exceed three years pending completion of at least two years of college in liberal arts or science, and providing all other qualifications have been met.

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Keith Godfrey, DC (Chairman)	ends July 15, 1979
Lee Q. Burger, DC (Vice President)	ends July 15, 1980
Adrian Barber, DC (Secy)	ends July 15, 1978
Linnea Burmeister	ends July 15, 1978
Locke Jacobs	ends July 15, 1979

2. Representation:

Profession = 3
Public = 2

3. Qualifications:

"Three members of the board shall be licensed chiropractic physicians who have practiced chiropractic in this state not less than two years. Two members of the board shall be persons with no direct financial interest in the health care industry..." (AS 08.20.020)

D. Licensing Data

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1975	7	6	1	86	14
1976	4	4	0	100	-0-
1977	12	12	0	100	-0-
1978 (through August)	7	5	2	71	29

Currently licensed:

in-State = 32 (through June, 1978)
out-of-State = 9 (through June, 1978)
Total 41

Associate licenses = 4 (through June, 1978)

E. Fees

1.	application for examination	$25.00
2.	application for reexamination	10.00
3.	temporary permit	25.00
4.	initial license	50.00
5.	biennial renewal	50.00
6.	associate license	30.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	$1,205.00	$ 345.00	$1,910.00	$1,070.00
- refunds	-	25.00	-	-
Total	$1,205.00	$ 320.00	$1,910.00	$1,070.00
Expenditures				
Per Diem	-	1,001.25	1,000.00	1,835.00
Transportation	-	1,027.36	1,128.58	1,815.32
Phone	-	20.55	19.51	65.98
Printing, Advert., Postage	85.98	544.58	174.67	370.55
Fees & Services	-	220.04	-	107.63
Rents, Leases, Other	75.00	25.00	54.24	23.59
Total	$ 160.98	$2,838.78	$2,377.00	$4,218.07
Surplus	$1,044.02	-	-	-
Deficit	-	$2,518.78	$ 467.00	$3,148.07

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	2	1	0
1976	0	1	0
1977	2	0	0
1978 (Through September 15)	1	3	0

Pending: 0

One complaint was closed because no violation was found to exist, another due to lack of information. Three complaints alleged over-charging, unethical advertising, and practicing without a license. None alleged harm to the public.

H. Qualifications

According to the Alaska Chiropractic Society, chiropractors must have a minimum of six years of college study and internship, the latter two years of which are generally devoted to practical or clinical studies.

II. Criteria and Analysis

A. To what extent has the Board of Chiropractic Examiners operated in the public interest?

Board authority in governing the practice of chiropractic includes the adoption of regulations necessary to carry out chapter provisions, approval of accredited schools or colleges, administration and approval of examinations and licensing of qualified chiropractors and associates. Authority to issue temporary permits and to license out-of-State licentiates without examination is discretionary. Requirements which are designed to measure proficiency operate in the public interest in assuring competency of practitioners. While administration and approval of examinations by the Board is an appropriate and desirable function, consistency and validity of these measures must be a major consideration.

Two examinations are scheduled routinely each year as provided by regulations. Applicants are required by statute to have taken and passed "to the satisfaction of the board, Part I and Part II of the examination of the National Board of Chiropractic Examiners." The State Board has, in the past, given this examination to applicants who have not already taken it or who have not passed. Pending regulations will require that an applicant have passed the national examination before s/he applies for examination in Alaska with the result that the Board will no longer be administering the national examination as it has been doing.

In addition to the requirement for successful completion of the national examination, the Board requires a written Board prepared examination, an oral (diagnosis, x-ray, visual) examination and a practical (application, treatment) examination. Each portion is graded by individual examiners and scores are averaged including the national examination score. A general average rating of 75% is considered to be a passing grade.

A review of Board prepared examination materials for recent years indicates that content was frequently identical or at least strikingly similar for as long as three years. Most questions are in essay form and require a measure of subjective judgment on the part of the examiners. The Board has not promulgated regulations which govern methods of grading or scoring for consistency of application. Although not specifically cited in Board records, it appears that there may have been additional inconsistencies in averaging methods utilized.

As one method of avoiding allegations of arbitrary and capricious action, the Board should adopt regulations which specify grading criteria. The Board should also adopt a policy which would promote substantial dissimilarity in successive Board examinations and regulations which govern "general average rating" procedures that would apportion examination sections appropriately and definitively. Potential problem areas could be largely avoided through the use of a national testing service.

Continuing education requirements, as a condition of continuing licensure, have been discussed by the Board. The Board (and the Alaska Chiropractic Society) has expressed a desire to institute such requirements, however, it has no authority to do so as a condition of relicensure. There are no current review or reexamination procedures. Valid arguments may be made against mandatory education requirements: lack of facilities, cost of programs, and the prospect of legal issues arising from failure to renew a license. Equally valid arguments may be made in behalf of measures that are designed to help insure continued competency and allow practitioners to up-date themselves in their profession.

Statutory authority to adopt "necessary" regulations implies that the Board may consider continuing education requirements. To provide definitely that this may be done the Board should be given the specific

statutory direction to consider the subject and to impose requirements that are determined to be advisable. This would not be inconsistent with other health care boards, i.e., Medical, Optometry and Dispensing Opticians, whose statutes require continuing education. It is considered advisable to address mandatory continuing education by statutory directive with any appropriate exemption provisions.

Statutory authority exists for the issuance of temporary permits pending examination to applicants who are otherwise qualified. Records indicate that only one temporary permit has been requested and approved in recent years.

Present statutes require that out-of-State applicants meet both endorsement and reciprocity provisions. It is interesting to note that while all present professional members of this Board were licensed by reciprocity, the Board has made a formal policy decision that it will not license in this manner. The last license to be issued by reciprocity was issued in 1970-to a member of the Board. Several requests have been made by out-of-State applicants seeking endorsement. Board replies indicate that no reciprocal agreement exists between Alaska and the other state, however, there is no documentation that suggests reciprocity has been explored as a possibility, only that such relationships do not exist. A review of reciprocity provisions indicates that such requirements restrict interstate entry into professions. Only applicants from states with which agreements have been established may be admitted without examination regardless of their qualifications. Endorsement allows licensure of those individuals licensed elsewhere whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence. Endorsement provisions are felt to be more in keeping with the principle of licensing qualified applicants and increasing services of practitioners. It is recommended that licensing be allowed on the basis of endorsement and that the Board consider every mechanism by which entry into the profession and availability of services to the public may be facilitated.

B. To what extent has the operation of the Board of Chiropractic Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Restrictive policies of the Board regarding reciprocity impede the opportunity of providing additional services to the public. The Board should recommend statutory changes for licensure by endorsement and, if unsuccessful, it should investigate the possibility of establishing reciprocal agreements with other states. If the requirements of Alaska and other states are substantially dissimilar, the Board should then review statutory qualifications for validity and make any appropriate recommendations that may be indicated.

Other statutory provisions for the Board of Chiropractic Examiners are generally considered to be adequate with the exception of mandatory continuing education requirements. The Board is given authority and latitude sufficient to allow it to operate in regulating the chiropractic profession.

The Board of Chiropractic Examiners has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions, with the exception of investigative services. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions, one of which is submission of an annual report.

The Board of Chiropractic Examiners has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complairts.

It is undeniably in the public interest to enforce the laws promulgated for the protection of public health and welfare and to take expeditious action upon receipt of potentially serious complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Board of Chiropractic Examiners recommended statutory changes which are generally of benefit to the public interest?

Laymembers were added to the Board by statute in 1976. Other 1976 amendments were concerned with Medical Indemnity provisions and general "housekeeping" items.

No recommendations have been made by the Board of Chiropractic Examiners relating to statutory changes that would be of specific benefit to the public.

D. To what extent has the Board of Chiropractic Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board appears to be generally sensitive to public concern and to aspects of public health and welfare. However, very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers in the State.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may partially mitigate public disinterest.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.[1]

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[1] Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Chiropractic Examiners processed and resolved?

No complaints were received which were specifically directed at individual members of the Board and none against the Board or profession were received by the Office of the Ombudsman. All complaints received against the profession through September, 1978 have been closed.

F. To what extent does the Board of Chiropractic Examiners present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Chiropractic Examiners. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. State Board examinations are conducted, monitored and graded by the Board. Applicants who demonstrate the required level of knowledge and proficiency are issued a license.

Board policy against licensure of out-of-State applicants by reciprocity is not conducive to encouraging entry into the profession. In order to provide the opportunity for increased availability of services to the public, it is recommended that reciprocity requirements be deleted and that licensure by endorsement be utilized. If not, the Board should attempt to establish reciprocal relationships with other states wherever possible.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Chiropractic Examiners in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for two other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Chiropractic Examiners issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Chiropractic Examiners to better serve the interests of the public?

Steps should be taken by the Board to apply existing statutes, regulations, and policies uniformly. Standards for examinations and grading should be formulated and enforced. Continuing education upon which relicensure would be contingent, and appropriate exemptions, should be considered and implemented. Efforts should be made to establish reciprocal relationships with other jurisdictions or to amend statutes to allow for licensure by endorsement.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead such as staff salary, examination expenses, and investigative services.

Information obtained in the process of this review indicates that the Board has not complied with 12 AAC 16.210 concerning the practice and working agreements of chiropractic associates. Under these regulations, an associate must execute a contract with a supervising chiropractor which "provides for a definite salary and no fee splitting, and provides that no remuneration may be made except under terms of the contract."

"The supervising chiropractor assumes liability for all malpractice of the associate." "The board will deny the practice of an associate if in the opinion of the board the contract permits unfair advantage to be taken of the associate." Available documentation suggests that the Board has abrogated its responsibility in reviewing these contracts and that the contracts are, in fact, unfair to associates. There is question also as to the legality of the current agreements, however, determination on this is a matter to be taken up by another department. If such agreements are to exist, the Board should enforce its regulations regarding them.

Board membership in terms of numbers is considered adequate. Although it would be desirable to have the two separate chiropractic schools of thought represented by professional members, this may be difficult in administration. Terms of membership should be limited unless appointed to an unexpired term or following a term of absence.

Reciprocity requirements in many cases serve to restrict entry into professions in a state. Only applicants from states with which agreements have been established may be admitted without examination regardless of their qualifications. Endorsement allows licensure of those individuals licensed elsewhere whose qualifications are substantially similar to those in Alaska at a given time, independently of formal interstate concurrence. Endorsement provisions are felt to be more in keeping with the principle of licensing qualified applicants and with providing services of practitioners.

Regulations of this and all boards which pertain to advertising prohibitions are currently in the process of review and appropriate revisions.

III. Conclusion

Regulation of this profession is determined to function in the public interest.

IV. Summary of Recommendations

The Board of Chiropractic Examiners should be reestablished for an additional four-year period. The following recommendations are made:

1. The Board should promulgate and adopt regulations covering examination and grading procedures, content, and criteria. (See discussion on p. 7)

2. The Board should address the subject of mandatory continuing education, possible exemptions, and qualifying courses or methods of compliance.

   It is recommended that these requirements and exceptions be established by statute. (See discussion on p. 7)

3. It is recommended that statutory provisions for reciprocity be deleted and endorsement be allowed instead. Whether by reciprocity or by endorsement, the Board should make every effort to encourage entry into the profession and to increase the availability of practitioners. (See discussion on p. 8)

4. The Board should fulfill its responsibility in applying statutes and regulations uniformly and fairly.

   Chiropractic associate agreements should be reviewed as stipulated or appropriate amendments made to the regulations. (See discussion on p. 13)

5. The Board should adopt regulations which define "accredited" schools or colleges of chiropractic which are approved by the Board.

6. The Board should comply with the statutory requirement for submission of an annual report.

Chapter 20. Chiropractors.

Article
1. Board of Chiropractic Examiners (§§ 08.20.010 — 08.20.090)
2. Licensing and Regulation (§§ 08.20.100 — 08.20.190)
3. Unlawful Acts and Penalties (§§ 08.20.200 — 08.20.210)
4. General Provisions (§ 08.20.220)

Article 1. Board of Chiropractic Examiners.

Section
10. Creation and membership of Board of Chiropractic Examiners
20. Members of board
30. Members' terms; vacancies
40. Organization of board
50. Power of officers to administer oaths and take testimony
55. Board regulations
60. Power of board to adopt seal
70 — 80. [Repealed]
90. Quorum of board

Sec. 08.20.010. Creation and membership of Board of Chiropractic Examiners. There is created the Board of Chiropractic Examiners consisting of five members appointed by the governor. (§ 35-3-23 ACLA 1949; am § 2 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "five members" for "three members."

Am. Jur., ALR and C.J.S. references. — 41 Am. Jur., Physicians and Surgeons, § 27.

Constitutionality of statute prescribing conditions of practicing medicine as affected by discrimination against chiropractors, 37 ALR 680; 54 ALR 600.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 ALR 630.

70 C.J.S. Physicians and Surgeons §§ 1, 8, 10, 12, 15.

Sec. 08.20.020. Members of board. Three members of the board shall be licensed chiropractic physicians who have practiced chiropractic in this state not less than two years. Two members of the board shall be persons with no direct financial interest in the health care industry. Each member serves without pay but is entitled to per diem and travel expenses allowed by law. (§§ 35-3-23, 35-3-30 ACLA 1949; am § 3 ch 102 SLA 1976)

Revisor's note. — This section relating to per diem and expenses was impliedly amended by § 1, ch. 130, SLA 1953, as amended by § 1 ch. 34, SLA 1960.

Effect of amendment. — The 1976 amendment substituted "Three members" for "Each member" and "licensed chiropractic physicians who" for "a licensed chiropractic physician and shall" in the first sentence and added the present second sentence.

Sec. 08.20.030. Members' terms; vacancies. Members serve for staggered terms of three years. The terms of the public members of the board may not expire at the same time. Vacancies on the board shall be filled for the unexpired term. (§ 35-3-23 ACLA 1949; § 4 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment rewrote this section.

Sec. 08.20.040. Organization of board. Every two years, the board shall elect from its membership a president, vice president and secretary. (§ 35-3-24 ACLA 1949)

Sec. 08.20.050. Power of officers to administer oaths and take testimony. The president and the secretary may administer oaths in conjunction with the business of the board. (§ 35-3-24 ACLA 1949)

Sec. 08.20.055. Board regulations. The board shall adopt substantive regulations necessary to effect the provisions of this chapter. (§ 1 ch 102 SLA 1966)

Sec. 08.20.060. Power of board to adopt seal. The board shall adopt a seal and affix it to all licenses issued. (§ 35-3-24 ACLA 1949)

Sec. 08.20.070. Secretary.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.20.080. Records, reports and accounts of board.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.20.090. Quorum of board. A majority of the board constitutes a quorum for the transaction of business (§ 35-3-24 ACLA 1949)

Article 2. Licensing and Regulation.

Section		Section	
100.	Practice of chiropractic without license prohibited	150.	Recording of license
110.	Application for license	160.	Temporary permits
115.	Malpractice insurance	170.	Grounds for suspension, revocation or refusal to issue a license
120.	Qualifications for license	175.	Limits or conditions on license; discipline
130.	Examinations	180.	Fees
135.	Associate	190.	Disposition of fees
140.	Out-of-state licenses		

Sec. 08.20.100. Practice of chiropractic without license prohibited. No person may practice chiropractic in the state without a license. (§ 35-3-21 ACLA 1949)

Cited in Territory of Alaska v. Hawkins, 9 Alaska 573 (1939).

Am. Jur. reference. — 41 Am. Jur., Physicians and Surgeons, §§ 15, 16, 27.

Sec. 08.20.110. Application for license. A person desiring to practice chiropractic shall apply in writing to the board. (§ 35-3-26 ACLA 1949)

Sec. 08.20.115. Malpractice insurance. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 5 ch 102 SLA 1976)

Sec. 08.20.120. Qualifications for license. An applicant shall be issued a license to practice chiropractic if he

(1) Repealed by § 25 ch 245 SLA 1970.

(2) has had a high school education or its equivalent;

(2) has successfully completed at least two academic years of study in a college of liberal arts or sciences;

(4) is a graduate of a legally chartered accredited school or college of chiropractic, approved by the board, which requires for graduation a residence course of instruction of not less than four years of nine months each;

(5) passes an examination given by the board;

(6) Repealed by § 8 ch 32 SLA 1971.

(7) passes to the satisfaction of the board Part I and Part II of the examination of the National Board of Chiropractic Examiners. (§ 35-3-25 ACLA 1949; am § 1 ch 53 SLA 1955; am § 1 ch 91 SLA 1965; am § 25 ch 245 SLA 1970; am § 8 ch 32 SLA 1971; am § 1 ch 84 SLA 1972)

Revisor's note (1972). — In ch. 84, SLA 1972, the apparently necessary word "examination" was omitted from AS 08.20.120(7). It has been added here.

Legislative committee reports. — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 08.20.130. Examinations. (a) Examinations for a license to practice chiropractic may be held in the time and manner fixed by the board.

(b) The examination may include practical demonstration and oral and written examination in those subjects usually taught in accredited chiropractic schools.

(c) A general average rating of 75 per cent is a passing grade on the examination.

(d) An applicant may take a re-examination within one year after failing the examination upon payment of a fee of $10. (§ 35-3-27 ACLA 1949; am § 2 ch 91 SLA 1965)

Am. Jur. reference. — 41 Am. Jur., Physicians and Surgeons, §§ 40, 41.

Sec. 08.20.135. Associate. A person who complies with § 120 (1), (2), (4), (5), and (6) of this chapter shall, pending compliance with (3) of § 120 of this chapter, be licensed to serve as an associate in an existing chiropractic clinic or office under the direct supervision of a licensed chiropractor for a period not to exceed three years. (§ 3 ch 91 SLA 1965)

Editor's note. — Paragraphs (1) and (6) of § 120, referred to in this section have been repealed.

Sec. 08.20.140. Out-of-state licenses. The board may issue a license without examination to an applicant presenting satisfactory proof of the possession of a license or certificate of registration in a state or territory of the United States, or a foreign country, if the requirements for registration at the date of his license are considered by the board as equivalent to those in this chapter, and if the licensing jurisdiction extends the same privilege to those holding a license from this state. (§ 35-3-25 ACLA 1949; am § 1 ch 53 SLA 1955)

Sec. 08.20.150. Recording of license. Each licensee shall record his license with the clerk of the superior court in the judicial district in which he is practicing his profession. (§ 35-3-28 ACLA 1949)

Sec. 08.20.160. Temporary permits. Temporary permits may be issued to persons apparently qualified until the next regular meeting of the board. (§ 35-3-28 ACLA 1949)

Sec. 08.20.170. Grounds for suspension, revocation or refusal to issue a license. (a) The board may refuse to issue, or may suspend or revoke a license upon any of the following grounds:

(1) malpractice;
(2) misrepresentation;
(3) unprofessional conduct;
(4) habitual intemperance, or addiction to the use of narcotics;
(5) conviction of a felony or misdemeanor invoiving moral turpitude;
(6) violation of any provision of this act.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board for the suspension or revocation of a license.

(c) Any person whose license is suspended or revoked may within two years from date of suspension apply for reinstatement, and if the board is satisfied that the applicant should be reinstated, it shall order reinstatement. (§ 35-3-29 ACLA 1949)

Am. Jur. reference. — 41 Am. Jur., Physicians and Surgeons, §§ 44 to 46.

Sec. 08.20.175. Limits or conditions on license; discipline. (a) In addition to action under § 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 6 ch 102 SLA 1976)

Sec. 08.20.180. Fees. The board shall impose and collect the following fees:

(1) upon the filing of an application for examination, $25;

(2) upon application for re-examination, $10;

(3) for issuance of temporary permit, $25;

(4) initial and renewal biennial license, $50;

(5) associate license, $30. (§ 35-3-30 ACLA 1949; am § 1 ch 13 SLA 1968)

Sec. 08.20.190. Disposition of fees. All fees collected by the board shall be paid into the general fund of the state. (§ 35-3-30 ACLA 1949)

Article 3. Unlawful Acts and Penalties.

Section

200. Violation of § 100 of this chapter

210. Fraudulent certificates

Sec. 08.20.200. Vilation of § 100 of this chapter. A person who violates § 100 of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $1,000, or by imprisonment for not more than a year, or by both. In prosecutions under this section, evidence that the defendant has failed to file his certificate of registration with the board is prima facie evidence that he is not a licensed chiropractor. (§ 3 ch 53 SLA 1955)

Revisor's note. — This section introduces a requirement which does not exist in this chapter, viz., filing a certificate with the board. It is the board's duty to keep a registry.

Sec. 08.20.210. Fraudulent certificates. Any person who obtains or attempts to obtain a chiropractic certificate by dishonest or fraudulent means, or who forges, counterfeits, or fraudulently alters any such certificate is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both. (§ 4 ch 53 SLA 1955)

Article 4. General Provisions.

Section
220. Chiropractic defined

Sec. 08.20.220. Chiropractic defined. Chiropractic is the science of locating and correcting interference with nerve energy transmission and expression within the human body, and the employment and practice of drugless therapeutics, including physiotherapy, hydrotherapy, mechanotherapy, phytotherapy, electrotherapy, chromotherapy, thermotherapy, thalmotherapy, correcting and orthopedic gymnastics, and dietetics which includes the use of foods and those biochemical tissue building products and cell salts found within the normal human body, without the use of drugs or surgery. (§ 35-3-22 ACLA 1949)

Prescription of drugs or medicine illegal. — It is illegal and criminal for a chiropractor, without additional qualifications, to prescribe drugs or medicine to sick or injured persons. 1961 Op. Att'y Gen., No. 23.

Expenditures from fishermen's fund for medicine prohibited. — Money cannot

CHAPTER 16. BOARD OF CHIROPRACTIC EXAMINERS

Article
1. The Board
2. Licensing
3. General Provisions

ARTICLE 1. THE BOARD

Section
10. Objectives
20. Meetings

12 AAC 16.010. OBJECTIVES. (a) It is the objective of the board to foster professional standards consistent with the best interests of the profession.

(b) It is the objective of the board to adhere to the Code of Ethics of the American Chiropractic Association or International Chiropractic Association as a basis for considering what comprises the duties and obligations of chiropractors to the public. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.020. MEETING. (a) Robert's Rules of Order govern the deliberations of the board to the extent that they do not conflict with this chapter or with the laws of the state.

(b) The board will meet regularly the second Saturday and Sunday of January and June for purposes of meeting and examining applicants. Other meetings or examinations are termed "special."

(c) The board will, when possible, coincide business meetings and examination of applicants for licensure. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

ARTICLE 2. LICENSING

Section
30. Application for examination
40. Evaluation
50. Notification
60. Schedule
70. Basis of questions
80. Identity of applicant
90. Method of examination
100. Materials
110. Leaving examination room
120. Disturbance
130. Questions
140. Grades
150. Re-examination
160. Time
170. Special examination
180. Reconsideration of papers
190. Certificates
200. Temporary permits
210. Associates
220. Duplicate licenses
230. Misrepresentation
240. Unprofessional conduct

12 AAC 16.030. APPLICATION FOR EXAMINATION. No applicant may take the examination unless he

(1) applies on the board approved form for application for licensure;

(2) complies with all the forms, requirements and any additional requests for information by the secretary of the board when necessary to complete the applicant's credentials;

(3) submits to the board written proof of meeting all requirements of AS 08.20;

(4) pays the required fees for application and

(5) applies no less than 30 days before a scheduled examination. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130

12 AAC 16.040. EVALUATION. Evaluation of an applicant's credentials in work for liberal arts or science (two years' liberal arts and science college) shall be made from a course of study from an institution equivalent to those of the University of Alaska or acceptable to the regional accrediting agencies for approved colleges of liberal arts or sciences. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.050. NOTIFICATION. An applicant will be notified of his passing or failing of an examination or the acceptance or denial of his application for examination within a reasonable time from the date of examination or

the receipt of application for examination. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.060. SCHEDULE. The board will when possible, regularly examine applicants on the second Saturday and/or Sunday of January and June at a time and place determined by the board. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.070. BASIS OF QUESTIONS. All examination questions will be based upon material contained in standard text books used in chiropractic schools or colleges. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.080. IDENTITY OF APPLICANT. An applicant for examination will be designated by a number instead of a name, so that the identity is not disclosed to the examiners until the papers are graded. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.090. METHOD OF EXAMINATION. The paper of an applicant will be identified by numbers as follows:

(1) each envelope will be numbered and will contain a blank sheet of paper with a number on it which the applicant shall write his name and address on the blank and return it to the envelope which shall be sealed and delivered to the director;

(2) each applicant shall place on his examination paper the number given to him. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.100. MATERIALS. No applicant may have on his examination table any paper or object other than the examination questions, examination paper, blotter, pencil, pens, and ink, eraser, and a watch. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.110. LEAVING THE EXAMINATION ROOM. No candidate may leave the examination room for any reason unless accompanied by a proctor or board member. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.120. DISTURBANCE. No applicant may communicate with another applicant during the examination. A disturbance on the part of the applicant will cause him to be required to leave the examination room. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.130. QUESTIONS. An applicant shall rely solely on his own judgment for the meaning of each question, and on his own knowledge of the subject in answering each question. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.140. GRADES. (a) An applicant failing to make required grade average will be credited for the subjects passed.

(b) An applicant failing to attain a general average rating of 75 percent after two examinations is required to produce evidence of refresher courses in the subjects failed before he is allowed a re-examination. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130

12 AAC 16.150. RE-EXAMINATION. An applicant may apply for re-examination by

(1) informing the board of his intention at least 30 days before the next regularly scheduled examination: and

(2) paying the re-examination fee. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.160. TIME. An applicant will be allowed to proceed at his own speed on each subject given in the examination, within the time specified. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.170. SPECIAL EXAMINATION. A special examination of an applicant may be

allowed if all members of the board agree and notice of 30 days in writing is given to the board and the applicant has complied with the provisions of this chapter and AS 08.20. (Eff. 3/8/71, Reg. 37)

Authority: AS 20.055

12 AAC 16.180. RECONSIDERATION OF PAPERS. The examining board will not reconsider an applicant's examination papers unless the applicant presents his reason in writing to the board. The applicant is bound by the decision of the board. (Eff. 3/8/71, Reg. 37)

Authority: 08.20.055

12 AAC 16.190. CERTIFICATES. The board shall issue one form of license to those passing the examination for licensure. The license shall be designated "License to Practice Chiropractic." The license authorizes its holder to practice chiropractic in the state, and shall be signed by all board members. All certificates shall be numbered consecutively. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.200. TEMPORARY PERMITS. (a) Temporary permits are subject to termination by the board at any time if, in the board's determination, the holder of the permit is violating ethical behavior or law after being warned by the board that this action in regard to him was being contemplated.

(b) Temporary permits shall be displayed in a conspicuous place in the office where the holder practices chiropractic.

(c) It is the duty of the permittee to inform the board of any change in his mailing and practicing address. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.160

12 AAC 16.210. ASSOCIATES. (a) No associate may treat or diagnose a patient professionally unless

(1) he furnishes the board periodic evidence that he is pursuing reasonable academic study to fulfill the two years liberal arts or science requirements within the three-year period;

(2) he executes a contract with the supervising chiropractor which provides for a definite salary and no fee splitting, and provides that no remuneration may be made except under terms of the contract;

(3) the supervising chiropractor assumes liability for all malpractice of the associate.

(b) The board will deny the practice of an associate if in the opinion of the board the contract permits unfair advantage to be taken of the associate.

(c) The associate shall inform the board of any changes in his current mailing address and contemplated changes in his contract.

(d) The associate shall openly display his license in the office in which he practices and on the license shall be stamped in a conspicuous place on the face, the words, "associate" or "as the associated chiropractor licensed under statute."

(e) The board will revoke the license of an associate at any time it reasonably appears impossible for the associate to complete the specified curricula within three years from the date of licensure issue.

(f) The licensed associate shall use the word "associate" after his name to inform the public of his status. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.135

12 AAC 16.220. DUPLICATE LICENSES. The board shall, upon request, issue a duplicate license in place of the original if the original is destroyed or lost, or if the licensee legally changes his name. The duplicate license shall have on the face in a conspicuous place the word "duplicate." (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.230. MISREPRESENTATION. As used in AS 08.20.170 (2) "misrepresentation" means

(1) the use of any advertising in which untruthful, exaggerated, improper, misleading or deceptive statements are made;

(2) the advertising of techniques or modalities to infer or imply superiority of treatment or diagnose by their use;

(3) impersonation of another practitioner of like or different name;

(4) advertising either in his own or under the name of another person, or clinic, or concern, actual or pretended, in any newspaper, pamphlet, circular or other written or printed paper or document, professing superiority to or a greater skill than that possessed by fellow chiropractic physicians;

(5) the advertising or holding oneself out to treat diseases or other abnormal conditions of the human body by any secret formula, method or procedure;

(6) knowingly permitting or allowing any person to use his certificate in the practice of any system or mode of treating the sick or afflicted. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.240. UNPROFESSIONAL CONDUCT. In AS 08.20.170 (3) "unprofessional conduct" means

(1) aiding the practice of any of the healing arts by an unlicensed person;

(2) the use of his name under the designation "Doctor," "Dr.," "Chiropractor," "Chiropractor Physician," or "Ph.C." or any similar designation with reference to the commercial exploitation of any goods, wares or merchandise;

(3) advertising which contains offers, premium gifts or cut rates for the purpose of attracting or retaining patients; or which is not in accordance with sec. 250 of this chapter;

(4) mention of either

(A) superiority to other members of the chiropractic profession; or

(B) of the school from which the advertising chiropractor was graduated;

(5) the use of handbills for the purpose of attracting patients;

(6) advertising the prices for which services are available;

(7) dishonorable conduct of degradation by a license relating to the occupation. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.170

ARTICLE 3. GENERAL PROVISIONS

Section
250. Violations
260. Advertising
270. Definitions

12 AAC 16.250. VIOLATIONS. It is the duty of all members of the board to report to the Division of Occupational Licensing, instances of alleged violations of AS 08.20.100. The secretary shall inform a new licensee in the state that it is his duty to report all instances of suspected unlicensed practice of chiropractic known to him to the board. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.100

12 AAC 16.260. ADVERTISING. (a) Upon the opening, reopening or removal of an office for the practice of chiropractic, the chiropractor may publish, in local newspapers, an announcement, which shall be limited to a statement of his name, title, profession, degrees, address, telephone number and office hours. The announcement may not be published for more than 90 days after the opening, reopening, or removal of the office. The announcement may not exceed eight square inches in area.

(b) When a chiropractor transfers his established practice to a successor, the successor shall, within a reasonable time, remove from all signs, cards, stationery and directories connected with the practice he has acquired or is acquiring, all such words or phrases as "successor to" or words of like import. Under no circumstances may these signs, cards, stationery or advertising

continue for a period of more than two years. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.270. **DEFINITIONS.** In this chapter:

(1) "board" means the Board of Chiropractic Examiners as established by AS 08.20.010. (Eff. 3/8/71, Reg. 37

Authority: AS 08.20.055

STATE OF ALASKA
Board of Pharmacy
(October, 1978)

Findings

The practice of pharmacy is controlled by AS 08.80, by Title 17 (Food and Drugs) and by federal laws and regulations. Practitioners dispense, upon prescription, controlled and dangerous drugs as well as those routinely prescribed to relieve pain or illness or to promote health. Lack of control over persons responsible for appropriate dispensing and security of these substances would present a danger to the welfare of the public. In general, the Board of Pharmacy has operated to insure high standards within the profession, to allow entry of qualified individuals, and to provide availability of services to the consuming public. Inconsistencies, exceptions and recommendations concerning the Board and regulation of the profession are cited in this report. It is recommended that the Board of Pharmacy and State regulation of this profession be reestablished for another four-year period.

I. General Information

A. Regulated Parties

1. Pharmacists
2. Intern Pharmacists
3. Pharmacies
4. Shopkeepers

B. Statutory Definition of Regulated Profession

1. Pharmacist: None specified

2. Intern pharmacist: None specified

3. Pharmacy: "... includes 'drug store' and 'pharmacy or drug department' and means a place of business in which physicians' prescriptions are compounded or dispensed and in which drugs and medicines are compounded or dispensed;" (AS 08.80.480(5))

4. Shopkeepers: "... means a retail dealer who sells over the counter medicinal preparations in original unbroken packaging which do not require a prescription for dispensing." (AS 08.80.480(19))

C. Nature and Composition of Board

1. Board members and terms:

Five-year term (no restrictions regarding consecutive terms or number of terms).

Eldon Ulmer (Chairman)	Ends March 31, 1977
James L. Murphy	Ends March 31, 1976
Lester E. Elkins	Ends March 31, 1983
Charles R. Rush (Secy.)	Ends March 31, 1979
James H. McCorcle	Ends March 31, 1980
Fred Savok	Ends March 31, 1981
Robert K. Snider	Ends March 31, 1980

2. Representation:

Profession = 5
Public = 2

3. Qualifications:

Five members shall be resident licensed pharmacists who have actively practiced in the State for the three-year period immediately preceding appointment and two members shall be persons with no direct financial interest in the health care industry.

D. Licensing Data

By Examination

Year	# of Candidates	# Passed	# Failed	% Passed	% Failed
1975	2	1	1	50	50
1976	1	1	0	100	0
1977	2	2	0	100	0
1978 (through June 30)	4	4	0	100	0

Currently licensed:

in-State	=	179 (through June, 1978)
out-of-State	=	95 (through June, 1978)
Total		274

Currently licensed pharmacies: 77

Currently licensed drug rooms: 14

Current shopkeeper permits: 0

E. Fees

1.	examination fee	$50.00
2.	reexamination fee	15.00
3.	reciprocity investigation fee	25.00
4.	biennial license fee	50.00
5.	temporary license fee	10.00
6.	wholesale drug dealer biennial license fee	50.00
7.	retail pharmacy biennial license fee	50.00
8.	pharmacy intern registration fee	10.00
9.	emergency permit fee	10.00
10.	hospital pharmacy biennial license fee	50.00
11.	hospital drug room biennial license fee	25.00
12.	nursing home license fee	25.00
13.	shopkeepers biennial permit fee	10.00
14.	license amendment or replacement fee	2.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	$5,570.00	$13,883.00	$8,384.00	$16,547.00
-refunds	25.00	35.00	135.00	65.00
Total	5,545.00	13,848.00	8,249.00	16,482.00
Expenditures				
Per Diem	551.25	2,677.15	2,216.67	2,016.67
Transportation	345.20	1,928.53	1,508.28	1,712.80
Phone	218.00	252.97	140.55	215.74
Printing, Advertising & Postage	495.58	586.30	320.23	313.19
Fees & Services	120.00	390.00	330.00	100.00
Rents, Leases, Other	-	19.50	139.50	543.00
Total	$1,730.03	$ 5,854.45	$4,655.23	$ 4,701.40
Surplus	$3,814.97	$7,993.55	$3,593.77	$11,580.60
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	5	0	0
1976	4	0	0
1977	5	0	0
1978 (through June 30)	1	0	0

Pending: 15

The largest portion of these cases was referred by members of the Board or profession and most deal with allegations of unethical advertising. Due to the nature of offense and length of time since filed, several of these complaints may be considered moot at this point.

II. Criteria and Analysis

A. To what extent has the Board of Pharmacy operated in the public interest?

Overall, the Board of Pharmacy is, and has been, acting in the public interest in assuring qualified practitioners and availability of services throughout the State. Recommendations and observations made in this report are designed to enhance Board operation in regulating the profession in a manner which is most desirable for the continued protection of the public.

The Board of Pharmacy has a number of statutory powers and duties through which it regulates the profession. For example, it may examine applicants, investigate State or federal violations, promulgate and adopt regulations, register and govern the practice of interns, and promulgate regulations

to ensure security of dangerous drugs (AS 08.80.030). AS 08.80.040 provides that the Board shall examine applicants, grant registration, initiate prosecution of violators, submit reports on the condition of pharmacy in the State to the Legislature, maintain necessary records, issue a list of potentially dangerous medicinal ingredients or preparations, and issue shopkeeper permits. These powers and duties are felt generally to be necessary if the Board is to continue to function for the public interest and protection by maintaining control over the quality and integrity of practitioners and pharmaceutical related establishments.

Qualifications for licensure include fluency in the English language, two character affidavits, graduation from a recognized college of pharmacy, successful completion of the NABP examination and 1,500 hours of internship, of which 540 must be postgraduate. The only other requirement established by the Board is that the applicant must pass a jurisprudence examination given by a member of the Board. Applicants may take this jurisprudence examination at their convenience and as many times as needed to pass.

The written examination proctored by the Board is developed and provided by the National Association of Boards of Pharmacy. This examination, the NABPLEX, is given nationwide to graduates who are then registered through the National Board. Very few licentiates have been licensed by examination in Alaska, only those who have not previously taken the National Board examination. Most applicants for an Alaska license are approved by endorsement as certified by the National Board.

Licensure may be delayed in instances where an applicant does not meet the requirement for 540 hours of postgraduate training under direct supervision of a licensed pharmacist. Registration as a postgraduate intern is then available until completion of the requirement at which time a permanent license is issued.

Upon completion of all items except validation of registration by the National Board, a Board member may issue a temporary registration certificate. Temporary certificates are valid for three months or until the next Board meeting - whichever is longer, may be extended for 60 days maximum, are nonrenewable and are issued on a one-time basis. This procedure allows adequate time in which to receive NABP certification and allows the applicant to begin practicing in the interim. Pregraduate intern permits are also issued to applicants who are enrolled and at least a junior in pharmacy school.

Practices and policies which utilize standard examinations, standard endorsement procedures and the issuance of temporary permits to qualified applicants are felt to operate in the public interest by encouraging entry into the profession and promoting increased availability of services.

Regulations adopted by the Board govern the practice of interns, practices of hospital pharmacies, and expanded definitions. Statutory authority to promulgate regulations ensuring dangerous drug security and to issue a list of potentially dangerous medicinal ingredients or preparations has been provided, the latter being a mandatory directive. However, some difficulty has been encountered by the Board in attempting to follow through on these. Some time ago regulations were proposed with respect to the required list of dangerous ingredients and preparations; they were not approved and no further action has taken place. This requirement is mandated by statute and should be pursued by the Board. Promulgation and adoption of regulations concerning security of dangerous drugs has also not occurred although this statute is optional and not mandatory.

Investigations of statute violations per se are conducted by and are generally the responsibility of the administrative agency. The Board, on its own initiative, and considering budgetary constraints, has con-

ducted on-premise inspections of pharmaceutical establishments wherever and whenever possible. These inspections include drug security, sanitation, access of pharmacy within the building, display of license, and equipment and references available. Because of budgetary limitations, these inspections have not occurred as often as may be desirable and in some areas very seldom or not at all. Self-inspection forms may be mailed in lieu of a personal visit as a reminder to proprietors.

Statutory provisions are made with respect to registration of shopkeeper permits. Issuance of such permits would entail on-going certification and regulation of all food stores, convenience stores, and so on, which sell items such as aspirin and laxatives to the public. Control over these establishments would assist in such matters as recalling items at the request of the manufacturer but regulation in this area has been unworkable due to opposition on behalf of retail establishments. Without enforcement capabilities, the Board of Pharmacy has requested that provisions regarding shopkeepers be deleted from the statutes.

No report has been made to the Legislature on the condition of pharmacy in the State although the administrative agency has been requested by the Board to accomplish this.

Maintenance of registration records with supporting documents is an area of some concern. Administrative agency files are inadequate with respect to licensing of applicants and actions authorized by the Board. Additionally, there is evidence that one member is acting or approving action which should be documented as occurring after consideration by the Board as a whole. For example, temporary permits, retail pharmacy registrations, and hospital pharmacy registrations are routinely issued by one Board member with no record of other members' consideration or approval. Statutes authorizing these items address the Board, not individual members, and the Board should take action as a body at a duly conducted meeting in the performance of its duties. Also missing from

some files are: (1) renewal information, (2) records of approval for licensure following internship, (3) jurisprudence examinations and scores, (4) copies of initial licenses, (5) application information, and (6) records of licensure authorization. Every effort should be made by the Board and by the agency to maintain adequate records and documents. Organization of records, forms and examination information would better enable the Board to perform its functions, such as submission of an annual report.

Another problem in this area is that fees, examination materials, application forms and other information have frequently been initially sent to a member of the Board rather than to the administrative agency. This procedure should be discontinued and all materials pertaining to applicants and licensees should be forwarded to and maintained by the administrative agency. Again, review and action on files should only occur through consideration of the Board at a regular meeting.

The Board of Pharmacy has been incorrectly interpreting and applying statutes concerning temporary registration in some instances. AS 08.80.150 states, "The board shall issue a temporary license to an applicant applying for registration as a pharmacist under § 140 of this chapter upon written or oral examination..." § 140 provides for licensure by endorsement for an applicant certified by the National Board who meets the requirements of § 110(1) - (4). Section 110(5), requiring 1,500 hours of internship training of which 540 hours must be postgraduate, is excluded from the endorsement provision and from the temporary registration provision. The Board has, however, denied temporary registration to applicants who have not had 540 hours of postgraduate experience, against statutory provisions. Amendments have been recently proposed to change these particular statutes but until such time as a change is made, if it is made, the Board should act in compliance with law.

No continuing education requirements are in effect for members of this profession nor are any contemplated as a condition of relicensure. The Board has recently taken a position in favor of such requirements but against mandatory imposition based on the scarcity of available educational resources within the State. Valid arguments may be made against mandatory continuing education. One is the fact that if ongoing education is required, provisions must be made to allow compliance. Pending further study of this issue, one opinion[1] seems to indicate that vigorous investigation and enforcement programs may be an effective course of action. It must be recognized, however, that there is a widespread trend toward continuing education requirements as a condition of license renewal. In view of the technical nature of the profession, changing procedures, new and increasing numbers of medicinal aids, and increasing technology in this field, it is recommended that the Board reconsider its position and adopt regulations requiring some form of continuing competency as a condition of relicensure. This may also be accomplished by statute with the Board outlining acceptable educational criteria. Any exceptions to such requirements should also be delineated by statute.

B. To what extent has the operation of the Board of Pharmacy been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

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[1] Shimberg, B., Improving Occupational Regulation, "Officials from 30 states discuss common problems and search for solutions," Educational Testing Service, Princeton, N.J., 1976, p. 35.

As previously noted, present statutes are considered to be appropriate to Board operation. While there have been no particular difficulties with advertising in the profession, AS 08.80.420(b) should be repealed in keeping with recent federal court decisions which deal with this subject. A statutory provision is also recommended which would require continuing education and which would clarify qualifications for temporary registration.

Board policies which allow for one member to act on matters of licensing and which circumvent the administrative agency's responsibility in the areas of fees collection and applicant files are felt to impede effective regulation. There is also indication that applicants are notified of approval for licensure but no certificate is issued until the applicant passes the jurisprudence examination. If certification is to be withheld in this manner, the Board and the regulations should clearly indicate that this examination is a prerequisite to licensure.

Available records further indicate that temporary registrants may have been practicing without authorization. In several instances temporary registrations expired prior to the effective date of licensure with no record of an extension having been applied for or approved. At least one applicant was granted two temporary permits with a three-month interruption between them. The effective date of licensure was beyond initial temporary registration even with an extension period. Temporary registrations are statutorily provided for applicants for licensure by endorsement pending National Board certification. They have, on occasion, been issued pending receipt of such items as birth certificate notarization. The Board should grant temporary registration privileges as provided by statutes and in a uniform manner. It further should act on these matters as a Board and ensure that adequate documentation exists for action.

The desires of the Board to delete AS 08.80.030(6), .040(7), .160(13), .380, and .480(19) concerning shopkeepers is concurred with as being unrealistic in terms of regulation or control. Opposition previously cited regarding regulation of potentially dangerous medicines and preparations has made these statutory provisions unenforceable under present circumstances.

The Board of Pharmacy has experienced some difficulty in its administrative operations with respect to personnel and budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs although high employee turnover has impeded continuity and follow-up on Board requests. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes. An expanded budget which would allow for increased inspection scheduling would be desirable if this Board is to be effective in administration of its duties.

Consideration should be given to an increased number of scheduled meetings to allow the Board to consider matters needing action and to facilitate documentation of subsequent action.

The Board of Pharmacy has experienced the same difficulties as have all other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and poten-

tially injurious licensing complaints. It must be noted that until recently this Board was unaware of the number of complaints on file concerning the profession.

It is undeniably in the public interest to enforce the laws promulgated for the protection of public health and welfare and to take expeditious action upon receipt of potentially serious complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Board of Pharmacy recommended statutory changes which are generally of benefit to the public interest?

Health care legislation enacted in 1976 provided amendments to existing statutes relating to the Board and the practice of pharmacy concerning: (1) addition of lay members to the Board; (2) Medical Indemnity provisions; (3) applicability of the Administrative Procedure Act; (4) expansion of violations provisions; and (5) general "housekeeping" items.

The Board of Pharmacy has discussed and recommended statutory and regulatory changes which it has determined would be of benefit in regulating the practice of pharmacy. Specific recommendations of direct benefit to the public are absent from Board records, however, increased administrative efficiency has an overall beneficial public effect.

D. To what extent has the Board of Pharmacy encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The Board is conscientious and sensitive to public concern and to aspects of public health and welfare. However, very little public interest or participation in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Most public concern is expressed by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers in the State. It can be assumed that members of the public are somewhat reluctant to involve themselves in areas of a technical or scientific nature and which may be considered too complex for anything but minimal scrutinization by a layperson. A technical and professional "barrier" of sorts exists, due to the nature of the occupation involved, which probably tends to deter public knowledgeability and participation.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.[2]

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[2]Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Pharmacy processed and resolved?

As of June, 1978 there were 15 complaint cases pending in agency files. Most of these deal with advertising and would be invalid in view of recent court rulings. Until recently the Board has been unaware of the number and nature of these complaints and little action was taken. The administrative agency is currently addressing complaints and investigative procedures and the need for timely disposition of issues. Investigation services to all boards and commissions under its jurisdiction are expected to improve.

There have been no complaints against the Board of Pharmacy or its members and no complaints regarding the Board or profession were reported received by the Office of the Ombudsman.

An accelerated inspection program by the Board is recommended to ensure adherence to laws, quality of premises and quality of services provided. Concurrently, it is recommended that budgetary allowances be made for such inspections throughout the State.

F. To what extent does the Board of Pharmacy present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Board of Pharmacy. Individuals wishing to practice within the State must submit fees and application with documentation of qualifications. Two examinations each year are currently scheduled. Applicants who demonstrate the required level of knowledge and proficiency are granted a license by examination or by endorsement.

High professional standards are advocated by this Board and members have exhibited a willingness to serve to the utmost to assure those high standards. Exceptions to procedure and statute and inconsistencies noted in this report are not felt to be a result of professional disinterest or disregard of public welfare. On the contrary, entry into the profession is facilitated and expedited by the Board in most cases. Recommendations made should be implemented to correct any inequities and to increase administrative efficiency. The Board should consider scheduling one or two additional meetings each year for the purpose of acting on Board business and coordinating its actions.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Pharmacy in its own activities, and in its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for two other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Pharmacy issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Pharmacy to better serve the interests of the public?

AS 08.80.030(6), .040(7), .160(13), .380 and .480(19), concerning shopkeepers, should be repealed as being unenforceable and unrealistic in terms of control. AS 08.80.420(b) should also be repealed as inappropriate with respect to advertising restrictions. The Board should be given specific statutory direction concerning the subjects of continuing education requirements and temporary permit qualifications.

The Board of Pharmacy has adequate regulatory authority. The Board should act to comply with AS 08.80.040(6) which requires issuance of a list of dangerous medicinal ingredients or preparations. It should also clarify the requirement for a jurisprudence examination as it relates to disbursement of certification. Board members should discontinue the practice of acting independently from the Board and from requesting or retaining materials that should be directed to and maintained by the administrative agency. This would also facilitate compliance with .040(4) which requires reports to the Legislature on the condition of pharmacy in the State. The administrative agency will establish procedures and ensure maintenance of records to facilitate assistance to the Board and accountability to the public or other interested parties. The agency will also continue to address the need for efficient and responsive investigation of complaints.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations, and the Division of Occupational Licensing administrative overhead such as staff salary, examination expenses and investigative services. Resources which would enable the Board to conduct periodic inspections of premises throughout the State are not available. This function of the Board is necessary to insure compliance with laws and standards and to inspect the quality of establishments and services. Budgetary allowances are needed for adequate inspection scheduling and for an increase in meetings when necessary to conduct Board business.

Current Board composition is also determined to be adequate. It is recommended, however, that the number of terms served be restricted to one in view of the fact that members serve for a five-year period.

III. Conclusion

The Board of Pharmacy and State regulation of this profession is justified in terms of protection of public health, safety and welfare.

IV. Summary of Recommendations

The Board of Pharmacy should be reestablished for an additional four-year period. The following recommendations are made:

1. The Board should comply with statutory provisions and apply those provisions uniformly.

   a. The Board should comply with § 040(6) which requires that it "issue a list of potentially dangerous medicinal ingredients or preparations that may be sold only under the direct supervision of a licensed pharmacist;" (See discussion on p. 9)

   b. The Board should "promulgate regulations to ensure adequate security for all dangerous drugs" as authorized by § 030(8). (See discussion on p. 9)

   c. The Board and the administrative agency should comply with § 040(4) which requires a report to the Legislature on the condition of pharmacy within the State. (See discussion on p. 10)

   d. The Board should apply the requirements for the issuance of temporary registrations as delineated by statute. While the Board is proposing a change which would make 540 hours of postgraduate supervision under a licensed pharmacist manadatory, this is not presently a requirement for temporary registration. (See discussion on p. 11)

2. The Board should clarify its position with respect to a jurisprudence examination and its relationship to licensure. (See discussion on p. 13)

3. A statutory change is recommended which sets out mandatory continuing education requirements for this profession and any appropriate exceptions. The Board should then address the kinds of educational courses which meet the requirements. (See discussion on p. 12)

4. Consideration should be given to deleting § .420(b) concerning advertising and § .030(6), .040(7), .160(13), .380, and .480(19) concerning shopkeepers and their regulation. (See discussion on p. 10)

5. The Board should act on all matters pertaining to licensure and examination privileges as a body at a regular business meeting. Individual members should not act independently of the Board in granting or denying these privileges. (See discussion on p. 10)

6. It is recommended that the Board expand its inspection duties to encompass periodic inspections of all establishments throughout the State and that it increase the number of meetings scheduled each year when necessary for the efficient conduct of Board business. The Board will not, however, be able to accomplish this without adequate budgetary allowances. (See discussion on p. 9)

7. It is recommended that membership on the Board be restricted to one five-year term unless initially appointed to fill a vacant term or following a term of absence. (See discussion on p. 19)

Chapter 80. Pharmacy Act.

Article
1. The Board of Pharmacy (§§ 08.80.010—08.80.100)
2. Licensing and Registration (§§ 08.80.110—08.80.265)
3. Duties of Licensed Pharmacists (§§ 08.80.270—08.80.365)
4. Unlawful Acts (§§ 08.80.370—08.80.460)
5. General Provisions (§§ 08.80.470—08.80.490)

Article 1. The Board of Pharmacy.

Section
10. Creation and membership of Board of Pharmacy
20. Term of office
30. Powers of the board
40. Duties of the board
50. Applicability of Administrative Procedure Act
60. Meetings of the board
70. Quorum
80. Expenses of members
90. Disposition of fees
100. [Repealed]

Sec. 08.80.010. Creation and membership of Board of Pharmacy. There is created the Board of Pharmacy, composed of seven members, five of whom shall be pharmacists licensed in the state who have been actively engaged in the practice of pharmacy in the state for a period of three years immediately preceding their appointment. Two shall be persons with no direct financial interest in the health care industry. Whenever possible, the board shall include at least one member from each judicial district. (§ 3 ch 194 SLA 1955; am § 25 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment, in the first sentence, substituted "seven members, five" for "five members, each," "pharmacists" for "a pharmacist," "have" for "has," and "their" for "his." The amendment also added the present second sentence.

Am. Jur. and C.J.S. references.—17 Am. Jur., Drugs and Druggists, §§ 7 to 13.
28 C.J.S. Druggists §§ 1, 2, 4.

Sec. 08.80.020. Term of office. Members of the board are appointed by the governor, and confirmed by the legislature in joint session, for overlapping terms of five years, or until their successors are appointed and qualified. The terms of the public members shall be staggered so that they do no expire at the same time. An appointment to fill a vacancy is for the unexpired term. The term of office begins on April 1 of each year. (§ 3 ch 194 SLA 1955; am § 26 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment added the present second sentence.

Sec. 08.80.030. Powers of the board. The board may

(1) elect a president and secretary from its membership and adopt rules for the conduct of its business;

(2) examine applicants for registration as pharmacists;

(3) investigate individually, collectively, or through its agent, for violations of this chapter, or of any other state or federal statute relating to the practice of pharmacy;

(4) adopt regulations and do whatever else is necessary and advisable to carry out the purposes of this chapter;

(5) promulgate regulations to carry out the purposes of this chapter;

(6) examine applicants for shopkeeper permits;

(7) register intern pharmacists and promulgate rules relating to their minimum experience requirements;

(8) promulgate regulations to ensure adequate security for all dangerous drugs. (§ 4 ch 194 SLA 1955; am § 1 ch 72 SLA 1969; am § 9 ch 69 SLA 1970; am § 1 ch 206 SLA 1972; am § 1 ch 187 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "investigate individually, collectively, or through its agent, for" for "investigate, individually, collectively, all alleged" in paragraph (3).

Legislative committee report.—For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 08.80.040. Duties of the board. The board shall

(1) examine qualified applicants for registration as pharmacists; each examination shall be graded by a member who resides in a judicial district other than the district in which the applicant resides;

(2) grant certificates of registration;

(3) initiate prosecution of any person violating this chapter;

(4) report to the legislature on the condition of pharmacy in the state; the report shall include a resumé of the proceedings of the board during the year and the names of all persons registered under this chapter;

(5) maintain a record of the name and place of business of each person registered under this chapter, together with evidence adequate to justify registration;

(6) issue a list of potentially dangerous medicinal ingredients or preparations that may be sold only under the direct supervision of a licensed pharmacist; the failure to include an ingredient or preparation in this list does not affect any law or regulation, which prohibits or restricts the sale of the ingredient or preparation; and

(7) issue shopkeeper permits in accordance with § 380 of this chapter. (§ 5 ch 194 SLA 1955; am § 2 ch 206 SLA 1972)

Sec. 08.80.050. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62).

Sec. 08.80.060. Meetings of the board. The board shall meet at least once each year at the call of the president for the transaction of business

properly before it. The president shall also call the board into session when requested in writing by at least two members. The secretary shall give at least 30 days written notice to all members before a meeting. (§ 6 ch 194 SLA 1955)

Sec. 08.80.070. Quorum. Four members constitute a quorum for the transaction of business. However, when the board meets for the purpose of examining applications for registration, three members of the board constitute a quorum. (§ 6 ch 194 SLA 1955; am § 27 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "Four members" for "Three members" at the beginning of the section and "three members" for "two members" near the end of the section.

Sec. 08.80.080. Expenses of members. Members of the board are entitled to reimbursement for actual travel expenses incidental to the discharge of their duties and, while in the performance of their duties, are entitled to the per diem expenses allowed by law. (§ 7 ch 194 SLA 1955)

Sec. 08.80.090. Disposition of fees. The fees collected by the secretary of the board shall be deposited in the general fund of the state. (§ 21 ch 194 SLA 1955)

Sec. 08.80.100. Board secretary as certifying officer.
Repealed by § 3 ch 59 SLA 1966.

Article 2. Licensing and Registration.

Section
110. Qualifications for registration
115. Registration of pregraduate and postgraduate intern pharmacist
117. Malpractice insurance
120. Grading and content of examination
130. Re-examination
140. License by endorsement
150. Temporary registration
155. Emergency permit
160. Fees
170—210. [Repealed]
220. Prescription department required for issuance of license
230. Sanitary conditions required for issuance of license
240. Form and display of registration certificate and license
250. Renewal of lapsed registration
260. Grounds for refusing or revoking a license
265. Limits or conditions on license; discipline

Sec. 08.80.110. Qualifications for registration. An applicant for registration as a pharmacist shall

(1) be fluent in the reading, writing and speaking of the English language;

(2) furnish the board with at least two affidavits from reputable citizens, whom he has known for at least one year, attesting to his good moral character and freedom from addiction to the use of drugs or alcoholic liquors;

(3) be a graduate of a college of pharmacy recognized by the National Association of Boards of Pharmacy;

(4) pass an examination by a board of pharmacy which board has been approved by the National Association of Boards of Pharmacy;

(5) have completed at least 1,500 hours of internship training under the direct supervision of a licensed pharmacist in a licensed pharmacy, 540 hours of which must have been completed after graduation. (§ 8 ch 194 SLA 1955; am § 1 ch 24 SLA 1968; am § 2 ch 72 SLA 1969; am §§ 3, 4 ch 206 SLA 1972; am § 16 ch 127 SLA 1974)

Effect of amendment. — The 1974 amendment deleted "a citizen of the United States and" following "be" in paragraph (1).

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Cited in Hicklin v. Orbeck, Sup. Ct. Op. No. 1435 (File No. 3025), 565 P.2d 159 (1977).

C.J.S. references. — 28 C.J.S. Druggists § 3; 53 C.J.S. Licenses §§ 32 to 34.

Sec. 08.80.115. Registration of pregraduate and postgraduate intern pharmacist. (a) An applicant for registration as a postgraduate intern pharmacist shall meet the requirements of § 110(1) — (3) of this chapter and pay the required fee.

(b) An applicant for registration as a pregraduate pharmacist shall meet the requirements of § 110(1) and (2) and shall be enrolled in a pharmacy school recognized by the National Association of Board of Pharmacy and shall be declared a junior by the pharmacy school. An applicant for registration as a pregraduate internship pharmacist may be on recognized vacation from the pharmacy school; however, the vacation may not exceed one quarter or one semester. The pregraduate internship pharmacist shall pay the required fee.

(c) The registration of postgraduate or pregraduate internship pharmacists is valid for one year and may be renewed upon application. (§ 5 ch 206 SLA 1972)

Sec. 08.80.117. Malpractice insurance. If medical malpractice insurance for pharmacists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of pharmacist services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 28 ch 102 SLA 1976)

Sec. 08.80.120. Grading and content of examination. To pass the state pharmacy examination each applicant must attain a general average of not less than 75 per cent and a grade of not less than 60 per cent in any one category of the National Association of Board of Pharmacy Standard Examinations for licensure or an equivalent examination given by the board. (§ 89 ch 194 SLA 1955; am § 2 ch 24 SLA 1968; am § 6 ch 206 SLA 1972; am § 1 ch 50 SLA 1974)

Effect of amendment. — The 1974 amendment, at the end of the section, substituted the language beginning "any one category" and ending "examination given by the board" for "each of the following subjects on the examination: jurisprudence, chemistry, mathematics, pharmacy, pharmacology and related subjects, and in the discretion of the board, oral theory and practical pharmacy."

Legislative committee report. — For report on ch. 50, SLA 1974 (HB 588), see 1974 House Journal, p. 311.

Sec. 08.80.130. Re-examination. An applicant unsuccessful in his initial examination may take a second examination within one year without further application and upon payment of the re-examination fee. If the applicant fails to take a second examination within one year, he must submit a new application for any examination. (§ 8 ch 194 SLA 1955; am § 7 ch 206 SLA 1972)

Sec. 08.80.140. License by endorsement. The board may register without examination an applicant who has been certified as a registered pharmacist by the National Association of Boards of Pharmacy, if the applicant meets the requirements of § 110(1) — (4) of this chapter. (§ 8 ch 194 SLA 1955; am § 3 ch 24 SLA 1968; am § 3 ch 72 SLA 1969; am § 8 ch 206 SLA 1972)

Sec. 08.80.150. Temporary registration. The board shall issue a temporary license to an applicant applying for registration as a pharmacist under § 140 of this chapter upon written or oral examination before a member of the board and certification by the member to the secretary of the board that the applicant is competent to receive a temporary license. The temporary license is valid for three months, or until the next regular meeting of the board, whichever is longer. A temporary license is not renewable, but at the discretion of the issuing board member may be extended for a period not to exceed 60 days, and an applicant may not receive more than one temporary license. An applicant whose registration has been denied by the board is not eligible to receive a temporary license. (§ 9 ch 194 SLA 1955; am § 9 ch 206 SLA 1972)

Sec. 08.80.155. Emergency permit. (a) The board may in its discretion grant an emergency permit to a pharmacist for the purpose of providing coverage in a pharmacy which is temporarily without the services of a pharmacist due to death, illness or other emergency circumstances.

(b) A pharmacist applying under (a) of this section must submit proof that he holds a license in good standing in a state recognized by the National Association of Boards of Pharmacy, and pay the fee required under § 160 of this chapter.

(c) A permit issued under this section is valid for a period not to exceed 60 days. (§ 10 ch 206 SLA 1972)

Sec. 08.80.160. Fees. The following fees shall be imposed under this chapter when applicable:

(1) examination fee	$50
(2) re-examination fee	15
(3) reciprocity investigation fee	25
(4) biennial pharmacist license fee	50
(5) temporary license fee	10
(6) wholesale drug dealer biennial license fee	50
(7) retail pharmacy biennial license fee	50
(8) pharmacy intern registration fee	10
(9) emergency permit fee	10
(10) hospital pharmacy biennial license fee (in and out-patient)	50
(11) hospital drug room biennial license fee (inpatient)	25
(12) nursing home and related facilities biennial license fee for inpatient dispensing	25
(13) shopkeepers biennial permit fee	10
(14) license amendment or replacement fee	2

(§ 10(a) ch 194 SLA 1955; am § 4 ch 24 SLA 1968; am § 11 ch 206 SLA 1972)

Sec. 08.80.170. Examination fee.

Repealed by § 7 ch 24 SLA 1968.

Sec. 08.80.180. Temporary registration fee.

Repealed by § 7 ch 24 SLA 1968.

Sec. 08.80.190. Renewal fee.

Repealed by § 7 ch 24 SLA 1968.

Sec. 08.80.200. Wholesale dealer license fee.

Repealed by § 7 ch 24 SLA 1968.

Sec. 08.80.210. Retail dealer license fee.

Repealed by § 7 ch 24 SLA 1968.

Sec. 08.80.220. Prescription department required for issuance of license. The board shall issue a license to operate a pharmacy only to an establishment which operates a bona fide prescription department. (§ 10 ch 194 SLA 1955)

Sec. 08.80.230. Sanitary conditions required for issuance of license. Failure to have proper sanitary appliances and to maintain orderly and sanitary premises are grounds for refusing a license to a pharmacy. (§ 10 ch 194 SLA 1955)

Sec. 08.80.240. Form and display of registration certificate and license. The registration certificate and license shall be in the form, and issued in the manner prescribed by the board. The license and certificate shall be conspicuously displayed in the premises for which issued or in which the licensee is employed. (§ 10 ch 194 SLA 1955)

Sec. 08.80.250. Renewal of lapsed registration. A previously licensed pharmacist who has not been registered for a period of three years or more shall take an oral examination before the board and satisfy it of his competence before the renewal of his registration. He may take a written examination if he desires. (§ 10 ch 194 SLA 1955; am § 5 ch 24 SLA 1968)

Sec. 08.80.260. Grounds for refusing or revoking a license. The board may refuse to issue, or may suspend or revoke a license to practice pharmacy for any of the following grounds:

(1) conviction of a felony or conviction of a misdemeanor involving moral turpitude;

(2) selling, bartering, or making available, morphine, cocaine or other narcotic to a person addicted to the use of drugs except upon prescription issued by a licensed physician;

(3) drug addiction;

(4) intemperance in the use of alcohol;

(5) violation of this chapter;

(6) conduct or habits inconsistent with professional standards;

(7) conviction of selling federal legend drugs without prescription of a licensed physician, surgeon, dentist or veterinarian;

(8) falsely stating in any license application that the applicant has not been convicted of or is not presently charged with any violation of pharmacy, liquor or narcotic laws;

(9) violation of regulations pertaining to the provision of adequate security for dangerous drugs. (§ 14 ch 194 SLA 1955; am § 6 ch 24 SLA 1968; am § 12 ch 206 SLA 1972)

Cited in Leege v. Martin, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

ALR and C.J.S. references. — What amounts to conviction within statute making conviction a ground for refusing or cancelling license or special privilege, 113 ALR 1179.

28 C.J.S. Druggists §§ 2 to 5; 53 C.J.S. Licenses § 44.

Sec. 08.80.265. Limits or conditions on license; discipline. (a) In addition to action under § 260 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice pharmacy under this chapter should

be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 28 ch 102 SLA 1976)

Article 3. Duties of Licensed Pharmacists.

Section		Section	
270.	Report of employee	310.	Record of sales
280.	Responsibility for goods sold	320.	Pharmacist required
290.	Affixing of label	330.	Licensed pharmacist as manager
295.	Substitution	340.	Who may prepare prescriptions
297.	Prescription prices available to consumer	350.	Technical aids required
300.	Record of prescriptions	360.	Sale of dangerous materials
		365.	Partial closure of pharmacy

Sec. 08.80.270. Report of employee. (a) An owner or manager of a pharmacy shall report to the board at the time the board directs, but not more often than twice each year, the names of all pharmacists employed in his pharmacy.

(b) An owner or manager of a pharmacy shall forward to the board a change of employee notice within 10 days of hiring or dismissing a pharmacist. (§ 11(a) ch 194 SLA 1955; am § 13 ch 206 SLA 1972)

Sec. 08.80.280. Responsibility for goods sold. An owner, or, if the owner is not a licensed pharmacist, a manager of a pharmacy, is responsible for the quality of drugs, chemicals and other medicines sold or dispensed by him, except those sold in the original packages of the manufacturer, and except those articles and preparations known as patent or proprietary medicines. (§ 11(b) ch 194 SLA 1955)

C.J.S. reference. — 28 C.J.S. Druggists §§ 6, 11 to 13

Sec. 08.80.290. Affixing of label. At the time of dispensing a prescription, there shall be affixed to the container of a prescription, a label bearing the name and address of the pharmacy compounding the prescription, the serial number of the prescription, the name and directions of the prescriber, the name of the patient, the date of dispensing, and the initials of the registered pharmacist who compounded the prescription. In addition a pharmacist shall indicate on the drug container the name and strength of the drug contained in it, unless specifically directed otherwise by the prescribing physician, osteopathic physician, dentist or veterinarian. If a drug is a mixture of pharmacologically active substances, only the name of the mixture need be indicated on the container, or in the absence of a name, the term

"physician's mixture" may be used. (§ 11(c) ch 194 SLA 1955; am § 14 ch 206 SLA 1972)

Sec. 08.80.295. Substitution. (a) Except as limited by (b) and (c) of this section, with the consent of the purchaser, the pharmacist may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent and meets the standards of (f) of this section. Upon substitution the pharmacist shall notify the purchaser and the person who prescribed the drug of the substitution and of the drug substituted.

(b) A person authorized to prescribe drugs shall specify in writing or by oral communication whether or not the pharmacist may substitute a drug under (a) of this section. Written specification may be accomplished either by (1) the physician personally initialing or checking the appropriate box on a prescription order form labeled "DISPENSE AS WRITTEN" or "SUBSTITUTION ALLOWED"; or (2) by handwriting on the prescription order. If the physician fails or neglects to give written specification, the prescription shall be dispensed as written. If the person communicating the specification does so orally, the pharmacist shall indicate that fact in handwriting on the written copy of the prescription order.

(c) Preprinted prescription order forms used by a person authorized to prescribe drugs shall contain boxes labeled "DISPENSE AS WRITTEN" and "SUBSTITUTION ALLOWED" to be checked or initialed by the person issuing the prescription.

(d) A pharmacist shall substitute a drug product under (a) of this section only when there will be a savings in cost to the purchaser.

(e) For a period of two years following September 16, 1976, every pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that "Under Alaska law a therapeutically equivalent but less expensive drug may, in some cases, be substituted for the drug prescribed by your doctor. Please consult your pharmacist or physician." The printing on the sign shall be in block letters not less than one inch in height.

(f) If a person authorized to prescribe drugs is temporarily unavailable, the pharmacist may, if he cannot supply the drug requested, substitute a drug or preparation of approximately equal therapeutic value so long as he notifies the author of the prescription at an early opportunity. The pharmacist in all cases of substitution, except when specifically indicated to the contrary by the prescriber, shall relate the nature of the change to the purchaser.

(g) A pharmacist may not substitute a product under the provisions of this section unless it has been manufactured with the following minimum good manufacturing standards and practices:

(1) maintain quality control standards equal to those of the Food and Drug Administration;

(2) comply with regulations promulgated by the Food and Drug Administration;

(3) mark products with identification code or monogram;

(4) label products with expiration date;

(5) provide reasonable services to accept returned goods that have reached their expiration date;

(6) maintain 24-hour resources for product information where practicable and financially feasible;

(7) maintain recall capabilities for unsafe or defective drugs;

(8) shall not refuse to sell to any properly licensed pharmacy.

(h) As used in this section, unless the context requires otherwise,

(1) "brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging;

(2) "generic name" means the official title of a drug or drug ingredients published in the latest edition of a nationally recognized pharmacopoeia or formulary;

(3) "substitute" means to dispense without prescriber's express authorization a different drug product in place of the drug ordered or prescribed;

(4) "therapeutically equivalent" means drugs that will provide essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen. (§ 15 ch 206 SLA 1972; am § 2 ch 187 SLA 1976)

Effect of amendment. — The 1976 amendment rewrote this section.

Sec. 08.80.297. Prescription prices available to consumer. A pharmacist shall disclose the price of filling any prescription when requested by the consumer. (§ 3 ch 187 SLA 1976)

Sec. 08.80.300. Record of prescriptions. Each pharmacy shall maintain a record of every prescription compounded or dispensed. The record shall be kept for a period of not less than five years, and shall be open at all times to inspection by the board, its members, agents or employees, and by the medical doctor who issued the prescription. (§ 11(d) ch 194 SLA 1955)

C.J.S. reference. — 28 C.J.S. Druggists §§ 6, 9, 10.

Sec. 08.80.310. Record of sales. (a) The owner, or, if the owner is not a licensed pharmacist, the manager, of every drug store, shall maintain in his place of business a record in which sales of the following items shall be entered: the compounds and salts of arsenic and mercury (calomel excepted); caustic hydrates of sodium and potassium; the concentrated mineral acids; hydrocyanic acids and their salts; yellow

phosphorous; the essential oils of pennyroyal, tansy and savine; croton oil, aconite; carbolic acid; and the poisonous alkaloids or alkaloidal salts.

(b) The record shall state the quantity and date of purchase, the purpose for which it is to be used, and the name and address of the buyer. The record shall be available during hours of business and subject to inspection by the attorney general, a federal, state or municipal peace officer, acting within his area of jurisdiction, and an authorized agent of the board. A record of each sale shall be retained for a period of five years from the date of the sale. (§ 11(e) ch 194 SLA 1955; am § 16 ch 206 SLA 1972)

Sec. 08.80.320. Pharmacist required. (a) A pharmacy shall have a pharmacist, licensed and registered under this chapter, on duty during the hours that the pharmacy is open for business.

(b) In communities which have one licensed pharmacy, the owner of the pharmacy shall have a pharmacist, licensed and registered under this chapter, on duty, or on call, at all times that the pharmacy is open for business. (§ 11(f) (i) ch 194 SLA 1955; am § 17 ch 206 SLA 1972)

ALR and C.J.S. references. — Construction of statutes in relation to operation of drugstore, pharmacy or chemical store, without registered pharmacist, 74 ALR 1084.
28 C.J.S. Druggists § 6.

Sec. 08.80.330. Licensed pharmacist as manager. (a) If the owner of a pharmacy is not a licensed pharmacist, he shall place a licensed pharmacist, designated the manager, in full charge and control of the pharmacy. The manager shall insure compliance with all laws, rules and regulations governing the operation of the pharmacy. The licensed pharmacist shall immediately advise the board of his appointment as manager.

(b) No license may be issued to a pharmacy unless there is a licensed registered pharmacist in charge whose name appears on the face of the license. (§ 11(g) ch 194 SLA 1955; am § 18 ch 206 SLA 1972)

Sec. 08.80.340. Who may prepare prescriptions. No person except a licensed pharmacist or a licensed intern pharmacist under the direct supervision of a licensed pharmacist may compound and dispense the prescription of a physician. However, this section does not limit the authority of a licensed medical doctor to compound and dispense medicinal preparations. (§ 11(h) ch 194 SLA 1955; am § 19 ch 206 SLA 1972)

Sec. 08.80.350. Technical aids required. Each licensed pharmacy shall have on the premises a copy of the most recent revision of the "United States Dispensatory" or "Remington's Practice of Pharmacy" or both the "National Formulary" and the "United States Pharmacopoeia." In addition, each pharmacy shall have sufficient technical equipment to properly compound prescriptions and

pharmaceutical preparations. No license may be issued until the requirements of this section are met. (§ 11(j) ch 194 SLA 1955; am § 20 ch 206 SLA 1972)

Sec. 08.80.360. Sale of dangerous materials. Drugs or medical supplies which contain poisonous, potent, habit-forming or deleterious ingredients shall be dispensed only by a licensed pharmacist. At the time of the sale, the pharmacist shall make the nature of the drug or medical preparation known to the purchaser. (§ 11(k) ch 194 SLA 1955)

C.J.S. reference. — 28 C.J.S. Druggists §§ 6, 8 to 13.

Sec. 08.80.365. Partial closure of pharmacy. A pharmacy or pharmacy drug department which is open for business at times different than the remainder of the store or building in which the pharmacy is located shall

(1) be accessible to the remainder of the store or building only through an entrance which is capable of being locked;

(2) be advertised by the methods described in §§ 420 and 430 of this chapter only if the signs or symbols are attached or located within the portions of the store or building where the pharmacy is located;

(3) be locked during nonbusiness hours; and

(4) have all keys to the pharmacy or drug department in the possession of a pharmacist, licensed and registered under this chapter. (§ 21 ch 206 SLA 1972)

Article 4. Unlawful Acts.

Section		Section	
370.	Vending machine sales prohibited	420.	Certain advertising prohibited
380.	Issuance of shopkeepers permits	430.	Use of pharmacy symbols prohibited
390.	Pharmacists required in hospitals and clinics	440.	Denial of examination or license
400.	Practice of medicine not affected	450.	Disciplinary action
410.	Use of term "pharmacist" prohibited	460.	Violation

Sec. 08.80.370. Vending machine sales prohibited. No mechanical device or vending machine wherever located, may be used to dispense a drug, medicine or preparation containing poison. (§ 12 ch 194 SLA 1955)

C.J.S. reference. — 28 C.J.S. Druggists §§ 6, 11 to 13.

Sec. 08.80.380. Issuance of shopkeepers permits. The board shall, upon proper application and payment of the required fee, issue a shopkeepers permit to sell substances or preparations not of a poisonous nature, in the original unbroken packages only. These remedies shall be

sold under restrictions and regulations as the board may adopt. The board may include in shopkeeper permits permission to sell other remedies not prohibited by law. (§ 12 ch 194 SLA 1955; am § 22 ch 206 SLA 1972)

Sec. 08.80.390. Pharmacists required in hospitals and clinics. (a) A hospital, clinic, nursing home, infirmary or related facility which dispenses drugs for outpatient treatment shall have a licensed pharmacist in charge of the dispensary, except that prescriptions may be compounded and dispensed by or under the supervision of the prescribing physician.

(b) The board shall issue a license to a hospital drug room, nursing home drug room or related facility which dispenses drugs from bulk supply for inpatient treatment, providing the facility employs a licensed pharmacist on a continual or consultant basis. (§ 12 ch 194 SLA 1955; am § 23 ch 206 SLA 1972)

Sec. 08.80.400. Practice of medicine not affected. This chapter does not affect the practice of medicine by a licensed medical doctor, and does not limit him in supplying a patient with any medicinal preparation or article which he considers proper. (§ 12 ch 194 SLA 1955)

Sec. 08.80.410. Use of term "pharmacist" prohibited. It is unlawful for a person to assume or use the title "pharmacist," or any variation of the title, or to hold himself out to be a pharmacist, without being registered. (§ 13(a) ch 194 SLA 1955)

Sec. 08.80.420. Certain advertising prohibited. (a) It is unlawful for a person to use or exhibit the title "pharmacist," "assistant pharmacist," or "druggist," or the descriptive term "pharmacy," "drug store," "drug sundries," or other similar title or term containing the word "drug," in any business premises, or in an advertisement through the media of press, or publication, or by radio or television, unless the business has a licensed pharmacist in regular and continuous employment.

(b) A person may not advertise in any manner, prices, percentiles of prices or discounts for drugs requiring a prescription. (§ 13(b) ch 194 SLA 1955; am § 24 ch 206 SLA 1972)

Sec. 08.80.430. Use of pharmacy symbols prohibited. It is unlawful for a person to display in a place of business the characteristic pharmacy symbol of bottles, or globes, which are colored or contain colored liquids unless the business has a pharmacist licensed and registered under this chapter on duty under § 320 of this chapter. (§ 13(c) ch 194 SLA 1955; am § 25 ch 206 SLA 1972)

Sec. 08.80.440. Denial of examination or license. The board may deny an applicant the opportunity to be examined, may deny a license to an applicant who has successfully completed the prescribed examination, or may deny a license to an applicant for registration by

reciprocity, or institute proceedings to suspend, revoke or otherwise terminate a registration, but only upon the basis of a specific complaint. Complaints shall be in the form of an affidavit and shall be filed in duplicate with the secretary of the board. (§ 15 ch 194 SLA 1955)

Sec. 08.80.450. Disciplinary action. The board may consider a complaint based upon the alleged violation of any provision of this chapter, and may by a majority vote of a quorum dismiss the complaint, reprimand a licensee, or take other punitive action as the nature of the facts warrant. Orders issued by the board shall be in writing, signed by a majority and filed with the secretary of the board. The accused shall receive an authenticated copy of the order. (§ 17 ch 194 SLA 1955)

Sec. 08.80.460. Violation. (a) A person who violates a provision of this chapter for which no punishment is provided is guilty of a misdemeanor and is punishable by a fine not to exceed $1,000, or by imprisonment for a period not to exceed three months or by both.

(b) A person who violates the provisions of § 295 of this chapter is punishable by a civil fine in an amount established by the board in a schedule or schedules establishing the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in the Administrative Procedure Act (AS 44.62). (§ 19 ch 194 SLA 1955; am § 26 ch 206 SLA 1972; am § 4 ch 187 SLA 1976)

Effect of amendment. — The 1976 amendment added subsection (b).

C.J.S. references. — 28 C.J.S. Druggists §§ 6, 11 to 13; 53 C.J.S. Licenses §§ 56 to 71.

Article 5. General Provisions.

Section		Section	
470.	Construction	480.	Definitions
475.	Exception	490.	Short title

Sec. 08.80.470. Construction. Nothing in this chapter amends, modifies, repeals or otherwise changes any provision of the Uniform Narcotic Drug Act (AS 17.10) or the Alaska Food, Drug and Cosmetic Act (AS 17.20). (§ 20 ch 194 SLA 1955)

Sec. 08.80.475. Exception. This chapter does not apply to the safe storage, preservation, dispensing, or control of drugs in any federally operated hospital or institution. (§ 1 ch 49 SLA 1974)

Legislative committee report. — For report on ch. 49, SLA 1974 (HB 589), see 1974 House Journal, p. 312.

Sec. 08.80.480. Definitions. As used in this chapter, unless the context otherwise requires,

(1) "board" means the Board of Pharmacy;

(2) "drug" or "drugs" means drugs or medical supplies which contain poisonous, potent, habit-forming or deleterious ingredients, or medicines containing ingredients which may be considered dangerous or harmful if taken in overdose;

(3) "medical supplies" means items for the cure or treatment of disease or injury which do not require prescription by a physician and which do not contain poisonous, potent, habit-forming or deleterious ingredients, or an ingredient which may be considered dangerous or harmful if taken in overdose;

(4) "owner" means the owner of a place of business for wholesaling, retailing, compounding or dispensing drugs, medicines or poisons;

(5) "pharmacy" includes "drug store" and "pharmacy or drug department" and means a place of business in which physicians' prescriptions are compounded or dispensed and in which drugs and medicines are compounded or dispensed;

(6) Repealed by § 11 ch 53 SLA 1973.

(7) "recognized college of pharmacy" means a college, school or department of pharmacy whose entrance requirements and courses of study are approved by the National Association of Boards of Pharmacy;

(8) "manager" means a licensed pharmacist in charge of a pharmacy or drug store, or of a pharmacy or drug department, where the owner is not a licensed pharmacist;

(9) "retail" means sale to the ultimate user;

(10) "retail pharmacist" means a person who sells to the ultimate user;

(11) "sell" means to possess in violation of the intent of this chapter, exchange, barter, give away or otherwise dispose of;

(12) "wholesale" means sale by a manufacturer, wholesale dealer, distributor, or jobber to a person who sells, or intends to sell, directly to the user;

(13) "wholesale drug dealer" means a manufacturer, wholesale dealer, distributor or jobber;

(14) "bulk supply" means drugs in original containers not labeled as required by § 290 of this chapter;

(15) "drug room" means an area provided only for the proper and safe storage, preservation and control of bulk supply drugs and which is under the responsibility of a continuously employed or consultant pharmacist;

(16) "hospital pharmacy" means and includes a pharmacy, licensed by the board, located within any hospital, institution or establishment which maintains and operates organized facilities for the diagnosis, care and treatment of human illness and provides for the obtaining, storage and

dispensing of drugs to both inpatients and outpatients and which is under the responsibility of a staff pharmacist;

(17) "outpatient dispensing" means dispensing drugs for administration outside of the hospital pharmacy's control;

(18) "prescription department" means that section of a business in which prescriptions for medications are compounded, filled and dispensed by a licensed pharmacist;

(19) "shopkeeper" means a retail dealer who sells over the counter medicinal preparations in original unbroken packaging which do not require a prescription for dispensing. (§ 2 ch 194 SLA 1955; am §§ 27 — 29 ch 206 SLA 1972; am § 11 ch 53 SLA 1973)

Effect of amendment. — The 1973 amendment repealed paragraph (6).

Legislative committee report. — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

Sec. 08.80.490. Short title. This chapter may be known as the Pharmacy Act. (§ 1 ch 194 SLA 1955)

CHAPTER 52.
BOARD OF PHARMACY

Article
1. Internship
2. Hospital Pharmacies
3. General Provisions

ARTICLE 1.
INTERNSHIP

Section
10. Record of experience of pregraduate and postgraduate pharmacy intern
20. Training requirements for pharmacy intern
30. Intern experience in a hospital
40. Internship in government-operated institutions

12 AAC 52.010. RECORD OF EXPERIENCE OF PREGRADUATE AND POSTGRADUATE PHARMACY INTERN. A pharmacy intern shall submit a record of his intern experience every three months on a form provided by the board. The form must be certified by a pharmacist, licensed and registered under AS 08.80.110, who supervises the pharmacy intern's work. (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4),(5) and (7)

12 AAC 52.020. TRAINING REQUIREMENTS FOR PHARMACY INTERN. (a) A pharmacy intern shall

(1) write one comprehensive outline for each 40 hours of employment, of at least 300 words about a pharmaceutical preparation, drug or specialty in the notebook required under (b) of this section until he has accumulated 500 hours of internship; pharmacy interns with 500 or more hours of internship need not comply with this requirement;

(2) record the prescriptions or chart orders filled in the notebook required under (b) of this section and personally fill at least at the rate of 100 prescriptions per 40 hours worked after completion of 1,000 hours of internship;

(3) observe the dispensing and recording of sales of controlled substances as those substances are defined by federal and state laws and regulations;

(4) study the method of controlled substance inventory in compliance with federal and state laws and regulations; and

(5) make out official order forms, except for signature, for the purpose of controlled substances.

(b) A pharmacy intern must record in a suitable notebook the experience he has gained to show he has met the training requirements outlined in (a) of this section. The notebooks will be reviewed and considered by the board in determining whether or not a pharmacy intern has met the training requirements in (a) of this section. (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4),(5) and (7)

12 AAC 52.030. INTERN EXPERIENCE IN A HOSPITAL. Pharmacy intern experience in a hospital must be obtained in a hospital pharmacy licensed as an inpatient and outpatient hospital pharmacy as defined in AS 08.80.480(16). (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4),(5) and (7)

12 AAC 52.040. INTERNSHIP IN GOVERNMENT-OPERATED INSTITUTIONS. The completion of an internship served in a pharmacy not licensed by the board but operated in an institution established by the state will be sufficient to meet the requirements set out in AS 08.80.110(5) if the following conditions are met:

(1) the applicant has served his internship under the supervision of a pharmacist licensed by the state; and

(2) supervising pharmacist certifies that the pharmacy in which the internship was completed meets all of the requirements set out by federal law and regulation, the Alaska Statutes, and this chapter. (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4) and (5)
AS 08.80.110(5)

ARTICLE 2.
HOSPITAL PHARMACIES

Section
100. Preparation of list of noncontrolled legend drugs

110. Prepackaging noncontrolled legend drugs
120. Labeling prepackaged noncontrolled legend drugs
130. Supervision of prescribing physician; procedure for delivery to patient of prepackaged, noncontrolled legend drugs
140. Pharmacist in charge of hospital pharmacy

12 AAC 52.100. PREPARATION OF LIST OF NONCONTROLLED LEGEND DRUGS. The licensed pharmacist or licensed consultant pharmacist in charge of a hospital pharmacy or drug room, in consultation with the hospital's medical staff, shall prepare a list of noncontrolled legend drugs which may be delivered to outpatients receiving emergency treatment when a licensed pharmacist is not on duty and the prescribing physician is not present. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)
AS 08.80.390

12 AAC 52.110. PREPACKAGING NONCONTROLLED LEGEND DRUGS. Licensed pharmacists may prepackage noncontrolled legend drugs identified on the list prepared under sec. 100 of this chapter. There shall be no more than six doses of the drug in each prepackaged container. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)
AS 08.80.390

12 AAC 52.120. LABELING PREPACKAGED NONCONTROLLED LEGEND DRUGS. (a) Drugs prepackaged under sec. 110 of this chapter must be labeled by the pharmacist at the time of packaging.

(b) The prescription label or unit dose package label must contain

(1) a blank space for the name of the patient;

(2) a blank space for the name of the prescribing physician;

(3) the name of the drug;

(4) the strength of the drug;

(5) the expiration date of the drug, if applicable;

(6) the lot number of the drug;

(7) the date of prepackaging;

(8) a blank space for the date of delivery to patient;

(9) a prescription number;

(10) initials of the pharmacist who prepackaged the drug;

(11) the name and address of the hospital;

(12) directions to the patient or, if not predetermined, a blank space for special instructions of the prescribing physician; and

(13) a blank space for the name or initials of the person delivering the drug. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)
AS 08.80.390

12 AAC 52.130. SUPERVISION OF PRESCRIBING PHYSICIAN; PROCEDURE FOR DELIVERY TO PATIENT OF PREPACKAGED, NONCONTROLLED LEGEND DRUGS. (a) If a licensed pharmacist is not on duty, emergency room personnel may deliver noncontrolled legend drugs, prepackaged in accordance with secs. 100–120 of this chapter, to a person receiving emergency outpatient treatment on receiving on order from a licensed physician. The physician's order may be by written or telephonic communication. No more than one prepackaged container of the same drug may be delivered to a person receiving emergency outpatient treatment, unless more than one package is required to sustain the patient until the first available pharmacist is on duty in the community.

(b) When delivering drugs under this section, the person doing so shall

(1) complete the label affixed to the container with all required information except that the name and strength of the drug may be deleted on order of the prescribing physician; and

(2) prepare a record of delivery which includes all of the information listed in sec. 120 of this chapter.

(c) The record prepared under (b)(2) of this section shall be given to the pharmacist in charge of the hospital pharmacy at the beginning of the pharmacist's next duty day.

(d) This section does not authorize other than emergency room personnel on a hospital's staff to deliver noncontrolled legend drugs to outpatients receiving emergency treatment.

(e) This section does not authorize the delivering of controlled legend drugs by any person not authorized by law to dispense controlled legend drugs. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)
AS 08.80.390

12 AAC 52.140. PHARMACIST IN CHARGE OF HOSPITAL PHARMACY. (a) The pharmacist in charge of the hospital pharmacy shall within a resonable time record all drugs delivered to outpatients under sec. 130 of this chapter in the pharmacy record book maintained for the recording of all medication delivered from the emergency room under this chapter.

(b) The entry made under (a) of this section must include logging the prescription number and all information required by the record of delivery prepared under sec. 130(b)(2) of this chapter and must be shown as a completed prescription.

(c) The pharmacist in charge of the hospital pharmacy shall determine what constitutes an adequate supply of prepackaged, noncontrolled legend drugs for use under the provisions of this article. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)
AS 08.80.390

ARTICLE 3.
GENERAL PROVISIONS

Section
900. Definitions

12 AAC 52.900. DEFINITIONS. In this chapter unless the context otherwise requires

(1) "board" means the Board of Pharmacy;

(2) "state" means the State of Alaska;

(3) "completed prescription" means the prescribed drug has been delivered to the patient, on a physician's order, that blank spaces on the label have been filled in, and a record of doing so has been given to the pharmacist so he may file the prescription as required by law;

(4) "deliver to patient" means completing the blank spaces on the label of the prepackaged drug and actually handing the package to the patient, or the patient's representative;

(5) "dose" means the amount of medication that is to be given at one specific time, as determined by the physician;

(6) "emergency room personnel" means those employees of a hospital who are designated by the administrator of the hospital, or by the personnel committee of the hospital, to be employed in the emergency room of the hospital for the purpose of administering emergency treatment to patients;

(7) "noncontrolled legend drug" means any drug that bears on the label the legend, "TO BE DISPENSED ONLY ON OR BY THE PRESCRIPTION OF A PHYSICIAN," but not drugs that have been classified as "CONTROLLED SUBSTANCES" under the Federal Controlled Substances Act of 1970 (21 USC Section 801 et seq.);

(8) "pharmacy record book" means a book kept for the sole purpose of logging all information pertinent to the delivery of noncontrolled legend drugs under secs. 100–140 of this chapter;

(9) "physician's order" means an order given to the emergency room personnel by a physician licensed to practice in Alaska or recognized by the hospital as a physician who may practice medicine in the hospital;

(10) "prepackage" means placing in a container that meets federal and state qualifications as a legal container, not more than six doses of a noncontrolled legend drug and affixing a label to the container that includes all of the information required under sec. 120 of this chapter;

(11) "present" means physically present in the emergency room of the hospital with the patient. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4)
AS 08.80.390

STATE OF ALASKA
Board of Nursing Home Administrators
(October, 1978)

Findings

Legislation creating the Board of Nursing Home Administrators was enacted in 1975 in response to federal legislation mandating that eligibility for Medicaid and/or Medicare funds be contingent on State licensure of the institutional administrator. There are currently 28 licensed practitioners in the State, excluding hospital administrators, and administrators of government or military facilities who are exempt. Also exempt are administrators of the Alaska Pioneers' Homes although some hold licenses.

No evidence has been shown which would indicate that licensing of this profession by a State board is in the best interests of the public. In view of the initial reason for creation of the Board, the nature of the profession and the absence of evidence reflecting general public protection, it is advocated that the Board of Nursing Home Administrators be allowed to terminate and that the administrative agency assume responsibility for examining and licensing applicants.

Should reestablishment of the Board be determined to be in the public interest, recommendations are made throughout this report the implementation of which is felt to be desirable in its continued operation.

I. General Information

A. Regulated Parties

1. Nursing Home Administrators

B. Statutory Definition of Regulated Parties

"(6) 'nursing home administrator' means a person who manages, supervises, or is in general charge of a nursing home, even though the duties are shared with another person; a member of a board of directors of a nursing home is an administrator only if he also serves in the administrative capacity defined in this paragraph." (AS 08.70.180)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Jane Hanna, RN (Chairman)	ends October 1, 1980
Roberly R. Potter, (Admin.)	ends October 1, 1979
Donna M. Stephens (Admin.)	ends October 1, 1980
Sister Patrick Mary	ends October 1, 1978
Unappointed public member	

2. Representation:

Profession = 3
Public = 1 (2 provided)

3. Qualifications:

"The board consists of five members: two nursing home administrators licensed under this chapter and practicing in the state, a registered nurse licensed in the state, and two persons from the general public." (AS 08.70.020(a))

D. Licensing Data

Currently Licensed

in-State	24
out-of-State	5
Total	29

E. Fees

1)	examination	$25.00
2)	investigation	25.00
3)	annual license	50.00

F. Board Revenues and Expenditures

	FY '75*	FY '76	FY '77	FY '78
Receipts	-	$1,100.00	$2,000.00	$1,875.00
-refunds				45.00
Total	-	1,100.00	2,000.00	1,830.00
Expenditures				
Per Diem	-	366.00	534.50	397.50
Transportation	-	383.42	241.94	489.65
Phone	-	25.60	12.79	14.80
Printing, Advertising & Postage	-	537.89	898.61	241.71
Fees & Services	-	630.00	610.00	490.00
Rents, Leases, Other	-	-	192.00	70.00
Total	-	$1,942.91	$2,489.84	$1,703.66
Surplus	-	-	-	126.34
Deficit	-	842.91	489.84	-

* Created in 1975

(EXCLUDING DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	0	0	0
1976	0	0	0
1977	0	0	0
1978 (through June)	1	0	0

Pending: 1

The sole complaint received and still pending consists of a protest over termination and allegations of nursing malpractice between a nurse and a nursing home administrator. None were received by the Office of the Ombudsman and none were received from the public.

H. Qualifications

No specific training for this profession is provided or generally required by all states. Requirements usually take the form of college coursework with emphasis on business or health administration, or on administrative experience.

II. Criteria and Analysis

A. To what extent has the Board of Nursing Home Administrators operated in the public interest?

The operation of the Board and licensing of administrators by the Board has not been shown to protect the public interests. Whether or not an administrator is licensed has no effect per se on the direct health and welfare of consumers. Rather, other facility personnel are responsible for the health and well being of its users while the administrator "manages, supervises, or is in general charge..." It undoubtedly is desirable to employ persons with health care and administrative knowledge. It is also likely that employers will hire those persons with the most desirable qualifications.

A review of agency and license files indicates a number of inconsistencies in the operation of the Board. Should it be continued, steps need to be taken to insure consistent application of Board statutes, regulations and policies.

There are numerous instances of material missing from files that routinely is required in the application and licensing process. Missing documents include character references, renewal applications and information, certification of continuing education compliance, education transcripts, examination materials and results, and approval (or denial) of the Board regarding licensure and/or relicensure. Only 14 of 25 administrators licensed for 1978 were formally approved for relicensure by the Board at its regular meeting, three without documentation of continuing education. Several files were found of qualified applicants who successfully completed examination but who are not licensed. There is no evidence to indicate that these licenses were approved or issued, or lapsed, or that the applicant subsequently refused or was refused licensure.

A National Association of Board of Nursing Home Administrations, Inc. examination is utilized as allowed by AS 08.70.050(2), 110(1), 120 and 12 AAC 46.010-030. Examinations are generally given twice each year, are proctored by the administrative agency, and may be scheduled in separate locations for convenience of applicants. Grading is done by the national board and an average of 75% is the minimum passing score set by the Alaska Board. Applicant records reveal that applicants have, on occasion, been approved for and passed the examination prior to completion of the application file. This practice should be discontinued and applicants approved for examination only after the necessary materials have been received by the administrative agency.

Although much documentation is absent, the Board has apparently licensed only by examination and never by endorsement as authorized by .110(3). A request for a reciprocity agreement from another state was denied because "provisions in the law only address licensure by examination or endorsement." Availability of practitioners is one measure of public service. However, in this instance, availability of practitioners depends on job openings and there is a limited market for this service within the State.

Board regulations stipulate that prior to January 1, 1978, applicants must have one year of administrative experience. From that date and through December 31, 1979, applicants must have an associate degree in administration from an accredited college. None of the five persons licensed through June of 1978 met this qualification. Subsequent to December 31, 1979, applicants will be required by Board regulation to have a baccaluareate degree in health care administration or a degree in business administration and one year of experience in a health care facility. This requirement appears to be overly restrictive considering the functions of an administrator and, again, the right of an employer to hire a person he deems qualified.

Annual relicensure and continuing competency documentation are required by statute. These requirements on an annual basis are considered to be excessive. It is recommended that relicensure be established on a biennial basis and that continuing competency requirements be deleted from the statutes. Documentation of education compliance is absent from files in many cases. Acceptable courses are supposed to be approved by the Board on an individual course basis prior to licensee participation. There is little evidence that this has been done. Lengthy Board regulations outline responsibilities of the "educational arm" and activities which are not acceptable for compliance with renewal requirements. However, there is no specific list of courses or particular criteria to guide the applicant in selecting suitable activities which will be acceptable. Some licensees have discovered too late that they and the Board have disagreed on what is acceptable with the result that renewals are refused.

In the absence of public protection evidence, restrictive applicant qualifications and mandatory continuing competency requirements are determined to be superfluous. Considering the primary reason for licensure, eligibility for federal health care funds, examination and licensure by the administrative agency would be adequate to serve that purpose. It is noted, as previously, that examinations are nationally formulated and graded, are written in nature and are already being proctored by the administrative agency. Standard reasonable qualifications, such as a two-year degree, a nursing degree, or administrative experience, may be established to guide the agency in examining and licensing appropriately.

If the Board of Nursing Home Administrators is to be reestablished, every effort should be made to insure that the public has representation. This Board has never had the two public members which were authorized by the Legislature at its creation. Public interests are not served by inadequate participation in professional board activities.

Because of recent concern regarding the need for occupational licensing, the questions raised concerning public welfare versus professional interests and concern regarding proliferation of regulated and licensed groups, appointment of knowledgeable lay members is a widely advocated step. "There has been a growing movement to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation."[1] Shimberg and Roederer further indicate that, "... if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to ter members."

Fees allowed by statute should be reviewed and established within realistic bounds. It is suggested that an investigation fee may be inappropriate particularly in view of the fact that endorsement is not utilized. National examination costs are $20 each without administration expenses. A separate fee for provisional licensure should be considered.

The statutorily required annual report on goals and activities of the Board and profession has not been submitted.

There is no evidence of compliance with 12 AAC 46.020(d) which requires a written statement of need from the prospective employer of an applicant for a provisional license. There also is no evidence of compliance with 12 AAC 070(1) requiring a sworn statement of "good moral character" as a condition of license renewal. 12 AAC 46.030(d) requiring a new application if a candidate fails to pass the examination within two years of initial application has not been complied with in at least one instance.

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[1] Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 9.

B. To what extent has the operation of the Board of Nursing Home Administrators been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Existing statutes, regulations and policies of the Board are more than adequate to accomplish the primary reason for licensing members of this profession. Operation of the Board has not been impeded with the exception of annual renewal and annual continuing education requirements which are felt to serve little purpose. Efficient operation in compliance with statutes and regulations has been impeded by the Board itself through inconsistent and restrictive policies as previously cited.

The Board of Nursing Home Administrators has experienced little difficulty in its administrative operations with respect to personnel or budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs. All fees and revenues are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined for budgetary purposes. It is recommended, however, that the present fee structure be reviewed.

Improved procedures are being developed within the administrative agency pertaining to organization of records, forms and examination information which will better enable the Board to perform its functions.

Only one complaint has been received by the administrative agency concerning this profession. This complaint, received in 1978, concerned an administrator and a nurse and is still pending. It is primarily due to the fact that no other complaints were received that this Board has encountered no difficulty with follow through by the administrative agency as have other boards. During the past year two investigator

positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely dispositon of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and subsequent appropriate action with emphasis on magnitude of offense as it relates to matters of public safety and concern.

C. To what extent has the Board of Nursing Home Administrators recommended statutory changes which are generally of benefit to the public interest?

It must be remembered that statutes concerning this Board have only been in effect since July 1, 1975. Changes since that time have been minor "housekeeping" amendments.

The Board itself has recommended no statutory changes whether of public benefit or otherwise.

D. To what extent has the Board of Nursing Home Administrators encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

Very little public interest in the activities of the Board has been shown in the form of attendance at Board meetings, hearings, or as written input. Interest has been from members of this or a related profession. Notices of pending meetings and new or changing regulations

are published in major newspapers in the State. Public interest and participation regarding the Board has been at least partially restricted by the absence since the creation of the Board of one public member.

The Board has not taken any overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may partially mitigate public disinterest. Because regulation does not serve to protect the public, concern regarding public interest or disinterest may be considered irrelevant.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Nursing Home Administrators processed and resolved?

No complaints were received which were directed at the Board or its individual members. Only one has been received concerning a licentiate and is still pending.

F. To what extent does the Board of Nursing Home Administrators present qualified applicants to serve the public?

Inconsistencies in application of licensing and renewal requirements which do not function to serve public or licensee interests have been enumerated elsewhere in this report. Pending regulatory qualifications which will mandate that applicants have a baccalaureate degree in business administration and one year of administrative experience in a health care facility are unduly restrictive qualifications which would eventually result in licensure of a small elite interest group from which an employer would be forced to choose regardless of any other considerations. "Qualified" applicants in this profession do not serve the public directly but instead supervise the facility and personnel that do.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Nursing Home Administrators in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for four other boards) who is hired through the State Personnel System and, therefore, subject to affirmative action requirements.

The Board of Nursing Home Administrators issues licenses on the basis of education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Board of Nursing Home Administrators to better serve the interests of the public?

If the Board is determined to function in the best interests of the public, some statutory changes would be desirable. Continuing education requirements should be deleted from the statutes. Renewal of licenses should be on a biennial basis rather than annually. Fees charged should be reviewed with consideration given to raising the examination fee, deleting the investigation fee, and including a fee for provisional licensure.

The Board should review the future licensure qualifications it has established by regulations and consider qualifications which are realistic and allow reasonable licensure. The Board should consistently and equally apply statutes and its own regulations in licensing and relicensing.

Board and administrative expenses outweigh the revenues collected through regulation of nursing home administrators. Fees collected are simply not adequate to cover transportation and per diem for meetings and examinations and the costs of Division of Occupational Licensing administrative overhead, such as staff salary and examination expenses. Additionally, the need for protecting the public from financial and/or physical harm has not been demonstrated nor is the expense of regulation justified by this criteria.

III. Conclusion

Licensure of nursing home administrators is required as a condition of eligibility for federal Medicaid funds. This is the sole reason for State licensure of nonexempt facility administrators.

IV. Summary of Recommendations

A. The Board of Nursing Home Administrators should be allowed to terminate on June 30, 1979. The functions of examination and licensure should be assumed by the administrative agency.

Applicant qualifications and conditions for licensure should be established by statute as a guideline for the agency.

B. If the Board of Nursing Home Administrators is determined to function in the public interest and is reestablished, the following recommendations are made:

1. The Board and the administrative agency should insure adequate documentation of board activities and related files. (See discussion on p. 6)

2. The Board should apply statutory and regulatory provisions with respect to initial licensure and relicensure and do so uniformly. (See discussion on p. 7)

3. The Board should establish reasonable and nonrestrictive educational and experience requirements for applicants. It should also enforce requirements that are established. (See discussion on p. 7)

4. Relicensure should take place biennially rather than annually. Annual renewal is considered to be unnecessary and cumbersome to administer for the applicant, the Board, and the agency. (See discussion on p. 8)

5. Mandatory continuing education requirements should be deleted as being superfluous in the regulation of nursing home administrators. This subject is more appropriately a concern of the administrator and/or his/her employer. (See discussion on p. 8)

6. The Board should be allowed to function with a full membership. An excessive ratio of professional members on any board is not a desirable situation from the standpoint of a Sunset review concerned with public participation and knowledgeability. It is also recommended that members not serve consecutive terms unless initially appointed to an unexpired vacancy but may be reappointed following a term of absence. (See discussion on p. 8)

7. The Board, in conjunction with the administrative agency, should be given the authority to review fee structure and establish appropriate fees. (See discussion on p. 9)

8. The Board should prepare and submit an annual report to the Governor and Legislature as required by statute.
(See discussion on p. 9)

Chapter 70. Nursing Home Administrators.

Section
10. Creation of Board of Nursing Home Administrators
20. Membership board; source of appointments; term of office
30. Election of officers
40. Board meetings: Quorum
50. Duties and powers of the board
60. Expenses
70. Applicability of Administrative Procedure Act
80. License required
90. Application
110. Licensing
120. Examination
130. Provisional licenses
140. Expiration and renewal
150. Fees
160. Unlawful acts
170. Penalties
180. Definitions
190. Facilities operated by religious organizations

Sec. 08.70.010. Creation of Board of Nursing Home Administrators. There is established the Board of Nursing Home Administrators. (§ 1 ch 123 SLA 1975)

Legislative committee report. — For report on ch. 123, SLA 1975 (HCSSB 132 [Judiciary] am H), see 1975 House Journal, p. 1221.

Sec. 08.70.020. Membership board; source of appointments; term of office. (a) The board consists of five members: two nursing home administrators licensed under this chapter and practicing in the state, a registered nurse licensed in the state, and two persons from the general public.

(b) Board members are appointed by the governor.

(c) Board members serve staggered terms of three years or until their successor is appointed, except that a member appointed to a vacated term serves the duration of that term. On the first board two members serve one-year terms, two members serve two-year terms, and one member serves a three-year term. (§ 1 ch 123 SLA 1975; am § 1 ch 77 SLA 1977)

Effect of amendment. — The 1977 amendment, in subsection (a), substituted "two nursing home administrators" for "one nursing home administrator" and deleted "a physician licensed in the state" following "registered nurse licensed in the state."

Sec. 08.70.030. Election of officers. The board shall annually elect a chairperson and a vice-chairperson from its members. (§ 1 ch 123 SLA 1975)

Sec. 08.70.040. Board meetings: Quorum. The board shall meet at least semiannually. A majority of the board constitutes a quorum. (§ 1 ch 123 SLA 1975)

Sec. 08.70.050. Duties and powers of the board. (a) The board shall

(1) adopt standards for licensing nursing home administrators to insure that licensees have knowledge and experience in health care and institutional administration necessary for competent administrators, and update the standards when necessary;

(2) examine, license, and renew the licenses of qualified persons;

(3) establish procedures to insure that licensees continue to uphold the board's standards; revoke, suspend, or refuse to renew licenses of persons who fail to uphold the standards;

(4) adopt criteria for educational programs for persons preparing for the licensing examination and for the continuing education of licensees; review the educational programs available in the state and accredit the programs meeting the criteria;

(5) keep a record of its proceedings and submit annual reports to the governor and the legislature.

(b) The board may adopt regulations necessary for the performance of its duties and to meet the requirements of Title 19 of the Social Security Act, the federal rules promulgated under it, and other federal requirements. (§ 1 ch 123 SLA 1975)

Sec. 08.70.060. Expenses. Board members serve voluntarily, except that members are entitled to the travel expenses and per diem allowed by law. (§ 1 ch 123 SLA 1975)

Sec. 08.70.070. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62). (§ 1 ch 123 SLA 1975)

Sec. 08.70.080. License required. Only a licensed nursing home administrator may manage, supervise, or be generally in charge of a nursing home unless excepted by this chapter. Only a nursing home which is supervised by a licensed nursing home administrator may operate in Alaska unless specially excepted by the board. This section does not apply to the Alaska Pioneers' Homes. (§ 1 ch 123 SLA 1975)

Sec. 08.70.090. Application. Applicants shall file applications with the Department of Commerce and Economic Development on forms provided by the department. Information requested on the forms shall be given under oath. (§ 1 ch 123 SLA 1975; am § 50 ch 218 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the first sentence.

Sec. 08.70.110. Licensing. (a) The board shall license

(1) applicants who pass the written examination administered by the board and meet the standards established by the board under § 50 of this chapter;

(2) persons licensed under emergency regulations 7AAC 12.045 promulgated in Register 51, July 8, 1974, who have practiced as administrators since licensing.

(b) The board may issue a license without examination to a person holding a current license as a nursing home administrator from another jurisdiction, if the board finds that the standards for licensing in the other jurisdiction are substantially equivalent to those in this state, and the person is otherwise qualified. (§ 1 ch 123 SLA 1975)

Sec. 08.70.120. Examination. The purpose of the examination is to test the applicant's knowledge of the health and safety standards of the state and his experience in the practice of health care. The board determines the content, scope, format, and grading procedure. Examinations shall be given at least annually, at the time and place chosen by the board. (§ 1 ch 123 SLA 1975)

Sec. 08.70.130. Provisional licenses. (a) A provisional license may be granted without examination to a person who meets the standards adopted by the board under § 50 of this chapter and who is needed to fill a vacancy in an administrative position.

(b) The provisional license is valid for six months and is nonrenewable. (§ 1 ch 123 SLA 1975)

Sec. 08.70.140. Expiration and renewal. (a) A nursing home administrator's license expires on December 31 of the year issued.

(b) An administrator may apply for renewal of his license by submitting an application for renewal to the board; application forms for renewal are provided by the department.

(c) A person whose license has expired for a period of 12 months or more must apply for a license and be examined in the same manner as an applicant who has not been licensed before. (§ 1 ch 123 SLA 1975)

Sec. 08.70.150. Fees. The following fees shall be imposed under this chapter when applicable:

(1) examination fee $25

(2) investigation fee for persons applying for a license under § 110 (b) of this chapter $25

(3) annual license fee $50

(§ 1 ch 123 SLA 1975)

Sec. 08.70.160. Unlawful acts. No person may

(1) sell or fraudulently obtain or furnish a license or aid another in doing so;

(2) practice as a nursing home administrator under cover of a license illegally or fraudulently obtained;

(3) practice as a nursing home administrator or use in connection with his name a designation tending to imply that he is a nursing home administrator unless licensed under this chapter;

(4) practice as a nursing home administrator during the time his license issued under this chapter is suspended or revoked; or

(5) otherwise violate this chapter. (§ 1 ch 123 SLA 1975)

Sec. 08.70.170. Penalties. A person convicted of violating a provision of this chapter is punishable by a fine of not more than $500, or by imprisonment for not more than one year, or by both. (§ 1 ch 123 SLA 1975)

Sec. 08.70.180. Definitions. In this chapter

(1) "board" means the Board of Nursing Home Administrators;

(2) "department" means the Department of Commerce and Economic Development;

(3) "license" means the certificate awarded by the board to a qualified person which entitles him to be a nursing home administrator in this state;

(4) "licensee" means a person who has been granted a license to be a nursing home administrator in this state by the board;

(5) "nursing home" means a facility which is operated in connection with a hospital or in which nursing care, intermediate care, and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery within the state for the accommodation of convalescents or other persons who are not acutely ill but who do require skilled or intermediate nursing care and related medical services; the term "nursing home" is restricted to those facilities the purpose of which is to provide skilled or intermediate nursing care and related medical services for a period of not less than 24 hours a day to individuals admitted because of illness, disease or physical or mental infirmity;

(6) "nursing home administrator" means a person who manages, supervises, or is in general charge of a nursing home, even though the duties are shared with another person; a member of a board of directors of a nursing home is an administrator only if he also serves in the administrative capacity defined in this paragraph. (§ 1 ch 123 SLA 1975; am § 51 ch 218 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

Sec. 08.70.190. Facilities operated by religious organizations. Nothing in this chapter or the regulation under this chapter is to be construed as requiring a person who applies for a license as administrator of a facility operated by a religious organization relying on spiritual means alone for healing to have skills in medical techniques or educational qualifications which are not in accord with the care and treatment provided in the facility. (§ 1 ch 123 SLA 1975)

CHAPTER 46.
BOARD OF NURSING HOME ADMINISTRATORS

Section
10. Qualifications of applicant for initial license
20. Application for initial license
30. Examination of applicant
40. Continuing education required for license renewal
50. Accreditation of nonacademic continuing education program
60. Activities not eligible for nonacademic continuing education accreditation
70. Application for license renewal
900. Definitions

12 AAC 46.010 QUALIFICATIONS OF APPLICANT FOR INITIAL LICENSE. (a) To be eligible for an initial license as a nursing home administrator, a person must be

(1) at least 19 years of age;

(2) of sound physical and mental health;

(3) a high school graduate or the equivalent; and

(4) of good moral character.

(b) In addition to the requirements of (a) of this section, a person applying for a license

(1) before January 1, 1978, must have one year of administrative experience;

(2) after December 31, 1977, must possess an associate degree in administration from an accredited college; and

(3) after December 31, 1979, must possess a

(A) baccalaureate degree in health care administration from an accredited college; or

(B) baccalaureate degree in business administration from an accredited college and have one year of administrative experience in a health care facility. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(a)(1) and (b)

12 AAC 46.020. APPLICATION FOR INITIAL LICENSE. (a) A person applying for an initial license as a nursing home administrator shall submit

(1) a completed application form;

(2) a written statement from a physician attesting to the fact that his or her physical and mental health is adequate to enable him or her to satisfactorily perform the duties involved in nursing home administration; and

(3) after December 31, 1977, an official transcript from his or her college of graduation.

(b) A person applying for an initial license by examination shall submit the documents in (a) of this section, accompanied by the examination fee required by AS 08.70.150(1), at least 30 days before the date of a scheduled examination, in order to be scheduled for that examination.

(c) In addition to the requirements of (a) of this section, a person applying for an initial license without examination shall submit

(1) evidence that he or she has passed the licensing examination for nursing home administrators of the Professional Examination Service or the National Association of Boards of Nursing Home Administrators, Inc. with a score of at least 75 percent;

(2) a copy of his or her current nursing home administrator license from another jurisdiction; and

(3) the investigation fee required by AS 08.70.150(2).

(d) In addition to the requirements of (a) of this section, a person applying for a provisional license shall submit a written statement from his or her prospective employer of the circumstances of his or her need to fill a vacancy in an administrative position. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(b) AS 08.70.110(b)
AS 08.70.090 AS 08.70.130(a)

12 AAC 46.030. EXAMINATION OF APPLICANT. (a) The examination required by

AS 08.70.110(a)(1) is the examination prepared and graded by the National Association of Boards of Nursing Home Administrators, Inc.

(b) A score of 75 percent is required to pass the examination.

(c) The examination is offered semiannually in May and November.

(d) A person who fails to pass the examination within two years of submitting his or her application for licensure shall submit a new physican's statement required by sec. 20(a)(2) of this chapter, along with a new application form. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(b)
AS 08.70.120

12 AAC 46.040. CONTINUING EDUCATION REQUIRED FOR LICENSE RENEWAL. (a) Continuing education required to maintain licensure as a nursing home administrator is at least

(1) one semester hour academic credit from an accredited college in a subject relevant to health care administration; or

(2) two continuing education units from the sponsoring organization of a nonacademic continuing education program approved by the board.

(b) Continuing education required by (a) of this section must be earned during the calendar year immediately preceding the year for which license renewal is being requested. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(a)(3) and (b)

12 AAC 46.050. BOARD ACCREDITATION OF NONACADEMIC CONTINUING EDUCATION PROGRAM. (a) In order for a nonacademic continuing education program to be accredited by the board, the sponsoring organization must

(1) have an identifiable educational arm with designated professional staff empowered to administer and coordinate an organized schedule of continuing education programs;

(2) maintain, through its educational arm, administrative control of all program elements to assure that both the immediate educational objectives and the requirements of this subsection are met;

(3) provide or arrange, through its educational arm, for appropriate educational facilities, library and reference materials and all necessary instructional aides and equipment consistent with the educational content, format and objectives of each learning experience;

(4) maintain a permanent individual record of participation and make the record readily available to each participant upon request;

(5) plan the program or activity in response to the educational needs of nursing home administrators, including the opportunity for input by representatives of nursing home administrators, as well as by other knowledgeable individuals having content expertise and an appreciation of the educational objectives to be met;

(6) prepare a clear statement of rationale, purposes and goals for each educational activity before the initiation of the program;

(7) directly involve qualified instructional personnel in conducting the educational activity;

(8) establish specific performance requirements for the award of continuing education units to participants before offering the program;

(9) include sufficient detail in participant registration to provide the necessary information for a permanent record of individual participation;

(10) use evaluation procedures determined during the planning process to measure the effectiveness of the program design and operation; and

(11) include in program administration a system for verification of satisfactory completion of the activity by each participant and for providing an approved list of those awarded continuing education units to the office responsible for preparing and maintaining permanent records for individual participants.

(b) An application for accreditation of a continuing education program must state the

(1) manner in which the sponsoring organization meets the requirements of (a) of this section; and

(2) starting date of the program.

(c) A sponsoring organization must apply to the board for accreditation of a continuing education program at least 60 days before the starting date of the program. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(a)(4) and (b)

12 AAC 46.060. ACTIVITIES NOT ELIGIBLE FOR NONACADEMIC CONTINUING EDUCATION ACCREDITATION. The board will not accredit, for nonacademic continuing education,

(1) a program leading to a high school equivalency certificate or diploma;

(2) a program dealing with such internal topics as indoctrination in rights, benefits and responsibilities; organizational structure; on-the-job methods, processes or procedures;

(3) committee activities;

(4) conferences, delegate assemblies or similar meetings for policymaking purposes;

(5) meetings and conventions of societies and associations unless educational activities programmed independently and held concurrently with these meetings meet the requirements of sec. 50(a) of this chapter;

(6) participation in programs delivered through the media such as television, radio and newspapers unless these presentations are an integral part of an educational program which meets the requirements of sec. 50(a) of this chapter;

(7) attendance at lecture series, cultural performances, entertainment or recreational meetings or activities and participation in travel groups unless these activities are an integral part of a larger educational program which meets the requirements of sec. 50(a) of this chapter;

(8) on-the-job training, apprenticeships and other work experience unless structured as part of a planned educational experience which meets the requirements of sec. 50(a) of this chapter;

(9) independent writing of articles or research reports or the presentation of papers outside a planned educational program which meets the requirements of sec. 50(a) of this chapter;

(10) individual, self-directed studies or other forms of independent learning experiences which are not subject to later verification by testing for the acquisition of cognitive or affective skills;

(11) noneducational activities of associations and professional societies, which may otherwise be used to qualify for professional and occupational group membership or certification; or

(12) a program involving less than 10 contact hours of instruction. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(a)(4) and (b)

12 AAC 46.070. APPLICATION FOR LICENSE RENEWAL. A person applying for renewal of his or her license as a nursing home administrator shall submit to the department

(1) a completed license renewal application form including a sworn statement that he or she has not violated the provisions of sec. 900(5) of this chapter;

(2) proof of meeting the continuing education requirement of sec. 40 of this chapter in the form of an official college transcript or a letter from the sponsor of a continuing education program, whichever is appropriate; and

(3) the annual license fee required by AS 08.70.150(3). (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(a)(2) and (3) and (b)

12 AAC 46.900. DEFINITIONS. In this chapter

(1) "accredited college" means an institution

that meets the accreditation standards set forth by the Northwest Association of Schools and Colleges or its equivalent;

(2) "board" means the Board of Nursing Home Administrators;

(3) "continuing education unit" means 10 contact hours in an organized continuing education experience under responsible sponsorship, capable direction and qualified instruction;

(4) "department" means the Department of Commerce and Economic Development;

(5) "good moral character" means that a person

(A) has not paid, given, caused to be paid or given or offered to pay or to give a commission or other valuable consideration for solicitation or procurement, either directly or indirectly, of nursing home patronage or has accepted such a payment;

(B) has not committed acts of misconduct in the operation of a nursing home including but not limited to fraud, deceit, or misrepresentation in his capacity as a nursing home administrator;

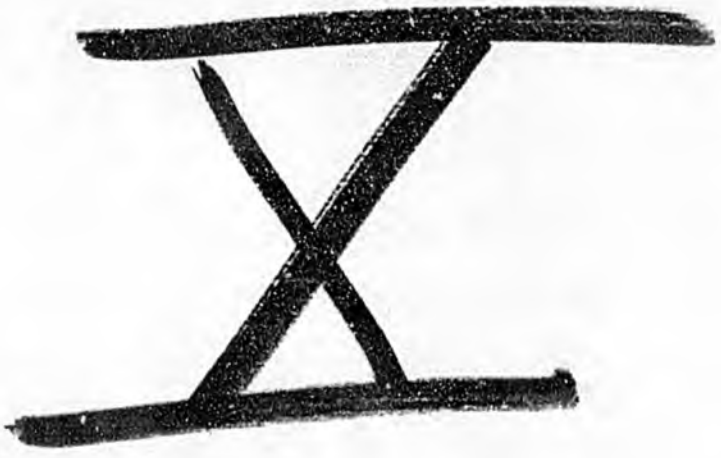
(C) is not addicted to or dependent upon the use of alcohol, morphine, cocaine or other drugs recognized as producing an abnormal effect;

(D) has not been convicted of a felony relative to work as a nursing home administrator; or

(E) has not engaged in conduct that demonstrates unfitness to practice as a nursing home administrator;

(6) "health care facility" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care of two or more nonrelated individuals suffering from illness, disease, injury or deformity, or a place devoted primarily to providing obstetrical or other medical or nursing care for two or more nonrelated individuals and includes a convalescent home, nursing home, a public health center, and community mental health center and a facility for the mentally retarded. (Eff. 5/13/77, Reg. 62)

Authority: AS 08.70.050(b)



STATE OF ALASKA
Board of Nursing
(October, 1978)

Findings

Members of the nursing profession are responsible for a wide range of health care including treatments and therapeutic measures, administration of medications, and direct patient care, under the supervision and prescription of a licensed physician or dentist. Special provisions may be instituted which would allow for independent medical practice by qualified practitioners. The Board of Nursing has the responsibility for establishing and evaluating educational standards of institutions.

Dissolution of the Board and governmental deregulation would significantly and adversely affect the quality of health care provided to and received by the general public. Lack of control could result in financial loss, physical injury or death. Additionally, with the abrogation of complaint and enforcement responsibility, unqualified practitioners would be virtually unhindered in practice. Regulation of this profession, by State government and through a State Board, is considered to be in the best interests of the public.

I. General Information

A. Regulated Parties

1. Licensed Professional Nurses (registered)
2. Licensed Practial Nurses (vocational)

B. Statutory Definition of Regulated Profession

"(5) 'practice of professional nursing' means the performance for compensation of observation, care and counsel of the ill, injured, or infirm, or the maintenance of health or prevention of illness of others, the supervision and teaching of personnel; or the administration of medications and treatments prescribed by a licensed physician or dentist which require substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social science; but the foregoing do not include acts of medical diagnosis, or the prescription of medical therapeutic or corrective measures unless authorized by regulations promulgated jointly by the State Medical Board and the Board of Nursing and as implemented by the Board of Nursing."

"(6) 'practice of practical nursing' means the performance for compensation of selected acts in the care or prevention of illness, and in the care of the ill, injured, or infirm under the direction of a licensed professional nurse or a licensed physician or a licensed dentist not requiring the substantial specialized skill, judgment and knowledge required in professional nursing."

"(9) 'advanced nurse practitioner' means a registered professional nurse who by virtue of specialized education and experience, has become certified to perform acts of medical diagnosis, and prescription of medical, therapeutic or corrective measures as authorized by regulations promulgated under (5) of this section." (AS 08.68.410)

C. Nature and Composition of Board

1. Board members and terms:

Five-year term (members may not serve more than two consecutive terms unless filling an unexpired vacancy of two years or less).

Eileen Montano, R.N. (Chairman)	ends March 31, 1981
Norma J. Frank, R.N.	ends March 31, 1979
Marjorie Van Kooten, R.N.	ends March 31, 1978
Betty Irwin Hodo, R.N.	ends March 30, 1980
Carol Ann Verga, R.N., A.N.P.	ends March 31, 1982
Kandace Henry	ends March 31, 1980
Erna Rasmussen	ends March 31, 1981

2. Representation:

Profession = 5
Public = 2

3. Qualifications:

"One member shall be currently involved in institutional nursing service, one member in community or public health nursing and two members in basic or continuing education, one nurse at large, and two persons who have no direct financial interest in the health care industry." (AS 08.68.010)

"The five members of the board who are nurses shall be licensed professional nurses in the state, and shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment." (AS 08.68.060)

D. Licensing Data

Currently licensed:

R.N.	in-State	= 2,240
R.N.	out-of-State	= 362
	Total	2,602

L.P.N.	in-State	= 588
L.P.N.	out-of-State	= 114
	Total	= 702

(Through September, 1978)

E. Fees

Professional or Registered Nursing

1.	application	$20.00
2.	examination	20.00
3.	endorsement	20.00
4.	biennial renewal	15.00

Practical or Vocational Nursing

1.	application	$15.00
2.	examination	15.00
3.	endorsement	15.00
4.	biennial renewal	15.00

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	30,433.00	55,021.00	41,731.00	73,312.37
- Refunds	385.00	375.00	984.00	1,046.50
Total	30,048.00	54,646.00	40,747.00	72,265.87
Expenditures				
Per Diem	3,721.74	5,165.75	4,321.50	8,195.68
Transportation	2,654.17	3,962.57	3,293.07	6,815.61
Phone	875.37	380.75	206.58	445.99
Printing, Advert., and Postage	1,832.30	1,552.32	1,784.46	1,181.20
Fees & Services	1,482.67	2,113.54	2,429.00	2,687.09
Rents, Leases, Other	286.60	757.05	571.92	772.98
Executive Officer (Salary & Benefits)	24,220.27	26,400.27	32,339.29	23,807.99
Total	35,073.12	40,332.41	44,945.82	43,906.54
Surplus	-	14,313.59	-	28,359.33
Deficit	5,025.12	-	4,198.82	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	0	0	0
1976	8	1	1
1977	8	1	0
1978 (through June 30)	0	0	0

Pending: 15

One complaint was received by the Office of the Ombudsman from an applicant who alleged that s/he was unfairly denied licensure by endorsement. This complaint was determined to be unsupported in fact. A case involving drug abuse and related charges was acted upon by authorities. Other complaints received included: (1) practicing without a license, (2) dispensing drugs without appropriate authorization, (3) misrepresentation, and (4) practicing beyond scope of authority, such as practicing midwifery without a license to do so.

H. Qualifications

1. Registered Nurse: Practitioners must have completed high school and from two to four years of nurse training. All states require successful completion of examination prior to initial licensure.

2. Licensed Practical Nurse: Practitioners must have completed a training program, usually one year, and must pass an examination prior to initial licensure.

II. Criteria and Analysis

A. To what extent has the Board of Nursing operated in the public interest?

The statutory duties of the Board include adoption of necessary rules and regulations, approval of educational curricula and adoption of educational program standards, accrediting of appropriate programs, and examining, licensing, and renewing licenses of qualified individuals.

Two methods of assuring licentiate competency are education and training evaluation. Nursing programs within the State are thoroughly reviewed by the Board prior to accreditation. Academic and clinical content must meet established criteria and must continue to do so. Continued evalution is accomplished through survey visits by the Board and submission of annual reports related to faculty, students and current curriculum. Programs meeting all requirements are given full accreditation, new programs that have yet to fulfill all requirements are given provisional accreditation status, and those with demonstrated problems in compliance are given conditional accreditation for a one-year period. Because content and criteria of nursing programs nationwide are similar and because all states require examination for licensure, educational qualifications for out-of-State applicants present few problems.

Examinations for professional and practical nurses consist of the State Board Test Pool Examination (SBTPE). These tests are constructed, provided and graded by the National League for Nursing, Inc. under contract with the National Council of State Boards of Nursing. Elaborate procedures for test security exist and must be adhered to by states participating, which is all states but one. Examinations are administered nationwide simultaneously, that is, on the same date, at the same time, and in the same manner. Only the acceptable passing score varies among states. Candidates in Alaska must score at least 350 in

each area of the examination, may be reexamined in one or two failed areas, and must repeat theory and practice if unable to successfully complete the examination a third time. Alaska will proctor the examination for other states.

Standard training, education and examination criteria operate in the public interest by assuring minimum competency and validity of competency requirements. Public interests are further served by the utilization of reasonable opportunities for entry into the profession. Several Board policies operate to provide such opportunities. For instance, it was noted that the Board has on occasion assumed the responsibility for locating special refresher training for candidates who failed the examination.

Temporary permits are issued routinely to allow apparently qualified individuals to practice pending licensure. Applicants for endorsement may be issued a temporary permit valid for a period not to exceed four months by which time all endorsement materials should have been received. Candidates for examination may receive a temporary permit which is valid until the results of the next examination are published. Temporary permit provisions are felt to advance the public interests by allowing expeditious entry into the profession. There does appear, however, to have been some problems when graduates from foreign schools applied for licensure. One such applicant was notified that she would be eligible for examination but would not be granted a temporary permit. Other applicants were refused permits because they had "graduated from foreign schools" or because they had "not had U.S. employment." AS 08.68.210(b) provides for the issuance of permits to any candidate for examination who is otherwise qualified. The Board should apply permit provisions to foreign graduates as well as to all other eligible qualified applicants.

Documentation also indicates that potential licentiates have been notified that their applications are incomplete because they lack such items as four reference letters, but such requirements are not statutory or regulatory prerequisites. It would be advisable for the Board to adopt regulations governing application procedures and materials so that such requirements may be enforced.

All applicants for endorsement who qualify on the basis of training and who have achieved a minimum score of 350 in all test areas are eligible for licensure in Alaska. Only in a few instances are such individuals required to be reexamined, notably, if test security had been broken at the time of initial examination, a rare occurrence. Because California utilizes (after January 1, 1974) a State constructed L.P.N. examination, its recent L.P.N licensees are a routine exception.

Practitioners with lapsed or inactive licenses who have been inactive for a period of five years or more may apply for reinstatement. However, if the Board has reason to believe it necessary, it may require additional training or supervised work to assure competency of the individual. Continuing competency of current licensees is not a requirement at the present time. In view of the importance of proficiency in nursing and the likelihood that programs could be established within the State, it is recommended that continuing education be instituted as a condition of relicensure. This should be accomplished by statutes as should any exceptions that may be acceptable. The Board should then designate qualifying programs or courses.

With few exceptions, the Board of Nursing has operated in the public interest through its statutes, regulations and policies. Entry into the profession is facilitated by standardized qualifications and requirements of nurse candidates, and by nonrestrictive licensing practices.

B. To what extent has the operation of the Board of Nursing been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The functions of the Board have not been particularly impeded by existing statutes, regulations and policies. As previously noted, however, the Board should make every effort to apply temporary permit provisions uniformly and should adopt regulations concerning application procedures. Continuing competency requirements should be designated upon which continued licensure would be contingent.

Although 27% of those nurses regulated by the Board are Licensed Practical Nurses, this group is not represented in Board membership. The inclusion of one practical nurse is recommended.

In July of 1976 some candidates were denied examination due to inadequate facilities, i.e., not enough room for all those applying. Adequate facilities and resources should be provided to help prevent a recurrence of this type of situation.

The Board and the administrative agency should have the authority to establish reasonable fees which would cover the costs of examination and licensing. Present fees are not adequate to cover transportation and per diem expenses and the total costs of Division of Occupational Licensing administrative overhead.

The Board of Nursing usually schedules three to four business meetings each year. Additional meetings and public hearings are held when necessary. Budgetary allowances should take into consideration these factors.

Support functions for the Board are largely the responsibility of its executive officer who: (1) performs administrative duties, (2) carries out Board regulations and policy decisions, and (3) assists in conducting examinations, educational programs, preparation of minutes and other Board administrative work. Further support staff is provided by a licensing examiner, who is also responsible for two other boards, and two clerical positions in Anchorage shared by this and two other units. Because of this support staff, little difficulty has been encountered with record keeping or maintenance of forms, files and board documents. Annual reports required by statute have been submitted each year and contain comprehensive information on the activities of the Board and the status of the profession.

The Board of Nursing has experienced the same difficulties as have all other boards and commissions under the jurisdiction of the administrative agency with respect to investigative services. During the past year two investigator positions remained vacant. As a result, one of these positions was abolished by the Legislature. One position in Anchorage was recently filled. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330-630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

It is undeniably in the public interest to enforce laws enacted for the protection of public health and welfare and to take expeditious action upon receipt of potentially serious complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Board of Nursing recommended statutory changes which are generally of benefit to the public interest?

Recent health care legislation pertaining to the Nursing Board statutes included: (1) public membership on the Board, (2) Medical Indemnity provisions, (3) applicability of the Administrative Procedure Act, and (4) general "housekeeping" items.

There are no recent records of statutory amendments proposed by the Board that would be specifically of direct benefit to the public. There are, however, numerous instances of regulatory changes designed to upgrade the profession and the efficiency of the Board. For example, recent regulations promulgated under AS 08.68.410(5) which will authorize independent practice by Advanced Nurse Practitioners are at this writing scheduled for public hearing. It is in the public interest to promulgate and adopt regulations and policies which will provide opportunities for entry into the profession and increased availability of services.

D. To what extent has the Board of Nursing encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The bulk of interest and participation concerning Board activities and services has come from this and related professions. The Board is sensitive to all input, however, very little general public interest has been demonstrated. Public concern is expressed by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers within the state but appear to elicit minimal response from the public at large. It may also be that members of the public are

somewhat reluctant to involve themselves in areas which they see as being technical or scientific in nature. A technical and professional "barrier" acts to deter public knowledgeability and participation.

The Board has not taken any overt action to inform the public or solicit its response outside of the professional sphere. Positive steps, such as public service radio announcements, could be taken to increase public awareness.

Public interests are furthered by the existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding.[1]

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Nursing processed and resolved?

One complaint was received by the Office of the Ombudsman. This unsupported charge alleged that the Board had unfairly denied licensure. Other complaints related to drug abuse allegations, practicing without a license, and practicing outside of the licensee's scope of authority. Sixteen complaints of this nature were received by the administrative agency during the last three and one-half year period. In this same

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[1] Shimberg, B. and Roeder, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

period one was referred to litigation and two were closed. At the time of this writing, fifteen cases remain open in agency files. The administrative agency will continue to review and update its complaints and investigative services to all boards and commissions coming under its jurisdiction.

A review of reading files maintained by the administrative agency indicates that public and professional inquiries are handled thoroughly and expeditiously through the mechanism of the Board's executive officer and clerical support.

F. To what extent does the Board of Nursing present qualified applicants to serve the public?

With few exceptions as previously noted, the Board makes every effort to present qualified practitioners to the public. The use of standard examinations and educational criteria to assure competency combined with utilization of temporary permit and endorsement procedures encourages entry into the profession and enhances availability of practitioners.

Every effort is made by the Board to insure the quality of in-State institutional education and training. Individual Board members have taken it upon themselves to provide assistance to applicants who require additional theory and practice. Only in the area of temporary permits for applicants for examination who graduated from foreign schools has nonconformance with statutes been indicated which may have restricted entry of some individuals into practice.

Mandatory continuing education requirements are recommended as an additional method of assuring that licensees continue to be qualified after initial licensure.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Nursing in its own activities, and its area of activity or interest?

Board staff consists of the support services of an executive officer, a licensing examiner and two shared clerical positions, all of whom are employed by the Division of Occupational Licensing, are hired through the State personnel system, and are subject therefore to affirmative action requirements.

The Board of Nursing issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary or other changes necessary to enable the Board of Nursing to better serve the interests of the public?

Representation on the Board should specify the inclusion of an L.P.N. Mandatory continuing competency requirements should be delineated, as should possible exemptions, and the Board should then define acceptable educational compliance. Temporary permit provisions should be applied uniformly to all qualified applicants. Authorization should be given to the administrative agency and the Board to establish a reasonable fee structure. AS 08.68.310 should be clarified to read that "graduates of an accredited nursing program are eligible for examination." No statutory language now exists which would clarify the "good samaritan" principle as it relates to nursing. Application materials and procedures should be delineated in Board regulations.

III. Conclusion

Continuation of the Board of Nursing and State regulation of the nursing profession are determined to be justified in terms of public health, safety and welfare.

IV. Summary of Recommendations

The Board of Nursing and State regulation should be reestablished for another four-year period. The following recommendations are made:

1. The Board should apply temporary permit provisions uniformly to all qualified applicants. (See discussion on p. 8)

2. Application procedures and necessary materials should be defined by Board regulations. (See discussion on p. 9)

3. Mandatory continuing competency requirements, and exemptions, should be imposed by statute and the Board should promulgate and adopt regulations which define acceptable qualifying education. (See discussion on p. 9)

4. A statutory amendment should be made that would specifically include an L.P.N. in board membership. (See discussion on p. 10)

5. Budgetary allowances need to be considered so that adequate meeting scheduling, testing facilities, and support services may be provided as necessary.

6. Authority should be given to enable the board and the administrative agency to establish reasonable fee structures. (See discussion on p. 10)

Chapter 68. Nursing.

Article
1. Board of Nursing (§§ 08.68.010 — 08.68.150)
2. Examination and Licensing (§§ 08.68.160 — 08.68.275)
3. Nursing Education Programs (§§ 08.68.280 — 08.68.330)
4. Unlawful Acts (§§ 08.68.340 — 08.68.390)
5. General Provisions (§§ 08.68.400 — 08.68.410)

Article 1. Board of Nursing.

Section
10. Creation and membership of Board of Nursing
20. Term of office
30. Limitation on term of service
40. [Repealed]
50. Removal from office
60. Qualifications of board members
70. Election of officers
80. Meetings
90. Quorum
100. Duties of board
110. [Repealed]
111. Executive officer of board
120 — 130. [Repealed]
140. Applicability of Administrative Procedure Act
150. Expenses

Sec. 08.68.010. Creation and membership of Board of Nursing. There is created a Board of Nursing, consisting of seven members appointed by the governor. One member shall be currently involved in institutional nursing service, one member in community or public health nursing and two members in basic or continuing nursing education, one nurse at large, and two persons who have no direct financial interest in the health care industry. (§ 3 ch 90 SLA 1957; am § 1 ch 67 SLA 1973; am § 15 ch 102 SLA 1976)

Effect of amendments. — The 1973 amendment rewrote the second sentence.

The 1976 amendment substituted "seven members" for "five members" in the first sentence and "one nurse at large, and two persons who have no direct financial interest in the health care industry" for "and one large" at the end of the second sentence.

Am. Jur. and C.J.S. references. — 41 Am. Jur., Physicians and Surgeons, §§ 14, 23 to 69.

70 C.J.S. Physicians and Surgeons, §§ 1, 8, 10, 69.

Sec. 08.68.020. Term of office. Members serve staggered terms of five years and until their successors are appointed. The terms of the public members on the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term. (§ 3 ch 90 SLA 1957; am § 16 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment rewrote this section.

Sec. 08.68.030. Limitation on term of service. A board member may not serve more than two consecutive terms. Time served in filling an unexpired vacancy of two years or less is not considered a term. (§ 3 ch 90 SLA 1957)

Sec. 08.68.040. Source of appointments.
Repealed by § 46 ch 102 SLA 1976.

Editor's note. — The repealed section derived from § 3, ch. 90, SLA 1957.

Sec. 08.68.050. Removal from office. The governor may remove any board member for neglect of duty required by law, or for unprofessional or dishonorable conduct after a fair and impartial hearing. (§ 3 ch 90 SLA 1957)

Sec. 08.68.060. Qualifications of board members. The five members of the board who are nurses shall be licensed professional nurses in the state, and shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment. (§ 4 ch 90 SLA 1957; am § 17 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment rewrote this section.

Sec. 08.68.070. Election of officers. The board shall annually elect a chairman and secretary-treasurer from among its members. (§ 5 ch 90 SLA 1957)

Sec. 08.68.080. Meetings. The board shall meet at least once a year. (§ 5 ch 90 SLA 1957)

Sec. 08.68.090. Quorum. A majority of the board constitutes a quorum. (§ 5 ch 90 SLA 1957)

Sec. 08.68.100. Duties of board. The board shall

(1) adopt rules and regulations necessary to make this chapter effective and when necessary, additions to or changes in rules and regulations of the board by a quorum vote by mail, these additions to or changes in the rules and regulations which are made by mail and the vote on them to be entered in the minutes of the board at its next meeting;

(2) make available, upon request, copies of this chapter and the regulations adopted for administering it;

(3) approve curricula and a[illegible] standards for educational programs preparing persons for licensing and provide for surveys of these programs in the state at the times it considers necessary;

(4) accredits educational programs which meet the requirements of this chapter and the standards of the board, and deny or withdraw accreditation from educational programs for failure to meet board standards;

(5) examine, license, and renew the licenses of qualified applicants, and conduct hearings upon charges and administer oaths to persons giving testimony at hearings;

(6) keep a record of its proceedings, and submit annual reports to the governor and the legislature. (§ 6(1) (2) (3) ch 90 SLA 1957)

Sec. 08.68.110. Appointment of executive officer.

Repealed by § 3 ch 59 SLA 1966.

Sec. 08.68.111. Executive officer of board. (a) The Department of Commerce and Economic Development, in consultation with the Board of Nursing, shall employ a licensed, registered nurse, who is not a member of the board, to serve as executive officer of the board.

(b) The executive officer shall be a nurse having a bachelor's degree or higher, currently licensed in the state and with not less than five years of active nursing experience, of which not less than two years within the preceding five years has been in an administrative or a teaching capacity in an accredited institution acceptable to the board. If a licensed professional nurse holding a bachelor's degree is not available to fill the position of executive officer, the board may waive the requirement for a bachelor's degree and appoint a licensed professional nurse possessing other qualifications in education and administrative experience which the board considers acceptable. However, the appointee shall complete the requirements for the award of a bachelor's degree in four years after appointment to the position of executive officer. Annually, the appointee shall offer the board evidence of satisfactory progress toward award of a bachelor's degree. If after the annual review the board believes that the appointee has not made satisfactory progress toward award of a bachelor's degree, the department may dismiss the appointee, notwithstanding the provisions of AS 39.25.170.

(c) The executive officer shall:

(1) perform the administrative duties as required by the statutes and the department,

(2) carry out regulations and policy decisions, consistent with law, made by the Board of Nursing, and

(3) assist the board in the conducting of examinations, educational programs, preparation of minutes and other board administrative work.

(d) Repealed by § 1 ch 129 SLA 1974. (§ 1 ch 47 SLA 1967; am § 1 ch 81 SLA 1969; am § 2 ch 67 SLA 1973; am § 1 ch 129 SLA 1974; am § 49 ch 218 SLA 1976)

Effect of amendment. — The 1973 amendment added the second, third, fourth and fifth sentences of subsection (b).

The 1974 amendment repealed subsection (d).

The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in subsection (a).

Sec. 08.68.120. Bond.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.68.130. Disposition of fees.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.68.140. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62).

Sec. 08.68.150. Expenses. Members of the board are entitled to the per diem and travel expenses allowed by law. (§ 7 ch 90 SLA 1957)

Article 2. Examination and Licensing.

Section
160. License required
165. Malpractice insurance
170. Qualifications of professional nurse applicants
180. Qualifications of practical nurse applicants
190. License by examination
200. License by endorsement
210. Temporary permits
220. Fees
230. Use of title and abbreviation
240. Nurses licensed or holding temporary permits under previous law
250. [Repealed]
251. Lapsed licenses
260. Inactive nurses
270. Grounds for denial, suspension or revocation
275. Limits or conditions on license; discipline

Sec. 08.68.160. License required. A person practicing or offering to practice professional or practical nursing in the state shall submit evidence that he is qualified to practice, and shall be licensed under this chapter. (§ 1 ch 90 SLA 1957)

Sec. 08.68.165. Malpractice insurance. If medical malpractice insurance for nurses becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of nursing services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance

on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 18 ch 102 SLA 1976)

Sec. 08.68.170. Qualifications of professional nurse applicants. An applicant for a license to practice professional nursing shall submit to the board on forms and in the manner prescribed by the board, written evidence, verified by oath, that the applicant has completed an approved four year high school course of study or the equivalent as determined by the appropriate educational agency, and has successfully completed (1) a professional nursing education program accredited by the board; or (2) a professional nursing education program outside the state which, in the opinion of the board, meets the minimum requirements of the board for an accredited program of study in this state at the time the applicant graduated; or (3) a professional nursing education program accredited by the National League for Nursing at the time the applicant graduated. (§ 8 ch 90 SLA 1957; am § 2 ch 129 SLA 1974; am § 1 ch 105 SLA 1976)

Effect of amendments. — The 1974 amendment substituted "in another state or territory" for "outside the state" in item (2).

The 1976 amendment substituted "outside the state" for "in another state or territory" in item (2).

Sec. 08.68.180. Qualifications of practical nurse applicants. (a) An applicant for a license to practice practical nursing shall submit to the board on forms prescribed by the board written evidence, verified by oath, that the applicant has completed the tenth grade or its equivalent as determined by the appropriate educational agency, is not less than 18 years of age, and has successfully completed (1) a practical nursing education program accredited by the board; or (2) a practical nursing education program outside the state which, in the opinion of the board, meets the minimum requirements of the board for an accredited program of study in this state.

(b) A qualified student of the Mt. Edgecombe School of Practical Nursing who was graduated before January 1, 1959, and had eighth

grade pretraining is eligible for a license. (§ 9 ch 90 SLA 1957; am § 3 ch 129 SLA 1974; am § 2 ch 105 SLA 1976)

Effect of amendments. — The 1974 amendment substituted "in another state or territory" for "outside the state" in item (2) of subsection (a).

The 1976 amendment substituted "outside the state" for "in another state or territory" in item (2) of subsection (a).

Sec. 08.68.190. License by examination. The applicant shall pass a written examination in the subjects which the board prescribes. The board shall issue a license to an applicant who passes the examination to practice professional nursing or practical nursing provided the other qualifications outlined in §§ 170 and 180 of this chapter are also met. The board shall conduct examinations annually and as often as it considers necessary. (§ 10 ch 90 SLA 1957)

Sec. 08.68.200. License by endorsement. The board may issue a license by endorsement to practice professional nursing or to practice practical nursing, whichever is appropriate, to an applicant who is licensed as either a professional nurse or a practical nurse under the laws of another state or territory, if in the opinion of the board the applicant meets the qualifications required for licensing in the state, and meets the requirements of either § 170 or § 180 of this chapter, whichever is applicable. (§ 11 ch 90 SLA 1957; am § 1 ch 37 SLA 1970; am § 4 ch 129 SLA 1974)

Effect of amendment. — The 1974 amendment substituted "state or territory" for "state, territory, or foreign country" near the middle of the section.

Sec. 08.68.210. Temporary permits. (a) The board may issue a temporary permit, nonrenewable and valid for a period not exceeding four months, to an applicant for a license by endorsement if he

(1) submits proof satisfactory to the board that he is currently licensed in another state or territory,

(2) meets the requirements of either § 170 or § 180 of this chapter, whichever is applicable, and

(3) pays the required fee.

(b) The board may issue a nonrenewable permit to an applicant for license by examination if he meets the qualifications of § 170 or § 180 of this chapter, whichever is applicable, and pays the required fee. The permit will be valid for a period not extending beyond the time when the results are published of the first examination the applicant is eligible to take after the permit is issued. (§ 11 ch 90 SLA 1957; am § 2 ch 37 SLA 1970; am § 5 ch 129 SLA 1974)

Effect of amendment. — The 1974 amendment substituted "state or territory" for "state, territory, or foreign country" in paragraph (1) of subsection (a).

Sec. 08.68.220. Fees. The following fees shall be imposed under this chapter when applicable:

(1) for professional or registered nursing

(A) application fee	$20
(B) license by examination fee	20
(C) license by endorsement fee	20
(D) biennial license renewal fee	15

(2) for practical or vocational nursing

(A) application fee	$15
(B) license by examination fee	15
(C) license by endorsement fee	15
(D) biennial license renewal fee	15

(§ 13 ch 90 SLA 1957; am § 1 ch 80 SLA 1960; am § 5 ch 94 SLA 1968; am § 2 ch 81 SLA 1969; am §§ 3, 4 ch 37 SLA 1970)

Sec. 68.68.230. Use of title and abbreviation. (a) A person licensed to practice professional nursing in the state may use the title "licensed professional nurse," "registered nurse," and the abbreviation "R.N."

(b) A person licensed to practice practical nursing in the state may use the title "licensed practical nurse," or "licensed vocational nurse," and the abbreviation "L.P.N." or "L.V.N." (§ 14 ch 90 SLA 1957)

Sec. 08.68.240. Nurses licensed or holding temporary permits under previous law. A person holding a license to practice professional or practical nursing in the state under prior law is considered licensed as a professional or practical nurse. (§ 15 ch 90 SLA 1957)

Sec. 08.68.250. Renewal of license.
Repealed by § 3 ch 81 SLA 1969.

Editor's note. — The repealed section derived from § 16, ch. 90, SLA 1957; § 2, ch. 80, SLA 1960; § 7, ch. 94, SLA 1968.

Sec. 08.68.251. Lapsed licenses. A lapsed license may be reinstated if it has not remained lapsed for more than five years. If the license is lapsed for more than five years and the board has reason to believe that the person applying for reinstatement of his license no longer has sufficient knowledge to carry out the duties of a licensed nurse, the board may require the applicant to take and pass the examination given under § 190 of this chapter or complete a refresher course approved by the board. (§ 3 ch 81 SLA 1969; am § 6 ch 129 SLA 1974)

Revisor's note (1969). — In ch 81 SLA 1969 this section was numbered AS 08.68.250.

Effect of amendment. — The 1974 amendment added "or complete a refresher course approved by the board" to the end of the second sentence.

Sec. 08.68.260. Inactive nurses. A licensed nurse may apply to be placed on inactive status. An inactive nurse may engage in the practice of nursing by submitting an application for renewal and the current biennial renewal fee to the board and receving a renewal certificate. If the board has reason to believe that the applicant for a renewal certificate no longer has sufficient knowledge to carry out the duties of a licensed nurse, the board may require the applicant to take and pass the examination given under § 190 of this chapter or complete a refresher course approved by the board. (§ 16 ch 90 SLA 1957; am § 2 ch 80 SLA 1960; am § 4 ch 81 SLA 1969; am § 7 ch 129 SLA 1974)

Effect of amendment. — The 1974 amendment added "or complete a refresher course approved by the board" to the end of the third sentence.

Sec. 08.68.270. Grounds for denial, suspension or revocation. The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, suspend or revoke the license of a person who

(1) has obtained or attempted to obtain a license to practice nursing by fraud or deceit;

(2) has been convicted of a felony;

(3) has been convicted of a crime involving moral turpitude;

(4) is habitualiy intoxicated or is addicted to the use of narcotics;

(5) has impersonated a professional or practical nurse;

(6) is guilty, in the opinion of the board, of negligence which has resulted in serious injury to a patient;

(7) is mentally ill or mentally incompetent;

(8) is guilty of unprofessional conduct;

(9) has wilfully or repeatedly violated any of the provisions of this chapter;

(10) is considered by the board to be professionally incompetent. (§ 20 ch 90 SLA 1957; am § 8 ch 129 SLA 1974)

Effect of amendment. — The 1974 amendment added paragraph (10).

Cited in Leege v. Martin, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

C.J.S. references. — 53 C.J.S. Licenses § 44; 70 C.J.S. Physicians and Surgeons § 16.

Sec. 08.68.275. Limits or conditions on license; discipline. (a) In addition to action under § 270 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 18 ch 102 SLA 1976)

Article 3. Nursing Education Programs.

Section
280. Nursing education program prohibited unless accredited
290. Application for accreditation
300. Survey and accreditation by the board
310. Accreditation
320. Denial of accreditation
330. List of accredited programs

Sec. 08.68.280. Nursing education program prohibited unless accredited. No person, institution or agency may conduct a nursing education program for professional or practical nurses unless the program is accredited by the board. (§ 18 ch 90 SLA 1957)

Sec. 08.68.290. Application for accreditation. An institution desiring to conduct a nursing education program to prepare professional or practical nurses shall apply to the board and submit evidence that (1) it is prepared to carry out the curriculum approved by the board for professional nursing or for practical nursing, as the case may be, and that (2) it is prepared to meet other standards established by law and by the board. (§ 17 ch 90 SLA 1957)

Sec. 08.68.300. Survey and accreditation by the board. The board shall designate the executive officer, a board member, or a consultant to survey the institution applying for accreditation to determine if the standards and requirements required by law and the board are met. The board may survey a nursing education program in the state at any time. Written reports of the surveys shall be filed with the board and retained by it. (§ 18 ch 90 SLA 1957)

Sec. 08.68.310. Accreditation. If, in the opinion of the board, the nursing education program meets the requirements established by the board, the board shall accredit it as an approved nursing education program for professional or practical nurses. The graduates of an accredited nursing program are eligible for licenses. (§ 18 ch 90 SLA 1957)

Sec. 08.68.320. Denial of accreditation. The board may deny, revoke or suspend accreditation of a nursing education program if it determines that required standards are not being maintained. (§ 18 ch 90 SLA 1957)

Sec. 08.68.330. List of accredited programs. The board shall prepare, maintain, and from time to time publish a list of accredited nursing education programs in the state. (§ 19 ch 90 SLA 1957)

Article 4. Unlawful Acts.

Section
340. Violations
350. Punishment for misdemeanor
360. Unlicensed practice a public nuisance
370. Application for injunction
380. Issuance of injunction
390. Remedy not exclusive

Sec. 08.68.340. Violations. It is a misdemeanor for a person to

(1) sell or fraudulently obtain or furnish a nursing diploma, license renewal or record, or aid or abet therein; or

(2) practice nursing under cover of a diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or by fraudulent representation; or

(3) practice or offer to practice nursing without a license, except when rendering necessary aid to the ill, injured or infirm in an emergency, or to knowingly employ a person without a license to practice nursing; or

(4) use in connection with his name a designation tending to imply that he is a licensed nurse unless he is licensed; or

(5) practice nursing during the time his license is lapsed, suspended or revoked; or

(6) conduct a nursing education program unless the program has been accredited by the board; or

(7) violate any provision of this chapter. (§§ 1, 22 ch 90 SLA 1957; am § 9 ch 129 SLA 1974)

Effect of amendment. — The 1974 amendment inserted "or to knowingly employ a person without a license to practice nursing" in paragraph (3).

C.J.S. references. — 53 C.J.S. Licenses §§ 62 to 65; 70 C.J.S. Physicians and Surgeons § 8.

Sec. 08.68.350. Punishment for misdemeanor. A person who violates § 340 of this chapter is punishable by imprisonment for not less than 10 days nor more than one year, or by a fine of not less than $10 nor more than $500, or by both. (§ 22 ch 90 SLA 1957)

Sec. 08.68.360. Unlicensed practice a public nuisance. The practice of professional or practical nursing for compensation by a person who is not licensed, or whose license is suspended, or revoked, or expired, is declared to be inimical to the public welfare and to constitute a public nuisance. (art VIII ch 90 SLA 1957)

Sec. 08.68.370. Application for injunction. The board may, apply for an injunction in a competent court to enjoin a person not licensed or whose license is suspended or revoked, or expired, from practicing professional or practical nursing. The court may issue a temporary injunction enjoining the defendant from practicing professional or practical nursing. (art VIII ch 90 SLA 1957)

Sec. 08.68.380. Issuance of injunction. If it is established that the defendant has been, or is practicing professional or practical nursing without a license or has been or is practicing nursing after his license has been suspended, or revoked, or has expired, the court may enjoin the defendant from further practice. (art VIII ch 90 SLA 1957)

Sec. 08.68.390. Remedy not exclusive. If a person violates an injunction issued under this section, he may be punished for contempt

of court. The injunction proceeding is in addition to other penalties and remedies provided in this chapter. (art VIII ch 90 SLA 1957)

Article 5. General Provisions.

Section
400. Exceptions to application of chapter
410. Definitions

Sec. 08.68.400. Exceptions to application of chapter. (a) This chapter does not apply to

(1) a qualified nurse licensed in another state employed by the United States Government or a bureau, or agency, or division of the United States Government while in the discharge of his official duties;

(2) nursing service given temporarily in the event of a public emergency or disaster;

(3) the practice of nursing by a student enrolled in a nursing education program accredited by the board when the practice is in connection with the student's course of study; or

(4) the practice of nursing by a nurse enrolled in an approved refresher course.

(b) For purposes of this section the word "nurses" includes professional and practical nurses, and "nursing" means professional and practical nursing. (art IX ch 90 SLA 1957; am § 10 ch 129 SLA 1974)

Effect of amendment. — The 1974 amendment added paragraph (4) to subsection (a).

Sec. 08.68.410. Definitions. As used in this chapter

(1) "board" means the Board of Nursing;

(2) "licensed professional nurse" is equivalent to the common title registered nurse;

(3) "licensed practical nurse" is equivalent to the title licensed vocational nurse;

(4) "practical nursing" also means vocational nursing;

(5) "practice of professional nursing" means the performance for compensation of observation, care and counsel of the ill, injured, or infirm, or the maintenance of health or prevention of illness of others, the supervision and teaching of personnel; or the administration of medications and treatments prescribed by a licensed physician or dentist which require substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social science; but the foregoing do not include acts of medical diagnosis, or the prescription of medical therapeutic or corrective measures unless authorized by regulations promulgated jointly by the State Medical Board and the Board of Nursing and as implemented by the Board of Nursing;

(6) "practice of practical nursing" means the performance for compensation of selected acts in the care or prevention of illness, and in the care of the ill, injured, or infirm under the direction of a licensed professional nurse or a licensed physician or a licensed dentist not requiring the substantial specialized skill, judgment and knowledge required in professional nursing;

(7) an "accredited nursing education program" is a program having curricula and standards which meet the requirements established by the board;

(8) "endorsement" is the licensing or registering of an applicant without examination through the acceptance of a license or registration issued by any state or territory after a comprehensive examination which is equivalent to the examination offered in this state, and providing the applicant meets all other qualifications required by law;

(9) "advanced nurse practitioner" means a registered professional nurse who by virtue of specialized education and experience, has become certified to perform acts of medical diagnosis, and prescription of medical, therapeutic or corrective measures as authorized by regulations promulgated under (5) of this section. (§ 2 ch 90 SLA 1957; am § 5 ch 37 SLA 1970; am § 3 ch 67 SLA 1973; am §§ 11, 12 ch 129 SLA 1974)

Effect of amendments. — The 1973 amendment added the language beginning "unless authorized" to the end of paragraph (5).

The 1974 amendment substituted "state or territory" for "state, territory, or foreign country" near the middle of paragraph (8) and added paragraph (9).

CHAPTER 44. BOARD OF NURSING

Article

1. Nursing Education of Professional Nurses
2. Nursing Education of Practical Nurses
3. Examination and Licensure
4. Advanced Nurse Practitioner
5. General Provisions

ARTICLE 1. NURSING EDUCATION OF PROFESSIONAL NURSES

Section

10. Purpose of accreditation
20. Types of accreditation
30. Survey
40. Establishment of school of professional nursing
50. Discontinuance of program
60. Organization of schools
70. Budget
80. Student clinical experience
90. Faculty
100. Qualifications of director and professional nursing instructors
110. Records
120. School catalogue
130. Curriculum requirements
140. Reports

12 AAC 44.010. PURPOSE OF ACCREDITATION. The purpose of accreditation is

(1) to assure the safe practice of nursing by setting minimum requirements for the conduct of school of professional nursing that prepares the nurse practitioner;

(2) to assure the graduate of their eligibility for admission to the licensing examination for professional nurses in Alaska; and

(3) to encourage within school of professional nursing self-evaluation and study for growth, development and improvement of its program. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100
AS 08.68.290

12 AAC 44.020. TYPES OF ACCREDITATION. (a) Full accreditation is granted a school of professional nursing that has met the requirements as set forth in secs. 10 – 140 of this chapter.

(b) Provisional accreditation is granted a school of professional nursing that has not been in operation long enough to fulfill the standards of accreditation of secs. 10 – 140 of this chapter.

(c) Conditional accreditation is granted a school of professional nursing which has failed to maintain minimum standards and has been notified that it must meet the requirements of the board within one year from date of notice. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.109(1),(3) and (4)
AS 08.68.290

12 AAC 44.030. SURVEY. (a) The completed application for provisional accreditation shall be submitted to the board when the school of professional nursing is ready for a survey visit.

(b) A survey of each school of nursing, including affiliations and extended campus facilities, is required for the purpose of full accreditation and shall be made by one or more representatives of the board and may include a faculty member from an established professional nursing program.

(c) Each school of professional nursing shall permit periodic surveys by the board or their designated representative for the purpose of determining compliance with accreditation standards.

(d) Prior to a survey visit, specific information will be requested by the board.

(e) The information supplied by the school and the written report of the survey will be given to the board. The report and recommendations of the board will be sent to the administrator of the controlling body and the delegated nurse administrator of the program. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1),(3) and (4)
AS 08.68.300

12 AAC 44.040. ESTABLISHMENT OF SCHOOL OF PROFESSIONAL NURSING. (a) Any university or college wishing to establish a school of professional nursing shall inform the

board in writing during the initial planning period.

(b) There shall be information on the availability of clinical facilities and job opportunities for graduates. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1),(3) and (4)
AS 08.68.300

12 AAC 44.050. DISCONTINUANCE OF PROGRAM. When a school of professional nursing plans on discontinuing its program it shall

(1) notify the board in writing as soon as the decision is made;

(2) give assurances that the educational standards shall be maintained until the last class has graduated or that adequate provisions are made for the transfer of students unable to complete the program; and

(3) make provision for the preservation of students' records. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)

12 AAC 44.060. ORGANIZATION OF SCHOOLS. (a) There shall be a clear statement of philosophy which shall be filed with the board.

(b) The school of professional nursing shall be an integral part of an accredited institution of higher learning. There shall be a plan of organization and administration of the school of professional nursing with an organization diagram available to all persons concerned with the school of professional nursing. This chart shall indicate responsibilities and lines of communication and show how individuals and units within the school of professional nursing stand in relation to one another and to such groups as the board of control and clinical facilities. The relationships may be direct, advisory, contractual, coordinating or cooperative in nature. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

12 AAC 44.070. BUDGET. (a) The financial statement of a school of professional nursing shall be submitted annually to the board and must include assets and liabilities, allowance for fiscal year for faculty salaries, administrative positions, laboratory equipment, maintenance, capitol improvement, library.

(b) In addition to the information required in (a) of this section, a school of professional nursing applying for initial, provisional accreditation shall submit a proposed budget for five years which includes projected amounts and sources of funding, and an analysis of projected disbursements. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

12 AAC 44.080. STUDENT CLINICAL EXPERIENCE. (a) Assignment of students for clinical experience shall be the responsibility of the director of the school of professional nursing and the faculty.

(b) Each school of professional nursing shall include in its curriculum student experience in meeting the physical, emotional and social needs of people of all ages in health and illness for nursing care.

(c) If there is more than one professional nursing program having clinical experience simultaneously within the same clinical area, each group shall have separate instructors.

(d) In student clinical experience, the clinical instructor-student ratio may not exceed 1:12 at any given time. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

12 AAC 44.090. FACULTY. The administration and teaching staff shall consist of

(1) a director of the school of professional nursing;

(2) nursing instructors prepared in the major broad areas of current nursing practice. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

12 AAC 44.100. QUALIFICATIONS OF DIRECTOR AND PROFESSIONAL NURSING INSTRUCTORS. (a) The director of a school of professional nursing shall be a professional nurse and have at least a master's degree in education or nursing, including coursework in curriculum development and counseling, and at least one

year of experience either in instruction or administration of nursing education.

(b) Instructors who are responsible for the development and implementation of curriculum in one of the specialty areas shall have a master's degree in nursing, and have at least one year of clinical nursing experience in that area.

(c) Instructors who supervise nursing practice in a school of professional nursing shall have at least a baccalaureate degree in nursing and have at least one year of clinical nursing experience in the area in which they are teaching. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

12 AAC 44.110. RECORDS. The school of professional nursing shall provide for

(1) pre-admission and current records for each student, including information as to the student's knowledge and skills related to the practice of professional nursing; and

(2) the official transcript of each student. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)
AS 08.68.300

12 AAC 44.120. SCHOOL CATALOGUE. In the catalogue of the accredited institution there shall be a current official statement, developed by the nursing faculty, describing the nursing program, which includes

(1) a statement of the philosophy and objectives of the school of professional nursing;

(2) admission and graduation policies and procedures;

(3) the curriculum, course description, and list of faculty members; and

(4) description of physical facilities. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)

12 AAC 44.130. CURRICULUM REQUIREMENTS. Baccalaureate and associate degree programs shall comply with the following minimum curriculum requirements:

(1) biological and physical sciences

(A) academic faculty prepared in these areas shall provide this instruction;

(B) subject matter shall relate to structure and function of the human body;

(2) behavioral and social sciences

(A) academic faculty prepared in these areas shall provide this instruction;

(B) subject matter shall include principles of psychology, communications, growth and development, and interpersonal relationships;

(3) nursing science

(A) the school of professional nursing shall provide instruction and clinical experience in the major broad areas of current nursing practice;

(B) it shall provide instruction in allied subjects such as community health, pharmacology, nutrition and diet therapy, history and trends in nursing and professional responsibilities;

(C) theory and laboratory experience shall be concurrent to enable students to develop basic skills in professional nursing;

(D) throughout the program the student shall have experience applying the principles learned by working with the health team in providing nursing services and health education to people of all ages. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)
AS 08.68.290

12 AAC 44.140. REPORTS. By July 1 of each year, schools of professional nursing shall submit to the Board of Nursing reports related to faculty, students and current curriculum as follows:

(1) written job descriptions and qualifications for each category of faculty;

(2) names, educational qualifications, and titles of all nursing faculty members;

(3) a count of students admitted, withdrawn, transferred and graduated on forms provided by the board;

(4) a copy of the catalogue;

(5) course outlines for all nursing courses;

(6) budget information required in sec. 70 of this chapter; and

(7) a copy of any written agreement between the school of professional nursing and clinical facilities. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.300

ARTICLE 2. NURSING EDUCATION OF PRACTICAL NURSES

Section

150. Purpose of accreditation
160. Types of accreditation
170. Survey
180. Establishment of school of practical nursing
190. Discontinuance of program
200. Organization of schools
210. Budget
220. Student clinical experience
230. Faculty
240. Qualifications of director and practical nursing instructors
250. Records
260. School catalogue
270. Curriculum requirements
280. Reports

12 AAC 44.150. PURPOSE OF ACCREDITATION. The purpose of accreditation is

(1) to assure safe practice of nursing by setting minimum requirements for the conduct of school of practical nursing that prepares the practical nurse;

(2) to assure the graduates of their eligibility for admission to the licensing examination for practical nurses in Alaska; and

(3) to encourage within school of practical nursing self-evaluation and study for growth, development and improvement of its program. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100
AS 08.68.290

12 AAC 44.160. TYPES OF ACCREDITATION. (a) Full accreditation is granted a school of practical nursing that has met the requirements as set forth in secs. 150 – 280 of this chapter.

(b) Provisional accreditation is granted a school of practical nursing that has not been in operation long enough to fulfill the standards of accreditation of secs. 150 – 280 of this chapter.

(c) Conditional accreditation is granted a school of practical nursing which has failed to maintain minimum standards and has been notifed that it must meet the requirements of the board within one year from date of notice. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.109(1)(3)(4)
AS 08.68.290

12 AAC 44.170. SURVEY. (a) The completed application for provisional accreditation shall be submitted to the board when the school of practical nursing is ready for a survey visit.

(b) A survey of each school of nursing, including affiliations and extended campus facilities, is required for the purpose of FULL accreditation and shall be made by one or more representatives of the board and may include a faculty member from an established practical nursing program.

(c) Each school of practical nursing shall permit periodic surveys by the board or their designated representative for the purpose of determining compliance with accreditation standards.

(d) Prior to a survey visit, specific information will be requested by the board.

(e) The information supplied by the school and the written report of the survey will be given to the board. The report and recommendations of the board will be sent to the administrator of

the controlling body and the delegated nurse administrator of the program. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)(4)
AS 08.68.300

12 AAC 44.180. ESTABLISHMENT OF SCHOOL OF PRACTICAL NURSING. (a) Any college wishing to establish a school of practical nursing shall inform the board in writing during the initial planning period.

b) There shall be information on the availability of clinical facilities and job opportunities for graduates. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)(4)
AS 08.68.300

12 AAC 44.190. DISCONTINUANCE OF PROGRAM. When a school of practical nursing plans on discontinuing its program it shall

(1) notify the board in writing as soon as the decision is made;

(2) give assurances that the educational standards shall be maintained until the last class has graduated or that adequate provisions are made for the transfer of students unable to complete the program; and

(3) make provision for preservation of students' records. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)

12 AAC 44.200. ORGANIZATION OF SCHOOLS. (a) There shall be a clear statement of philosophy which shall be filed with the board

(b) The school of practical nursing shall be an integral part of an accredited institution of higher learning. There shall be a plan of organization and administration of the school of practical nursing with an organization diagram available to all persons concerned with the school of practical nursing. This chart shall indicate responsibilities and lines of communication and show how individuals and units within the school of practical nursing stand in relation to one another and to such groups as the board of control and clinical facilites. The relationships may be direct, advisory, contractual, coordinating or cooperative in nature. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.210. BUDGET. (a) The financial statement of a school of practical nursing shall be submitted annually to the board and must include assets and liabilities, allowance for fiscal year for faculty salaries, administrative positions, laboratory equipment, maintenance, capital improvement library.

(b) In addition to the information required in (a) of this section, a school of practical nursing applying for initial, provisional accreditation shall submit a proposed budget for five years which includes projected amounts and sources of funding, and an analysis of projected disbursements. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.220. STUDENT CLINICAL EXPERIENCE. (a) Assignment of students for clinical experience shall be the responsibility of the director of the school of practical nursing and the faculty.

(b) Each school of practical nursing shall include in its curriculum, student clinical experience in the areas of medical, surgical, obstetrical, psychiatric and pediatric nursing.

(c) If there is more than one nursing program having clinical experience simultaneously within the same clinical area, each group shall have separate instructors.

(d) In student clinical experience, the clinical instructor-student ratio may not exceed 1:12 at any given time. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.230. FACULTY. The administration and teaching staff shall consist of

(1) a director of the school of practical nursing; and

(2) nursing instructors in each specialty area, medical, surgical, obstetrical, psychiatric and pediatric nursing. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.240. QUALIFICATIONS OF DIRECTOR AND PRACTICAL NURSING INSTRUCTORS. (a) The director of a school of practical nursing shall have at least a baccalaureate degree in nursing, including coursework in curriculum development and counseling, and at least one year of experience either in instruction or administration of nursing education and one year clinical nursing experience in the areas in which he is teaching.

(b) Instructors who teach in a school of practical nursing shall be registered nurses with a bachelor's degree who have at least one year of clinical nursing experience in the area in which they are teaching. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.250. RECORDS. The school of practical nursing shall provide for

(1) pre-admission and current records for each student, including information as to the student's knowledge and skills related to the practice of practical nursing; and

(2) the official transcript of each student. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)
AS 08.68.300

12 AAC 44.260. SCHOOL CATALOGUE. In the catalogue of the accredited institution there shall be a current official statement, developed by the nursing faculty describing the nursing program, which includes

(1) a statement of the philosophy and objectives of the school of practical nursing;

(2) admission and graduation policies and procedures;

(3) the curriculum, course description, and list of faculty members; and

(4) description of physical facilities. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.270. CURRICULUM REQUIREMENTS. The program for a school of practical nursing shall comply with the following minimum requirements:

(1) the school of practical nursing shall provide instruction and clinical experience in medical, surgical, obstetrical, pediatric and psychiatric nursing;

(2) the school of practical nursing shall provide instruction in those basic principles of the physical, social and behavioral sciences which relate to the practice of practical nursing;

(3) the school of practical nursing shall provide instruction in basic concepts of nutrition, pharmacology, communications, history and trends in nursing, and vocational responsibilities;

(4) theory and laboratory experience shall be concurrent to enable students to develop basic skills in practical nursing; and

(5) throughout the program the student shall have experience applying all principles learned by working with the health team in providing basic bedside care to patients. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (3)
AS 08.68.290

12 AAC 44.280. REPORTS. By July 1 of each year, schools of practical nursing shall submit to the board reports related to faculty, students, and current curriculum as follows:

(1) written job descriptions and qualifications for each category of faculty;

(2) names, educational qualifications, and titles of all nursing faculty members;

(3) a count of students admitted, withdrawn, transferred and graduated, on forms provided by the board;

(4) a copy of the catalogue;

(5) course outlines for all nursing courses;

(6) budget information required in sec. 210 of this chapter; and

(7) a copy of any written agreement between the school of practical nursing and clinical facilities. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.300

ARTICLE 3.
EXAMINATION AND LICENSURE

Section
290. Application for examination
300. State board examinations
310. Licensure of graduates of foreign schools of nursing
320. Temporary permits

12 AAC 44.290. APPLICATION FOR EXAMINATION. (a) All applicants for license by examination in Alaska shall

(1) make written application on forms provided by the board for permission to be admitted to the licensing examination;

(2) pay the required fee;

(3) provide the board with a complete certified transcript of her nursing education; and

(4) submit a letter of recommendation for examination from the director of the school of nursing.

(b) Application, fee, and all credentials shall be on file in the board office not later than six weeks prior to the date of the examination. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (5)
AS 08.68.190

12 AAC 44.300. STATE BOARD EXAMINATIONS. (a) Candidates shall write the State Board Test Pool Examination.

(b) Registered nurse candidates who receive a standard score of 350 or above in each area of the examination will be issued a license by the Board of Nursing.

(c) Registered nurse candidates who fail one or two areas of the examination need repeat only the areas failed. Candidates who fail three or more areas of the examination shall repeat the entire examination.

(d) Licensed practical nurse candidates who receive a standard score of 350 or above will be issued a license by the Board of Nursing.

(e) Licensed practical nurse candidates who fail the examination shall repeat said examination.

(f) After the third failure both registered nurse and licensed practical nurse candidates shall be required to repeat, at an accredited school of nursing, the theory and practice in the areas failed. The candidate shall provide proof of having fulfilled this requirement. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (5)
AS 08.68.190

12 AAC 44.310. LICENSURE OF GRADUATES OF FOREIGN SCHOOLS OF NURSING. (a) Applicants shall submit all required documents accompanied by certified English translations if the original documents are not in English.

(b) Unless otherwise provided by this section, nurses who have received nursing education outside the United States shall write the State Board Test Pool Examination.

(c) Applicants who have successfully completed the State Board Test Pool Examination elsewhere shall be licensed by endorsement.

(d) If licensed in Canada as a result of passing the national Canadian examination, and having received a score of at least 350 on each part of the examination, an applicant may receive a license by endorsement in the manner provided by AS 08.68.200. If the examination did not include all subjects included in the State Board Test Pool Examination, the applicant will be required to examine in those subjects. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.190
AS 08.68.200
AS 08.68.210(a) and (b)

12 AAC 44.320. TEMPORARY PERMITS. A temporary nonrenewable permit may be issued to an applicant who has taken the State Board Test Pool Examination one time and the results are pending. This permit will be valid until the results of this examination are published. (Eff. 10/14/72, Reg. 43; am 6/27/76, Reg. 58)

Authority: AS 08.68.100(1) and (5)
AS 08.68.200
AS 08.68.210(a) and (b)

ARTICLE 4.
ADVANCED NURSE PRACTITIONER

Section
322. Nurse-midwife

12 AAC 44.322. NURSE-MIDWIFE. (a) A person may not practice or offer to practice as a nurse-midwife in Alaska or use a title or initials signifying that he or she is a nurse-midwife unless authorized to do so by the board.

(b) An applicant for authorization to practice as a nurse-midwife must meet the following requirements:

(1) apply on forms provided by the board;

(2) at the time of application, provide written evidence of an established collaborative relationship with a physician or physicians appropriate to the area of practice, at least one physician who must be certified by the American Board of Obstetrics and Gynecology or eligible for certification by that board;

(3) pay a fee of $25, which must accompany the application;

(4) be currently licensed to practice as a professional nurse in Alaska;

(5) be certified by the American College of Nurse-Midwives; and

(6) within the five years before application have

(A) practiced nurse-midwifery on a continuing basis at least one year; or

(B) completed a basic nurse-midwifery program approved by the American College of Nurse Midwives.

(c) A person authorized to practice as a nurse-midwife by the board shall immediately report in writing to the board any change in conditions or terms in his or her collaborative relationship.

(d) A nurse-midwife may

(1) manage all in- and out-patient care of a low-risk obstetrical patient, which includes the prescription of necessary medical therapeutic or corrective measures, or those patients who meet criteria established by an advisory committee jointly appointed by the board and the State Medical Board; and

(2) provide family planning services.

(e) A nurse-midwife may not

(1) continue to manage a patient if abnormal conditions or complications are apparent or known to exist, except that emergency measures may be performed, if necessary, after summoning a physician but before arrival of a physician;

(2) perform deliveries except within a hospital licensed under AS 18.30.101 – 18.30.130 unless prevented from doing so by unusual or emergency circumstances.

(f) The executive officer of the board will prepare and transmit to the Alaska Board of Pharmacy a listing of all nurse-midwives. The listing will contain

(1) the name and Drug Enforcement Administration number, if issued, of each nurse-midwife;

(2) the beginning and ending dates of the nurse-midwife's authority to prescribe; and

(3) any limitations on the prescribing authority of the nurse-midwife.

(g) The executive officer of the board will notify the Alaska Board of Pharmacy within 24 hours of a termination or any other change in the prescribing authority of the nurse-midwife and the reason for the action.

(h) The authority to practice as a nurse-midwife will be denied, revoked or suspended in accordance with AS 08.68.270 and provisions of this chapter. (Eff. 6/27/76, Reg. 58; am 2/8/78, Reg. 65)

Authority: AS 08.68.100(1) and (5)
AS 08.68.111
AS 08.68.410(5)

ARTICLE 5.
GENERAL PROVISIONS

Section
330. License renewal
340. Reinstatement of a suspended license
350. Reinstatement of a revoked license
360. Change of name
370. Definitions

12 AAC 44.330. LICENSE RENEWAL. (a) All licenses shall be renewed biennially by June 30. Notice of renewal with inventory questionnaire will be mailed to every currently licensed nurse on or before May 1 of every even-numbered year.

(b) Any licenses not renewed by June 30 will be automatically canceled by July 1 or placed on the inactive list at the request of the licensee.

(c) To retain legal recognition as a nurse-midwife, a license must be renewed biennially by June 30 with

(1) a fee of $20 accompanying the renewal application;

(2) evidence of meeting any existing educational requirements for continued certification by the American College of Nurse-Midwives. (Eff. 10/14/72, Reg. 43; am 6/27/76, Reg. 58)

Authority: AS 08.68.100(1) and (5)

12 AAC 44.340. REINSTATEMENT OF A SUSPENDED LICENSE. A suspended license may be reinstated at the termination of suspension only if the requirements in the suspension order have been met. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (5)

12 AAC 44.350. REINSTATEMENT OF A REVOKED LICENSE. (a) One year after revocation of a license the licensee may apply to the board in writing for reinstatement of a license.

(b) The applicant for reinstatement may be requested to appear before the board.

(c) The board may request the applicant to work under supervision for a specified length of time in an agency approved by the board as a condition for temporary reinstatement of license.

(d) The applicant shall be responsible for providing a written evaluation from the employing agency regarding his performance and will be evaluated by the board to determine whether or not the license shall be reinstated. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1) and (5)

12 AAC 44.360. CHANGE OF NAME. The name of a licensed nurse shall be changed on the records when a request is made in writing and accompanied by one of the following:

(1) affidavit form supplied by the board;

(2) certified copy of marriage certificate; or

(3) certified copy of court ruling. (Eff. 10/14/72, Reg. 43)

Authority: AS 08.68.100(1)

12 AAC 44.370. DEFINITIONS. As used in this chapter

(1) "board" means Alaska Board of Nursing;

(2) "shall" indicates a mandatory requirement,

(3) "may" indicates permission at the discretion of the board;

(4) "school" or "program" means a division in a college or university which is responsible for preparing persons for practice of professional or practical nursing;

(5) "clinical facility" means any facility which provides laboratory experience for the education of students in a school of professional or practical nursing;

(6) "accreditation" means the approval granted a school of professional or practical nursing which has met the minimum requirements of the board;

(7) "baccalaureate program" is conducted in a senior college or university and is an academic department, division, school or college of the

senior college or university, which prepares persons for a baccalaureate degree in nursing;

(8) "associate degree program" includes general academic and nursing courses, is conducted within a community or junior college, and prepares persons for an associate degree in nursing;

(9) "collaborative relationship" is a working relationship between a nurse and a physician which utilizes their respective areas of expertise to meet the common goal of providing comprehensive care for the patient;

(10) "manage" means select and perform those measures essential to the effective execution of care and treatment regimens;

(11) "low-risk obstetrical patient" is a person who meets the following criteria:

(A) general good health;

(B) no major medical disorders, such as diabetes, heart disease, epilepsy, kidney disease, blood dyscrasia;

(C) no previous major obstetrical complications;

(D) parity under six;

(E) not presenting during the course of pregnancy symptoms of toxemis, hydramnios, placenta previa or abrupto, malposition of fetus, multiple pregnancy;

(F) vital signs remaining within normal curve;

(G) labor progressing according to normal curve;

(H) no prolonged rupture of membranes;

(I) no anesthesia, required or desired, other than pudendal or local; and

(J) acceptance of management of care by a nurse-midwife. (Eff. 10/14/72, Reg. 43; am 6/27/76, Reg. 58)

Authority: AS 08.68.100(1)
AS 08.68.410(5)

Editor's Note: All old regulations adopted by the Board of Nursing, Sections 1000 – 1090, were repealed as of 10/14/72. Check Register 3, June 1961, for the old regulations.

STATE OF ALASKA
Medical Board
(October, 1978)

Findings

The need for regulating the medical profession in the public interest is self evident. As stated in 37 ALR Annotated 676: "Careful preparation is required of one who enters the medical profession. No one has, or ought to have, the right to practise (sic) medicine who does not possess the necessary skill and learning. The physician must not only be able to detect readily the presence of disease, but also to ascertain its nature or character and to prescribe appropriate remedies for its cure. Many may have occasion to consult a physician, but few are able to determine his qualifications. Reliance in this respect must therefore be placed upon an assurance, usually in the form of a license granted by competent authority. Consideration for the protection of society has led many states to exclude from the practice of medicine those who upon an examination have been found not qualified therefor." (1924)

I. General Information

A. Regulated Parties

1. Physicians
2. Podiatrists
3. Chiropodists
5. Acupuncturists
6. Physician Assistants (pending)
7. Paramedics (pending)

B. Statutory Definition of Regulated Profession

"(2) 'practice of medicine' or 'practice of osteopathy' means

(A) maintaining an office or place of business for the purpose of treating the sick or injured for pay; or

(B) the public display of one's name and the letters 'M.D.,' 'M.B.' or 'D.O.' or the words 'physician' or 'osteopath' or 'osteopathic physician,' or 'osteopathic surgeon,' or 'osteopathic physician and surgeon,' or a specialist designation such as 'surgeon' or 'dermatologist,' 'psychiatrist,' or the like; or

(C) the assumption or promulgation of a title which tends to show that the person is willing or qualified to diagnose or treat the sick or injured; or

(D) for a fee prescribing, directing or recommending for the use of a person, a drug or medicine for the treatment, cure or relief of a disease, infirmity, bodily injury or defect; or

(E) for a fee performing a surgical operation for the cure, relief or reduction of disease, bodily injury, deformity, or defect..."

"(6) 'acupuncture' means a medical practice to cure disease or relieve pain, alter function or induce anesthesia by piercing portions of the body with needles;"

"(7) 'physician-trained mobile intensive care paramedic' means a person who

(A) has successfully completed the advanced first aid course prescribed by the board;

(B) is trained by a licensed physician

(i) to carry out all phases of cardio-pulmonary resuscitation,

(ii) to administer drugs under written or oral authorization of a licensed physician,

(iii) to administer intravenous solutions under written or oral authorization of a licensed physician; and

(C) has been examined and certified as a physician-trained mobile intensive care paramedic by the board or by the board's designated representatives;"

"(9) 'practice of podiatry' means the medical, mechanical, and surgical treatment of aliments of the foot, the muscles and tendons of the leg governing the functions of the foot, and superficial lesions of the hand other than those associated with trauma; the use of preparations, medicines, and drugs as are necessary for the treatment of these ailments; the treat-

ment of the local manifestations of systemic diseases as they appear in the hand and foot, except that

(A) a patient shall be concurrently referred to a physician or osteopath for the treatment of the systemic disease itself;

(B) general anaesthetics may be used only in colleges of podiatry approved by the State Medical Board and in hospitals approved by the joint commission on the accreditation of hospitals, or the American Osteopathic Association; and

(C) the use of X ray or radium for therapeutic purposes is not permitted." (AS 08.64.380)

C. Nature and Composition of the Board

1. Board members and terms:

Four-year term (no restrictions regarding consecutive terms or number of terms).

Hilbert J. Henrickson, M.D. (Chairman)	ends April 31, 1982
Jeffrey A. Partnow, M.D.	ends November 6, 1980
Thomas J. Harrison, M.D.	ends July 8, 1980
Thomas Stengl, M.D.	ends January 12, 1980
Winthrop Fish, M.D.	ends April 21, 1981
Janette P. Adasiak	ends August 13, 1980
Hugh Gellert	ends January 19, 1981

2. Representation:

Profession = 5
Public = 2

3. Qualifications:

The Board shall consist of "five licensed physicians, residing in as many separate Alaska judicial districts as possible, and two persons with no direct financial interest in the health care industry." (AS 08.64.010)

D. Licensing Data

Current active licenses:

in-State = 387
out-of-State = 72
total = 459
(through May, 1978)

E. Fees

1.	application		$ 25.00
2.	license by examination		125.00
3.	endorsement or waiver		100.00
4.	temporary permit		25.00
5.	locum tenens permit		25.00
6.	biennial renewal, active		100.00
7.	biennial renewal, inactive		25.00
8.	reexamination		75.00
	Part I	$15.00	
	Part II	20.00	
	Part III	40.00	
	Parts I and II	10.00	

F. Board Revenues and Expenditures

	FY '75	FY '76	FY '77	FY '78
Receipts	$61,097.00	$14,510.00	$62,545.00	$18,203.75
- refunds	35.00	25.00	522.00	652.50
Total	61,062.00	14,485.00	62,023.00	17,551.25
Expenditures				
Per Diem	1,276.00	1,618.75	1,844.50	2,251.50
Transportation	1,765.67	2,335.56	2,199.13	2,695.36
Phone	202.95	108.26	255.96	589.28
Printing, Adver. & Postage	700.94	637.46	1,079.30	490.50
Fees & Services	216.30	804.20	368.65	225.00
Rents, Leases				
Other	-	49.13	108.00	94.68
Total	4,161.86	5,553.36	5,855.54	6,346.32
Surplus	56,900.14	8,931.64	56,167.46	11,204.93
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

	Received	Closed	To Litigation
1975	6	0	0
1976	11	1	0
1977	20	2	0
1978 (through August, 1978)	6	27	2

Pending: 13

These complaints involve allegations ranging from overcharging to drug abuse and malpractice resulting in death. At least 20 were filed with the administrative agency by members of the public at large, however, most of these concerned fees charged by the practitioner. Two additional complaints were received by the Office of the Ombudsman: one regarding a delay in investigating a grievance was justified and rectified, the other for failure to refund a license application fee which also was justified and rectified.

II. Criteria and Analysis

A. To what extent has the Medical Board operated in the public interest?

The Medical Board is statutorily directed to adopt regulations regarding abortion procedures and the registration and practice of physician assistants and physician-trained mobile intensive care paramedics. Board responsibilities include governing the licensing and practice of chiropodists, podiatrists, osteopaths and acupuncturists.

Most applicants for licensure in Alaska have a current license elsewhere and are seeking endorsement privileges. Those who have not successfully completed examination are administered a national examination, the

Federation Licensing Examination (FLEX), or appropriate portions. These FLEX examinations are given twice each year in all states at the same time and in the same manner. All applicants must have an oral interview with a member of the Board at which time a temporary permit is usually issued by the member unless there is a problem regarding the individual's qualifications or application. Graduates of medical colleges not accredited by the American Medical Association (AMA) must have been examined and certified by the Education Council on Foreign Medical Graduates or be licensed in another state, U.S. territory or Canada.

Another method by which physicians may practice in Alaska is the locum tenens permit. This is issued following an interview by a Board member to a physician licensed in another jurisdiction who wishes to substitute for an Alaska physician in his absence. Locum tenens permits are valid for 120 consecutive days.

Temporary permits are issued routinely to allow apparently qualified individuals to practice pending licensure. Permits are valid for eight months or until the Board meets to consider the application, whichever occurs first, and may be renewed by the Board one time only. Documentation of Board renewal is not contained in individual files or in meeting minutes even though there is a time lapse between permit expiration date and the effective date of initial licensure.

Utilization of all methods which allow entry into the profession operates in the public interest. Board regulations and policies are consistent with the goal of protecting the public by insuring qualifications and availabilty of practitioners.

Continuing education as a condition of relicensure, and exemption provisions, are required by AS 08.64.312. Regulations have been promulgated but are not yet in effect which delineate hours and methods of

compliance. Both the American Medical Association and the Alaska State Medical Association advocate continuing education as a means of keeping physicians up-to-date on current practices and technology. This too serves in the interests of public protection and welfare.

B. To what extent has the operation of the Medical Board been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Medical Board statutes are considered to be adequate in governing the profession. There are no real problems with existing regulations or Board policies in general.

A major impediment to Board operation is a lack of technical and clerical assistance partially due to a high turnover rate of personnel in the administrative agency. Three to five meetings are scheduled each year and are usually one day in length due to professional commitments of Board members. Although much is accomplished during meetings, priority items (i.e. three sets of pending regulations) consume a major portion of this time. For instance, the practice of podiatry has recently (1976) been placed under the Medical Board and although applications for licensure are pending, procedures and requirements have not yet been formulated. The requirement for submission of an annual report has not been complied with. Board members have not taken an oath of office as required by statute. Board minutes and files are lacking such documentation as Board approval for licensure and renewal of temporary permits. It is not felt that these deficiencies are so much a result of negligence as they are of lack of time and adequate administrative support. The administrative agency position which is responsible for support services to this Board is also responsible to two other professional boards with equally valid demands and priorities. Additionally, when the pending regulations go into effect, this Board will be examining, regulating and

licensing mobile intensive care paramedics and physician assistants and will be reviewing continuing education compliance and collaborative relationships between physicians and advanced nurse practitioners.

The Medical Board has experienced the same difficulties as other boards and commissions with respect to investigative services coming under the jurisdiction of the administrative agency. During the past year two investigator positions remained unfilled. As a result, one of these positions was abolished by the Legislature. One position was recently filled in Anchorage. Moreover, procedural constraints of the Administrative Adjudication Article of the Administrative Procedure Act (AS 44.62.330 - 630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints.

It is undeniably in the public interest to enforce the laws promulgated for the protection of public health and welfare and to take expeditious action upon receipt of such potentially serious complaints as those received regarding the medical profession. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Medical Board recommended statutory changes which are generally of benefit to the public interest?

1976 amendments to Medical Board statutes included: addition on the Board of two public members to serve staggered terms, addition of podiatrists and the practice of podiatry under Board regulation, Medical Indemnity provisions, applicability of the Administrative Procedure Act, the right of a physician to administer laetrile at the patient's request, mandatory continuing education, and general "housekeeping items."

Specific statutory recommendations of direct benefit to the public have not been made by the Board.

D. To what extent has the Medical Board encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The bulk of interest and participation concerning Board activities and services has come from this and related professions. The Board is sensitive to all input, however, very little general public interest has been demonstrated. Most public concern is expressed as a result of controversial issues or publicity, or by individuals with particular problems directly approaching Board members. Notices of pending meetings and new or changing regulations are published in major newspapers in the State. It can be assumed that members of the public are somewhat reluctant to involve themselves in areas of a technical or scientific nature which may be considered too complex for anything but minimal scrutinization by a layperson. A technical and professional "barrier" of sorts exists, due to the nature of the occupation involved, which probably tends to deter public knowledgeability and participation.

The Board has not taken overt action to solicit general public response to its quality and availability of service. Positive steps could be taken to solicit interest and make the public aware of the existence and functions of the Board, such as public service radio announcements. Wider dissemination of general information regarding the Board may help to mitigate public disinterest.

Public interests are furthered by existence of public members on professional boards. The State of California, which provides for a one-third public membership on health care boards and a public majority on other boards, has indicated that its experience with public members has been highly rewarding. [1]

E. How efficiently are public inquiries or complaints regarding the activities of the Medical Board processed and resolved?

No complaints were received against individual members of the Board or the Board as a whole.

Among complaints received against practitioners were charges relating to drug abuse, malpractice and negligence resulting in death. These cases are one to two years old and still pending largely due to the lengthy processes of litigation. As previously noted, this and all other boards have experienced some difficulty in timely and efficient receipt of investigative services. Also as previously noted, complaints of such a serious nature where health and life are in danger should be acted upon immediately. The administrative agency is addressing the matter of procedure and prioritization with emphasis on magnitude of offense as it relates to public welfare and safety.

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[1] Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

F. To what extent does the Medical Board present qualified applicants to serve the public?

Applicants for licensure are not sponsored by the Medical Board. Individuals wishing to practice within the State must submit fees and application to the administrative agency with documentation of qualifications. Two examinations are given each year, for those who need examination, both in Alaska and nationwide. Applicants who demonstrate the required level of knowledge or qualifications are issued a license.

Provisions for endorsement, temporary permits, locum tenens permits and for licensure of foreign graduates function to encourage availability of health care in the State. Continuing education, licensure qualifications, and regulation of related health care providers function to enhance the quality of services to the public.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Medical Board in its own activities, and its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (responsible for two other boards) who is hired through the State Personnel System, and therefore, subject to affirmative action requirements.

The Medical Board issues licenses on the basis of specific education and performance criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, regulatory, budgetary, or other changes necessary to enable the Medical Board to better serve the interests of the public?

Present Medical Board statutes are considered to be generally adequate except that AS 08.64.030 regarding substitution of members should be reviewed for validity. Pending regulations should be finalized as soon as possible. The Board and the administrative agency should comply with statutory requirements such as submission of an annual report. Appropriate steps need to be taken to formalize qualification and application procedures for podiatry applicants.

A lack of specific and adequate support services for this Board has contributed to the length of time in which action is taken on Board business such as documentation and follow through on requests. The administrative agency position assigned to the Medical Board also is responsible to two other professional boards. There has been a turnover in personnel that has not enhanced efficient Board operation.

Board and administrative expenses outweigh the revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations and the Division of Occupational Licensing administrative overhead, such as staff salary, investigative services and litigation costs.

III. Conclusion

The Medical Board and State regulation of the professions under its jurisdiction function to protect the public health, safety and welfare

IV. Summary of Recommendations

The Medical Board and State regulation should be reestablished for another four-year period. The following recommendations are made:

1. The Board should take formal action as a body on approvals for licensure and for extensions of temporary permits. This information should be recorded in meeting minutes and in Board files. (See discussion on p. 8)

2. The Board should take expeditious action on regulations now pending so that the intent of its statutes and policies may be in effect. (See discussion on p. 9)

3. The problem of providing adequate support services to this Board and possible administrative and budgetary implications should be considered. (See discussion on p. 9)

4. The Board should comply with statutory provisions such as those requiring an oath of office and an annual report on its activities. (See discussion p. 9)

5. The Board should take steps to formalize its requirements for podiatry applicants. (See discussion on p. 9)

6. The Board and the administrative agency should take positive steps to inform the public of Board and profession activities. (See discussion on p. 11)

Chapter 64. Medicine.

Article
1. State Medical Board (§§ 08.64.010 — 08.64.160)
2. Licensing (§§ 08.64.170 — 08.64.350)
3. Unlawful Acts (§ 08.64.360)
4. Miscellaneous Provisions (§§ 08.64.365 — 08.64.368)
5. General Provisions (§§ 08.64.370 — 08.64.380)

Article 1. State Medical Board.

Section
10. Creation and membership of State Medical Board
20. State Medical Board term of office
30. Substitution of members
40. Removal of members
50. Oath of office
60. Seal
70. Officers
80. [Repealed]
90. Quorum
100. Power of board to adopt regulations
105. Regulation of abortion procedures
107. Regulation of physician assistants and intensive care paramedics
110. Per diem and expenses
120. [Repealed]
130. Board records
140. Annual report to governor
150. [Repealed]
160. Applicability of Administrative Procedure Act

Sec. 08.64.010. Creation and membership of State Medical Board. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five licensed physicians, residing in as many separate Alaska judicial districts as possible, and two persons with no direct financial interest in the health care industry. (§ 35-3-82 ACLA 1949; am § 1 ch 148 SLA 1970; am § 11 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment added the language beginning "and two persons" to the end of the section and deleted the former second sentence, which read "Each member shall be chosen from a panel of three, for each vacancy, submitted to the Governor by the Alaska State Medical Association."

Am. Jur., ALR and C.J.S. references. — 41 Am. Jur., Physicians and Surgeons, §§ 7 to 69.

Validity of statute providing revocation of license of physician or surgeon, 5 ALR 94; 79 ALR 323.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 16 ALR 709; 37 ALR 680; 42 ALR 1342; 54 ALR 600.

Grounds for revocation of license, 54 ALR 1504; 82 ALR 1184.

What offenses involve moral turpitude within statute providing grounds for denying license, 109 ALR 1459.

What amounts to conviction within statute making conviction ground for refusing license, 113 ALR 1179.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 ALR 1138.

70 C.J.S. Physicians and Surgeons § 1.

Sec. 08.64.020. State Medical Board term of office. Members shall be appointed for a term of four years, subject to confirmation by a majority of the members of the legislature in joint session, and shall hold office until their successors are appointed and qualified. The terms of the public members of the board shall be staggered so that they do not expire at the same time. (§ 35-3-82 ACLA 1949; am § 4 ch 107 SLA 1969; am § 12 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment added the second sentence.

Sec. 08.64.030. Substitution of members. (a) If impracticable, a member of the board residing in another judicial district is not obligated to attend meetings of the board.

(b) If a member is unavoidably prevented from attending a meeting of the board, the governor may appoint a substitute examiner to serve pro tem with the same duties and responsibilities as a regular member. (§§ 35-3-82, 35-3-84 ACLA 1949; am § 2 ch 148 SLA 1970)

Sec. 08.64.040. Removal of members. The governor may remove a member of the board for cause. (§ 35-3-84 ACLA 1949)

Sec. 08.64.050. Oath of office. Each member shall take an oath of office. The oath shall be filed and preserved in the division of occupational licensing of the department. (§ 35-3-83 ACLA 1949; am § 1 ch 77 SLA 1969; am § 1 ch 101 SLA 1974)

Effect of amendment. — The 1974 amendment substituted "division of occupational licensing" for "central licensing section."

Sec. 08.64.060. Seal. The board shall adopt a seal. (§ 35-3-83 ACLA 1949)

Sec. 08.64.070. Officers. The board shall elect a president and secretary from among its members. The president and secretary may administer oaths. (§ 35-3-83 ACLA 1949; am § 2 ch 77 SLA 1969)

Sec. 08.64.080. Meetings of board.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.64.090. Quorum. Four members of the board constitute a quorum for the transaction of all business properly before the board. (§ 35-3-83 ACLA 1949; am § 3 ch 148 SLA 1970; am § 13 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "Four members" for "Three members" at the beginning of the section.

Sec. 08.64.100. Power of board to adopt regulations. The board may prescribe and establish rules and regulations necessary to carry into effect the provisions of this chapter. (§ 35-3-95 ACLA 1949)

Sec. 08.64.105. Regulation of abortion procedures. The State Medical Board shall adopt regulations necessary to carry into effect the provisions of AS 11.15.060 and shall define ethical, unprofessional or dishonorable conduct as related to abortions, set standards of professional competency in the performance of abortions and establish procedures and set standards for facilities, equipment and care of patients in the performance of an abortion. (§ 2 ch 103 SLA 1970)

Legislative committee report. — For report on ch. 103, SLA 1970 (CSSB 527 (HWE)), see 1970 Senate Journal Supplement No. 10; 1970 House Journal Supplements Nos. 12, 13. Also refer to the following relevant reports on abortion bills: 1970 Senate Journal Supplements Nos. 1, 4 (re SB 411); 1970 House Journal Supplement No. 11 (re CSHB 776).

Sec. 08.64.107. Regulation of physician assistants and intensive care paramedics. The board shall adopt regulations regarding the registration of physician assistants and physician-trained mobile intensive care paramedics, and the medical services that each may perform, including but not limited to (1) the educational and other qualifications, (2) the application and registration procedures, (3) the scope of activities authorized, and (4) the responsibilities of the supervising or training physician. (§ 2 ch 101 SLA 1974)

Sec. 08.64.110. Per diem and expenses. The members of the board are entitled to per diem and expenses authorized by law. (§ 35-3-95 ACLA 1949)

Revisor's note. — This section was impliedly amended by § 1, ch. 130, SLA 1953, as amended by § 1, ch. 34, SLA 1960.

Sec. 08.64.120. Coverage of funds and warrants for expenses. Repealed by § 3 ch 59 SLA 1966.

Sec. 08.64.130. Board records. The board shall preserve a record of its proceedings, which shall contain the name, age, residence and duration of residence of each applicant for a license, the time spent by him in medical study, the place of medical study, and the year and school from which degrees were granted. The record shall also show whether the applicant was granted a license or rejected. (§ 35-3-84 ACLA 1949)

Sec. 08.64.140. Annual report to governor. The board shall report annually to the governor, furnishing an itemized account of all money received and disbursed, with a complete record of the proceedings of the board for the preceding year. (§ 35-3-84 ACLA 1949)

Sec. 08.64.150. Bond of secretary-treasurer. Repealed by § 28 ch 77 SLA 1969.

Editor's note. — The repealed section derived from § 35-3-84, ACLA 1949.

Sec. 08.64.160. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62)

Article 2. Licensing.

Section
170. License to practice medicine or osteopathy
180. Application for license
190. Contents of application
200. Qualifications of physician applicants
205. Qualifications for osteopath applicants
207. Qualifications for acupuncture applicants
209. Qualifications for podiatry applicants
210. Examination required
215. Insurance required
220. Contents of examination and grading
225. Foreign medical graduates
230. License granted
240. License refused
250. Licensure by endorsement
255. Interview required
260. Re-examination
270. Temporary permits
272. Residency and internship
275. Temporary permit for locum tenens practice
280. Record of license
290. Examination fee
300 — 310. [Repealed]
311. Biennial license renewal
312. Continuing education requirements
313. Inactive license
315. Fees
320. Disposition of fees
325. Limits or conditions on license; discipline
330. Grounds for revocation of license
332. Automatic suspension for mental incompetency or insanity
334. Voluntary surrender
336. Duty of physicians to report
340. Statement of grounds of refusal or revocation of license
350. Certification of revocation

Sec. 08.64.170. License to practice medicine or osteopathy. (a) No person may practice medicine, podiatry, osteopathy or acupuncture in the state unless he is licensed under this chapter, except that

(1) a physician assistant may examine, diagnose or treat persons under the supervision, control, and responsibility of either a physician licensed under this chapter or a physician exempted from licensure under § 370 of this chapter;

(2) a physician-trained mobile intensive care paramedic may render emergency lifesaving service; and

(3) a person licensed under AS 08.36 may perform acupuncture in the regular practice of dentistry, subject to the regulations of the Board of Dental Examiners.

(b) Repealed by § 4 ch 101 SLA 1974.

(c) A chiropodist practicing in the state on May 16, 1972 is exempt from this section.

(d) A podiatrist practicing in the state on March 26, 1976 is exempt from this section, and shall be issued a license without examination if application is made within one year of the effective date of this act. (§ 35-3-81 ACLA 1949; am § 4 ch 148 SLA 1970; am § 1 ch 5 SLA 1972; am § 1 ch 21 SLA 1974; am §§ 3, 4 ch 101 SLA 1974; am §§ 1, 2 ch 24 SLA 1976)

Effect of amendments. — The first 1974 amendment, in subsection (a), substituted "medicine, osteopathy or acupuncture" for "medicine or osteopathy" in the introductory language and added a sentence which has been designated by the revisor as paragraph (3).

The second 1974 amendment designated the provisions of subsection (a) as subsection (a)(1), added paragraph (2) of that subsection, and repealed subsection (b).

The 1976 amendment inserted "podiatry" in the introductory language of subsection (a) and added subsection (d).

Legislative committee report. — For report on ch. 5, SLA 1972 (SCS CSHB 34), see 1971 House Journal, pp. 250, 251.

C.J.S. references. — 53 C.J.S. Licenses §§ 32 to 39; 70 C.J.S. Physicians and Surgeons §§ 8 to 14.

Sec. 08.64.180. Application for license. A person who desires to practice medicine, osteopathy or acupuncture in the state shall apply in writing to the department for a license. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 4 ch 143 SLA 1968; am § 3 ch 77 SLA 1969; am § 2 ch 21 SLA 1974)

Effect of amendment. — The 1974 amendment substituted "medicine, osteopathy or acupuncture" for "medicine or osteopathy."

Legislative committee report. — For report on ch. 143, SLA 1968 (HB 707), see 1968 House Journal, p. 836.

Sec. 08.64.190. Contents of application. The application shall state the name, age, residence, the duration of residence, the time spent in medical or osteopathy study, the place, year and school in which degrees were granted, and other information the board considers necessary. The application shall be made under oath. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 4 ch 77 SLA 1969)

Sec. 08.64.200. Qualifications of physician applicants. Except for foreign medical graduates as specified in § 225 of this chapter, each physician applicant shall

(1) be of good moral character;

(2) submit a certificate of graduation from a legally chartered medical school accredited by the Association of American Medical Colleges and the Council on Medical Education of the American Medical Association;

(3) submit a certificate from a recognized hospital certifying that the applicant has satisfactorily performed the duties of resident physician or intern for a period of one year;

(4) not have a license to practice medicine in another state, province, or territory which is currently suspended or revoked for disciplinary reasons; and

(5) be a citizen of the United States or be lawfully admitted for permanent residence. (§ 55-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 1 ch 18 SLA 1963; am § 5 ch 77 SLA 1969; am §§ 5, 6 ch 148 SLA 1970; am § 1 ch 85 SLA 1972; am § 5 ch 101 SLA 1974)

Effect of amendment. — The 1974 amendment added the exception to the beginning of the section and added paragraph (5).

Legislative committee report. — For report on ch. 77, SLA 1969 (CSHB 326 [Finance] am), see 1969 House Journal, p. 738.

Sec. 08.64.205. Qualifications for osteopath applicants. Each osteopath applicant shall meet the qualifications prescribed in § 200(1), (4) and (5) of this chapter and shall

(1) submit a certificate of graduation from the legally chartered school of osteopathy approved by the board;

(2) submit a certificate from a hospital approved by the American Medical Association or the American Osteopathic Association which certifies that he has satisfactorily completed and performed the duties of intern or resident physician for one year;

(3) take the examination required by § 210 of this chapter or be certified to practice by the National Board of Examiners for Osteopathic Physicians and Surgeons. (§ 1 ch 56 SLA 1966; am § 6 ch 77 SLA 1969; am § 7 ch 148 SLA 1970; am § 6 ch 101 SLA 1974)

Effect of amendment. — The 1974 amendment inserted the reference to § 200 (5) in the introductory language, inserted "the American Medical Association or" in paragraph (2), and substituted "or be certified to practice by the National Board of Examiners for Osteopathic Physicians and Surgeons" for "no waiver of this requirement for an osteopath applicant may be given" in paragraph (3).

Sec. 08.64.207. Qualifications for acupuncture applicants. Each acupuncture applicant shall meet all of the qualifications prescribed in § 200 of this chapter and shall meet those requirements of experience or education in the practice of acupuncture as may be required by the board. (§ 3 ch 21 SLA 1974)

Sec. 08.64.209. Qualifications for podiatry applicants. (a) Each applicant who desires to practice podiatry shall meet the qualifications prescribed in § 200(1) and (4) of this chapter and shall

(1) submit a certificate of graduation from a legally chartered school of podiatry approved by the board;

(2) take the examination required by § 210 of this chapter; the State Medical Board shall call to its aid a podiatrist of known ability who is licensed to practice podiatry to assist in the examination and licensure of applicants for a license to practice podiatry,

(3) meet other qualifications of experience or education which the board may require.

(b) The provisions of §§ 180 — 190, 220, and 230 — 380 of this chapter relating to the practice of medicine or osteopathy apply to the application procedure, testing, and practice of podiatry, as appropriate. (§ 3 ch 24 SLA 1976)

Sec. 08.64.210. Examination required. (a) The applicant shall take examinations in subjects the board considers necessary, unless excused under provisions of § 250 of this chapter.

(b) The application for examination shall be submitted to the board at least 40 days before the examination date. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 7 ch 77 SLA 1969; am § 8 ch 148 SLA 1970)

Sec. 08.64.215. Insurance required. (a) To be eligible for an active license under this chapter, a person shall maintain insurance issued by the Medical Indemnity Corporation of Alaska against liability to patients for medical malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska in the required amounts.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first. (§ 14 ch 102 SLA 1976)

Sec. 08.64.220. Contents of examination and grading. (a) The board shall make the examination written and oral and sufficient to test the applicant's fitness to practice medicine or osteopathy.

(b) Repealed by § 27 ch 148 SLA 1970.

(c) The examinations, answers and scores shall be preserved and filed. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am §§ 8, 9 ch 77 SLA 1969; am §§ 9, 27 ch 148 SLA 1970)

Sec. 08.64.225. Foreign medical graduates. Applicants who are graduates of medical colleges not accredited by the American Medical Association or one of its agencies shall meet the requirements of § 200(1), (3), (4) and (5) of this chapter and must have passed an examination and be certified by the Education Council on Foreign Medical Graduates, or be licensed by examination in another state or territory of the United States or province of Canada. (§ 10 ch 77 SLA 1969; am § 10 ch 148 SLA 1970; am § 7 ch 101 SLA 1974)

Effect of amendment. — The 1974 amendment inserted the reference to § 200 (5) near the middle of the section.

Sec. 08.64.230. License granted. (a) If the physician applicant passes the examination and meets the requirements of § 200 of this chapter, the board shall grant a license to him to practice medicine in the state.

(b) If the osteopath applicant passes the examination and meets the requirements of § 205 of this chapter, the board shall grant a license to him to practice osteopathy in the state.

(c) Each license shall be signed by the secretary and president of the board, and have the seal of the board affixed to it. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 11 ch 77 SLA 1969)

Sec. 08.64.240. License refused. If the applicant fails the examination, or is determined by the board to be morally or professionally unfit to practice medicine or osteopathy in this state, or fails to comply with any of the other requirements of this chapter, the board shall refuse to grant the license. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 12 ch 77 SLA 1969; am § 11 ch 148 SLA 1970)

Sec. 08.64.250. Licensure by endorsement. The board may waive the examination requirement and license by endorsement if the physician applicant meets the requirements of § 200 of this chapter, pays the required fee and has

(1) an active license from a board of medical examiners established under the laws of a state or territory of the United States or a province of Canada issued after thorough examination; or

(2) passed an examination given by the National Board of Medical Examiners or the Federation of State Medical Boards of the United States. (§ 35-3-85 ACLA 1949; am § 1 ch 22 SLA 1960; am § 13 ch 77 SLA 1969; am § 8 ch 69 SLA 1970; am § 12 ch 148 SLA 1970)

Revisor's note (1970). — Section 8, ch. 69, SLA 1970 and § 12, ch. 148, SLA 1970, both amended AS 08.64.250, making changes not compatible with each other. The earlier enactment (ch. 69) made a technical change to remove an ambiguity; it was superseded by the later enactment which made a substantive change that incidentally eliminated the source of the ambiguity. Since the earlier amendment never took effect it is not set out here.

Legislative committee report. — For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 08.64.255. Interview required. All applicants for a license under § 250 of this chapter shall be interviewed in person by at least one member of the board before a license will be issued. The interview shall be recorded, and, if the application is denied on the basis of the interview, the denial shall be stated in writing with the reasons for it, and the record shall be preserved. (§ 14 ch 77 SLA 1969; am § 13 ch 148 SLA 1970)

Legislative committee report. — For report on ch. 77, SLA 1969 (CSHB 326 [Finance] am), see 1969 House Journal, p. 738.

Sec. 08.64.260. Re-examination. (a) If the applicant fails the examination, he may, on the same application and payment of a re-examination fee, take another examination not less than six months nor more than two years after the date of the first examination. If the applicant fails a second examination, he may, after a year or more of further study or training approved by the board, make a new application for licensure.

(b) Applicants failing every portion of the examination shall retake the entire examination and pay the full examination fee.

(c) Applicants failing portions of part I or part II of the examination may retake the portions failed at a prorated fee prescribed in the regulations by the board.

(d) Applicants failing part III of the examination shall retake the entire part at a prorated fee prescribed in the regulations by the board. (§ 35-3-92 ACLA 1949; am § 15 ch 77 SLA 1969; am § 14 ch 148 SLA 1970)

Sec. 08.64.270. Temporary permits. (a) The board may issue a temporary permit to an applicant who meets the requirements of § 200 or 205 of this chapter and pays the required fee.

(b) A temporary permit is valid for eight months or until the board meets to consider the application, whichever occurs first.

(c) A temporary permit may be renewed at the board's discretion one time only. (§ 35-3-96 ACLA 1949; am § 16 ch 77 SLA 1969; am § 15 ch 148 SLA 1970; am §§ 2, 3 ch 85 SLA 1972; am § 8 ch 101 SLA 1974)

Effect of amendment. — The 1974 amendment deleted "nonrenewable" preceding "temporary permit" and "for licensure by endorsement or by examination" following "applicant" in subsection (a), deleted "issued to an applicant for licensure by endorsement" following "temporary permit" in subsection (b), and rewrote subsection (c).

Sec. 08.64.272. Residency and internship. For the limited purpose of doing residency or internship work, the board may issue a temporary permit to an applicant without examination if the applicant meets the requirements of § 200(1) and (2) of this chapter, pays the required fee, and has been accepted by an eligible institution in the state for the purpose of doing residency or internship work. (§ 16 ch 148 SLA 1970)

Sec. 08.64.275. Temporary permit for locum tenens practice. (a) A member of the board may grant a temporary permit to a physician or osteopath for the purpose of substituting for another physician or osteopath licensed in this state. The permit is valid for 120 consecutive days. If circumstances warrant, an extension of the permit may be granted by the board.

(b) A physician applying under (a) of this section shall pay the required fee and shall meet the requirements of § 200 of this chapter. In addition, he shall submit evidence of holding a license to practice medicine in a state or territory of the United States or in a province of Canada.

(c) An osteopath applying under (a) of this section shall pay the required fee and shall meet the requirements of § 205 of this chapter. In addition, he shall submit evidence of holding a license to practice in a state or territory of the United States or in a province of Canada.

(d) Within 10 days from the granting of the permit, the board member shall forward the fee to the department with a report of the issuance of the permit. (§ 17 ch 77 SLA 1969; am §§ 17 — 19 ch 148 SLA 1970)

Sec. 08.64.280. Record of license. (a) Before engaging in the practice of medicine or osteopathy, the licensee shall file the license or a certified copy of it with the clerk of the superior court in the judicial district in which he intends to practice medicine. The clerk shall file the certificate in his office and enter a memorandum of it in a book provided for that purpose containing the date of the license, the ground upon which it is issued, and the name and address of the licensee. The certificate and memorandum are open to public inspection.

(b) The clerk shall give the secretary of the board notice of all licenses recorded.

(c) If a licensee moves to another judicial district he shall file his license as provided in (a) of this section.

(d) Proof of failure to file the license is prima facie evidence of a violation of this chapter. (§ 35-3-91 ACLA 1949; am § 20 ch 148 SLA 1970)

Sec. 08.64.290. Examination fee. The examination fee shall be paid at the time of applying for examination. The board may refund the examination fee only if the applicant is unavoidably prevented from making the examination. (§ 35-3-86 ACLA 1949; am § 18 ch 77 SLA 1969)

Sec. 08.64.300. Fee for license by reciprocity.

Repealed by § 19 ch 77 SLA 1969.

Editor's note. — The repealed section derived from § 35-3-86, ACLA 1949.

Sec. 08.64.310. Annual license fee.

Repealed by § 20 ch 77 SLA 1969.

Editor's note. —The repealed section derived from § 35-3-87, ACLA 1949.

Sec. 08.64.311. Biennial license renewal. Licenses shall be renewed biennially. (§ 20 ch 77 SLA 1969; am § 21 ch 148 SLA 1970)

Revisor's note (1969). — In ch. 77, SLA 1969, this section was numbered AS 08.64.310.

Sec. 08.64.312. Continuing education requirements. (a) The Board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence to the board that continuing education requirements prescribed by regulations adopted by the board have been met.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five-year period. (§ 14 ch 102 SLA 1976)

Sec. 08.64.313. Inactive license. A licensee residing outside Alaska may renew his license as inactive. If he practices intermittently in Alaska, he may not hold an inactive license. (§ 21 ch 148 SLA 1970)

Sec. 08.64.315. Fees. The following fees are imposed under this chapter:

(1) application	$ 25
(2) license by examination	125
(3) license by endorsement or waiver of examination	100
(4) temporary permit	25
(5) locum tenens permit	25
(6) license renewal, biennial, active	100
(7) license renewal, biennial, inactive	25
(8) license by reexamination	75

(§ 21 ch 77 SLA 1969; am § 22 ch 148 SLA 1970)

Legislative committee report. — For report on ch. 77 SLA 1969 (CSHB 326 [Finance] am), see 1969 House Journal, p. 738.

Sec. 08.64.320. Disposition of fees. Fees collected by the board shall be deposited in the general fund. (§ 35-3-86 ACLA 1949)

Sec. 08.64.325. Limits or conditions on license; discipline. (a) In addition to action under § 330 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by speciality, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 14 ch 102 SLA 1976)

Sec. 08.64.330. Grounds for revocation of license. (a) A license may be revoked for failure to pay the license renewal fee prescribed in § 315 of this chapter. If the fee is not paid within the time provided, the department shall give written notice to the licensee that he is in default. Notice may be served on him personally or by registered mail addressed to his last known residence. If he fails to pay the fee within three months after notice of default, the secretary shall revoke his license on behalf of the board and notify the licensee of the revocation by mail or by personal service of the revocation.

(b) After a hearing, a license may be suspended, limited, revoked or annulled, or the licensee may be reprimanded, censured or disciplined by the board for (1) unprofessional or dishonorable conduct as defined in § 380(3) of this chapter, (2) professional incompetence, or (3) a violation of this chapter or a regulation adopted under it. (§ 35-3-89 ACLA 1949; am § 22 ch 77 SLA 1969; am § 9 ch 101 SLA 1974)

Effect of amendment. — The 1974 amendment rewrote subsection (b).

Legislative committee report. — For report on ch. 77, SLA 1969 (CSHB 326 [Finance] am), see 1969 House Journal, p. 738.

Sec. 08.64.332. Automatic suspension for mental incompetency or insanity. Notwithstanding AS 44.62.330 — 44.62.640, if a person holding a license to practice medicine and surgery or osteopathy under this chapter is adjudged mentally incompetent or insane by any final order or adjudication by a court of competent jurisdiction or by voluntary commitment to an institution for the treatment of mental illness, his license shall be automatically suspended by the board. The suspension shall continue in effect until the licensee is found or adjudged by the court to be restored to reason or until he is determined to be restored to reason by a licensed psychiatrist approved by the board. (§ 10 ch 101 SLA 1974)

Sec. 08.64.334. Voluntary surrender. The board, at its discretion, may accept the voluntary surrender of a license. No license may be returned unless the board determines, under regulations established by it, that the licensee is competent to resume his practice. However, no license may be returned to the licensee if the voluntary surrender resulted in the dropping or suspension of civil or criminal charges against the physician. (§ 10 ch 101 SLA 1974)

Sec. 08.64.336. Duty of physicians to report. (a) A physician who professionally treats a person licensed to practice medicine and surgery or osteopathy in this state for alcoholism or drug addiction, or for mental, emotional or personality disorders, shall report it to the board if he feels that the person may constitute a danger to the health and welfare of his patients or the public if he continues in practice. The report shall state the name and address of the person and the condition found.

(b) Upon receipt of a report under (a) of this section, the board shall investigate the matter and, upon a finding of reasonable cause, may appoint a committee of three qualified physicians to examine the licensee and report their findings to the board.

(c) If the board finds that the licensee is unable to continue to practice medicine and surgery or osteopathy with reasonable safety to his patients or the public, it shall initiate action to suspend, revoke, limit or condition his license to the extent determined necessary for the protection of the public. (§ 10 ch 101 SLA 1974)

Sec. 08.64.340. Statement of grounds of refusal or revocation of license. If the board refuses to issue a license or revokes a license, it shall file a brief and concise statement of the grounds and reasons for the action in the office of the secretary of the board and in the department. The statement, together with the written decision of the board, shall remain of record in the department. (§ 35-3-89 ACLA 1949; am § 23 ch 77 SLA 1969)

Sec. 08.64.350. Certification of revocation. When a license is revoked, the fact of revocation shall be certified by the secretary of the board to the clerk of the superior court in the judicial district where the license is on file. The clerk shall endorse the fact of revocation and the date of revocation on the face of the license or a certified copy of it which is on file. The same information shall be noted in the registry book provided for in § 280 of this chapter. (§ 35-3-94 ACLA 1949; am § 24 ch 77 SLA 1969)

Article 3. Unlawful Acts.

Section

360. Penalty for practicing without a license or in violation of chapter

Sec. 08.64.360. Penalty for practicing without a license or in violation of chapter. Except for a physician assistant and a physician-trained mobile intensive care paramedic under § 170 of this chapter, a person practicing medicine or osteopathy in the state without obtaining and filing an appropriate license is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $50 nor more than $100, or by imprisonment for not less than 10 days nor more than 90 days, or by both. Evidence that the defendant has failed to file a license with the clerk of the court is prima facie evidence that the defendant is not licensed. Each day of illegal practice is a separate offense. (§ 35-3-93 ACLA 1949; am § 25 ch 77 SLA 1969; am § 2 ch 5 SLA 1972; am § 11 ch 101 SLA 1974)

Effect of amendment. — The 1974 amendment inserted "and a physician-trained mobile intensive care paramedic" near the beginning of the first sentence.

Legislative committee report. — For report on ch. 5, SLA 1972 (SCS CSHB 34), see 1971 House Journal, pp. 250, 251.

C.J.S. references. — 53 C.J.S. Licenses §§ 44, 62 to 71; 70 C.J.S. Physicians and Surgeons §§ 24 to 30.

Article 4. Miscellaneous Provisions.

Section
365. [Repealed]
366. Liability for services rendered by a physician-trained mobile intensive care paramedic
367. Prescription or administration of laetrile by physicians
368. [Repealed]

Sec. 08.64.365. Physicians acting under emergency circumstances.

Repealed by § 46 ch 102 SLA 1976.

Editor's note. — The repealed section derived from § 1, ch. 6, SLA 1962.

Sec. 08.64.366. Liability for services rendered by a physician-trained mobile intensive care paramedic. No act or omission of a physician-trained mobile intensive care paramedic done or omitted in good faith while rendering emergency lifesaving service to a person who is in immediate danger of loss of life shall impose any liability upon the physician-trained mobile intensive care paramedic, the supervising physician, a hospital, the officers, members of the staff, nurses, or other employees of a hospital or upon a federal, state, borough, city or other local governmental unit or upon other employees of a governmental unit; however, this section does not relieve a physician or a hospital of a duty otherwise imposed by law upon the physician or hospital for the designation or training of a physician-trained mobile intensive care paramedic or for the provision or maintenance of equipment to be used

by the physician trained mobile intensive care paramedic. (§ 14 ch 101 SLA 1974)

Sec. 08.64.367. Prescription or administration of laetrile by physicians. (a) No physician may be subject to disciplinary action by the State Medical Board for prescribing or administering amygdalin (laetrile) to a patient under his care who has requested the substance unless the State Medical Board in a hearing conducted under the Administrative Procedure Act (AS 44.62) has made a formal finding that the substance is harmful.

(b) No hospital or health facility may interfere with the physician-patient relationship by restricting or forbidding the use of amygdalin (laetrile) when prescribed or administered by a physician and requested by a patient unless the substance as prescribed or administered by the physician is found to be harmful by the State Medical Board in a hearing conducted under the provisions of the Administrative Procedure Act (AS 44.62). (§§ 1, 2 ch 227 SLA 1976)

Sec. 08.64.368. Permits for isolated areas.

Repealed by § 27 ch 148 SLA 1970.

Editor's note. — The repealed section derived from § 3, ch. 93, SLA 1965.

Article 5. General Provisions.

Section

370. Persons not affected
380. Definitions

Sec. 08.64.370. Persons not affected. This chapter does not apply to

(1) officers in the regular medical service of the armed services of the United States or the United States Public Health Service while in the discharge of their official duties;

(2) a physician or osteopath, who is not a resident of this state, who is asked by a physician or osteopath licensed in this state to help in the diagnosis or treatment of a case;

(3) the practice of the religious tenets of a church;

(4) Repealed by § 13 ch 127 SLA 1974.

(5) a person while serving as a student, intern, resident physician, or fellow at a hospital, clinic, or medical facility in the state;

(6) a physician in the regular medical service of the United States Public Health Service or the armed services of the United States volunteering his services without pay or other remuneration to a hospital, clinic, medical office, or other medical facility in the state. (§ 35-3-97 ACLA 1949; am § 4 ch 93 SLA 1965; am § 26 ch 77 SLA 1969; am §§ 23, 24 ch 148 SLA 1970; am §§ 1, 2 ch 88 SLA 1972; am § 13 ch 127 SLA 1974)

Effect of amendment. — The 1974 amendment repealed paragraph (4).

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.64.380. Definitions. As used in this chapter

(1) "board" means the State Medical Board;

(2) "practice of medicine" or "practice of osteopathy" means

(A) maintaining an office or place of business for the purpose of treating the sick or injured for pay; or

(B) the public display of one's name and the letters "M.D.", "M.B." or "D.O." or the words "physician" or "osteopath" or "osteopathic physician", or "osteopathic surgeon", or "osteopathic physician and surgeon", or a specialist designation such as "surgeon" or "dermatologist", "psychiatrist", or the like; or

(C) the assumption or promulgation of a title which tends to show that the person is willing or qualified to diagnose or treat the sick or injured; or

(D) for a fee prescribing, directing or recommending for the use of a person, a drug or medicine for the treatment, cure or relief of a disease, infirmity, bodily injury or defect; or

(E) for a fee performing a surgical operation for the cure, relief or reduction of disease, bodily injury, deformity, or defect; or

(F) Repealed by § 1 ch 117 SLA 1971.

(3) "unprofessional or dishonorable conduct" means

(A) a violation of the provisions of AS 11.15.060 or regulations lawfully adopted by the State Medical Board concerning abortion procedures and practice;

(B) habitual overuse of alcoholic beverages or depressant, hallucinogenic or stimulant drugs, as defined in AS 17.12.150(3), or addiction to the use of narcotic drugs as defined in AS 17.10.230(13);

(C) conviction of an offense involving moral turpitude;

(D) advertising professional services to the public except for notice of opening, closing, or removing practice, and except for directories listing physicians in a community on a uniform and nondiscriminatory basis, containing only factual, truthful descriptions of physicians and their services;

(E) making untruthful or fraudulent statements in the application for examination, or deceiving or cheating during the examination for license, or procuring a license by deceit or fraud;

(F) violating the Controlled Substances Act (P.L. 91-513; 84 Stat. 1242) or any other federal law pertaining to medical practice and drugs;

(G) violating the principles of medical ethics of the American Medical Association and of the Alaska State Medical Association;

(4) Repealed by § 27 ch 148 SLA 1970.

(5) "department" means the Department of Commerce.

(6) "acupuncture" means a medical practice to cure disease or relieve pain, alter function or induce anesthesia by piercing portions of the body with needles;

(7) "physician-trained mobile intensive care paramedic" means a person who

(A) has successfully completed the advanced first aid course prescribed by the board;

(B) is trained by a licensed physician

(i) to carry out all phases of cardio-pulmonary resuscitation,

(ii) to administer drugs under written or oral authorization of a licensed physician,

(iii) to administer intravenous solutions under written or oral authorization of a licensed physician; and

(C) has been examined and certified as a physician-trained mobile intensive care paramedic by the board or by the board's designated representatives;

(8) "emergency lifesaving service" means medical assistance given to a person whose physical condition, in the opinion of a reasonably prudent person, is such that his life is endangered;

(9) "practice of podiatry" means the medical, mechanical, and surgical treatment of ailments of the foot, the muscles and tendons of the leg governing the functions of the foot, and superficial lesions of the hand other than those associated with trauma; the use of preparations, medicines, and drugs as are necessary for the treatment of these ailments; the treatment of the local manifestations of systemic diseases as they appear in the hand and foot, except that

(A) a patient shall be concurrently referred to a physician or osteopath for the treatment of the systemic disease itself;

(B) general anaesthetics may be used only in colleges of podiatry approved by the State Medical Board and in hospitals approved by the joint commission on the accreditation of hospitals, or the American Osteopathic Association; and

(C) the use of X ray or radium for therapeutic purposes is not permitted. (§§ 35-3-94, 35-3-38 ACLA 1949; am § 27 ch 77 SLA 1969; am § 3 ch 103 SLA 1970; am §§ 25 — 27 ch 148 SLA 1970; am § 9 ch 32 SLA 1971; am § 1 ch 117 SLA 1971; am § 4 ch 85 SLA 1972; am § 4 ch 21 SLA 1974; am §§ 12, 13 ch 101 SLA 1974; § 1 ch 127 SLA 1975; am § 4 ch 24 SLA 1976)

Cross reference. — As to malpractice actions, see AS 09.55.530 — 09.55.560.

Effect of amendments. — The first 1974 amendment added paragraph (6).

The second 1974 amendment added subparagraph (G) to paragraph (3) and added paragraphs (7) and (8).

The 1975 amendment added the language beginning "and except for directories listing physicians" to the end of paragraph (3) (D).

The 1976 amendment added paragraph (9).

Legislative committee report. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

The statutory definition of practicing medicine or surgery is very broad and within the literal meaning of the words

would include the practice of dentistry, optometry, podiatry, chiropractic, etc. By its very breadth the definition precludes a literal interpretation inasmuch as dentists, for example, have had a separate licensing procedure as long as have those who practice medicine or surgery. 1962 Op. Att'y Gen., No. 17.

Prescription of drugs or medicine by chiropractor. — It is illegal and crimiral for a chiropractor, without additional qualifications, to prescribe drugs or medicine to sick or injured persons. 1961 Op. Att'y Gen., No. 23.

Cited in Leege v. Martin, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

CHAPTER 40.
STATE MEDICAL BOARD.

Article

1. Licensing
2. Abortions
3. General Provisions

ARTICLE 1.
LICENSING.

Section

10. License by endorsement
20. License by examination
30. Re-examination fees
40. Recognized hospital
50. Biographical data required

12 AAC 40.010. LICENSE BY ENDORSEMENT. An applicant for license by endorsement shall submit evidence satisfactory to the board that he has passed an examination in the medical and basic science subjects. (Eff. 12/20/70, Reg. 36)

Authority: AS 08.64.250

12 AAC 40.020. LICENSE BY EXAMINATION. (a) The written examination will be the FLEX examination administered in Alaska.

(b) The oral examination required under AS 08.64.220 will be given in conjunction with the written examination.

(c) An applicant for license by examination must attain a FLEX weighted average of not less than 75 percent on his examination. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.100
AS 08.64.220

12 AAC 40.030. RE-EXAMINATION FEES. The following fees will be charged for re-examination where applicable:

(1) Part I $15
(2) Part II 20
(3) Part III 40
(4) Part I and II by individual subject 10

(Eff. 12/20/70, Reg. 36)

Authority: AS 08.64.260

12 AAC 40.040. RECOGNIZED HOSPITAL. For the purpose of AS 08.64.200(3) a recognized hospital is one which has been approved for internship or residency training by the Council on Medical Education of the American Medical Association or the Canadian Medical Association. (Eff. 12/20/70, Reg. 36)

Authority: AS 08.64.100
AS 08.64.200

12 AAC 40.050. BIOGRAPHICAL DATA REQUIRED. (a) The department will request biographical data from the Amercian Medical Association on each applicant for licensure by examination or endorsement, and no application will be considered complete until the form entitled "Biographical Data on Physicians" is on file.

(b) The department will request data from the United States Department of Justice, Bureau of Narcotics and Dangerous Drugs, on each applicant for licensure by examination or endorsement, and no application will be considered complete until the report is on file. (Eff. 8/29/73, Reg. 47)

Authority: AS 08.64.190

ARTICLE 2.
ABORTIONS.

Section

60. Termination of pregnancy
70. Informed consent
80. Medical procedures
90. Evaluation
100. Consultation requirements
110. Abortion procedures
120. Standards for hospitals and facilities
130. Records
140. Limitation

12 AAC 40.060. TERMINATION OF PREGNANCY. Termination of pregnancy must be requested by the pregnant woman, unless she has been adjudged mentally incompetent or is unmarried and under 18 years of age, in which case the request must be made by her parent or guardian. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 11.15.060(a)(3)
AS 08.64.105

12 AAC 40.070. INFORMED CONSENT. Unless otherwise provided in sec. 60, a written informed consent shall be obtained from the patient or from any other person whose consent is required before termination of a pregnancy. Such written informed consent shall be on the patient's chart. The patient and other persons whose consent is required shall be advised of the medical implications and the possible emotional and physical sequelae of the procedure. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

12. AAC 40.080. MEDICAL PROCEDURES. The patient shall be examined by a physician licensed in Alaska, and a written record of the patient's physical and emotional health shall be prepared before performing an abortion procedure as set out in sec. 110 of this chapter. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

12 AAC 40.090. EVALUATION. The attending physician shall make an evaluation of the patient and an estimation of the duration of gestation based upon the patient's history, examination and test results. This information shall be recorded on the patient's chart. (Eff. 12/20/70, Reg. 36)

Authority: AS 08.64.105

12 AAC 40.100. CONSULTATION REQUIREMENTS. Abortions interrupting a pregnancy up to and including the twelfth week of gestation may be performed without consultation. Abortions performed after the twelfth week of gestation shall be preceded by consultation with another physician. The consultation shall include an opinion as to the preferred method of termination of pregnancy. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

12 AAC 40.110. ABORTION PROCEDURES. During the second or third trimester of a pregnancy, acceptable procedures include dilatation and curettage, suction aspiration of the uterus, injection of pharmacological agents, hysterectomy and hysterotomy. The exact procedure to be used will depend upon the patient's total health, age, associated disease and pathology, and anomalies such as skeletal defects and other medical indications. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

12 AAC 40.120. STANDARDS FOR HOSPITALS AND FACILITIES. (a) During the second or third trimester of a pregnancy, abortions shall be performed under sterile conditions. A bed and a registered nurse shall be available for a minimum recovery period of one-half hour. A registered nurse shall be present during the procedure.

(b) During the second or third trimester of a pregnancy, blood, blood derivatives, blood substitutes or plasma expanders shall be immediately available when an abortion is performed, and an operating room appropriately staffed and equipped for major surgery in accordance with regulations adopted under AS 18.20.060 shall be immediately available. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

12 AAC 40.130. RECORDS. During the second or third trimester of a pregnancy, the attending physician shall record a medical history, findings of the physical examination, operative report of the abortion procedure and pathology report as part of the clinical record to be maintained by the hospital or facility. The physician and hospital or facility shall treat the patient's identity and medical record as confidential information. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 08.64.105

12 AAC 40.140. LIMITATION. A fetus which has not developed beyond 150 days after the first day of the last menstrual period may be considered non-viable for purposes of AS 11.15.060(a). In the performance of an abortion after that date, the physician shall be guided by a reasonable judgment as to whether the fetus is viable in fact. (Eff. 12/20/70, Reg. 36; am 8/29/73, Reg. 47)

Authority: AS 11.15.060(a)
AS 08.64.105

ARTICLE 3.
GENERAL PROVISIONS.

Section
150. Professional incompetence
160. Definitions

12 AAC 40.150. PROFESSIONAL INCOMPETENCE. As used in AS 08.64.330(b),

"professional incompetence" means lacking in sufficient knowledge or skills or both, in that field of practice in which the physician concerned engages, to a degree likely to endanger the health of his patients. (Eff. 8/29/73, Reg. 47)

Authority: AS 08.64.330(b)

12 AAC 40.160. DEFINITIONS. In this chapter

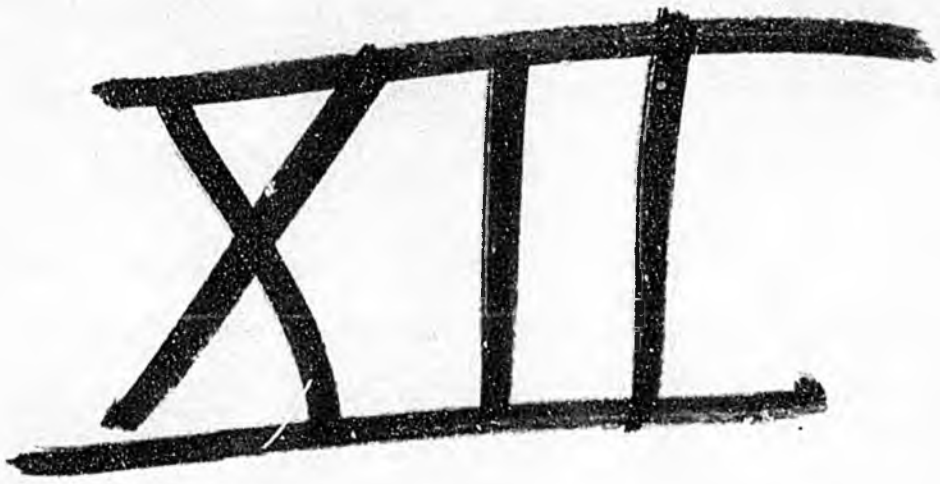
(1) "department" means Department of Commerce;

(2) "pharmacological agents" means saline, glucose, prostaglandins and pitocin;

(3) "board" means State Medical Board;

(4) "FLEX examinations" means the written examinations prepared by the Federation of State Medical Boards of the United States. (Eff. 8/29/73, Reg. 47)

Authority: AS 08.64.100



LAWS OF ALASKA

1977

Source

CSHB 1(Finance) am S

Chapter No.

149

AN ACT

Relating to the termination, continuation, or reestablishment of certain boards and commissions, and establishing a procedure for evaluation of agency programs and activities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government, and that there is need for an effective and regular system of scrutiny of the programs and activities of all agencies, boards and commissions. The legislature further finds that the establishment of a system for periodic review by the public and the executive and legislative branches of certain state agencies, boards and commissions will help the governor and the legislature to determine the need for the continued existence of each of the agencies, boards and commissions.

* Sec. 2. AS 08 is amended by adding a new chapter to read:

CHAPTER 03. TERMINATION, CONTINUATION AND REESTABLISHMENT OF REGULATORY BOARDS.

Sec. 08.03.910. TERMINATION, CONTINUATION AND REESTABLISHMENT OF REGULATORY BOARDS. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Board of Chiropractic Examiners (AS 08.20.010);

(2) Board of Dental Examiners (AS 08.36.010);

(3) State Medical Board (AS 08.64.010);

Chapter 149

(4) Board of Nursing (AS 08.68.010);

(5) Board of Dispensing Opticians (AS 08.71.-010);

(6) Board of Examiners in Optometry (AS 08.72.-010);

(7) Board of Pharmacy (AS 08.80.010);

(8) Board of Veterinary Examiners (AS 08.98.-010);

(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);

(10) Board of Nursing Home Administrators (AS 08.70.010);

(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.-010);

(2) Board of Barber Examiners (AS 08.12.010),

(3) Collection Agency Board (AS 08.24.011);

(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);

(5) Board of Electrical Examiners (AS 08.40.010),

(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);

(7) Guide Licensing and Control Board (AS 08.-54.010);

(8) Board of Marine Pilots (AS 08.62.010);

(9) Real Estate Commission (AS 08.88.011);

(10) Board of Welding Examiners (AS 08.99.010),

(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years.

* Sec. 3. AS 44 is amended by adding a new chapter to read

CHAPTER 66. REVIEW OF THE ACTIVITIES OF AGENCIES, BOARDS AND COMMISSIONS.

Sec. 44.66.010. TERMINATION OF STATE BOARDS AND COMMISSIONS. (a) Boards and commissions listed in this subsection expire on the date set out after each:

(1) Alcoholic Beverage Control Board (AS 04.05.010) -- June 30, 1979;

(2) Alaska Transportation Commission (AS 42.07.011) -- June 30, 1979;

(3) State Board of Parole (AS 33.15.010) -- June 30, 1980;

(4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30, 1980;

(5) Alaska Pipeline Commission (AS 42.05.010) -- June 30, 1981.

(b) Upon termination, a commission listed in (a) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs.

(c) A commission scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years.

Sec. 44.66.020. AGENCY PROGRAMS. (a) Agency programs and activities listed in this subsection which are specifically designated as provided in sec. 30 of this chapter are subject to termination during the regular legislative session convening in the month and year set out after each:

(1) programs in the budget categories of general government, public protection, and administration of justice -- January, 1980;

(2) programs in the budget categories of education and the University of Alaska -- January, 1981.

(3) programs in the budget categories of health and social services -- January, 1982;

(4) programs in the budget categories of natural resources management, development and transportation -- January, 1983.

(b) An agency program or activity designated in (a) of this section shall be subject to termination during the regular legislative session convening for years

after the preceding review and may be subject to termination at any time upon the recommendation of the Legislative Budget and Audit Committee and the concurrence of the legislature as if under sec. 30 of this chapter

Sec. 44.66.030. PROGRAM IDENTIFICATION. During the legislative session preceding each of the years set out in sec. 20 of this chapter, the Legislative Budget and Audit Committee shall designate, not later than March 1 of those years, the programs and activities within each program category which shall be subject to termination in the next fiscal year. The recommendations of the Legislative Budget and Audit Committee shall be submitted to the respective houses of the legislature in the form of a bill which, if enacted into law, would terminate those designated programs and activities on or before July 1 of the following year.

Sec. 44.66.050. LEGISLATIVE OVERSIGHT. (a) Before the termination, dissolution, continuation or reestablishment of a board or commission under AS 08.03.010 or sec. 10 of this chapter, or of an agency program under secs. 20 and 30 of this chapter, a committee of reference of each house, which shall be the standing committee of legislative jurisdiction as provided in the Uniform Rules of the Legislature, shall hold one or more hearings to receive testimony from the public, the commissioner of the department having administrative responsibility for each named board, commission, or agency program, and the members of the board or commission involved. The hearings may be joint hearings. The committee shall also consider the proposed budget of the board, commision, or agency program, prepared in accordance with AS 37.07.050(f), and the performance audit of the activities of the board, commission, or agency program, prepared by the legislative audit division as prescribed in AS 24.20.271(1). The committee may consider any other report of the activities of the board, commission or program, including but not limited to annual reports, summaries prepared by the Legislative Affairs Agency, and any evaluation or general report of the manner of conduct of activities of the board, commission, or agency program prepared by the office of the ombudsman.

(b) During a public hearing, the board, commission or agency shall have the burden of demonstrating a public need for its continued existence or the continuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

(c) A determination as to whether a board or commission or agency program has demonstrated a public need for its continued existence shall take into consideration the following factors:

(1) the extent to which the board, commission or program has operated in the public interest;

(2) the extent to which the operation of the board, commission, or agency program has been impeded or

enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters;

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest,

(4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided;

(5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;

(6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved;

(7) the extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

(8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest; and

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

(d) As to each board, commission, or agency program assigned to it for purposes of review, the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of the house. The report shall contain a summary of the findings of the committee as to the compliance of the board, commission or program with the factors enumerated in (c) of this section, together with a summary or recommendations of the committee as to each of the following:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

(3) an identification of any other programs

having similar, conflicting or duplicate objectives;

(4) an assessment of alternative methods of achieving the purpores of the program;

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts; and

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

(e) The committee of reference may introduce a bill providing for the reorganization or continuation of the board, commission or agency program. No more than one board, commission, or agency program shall be continued or reestablished in any legislative bill, and the board, commission, or agency program shall be mentioned in the title of the bill.

Sec. 44.66.060. EXISTING CLAIMS. This chapter shall not cause the termination or dismissal of a claim or right of a citizen against a board, commission or program of an agency terminated under this chapter which is subject to litigation. Claims and rights shall be assumed by the department to which the board or commission terminated under this chapter was attached for administrative purposes.

* Sec. 4. AS 24.20.271(1) is repealed and re-enacted to read:

(1) conduct a performance post-audit of boards and commissions designated in AS 44.66.010 and of those programs and activities of agencies subject to termination as determined in the manner set out in AS 44.66.020 - 44.66.040, and submit the audit, together with a written report, not later than the first day of the regular session of the legislature convening in each year set out with reference to boards, commissions or agency programs whose activities are subject to termination as prescribed in AS 44.66;

* Sec 5. AS 37.07.050 is amended by adding a new subsection to read:

(f) Budget requests for boards and commissions and for those agency programs for the fiscal year following termination under AS 44.66.010 - 44.66.070 shall be prepared and submitted. The recommended appropriation request shall include:

(1) an identification of the objectives

intended for the program and the problem or need which the activities and operations of the board, commission or program is intended to address;

(2) an assessment of the degree to which the original objectives of the program have been achieved expressed in terms of performance, effects, or accomplishments of the program and of the program or need which it was intended to address;

(3) a statement of the performance and accomplishments of the program in each of the last four complete fiscal years and of the costs incurred in the operation of the program;

(4) a statement of the number and types of persons affected by operation of the program;

(5) a summary statement, for each of the last three completed fiscal years, of the number of personnel employed in carrying out the program and a summary of the cost of personnel employed under contract in carrying out the program;

(6) an assessment of the effect of the program on the economy of the state;

(7) an assessment of the degree to which the overall policies of the program, as expressed in regulations adopted by the agency, board or commission and its decisions, meet the objectives of the legislature in establishing the program; and

(8) an analysis of the services and performance estimated to be achieved if the life of the agency, board or commission were to be continued.

* Sec. 6. AS 37.07.090 is amended to read:

Sec. 37.07.090. PERFORMANCE REPORTING. (a) Each state agency shall submit a performance report to the division no later than September 1 for the preceding fiscal year. These reports shall be in the form prescribed by the division after consultation with the legislative finance division, and shall include

(1) an identification of the objectives intended for the program and the problem or need which the activities and operations of the board, commission or program is intended to address;

(2) an assessment of the degree to which the original objectives of the program have been achieved expressed in terms of performance, effects, or accomplishments of the program and of the program or need which it was intended to address;

(3) a statement of the performance and accomplishments of the program in each of the last four completed fiscal years and of the costs incurred in the operation of the program;

(4) a statement of the number and types of persons affected by operation of the program,

(5) a summary statement, for each of the last three completed fiscal years, of the number of personnel employed in carrying out the program and a summary of the cost of personnel employed under contract in carrying out the program;

(6) an assessment of the effect of the program on the economy of the state;

(7) an assessment of the degree to which the overall policies of the program, as expressed in regulations adopted by the agency, board or commission and its decisions, meet the objectives of the legislature in establishing the program; and

(8) an analysis of the services and performance estimated to be achieved if the life of the agency, board or commission were to be continued.

(b) The division shall summarize the performance reports and forward copies to each member of the legislature.

Approved by the Governor June 18, 1977
Actual Effective Date: September 16, 1977

(1) the extent to which the board, commission or program has operated in the public interest;

(2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource and personnel matters;

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;

(4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided;

(5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;

(6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively

assigned, or with the office of the ombudsman have been processed and resolved;

(7) the extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

(8) the extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest; and

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

ADVERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

1. PUBLISHER

DEPT. NO.	A.O. NO.
AO-	

PUBLISHER:
Alaska Advocate
Anchorage Times
Fairbanks Daily News Miner
Ketchikan Daily News
Sitka Sentinel
Southeast Alaska Empire (Juneau)

VENDOR NO.

DATE OF A.O.
August 14, 1978

DATES ADVERTISEMENT REQUIRED:
August 22 and 24, 1978
3" by 5" with black border
THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.

FROM:
Department of Commerce & Economic Development
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811

BILLING ADDRESS:
Department of Commerce & Economic Development
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811

ADVERTISEMENT

STATE OF ALASKA
PUBLIC NOTICE
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

The Department of Commerce & Economic Development hereby announces the initiation of a "sunset" review of all state health care boards.

The review is based upon "sunset" legislation enacted in 1977 in response to public dissatisfaction at the substantial increase in the number of state boards. All state health care boards will be terminated on June 30, 1979 unless definite public need and worthiness can be determined. These boards include:

Chiropractic Examiners
Dental Examiners
Medical Board
Nursing
Examiners in Optometry
Pharmacy
Psychologist and Psychological Associates
Veterinary Examiners
Physical Therapists
Dispensing Opticians
Nursing Home Administrators

The public is invited and encouraged to assist the department and participate in this review process by submitting comments, in writing, to:

Department of Commerce & Economic Development
Sunset Review
Pouch D
Juneau, Alaska 99811

H. Phillip Hubbard
Commissioner

TO BE COMPLETED BY ORDERING DEPARTMENT

TRANS	DEPT.	DIV. & PROG.	FUNCTION	SUB FUNCTION	OBJECT RECEIPT	SUB OBJECT	PROJECT LEDGER	PER CENT OR ITEM NO

PAGE NO. 1 OF 1 PAGES

David Creekman
REQUISITIONED BY

Elaine Garrett
DIVISIONAL APPROVAL

DATE ENTERED

TOTAL ALL PAGES $

I HEREBY CERTIFY THAT THE UNENCUMBERED BALANCE IN THE APPROPRIATION CITED HEREON IS SUFFICIENT TO COVER THIS PURCHASE AND THAT THIS PURCHASE IS AUTHORIZED HEREUNDER.

CERTIFYING OFFICER

VOUCHER NUMBER

XII-11

02-901

FY '75	REVENUES			EXPENDITURES						
	Receipts	Refund	=Total	Transportation	Per Diem	Phone	Printing Advertising Postage	Fees & Services	Rents, Leases, Other	=Total
Board of Barber Examiners	4,545.00	20.00	4,525.00	968.81	638.75	30.90	200.63	--	70.00	1,909.09
Board of Chiropractic Examiners	1,205.00	--	1,205.00	--	--	--	85.98	--	75.00	160.98
Collection Agency Board	4,970.00	100.00	4,870.00	107.40	72.50	--	91.05	--	4.00	274.95
Board of Dental Examiners	11,040.00	100.00	10,940.00	130.40	--	209.30	172.30	--	50.00	562.00
Board of Electrical Examiners	24,537.00	2,033.00	22,504.00	577.40	430.00	120.00	389.75	--	--	1,517.15
Architects, Engineers and Land Surveyors	28,413.25	330.00	28,083.25	3,261.33	2,966.60	321.40	2,558.31	3,416.52	5.39	12,529.55
Hairdressing and Beauty Culture	15.500.00	95.00	15,405.00	1,136.71	2,128.75	286.80	694.38	339.50	375.00	4,961.14
Board of Marine Pilots	9,100.00	50.00	9,050.00	1,291.50	1,601.08	45.07	441.57	195.00	--	3,574.22
State Medical Board	61,097.00	35.00	61,062.00	1,765.67	1,276.00	202.95	700.94	216.30	--	4,161.86
Board of Nursing	30,433.00	385.00	30,048.00	2,654.17	3,721.74	875.37	1,832.30	1,482.67	286.60	10,852.85
Board of Dispensing Opticians	750.00	--	750.00	1,108.48	892.25	332.50	100.22	--	9.75	2,443.20
Board of Examiners in Optometry	2,190.00	110.00	2,080.00	722.15	558.00	20.50	25.40	50.00	400.00	1,776.05
Board of Pharmacy	5,570.00	25.00	5,545.00	345.20	551.25	218.00	495.58	120.00	--	1,730.03
Psychologists and Associates	1,580.00	10.00	1,570.00	168.90	35.00	207.45	39.11	56.00	--	506.46
Board of Public Accountancy	6,834.71	124.71	6,710.00	1,608.42	1,450.00	170.65	312.32	4,389.02	457.50	8,387.91
Real Estate Commission	72,535.00	5,889.00	66,646.00	2,189.37	1,798.50	637.86	2,426.51	8,118.62	--	15,170.86
Board of Veterinary Examiners	3,570.00	25.00	3,545.00	32.00	70.00	34.05	240.86	320.00	--	696.91
Nursing Home Administrators	(Created 1975)		--	--	--	--	--	--	--	--
Physical Therapy Board	750.00	--	750.00	--	--	16.20	--	35.00	16.30	67.50
Guide Licensing and Control	36,184.00	80.00	36,104.00	2,610.75	3,155.00	237.35	2,262.75	501.95	130.00	8,917.80
Board of Welding Examiners	--	--	--	466.00	1,435.00	1.50	155.61	--	11.43	2,069.54
Construction Contractors	173,429.00	255.00	173,174.00	2.50	77.50	232.35	1,184.35	--	--	1,496.70

FY '76

	REVENUES			EXPENDITURES						
	Receipts	Refund	=Total	Transportation	Per Diem	Phone	Printing Advertising Postage	Fees & Services	Rents, Leases, Other	=Total
Board of Barber Examiners	4,087.00	--	4,087.00	586.93	1,152.50	20.75	558.61	170.40	--	2,489.19
Board of Chiropractic Examiners	345.00	25.00	320.00	1,027.36	1,001.25	20.55	544.58	220.04	25.00	2,838.78
Collection Agency Board	4,164.00	--	4,164.00	--	--	--	--	--	--	--
Board of Dental Examiners	11,524.40	755.00	10,769.40	2,480.75	3,998.75	638.04	939.46	476.50	120.69	8,654.19
Board of Electrical Examiners	8,357.00	500.00	7,857.00	1,053.40	823.44	128.71	193.14	446.80	--	2,645.49
Architects, Engineers and Land Surveyors	101,502.00	125.00	101,377.00	4,879.28	5,719.75	166.49	3,020.76	4,054.98	35.50	17,876.76
Hairdressing and Beauty Culture	23,245.00	170.00	23,075.00	1,063.01	2,678.75	83.85	902.44	368.50	--	5,096.55
Board of Marine Pilots	990.00	--	990.00	865.50	1,313.75	32.98	501.29	--	--	2,713.52
State Medical Board	14,510.00	25.00	14,485.00	2,335.56	1,618.75	108.26	637.46	804.20	49.13	5,553.36
Board of Nursing	55,021.00	375.00	54,646.00	3,962.57	5,165.75	380.75	1,552.32	2,113.54	757.05	13,931.98
Board of Dispensing Opticians	2,720.00	--	2,720.00	494.23	846.25	95.53	212.88	63.70	15.75	1,728.34
Board of Examiners in Optometry	630.00	100.00	530.00	577.93	900.00	5.10	330.16	765.00	--	2,578.19
Board of Pharmacy	13,883.00	35.00	13,848.00	1,928.53	2,677.15	252.97	586.30	390.00	19.50	5,854.45
Psychologists and Associates	1,600.00	20.00	1,580.00	1,405.62	750.12	314.63	594.14	239.00	--	3,303.51
Board of Public Accountancy	21,437.00	660.00	20,777.00	2,399.90	2,051.53	131.26	897.75	6,773.90	71.15	12,325.49
Real Estate Commission	183,184.50	4,687.00	178,497.50	3,153.63	3,157.15	800.82	1,781.13	10,054.55	171.19	19,188.47
Board of Veterinary Examiners	705.00	--	705.00	355.15	493.00	88.45	230.34	540.00	--	1,706.94
Nursing Home Administrators	1,100.00	--	1,100.00	383.42	366.00	25.60	537.89	630.00	--	1,942.91
Physical Therapy Board	1,880.00	--	1,880.00	168.30	45.00	43.75	212.33	335.00	--	804.38
Guide Licensing and Control	39,054.64	254.64	38,800.00	2,913.37	5,213.88	382.99	966.17	300.00	293.90	10,070.31
Board of Welding Examiners	--	--	--	815.24	1,583.43	34.03	448.46	16.85	--	2,898.01
Construction Contractors	230,182.00	1,007.00	229,175.00	--	--	424.83	1,454.77	--	45.00	1,924.60

FY '77

	REVENUES			EXPENDITURES						
	Receipts	Refund	=Total	Transportation	Per Diem	Phone	Printing Advertising Postage	Fees & Services	Rents, Leases, Other	=Total
Board of Barber Examiners	5,005.54	35.00	4,970.54	583.61	1,714.50	74.20	425.96	115.00	--	2,913.27
Board of Chiropractic Examiners	1,910.00	--	1,910.00	1,128.58	1,000.00	19.51	174.67	--	54.24	2,377.00
Collection Agency Board	8,364.00	300.00	8,064.00	438.83	212.50	20.10	140.16	--	--	811.59
Board of Dental Examiners	14,707.00	270.00	14,437.00	1,493.10	3,471.16	588.88	657.30	50.00	140.35	6,400.79
Board of Electrical Examiners	28,759.00	400.00	28,359.00	1,884.37	2,793.28	312.50	2,202.07	362.85	340.25	7,895.32
Architects, Engineers and Land Surveyors	31,086.00	30.00	31,056.00	5,180.64	7,062.50	304.42	2,268.31	4,507.27	--	19,323.14
Hairdressing and Beauty Culture	22,248.00	285.00	21,963.00	1,752.03	2,700.00	61.73	818.79	486.50	125.00	5,944.05
Board of Marine Pilots	11,122.10	--	11,122.10	2,444.46	2,271.68	42.12	706.10	35.00	15.75	5,515.11
State Medical Board	62,545.00	522.00	62,023.00	2,199.13	1,844.50	255.96	1,079.30	368.65	108.00	5,855.54
Board of Nursing	41,731.00	984.00	40,747.00	3,293.07	4,321.50	206.58	1,784.46	2,429.00	571.92	12,606.53
Board of Dispensing Opticians	1,060.00	--	1,060.00	712.16	745.00	91.00	543.16	--	--	2,091.32
Board of Examiners in Optometry	2,800.00	175.00	2,625.00	613.07	837.50	40.30	179.16	50.00	200.00	1,920.03
Board of Pharmacy	8,384.00	135.00	8,249.00	1,508.28	2,216.67	140.55	320.23	330.00	139.50	4,655.23
Psychologists and Associates	1,700.00	150.00	1,550.00	530.85	443.33	122.24	866.01	407.00	--	2,369.43
Board of Public Accountancy	15,780.00	645.00	15,135.00	2,645.48	3,117.17	316.55	2,091.24	6,532.17	436.09	15,138.70
Real Estate Commission	129,017.00	9,484.00	119,533.00	3,213.48	5,230.50	1,334.13	4,281.35	15,500.47	89.00	29,648.93
Board of Veterinary Examiners	4,236.50	50.00	4,186.50	85.14	37.50	83.35	304.54	588.32	11.34	1,110.19
Nursing Home Administrators	2,000.00	--	2,000.00	241.94	534.50	12.79	898.61	610.00	192.00	2,489.84
Physical Therapy Board	1,455.00	--	1,455.00	86.64	125.00	74.52	242.52	145.00	--	673.68
Guide Licensing and Control	39,025.50	330.00	38,695.50	2,607.63	5,057.75	569.68	1,592.27	430.00	--	10,257.33
Board of Welding Examiners	--	--	--	1,151.11	1,711.40	90.08	1,907.80	58.60	--	4,918.99
Construction Contractors	202,492.50	6,854.00	195,638.50	--	--	420.30	1,228.00	8.70	82.75	1,739.75
Board of Mortuary Science	4,635.00	150.00	4,485.00	--	--	11.00	13.00	--	--	24.00

FY '78

	REVENUES			EXPENDITURES						
	Receipts	Refund	=Total	Transportation	Per Diem	Phone	Printing Advertising Postage	Fees & Services	Rents, Leases, Other	=Total
Board of Barber Examiners	4,410.18	10.00	4,400.18	723.22	1,297.75	84.30	228.49	300.00	300.00	2,933.75
Board of Chiropractic Examiners	1,070.00	--	1,070.00	1,815.32	1,835.00	65.98	370.55	107.63	23.59	4,218.07
Collection Agency Board	6,950.00	--	6,950.00	1,830.87	1,621.60	49.40	624.35	--	--	4,126.22
Board of Dental Examiners	6,040.24	70.00	5,970.24	3,371.97	3,202.50	741.07	394.74	914.20	151.40	8,775.88
Board of Electrical Examiners	15,912.14	475.00	15,437.14	2,232.23	2,412.75	712.90	1,217.32	--	91.22	6,666.42
Architects, Engineers and Land Surveyors	112,970.75	2,100.00	110,870.75	6,740.23	7,021.73	452.26	1,823.13	5,099.23	113.90	21,250.48
Hairdressing and Beauty Culture	22,237.00	416.00	21,821.00	1,086.96	2,133.41	127.75	405.70	347.50	411.00	4,512.32
Board of Marine Pilots	1,830.00	50.00	1,780.00	1,648.74	1,692.00	49.96	358.94	--	70.00	3,819.64
State Medical Board	18,203.75	652.50	17,551.25	2,695.36	2,251.50	589.28	490.50	225.00	94.68	6,346.32
Board of Nursing	73,312.37	1,046.50	72,265.87	6,815.61	8,195.68	445.99	1,181.20	2,687.09	772.98	20,098.55
Board of Dispensing Opticians	2,190.00	--	2,190.00	517.10	751.25	60.95	284.51	297.00	--	1,910.81
Board of Examiners in Optometry	795.00	--	795.00	2,306.22	1,991.84	67.70	488.65	50.00	800.00	5,704.41
Board of Pharmacy	16,547.00	65.00	16,482.00	1,712.80	2,016.67	215.74	313.19	100.00	543.00	4,901.40
Psychologists & Associates	2,780.00	100.00	2,680.00	1,933.63	2,385.25	138.51	660.29	500.00	20.00	5,637.68
Board of Public Accountancy	39,265.00	590.00	38,675.00	4,263.76	2,723.50	393.17	854.25	8,356.70	657.43	17,248.81
Real Estate Commission	299,849.00	14,214.08	285,634.92	4,079.75	6,035.89	1,687.91	4,622.51	20,517.25	1,234.61	38,177.92
Board of Veterinary Examiners	1,160.00	--	1,160.00	170.05	808.75	21.00	280.62	360.00	--	1,640.42
Nursing Home Administrators	1,875.00	45.00	1,830.00	489.65	397.50	14.80	241.71	490.00	70.00	1,703.66
Physical Therapy Board	3,132.00	--	3,132.00	516.51	475.00	107.95	371.13	275.00	--	1,745.59
Guide Licensing and Control	41,882.00	265.00	41,617.00	3,457.12	8,840.68	815.01	2,584.38	362.00	768.98	16,828.17
Board of Welding Examiners	--	--	--	1,020.43	1,564.25	196.75	200.82	--	--	2,982.25
Construction Contractors	333,575.40	680.00	332,895.40	--	--	681.76	2,130.78	--	--	2,812.54
Board of Mortuary Science	902.00	100.00	802.00	62.40	50.00	19.09	20.00	300.00	--	451.49

Chapter 01. Centralized Licensing.

Section		Section	
10.	Applicability of chapter	80.	Department regulations
20.	Board organization	87.	Powers and duties of department
25.	Public members	90.	Applicability of the Administrative Procedure Act
30.	Quorum	100.	License renewal, lapse and reinstatement
40.	Transportation and per diem	105.	Penalty for improper payment
50.	Administrative duties of department	110.	Definitions
60.	Application for license		
70.	Administrative duties of boards		

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

(1) Board of Public Accountancy;

(2) Board of Barber Examiners;

(3) Repealed by § 6 ch 32 SLA 1971.

(4) Board of Chiropractic Examiners;

(5) Board of Hairdressing and Beauty Culture Examiners;

(6) Board of Dental Examiners;

(7) Board of Electrical Examiners;

(8) State Board of Registration for Architects, Engineers and Land Surveyors;

(9) State Medical Board;

(10) Board of Nursing;

(11) Board of Examiners in Optometry;

(12) Board of Pharmacy;

(13) Real Estate Commission;

(14) Board of Veterinary Examiners;

(15) Board of Psychologist and Psychological Associate Examiners;

(16) Collection Agency Board;

(17) Board of Welding Examiners;

(18) Board of Marine Pilots;

(19) Board of Dispensing Opticians;

(20) Guide Licensing and Control Board;

(21) State Physical Therapy Board. (§ 1 ch 59 SLA 1966; am § 2 ch 136 SLA 1967; am § 2 ch 101 SLA 1968; am § 2 ch 143 SLA 1968; am § 2 ch 151 SLA 1968; am § 1 ch 106 SLA 1970; am § 6 ch 32 SLA 1971; am § 4 ch 179 SLA 1972; am § 2 ch 45 SLA 1973; am § 14 ch 65 SLA 1973; am § 1 ch 43 SLA 1975; am § 1 ch 43 SLA 1977)

Effect of amendments. — The first 1973 amendment added paragraph (19).

The second 1973 amendment inserted "and Psychological Associate" in paragraph (15).

The 1975 amendment added paragraph (20).

The 1977 amendment added paragraph (21).

Editor's note. — Section 2, ch. 59, SLA 1966, provides: "The Department of Commerce shall provide for the orderly transfer of the service functions which are to be performed by the department under this chapter."

Section 4, ch. 59, SLA 1966, provides: "A provision in existing law which conflicts with this Act is superseded by this Act."

Legislative committee reports. — For report on ch. 143, SLA 1968 (HB 707), see 1968 House Journal, p. 836. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 08.01.020. Board organization. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members. (§ 1 ch 59 SLA 1966)

Sec. 08.01.025. Public members. No public member of a board may:

(1) be engaged in the occupation which the board regulates;

(2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or

(3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 258 SLA 1976)

Sec. 08.01.030. Quorum. A majority of the membership of a board constitutes a quorum unless otherwise provided. (§ 1 ch 59 SLA 1966)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (§ 1 ch 59 SLA 1966)

Sec. 08.01.050. Administrative duties of department. (a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;

(2) maintain records and files;

(3) issue and receive application forms;

(4) notify applicants of acceptance or rejection of applicants as determined by the board;

(5) designate dates examinations are to be held and notify applicants;

(6) publish notice of examination;

(7) arrange space for holding examinations;

(8) notify applicants of results of examinations;

(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;

(10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of $2;

(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;

(12) compile and maintain current a register of licenses;

(13) answer routine inquiries;

(14) maintain files relating to individual licensees;

(15) arrange for printing and advertising;

(16) purchase supplies;

(17) employ secretarial help when needed;

(18) perform other services which may be requested by the board;

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in § 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned. (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment added paragraph (19) of present subsection (a).

The second 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the introductory paragraph of present subsection (a).

The third 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, substituted "department" for "Department of Commerce" and "when appropriate" for "for the boards" in the introductory language and inserted "by the licensee" in two places in paragraph (10). The amendment also added subsection (b).

While none of the amendments gave effect to the others, this section is set out as it appears in ch. 258, SLA 1976, with the inclusion of paragraph (19) of subsection (a) added by ch. 102, SLA 1976.

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law:

(1) keep minutes and records of all proceedings;

(2) hold a minimum of one meeting each year;

(3) hold at least one examination each year;

(4) request, through the department, investigation of violations of its laws and regulations;

(5) prepare and grade examinations;

(6) pass on qualifications of applicants for examination and license;

(7) forward minutes of meetings to the department within 20 days;

(8) forward results of examinations to the department;

(9) notify the department of meeting dates at least 15 days before meeting. (§ 1 ch 59 SLA 1966)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;

(2) what is contained in application forms;

(3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

Sec. 08.01.087. Powers and duties of department. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by a board listed in § 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (§ 3 ch 258 SLA 1976)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (§ 1 ch 59 SLA 1966; am § 4 ch 258 SLA 1976)

Effect of amendment. — The 1976 amendment added "except those under AS 08.01.087(b)" to the end of the section.

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968)

Sec. 08.01.105. Penalty for improper payment. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (§ 3 ch 258 SLA 1976)

Sec. 08.01.110. Definitions. In this chapter

(1) "board" includes the boards and commissions listed in § 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in § 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in § 10 of this chapter. (§ 1 ch 59 SLA 1966; am § 40 ch 218 SLA 1976; am § 5 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

The second 1976 amendment added paragraphs (3) through (6).

Chapter 02. Miscellaneous Provisions.

Section

10. Professional designation requirements
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) A person licensed in the state as a chiropractor as defined in AS 08.20.220, a dentist as defined in AS 08.36.360, a medical practitioner or osteopath as defined in AS 08.64.380, a professional nurse as defined in AS 08.68.410, an optometrist as defined in AS 08.72.300(3), a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall professionally identify

himself by the use of appropriate letters or a title after his name which represents his specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays his professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and identifies himself by using the letters "M.D." or the title "doctor" or "physician" or any other title which tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of his noncompliance by his appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, his noncompliance continues, the board may suspend or revoke his license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1973)

Sec. 08.02.020. Limitation of liability for members of licensing boards. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976)

SUNSET DECISIONS

Committee files
Y = yes
N = no

		SUNSET MASTER		HEARING	Notes
J.	BARBERS & HAIRDRESSERS (COMBINED with H CS)	Y	SB-544 (C) HB-978	CSSB-544	passed Senate 5/17/80 17-0
J. ✓	COLLECTION AGENCY FC.	Y	SB-576 Sectional Analysis 4/24 - rec 4/27 HB-940	April 24	passed out
J.	ELECTRICAL EXAMINERS FC (?)	Y	SB-566 HB-		Join w/ Bob work w/ House
C. ✓	A.E.& L.S.	Y	CSSB-572 HB-1005	passed 20/0 Senate	passed out 5/8/80
J. ✓	MARINE PILOTS	Y	SB-573 Sectional Analysis 4/24 HB-	April 24	passed out
C.	REAL ESTATE	Y	SB - on my desk. HB-1004	work shop	
J. ✓	WELDING EXAMINERS	Y Y	CSSB-553 (C) HB-994 Sectional Analysis 4/24	SCSCSHB-994 April 24, 80	passed out
F ✓	A.P.U.C.		FRANK'S BILL	April 24.	passed out.
✓	PUBLIC ACCOUNTANCY	N/A	SB-552 in S(J) HB-997		
✓	NURSING HOME ADM	Y	HB 997 in S(C)		WAIVE TO HESS
C ✓	GUIDES	Y	CSSB-574 HB sectional analysis 4/24 received 4/29	April 24	failed the senate 4/30/80 10/2/80

SUNSET MASTER

		Action
	Barbers Hairdressers	Combined SB-544 (C)
Senate alone	Collection Agency (Ky Miller House St Aff.)	MAX House will Sunset
	Electrical Examiners	Bill #
C	A.E.& L.S. (K)	Copy H 1005
Senate alone C	Guides (House - Resources)	IN Legal (Chris)
Senate alone	Marine Pilots (Osterbrock)	IN Legal (Jon) House will make CS for/Senate Bill.
C	Real Estate (K)	Copy H 1004
✓	Welding Examiners	Bill # 553 (S) C HB-994 intro.
F	A.P.U.C. (Frank)	Cable (Frank)
✓	Public Accountancy	Bill # 552 in (S) J intro.

3:15 pm
1/17/80

Alaska State Legislature

Senate

JUNEAU, ALASKA

January 17, 1980

MEMORANDUM TO: Commerce Committee

FROM: Secretary of the Senate

SUBJECT: Sunset Audits

The President has referred the following Sunset Audits to your Committee for review and recommendations:

	Hearing	Workshop
Board of Barber Examiners	X	2/19 (3/06)
Collection Agency Board	3/20	Combine
Board of Hairdressing and Beauty Culture Examiners	X	2/19 (3/06)
Board of Electrical Examiners	X	2/08 to Banners
Board of Registration for Architects, Engineers and Land Surveyors	X	3/06
Guide Licensing and Control Board	2/28	3/06
Board of Marine Pilots	X	3/06
Real Estate Commission	3/04	
Board of Welding Examiners	X	3/06
Alaska Public Utilities Commission	3/11 3/13	
~~Alaska State Board of Parole~~ Public Accountancy	2/26	

SUBJECT	NUMBER	ABBREVIATED TITLE	SPONSOR	REQUESTER	CURRENT STATUS
	HB 239	SPEC APPROP/ALAA/GAS LINE FEASIBILITY STUDIES; E.D.	MILES		IN (H) RULES
	HCR 1	STUDY ON FOREIGN INVESTMENTS IN AK FISHERIES	RULES	LEG. CNCL.	EXPIRD 1ST SESS (S)
	SB 128	SPEC APPROP/LEGIS COUNCIL/ROYALTY GAS; E.D.	COLLETTA		IN (H) RESOURCES
	SCR 1	TRANSFERRAL OF STATE EMPLOYMENT/URBAN TO RURAL	SUMNER		EXPIRD 1ST SESS (S)
	SCR 6	DIRECTING LEGIS COUNCIL/AUTOMOBILE INSURANCE IN AK	BRADLEY		EXPIRD 1ST SESS (H)
SUBSISTENCE	HB 128	SUPPL APPROP/DEPT OF FISH & GAME; E.D.	ANDERSON		IN (H) RESOURCES
	HB 199	ESTABLISH/DIV OF SUBSISTENCE HUNTING/FISHING	SUBSISTENC		IN (S) RESOURCES
	HB 544	RE/CATAGORIES OF FISHING; ED	PARR		IN (H) RULES
	SB 113	RE/WASTE OF WILD FOOD ANIMALS	SACKETT		CHAPTER 0005 SLA 80
SUNSET LAW	HB 317	REVIEW PROGRAMS/ACTIVITIES UNDER AS 44.66;E.D.	RULES	LB&A	IN (S) HESS
	HB 440	CONTINUE EXISTENCE OF NURSING BD/AM NURSING LAWS; E.D.	COMMERCE		IN (H) FINANCE
	HB 441	TERMINATE BRD CHIRO/JAN 1, 1981/DEPT COM & ECON DEV;E.D	COMMERCE		IN (H) FINANCE
	HB 442	TERMINATE EXISTENCE OF EXAMINERS IN OPTOMETRY BD; E.D.	COMMERCE		IN (H) FINANCE
	HB 443	TERMINATE EXISTENCE/DISPENSING OPTICIANS BD; E.D.	COMMERCE		IN (H) FINANCE
	HB 444	TERMINATE EXISTENCE OF VETERINARY EXAMINERS BD; E.D.	COMMERCE		IN (H) FINANCE
	HB 445	TERMINATE EXISTENCE OF STATE PHYSICAL THERAPY BD; E.D.	COMMERCE		IN (H) FINANCE
	HB 446	CONT EXISTANCE/BRD PSYCHOLOGIST EXAMINERD; ED	COMMERCE		CONF CMTE APPOINTED
	HB 447	TERMINATE EXISTENCE OF NURSING HOME ADMIN. BD; E.D.	COMMERCE		IN (H) RULES
	HB 448	CONTINUE EXISTENCE OF DENTAL EXAMINERS BD; E.D.	COMMERCE		IN (H) FINANCE
	HB 450	CONT EXIST/ST MED BOARD/AM LAWS REG MED PROFF; E.D.	COMMERCE		IN (H) FINANCE
	HB 465	CONTINUE EXISTENCE OF BOARD OF PHARMACY; E.D.	COMMERCE		IN (H) FINANCE
	HB 481	CONTINUING EXISTENCE OF AK TRANSPORTATION COMMISSION;ED	COMMERCE		IN (H) FINANCE
	HB 484	TERMINATING EXISTENCE OF ALCOHOLIC BEV CONTROL BD; E.D.	COMMERCE		IN (H) FINANCE
	HB 927	DES PRGMS & ACTIVS/REVIEW & TERMINATE PER AS44.66; ED	RULES	LB&A	IN (H) FINANCE
	HB 940	TERMINATE EXISTENCE/COLLECT AGY BRD/COM & ECON DEV; ED	STATE AFF.		IN (S) STATE AFF.
	HB 978	RE/HAIR DESIGN & COSMET/BRD BARBERS & HAIRDRESSERS; ED	COMMERCE		IN (H) COMMERCE
	HB 984	CONT EXIS/AK BAR ASSOC/AM STATS/LAW & BAR RULES 2&7; ED	JUDICIARY		IN (H) JUDICIARY
	HB 994	CONTINUE EXISTENCE OF BD WELDING/AM STAT RE:WELDERS; ED	COMMERCE		IN (H) COMMERCE
	HB 997	RE/REGULATE CPA/CONTINUE EXIST BD PUBLIC ACCOUNT; ED	COMMERCE		IN (H) COMMERCE
	HB1004	CONTINUE EXISTENCE/REAL ESTATE CMSN/AM POWER & DUTY; ED	COMMERCE		IN (H) COMMERCE
	SB 232	REVIEW PROGRAMS/ACTIVITIES UNDER AS 44.66;E.D.	RULES	LB&A	IN (S) COMMERCE
	SB 236	CONTINUING EXISTENCE OF THE AK TRANSPORTATION CMSN; E.D	COMMERCE		VETOED BY GOVERNOR
	SB 240	CONTINUING EXISTENCE OF STATE MEDICAL BOARD; E.D.	HESS		2ND CONF CMTE APPTD
	SB 241	CONTINUE EXISTENCE OF BOARD OF NURSING; E.D.	HESS		CHAPTER 0074 SLA 79
	SB 242	TERMINATING EXISTENCE OF BD OF CHIROPRACTIC EXAMINERS	HESS		2ND CONF CMTE APPTD
	SB 243	TERMINATING EXISTENCE OF BD OF EXAMINER IN OPTOMETRY;ED	HESS		2ND CONF CMTE APPTD
	SB 244	CONTINUING EXISTENCE OF BOARD OF PHARMACY; E.D.	HESS		2ND CC APPOINTD (S)
	SB 245	TERMINATING EXISTENCE OF BD OF DISPENSING OPTICIANS;ED	HESS		2ND CONF CMTE APPTD
	SB 246	CONTINUE EXISTENCE OF BOARD OF DENTAL EXAMINERS; E.D.	HESS		2ND CC APPOINTD (S)
	SB 247	TERMINATE EXISTENCE OF BD OF VETERINARY EXAMINERS; E.D.	HESS		2ND CONF CMTE APPTD
	SB 248	TERMINATING EXISTENCE OF STATE PHYSICAL THERAPY BD;E.D.	HESS		2ND CONF CMTE APPTD
	SB 249	CONTINUE EXISTENCE OF NURSING HOME ADMINISTRATOR BD;E.D	HESS		FAILED (S)
	SB 250	TERMINATING THE ALCOHOLIC BEVERAGE CONTROL BOARD; E.D.	HESS		CONF CMTE APPOINTED
	SB 445	RE/REVIEW BOARDS, COMMISSIONS & AGENCY PRGMS; ED	KELLY		IN (S) FINANCE
	SB 512	CONTINUE EXISTENCE/AK TRANSPORTATION CMSN; ED	RULES		IN (H) COMMERCE
	SB 544	RE/HAIR DESIGN & COSMET/BRD BARBERS & HAIRDRESSERS; ED	COMMERCE		IN (S) COMMERCE
	SB 552	RE/REGULATE CPA/CONTINUE EXIST BD PUBLIC ACCOUNT; ED	COMMERCE		IN (S) JUDICIARY
	SB 553	CONTINUE EXISTENCE OF BD WELDING/AM STAT RE:WELDERS; ED	COMMERCE		IN (S) COMMERCE
SUPERIOR COURT	HB 169	SUPERIOR COURT/REVIEW OF SCHOOL BOARD DECISIONS; E.D.	MOSS	BY REQUEST	IN (H) JUDICIARY

Sunset
Oct 22, 79

SENATE COMMERCE COMMITTEE MEMBERSHIP

NOV. 9

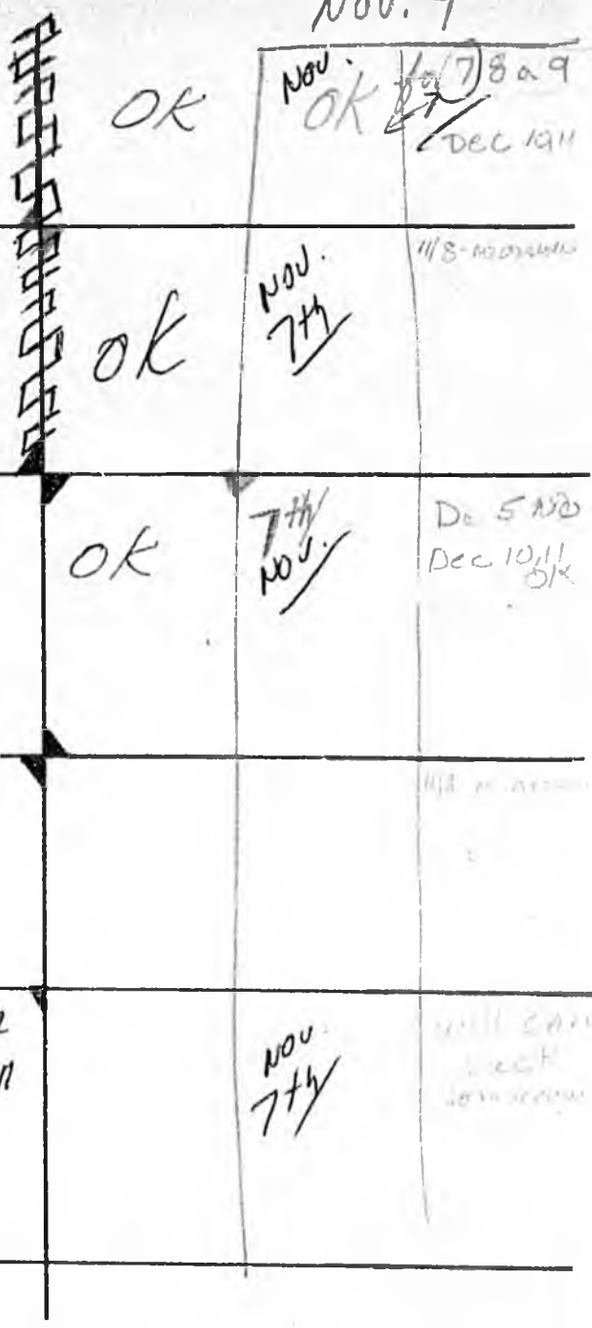
Brad Bradley (Chairman)
H-333-8760
O-278-1581
AA-Basler/Mathison

Sturgulewski (Vice-Chairman)
H-279-4939
O-278-3668 (Leg. Affairs)
AA-

Tim Kelly
H-333-1179
O-694-3578
O-694-3578 (Eagle River Office)
AA-Simonson/Moffet

Furguson
O-274-7632 Nancy Harvey AA

Stimson
H-272-6094
O-272-0954
AA-Licia Piceno
1315 Hyder Street ANC 99501



Alaska State Legislature

Senate

Office of the Secretary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 30, 1979

MEMORANDUM TO: Commerce Committee

From: Secretary of the Senate

Subject: Sunset Audits with Discussion of Legislative Oversight Responsibilities

The President has referred the following for review to the Commerce Committee for public hearings:

(1) Board of Public Accountancy (AS 08.04.010); 101
(2) Board of Barber Examiners (AS 08.12.010); 10
(3) Collection Agency Board (AS 08.24.011); 17
(4)- Board of Hairdressing & Beauty Culture Examiners (AS 08.28.010); 97
(5)- Board of Electrical Examiners (AS 08.40.010); 87
(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011); 6 → time
(7)+ Guide Licensing and Control Board (AS 08.54.010); 46
(8)+ Board of Marine Pilots (AS 08.62.010); 77
(9) Real Estate Commission (AS 08.88.011); → time 105
(10)+ Board of Welding Examiners (AS 08.99.010). 128
(11) + ARVC - 104

Sept 7- + oct

Requirements set out in AS 44.66.050(c).

(12) AIC - 120

cc: President

WEB:jp

Elaine

Contact Ms. Garrett in the Division of Occupational Liscensing when action is going to be taken on Sunset this year. (1979)
789-2747 (Home)
465-2534 (Work)

Ann Griggs Director Div of Occ. Licensing 465-2534

Alaska State Legislature

Senate

Office of the Secretary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 30, 1979

MEMORANDUM TO: Commerce Committee

From: Secretary of the Senate BM

Subject: Sunset Audits with Discussion of Legislative Oversight Responsibilities

The President has referred the following for review to the Commerce Committee for public hearings:

No —— (1) Board of Public Accountancy (AS 08.04.010);
(2) 8 Board of Barber Examiners (AS 08.12.010);
(3) 7 Collection Agency Board (AS 08.24.011);
(4) 2 Board of Hairdressing & Beauty Culture Examiners (AS 08.28.010);
(5) 4 Board of Electrical Examiners (AS 08.40.010);
(6) 7 State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
10/9 — (7) Guide Licensing and Control Board (AS 08.54.010);
10/9 — (8) Board of Marine Pilots (AS 08.62.010);
(9) 11 Real Estate Commission (AS 08.88.011);
10/9 — (10) Board of Welding Examiners (AS 08.99.010).

Requirements set out in AS 44.66.050(c).

10/9 — A.T.U.C.
A.T.C.

cc: President

WEB:jp

Key to References

(Y) - (yellow cover) - State of Alaska Sunset Review, 1979. Prepared by the Division of Occupational Licensing

(B) - (blue cover) - Division of Legislative Audit Performance Review

(W) - (white cover) - Senate Commerce Committee Public Hearing Testimony, October 23, 1979.

1. The Board of Registration for Architects, Engineers and Land Surveyors should be continued. (How many years?)
(Y) - p 1
(B) - p 7, paragraph 2
(W) - p 6; p 11; p 22

2. Two public members should be included on the board replacing two of the land surveyors providing that two of the three engineers are dual registered as land surveyors. (Keep the same number of members - 9)
(Y) - p 4; (current membership) p 17, last paragraph; p 19, paragraph 5; p 27, paragraph 2
(B) - p 8, paragraph 1; p 9
(W) - p 4; p 7; p 17 (size); p 27

3. AS 08.48.091 should be amended to read: ". . . determined by the Board except in the case of the Architecture-Qualifying and the Architecture-Professional examines, which are to be held once a year."
(B) - p 11, B
(W) - p 4

4. Sec. 08.48.111(4) "a crime involving moral turpitude relevant to one of those professions." should be eliminated or more precisely defined.
(B) - p 11, C
(W) - p 4

5. 12 AAC 36.010. Applications - should be amended to eliminate the requirement of a photograph to be affixed to the application. This does not comply with affirmative action standards. Photographs should be used for identification purposes only.
(B) - p 12, paragraph 1
(W) - p 4

6. 12 AAC 36.065(a)(2). Eligibility for Professional Land Surveyor Examination. (Y) p 37-38. The regulation requirements for land surveyors must be repealed and lowered. Put in a statutory amendment to lower the figure from 12 years back to 8 years.

7. AS 08.48.081. Send rosters only to those persons requesting them.
(Y) - p 19
(Elaine Garrett)

BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS SUNSET

KEY TO REFERENCES:

(Y) - (yellow cover) - State of Alaska Sunset Review, 1979, Prepared by the Division of Occupational Licensing.
(B) - (blue cover) - Division of Legislative Audit Performance Review.
(W) - (white cover) - Senate Commerce Committee Public Hearing testimony, October 22, 1979.

1. Two public members should be included on the board filling the first two vacancies which occur.
(Y) - p. 11, par. 4; p. 13, par. 2
(W) - p. 33, par. 3; p. 39, par. 1
(B) - p. 10, recommendation #1

2. Statutory amendments should be introduced which would repeal
Sec. 08.28.150 -Admission of shop owner without examination.
Sec. 08.28.240 -A person holding a valid license as an operator issued before March 16, 1957, is not required to obtain a new license...these are simply obsolete.
Sec. 08.28.250 - (grandfather clause to the above)
Sec. 08.28.260 - (grandfather clause to the above)
(Y) - p. 11/12, last par. Clauses are on p. 21.

3. The board should explore methods of informing the general public of its existence and functions.
(Y) - p. 11/13
(W) - p. 50, par. 1

4. I suggest a mandatory annual inspection of the schools by the board, and there is a need for more assessment and follow-through on complaints as well as record keeping procedures.
(Y) - p. 13 15
(W) - p. 39, par. 1; p. 50, par. 1
(B) - p. 10, recommendation #2, p. 18. IV.

5. The Board should review and revise its application forms and procedures.
(Y) - p. 15, par. 4.
(W) - p. 40, par. 3.
(B) - p. 13, recommendation #7.

6. Mandatory annual inspection of the shops and schools by the Department of Health and Social Services should be enforced by new regulations. This is a requirement now, but it is not being done. (Section 08.28.280)
(W) _ p. 39, par. 1

7. Occupational Licensing should maintain operating statutes on licensing, examinations, and related business workload.
(W) - p. 40, par. 3
(B) - p. 15, recommendation #9.

8. AS 08.28.140
(1) proof of out-of-state or foreign license; Board recommendation.

9. AS 08.28.170 Fees.

(1)	schools	
	registration and initial license fee	$500
	biennial renewal	$200
(2)	school owner:	
	registration and initial license fee	$ 50 [$40]
	biennial renewal	$ 40 [$30]
(3)	instructor-operator:	
	registration and initial license fee	$ 50 [$40]
	biennial renewal	$ 40 [$30]
(4)	owner-operator:	
	registration and initial license fee	$ 40 [$25]
	biennial renewal	$ 30 [$20]
(5)	owner only, beauty shop:	
	registration and initial license fee	$ 40 [$25]
	biennial renewal	$ 30 [$20]
(6)	manager-operator:	
	registration and initial license fee	$ 40 [$25]
	biennial renewal	$ 30 [$20]
(7)	demonstration or consultant:	
	registration and initial license fee	$ 40 [$25]
	biennial renewal	$ 30 [$20]
(8)	operator:	
	registration and initial license fee	$ 25 [$15]
	biennial renewal	$ 20 [$10]
(9)	apprentice or student:	
	registration and one-year permit fee	$ 10 [$5]
	biennial renewal	$ 20 [$3]
(10)	manicurist:	
	registration and initial license fee	$ 20 [$15]
	biennial renewal	$ 15 [$10]
(11)	examination fee	$ 25 [$15]
(12)	investigation fee	$25
(13)	consultant:	
	seven day permit fee	$ 30
	one-time renewal of permit fee	$ 10

Board recommendation.

* what does it take to combine Barber + Hairdressing.

BOARD OF BARBER EXAMINERS SUNSET

KEY TO REFERENCES:

(Y) - (yellow cover) - State of Alaska Sunset Review, 1979, Prepared by The Division of Occupational Licensing.
(B) - (blue cover) - Division of Legislative Audit Performance Review.
(W) - (white cover) - Senate Commerce Committee Public Hearing testimony, October 22, 1979.

1. The Barber Examiners Board should not be continued.
   (Y) - p. 1, par. 2.
   (B) - p. 8, par. 4.

If The Board of Barber Examiners is to be continued then the following changes/recommendations are suggested:

A. The Board should review its examination procedures and develop a valid, consistent examination and grading standard.
   (Y) - p. 5, par 1; p. 6, par 3; p. 7, par 2; p. 9, par 3; p. 12, par 5; p. 13, par 5.
   (W) - p. 2, p. 6, p. 8.
   (B) - p. 10, recommendation #2.

B. There should be an inclusion of two public members on the board without increasing its overall size. (5)
   (Y) - p. 11, par. 3; p. 13.
   (W) - p. 6, par. 1.
   (B) - p. 11, recommendation #4; p. 12, last par.

C. The five (5) year Alaska License restriction for Board members should be deleted. (08.12.020)
   (Y) - p. 9, par. 5; p. 13. par. 4.
   (B) - p. 12, par. 3 (definition of the statute in question)

D. Board Membership should be limited to two consecutive terms.
   (Y) - p. 13, par. 4.
   (W) - p. 23.
   (B) - p. 11, last par.; p. 12, par. 5 & last par.

E. Statutory authority for reciprocity should exist for obtaining a license. Presently, licensure is by examination only.
   (Y) p. 9, par. 4; p. 13, par. 4.
   (B) - p. 7, par. 4; p. 9, par. 4; p. 10, par. 1.

F. Section 08.12.270 should be repealed. (applies to a person engaged in barbering in a community having more than 1,000 persons, etc.)

(Y) - p. 9, par. 4; p. 10, par. 3; p. 13, par. 4.

G. Section 08.12.180 should be repealed. (Licensing of person barbering before 1957 without examination.)
(Y) - p. 13, par. 3. (this is now obsolete. If a person in this category does not have a license by now he never will. Formality.)

H. Change Fees - Board recommendation
Section 08.12.080. [EXAMINATION] FEES. An applicant [FOR EXAMINATION] shall submit with his application a [AN EXAMINATION] fee as follows:

(1) examination for apprentice barber registration [LICENSE]..... $25

(2) annual apprentice registration fee [EXAMINATION FOR BARBER TEACHER LICENSE].... $10 [$75]

(3) annual barber license fee.... $15

(4) annual barber teacher license fee.... $50

(5) annual barber school or college license fee.. .. $150

(6) examination for barber teacher license.... $75

GENERAL COMMENTS:

The Board of Barber Examiners should establish formal goals, objectives, and quantifiable measures which should be included in the Division of Occupational Licensing's budget document.

THE BOARD DOES NOT HAVE A STATEMENT OF GOALS AND OBJECTIVES TO DATE ACCORDING TO THE O. L. REPORT (Y). (B) - p. 14, recommendation #7.

The testimony of the Barber Examiners hearing on October 22, 1979 said very little regarding significant changes and recommendations.

BOARD OF ELECTRICAL EXAMINERS (pages 1-12)

KEY OF REFERENCES:

(Y) = yellow - State of Alaska Sunset Review, 1979
(B) = blue - Division of Legislative Audit Performance Review of Electrical Examiners Board, May 1979.
(Testimony) = Senate Commerce Committee Hearing Minutes, November 7, 1979
(Green) = Board of Electrical Examiners Report, June 1979 to Governor J. S. Hammond

1. Board should not be continued
   (B) Audit - page 7, page 9, Recommendation 1; page 8 (Yellow) O.L.

   Quote ~~from Elaine~~ Garrett

   If the Board of Electrical Examiners should be continued the following changes/additions are suggested:

   A. Board composed of ~~4~~ 5 members -- ~~2~~ 3 lay, 2 professional. Two year terms with one re-appointment.
   Testimony - p. 59
   (Y) - p. 10/13 O.L.
   (Y) - p. 32, Board View
   (B) - p. 13, Audit

   B. Increase the number of inspectors.
   Testimony - p. 60, 6, and 10
   (Y) - p. 11, O.L.
   (Y) - p. 5, Board has power to inspect
   Testimony - Don Liston, Editor of "Building Alaska" magazine

   C. Statutory authority for reciprocity should exist.
   Testimony - H. D. Wilson, contractor, p. 69, and ombudsman's letter, p. 80
   (Y) - p. 35, Board
   (B) - p. 12, Audit, Recommendation #5
   (Y) - p. 7, O.L.

   D. Eliminate inspection power from the Department of Labor for Electrical Examiners. Commerce already has this power.
   (Y) - p. 27/29, conclusive p. 30, Attorney General
   Testimony - Don Liston/"Build Alaska"
   SB 232

E. Licensee should not take the certificate of fitness test.
Testimony - p. 60,9
(Y) - p. 39, Board
(Y) - pp. 8, 6
(B) - p. 9 (instead of Sunset, eliminate this duplication) Audit

F. Adopt the National Electrical Code and the National Electrical Safety Code as a minimum standard for the State of Alaska.
(Y) - p. 36 - Board
Testimony - Tony Reid, Inspector
Administration - Memo Oct. 30, 1979 by Bill McConkey, p. 2

G. Annual report from Board to Legislature/Put authority in 08 Title.
Testimony - Michael Frith
(B) - p. 13, Audit
(Green) - p. 3, section 2, Board

H. It should not be required that electricians involved in the communications industry be licensed.
(B) - pp. 7, 10, Recommendation 2 - Audit
(Y) - p. 7, Audit

I. In regard to fees and licensing a maximum of two-years lapse of license should be allowed before reexamination is statutorily required.
(Y) - p. 34, Board
(Y) - p. 13 - fees - O.L.
(Y) - O.L. and Audit agree on fees. Set by OL and Board. SB 94.

J. Licencees should be notified of renewal dates at least thirty days before the expiration date of their licenses.
Repeal 08.01.050 by O.L. per Elaine Garrett

BOARD OF ELECTRICAL EXAMINERS ~~(pages 1-12)~~ Sunset

KEY ~~OF~~ to REFERENCES:

(Y) - (yellow cover) State of Alaska Sunset Review, 1979 - Prepared by Div. of O.L.
(B) - (blue cover) Division of Legislative Audit Performance Review
~~White of Electrical Examiners Board, May 1979.~~
(W) ~~(Testimony)~~ - Senate Commerce Committee Public Hearing Testimony ~~Minutes~~, November 7, 1979
~~1979~~
~~(Green) - Board of Electrical Examiners Report, June 1979 to Governor J. S. Hammond~~

1. Board should not be continued
   (B) Audit - page 7, page 9, Recommendation 1; page 8 (Yellow) O.L.

~~Quote from Elaine Garrett~~

If the Board of Electrical Examiners should be continued the following changes/additions are suggested:

A. Board composed of 4 members -- 2 lay, 2 professional. Two year terms with one re-appointment.
Testimony - p. 59
(Y) - p. 10/13 O.L.
(Y) - p. 32, Board View
(B) - p. 13, Audit

ok

(3c & 2p) = 5 public (lay) members
elect ~~[illegible]~~ examiners

B. Increase the number of inspectors.
Testimony - p. 60, 6, and 10
(Y) - p. 11, O.L.
(Y) - p. 5, Board already has power to inspect
Testimony - Don Liston, Editor of "Building Alaska" ~~magazine~~

w/ letter of intent.

C. Statutory authority for ~~reciprocity~~ endorsement should exist.
Testimony - H. D. Wilson, contractor, p. 69, and ombudsman's letter, p. 80
(Y) - p. 35, Board
(B) - p. 12, Audit, Recommendation #5
(Y) - p. 7, O.L.

ok

D. Eliminate inspection power from the Department of Labor for Electrical Examiners. Commerce already has this power.
(Y) - p. 27/29, conclusive p. 30, Attorney General
Testimony - Don Liston/"Build Alaska"
SB 232

NO

SC - w/ request

To Labor ~~to Public Safety only~~ not Commerce

E. Licensee should not take the certificate of fitness test.
Testimony - p. 60,9
(Y) - p. 39, Board
(Y) - pp. 8, 6
(B) - p. 9 (instead of Sunset, eliminate this duplication)
Audit

F. ~~Adopt~~ the National Electrical Code and the National Electrical Safety Code as a minimum standard for the State of Alaska.
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H. It should not be required that electricians involved in the communications industry be licensed.
(B) - pp. 7, 10, Recommendation 2 - Audit
(Y) - ~~p. 7, Audit~~

I. In regard to fees and licensing a maximum of two-years ~~lapse~~ of license should be allowed before reexamination is statutorily required.
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(Y) - p. 13 - fees - O.L.
(Y) - O.L. and Audit agree on fees. Set by OL and Board. SB 94.

J. Licencees should be notified of renewal dates at least thirty days before the expiration date of their licenses.
Repeal 08.01.050 by O.L. per Elaine Garrett

Key to References

(Y) - (yellow cover) - State of Alaska Sunset Review, 1979. Prepared by the Division of Occupational Licensing

(B) - (blue cover) - Division of Legislative Audit Performance Review

(W) - (white cover) - Senate Commerce Committee Public Hearing Testimony, October 23, 1979.

A. The Board of Welding Examiners should be discontinued.
(Y) - p 1; p 11, paragraph 3
(B) - p 7, paragraph 2; p 8, Recommendation 1
(W) - p 38, paragraph 4; p 39, paragraph 1

If the Board of Welding Examiners is to continue, the following changes are recommended:

1. To insure adequate representation of the regulated occupation and the general public, the sources of nomination for board membership should be accepted from the entire industry rather than only nominations by the Alaska Chapter of the American Welding Society and the Alaska Society of Professional Engineers. AS 08.99.030 should be amended as such.
(Y) - p 11, paragraph 4; p 13, paragraph 2
(B) - p 10
(W) - p 5 (written testimony by Donald Lockman, Chairman of the Board of Welding Examiners)

2. Reduce the number of board members from 7 to 5 members only. The board currently licenses only 50 persons. Amend AS 08.99.010
(Y) - p 11, paragraph 4; p 13, paragraph 2
(B) - p 11, paragraph 4

3. Add one public member to the board if total number of board members is reduced to five (add two public members if total number remains at seven)
(Y) - p 13, paragraph 2; p 14, paragraph 3
(B) - p 11, paragraph 2
(W) - p 6 (written testimony by Donald Lockman, Chairman of the Board of Welding Examiners)

4. Limit the term of board members to no more than two consecutive terms which would create a more responsive, active board.
(Y) - p 11, paragraph 4
(B) - p 11, paragraph 3
(W) - p 4 (written testimony by Donald Lockman)

5. Increase application fee from $25 to $50 and increase biennial fee from $10 to $50
(Y) - p 16, paragraphs 2 and 3

4/29

Jon / Frank / Chris,

Use this format for all sunset sectional analyses.

Disregard underlining. I shall do that.

Where there is a comparasion between the changes in the bill and the existing statute, you may not need to give the reason for the change if it is an obvious comparison, but otherwise always give a reason for the

2

change or changes in each section. Inevitably this question is asked.

Do not take a sectional analysis as the last word or the best way to express a point. Often they confuse the issue in Legislative Affairs agency.

Always attach a copy of the referenced statute (Title. Chapter. Section) in the order that they are mentioned in your own sectional analysis of a bill.

Don't forget to include and explain all sections that are repealed in a bill.

Follow the attached model as close as possible -- no shortcuts / Brad

CS FOR SENATE BILL 574

MR. PRESIDENT, I MOVE THE ADOPTION OF CS FOR SB 574, WHICH IS IDENTICAL, AT THIS POINT, TO THE HOUSE BILL FOR THE SAME BOARD. WE HAVE WORKED JOINTLY TO TRY TO PREVENT AN UNNECESSARY AND OFTEN TIME-CONSUMING FREE CONFERENCE COMMITTEE.

THIRD READING

I will attempt to cover the changes to current law by section as briefly as possible

(SEC. 08.54.010) P. 1, L. 12

- SECTION 1 ESTABLISHES THE GUIDE LICENSING AND CONTROL BOARD SOLELY IN THE DIV. OF FISH AND WILDLIFE PROTECTION OF THE DEPT. OF PUBLIC SAFETY. CURRENTLY, THE BOARD IS ESTABLISHED IN THE DIV. OF OCCUPATIONAL LICENSING OF THE DEPT. OF COMMERCE AND ECONOMIC DEVELOPMENT AND THIS DIVISION PLUS THE DIV. OF FISH AND WILDLIFE PROTECTION OF THE DEPT. OF PUBLIC SAFETY SHARE THE RESPONSIBILITY FOR STAFF SUPPORT. THIS SECTION ALSO ENSURES THAT THREE MEMBERS OF THE BOARD WILL BE ACTIVELY INVOLVED IN GUIDING AND THE REMAINING FOUR WILL HAVE NO INVOLVEMENT IN THE GUIDING BUSINESS. CURRENTLY, THREE MEMBERS ARE JUST REQUIRED TO HAVE A GUIDE LICENSE AND THE OTHER FOUR A GENERAL KNOWLEDGE OF GAME RESOURCES.

(SEC. 08.54.020) P. 1, L. 28

- SECTION 2 PROVIDES THAT THE MEMBERS OF THE BOARD MAY NOT BE APPOINTED FOR MORE THAN TWO CONSECUTIVE TERMS. A TERM IS FOR THREE YEARS. CURRENTLY, THERE IS NO LIMIT TO HOW MANY CONSECUTIVE TERMS A MEMBER MAY SERVE if appointed.

(SEC. 08.54.030) P. 2, L. 2

- SECTION 3 REQUIRES THAT THE BOARD MUST ELECT A CHAIRMAN AND A VICE-CHAIRMAN ANNUALLY. THE CHAIRMAN MAY NOT SERVE FOR MORE THAN TWO CONSECUTIVE TERMS. TESTIMONY INDICATED THAT SUCH ROTATION WOULD ASSURE THAT THE BOARD WOULD BE MORE RESPONSIVE TO THE PUBLIC INTEREST. CURRENTLY, THERE IS NO LIMIT TO HOW LONG A CHAIRMAN CAN SERVE.

(SEC. 08.54.070(A)) P. 2, L. 7

- SECTION 4 REQUIRES GUIDE LICENSE FEES TO BE PAID BIENNIALLY AND GENERALLY INCREASES THEM 25 TO 30 PERCENT.

(SEC. 08.54.182) P. 2, L. 13

- SECTION 5. PERSONS SEEKING REGISTERED AND MASTER GUIDE LICENSES MUST PASS AN EXAMINATION, AND THAT EXAMINATION SHALL BE HELD TWICE A YEAR AT BOTH JUNEAU AND ANCHORAGE FOR THE CONVENIENCE OF APPLICANTS. CURRENTLY, THE EXAMINATIONS ARE ADMINISTERED ONLY IN ANCHORAGE.

(SEC. 08.54.190(A)) P. 2, L. 18

- SECTION 6 ELIMINATES A LICENSURE PROVISION FOR AIR TRANSPORTERS AND IT ASSURES THAT ALL GUIDE LICENSES ARE VALID FOR AT LEAST ONE FULL YEAR. UNDER EXISTING LAW, ALL LICENSES EXPIRE ON DECEMBER 31 FOLLOWING ISSUANCE REGARDLESS OF WHEN THEY WERE ISSUED. PERSONNEL IN THE DIV. OF FISH AND WILDLIFE PROTECTION CONSIDER THE "TRANSPORTER LAWS" CONFUSING AND DIFFICULT TO ENFORCE. IN ADDITION, THE INFORMATION AND REPORTS THAT TRANSPORTERS ARE REQUIRED TO FILE ARE NOT BEING ACCOMPLISHED AND ARE NOT NEEDED TO MANAGE THE GAME RESOURCES OF THE STATE. Testimony was unanimous that the transporter license should be eliminated.

(SEC. 08.54.190(B)) P. 2, L. 23 — SECTION 7 REQUIRES THAT AN ASSISTANT GUIDE OR A CLASS-A ASSISTANT GUIDE THAT HAS NOT RENEWED HIS LICENSE FOR FOUR YEARS MAY NOT BE RENEWED UNTIL HE MEETS THE QUALIFICATIONS FOR AN INITIAL LICENSE. CURRENTLY, THE GRACE PERIOD IS FOR ONLY TWO YEARS.

(SEC. 08.54.200(A)) P. 2, L. 28 — SECTION 8. UNDER EXISTING LAW, THE BOARD IS REQUIRED TO HOLD A HEARING TO CONSIDER DISCIPLINARY ACTION IF IT RECEIVED COMPLAINTS FROM THREE OR MORE SEPARATE PARTIES TO WHICH A LICENSEE HAS PROVIDED SERVICES. NO TIME PERIOD WAS INDICATED; IT COULD BE THREE COMPLAINTS IN THIRTY YEARS, which is impractical. SECTION 8 PROVIDES A TIME PERIOD OF FIVE YEARS WITHIN WHICH THESE COMPLAINTS MUST BE RECEIVED BEFORE THE BOARD IS REQUIRED TO HOLD A DISCIPLINARY HEARING. THIS SECTION ALSO PROVIDES THAT THE BOARD IS NO LONGER OBLIGATED TO HOLD A DISCIPLINARY HEARING WHEN A LICENSEE IS MERELY CHARGED WITH A VIOLATION OF FEDERAL OR STATE SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS. HOWEVER, UPON A CONVICTION, THE BOARD IS STILL REQUIRED TO HOLD A DISCIPLINARY HEARING.

(SEC. 08.54.200(C)) P. 3, L.9 — SECTION 9 PROVIDES THE BOARD THE OPTION OF REVOKING, SUSPENDING, OR DENYING RENEWAL OF A LICENSE IF THE BOARD FINDS THAT THE LICENSEE DOES NOT MEET CERTAIN REQUIREMENTS. UNDER EXISTING LAW, THE BOARD WAS REQUIRED TO REVOKE THE LICENSE UPON SUCH A FINDING. THIS SECTION ALSO PROVIDES THAT SPECIFIED DISCIPLINARY

ACTION MUST BE TAKEN BY THE BOARD ONLY WHEN A LICENSEE HAS BEEN CONVICTED OF TWO VIOLATIONS OF FEDERAL OR STATE SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS WITHIN THE PAST FIVE YEARS. UNDER CURRENT LAW, TWO VIOLATIONS TRIGGER MANDATORY DISCIPLINARY ACTION REGARDLESS OF THE TIME PERIOD.

(SEC. 08.54.210(A)(1)) P. 3, L. 20 • SECTION 10 REMOVES REFERENCE TO A TRANSPORTER BECAUSE TRANSPORTERS WILL NO LONGER BE LICENSED UNDER THIS ACT. (SEE SECTION 6 AND SEC. 08.54.142 AND 144)

(SEC. 08.54.210(A)(2)) P. 3, L. 26 • SECTION 11 REMOVES REFERENCE TO A TRANSPORTER.

(SEC. 08.54.210(A)(4)) P. 4, L. 5 • SECTION 12 REMOVES REFERENCE TO A TRANSPORTER.

(SEC. 44.41.020) P. 4, L. 11 • SECTION 13 PROVIDES THAT A NEW DUTY OF THE DEPT. OF PUBLIC SAFETY SHALL BE THE SOLE RESPONSIBILITY FOR ADMINISTRATIVE STAFF SUPPORT OF THE GUIDE LICENSING AND CONTROL BOARD (SEE SECTION 1).

(SEC. 08.03.010(C)) P. 4, L. 15 • SECTION 14 PROVIDES FOR JUNE 30, 1984, AS THE TERMINATION DATE FOR THE GUIDE LICENSING AND CONTROL BOARD.

P. 4, L. 16 • SECTION 15. THIS SECTION REPEALS PROVISIONS WHICH ARE INCONSISTENT WITH THIS ACT.

AS 08.01.010(20) REMOVES THE GUIDE LICENSING AND CONTROL BOARD FROM THE LIST OF BOARDS TO WHICH CHAPTER 01 APPLIES, SINCE THIS BOARD

WILL NO LONGER BE ADMINISTERED BY THE DEPT. OF COMMERCE AND ECONOMIC DEVELOPMENT.

AS 08.03.010(B)(7) REPEALS THE SUNSET PROVISION FOR THIS BOARD;

AS 08.54.100(5) ELIMINATES THE BOARD'S DISCRETION TO ESTABLISH QUALIFIACTIONS FOR LICENSING MASTER GUIDES IN ADDITION TO THOSE ESTABLISHED BY STATUTE (IF THE BOARD WAS PERMITTED TO ESTABLISH QUALIFICATIONS IN ADDITION TO THOSE IN THE STATUTES, IT WAS THOUGHT THERE COULD POSSIBLY BE SOME CHANCE OF DISCRIMINATION);

AS 08.54.110(12) ELIMINATES THE BOARD'S DISCRETION TO ESTABLISH QUALIFICATIONS FOR LICENSING REGISTERED GUIDES IN ADDITION TO THOSE ESTABLISHED BY STATUTE (THE SAME REASON AS FOR MASTER GUIDES ALSO APPLIES HERE);

TRANSPORTER REPEALS BEGINS HERE (NEXT 5 SECTIONS)

AS 08.54.142 REPEALS THE SECTION DEALING WITH LICENSURE OF TRANSPORTERS;

AS 08.54.144 REPEALS THE RESTRICTIONS ON TRANSPORTATION OF HUNTERS BY TRANSPORTERS;

AS 08.54.146 REPEALS THE SECTION REQUIRING PREPARATION AND FILING OF TRANSPORTER REPORTS;

AS 08.54.170(c) ELIMINATES THE LICENSE FEE FOR A TRANSPORTER;

AS 08.54.240(5) REMOVES THE DEFINITION OF "TRANSPORTING" AND "ACTIVITY OF TRANSPORTING"; TRANSPORTER REPEALS END HERE.

AS 16.05.340(E) ELIMINATES FEES CHARGED TO MASTER GUIDES AND REGISTERED GUIDES FOR THE TAKING OF SPECIFIED GAME ANIMALS. (Head Tax).

P. 4, L. 19 ● SECTION 16 PROVIDES FOR THIS ACT TO TAKE EFFECT JUNE 30, 1980, THE DATE ON WHICH THE BOARD IS SCHEDULED TO TERMINATE.

SUNSET INFO

Alaska State Legislature

Senate

Committee on

Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

March 8, 1980

TO: Senator Arliss Sturgulewski
Representative Hugh Malone

FROM: Margo W. Waring & Paul Quesnel

RE: Sunset Free Conference Committee

Our previous memorandum on this subject (Feb. 29, 1980) conveyed to you the options and recommendations of Gerald Wilkerson, Legislative Audit. In this memorandum, we would like to present a fuller discussion of the issue of revision of the sunset process.

To establish a context for decisions about sunset revisions, a restatement of the policy approach of the sunset legislation may be appropriate. The significant difference between sunset and previously existing audit and review laws (as embodied in AS 24.20, Legislative Budget and Audit and AS 37.07 Executive Budget Act) is the provision for automatic termination of programs and agencies unless positive joint legislative action is taken. The philosophic assumption informing this approach is that needless government regulation over the private lives of individuals exists that creates a costly and needless burden. Hence, only positive action would save these agencies from automatic extinction. This bias of "guilty til proved innocent" is the key distinction between traditional audit and review mechanisms and the mechanism available in the sunset process.

Alaska's experience with sunset has not been atypical: few agencies have been allowed to terminate. A great deal of time, energy, and money has gone into reviewing boards and determining both their effectiveness and the adequacy of their enabling legislation. However, apparently, few legislators have felt a deep commitment to sunset, and several standing committees have found their time overwhelmed by the demands of the sunset process.

It is within this context that our instructions were given: to review the sunset process with a goal of a revision which would focus on those agencies/boards which require review, free regular committees from the burden of so tight a schedule, yet maintain the sunset process.

While the instructions are clear, the criteria used for judging any particular option are stringent: any number of alternatives would achieve the first two criteria; very few will meet the added criterion of

maintaining a process in which agencies/boards are automatically terminated unless positive action is taken by the legislature.

Discussion of Alternatives

1. The first alternative is the one suggested by Mr. Wilkerson (memorandum of February 29, 1980) in which legislators annually target agencies for sunset. While this option preserves the appearance of the existing sunset process, it should be noted that the power to annually target agencies/boards for sunset already exists under AS 24.20.271 relating to legislative audit. Passage of legislation which would enact this option would essentially duplicate existing authorities. Nothing more would be achieved than would be achieved by the simple repeal of sunset. Additionally, since bills would need to be signed by the Governor, possible veto could endanger this approach.

2. As mentioned in the memorandum of February 29, 1980, stretching out the existing schedule would meet the three criteria we were given, with the exception of focussing on agencies "in need" of sunset review. Even so, this option merits further discussion, as its implementation could be within the function of the Free Conference Committee itself. Legislative Legal Services informs us that the original intention behind placing the health boards in one group for sunset review was to achieve certain efficiences in approach and to provide for coordination in review, so that consolidations, cross references and other inter-disciplinary approaches could be undertaken by the legislature. However, the Free Conference could elect to extend the life of the health boards by varying lengths. For example, while the Psychology Board might be extended for one year, the Board of Nursing could be extended for six or eight years, effectively staggering reviews over a longer time period. Such action would achieve all three objectives: more frequent attention on those boards "in need" of review, less work for the standing committees, and retention of the sunset process.

3. If greater attention is paid to the concept of "less work" than to the other criteria, other options suggest themselves.

a) The sunset legislation allows for joint hearings on the agencies/boards. If joint hearings were held, less total legislative time would be spent; it would be easier for board members to participate, and the whole process would be less expensive. These benefits would be increased if boards were extended for greater periods of time, as suggested in 2 above.

b) Most states, in their sunset legislation, review only licensing/regulatory boards. If the Sunset Act were amended to eliminate the program agencies, then the work load would be reduced. In support of this concept, it should be remembered that program agencies can and are routinely reviewed and audited, that the executive budget process performs similar performance reviews and that the perceived burden of government regulation on the lives of citizens comes substantially from the public interest efforts of licensing and regulatory boards. Hence, if program agencies were to be removed from the sunset list, all three criteria would be observed, without great loss, as program agencies can and are routinely reviewed under traditional mechanisms.

Either or both of the options mentioned in 3(a) and (b) can be supported by the following argument. During the first cycle of sunset reviews, a great deal has been learned regarding the conduct of the process. In 1983, when the boards would again be sunsetted, review criteria will be easier to establish, the organization and scheduling of hearings should be easier, and, perhaps most significantly, there should be less to review as most of the boards will have undergone considerable revision of their practice acts.

4. There is a fourth alternative which would also meet the criteria given to us. This option does not necessarily involve changes in the sunset process or in the scheduling of boards for review. Instead, the legislature itself could establish an alternative process for the sunset reviews. A standing Sunset Committee (perhaps a Joint Committee) would be established. Staff would be hired for this committee. In favor of this option are several efficiences of effort. Although the same time and money would be spent as now, those efforts and funds could be more efficiently used. Staff would develop an expertise in the sunset process, hearings could be held over the interim, deadlines would be more easily met, and the public could be educated regarding the public interest goals of the boards, thus encouraging greater public participation in the sunset hearings. The theoretical loss involved in this option would be the expertise of existing standing committees.

This option could be combined with those detailed in 3(a) and (b) above.

After this memorandum was written, we received a copy of the "House Commerce Committee Interim Report, Sunset in Alaska, 1979-1980." On page 32 of that document a recommendation is made to establish a permanent committee on sunset. A copy of that page is attached to this memorandum.

Summary

There are several options which meet the criteria assigned to us for use in selecting optional revisions of the sunset process. Several of the options can be combined. Of importance in the consideration of these options is whether or not you wish to pursue an aggressive sunset review program. If so, the process selected should be well established and supported. On the other hand, you may consider that the primary value of sunset has already been achieved by the first sunset cycle: revisions to practice acts have been made, board performance has been improved, management adjustments have occurred, and some boards may have been terminated. In other words, we see this juncture as a further determination of the public interest and how that may be served.

Enclosure

RECOMMENDED CRITERIA FOR SELECTING PROGRAMS SUBJECT TO SUNSET REVIEW

1. Duplication of program's objectives.
2. Duplication of efforts.
3. Degree of public exposure.
4. Dollars spent.
5. Dollar impact on consumer and/or private industry.
6. Availability/success of complaint function.
7. Results of assessment of alternative methods to achieve program's objectives.
8. Questi n of who should provide the service - State government, local government, or private sector.
9. Age of program.
10. Number of positions in program.
11. Existence of recent legislative review.
12. Indication of program deficiencies through internal or external audits.
13. Source of funding.
14. Recent change in legislation affecting the responsibilities of the program.

Administration Of Justice

Human Rights Commission - Office Of The Governor

The Commission enforces Alaska's Human Rights Law by investigating citizen complaints and by issuing remedial orders after public hearing where cases are not settled voluntarily. The Commission also initiates investigations of alleged discriminatory practices on its own motion. Seven unsalaried Commissioners, appointed by the Governor and approved by the Legislature, administer the agency. Offices are

maintained in Anchorage, Barrow, Juneau and Fairbanks. Funding for FY'79 was $883,300 (20 positions), $838,200 for FY'78, and $748,700 for FY'77. Funding is 100% General Fund.

Police Standards Council - Office Of The Governor

The Council establishes the minimum employment, educational and training standards for all Alaska police officers. Responsibilities include establishing the minimum curriculum requirements for preparatory, in-service, and advanced courses of police training. The Council consists of nine members appointed by the Governor, representing State and municipal police administrators, municipal executives and the private sector. Funding for FY'79 was $98,400 (2 positions), $96,500 for FY'78 and $89,700 for FY'77. Funding is 100% General Fund.

Criminal Justice Planning Agency - Office Of The Governor

Agency provides supportive services to all Alaskan criminal justice agencies for inter-agency coordination, planning, research and evaluation. Specifically, Agency provides staff functions for maintenance of Governor's Commission on the Administration of Justice. Statewide planning and action requirements are mandated by the Federal Omnibus Crime Control and Safe Streets Act of 1968, as amended, for State receipt of LEAA funds. Agency administers the LEAA block grant program with funds awarded to the State by the Federal government. Funding for FY'79 was $2,824,500 (20 positions), $3,454,000 for FY'78, and $3,132,800 for FY'77. Approximately 86% of Agency's funding is Federal money.

Violent Crimes Compensation Board - Department Of Public Safety

The three member Board determines and issues pecuniary awards to victims or family members of the victim of a criminal act, without which the recipient's total well-being and economic independence would not be maintained. In so doing the Board holds hearings, issues orders and decisions; has full subpoena powers; promulgates, rescinds and amends regulations; develops standards for determination of compensation. Funding for FY'79 was $339,300 (2 positions), $323,600 for FY'78, and $186,100 for FY'77. Funding source is the General Fund.

Public Protection

Office Of Consumer Protection - Department Of Law

As a section in the Civil Division of the Department of Law, Consumer Protection investigates and prosecutes violations of the State's Consumer Protection Statutes. Services offered by its offices in Anchorage, Fairbanks, Juneau and Ketchikan include consumer complaint mediation, consumer fraud alerts, consumer and business education, referrals, monitoring of advertising, investigation of possible deceptive practices, civil and criminal litigation to eliminate unfair and deceptive practices, and to recover restitution for injured consumers as well as penalties and costs for the State. Funding for FY'79 was $434,400 (12 positions), $381,800 for FY'78, and $342,700 for FY'77. Funding is 100% General Fund.

Industrial Safety - Mechanical Inspection - Department of Labor

Through its staff of professional inspectors, this Section protects the public from physical and financial injuries from the unregulated use, operation and installation of inferior, hazardous boiler and pressure vessels, electrical installations, unsafe elevators, and substandard unsanitary plumbing construction. These responsibilities are met by its licensing and inspection functions. Funding for FY'79 was $478,800 (13 positions), $393,100 for FY'78, and $426,200 for FY'77. Approximately 47% of funding is estimated to be program receipts with the remainder General Fund money.

Worker Protection - Fisherman's Fund - Department of Labor

The Fund provides benefits to licensed fishers who are injured or become ill while engaged in commercial fishing activities on shore in Alaska or in the territorial waters of the State. Benefits include all medical and transportation expenses up to $2,500 for each injury. The Fund is administered under the supervision of the Commissioner of Labor with the assistance of the Fisherman's Fund Advisory and Appeals Council (5 members) serving in an advisory and appellate capacity. Funding for FY'79 was $346,300 (2 positions), $283,600 for FY'78, and $279,900 for FY'77. Fund is supported by 60% of the money derived by the State from each crewmember fishing license issued under AS 16.05.480 and an equal amount of money derived by State from each commercial fisherman issued a permit under AS 16.43.

Weights and Measures - Department of Commerce and Economic Development

This section inspects all commercial weighing and measuring devices and public utility meters; inspects packages or amounts of commodities offered for sale; enforces standards for mobile homes as homes arrive in the State; investigates alleged violations; issues and enforces regulation to carry out the Weights and Measures Act (AS 45.75). Funding for FY'79 was $636,600 (16 positions), $592,800 for FY'78, and $870,000 (28 positions) for FY'77. FY'77 is not comparable since some functions moved to the Department of Public Safety in FY'78. Funding is 100% General Fund.

Alaska Division of Emergency Services - Department of Military Affairs

Previously known as the Alaska Disaster Office, this program develops and maintains the capability, both private and public, to protect life and property and to assist in the recovery from natural disaster or nuclear attack. In an emergency or threat of disaster, the Division provides warning and responds to aid local authorities. Division administers State and Federal funds authorized for disaster relief and recovery programs. Funding for FY'79 was $855,500 (21 positions), $836,000 for FY'78, and $2,211,700 for FY'77. Federal money provides approximately 50% of funding.

Agricultural Inspections - Department of Natural Resources

The purpose of this section is to ensure through inspection that food products purchased from commercial outlets are of wholesome quality and truthfully labeled, to minimize animal-to-man transmissible diseases and to provide marketing expertise to improve local production. Division is headquartered in Palmer with branch offices in Juneau, Fairbanks and Kodiak. Funding for FY'79 was $992,600 (20 positions), $770,200 for FY'78, and $659,600 for FY'77. Federal funding provides for approximately 35% of total funding; remainder is General Fund.

Vehicle Weight Enforcement - Department of Public Safety

This section operates weigh stations, enforces highway size, weight and load limitations, inspects commercial vehicles and issues special oversize and overweight permits. The purpose of these activities is to prevent damage to the State highway system for overloaded vehicles and to protect the motoring public from dangers of unsafe commercial vehicles. Funding for FY'79 was $895,700 (25 positions), $487,100 for FY'78 and $444,400 for FY'77 (in FY'79, the Oversize, Overweight Special Permit Program was transferred to DOPS from DOTPF). Program receipts are estimated to provide 47% of funding for FY'79; remainder is General Fund.

General Government

Policy Development and Planning - Office of the Governor

The Division assists executive and legislative branches in identifying and translating goals and objectives into policies to guide State agencies in designing programs and services that meet Alaska's needs. Funding for FY'79 was $812,500 (18 positions), $731,200 for FY'78 and $1,231,800 for FY'77. Federal funding is approximately 31% of total funding; remainder is General Fund.

Growth Policy Council - Office of the Governor

This is a group of 11 citizens appointed by the Governor that involves the public in issues and recommends policy alternatives relating to growth and development in Alaska. The Council serves as the "Board of Directors" of the Alaska Public Forum which is a systematic process of citizen participation through which the public can make know its feelings on these issues to the AGPC, the executive and legislative branches, and to private groups and citizens. Funding for FY'79 was $326,500 (3 positions), $319,300 for FY'78 and $501,600 in FY'77. Funding is all General Fund.

Public Offices Commission - Office of the Governor

The Commission administers the campaign expenditure disclosure laws; promulgates and administers the regulations for lobbying and lobbyists and the conflict of interest law. In the areas of campaign disclosure and regulation of lobbying, the Commission receives complaints, conducts investigations, and recommends prosecution or other action to the Attorney General when it believes a violation has occurred. In the conflict of interest area the Commission reviews the conflict of interest statements and refers violations to the Attorney General. Funding for FY'79 was $316,500 (8 positions), $303,600 for FY'78, and $249,900 for FY'77. Funding is all General Fund.

Risk Management - Department of Administration

This section is responsible for combining the insurable exposures of all State agencies under a single program to obtain the most advantageous cost and most effective coverage. In addition to the placement of adequate insurance coverage at fair market cost with reliable underwriters, the section educates State agencies in proper loss control techniques to reduce losses and subsequently premiums. Funding for FY'79 was $173,600 (4 positions), $157,000 for

FY'78, and $5,705,500 for FY'77. The large decrease in funding after FY'77 is due to not funding possible liabilities. Thus if the State incurs a large liability, the program would probably need a special appropriation. Funding is General Fund.

Blue Book - Department of Education

The Alaskan Blue Book is the official directory of the State of Alaska. It is compiled, published and distributed biennially, and in the past, is updated in the interim. However, there was no FY'78 interim update. The book is distributed free of charge to all State, municipal and Federal agencies in the State and to all Alaskan schools, libraries, and members of the Legislature. Copies are sold to the general public for $5. Funding for FY'79 was $36,000 (1 position) and $27,000 for FY'77 (3,000 books were printed in FY'77). Funding is General Fund.

Attachment: A

Attachment A

ADMINISTRATION OF JUSTICE
BUDGET CATEGORY

Office of the Governor

- Public Defender
- Human Rights Commission
- Police Standards Council
- Criminal Justice Planning

Department of Law

- Prosecution

Department of Health and Social Services

- Adult Confinement
- Juvenile Confinement
  - Institutional Care
  - Foster Care
  - Major Medical and Guard Hire
  - McLaughlin Youth Center
- Probation and Parole
- Administration and Support

Department of Labor

- Worker Protection
  - Wage and Hour Administration
  - Administration of Workmen's Compensation

Department of Public Safety

- Crime Identification and Apprehension
  - Community Relations
  - Detachments and CIB
  - Narcotics Unit
  - Alaska State Troopers, Director's Office
- Office of the Commissioner

Department of Public Safety (cont'd)

Administration and Support

- Records and Identification
- Laboratory Services
- Central Communications
- Housing Program
- Research and Planning
- Training

Violent Crimes Compensation

Judicial Services - Alaska State Troopers

PUBLIC PROTECTION
BUDGET CATEGORY

Department of Administration

- State Records

Department of Law

- Office of Consumer Protection

Department of Labor

- Occupational Safety
  - General Administration
  - Compliance Inspection
  - Health Inspection
  - Training and Consultation
  - Planning and Standards
- Occupational Safety - Research Grants
- Industrial Safety - Mechanical Inspection
- Worker Protection - Second Injury Fund
- Worker Protection - Fisherman's Fund

Department of Commerce and Economic Development

- Consumer Protection
  - Weights and Measures
  - Banking, Securities and Corporations
    - Corporations
    - Financial Institutions
  - Insurance
    - Market Surveillance
    - License Surveillance
    - Financial Surveillance

Department of Military Affairs

Search and Rescue

Civil Air Patrol

Alaska Division of Emergency Services

Civil Defense Planning
Radiological Program
City Participation
Flood Control
Disaster Relief Act

Alaska National Guard

Office of Adjutant General
State Armories
Federal Armories
Army Training Support
Air Training Support
Organized Militia Benefits
Hitchhike - Alaska Military Academy

Department of Natural Resources

Agricultural Inspection

Plant Industry

Animal Industry

Seafood Industry

Department of Public Safety

Fire Safety

Driver Vehicle Services

Driver Services
Vehicle Services
Field Operations
Administration
Municipal Tax Unit

Traffic Safety Planning Agency

Vehicle Weight Enforcement

GENERAL GOVERNMENT
BUDGET CATEGORY

Office of the Governor

- Executive Office
- Special Projects Coordinator
- Contingency Fund
- Policy Development and Planning
- Growth Policy Council
- Budget and Management
- Executive Mansion
- Telecommunications
- Lieutenant Governor
- Elections
- Volunteer Action
- Public Offices Commission

Department of Administration

- Executive Administration
  - Office of Commissioner
  - Administrative Services
- Internal Audit
- Equal Employment Opportunity
- Personnel
- Accounting
  - Pre-Audit
  - Accounting Services
  - Payroll Accounting
  - Administration and Support

Department of Administration (cont'd)

General Services

Purchasing

Property Management

Central Mail and Switchboard

Archives

Leasing and Facilities

STATE
of ALASKA

MEMORANDUM

DIVISION OF OCCUPATIONAL LICENSING

TO: The Honorable Fred Brown, Chairman
House Commerce Committee
Alaska House of Representatives

DATE: February 7, 1979

FILE NO:

TELEPHONE NO:

SUBJECT:

FROM: Don Hostak, Director
Division of Occupational
Licensing

Travel Monies Budgeted for FY79 Board Travel:

Board	Allowed Monies	Used	Left
Real Estate	$11,783.76	$7,739.63	$4,044.13
A,E, & LS	9,095.30	4,982.22	4,113.08
Barbers	2,091.04	1,276.15	814.89
Chiropractors	2,369.36	1,958.80	410.56
Collection Agency	5,411.44	1,909.40	3,502.04
Dental	7,766.04	7,056.00	710.04
Dispensing Optician	1,517.72	1,197.58	320.14
Electrical	5,172.20	1,723.40	3,448.80
Guide Licensing	9,365.12	3,651.07	5,714.05
Hairdressing	4,102.76	1,852.21	2,250.55
Marine Pilots	3,131.64	1,367.66	1,763.98
Medical	6,291.20	4,266.00	2,025.20
Nursing	11,449.10	5,312.39	6,136.71
Nursing Home Admin.	3,074.78	1,773.61	1,301.17
Optometry	1,585.70	-0-	1,585.70
Pharmacy	4,990.12	2,581.05	2,409.07
Physical Therapy	1,588.88	435.16	1,153.72
Psychology	3,484.38	2,445.07	1,039.31
Public Accountancy	6,332.20	5,806.25	525.95
Veterinary	1,409.64	824.82	584.82
Welding	4,621.60	2,435.14	2,186.46
	$106,633.98	$60,593.61	$46,040.37

Travel Monies Budgeted for FY79 Out-Of-State Board Travel:

$ 10,731.80	$ 5,024.64	$ 5,707.16

STATE of ALASKA

MEMORANDUM

DIVISION OF OCCUPATIONAL LICENSING

TO: The Honorable Fred Brown, Chairman
House Commerce Committee
Alaska House of Representatives

DATE: February 7, 1979

FILE NO:

TELEPHONE NO:

SUBJECT:

FROM: Don Hostak, Director
Division of Occupational Licensing

Allowable Travel FY79 for Board Meetings:

Board	Allowed Travel	Used	Left
Real Estate	6 meetings	3	3
A,E, & LS	6 meetings	3	3
Barbers	2 meetings	1	1
Chiropractors	2 meetings	1	1
Collection Agency	4 meetings	2	2
Dental	5 meetings	4	1
Dispensing Optician	2 meetings	2	0
Electrical	5 meetings	2	3
Guide Licensing	3 meetings	2	1
Hairdressing	4 meetings	2	2
Marine Pilots	2 meetings	1	1
Medical	4 meetings	2	2
Nursing	4 meetings	3	1
Nursing Home Admin.	3 meetings	2	1
Optometry	1 meeting	0	1
Pharmacy	3 meetings	2	1
Physical Therapy	2 meetings	2	0
Psychology	4 meetings	2	2
Public Accountancy	4 meetings	3	1
Veterinary	2 meetings	2	0
Welding	4 meetings	3	1

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Allowable Out of State Travel for FY79:

Real Estate	2 trips	2	0
A,E, & LS	2 trips	0	2
Barber	0	0	0
Chiropractors	1 trip	0	1

Board	Allowed Travel	Used	Left
Collection Agency	0	0	0
Dental	1 trip	1	0
Dispensing Optician	0	0	0
Electrical	1 trip	0	1
Guide Licensing	0	0	0
Hairdressing	0	0	0
Marine Pilots	0	0	0
Medical	1 trip	0	1
Nursing	2 trips	0	2
Nursing Home Admin.	1 trip	1	0
Optometry	0	0	0
Pharmacy	1 trip	1	0
Physical Therapy	0	0	0
Psychology	1 trip	1	0
Public Accountancy	1 trip	1	0
Veterinary	0	0	0
Welding	0	0	0
	14		

Board Requested Travel for FY80:

Real Estate:
6 Board Meetings
2 out-of-state trips - 2 people
4 in-state inspection trips
1 regulation hearing

A,E, & LS:
6 Board Meetings
6 out-of-state trips

Barbers:
2 Board Meetings

Chiropractors:
2 Board Meetings
1 out-of-state trip

Collection Agency:
3 Board Meetings
1 out-of-state trip

Dental:
5 Board Meetings
2 out-of-state trips
2 in-state inspection trips
1 regulation hearing

Dispensing Optician:
2 Board Meetings

Electrical:	4 Board Meetings 1 out-of-state trip 5 in-state inspections
Guide Licensing:	3 Board Meetings 2 disciplinary hearings 1 regulation hearing
Hairdressing:	4 Board Meetings 1 out-of-state trip - 2 people
Marine Pilots:	2 Board Meetings 6 in-state inspections 1 regulation hearing
Medical:	4 Board Meetings 1 out-of-state trip 2 regulation hearings
Nursing:	5 Board Meetings 6 out-of-state trips 10 in-state inspections
Nursing Home Admin.:	2 Board Meetings 1 out-of-state trip
Optometry:	2 Board Meetings
Pharmacy:	2 Board Meetings 1 out-of-state trip 5 in-state inspections 1 regulation hearing
Physical Therapy:	3 Board Meetings 1 out-of-state trip
Psychology:	5 Board Meetings 2 out-of-state trips 2 in-state trips to Juneau
Public Accountancy:	4 Board Meetings 2 out-of-state trips
Veterinary:	2 Board Meetings 1 out-of-state trip
Welding:	5 Board Meetings 1 out-of-state trip $2,000 for in-state travel

73 Board Meetings
31 Out-of-State trips
34 In-State trips + $2,000
7 Regulation Hearings
2 Disciplinary Hearings

02-0018 (Rev. 10/78)

STATE of ALASKA

MEMORANDUM

TO: All Occupational Licensing Boards

DATE: November 2, 1977

THRU: Sharon Andrew, Director
Division of Occupational Licensing

FILE NO.

TELEPHONE NO.

FROM: Avrum M. Gross
Attorney General

SUBJECT: Boards' Role in Investigation and Adjudication

By:
Bruce M. Botelho
Assistant Attorney General

Because of the limited resources of the Department of Law, it is impossible that attorneys attend all meetings of the State's 23 occupational licensing boards. In our absence this memorandum is designed to lend the boards some guidance in fulfilling their responsibilities with respect to complaints against practitioners.

INTRODUCTION

Generally speaking, state governments have assumed responsibility for licensure of occupations and professions in order to assure the public that practitioners are both competent and scrupulous. In Alaska, policing of the occupations has been divided between the Division of Occupational Licensing and the occupational licensing boards.

The Division of Occupational Licensing assumes day-to-day responsibility for processing of applications, fees and inquiries regarding the various professions. Furthermore, the division, through its enforcement section, investigates complaints against persons in violation of the occupational licensing statutes (found in Title 8 of the Alaska Statutes). Finally, the division, through the Commissioner of the Department of Commerce and Economic Development, has authority to seek enforcement of the licensing statutes either through cease and desist orders or court injunctions pursuant to AS 08.01.087.

The occupational licensing boards generally are responsible for reviewing the applications of all persons wishing to enter a profession in Alaska, to adopt regulations regarding the

standards of practice within the professions, and to hear cases presented to the boards by the Division of Occupational Licensing.

The Department of Law serves as counsel for both the Division of Occupational Licensing and for the licensing boards. The department specifically provides advice to the division and to the boards regarding their statutory authority and functions, helps draft and review proposed legislation and regulations and represents the division and boards in administrative proceedings and in court.

COMPLAINTS

Complaints about violations of the occupational licensing statutes usually come to a board's attention in two ways: (1) the division brings a complaint to the board for preliminary review; or (2) a member of the board has been contacted by some third party or has independently observed a violation of the law.

The immediate issue arises: how involved should the board become with the complaint? It is our position that the boards should refrain from becoming actively involved in investigations. Instead, investigations should be conducted by division staff. Thus, complaints received by an individual board member should be referred to the division. This does not preclude the division from approaching a board to inform it of the number and nature of outstanding complaints or investigations or from seeking guidance from a board as to whether particular conduct could constitute a violation of the licensing statute.

The reason for this limitation of board investigatory functions is the risk of undue bias that could violate a respondent's right to a fair and impartial hearing. The most recent U.S. Supreme Court decision in this regard is Withrow v. Larkin, 421 U.S. 35, 43 L.Ed.2d 712, 95 Sup. Ct. 1456 (1976), in which the Court was asked to uphold a decision of a three-judge U.S. District Court that enjoined a state medical board from temporarily suspending a license because the board had itself investigated the complaint and then separately held a revocation hearing based on the complaint! The Supreme Court reversed the District Court decision, holding that the processes utilized by the board did not in themselves contain an unacceptable risk of bias. However, the Court went to some length to emphasize two points:

1. That the board in question had utilized certain procedural safeguards (e.g., the doctor and his attorney were permitted to be present throughout the investigative proceeding), thus eliminating certain due process questions;

2. That there are risks of bias in administrative proceedings of this nature.

The Court concluded: "the mere exposure to evidence presented in non-adversary investigative procedures is insufficient in itself to impune the fairness of the board members at a later adversary hearing."

The Alaska Supreme Court has reached a similar result in interpreting Alaska's constitutional due process provisions. In In Re Cornelius, 527 P.2d 76 (Alaska 1974), the Alaska Supreme Court was asked to review a recommendation of the Board of Governors calling for the discipline of a member of the bar. The Alaska court summarily held that the combination of the investigative and judicial functions within an agency did not violate due process. It is noteworthy, however, that the trial committee of the board and the Board of Governors, which made the recommendation, are two separate entities within the State Bar Association. Different persons within the agency performed the separate investigative and judicial functions.

Thus, I believe that boards may become involved in investigations to the extent I have outlined above without fear of later court reversal. On the other hand, to allow a greater role except on a case-by-case basis (reviewed by a staff attorney) increases the risk of adverse court reaction to the board conduct in question.

AS 08.01.087 AUTHORITY

Once the division has investigated a complaint (whether it involves a practitioner in violation of the licensing statute or a person who is required to be licensed but is not), and it determines that a violation appears to have occurred or is about to occur, the division, on behalf of the Commissioner of the Department of Commerce and Economic Development, may seek (1) a cease and desist order stopping the person from committing a violation of the Act; (2) an injunction in superior court; (3) examination of license records; or (4) subpoena power to conduct further investigations.

In order to do any of these, however, the division must first contact the board involved by telephone or telegraph. The proposed action may take place if a majority of the board do not object within 10 days. As a practical matter the division will poll the board at the time of notification to determine whether a majority object to the proposed action.

The statute does not grant authority to the boards to issue cease and desist orders or injunctions. Nor can they direct the division to seek such relief. At most, they can recommend that the division review a complaint for possible action.

LICENSE DENIALS, SUSPENSIONS, AND REVOCATIONS

Statement of Issues

When a board, after reviewing an application for licensure, has determined that licensure should be denied, then the board issues a "Statement of Issues."

The statement of issues will generally be issued by the board without the assistance of the Department of Law. However, the board should set forth clearly and completely in the statement of issues all the reasons that the license is being denied. The board must set forth clearly and completely in its minutes and records the bases for its action. The Department of Law presents the state's case at hearing before the board.

Accusation

An accusation begins the process of determining whether a license that is currently valid should be suspended or revoked. In all cases, the accusation is filed by the division -- not by the board. The Department of Law drafts the accusation and presents the case to the board at hearing on behalf of the division.

The Hearing

Once either a statement of issues or an accusation has been filed, the person complained against (called "the Respondent") has 15 days to file a notice of defense and request a hearing. If the Respondent does not make such a filing, then at the board's next meeting the division will put on its evidence and the board will issue an order based on the evidence.

Normally, however, the Respondent requests a hearing. In that case, the hearing must be presided over by a hearing officer, either sitting alone or with the board members. The hearing officer is normally responsible for setting the time and place of hearing as well as the setting of any prehearing conferences. The board must make a determination, either before or after a notice of defense is filed, whether it wishes to delegate the hearing function to a hearing officer alone or whether it wishes to hear the case with the hearing officer. Some of the considerations in making such a decision are: the time involved (some cases have lasted several weeks), the location of the hearing and the complexity of the case. If a board chooses to hear the case, a majority of the board must hear it -- that means, hear all the evidence and testimony. A board member who believes he/she cannot render an impartial decision should disqualify himself/herself.

Paramount to all administrative proceedings is that the Respondent be accorded "due process." What lawyers usually refer to when they speak of "due process" is the right to a fair and impartial hearing. Though by no means exhaustive, the following are the most important elements of due process. Each board member who sits in a hearing has an obligation to protect these rights:

1. There must be adequate and timely notice of hearing and of every material step in the proceeding.

2. The purpose of the hearing and the issues involved must be stated clearly and simply in the notice and, where it is possible, the notice should contain a statement of the statute, rule or regulation involved and also the factual basis of the hearing or the charge involved.

3. The hearing must be before an impartial adjudicator.

4. There must be a full opportunity to be heard.

5. All parties must have the right to be represented by counsel or other representatives of their own choosing.

6. All parties have the right to bring witnesses to the hearing.

7. All parties are entitled to hear the whole testimony and the evidence produced against them and to know the claims or charges made against them; to confront and be

confronted by all parties and witnesses on the other side. There are exceptions of necessity, as discussed herein later.

8. All parties have the right to offer evidence and witnesses in their behalf and to rebut or explain testimony or evidence against them.

9. All parties have the right to cross-examine other parties and witnesses and to offer argument or explanation in support of their positions or contentions.

10. All parties have the right to have the power of subpoena exercised in their behalf, to bring in persons and records, according to the statutes, rules or regulations and court decisions governing subpoenas.

11. There must be substantial evidence, adequate to support pertinent and necessary findings of fact.

12. There must be a written decision setting forth findings of fact, conclusions of law or opinion, giving the reasons for the decision.

13. The conclusions or opinion in the decision must be governed by and based upon all the evidence adduced at the hearing. There must also be substantial evidence to support them.

14. The decision must be promptly served on all parties and their representatives.

15. If there is a right of administrative appeal from the decision, the notice of that right should be given with the decision.

16. Judicial review of the decision of the hearing officer or of a higher administrative tribunal must be afforded.

If a proposed decision is reached by a hearing officer sitting alone, then the board may:

(1) allow the proposed decision to become final;

(2) order reconsideration within 30 days, allowing

for additional evidence and argument;

(3) adopt the proposed decision, but reduce the proposed penalty; or

(4) decline to adopt the proposed decision and decide the case on the record (with or without taking additional evidence.

GENERAL REMARKS

Despite its limited resources, the Department of Law is committed to delivering quality service to each of its boards. The boards can assist the department towards this end in the following ways:

1. By limiting their opinion requests to issues vital to the exercise of their current functions. The requests should be through the Director of the Division of Occupational Licensing. It is important to note that each opinion request takes time away from the board attorney to prosecute revocation proceedings.

2. By refraining from contacting department attorneys for advice on particular cases or investigations outside of board members. When necessary, such contact should be initiated through the board chairperson.

I have attached copies of the instructions regarding occupational licensing matters which are contained in the Department of Law Manual in order to acquaint board members with our procedures.

RMB:md

cc: Bob Johnson, AGO Anchorage
Ivan Lawner, AGO Anchorage
Doug Hertz, AGO Fairbanks

INSTRUCTIONS FOR ADMINISTRATIVE PROCEEDINGS

All administrative adjudications under the Administrative Procedure Act, AS 44.62.010 et seq., (APA) are initiated through an accusation or a statement of issues. The APA does not apply to all administrative proceedings; AS 44.62.330 sets forth some of the agencies to which the APA applies. That section, as well as the specific agency statutes and regulations should be consulted to determine if the APA applies to a particular proceeding.

Accusation

An accusation begins the process of determining whether a right, authority, license or privilege should be revoked, suspended, limited, or conditioned. AS 44.62.360. A form of notice of defense must be served with the accusation. AS 44.62.380. If the respondent files a notice of defense within 15 days after service, he/she is entitled to a hearing on the merits. The accusation may be amended or supplemented at any time before the matter is submitted for decision pursuant to AS 44.62.400, and may be further amended after submission pursuant to AS 44.62.490.

The accompanying form of accusation follows the format of a complaint. Paragraph one sets forth briefly the nature of the proceeding, specifying the statutes relied on, the respondent and the relief sought. Paragraphs two and three set forth the operative facts. Paragraph four sets forth the statute violated. Paragraph five sets forth the consequences of the violation. In more complicated and lengthier accusations, refer to the form complaint and

instructions in these forms.

Statement of Issues

A statement of issues is used when an agency has denied a right, authority, license or privilege in the first instance or has refused to renew such right, authority, license or privilege. The statement of issues should take the same form as an accusation. A form notice of defense must be served with the statement of issues. AS 44.62.380. AS 44.62.370 implies that either the State or another party (possibly the respondent) may prepare a statement of issues. The Department of Law takes the position that, since it is the agency that denied the right, authority, license or privilege, it should prepare the statement.

The statement of issues will generally be issued by the agency without the assistance of the Department of Law. However, the client agency should be advised to set forth clearly and completely in the statement of issues all the reasons that the license, right, authority or privilege is being denied. The client agency should be further advised that it must set forth clearly and completely in its minutes and records the bases for its action.

The Department of Law will generally become involved if the agency action is contested. The attorney should first thoroughly review the statement of issues and the agency minutes and records to determine if an amended statement of issues should be prepared. Although the APA is not clear, the Department of Law takes the position that a statement of issues may be amended in the same manner as an

accusation pursuant to AS 44.62.400 and 490.

Once an administrative proceeding has been initiated by an accusation or statement of issues, the State attorney representing an agency should be particularly circumspect regarding his/her contacts with agency personnel who could hear the matter on appeal. Although the Alaska Supreme Court has ruled that counsel for an agency may advise the ultimate judges regarding procedural matters related to the case, the line of demarcation between compliance with due process and its violation is unclear.

The administrative hearing is presided over by a hearing officer, either sitting alone or with agency representatives. AS 44.62.450. The hearing officer is normally responsible for setting the time and place of hearing as well as the setting of any prehearing conferences.

AS 44.62.460 outlines the rules of evidence, which are generally much less strict than those applicable to court proceedings. However, since both parties are normally represented by attorneys and the hearing officer is also an attorney, the parties by stipulation may choose to use the civil rules.

Contempt Proceedings (Order to Show Cause)

If a party refuses to be sworn or examined or disrupts the administrative proceeding, the agency can seek a contempt order pursuant to AS 44.62.590. The papers should include a petition to the court, a certification by the agency (usually the hearing officer) of the facts necessitating court action and a form of order.

The law is uncertain regarding the procedure to be followed when a respondent challenges agency action.

AS 44.62.560(e) provides that the superior court may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. Appellate Rule 45 provides for appeals to superior court from district court and from administrative agencies.

District Court Civil Rule 31 provides for petition for review of any order or decision of a "magistrate court" or an administrative agency. The Department of Law takes the position that the rules supersede the statute. See, State v. Keep, 397 P.2d 973 (Alaska 1965).

Because such proceedings are often wasteful and result in undue delay of the administrative proceeding, attorneys should avail themselves of the doctrine of administrative primary jurisdiction. See, G & A Contractors, Inc. v. Alaska Greenhouses, Inc., 517 P.2d 1379 (Alaska 1974); and Alaska Public Utilities Commission v. Greater Anchorage Area Borough, 534 P.2d 549 (Alaska 1975). See also, Abbott Laboratories v. Gardener, 387 U.S. 136 (1967).

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Insert name and address of applicant]

Re: Notice of Denial of the Application
of [insert name of applicant] for
[identify license applied for]

You are hereby notified that on [insert date] the [insert name of agency] considered your application for [identify license applied for]. For the reasons set forth in the enclosed Statement of Issues, your application for [identify license applied for] was denied.

Notice of Defense and Request for Hearing.

The enclosed Statement of Issues was prepared pursuant to AS 44.62.370 and sets forth the findings of [insert name of agency]. This letter constitutes notice as required by AS 44.62.380 that you may request a hearing on the findings set forth in the Statement of Issues and the denial of your application for [identify license applied for].

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to [insert name of agency] within 15 days after receipt of the enclosed Statement of Issues, the denial of your application for [identify license applied for] is final and not reviewable by any court of law. The request for a hearing may be made by delivering or mailing the enclosed Notice of Defense form to [insert name of agency] in the enclosed envelope, postage prepaid. Mailing of the Notice of Defense signed by you or on your behalf and returned to [insert name of agency] within 15 days in the enclosed addressed envelope, postage prepaid, acknowledges receipt of the enclosed Statement of Issues and constitutes a notice of defense pursuant to AS 44.62.390.

Sincerely,

Sharon Andrew, Director
Division of Occupational
Licensing
Department of Commerce and
Economic Development

10/77

[Insert name of agency; e.g.,

STATE OF ALASKA

BOARD OF DENTAL EXAMINERS]

In the Matter of)
)
)
)
)
_____) No. _____

STATEMENT OF ISSUES

The State of Alaska Board of Dental Examiners, having considered the application of [insert name of applicant] for [identify license applied for] finds as follows:

1. The Board of Dental Examiners pursuant to [cite the statutory or regulatory basis for the agency action, e.g., AS 08.36.070] considered the application of [insert name of applicant] for [identify license applied for].

2. On or about [insert date and name of applicant] applied for [identify license applied for].

3. On or about [insert date, name of applicant and grounds for denial; e.g., was convicted of the crime of embezzlement. It is advisable in such cases to attach to the statement of issues a certified copy of the judgment of conviction].

4. The crime of embezzlement is evidence that [insert name of applicant] is not of good moral character as required by AS 08.36.110(2).

5. Pursuant to AS 08.36.110(2), the application of [insert name of applicant] for [identify license applied for] is denied.

DATED: _____.

[provide for signatures for board officers as appropriate]

[Insert name of agency; e.g.,

STATE OF ALASKA

BOARD OF DENTAL EXAMINERS]

In the Matter of)
)
)
)
_____) No. _____

NOTICE OF DEFENSE

The respondent named below, pursuant to AS 44.62.390, hereby gives notice of defense in this proceeding.

A hearing on the matters set forth in the Statement of Issues is hereby requested.

DATED: _____.

_____
RESPONDENT

ADDRESS: _____

_____

NOTE: This Notice of Defense must be signed by or on behalf of respondent, must set forth respondent's mailing address and must be filed with the [insert name of agency] within 15 days of receipt.

10/77

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Insert name and address of respondent]

Re: [Insert caption on accusation]

You are hereby notified that the enclosed Accusation has been filed with [insert name of agency]. [Insert name of agency] will conduct a hearing to decide the issues presented in the Accusation.

Notice of Defense and Request for Hearing.

The enclosed Accusation was prepared pursuant to AS 44.62.360 and sets forth the issues that will be decided by [insert name of agency]. This letter constitutes notice as required by AS 44.62.380 that you may request a hearing on the issues set forth in the Accusation.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to [insert name of agency] within 15 days after receipt of the enclosed Accusation, [insert name of agency] pursuant to AS 44.62.530 will decide in your absence the issues presented in the Accusation. The request for a hearing may be made by delivering or mailing the enclosed Notice of Defense to [insert name of agency] in the enclosed envelope, postage prepaid. Mailing of the Notice of Defense signed by you or on your behalf and returned to [insert name of agency] within 15 days in the enclosed addressed envelope, postage prepaid, acknowledges receipt of the enclosed Accusation and constitutes a notice of defense pursuant to AS 44.62.390.

Sincerely,

Sharon Andrew, Director
Division of Occupational
Licensing
Department of Commerce and
Economic Development

[Insert name of agency; e.g.,

STATE OF ALASKA

BOARD OF DENTAL EXAMINERS]

In the Matter of)
)
)
)
)
_____) No. _____

ACCUSATION

Petitioner Sharon Andrew, Director of the Division of Occupational Licensing, Department of Commerce and Economic Development, State of Alaska, alleges:

1. This is a proceeding pursuant to [cite the statutory or regulatory basis for the proceeding, e.g., AS 08.36.070(5) and (7) and AS 44.62.330 et seq.] to [describe proposed action, e.g., revoke the license of the respondent to practice dentistry in the State of Alaska].

2. On or about [insert date] respondent was licensed to practice dentistry in the State of Alaska.

3. On or about [insert date] respondent [state grounds of revocation, e.g., was convicted of the crime of embezzlement. It is advisable in such cases to attach a certified copy of the judgment of conviction].

4. The crime of embezzlement is a crime involving moral turpitude for purposes of AS 08.36.310(2).

5. Pursuant to AS 08.36.310(2), respondent's license may be revoked for the reason that he has been convicted of a crime involving moral turpitude.

WHEREFORE, petitioner seeks:

1. To revoke respondent's license to practice dentistry in the State of Alaska.

2. To make such other findings and disposition of this proceeding as are just.

DATED: _____.

_____
Sharon Andrew, Director
Division of Occupational
Licensing
Department of Commerce and
Economic Development

(3177)

[Insert name of board, e.g.:

STATE OF ALASKA

BOARD OF DENTAL EXAMINERS]

In the Matter of)
)
)
)
_____) No. _____

DECISON

The Alaska Board of Dental Examiners, after hearing evidence in this proceeding submitted by petitioner and by respondent at a hearing held on [insert date(s)], enters the following decision:

FINDINGS OF FACT

1. Respondent was licensed to practice dentistry in the State of Alaska on or about [insert date].

2. Respondent was convicted of the crime of embezzlement on or about [insert date].

3. [Here insert the reason why the findings support the agency action taken--i.e., revocation, rather than suspension or reprimand].

DETERMINATION OF ISSUES

4. The crime of embezzlement is a crime involving moral turpitude for purposes of AS 08.36.310(2).

PENALTY

5. Respondent's license to practice dentistry in the State of Alaska is hereby revoked.

DATED: _____.

_____

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

March 17, 1980

SUBJECT: Legislative oversight procedures

TO: Max DuBois, A.A.
House State Affairs Committee

FROM: David T. Walker
Co-Revisor of Statutes

The purpose of this memorandum is to identify procedural changes which would operate to modify the role of the standing committees in the sunset process. I would also like to take the opportunity to identify several areas within the existing statutory framework which would benfit from clarifying amendments.

I. Alternatives for Discussion

(1) Restrict oversight procedures to Title 8 boards and commissions;

NO (2) Create a permanent committee of the legislature charged with oversight responsibilities; this could function in the same manner as the Administrative Regulations Review Committee (this is the approach recommended by the House Commerce Committee in its interim report, Sunset in Alaska 1979-80 page 32);

(3) Eliminate the automatic termination features of the statutes and allow the Legislative Budget and Audit Committee to "target" all boards and commissions using the same procedures which now apply only to agency programs under AS 44.66.020 - 030. Oversight would then be restricted to those areas selected for review by the legislature.

II. Clarifying and Perfecting Amendments

(1) AS 44.66.010(a) uses the word "expire" when it should use "are terminated";

(2) The statute should address what the legislature wishes to happen when it does not comply with the AS 44.66.050(d) procedures or deadlines;

(3) Does the legislature intend for the boards, etc. identified in AS 44.66.010 to be effected by the one year wind-down period in the same way as the Title 8 boards? If so, I would recommend that the second sentence of AS 08.-03.020(a) be added to AS 44.66.010(b). Should the word "otherwise" be deleted from that sentence?

(4) If the legislature intends that the standing committees meet and conduct the oversight process during the interim, I would recommend that it express that in the oversight statutes.

DWT:ljb

4.

a. Are you satisfied w the support your Board gets from or & dept of Ins.

b. Are you satisfied w the amt. of $ your Board gets to do its business:
   1. # meetings
   2. ability to travel to different parts of state for public accessibility
   3. ability to participate in natl workshops & conventions
   4. for advertising meetings to solicit public input
      a. papers
      b. radio/TV PSA's
      c. notification to associations & public organizations which might have interest
      d.

c. Are you satisfied with the way your Bd gets & spend its money?
   a. does it decide how/where/# days given x amt of $ per fiscal year
   b. does it decide when/where meetings held
   c. may your Board travel out of state on state funds
      1. would you like it to have that flexibility?
      2.

d. do you think your Board should have the option of deciding priorities of travel/meetings? In other words, if your Bd thought it very important to send a member to a natl meeting & wanted to spend $ to do so rather than

hold one of its scheduled meetings (it's that important) do you think the board should be able to make that decision?

D. Are you satisfied with the way complaints are handled by or - the investigator?

1. does your board know of all complaints filed against nurses reported by the board?
   a. does the board know before or after the investigation known
   b. does your board know what disposition has been made of complaints?
   c. does your board make dispositions or does the investigator?
   d. how are complaints handled
   e. ~~should~~ do you ~~the~~ think the board should know of all complaints filed with it.
   f. should the board be the body to make disposition? (ie: to consumer protection, to peer review committee, to investigator for further information)
2. g. Should the board be involved in fee disputes? Or leave that to peer review &/or consumer protection.
   a. should fee disputes be recorded in a nurse's file (in case this is a repetative occurance which might prompt the board to issue a reprimand)

3 Does your board have a standardized method (statutory or regulatory) by which actions against a

a. under what circumstances is a ~~public~~:
   1) ~~reprimanded~~ license reprimanded
   2) license suspended
   3) ~~limited~~ license limited
   4) revoked (license)
b. has the dept. & bd. given your board assistance in:
   1) establishing guidelines for the above
   2) enforcing the above
c. how often since you become a board member has an action been taken against a license

4. do you think it would be helpful for a contact # for your board to be in the phone book (idea: / secretary for all 22 boards could take complaint calls, ~~direct~~ send complaint forms to callers, alert board member, etc.) (not an OL or Dept #)

E Are you satisfied with the way the dept of law gives assistance to your board
1. does a representative of the dept attend your meetings? Would you like a rep. to attend:
   a. as a matter of course
   b. on request
   c. when they want something
   d. never
2. does the dept answer your written or phone requests promptly?
3. does the dept. give you the information you need in a way that you understand?
4. do you feel (as a Board) that the dept law represents you well in hearings & court?
   a. Are you allowed to attend hearings & court proceedings?
   b. Are you allowed to read transcripts of hearing & court proceedings before rendering decisions?
5. does the dept of law ever bargain away your board's decision for a lesser penalty
   a. does your board have the ability to prevent this after the fact bargains
   b. does the dept's attorney counsel you about his/her intention to bargain away your decision or are you informed after it has been accomplished that that's what happened

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Board of Chiropractic Examiners (AS 08.20.010);
(2) Board of Dental Examiners (AS 08.36.010);
(3) State Medical Board (AS 08.64.010);
(4) Board of Nursing (AS 08.68.010);
(5) Board of Dispensing Opticians (AS 08.71.010);
(6) Board of Examiners in Optometry (AS 08.72.010);
(7) Board of Pharmacy (AS 08.80.010);
(8) Board of Veterinary Examiners (AS 08.98.010);
(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
(10) Board of Nursing Home Administrators (AS 08.70.010);
(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.010);
(2) Board of Barber Examiners (AS 08.12.010);
(3) Collection Agency Board (AS 08.24.011);
(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);
(5) Board of Electrical Examiners (AS 08.40.010);
(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
(7) Guide Licensing and Control Board (AS 08.54.010);
(8) Board of Marine Pilots (AS 08.62.010);
(9) Real Estate Commission (AS 08.88.011);
(10) Board of Welding Examiners (AS 08.99.010);
(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

Chap

Article
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2. Certified Public Acc
3. Public Accountants
4. Regulation of Accou
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6. Miscellaneous Provi
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Arti

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Am. Jur., ALR and C
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Failure of accountan as affecting validity contract, 4 ALR 1087; 1226; 118 ALR 651.
Licensing and reg accountants, 27 ALR 1 ALR 1095.

Sec. 08.04.020. consists of seven shall be a resident shall be certified members in accord shall be public acc appointed who does the laws of this appointed who is (§ 2(2) ch 187 SLA

Effect of amendm amendment substituted for "five members" in deleted "a citizen of the preceding "n residen sentence, deleted "At

Title 8 Business and Professions

Title 7 Boroughs

Introduced: 3/1/79
Referred: Commerce and Finance

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

IN THE SENATE

SENATE BILL NO. 232

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act designating programs and activities for review and termination under AS 44.66; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.56.250 - 14.56.290 (relating to the responsibility and authority of the Department of Education, division of state libraries, to publish the Alaska Blue Book) are repealed.

* Sec. 2. The following laws relating to mechanical inspection functions of the Department of Labor are repealed:

(1) AS 18.60.220 - 18.60.395 (boiler and pressure vessel inspection);

(2) AS 18.60.600(a)(2), 18.60.600(b), and 18.60.610 - 18.60.650 (electrical wiring inspection);

(3) AS 18.60.715(b), 18.60.720(b), 18.60.725, 18.60.730 and 18.60.740(4) (plumbing code inspection);

(4) AS 18.60.800(b)(2) and 18.60.820 (elevator safety inspection).

* Sec. 3. AS 18.65.130 - 18.65.290 and AS 44.62.330(a)(34) (Police Standards Council) are repealed.

* Sec. 4. AS 18.80 and AS 39.50.200(9)(N) (State Commission on Human Rights) are repealed.

* Sec. 5. AS 23.35 (Fisherman's Fund) is repealed.

* Sec. 6. AS 28.05.011(8) (authority of the Department of Public Safety to operate motor vehicle weighing stations and to enforce size, weight and

load limitations) is repealed.

* Sec. 7. AS 44.19.870 - 44.19.881 (division of policy development and planning) are repealed.

* Sec. 8. AS 45.50.491 - 45.50.521 (consumer protection - Department of Law) are repealed.

* Sec. 9. AS 45.50.531(b) is amended to read:

(b) A person entitled to bring an action under this section may, [AFTER INVESTIGATION BY AND APPROVAL OF THE ATTORNEY GENERAL,] if the unlawful act or practice has caused similar injury to numerous other persons similarly situated and if he adequately represents the similarly situated persons, bring an action on behalf of himself and other similarly injured and situated persons to recover actual damages. [A PERSON PLANNING TO BRING AN ACTION UNDER THIS SUBSECTION SHALL FIRST SUBMIT TO THE ATTORNEY GENERAL A COPY OF HIS PROPOSED COMPLAINT, AND HE MAY NOT FILE THE COMPLAINT IN COURT WITHOUT THE ATTORNEY GENERAL'S APPROVAL.] In an action brough under this subsection, the court may in its discretion order, in addition to damages, injunctive or other equitable relief.

* Sec. 10. The responsibility of the Department of Law under AS 45.45 (regulation of motor vehicle repairs) is terminated.

* Sec. 11. AS 47.10.150, 47.10.160, and 47.10.180 - 47.10.220 (programs of the Department of Health and Social Services relating to the confinement of juveniles) are repealed.

* Sec. 12. The Alaska Growth Policy Council, established within the division of policy development and planning, Office of the Governor, by Administrative Order No. 26, under the authority of AS 44.19.880(c), is terminated.

* Sec. 13. A claim for an injury compensable under AS 23.35, repealed by this Act, may be paid by the commissioner of labor if claim for compensation

is made within one year of the effective date of this Act. A claim shall be paid in accordance with the provisions of AS 23.35 as the provisions read at the time of repeal. On July 1, 1981 the balance in the fishermen's fund (AS 23.35.060, repealed and AS 37.05.155(a)(6)) lapses into the general fund.

* Sec. 14. This Act takes effect July 1, 1980.

OCCUPATIONAL LICENSING

IN ALASKA:

A

Manual For Members of

State Licensing Boards

And The Division of Occupational Licensing

Prepared by the

Office of the Attorney General

Alaska Department of Law

1979

Acknowledgements

This Manual is adapted in part from publications prepared by the Committee on the Office of Attorney General under Grant No. 21-34-76-10 to the Educational Testing Service from the Employment and Training Administration, U.S. Department of Labor.

In addition, the following sources were of assistance in preparing this manual:

Alaska Department of Law, Drafting Manual for Administrative Regulations

California Office of Administrative Hearings,

Guidelines for Formal Contested Administrative Proceedings: A Handbook for Members of State Licensing Boards

Montana Legislative Council, Professional and Occupational Licensing Boards

[The views expressed in this manual do not necessarily reflect those of any of these organizations.]

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APPENDICES

A. INTRODUCTION

1. Reasons for Licensing

Licensing of professions and occupations is simply regulation of vocations by the state. The state defines the qualifications of persons who are permitted to engage in a vocation and prohibits anyone who does not have the required qualifications from pursuing that vocation.

Licensing is an exercise of the state's police power to protect the public health, welfare, and safety by safeguarding the public from the activities of incompetent persons.

2. Development of Licensing

Modern regulation of professions and occupations is an outgrowth of medieval guilds of merchants, craftsmen, and the professions. Merchant guilds appeared first and developed into organizations designed to protect the merchant class. Municipal authorities not only passed ordinances to protect the public from the adulteration of goods, short-weight, and unfair prices upon recommendation of the guilds, but also legislated for the benefit of the guilds. Thus the guilds obtained legal sanction for restricting their membership and gained a monopolistic control over trade.

Occupational groups began to organize into national associations just prior to the Civil War. The American Medical Association was organized in 1847, and soon after organizations appeared representing pharmacists (1852), civil engineers (1852), architects (1857), dentists (1859), and veterinarians (1863). The groups appeared because of: (1) a desire for comradeship with others of the same background; (2) an interest in advancing the knowledge of the profession or perfecting the skill of the vocation by sharing the experiences and counsel of others; (3) a desire to discuss mutual problems, new discoveries, and new techniques; (4) a desire to set out codes of ethics which defined the relationship between professional persons; and (5) a desire to gain for the entire membership the compensation and status which the community could be induced to grant for particular services.

To protect their status, associations sponsored and urged licensing legislation which gave legal sanction to their codes of ethics and established a legal register of "qualified" practitioners. A demand for self government

also emerged. Members of the professions desired licensing boards controlled by fellow members who would more likely understand their problems. Almost invariably, the associations won the right to be represented on, and in many instances control of, the licensing boards.

The recent legislative trend nationwide has been to divorce the licensing boards from overt control of the associations. This has been accomplished through placement of "public" members on boards and deletion of statutory obligations on the appointing authority to consult with or draw from the associations.

"Sunset" legislation has been enacted in most states, including Alaska. Under such statutes, legislatures periodically review the activities of executive branch agencies, including licensing boards, to determine whether there is sufficient justification for their continued existence. The result of such review is often corrective legislation and, in some instances, abolition of the agency.

3. Characteristics of Licensing Boards

Licensing boards have two main duties: (1) to control entrance into the occupation, and (2) to support and enforce the standards of practice among licensed practitioners. To accomplish these objectives, the boards typically engage in the following activities:

1. Examination of the credentials of applicants and determination of whether their education, experience and moral fitness meet statutory or administrative requirements.

2. Boards ordinarily prepare (or select nationally recognized) examinations to test the academic and practical qualifications of applicants. They then administer and grade examinations to determine who have passed and who have failed.

3. In most states, the boards have discretionary power to grant licenses on the basis of reciprocity with other states.

4. Most boards issue regulations establishing standards of practice. They hold hearings on allegations of violations of conduct when reasonable evidence of violation exists. If necessary, the boards suspend or revoke licenses.

4. Occupational Licensing in Alaska

In Alaska, policing of the occupations has been divided between the Division of Occupational Licensing and the occupational licensing boards.

The Division of Occupational Licensing assumes day-to-day responsibility for processing of applications, fees and inquiries regarding the various professions. Furthermore, the division, through its enforcement section, investigates complaints against persons in violation of the occupational licensing statutes (found in Title 8 of the Alaska Statutes). Finally, the division, through the Commissioner of the Department of Commerce and Economic Development, has authority to seek enforcement of the licensing statutes either through cease and desist orders or court injunctions under AS 08.01.087.

The occupational licensing boards, much like their counterparts elsewhere, are generally responsible for reviewing the applications of all persons wishing to enter a profession in Alaska, to adopt regulations regarding the standards of practice within the professions, and to hear cases presented to the boards by the Division of Occupational Licensing.

The Department of Law serves as counsel for both the Division of Occupational Licensing and for the licensing boards. The department specifically provides advice to the division and to the boards regarding their statutory authority and functions, helps draft and review proposed legislation and regulations and represents the division and boards in administrative proceedings and in court.

PART I

RULEMAKING AUTHORITY:

THE PROMULGATION OF REGULATIONS

1.1 RULEMAKING AUTHORITY

1.1.1 Rulemaking: Introduction

The observations contained in this section should be read in conjunction with rather than in lieu of the Alaska Drafting Manual for Administrative Regulations.

While the Division of Occupational licensing has a regulations specialist available to assist boards in the promulgation of regulations, each board member should assume the responsibility to strictly observe the statutory requirements in the rulemaking process.

1.1.2 Basis of Authority

A board has only those powers that are given it by law; no board or agency may promulgate an administrative regulation unless it has expressly been given such powers by statute, or unless such powers are necessarily implied from its statutory duties. Rulemaking authority can only be delegated by specific statute.

In promulgating regulations, the board is exercising powers that have been delegated by the legislature and that are not inherently of the board. Under our scheme of government, the legislature was given the power to make laws or regulations, which were then carried out by the executive branch. As the regulatory functions of government increased, it became impossible for the legislature adequately to legislate all of the regulations that were needed. The practice of delegating some rulemaking authority evolved as a practical necessity, both because of the number of regulations required and because of the specialized subjects of regulation.

1.1.3 Scope of Authority

Generally, the legislature sets the state's policy and establishes standards to guide the board. The board may then, within the scope of these standards, promulgate regulations to effectuate the policies established by the legislature. The legislature must set policy and define the general legislative purposes before the board can make regulations. The rulemaking authority should be used sparingly. An agency should promulgate regulations only when there is

substantial evidence that regulations are necessary either to meet demonstrated problems or to comply with legislative mandates.

1.1.4 Limits on Authority

Within the permissible scope of rulemaking activities, there are limits on what a board may do. These may be summarized as follows:

(1) The board's action may not be arbitrary or unreasonable;

(2) The board may not make a regulation which deprives any person or persons of their constitutional rights;

(3) The board's actions must comply with statutory requirements concerning rulemaking procedures;

(4) The board may make only such regulations as are consistent with law. In some cases, very explicit statutory authority is required if an agency's action is to be valid, because some acts are considered to be exclusively the prerogative of the legislature.

1.1.5 Procedures Required

no regulation to which the rulemaking process applies is valid unless it is adopted in compliance with procedures set by statute. It is the board's responsibility to assure that its rules conform precisely to statutory requirements.

1.2. DEFINITION OF REGULATION

1.2.1 General Definition

A regulation is usually defined as each statement of a board that is of general applicability and that implements, interprets, or prescribes law or policy, or that describes the organization, procedure or practice of the agency. Regulations have the force and effect of law once they have been properly adopted.

In general, rulemaking is appropriate:

(1) When the legislature has delegated authority to a board to promulgate the particular regulations, or to promulgate regulations on that subject;

(2) When the regulation would regulate particular conduct in a general manner;

(3) When the regulation would apply to future situations.

(4) When the need to regulate particular conduct is demonstrated.

1.2.2 Mandatory and Discretionary Regulations

Mandatory regulations are those which the board is required by statute to promulgate. For example, a board may be required by statute to prescribe by regulations minimum educational and professional conduct for licensees. Another example would be a statute requiring a board to adopt regulations establishing standards for certain types of professional equipment. The statutes usually use the word "shall" in defining mandatory regulations.

Discretionary regulations are those which the agency may adopt, although it is not required to do so. These must be within the scope of the board's statutory authority. A typical statute authorizes a board to make such regulations as may be necessary to carry out the purposes of the statute.

1.2.3 Rules of Organization and Practice

A board may be required by law to adopt a regulation describing its organization, stating the general course and

method of its operations and the methods whereby the public may obtain information or make submissions or requests. The board may adopt such a regulation even if it is not required.

A board may be required by law to adopt regulations setting forth the nature and requirements of all formal and informal proceedings before it. These may include a description of all forms and instructions used by the agency.

1.2.4 Amendment of Prior Rule

The definition of a regulation includes action to amend or repeal a prior regulation. Such action is subject to the same rulemaking procedures as is an original regulation.

1.2.5 Exclusion from Definition

Certain documents or materials issued by a board would not normally be considered regulations, although they might contain official statements of agency policy. Examples are:

(1) Internal rules, which affect only employees of the board and do not affect the rights of the public;

(2) Official reports, such as those to the Governor or legislature;

(3) Declaratory rules issued by the board in response to requests for statements clarifying the effect of a regulation;

(4) Reprints of statutes relating to the agency;

(5) Informal material, such as news releases and informational booklets.

In each case, however, the board must exercise its discretion to decide whether the rulemaking process is required.

1.2.6 Relation to Statute

The statute granting rulemaking authority to the board should not itself be set forth as a rule. This is not only unnecessary, but it can cause confusion and error. It may, however, be necessary for the sake of clarity to incorporate portions of the statute into rules.

1.3. DRAFTING REQUIREMENTS

1.3.1 Requirements for Form and Style

All boards must comply with the uniform drafting style of the Drafting Manual for Administrative Regulations. This is necessary to ensure consistency in the regulations when they are codified and to ensure that they meet minimum standards of clarity and precision.

1.3.2 Specific Suggestions

Some suggestions on drafting regulations are:

(1) Check to make sure that any references to statutes are current, complete and accurate.

(2) While there is no requirement for maximum or minimum length, each regulation should encompass one subject only and each subject should be covered in a single regulation, to the extent possible;

(3) Be sure that the title of the regulation clearly expresses the subject concerned;

(4) Use the word "shall" when an action is mandatory and the word "may" when an action is discretionary;

(5) Divide regulations into sections and subsections at logical breaks in the subject matter, for more convenient reference.

1.3.3 Adoption by Reference

The board may adopt by reference all or part of a standard, or code which has been adopted by another state board or agency or by a federal agency. It may also adopt regulations which have been adopted by a professional organization or association. Such material is often referred to as "third-party standards."

Material adopted by reference must be clearly specified in the reference. The board must keep copies of the adopted material available for inspection. If part of the referenced material is to be deleted, the rule adopting the material must so specify.

Adoptions by reference must follow the same procedure as other rule-making, including giving adequate advance notice. The adoption of a third-party standard is required to refer to a specific version or edition of the standard, not merely to standards adopted by a specific board or agency. The version adopted by regulation does not change automatically if the third-party standard changes; if the board wishes to adopt the revised standard, normal rule-making procedures must be followed.

1.4 NOTICE

1.4.1 General Requirement

A board must give adequate advance notice of proposed regulations, except in emergency situations, as described in this manual. Notice is necessary to allow all interested persons to learn of the proposal and to prepare comments if they so desire. Notice should be given not only to persons who are directly affected by the regulation, but to the public at large. See AS 44.62.190(a)(10). Generally, notice should be given in such a manner as is reasonably calculated to reach interested persons.

1.4.2 Contents of Notice

The contents of the notice will depend on the issues involved and similar factors.

The notice must contain the following information, as a minimum:

(1) A concise statement of the substance of the proposed regulation and the major issues it involves;

(2) A statement of the statute or other authority under which the regulation is to be promulgated;

(3) A request for comments and an explanation of how comments should be submitted, whether in writing or at a hearing;

(4) Certification by the appropriate official.

The notice should also contain any other information that is required by statute or that the board feels would be helpful to the persons affected.

1.4.3 Notice of Hearing

If the board plans to hold an oral hearing, the notice must, in addition to the above, state the time and place of the hearing.

A board should hold an oral hearing if (i) there is general interest among those affected by the regulation in the subject matter of the regulation, or (ii) if the

regulation is a controversial one, or (iii) if those affected by the regulation would be better able by that method to provide the agency with information that is useful to it in deciding whether or not to finally adopt the proposed regulation, or (iv) if the agency feels it would benefit by an opportunity to explain the regulation to interested persons.

If it decides not to hold an oral hearing, the notice must contain a statement that those interested in the regulations may present their views to the agency in writing before a specified date.

1.5 CONDUCT OF HEARING

1.5.1 Conducting the Hearing

The board alone has the statutory authority to make regulations. The board may, however, delegate to a panel the responsibility for conducting a hearing. It may not delegate the responsibility for adopting regulations.

1.5.2 The Presiding Officer

The presiding officer, whether a hearing officer or a board member, has an important role in the hearing. It is the presiding officer's responsibility to ensure that the hearing is orderly, that all parties are treated fairly, and that it progresses in an expeditious manner.

Presiding officers usually have the power, pursuant to statute and regulation, to:

(1) Preside over the hearing;

(2) Take action necessary to maintain order;

(3) Rule on motions and procedural questions arising during the hearing;

(4) Call recesses or adjourn the hearing;

(5) Recognize speakers and allot time for their presentations;

(6) Question speakers;

(7) Grant extensions for any time requirements.

1.5.3 Standards of Conduct

To ensure a fair but efficient hearing, the presiding officer must enforce proper conduct on the part of all persons present. The presiding officer should recognize a person who is entitled to speak and refuse to allow any other person to speak until that person has been recognized. In case of disturbances, the presiding officer should ask the offending person to be quiet or to leave the hearing. If necessary, and after appropriate warning, the presiding officer may rule that a person has forfeited the right to

participate in the hearing, or may order a person removed from the room.

1.5.4 Examination of Witnesses

The presiding officer or any board member who is present may examine any witness, and may allow others to do so. Most hearings, however, would not involve the examination of witnesses.

A hearing is not an adversary proceeding or a determination of rights, but is informative by nature. Therefore, there is no right to crossexamination of witnesses, although the presiding officer may allow this. For the same reasons, witnesses are seldom placed under oath.

1.5.5 Evidence

The presiding officer should keep a list of all physical and documentary material offered in evidence. He/she should ascertain that each exhibit is marked by an identifying number.

The rules of evidence that govern a courtroom proceeding need not be followed, because the purpose of the hearing is not to determine rights, but to allow an adequate expression of opinion on an issue and to guide the board in its decision making. For example, reports and studies are appropriate kinds of information to be considered in rulemaking, although they might not be admissible as evidence in a court of law. The primary object of the hearing is to gather relevant information to help determine policy.

1.5.6 Record of Hearing

The presiding officer or his/her designee should keep a list of persons who testify at the hearing. This should show each person's name, address and affiliation, if any. It should also show whether the person testified in favor of or in opposition to the proposed regulation, and such other information as appropriate. All rulings of the presiding officer should also be made a matter of record. If the full board is not present at the hearing, the record should be given to them to aid in the regulation-making decision.

1.6 EMERGENCY RULES

1.6.1 Provision for Adoption

Boards are authorized by statute to adopt, amend, or repeal a rule in specific circumstances without complying with the procedures that are normally required. This can be done only in situations that involve an emergency, as defined by statute. These emergency situations permit the board to dispense with advance notice and a public hearing.

An emergency is defined by statute in reference to the public, not to the board. It usually must involve an imminent peril to the health, safety or welfare of the public. By statute, emergencies are rarely found to exist.

1.6.2 Effective Dates

Emergency regulations can go into effect immediately upon filing by the Lieutenant Governor. However, the board should allow as much notice as possible before putting an emergency regulation into effect. The amount of time will necessarily depend on the nature of the emergency.

The period for which an emergency regulation can remain in effect is limited by statute to 120 days.

1.7 ADOPTION AND FILING

1.7.1 Action by Agency

At the conclusion of the hearing, and after all procedural requirements for notice have been met, the board may take formal action on the regulation covered by the notice. The board may adopt, amend or repeal the proposed regulation.

A majority vote is usually necessary to adopt regulations and a quorum of the board must be present for the vote.

1.7.2 Legal Approval

The board must send the final regulations to the Department of Law, along with the written adoption order, a copy of the public notice, the publishers' affidavits of publication and any other relevant documents. After reviewing the substance of the regulations and the procedure followed in adopting them, in order to form an opinion as to their validity compliance with this manual, etc., the Department of Law will write an opinion on the final regulations. That department will send a copy of the opinion to the board and will forward the regulations, the opinion, and all other documents to the lieutenant governor.

1.7.3 New Order of Adoption

When a regulation is changed by the board in response to the Department of Law review, after the initial adoption order is signed, a new adoption order should be signed, to show that the adopting board has in fact adopted the final version.

1.7.4 Filing and Effective Date

Regulations properly submitted to the lieutenant governor are then filed by him/her. It is his/her practice to return to the adopting agency a copy of the adoption order showing his/her signature and the date and time of filing. A regulation becomes effective on the 30th day after it is filed, unless it is an emergency regulation, or unless the agency specifies a date more than 30 days from the filing date, or unless it is a regulation "prescribing the organization or procedure of an agency."

1.8 LEGISLATIVE AND JUDICIAL REVIEW

1.8.1 Legislative Review of Rules

In 1975, the Administrative Regulation Review Committee (ARRC) was established as a permanent interim committee of the legislature, to review regulations to determine whether legislative annulment is appropriate.

1.8.2 Declaratory Judgment by Courts

An action for declaratory judgment may be brought in court to determine the validity or the applicability of a regulation.

PART II

DISCIPLINARY PROCEEDINGS

2.1. THE DISCIPLINARY PROCESS

2.1.1 Use of Administrative Hearings

Boards often use formal administrative hearings to determine whether disciplinary action should be taken against persons whom they have licensed. The board may suspend or revoke a license or impose other sanctions. In other cases an applicant may request a hearing if a board has denied a license or issued a restricted license. Formal hearings invlove a contested case, in which the licensee challenges or contests the action taken by the board.

The board, in the course of the proceeding, hears the charges and the licensee's response. It then makes findings of fact and conclusion of law and reaches a decision on the basis of evidence presented at the hearing.

This part is concerned with disciplinary proceedings against a licensee. However, identical or substantially similar procedures may be followed when a board agrees to hear the complaint of an applicant who contests the board's action in refusing to issue a license.

2.1.2 Nature of Proceeding

A disciplinary proceeding, including the formal hearing, is usually less formal than is a judicial proceeding. Boards must, however, conduct such proceedings in accordance with considerations of fair play and constitutional requirements of due process. They must also observe any requirements set by law or regulation.

The purpose of this kind of proceeding is to determine contested issues of law and fact: whether the licensee did certain acts and, if he did, whether those acts violate statutes or regulations administered and enforced by the board; and to determine the appropriate disciplinary action.

2.1.3 Role of the Board

The board's responsibility in a disciplinary proceeding is to reach a decision and render a judgment. It is also responsible for conducting the hearing, unless it delegates this function to a hearing officer. The board, however, may not delegate its decision-making function to a hearing of-

fice., although the hearing officer may recommend a particular decision to the board.

While the courts have not clearly defined the degree to which a board may combine the duties of a prosecutor and a judge, such combination should be avoided; the board's primary role is that of decision-maker. Therefore it is Alaska practice to divorce boards from fact finding inquiries or investigation prior to the formal hearing.

2.1.4 Participants

There are usually two parties to a disciplinary proceeding: the state, which is bringing the charges, and the licensee, against whom they are brought. The state frequently brings charges as a result of a complaint by a private individual or other entity, but such person or entity is not an official party to the action.

The state is represented by a member of the Attorney General's office and is assisted by staff of the Division of Occupational Licensing.

The other party is the person who holds a license issued by the board and whose conduct is challenged. The licensee is frequently represented by an attorney at the hearing.

The licensing board hears the evidence and reaches a decision.

2.1.5 Jurisdiction of the Board

The board can conduct formal proceedings only against those persons over whom it has jurisdiction. Most boards have jurisdiction only over persons who hold licenses, certificates, registrations, or permits issued by the board.

The board must have jurisdiction over the subject matter of the complaint i.e., the complaint must be one which concerns a regulation of the board or a statute administered by it. A complaint about a licensee which does not concern his or her fitness, competence or qualifications to practice, as defined by statute and regulation, will usually not be within the board's jurisdiction.

2. INFORMAL DISPOSITION OF COMPLAINTS

2.2.1 Advantages of Informal Disposition

Not all complaints are resolved by formal proceedings. Many are settled informally by the Division of Occupational Licensing, which screens and investigates complaints about licensees, and the licensee. This approach is often desirable when the issues are relatively simple. It usually costs less than does a formal hearing, in terms of both time and money. It may be possible to dispose of some issues informally, thereby reducing the scope of the formal hearing, even if the entire complaint cannot be resolved in this manner.

2.2.2 Disposition by Correspondence

One method of disposing of a complaint informally is through correspondence. The division may write to the licensee explaining the nature of the complaint received. The licensee's subsequent response may explain the situation to the division's satisfaction, and the matter may be dropped.

In response to less serious complaints, the division may write to the licensee and suggest remedial action. The licensee may agree to these suggestions, and make further action by the division unnecessary.

2.2.3 Conference or Informal Hearing

Another informal approach is for the division to hold a conference with the licensee. The conference may result in a complete settlement, thereby making a formal hearing unnecessary. Alternatively, it may result in the settlement of some issues, so that the number of matters to be considered at a formal hearing are reduced. The conference is held prior to a formal hearing.

The conference may not be so informal that it amounts to a denial of the licensee's constitutional rights. The licensee must be given adequate notice of the conference, and of the issues to be discussed.

Because the conference is informal, witnesses are not placed under oath and no subpoenas are issued. Statements made at a conference may not be introduced at a formal hearing unless all parties consent. No transcript of the conference is made.

2.2.4 The Board's Role in Informal Hearings

A board should be careful not to become involved in informal proceedings, because a formal hearing may subsequently be held and the board would have to take action on the same case. The board may not be able to act impartially in the formal hearing if its members had been closely involved in an informal hearing or conference. For this reason, board members do not participate in informal hearings.

2.2.5 Consent Order

A consent order is an order involving some type of disciplinary action and is made by the State with the consent of the licensee. It requires the formal consent of the board. It is not the result of the board's deliberations, but represents the board's acceptance of an agreement reached between the State and the licensee. The order is issued by the board to carry out the parties' agreement. This agreement involves the licensee's assent to some form of discipline against the licensee. The agreement must be in writing. It must be signed by the licensee, the representative of the State and the board or someone authorized to sign for the board.

2.3 THE RIGHTS OF PARTIES

2.3.1 Right to Appear

Any person who is a party to a proceeding has the right to appear and be heard, either in person or by counsel. A party also has a right to notice; that is, to be given a statement of what accusations have been made. If, however, a party does not appear after proper notice has been given, the party may be considered to have waived these rights and the board may proceed with the hearing without the presence of the party.

2.3.2 Right to Present Evidence and to Cross-Examine

Every person who is a party to a proceeding has the right in a hearing:

(1) to present evidence on questions of fact, provided that such evidence is acceptable under the rules governing the hearing;

(2) to present arguments on issues of law and policy;

(3) to cross-examine witnesses.

2.3.3 Right to Counsel

The licensee against whom the proceeding is brought has a constitutional right to be accompanied and advised by counsel. He also has the right to be examined by his own counsel. There is no constitutional requirement, however, that the board pay for or appoint counsel for the respondent, even if he is indigent.

The filing of an answer, a motion or other appearance by an attorney constitutes his appearance on behalf of the licensee. The board must be notified in writing if the attorney withdraws from the proceeding.

2.3.4 Right to Copy of Testimony

Any person who gives evidence, whether as a party, in response to a subpoena, or as a witness, is entitled to procure a copy of any transcript of his testimony. The person requesting the copy can be required to pay for the transcript. The requesting party obtains the transcript from the

reporter; the board does not order the transcript unless it desires a copy.

2.3.5 Right to Judicial Review

A licensee has the right to ask the courts to review a decision of the board that is adverse to him.

2.4 INITIATING A DISCIPLINARY PROCEEDING

2.4.1 Initiating the Process

All administrative adjudications under the Administrative Procedure Act, AS 44.62.010 et seq., (APA) are initiated through an accusation or statement of issues.

An accusation begins the process of determining whether license should be revoked, suspended, limited, or conditioned. (See Appendix)

A statement of issues is used when a board has denied a license in the first instance or has refused to renew the license. (See Appendix)

The accusation and statement of issues serve to: initiate the disciplinary proceeding; give notice to the person complained against (the licensee) of the essential facts of the complaint; and define the issues to be contested at the hearing.

These documents are accompanied by a notice of certain procedural rights (See Appendix) as well as a "notice of defense" which the licensee returns if he/she intends to contest the proceeding. (See Appendix)

2.4.2 Need for Formal Adjudication

The possibility of informal disposition is usually pursued before proceeding to a formal hearing.

A decision to initiate formal adjudication usually results from one or more of the following conditions:

(1) the board or division believes that the complaint is sufficiently serious to require formal adjudication;

(2) the licensee fails to respond to the division's letter concerning a complaint and the division believes there are sufficient grounds to justify further action;

(3) the licensee's response to the division's letter or investigative demand does not convince the division that no action is necessary;

(4) an informal hearing or a conference is held, but fails to resolve all of the issues.

The board's hearing procedures are not well suited for adjudication of legitimate civil disputes between individuals which would more appropriately be settled in court. The board should not interject itself into private commercial disputes, or permit a complainant to use the threat of board action to force a licensee to settle a civil case.

2.4.3 Right to Hearing

The Constitution provides that no person can be deprived of life, liberty or property without due process of law. Most courts, including the United States Supreme Court, have interpreted this to require a formal hearing in proceedings which are held to determine a person's rights, duties or privileges.

A person may choose to waive his right to a hearing, either by non-appearance or by consent order or settlement.

2.4.4 When a Hearing is not Required

The exceptions to the requirement for a hearing can be summarized as follows:

(1) where Alaska law specifically provides that the board need not hold a hearing;

(2) where disciplinary action is based solely on the failure to file required reports, applications or other material in a timely manner, or on a failure to pay required fees or maintain required insurance.

2.4.5 Ex Parte Communications

Ex Parte is a legal term meaning by or for one party, or in the absence of another party. Generally, no board member or hearing officer may communicate with any party to a proceeding or his representative concerning any issue of fact or law involved in that proceeding, once notice of the proceeding has been served. This prohibition assumes that whatever a party has to say to the board member has a bearing on the case and should be available to all parties. The board or hearing officer may, however, communicate ex parte concerning procedural matters.

2.5 DESIGNATION OF HEARING OFFICERS

2.5.1 Use of Hearing Officers

All hearings are presided over by a hearing officer who is an attorney appointed by the Governor and who has generally engaged in the practice of law for at least five years.

The hearing officer may "sit alone", that is, hear the case alone and recommend a proposed decision to the board or the hearing officer may sit with the board as the presiding officer of the hearing.

The board must make a determination, either before or after a notice of defense is filed, whether it wishes to delegate the hearing function to a hearing officer alone or whether it wishes to hear the case with the hearing officer. (See Appendix) Some of the considerations in making such a decision are: the time involved (some cases have lasted several weeks), the location of the hearing and the complexity of the case.

2.5.2 Duties of the Hearing Officer

Although discussed in more detail below, the hearing officer is normally responsible for setting the time and place of hearing as well as scheduling prehearing conferences.

The hearing officer rules on motions, conducts the hearing and assists in the preparation of findings of fact and conclusions of law.

The hearing officer's paramount concern will be the making of the record of the proceeding.

2.6 PRELIMINARY ACTIONS

2.6.1 Pre-Hearing Conferences

The hearing officer may, at the request of a party or on his/her own initiative order a pre-hearing conference. Such a conference may also be held by agreement of the parties. The board is not present at the prehearing conference.

The purpose of such a conference is to consider any or all of the following actions:

(1) to reduce or simplify the issues to be adjudicated;

(2) to dispose of preliminary legal issues including ruling on pre-hearing motions;

(3) to stipulate issues that are not contested by the parties;

(4) for the parties to stipulate to the admission of certain evidence or admissions of fact which will avoid unnecessary proof;

(5) to identify documentary evidence or other physical evidence and to dispose of any questions by the parties about its authenticity;

(6) to identify witnesses;

(7) to amend the pleadings;

(8) other matters which might aid in the expeditious conduct of the hearing.

Written notice of the conference should be sent to all parties prior to the conference unless it was included in the notice of the hearing.

2.6.2 Stipulation

The parties may stipulate, or agree upon, certain issues or certain facts. Stipulated issues or facts are not required to be proved at the hearing.

It may be advisable to hold a formal hearing even if one is not required by law. A hearing typically involves a

meeting, with the parties present and able to give oral testimony. Even if the parties agree to submit the question to be adjudicated on a stipulation of agreed facts, the parties should be given an opportunity to present oral arguments in support of their positions.

2.7 MOTIONS

2.7.1 Use of Motions

A request to the board by a party for a particular action is normally made in the form of a motion. A motion may be made before, during, or after a hearing. All motions must be made at an appropriate time, according to the nature of the request.

2.7.2 Form of Motions

A motion made before or after the hearing is usually made in writing. Motions made at the commencement of or during the course of the hearing may be made orally. Motions are directed to the hearing officer.

The person making the motion must identify with particularity the action, ruling or order sought.

2.7.3 Answers to Motions

Any party may file a response or answer to a motion. Such an answer may be in support of or in opposition to a motion, and may be accompanied by an affidavit and memorandum.

2.7.4 Argument on Motions

Oral argument or the presentation of evidence on a motion may or may not be allowed at the hearing officer's discretion.

The propriety of allowing argument and presentation of evidence may depend on the importance of the motion. For example, the motion may be a simple one, such as a request that the hearing be held at a later date because of the illness of the licensee or his attorney. Such motions are usually allowed with liberality if they are made in a timely manner.

On the other hand, a motion may be complex and require the determination of contested issues of law or fact or be determinative of the result of the case. Argument or presentation of evidence would be appropriate in considering such complex motions. For example, a licensee may claim that the statute or regulation that he is charged with

violating is unenforceable because it was improperly adopted. The motion would request that the charges be dismissed. In considering such a motion the hearing officer or board may well desire the presentation of evidence or argument as the determination of the motion will also determine significant issues of law and policy and may determine the result of the case.

2.7.5 Disposition of Motions

The board or hearing officer must rule on all motions. Rulings should be made as promptly as possible.

In some situations, a hearing officer may not have authority to rule on a motion, but may need to refer the motion to the board. An example would be a motion to dismiss a proceeding and close the case.

2.8 SUBPOENAS

2.8.1 Types of Subpoenas

A subpoena is an order for a witness to be present at a proceeding or to present documents for the record. The purpose of the subpoena is to produce evidence which otherwise would not be available and which is needed for the determination of facts relevant to the case.

There are two types of subpoenas used in disciplinary proceedings: (a subpoena requiring a person to appear and give testimony; and (2) a subpoena duces tecum, which requires that a person produce books, records, correspondence, or other materials over which he has control.

2.8.2 Subpoena Authority

The board shall issue a subpoena when requested in writing by any party to a contested case.

Either side in a contested hearing may request that a subpoena be issued. It is generally required that the information called for by a subpoena must be reasonable in terms of the amount required and that it must relate to the matter under consideration. A subpoena duces tecum should show the reasonable scope and relevance of the documentary material sought.

2.8.2 Procedure for Issuing Subpoena

A party to whom the subpoena is directed is not given notice that it will be issued. The subpoena serves as its own notice. This is done to ensure that no evidence will be destroyed.

After the hearing begins the subpoena may be issued by a hearing officer, board member, or the entire board.

2.8.4 Response to Subpoena

The person to whom the subpoena is directed must comply with it unless he files a motion with the board to modify or quash the subpoena. Such a motion must be filed within a stated number of days after receipt, or at any time prior to the return date.

The board may decide to quash the subpoena if it finds that:

(1) the testimony required is not reasonably related to the subject matter of the hearing;

(2) the subpoena does not adequately describe the evidence required;

(3) the production of the evidence would impose difficulties that are not justified in light of its importance to the case, or would subject the witness to undue hardship;

(4) the material or testimony requested falls under a privilege afforded to the witness by statute, regulation, or constitutional guarantees.

2.8.5 Enforcement

If a person fails to comply with a subpoena, the board may apply to the Superior Court for an order to show cause why the person should not be required to comply. The court has power to order the witness to comply with the subpoena and to impose punishment for failure so to do.

2.9 CONDUCTING THE HEARING

2.9.1 The Presiding Officer

The hearing officer as presiding officer has an important role in the hearing. It is his responsibility to ensure that the hearing proceeds smoothly, and that all parties are treated fairly. Hearing officers have the power to:

(1) regulate the discovery process;

(2) hold conferences for the simplification or settlement of issues;

(3) issue subpoenas;

(4) place witnesses under oath;

(5) take action necessary to maintain order;

(6) rule on motions and procedural questions arising during the hearing;

(7) call recesses or adjourn the hearing;

(8) prescribe and enforce general rules of conduct and decorum;

(9) examine witnesses.

2.9.2 Standards of Conduct

To ensure a fair but efficient hearing, the hearing officer must enforce proper conduct on the part of persons present. He should recognize the person who is entitled to speak, and refuse to allow any person to speak until that person has been recognized. In case of disturbance, the hearing officer should ask the offending person to be quiet or to leave the hearing. If necessary, and after appropriate warning, he may rule that a person has forfeited his right to participate in the hearing or may certify the incident to the superior court for appropriate action.

2.9.3 Conduct of Board Members and Officers

Board members, hearing officers, and any other board

representatives should prepare for the hearing by reading in advance the notice of hearing, the answer (if any) and any other pleadings, motions, or briefs. They should attend all of the sessions necessary to conclude a hearing on a particular case. They shall be barred from voting on the final decision unless they were present throughout the hearing or have read the entire record including this the transcript, even though not present at the hearing. Board members should avoid any impression of prejudice against or favoritism toward any party, attorney or witness, and especially in questioning a witness.

2.9.4 Admission of Public

As a general rule, hearings should be open to the public unless there is a compelling reason that the particular hearing should be closed in accordance with AS 44.62.310.

2.9.5 Record of Proceeding

Alaska law requires that a formal record be made of a hearing.

The board and the hearing officer are responsible for ensuring that the proceeding is accurately recorded. It may employ a court reporter or a stenographer for this purpose, or it may make a tape recording. If a tape recorder is used, it should be checked carefully before the proceeding begins to ensure that it is working well.

2.10 ORDER OF PROCEEDINGS

2.10.1 Convening the Hearing

The hearing officer calls the session to order and identifies the case by name and number. He states for the record a brief summary of the subject of the hearing and cites the authority for holding it.

He should ask the parties to identify themselves and their counsel. All parties should be allowed to state for the record any objections they have to any of the prehearing proceedings, such as the service of notice, and to make any prehearing motions they have.

2.10.2 Oaths and Affirmations

As a general rule, all testimony is given under oath. Its purpose is to impress on the witness the seriousness of the occasion in order to assure that his testimony will be truthful.

If the witness objects to "swearing" or "taking an oath," the word "affirm" may be substituted.

If the witness' testimony is interrupted by a recess, it is not necessary to administer the oath again when the hearing reconvenes. He may, however, be reminded that he is still under oath.

2.10.3 Order of Proceedings

The customary order of the proceeding is as follows:

(1) the person presenting the evidence against the licensee makes an opening statment of what he intends to prove, and what action he wants the board to take;

(2) the licensee makes an opening statement, explaining why he believes that the charges against him are untrue;

(3) the person presenting evidence gives the case against him;

(4) the licensee cross-examines;

(5) the licensee presents evidence;

(6) the person who presented evidence against him cross-examines;

(7) the person presenting evidence against the licensee rebuts the latter's evidence;

(8) the licensee rebuts the evidence against him;

(9) both parties make closing statements.

This order may vary, however.

2.11 EVIDENCE

2.11.1 Purpose of Evidence

The purpose of evidence is to provide the facts necessary to reach a decision in a case. The board or hearing officer is not strictly bound by the rules of evidence which govern court proceedings, except that the evidence admitted must be of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

Constitutional guarantees of due process give the licensee a right to a decision based on evidence presented at the hearing. This means that a board member in making up his mind must consider evidence presented at the hearing, and can consider only such evidence. A board member may not consider anything that he has heard or read about the case; he may consider only the evidence presented at the hearing.

2.11.2 Forms of Evidence

Evidence includes testimony, documents, reports, technical and scientific facts, and real evidence, such as direct physical illustration of a fact before the board. Evidence usually consists of:

(1) oral testimony given by witnesses at the hearing;

(2) documentary evidence, i.e., written or printed materials including public, business, or institutional records;

(3) visual, physical, and illustrative evidence;

(4) admissions, which are written or oral statements of a party made either before or during the hearing;

(5) facts offically noted.

2.11.3 Admissibility

In determining the admissibility of evidence, the presiding officer usually follows the rules governing evidence in Alaska courts. However, the board may admit some hearsay evidence, although this would not be admitted in a court. Hearsay is testimony by a witness as to a

statement made by another person who is not present at the time of the testimony. When the statement by the absent declarant is offered to prove the truth of the matter asserted, it is considered unreliable because the person who made the original statement was not under oath, because opposing parties do not have an opportunity to cross-examine that person, and because the truth of the statement depends on whether the declarant is believable. While hearsay and similar evidence that could not be admitted in a trial might be admitted in a hearing, the board may not take disciplinary action solely on the basis of such evidence.

A party to the proceeding should inform the presiding officer if he objects to the admission of any evidence. If the presiding officer sustains the objection, the evidence is immediately withdrawn from consideration. If not, the proceeding continues with the evidence admitted.

2.11.4 Rules of Privilege

The board must follow the rules of privilege in excluding certain evidence. Generally, these provide that communications to an attorney or physician may not be disclosed without the consent of the person who sought the professional's assistance.

A board also may not force a licensee to testify if he invokes the Fifth Amendment privilege against self-incrimination. Since the decision of the board must be based on evidence presented in the case, the licensee's refusal to testify must be looked upon as having presented no evidence in his own behalf. A board may not, however, draw any inference from a respondent's invocation of the Fifth Amendment privilege.

2.11.5 Exclusion of Evidence

Evidence which is irrelevant, immaterial, incomplete, inaccurate, unsubstantiated, or unduly repetitious should be excluded. Examples are:

(1) irrelevant evidence which does not relate to the issues, and has no bearing on their resolution;

(2) immaterial evidence which, though it may relate to the issues, has no bearing on their resolution, including reptitious evidence, which covers matters that have already been fully covered by other evidence, although some repeti-

tion can be allowed for emphasis;

(3) incomplete, inaccurate, or unsubstantiated evidence such as technical evidence submitted by an unqualified person.

2.11.6 Exhibits

The presiding officer should see that all documentary and physical evidence is marked for identification and that a list is kept that describes the exhibit and its identification. The list should note whether the exhibit was admitted as evidence. One copy of any document offered as evidence must be furnished to each of the parties during or prior to the hearing. The original is given to the hearing officer, unless he allows a copy to be substituted. Copies generally may be introduced into evidence in lieu of original documents unless a party challenges the copy's authenticity.

2.11.7 Official Notice

The board may take official notice of a matter, thereby making it part of the official record. Proof of a matter is not necessary if it has been officially noticed. Where a board's decision rests on official notice of a material fact not appearing in the evidence, a party is entitled to an opportunity to disprove or rebut that fact. Official notice is usually limited to facts which are generally known or which are readily determined by a source which is of unquestioned accuracy. A fact need not always be indisputable to be noticed, so long as parties have an opportunity to challange it. Official notice may also be taken of rules, official reports, decisions, standards, orders of records of the board or of other regulatory agencies or state or federal courts.

2.11.8 Evidentiary Terms

The following are legal definitions of certain evidentiary rules which are pertinent to the administrative process.

Burden of proof is defined as "...(1) either the necessity of establishing the existence of a certain fact or certain facts by evidence that preponderates to the legally required extent, or (2) the necessity which rests on the party at any particular time during a trial, to create a

prima facie case in his own favor, or to overthrow one when created against him."

Preponderance of the evidence is a term which "... simply means what it says, that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed." In effect, in a Statement of Issues proceeding, the applicant must establish by a preponderance of the evidence that he is entitled to the agency action which he seeks; while in an Accusation proceeding the agency must establish by a preponderance of the evidence that the licensee in fact violated the subject law.

The agency presents its case first in Statement of Issues and Accusation cases, irrespective of the burden of proof. This is often referred to as the "burden of going forward."

A document which the hearing officer merely marks for identification only is made part of the record, but is not to be considered as evidence by the Board, and, therefore, cannot be used by the board for the purpose of making specific findings. It is thusly labeled primarily as a matter of convenience, so that any subsequent reference to it may be made by number. When a document is admitted into evidence by the hearing officer, it has the same force and effect as sworn oral testimony, unless a legal barrier, such as hearsay, affects its use. It is admitted into evidence when certain preliminary facts about the document are established.

Direct or positive evidence is legally defined as "... that which proves the fact in dispute, directly, without an inference or presumption, and which in itself, if true, conclusively establishes the fact...." This includes relevant evidence which was formerly defined as indirect or circumstantial.

2.12 THE BOARD'S DECISION

2.12.1 Making the Decision

The first task of the board is to perform its fact-finding function. It must determine the facts in issue solely on the basis of the evidence submitted at the hearing then prepare its findings of fact. It must then determine whether the facts in the case support the charges brought against the licensee. Last, it must determine whether the charges brought are a violation of the relevant law or regulation and it must prepare its conclusions of law.

If the board has delegated the hearing to a hearing officer, he prepares a report setting forth such findings and conclusions and submits the report to the board. The board may adopt such findings and conclusions in whole or in part. Generally, it may amend or revise the hearing officer's findings and conclusions only if it was present throughout the hearing or its members have read the transcript of the hearing or if it wishes to reduce the proposed penalty.

Where the board adopts the decision into the form DECISION found in the Appendix should be used. If the board rejects the proposed decision of the hearing officer, the board must file the NOTICE OF REJECTION OF PROPOSED DECISION found in the Appendix. The board must also determine whether it will hear the case or assign it to another hearing officer. The form notice should be modified accordingly.

2.12.2 Multiple Charges

In cases where multiple charges or issues are involved in an appeal, findings of fact and conclusions of law must be made on each charge.

2.12.3 Procedures for Decision

At the conclusion of the evidence-taking portion of the hearing, the board will retire into an executive session for the purpose of rendering a decision. Only board members who were present at the entire hearing, and the hearing officer who presided, will be permitted to attend, or participate in discussions in the executive session. Executive sessions should not be hurried, and an adequate opportunity will be provided for each board member to express his opinions and theories concerning the cause heard.

The first order of business in the executive session should be to determine whether the allegations raised by the pleadings are to be found true and correct; followed by a determination of the sanction, if any, to be imposed by the majority opinion of the board. No minority opinion will be filed.

Generally, the hearing officer who presided at the hearing, and conducts the executive session, will draft the decision for execution by the board. The manner of execution will be at the option of the board, but under no circumstances should board members who did not deliberate execute the decision. Oftentimes, the secretary of the board is authorized by the board to execute the decision in behalf of the board.

The vote of the board must be recorded and available for inspection to demonstrate that the findings and conclusions were adopted by the required majority.

2.12.4 Determining Sanctions

Once the board has completed its fact-finding function and decided that action should be taken against the licensee, it must determine what sanction or punishment is appropriate. The sanction must be based on the findings of fact and conclusions of law determined by the hearing.

The sanctions available to a board are generally determined by law. They may include: revocation or suspension of the license; probations; censure or reprimands; and fines.

2.13 RECONSIDERATION OF DECISION

2.13.1 Procedures

Alaska law provides for the board to reconsider a matter which it has decided.

Reconsideration may occur in three ways:

(1) A party who is dissatisfied with a decision of the board may file a motion requesting that the decision be reconsidered by the board.

(2) The board may order reconsideration on its own motion.

(3) A court to which the board's decision has been appealed may remand the case for reconsideration or rehearing.

All parties must be given notice of a reconsideration or rehearing and the same procedures must be followed as in the original proceeding. Appropriate forms for accepting or denying petitions for reconsideration are contained in the Appendix.

2.13.2 Basis for Reconsideration

The board should grant a motion for reconsideration or rehearing when it is satisfied that one or more of the following conditions are met:

(1) the motion and the record show a serious irregularity in the conduct of the proceeding, such as lack of proper notice that deprived the licensee of due process;

(2) there is newly-discovered evidence, which was not available to the licensee at the time of the hearing and which may be sufficient to reverse the board's action;

(3) the board's decision is contrary to the manifest weight of the evidence;

(4) there was good cause for the licensee's failure to appear or file papers which resulted in default by the licensee.

2.13.3 Enforcement of Decision

If the motion for reconsideration or rehearing is denied, the board's decision is final and binding. The licensee may proceed to seek judicial review of the decision. The board's decision, however, is enforceable unless the court orders a stay.

If a motion for reconsideration is granted, the decision of the board is not final and, therefore, is not implemented until a final decision is reached.

2.14 JUDICIAL REVIEW

2.14.1 Seeking Judicial Review

Judicial review of board actions normally cannot be sought until all administrative remedies have been exhausted; the licensee must use any administrative hearing procedures that are available before he can go to court.

The licensee has the right to seek judicial review if he is dissatisfied with the board's decision.

2.14.2 Effect of Review

The filing of a petition for judicial review does not, in itself, affect the board's decision. The board's decision is enforced unless the court orders a stay of that decision. The court may do this if good cause is shown.

The court may take various types of action on judicial review. It may affirm the board's action. It may modify the board's decision by changing parts of it. Or it may reverse the decision entirely. The court also may remand the case for further proceedings, in which case the board may be directed to reconsider all or some issues.

2.14.3 Scope of Review

The reviewing court generally will not substitute its judgment for that of the licensing board concerning questions of fact, but will accept the board's determination of these matters.

The reviewing court may overrule the board's decision when there has been a failure by the board to meet the requirements of law. The court also may overrule the board if the board has: violated the Constitution or statutes; exceeded its lawful authority; failed to follow lawful procedure; acted in a way that is clearly arbitrary or capricious; abused its discretion; or if the board's findings are not supported by the record.

2.14.4 Procedures for Review

The requirements for filing an appeal are set forth in the Alaska Rules of Appellate Procedure, specifically Appel-

late Rule 45. In certain circumstances, Alaska District Court Rule 31 also applies.

2.15 DISQUALIFICATION

2.15.1 Disqualification of Hearing Officer or Board Member

A hearing officer or board member should be disqualified because of bias or interest which makes him unable to conduct a fair and impartial hearing. Determination of bias involves many considerations. Generally, bias about issues of law or policy is not a ground for disqualification. Bias or prejudgment about issues of fact in a case, however, is a ground for disqualification, as is bias or prejudice for or against one party in a proceeding. Another ground for disqualification is personal interest, i.e., when the hearing officer or board member stands to gain or lose from the outcome of a proceeding.

2.15.2 Procedures for Disqualification

If, a hearing officer or board member determines that he or she is unable to conduct a hearing in an impartial manner, that person should disqualify himself/herself.

A party to the proceeding may also file an affidavit or motion with the board alleging that a hearing officer or board member is unable to conduct the hearing because of bias or other disqualification. The affidavit should state the grounds for disqualification as precisely as possible. It must be filed before the commencement of the hearing, or at the first opportunity after the party becomes aware of the facts upon which the claim of disqualification is based.

2.15.2 Action on Disqualification

If the request for disqualification concerns the agency member the issue shall be determined by the other members of the agency. If the request concerns the hearing officer, the issue shall be determined by the agency when the agency hears the case with the hearing officer, and by the hearing officer when he hears the case alone. No agency member may withdraw voluntarily or be disqualified if his disqualification would prevent the existence of a quorum qualified to act in the particular case.

2.16 THE CASE RECORD

2.16.1 Need for Record

A complete case record must be maintained for each formal hearing because there is a possibility of subsequent judicial action. The court usually will not rehear the evidence in a case, so it must rely on the division to furnish a complete record of everything that occurred during the hearing.

The record of the proceeding must be retained until the time for any appeal has expired, or until the appeal has been concluded. It is not usually transcribed unless a party to the proceeding so requests. The requesting party is required to pay the expense of such transcription.

2.16.2 The Case Record

The case record includes the following, plus other material that the board or hearing officer considers desirable to retain:

(1) all papers filed and served in the proceeding;

(2) all documents and other materials accepted as evidence at the hearing;

(3) statements of matters officially noticed;

(4) notices required by the statutes or rules, including notice of the hearing;

(5) affidavits of service or receipts for mailing of process or other evidence of service;

(6) stipulations, settlement agreements or consent orders if any;

(7) records of matters agreed upon at the prehearing conference;

(8) reports filed by the hearing officer;

(9) orders of the board and its final decision;

(10) actions taken subsequent to the decision, including requests for reconsideration and rehearing;

(11) a transcript of the proceedings, if one has been made, or the tape recording.

The Appendix contains the Supreme Court's instructions on preparation of the record on appeal. These instructions should be closely adhered to.

Once a designation of the record has been filed with the division an estimate of costs in preparing the record is sent by the division to the appellant (See Appendix). If payment is not forthcoming within 30 days, the division moves to dismiss the appeal.

PART III

FUNCTIONS OF THE DIVISION OF OCCUPATIONAL LICENSING

3.1 ROLE OF THE DIVISION IN THE PROMULGATION OF REGULATIONS

3.1.1 Drafting Regulations

When a board decides to promulgate regulations, it may prepare a draft on its own. Usually, however, the board requests the division to prepare a draft for the board's review. The division subsequently returns the draft to the board for its comments, revisions and approval.

3.1.2 Hearing Notification

Upon compilation of a satisfactory draft the division, on behalf of the board, prepares the appropriate notice, schedules the meeting place and provides other administrative services related to the adoption of regulation.

3.1.3 Post-hearing Procedures

Once comment has been received and reviewed, the division prepares a final version of the proposed regulation for board approval and adoption. The division readies the order for adoption, affidavit of notice of adoption and affidavits of publication. These documents are referred to the Department of law for review before submission to the lieutenant governor for filing.

3.2 ROLE OF THE DIVISION IN THE DISCIPLINARY PROCESS

3.2.1 Initial Complaint Procedures

Complaints about licensees are handled by the division in the manner generally set forth in Chapter II. Investigations are likewise conducted by the division in accordance with priorities set forth by the director of the division.

3.2.2 Initiation of Formal Proceedings

Whenever an accusation or statement of issues is generated on behalf of the division, it opens a litigation file. Accusations or statements of issues regarding guide licensing and control board matters are usually served by the Fish and Wildlife Protection Division. The Division of Occupational Licensing takes responsibility for serving all other statements of issues and accusations. All notices of defense accompanying these statements of issues and accusations, regardless of the board, are returnable to the director of the Division of Occupational Licensing.

Once the notice of defense has been returned, the Division sends a copy of the notice of defense to the attorney in the Department of Law handling the case (the attorney who drafted the accusations or was consulted on the statement of issues).

3.2.3 Appointment of Hearing Officers

At the same time, the Division requests the Governor to appoint a hearing officer. (See Appendix) This request is directed to the Office of the Governor but is carbon copied to the Department of Law.

Once an appointment has been made, the Division notifies counsel for the State and for the respondent. (See Appendix)

3.2.4 Delegation of Hearing Authority

The Division contacts the board before whom the matter is to be heard in order to make a determination whether that board wishes to sit with the hearing officer or to delegate

the hearing responsibility to a hearing officer sitting alone. In both cases, there should be a written record of the decision, normally in the minutes of the board. When, however, the board delegates the hearing function to a hearing officer sitting alone, a separate order in the case should be filed and transmitted to the parties. (See Appendix)

Once a hearing officer has been appointed, the Division should contact the hearing officer in writing, enclosing the accusation/statement of issues, notice of defense and any other orders filed by the agency. The Division should not attempt to duplicate the hearing officer's file with respect to the pleadings, motions, and other papers filed by counsel. Instead, all papers should be filed directly with the hearing officer.

3.2.5 Issuance of Subpoenas

On rare occasions, a party may wish to engage in discovery prior to the appointment of the hearing officer. This procedure is specifically allowed under the Alaska Administrative Procedure Act. In that instance, the party would normally petition the board for a subpoena. Accordingly, at the same time the board is deciding whether or not it will hear the case sitting with a hearing officer or will delegate the hearing function to a hearing officer sitting alone, the board should determine whether to grant the president or some other officer of the board authority to issue subpoenas duces tecum. (See Appendix) This resolution should be transmitted to the parties as well.

3.2.6 Filing of Proposed Decision

At the conclusion of the hearing, the hearing officer issues a proposed decision. The hearing officer is under a duty to file the proposed order with the Division (acting on behalf of the board) which in turn files it with the Office of the Lieutenant Governor and brings it to the attention of the appropriate board.

3.2.7 Preparation of the Record

Should the respondent appeal from the decision of the board, the Division has the responsibility of preparing the record. The record should be prepared substantially in accordance with the instructions found in the Appendix and in chapter II.15. In every case, the Division assesses the estimated cost of preparation of the record against the appellant. (See Appendix)

3.3. EMERGENCY POWERS

3.3.1 Cease and Desist Authority

Where the division has investigated a complaint (whether it involves a practitioner in violation of the licensing statute or a person who is required to be licensed but is not), and it determines that a violation appears to have occurred or is about to occur, the division, on behalf of the Commissioner of the Department of Commerce and Economic Development, may seek a cease and desist order stopping the person from committing a violation of the Act, or an injunction in superior court.

3.3.2 Procedural Requirements

Before the issuance of an order or application for injunctive relief, the division must first contact the board involved by telephone or telegraph. The proposed action may take place if a majority of the board do not object within 10 days. As a practical matter the division will poll the board at the time of notification to determine whether a majority object to the proposed action.

3.3.3 Nature of the Violation

The Commissioner will not normally invoke the emergency powers of AS 08.01.087 unless in his/her judgment the acts complained of pose a danger to the public health or safety.

3.3.4 Investigative Powers

AS 08.01.087 also authorizes the Commissioner to issue subpoenas and to examine the records of a licensee in aid of an investigation. The requirements set forth in sections 3.2.1 and 3.2.2 above must be satisfied before such action may be taken.

PART IV

FUNCTIONS OF THE DEPARTMENT OF LAW

4.1 FUNCTIONS OF THE DEPARTMENT OF LAW

4.1.1 General Duties

By statute the Attorney General is the legal advisor to the Governor and other state officers and is responsible for the administration of state legal services.

The Attorney General is also charged with responsibilities to represent the State in all civil actions in which the State is a party and to prosecute all cases involving violation of state law.

4.1.2 Legal Advice

The Department of Law renders advice in three forms:

(1) "opinions" (sometimes referred to as "formal opinions" or "official opinions") on matters which:

(a) are likely to result in litigation;

(b) are likely to cause significant public controversy;

(c) are of significant precedential importance; or,

(d) involve a significant commitment of human, financial, or natural resources, depending on the resolution of the issue;

(2) "memoranda of advice" (sometimes referred to as "informal opinions" or "unofficial opinions") on less important matters; and,

(3) "oral advice" on minor matters, that may be followed by a "memorandum of advice" where good judgment requires.

Requests for opinions made by boards must be made by the board president and must have the approval of the Commissioner or his designee before submission to the Department of Law. This ensures that frivolous or repetitious opinion requests are not submitted.

Oral legal advice is usually rendered by an assistant attorney general who may be in attendance at a regular or special meeting of a board. It is the policy of the depart-

ment not to send a representative to such meetings unless requested by the board and/or the director of the Division of Occupational Licensing to address issues involving questions of law.

4.1.3 Promulgation of Regulations

The Department of Law is available to work with the regulations specialist of the Division of Occupational Licensing in preliminary drafting of regulations. Normally, however, the department's role is limited to review of proposed regulations for legality of form and substance before adoption. If the department recommends changes, the department will later review the regulations to determine if the necessary alterations have been made. A written statement of approval by the Department of Law must accompany the regulations to permit them to be filed by the Lieutenant Governor.

4.1.4 Drafting of Legislation

The Department of Law is responsible for drafting all administration bills introduced in the legislature at the request of the Governor. Legislative proposals originating with the boards must be submitted to the Commissioner of the Department of Commerce and Economic Development for his approval prior to their submission to the Department of Law.

4.1.5 Representation of the Division

The Department of Law represents the Division of Occupational licensing in all disciplinary proceedings before the board. Similarly, in proceedings to determine whether a license was properly denied, the department represents the division and/or the board.

WHENEVER THE DEPARTMENT OF LAW APPEARS BEFORE A BOARD ON A CONTESTED MATTER IN AN ADVERSARY CAPACITY IT MAY NOT RENDER LEGAL ADVICE TO THE BOARD REGARDING HOW THE BOARD SHOULD DECIDE.

The board should seek legal guidance from the hearing officer appointed to serve as the presiding officer. This does not preclude the board from hearing argument from both parties (the state and the respondent) regarding issues of law or procedure so long as both parties are present and are afforded the opportunity to respond.

4.1.6 Representation of the Board

Whenever a board has rendered a decision challenged in court by a respondent or third party, the Department of Law assures the representation of the board. Similarly, whenever a board member or board is sued for conduct within the scope of its responsibility, the department will represent the member or the board.

4.1.7 Audits of board procedures

When complaints are received by the Department of Law regarding alleged unlawful practices of a board (e.g., conducting business without a quorum, arbitrary denial of a license), the department will initiate an investigation or request the Department of Commerce and Economic Development to do so.

Where violations of the law have occurred, the department will meet with the board to assist it in undertaking corrective measures.

Where a board or board member refuses to abide by the advice rendered by the department, the department generally will not represent that board or board member in any suit challenging the legality of the acts complained of. Failure to follow the advice of the Department of Law could lead to liability for damages or other relief. See AS 08.02.020.

[Insert name of agency; e.g.,

STATE OF ALASKA

BOARD OF DENTAL EXAMINERS]

In the Matter of)
)
)
) No. _____
_____)

STATEMENT OF ISSUES

The State of Alaska Board of Dental Examiners, having considered the application of [insert name of applicant] for [identify license applied for] finds as follows:

1. The Board of Dental Examiners pursuant to [cite the statutory or regulatory basis for the agency action, e.g., AS 08.36.070] considered the application of [insert name of applicant] for [identify license applied for].

2. On or about [insert date and name of applicant] applied for [identify license applied for].

3. On or about [insert date, name of applicant and grounds for denial; e.g., was convicted of the crime of embezzlement. It is advisable in such cases to attach to the statement of issues a certified copy of the judgment of conviction].

4. The crime of embezzlement is evidence that [insert name of applicant] is not of good moral character as required by AS 08.36.110(2).

5. Pursuant to AS 08.36.110(2), the application

of [insert name of applicant] for [identify license applied for] is denied.

DATED: _____

[provide for signatures for board officers as appropriate)

[Insert name of agency; e.g.,

STATE OF ALASKA

BOARD OF DENTAL EXAMINERS]

In the Matter)
)
)
)
_____) No. _____

ACCUSATION

Petitioner Don Hostak, Director of the Division of Occupational Licensing, Department of Commerce and Economic Development, State of Alaska, alleges:

1. This is a proceeding pursuant to [cite the statutory or regulatory basis for the proceeding, e.g., AS 08.36.070(5) and (7) and AS 44.62.330 et seq.] to [describe proposed action, e.g., revoke the license of the respondent to practice dentistry in the State of Alaska].

2. On or about [insert date] respondent was licensed to practice dentistry in the State of Alaska.

3. On or about [insert date] respondent [state grounds of revocation, e.g., was convicted of the crime of embezzlement. It is advisable in such cases to attach a certified copy of the judgment of conviction].

4. The crime of embezzlement is a crime involving moral turpitude for purposes of AS 08.36.310(2).

5. Purusant to AS 08.36.310(2), respondent's license may be revoked for the reason that he has been

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Insert name and address of respondent]

Re: [Insert caption on accusation]

You are hereby notified that the enclosed Accusation has been filed with [insert name of agency]. [Insert name of agency] will conduct a hearing to decide the issues presented in the Accusation.

Notice of Defense and Request for Hearing.

The enclosed Accusation was prepared pursuant to AS 44.62.360 and sets forth the issues that will be decided by [insert name of agency]. This letter constitutes notice as required by AS 44.62.380 that you may request a hearing on the issues set forth in the Accusation.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to [insert name of agency] within 15 days after receipt of the enclosed Accusation, [insert name of agency] pursuant to AS 44.62.530 will decide in your absence the issues presented in the Accusation. The request for a hearing may be made by delivering or mailing the enclosed Notice of Defense to [insert name of agency] in the enclosed envelope, postage prepaid. Mailing of the Notice of Defense signed by you or on your behalf and returned to [insert name of agency] within 15 days in the enclosed addressed envelope, postage prepaid, acknowledges receipt of the enclosed Accusation and constitutes a notice of defense pursuant to AS 44.62.390.

Sincerely,

Don Hostak, Director
Division of Occupational
Licensing
Department of Commerce and
Economic Development

convicted of a crime involving moral turpitude.

WHEREFORE, petitioner seeks:

1. To revoke respondent's license to practice dentistry in the State of Alaska.

2. To make such other findings and disposition of this proceeding as are just.

DATED: _____.

_____
Don Hostak, Director
Division of Occupational
Licensing
Department of Commerce and
Economic Development

[Insert name of agency; e.g.,

STATE OF ALASKA

BOARD OF DENTAL EXAMINERS]

In the Matter of)
)
)
)
_____) No. _____

NOTICE OF DEFENSE

The respondent named below, pursuant to AS 44.62.-390, hereby gives notice of defense in this proceeding.

A hearing on the matters set forth in the Statement of Issues is hereby requested.

DATED: _____.

_____
RESPONDENT

ADDRESS: _____

_____

NOTE: This Notice of Defense must be signed by or on behalf of respondent, must set forth respondent's mailing address and must be filed with the [insert name of agency] within 15 days of receipt.

BEFORE THE ALASKA STATE BOARD OF

_____

In the Matter of)
)
)
)
Respondent.) File No. _____
_____)

DECISION

The attached proposed decision of the hearing officer is adopted by the _____(title of agency)_____ as its decision in the above-entitled matter. This decision shall become effective on _____, 19___.

DATED: _____.

_____
Title of Agency

By: _____

[Insert name of board, e.g.:

STATE OF ALASKA

BOARD OF DENTAL EXAMINERS]

In the Matter of)
)
)
) No. _____
_____)

DECISION

The Alaska Board of Dental Examiners, after hearing evidence in this proceeding submitted by petitioner and by respondent at a hearing held on [insert date(s)], enters the following decision:

FINDINGS OF FACT

1. Respondent was licensed to practice dentistry in the State of Alaska on or about [insert date].

2. Respondent was convicted of the crime of embezzlement on or about [insert date].

3. [Here insert the reason why the findings support the agency action taken -- i.e., revocation, rather than suspension or reprimand].

DETERMINATION OF ISSUES

4. The crime of embezzlement is a crime involving moral turpitude for purposes of AS 08.36.310(2).

PENALTY

5. Respondent's license to practice dentistry in the State of Alaska is hereby revoked.

DATED: _____

_____

BEFORE THE ALASKA STATE BOARD OF

_____

In the Matter of)
)
)
) File No. _____
_____)

NOTICE OF REJECTION OF PROPOSED DECISION

Attached is a copy of the proposed decision in the above-entitled matter submitted to the _____(Title of agency) _____. You are advised that the board considered, but did not adopt the proposed decision and that the board will itself decide the case.

You are advised that you may submit written argument to the board. Your right to argue on any matters that you feel should be argued is not limited, but you are advised that the board based its rejection of the proposed decision on its consideration of the (findings of fact/determination of issues/penalty or recommendations).

Any written argument that you may submit to the board in this matter should be received by the board at its office _____(address)_____, on or before _____, 19___.

DATED: _____.

Title of Agency

By: _____

BEFORE THE ALASKA STATE BOARD OF

_____

In the Matter of)
)
)
)
)
)
Respondent.)
_____) File No. _____

ORDER OF RECONSIDERATION

The petition of the above-named respondent for an order of reconsideration of the decision dated _____, 19___, having been fully considered;

IT IS ORDERED that the decision is vacated and the petition for reconsideration granted.

IT IS FURTHER ORDERED:

1. That this reconsideration be granted by the agency itself on all pertinent parts of the record;

2. Written argument may be filed with this agency on or before _____, 19____;

3. The agency itself will hear such additional evidence as may be offered by the parties on the following issues:

OR

1. The reconsideration shall be conducted by a hearing officer who shall reconsider the case and all pertinent parts of the record and the petition for reconsi-

deration and the oral or written argument as the hearing officer permits.

2. The hearing officer shall permit such additional evidence as is offered by the parties on the following issues:

TITLE OF AGENCY

By: _____ .

BEFORE THE ALASKA STATE BOARD OF

_____

In the Matter of)
)
)
)
)
)
Respondent.)
_____) File No. _____

ORDER DENYING PETITION FOR RECONSIDERATION

The petition of the above-named respondent for an order of reconsideration of the decision dated _____, 19___, having been filed and having been fully considered,

IT IS ORDERED that the petition is denied.

DATED: _____.

TITLE OF AGENCY

By: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

Appellant,	)
v.	)
STATE OF ALASKA, BOARD OF	)
Appellee.	)

NOTICE TO APPELLANT

Pursuant to Appellate Rule 45(e)(2) you are hereby notified that the estimated costs of the Division to prepare the record on appeal in the above-entitled action is $. Receipt of that amount is condition precedent to the Division preparing and filing the record on appeal with the Superior Court.

The deposit may be filed with [name of court reporter and the address] or with this division, Pouch D, Juneau, Alaska 99811.

DATED this ____ day of _____, 19__ at Juneau, Alaska.

Don Hostak, Director
Division of Occupational Licensing

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K, JUNEAU, ALASKA 99811
PHONE (907) 465-3600

INSTRUCTIONS TO ADMINISTRATIVE AGENCIES

ON APPELLATE PROCEDURE

Prepared and Distributed by

Clerk, Supreme Court
State of Alaska

March 1975

INSTRUCTIONS TO AGENCIES ON APPELLATE PROCEDURE

In order to facilitate the handling by the Superior Court of appeals and petitions for review, this memorandum of instructions has been prepared. There is presented here the detailed, step-by-step procedure to be followed by the clerks in handling such cases. The rule numbers which appear from time to time refer to the Rules of the Court and to the Alaska Statutes.

WHAT MAY BE APPEALED AS 44.62.560

An appeal may be taken to this court from a final administrative order.

1. NOTICE OF APPEAL

When an appeal is taken from a final judgment of an agency the first document that counsel will file is a Notice of Appeal with the Superior Court. Counsel will also provide the necessary copies along with an Attorneys of Record list for the Clerk of Superior Court. The court will then serve all parties with a copy of the Notice of Appeal.

When the Notice of Appeal is filed it will be automatically given the case file number which should be referenced

2. ATTORNEYS OF RECORD

After the court has mailed copies of the Notice to all parties, the parties wishing to join in the appeal are to file an entry of appearance within thirty (30) days, if they

fail to appear they will be defaulted.

At the end of the 30 day period an appellate conference will be held with only those who have filed their appearance. At this conference the designation of record for the appeal will be determined and any other special conditions.

3. DESIGNATION

After the conference the appellant will file a designation of record with the agency and serve a copy on all parties.

The agency will promptly advise counsel of the cost of preparation of the record. If the agency has not received the requested fees or corporate surety bond to equal the estimated cost within 20 days after notification, then the agency is to notify the court in writing of the amount due and when counsel was advised and copy all parties in the action.

The record on appeal is due 30 days after the fee has been submitted.

4. PREPARATION OF RECORD ON APPEAL

The clerk prepares the record by taking from the agency files those papers and documents referred to in the designation and they are placed in one or more separate files, depending on how voluminous the record will be. Documents should be in chronological order starting with the first instrument filed (generally the complaint or petition), each page should be numbered beginning with number 1 and going on page by page to the end of the record. Numbering may be done

in ink or with a rubber stamp numbering machine, at the lower right hand corner of each page. Papers should be fastened at the top of the folder with an acco fastener.

A typical record on appeal would probably include (but not be limited to) the following:

a. Petition or complaint

b. Answer

c. Motion for early hearing or Stay

d. Memorandum in support

e. Hearing notes on Motion

f. Motion for reconsideration

d. Administrative agency order

5. TRANSCRIPT

Included in the designation filed with the agency will be a request for transcript. If the evidence or proceedings in an action were electronically recorded, it is likely that counsel will request that a transcript of the same be included in the record on appeal. The transcript may consist of one or more separate volumes separately bound. It is not necessary to place these volumes in file folders, they should be forwarded to the court along with the rest of the record on appeal.

6. EXHIBITS

Exhibits designated for inclusion in the record should generally be placed in separate folders, envelopes or boxes, together with a document made up by the clerk

indicating the contents, such as : "Petitioner's Exhibits Nos. _____ to _____ inclusive".

7. TABLE OF CONTENTS-CERTIFICATE

Before the record is ready to be forwarded to the Superior Court, two more things must be done. First, the clerk should prepare a table of contents which should list each document contained in the record on appeal, with corresponding reference to the place that such document may be found, by file number and page number. This table of contents should be fastened to the top of the first page of the first file of the record on appeal so that it will be in the front of the folder. [Rule 9(f)(2)] (Example). Finally the clerk should add to the table of contents a certificate which shows the following:

a. The date upon which the preparation of the record was completed.

b. The date upon which notice of the completion of the record was given to counsel for each of the parties.

c. The names and addresses of counsel notified.

d. The manner in which the notice was given [Rule 9(f)(3)(4)]. (Example)

Upon completion of the record it should either be delivered to the Appeals Clerk or mailed by certified mail to the court.

8. DETERMINATION

The record from the agency will be held with the court until the determination by the court and upon decision

a copy will be mailed to the agency. The file will be held further for a 30 day period for Supreme Court appeal time to run. If no appeal is taken then the record will be transmitted back to the agency.

9. MISCELLANEOUS

a. SERVICE. Various papers that are filed with the clerk in connection with an appeal must be served on adverse parties and when filed, must be accompanied by proof of service. This subject is governed by Rule 39.

b. FILING FEES. Filing fees in connection with appeals and petitions for review are to be paid directly to the Clerk of the Trial Courts for the district. The fee is $50.00.

c. DESIGNATION. This document tells the agency what the attorney wants them to prepare as a record on appeal for the Superior Court. AS 44.62.560(c)(d).

d. EXTENSIONS OF TIME. When the agency finds that a record is of such size that it will be impossible for them to certify the record on or before the due date the agency should contact the appellant of the problem who then should apply to the court for an extension.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

POLAR AIRWAYS, INC., Appellant, v. ALASKA TRANSPORTATION COMMISSION, ALASKA AERONAUTICAL INDUSTRIES, INC Appellee.	Superior Court No. Agency File No.

RECORD ON APPEAL

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TRANSCRIPT

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File No. 3

EXHIBITS

Petitioner's Exhibits No. 1 thru 10 inclusive

Respondent's Exhibits A thru J inclusive

- THE END -

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

POLAR AIRWAYS, INC., Appellant, v. ALASKA TRANSPORTATION COMMISSION, ALASKA AERONAUTICAL INDUSTRIES, INC., Appellee.	Superior Court No. Agency File No.

RECORD ON APPEAL

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File No. 3

PETITIONER'S EXHIBITS

No. 1	copies of receipts
No. 2	color photo of airplane No. 3
No. 3	Petition with 1,001 signatures

RESPONDENT'S EXHIBITS

No. A	color photo of two aircraft
No. B	receipts for hospital bills
No. C	account's ledger

- THE END -

[Insert name of agency; e.g.,

STATE OF ALASKA

BOARD OF DENTAL EXAMINERS]

In the Matter)
)
)
)
)
_____) No. _____

STATEMENT OF ISSUES

The State of Alaska Board of Dental Examiners, having considered the application of [insert name of applicant] for [identify license applied for] finds as follows:

1. The Board of Dental Examiners pursuant to [cite the statutory or regulatory basis for the agency action, e.g., AS 08.36.070] considered the application of [insert name of applicant] for [identify license applied for].

2. On or about [insert date and name of applicant] applied for [identify license applied for].

3. On or about [insert date, name of applicant and grounds for denial; e.g., was convicted of the crime of embezzlement. It is advisable in such cases to attach to the statement of issues a certified copy of the judgment of conviction].

4. The crime of embezzlement is evidence that [insert name of applicant] is not of good moral character as required by AS 08.36.110(2).

5. Pursuant to AS 08.36.110(2), the application of [insert name of applicant] for [identify license applied for] is denied.

DATED: _____.

[provide for signatures for board officers as appropriate]

BEFORE THE ALASKA STATE BOARD OF

_____

In the Matter of	)	
	)	
	)	
	)	
	)	
	)	
Respondent.	)	
_____	)	File No. _____

REQUEST FOR APPOINTMENT OF HEARING OFFICER

The Board of _____ requests the appointment of a hearing officer in the matter of the (statement of issues/accusation) against _____, respondent.

This matter should be heard in _____(location).

cc: Dept. of Law

BEFORE THE ALASKA STATE BOARD OF

_____

In the Matter of)
)
)
)
)
Respondent.)
_____) File No.

NOTICE OF HEARING

You are notified that a hearing will be held before the _____ (agency) at _____(address), _____(city), Alaska, on the _____ day of _____, 19___, at _____m. upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You may have subpoenas issued to compel the attendance of witnesses and the production of books, documents or other things by applying to _____(agency).

ALASKA STATE BOARD OF

_____

By: _____
Hearing Officer

BEFORE THE ALASKA STATE BOARD OF

_____

In the Matter of)
)
)
)
Respondent.) File No.
)
_____)

RESOLUTION OF THE ALASKA BOARD OF

_____

The Board of _____ hereby authorizes its president to issue subpoenas and subpoenas duces tecum pursuant to AS 44.62.430 at the request of a party and in accordance with the rules of civil procedure and prior to the appointment of a hearing officer in any contested case.

DATED at _____, Alaska, this _____ day of _____, 1979.

_____

_____

_____

_____

BEFORE THE ALASKA STATE BOARD OF

_____

In the Matter of	)	
	)	
	)	
	)	
Respondent.	)	File No.
	)	
_____	)	

The Board of _____

PURSUANT TO AS 44.62.450(a) orders that the hearing in the above-captioned matter be presided over by a hearing officer hearing the case alone.

DATED at _____, Alaska, this _____ day of _____, 1978.

ALASKA STATE BOARD OF

_____

By: _____

BEFORE THE ALASKA BOARD OF

_____

In the Matter of)
)
)
)
)
)
Respondent.)
_____) File No. _____

NOTICE TO COUNSEL

_____ has been appointed by the Governor as hearing officer in the above captioned matter. All future correspondence and motion papers should be directed to the hearing officer at the following address:

_____

DATED at Juneau, Alaska, this _____ day of _____, 197__.

_____
Richard Long
Chief Investigator
Division of Occupational
Licensing

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

November 15, 1979

The Honorable Brad Bradley
P.O. Drawer 8-Q
Anchorage, AK 99508

Dear ~~Senator~~ Brad Bradley:

During the 1980 session, the Legislature will continue to be involved with "sunset" reviews of several occupational licensing boards and commissions. We will be deciding to continue, change or terminate these boards and commissions, as well as several related licensing statutes.

Several questions and issues will have to be addressed in reaching those decisions. Although many will be unique to individual boards, some will be common to all occupational licensing and regulation.

Enclosed is a booklet on occupational licensing prepared by the Council on State Governments. This short booklet is very helpful in defining several of the basic questions and issues which will be addressed in the coming session.

Sincerely,

Jim

Jim Duncan, Chairman
Legislative Budget & Audit
Committee

Enclosure

31-Q1LH

11/24

Forgive Chris,

Remind me to

read this before

Wapt sunset

B

The Council of State Governments

OCCUPATIONAL LICENSING: OCCUPATIONAL LICENSING:

OCCUPATIONAL LICENSING:

The Council of State Governments

The Council is a joint agency of all the state governments—created, supported, and directed by them. It conducts research on state programs and problems; maintains an information service available to state agencies, officials, and legislators; issues a variety of publications; assists in state-federal liaison; promotes regional and state-local cooperation; and provides staff for affiliated organizations.

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165 Post Street, 5th Floor
San Francisco, California 94108
(415) 986-3760

Washington Office
Hall of the States, 444 North Capitol Street
Washington, D.C. 20001
(202) 624-5450

Occupational Licensing:
Questions a Legislator Should Ask

Benjamin Shimberg
Associate Director
Center for Occupational and Professional Assessment
Educational Testing Service
Princeton, New Jersey

and

Doug Roederer
Special Assistant
The Council of State Governments
Lexington, Kentucky

Editor
Ralph J. Marcelli

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THE COUNCIL OF STATE GOVERNMENTS
Lexington, Kentucky

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Foreword

In 1952 the Council of State Governments published *Occupational Licensing Legislation in the States.* That publication reported licensure of more than 70 occupations, trades, and professions—from abstractors to yacht salesmen. Today state government has a renewed interest in occupational and professional licensing as a result, in part, of the increasing number of requests for licensure.

The Council of State Governments is pleased to join with the Educational Testing Service (ETS) in publication of this guide. It is intended to assist state policymakers confronting decisions regarding the credentialing of various occupations and professions.

The material was prepared by Dr. Benjamin Shimberg, Associate Director, Center for Occupational and Professional Assessment, ETS, with assistance from Doug Roederer of the Council of State Governments' staff. The Council is indebted to the authors and a number of individuals who gave generously of their time in reviewing early drafts of this manuscript. They include Mrs. Karen Greene, Manpower Analyst, Employment and Training Administration, U.S. Department of Labor; Mrs. Ruth Herrink, Director, Virginia Department of Professional and Occupational Regulation; Ms. Corrine Larson, Director, and Dr. Colleen Coughlan, Supervisor of Special Studies, Health Manpower Program, Minnesota Department of Health; Dr. Raymond Salman, Director, Division of Professional Licensing Services, New York State Department of Education; Neil Duncliffe, Lexington Office, and Alec Sutherland, Midwestern Office, the Council of State Governments; Dr. Albert P. Maslow, Director, and Dr. Gordon Cook, Staff Associate, Center for Occupational and Professional Assessment, ETS.

A legislative handbook on occupational and professional regulation is currently in preparation under a grant from the Employment and Training Administration, U.S. Department of Labor, to the Educational Testing Service. The handbook will deal with a variety of regulatory issues in considerable detail and will present action options for consideration. The handbook is being developed cooperatively by Dr. Benjamin Shimberg and his associates at Educational Testing Service, with assistance from the Council of State Governments. It is expected that the handbook will be ready for distribution in the spring of 1979.

Herbert L. Wiltsee
Executive Director
The Council of State Governments

Lexington, Kentucky
March 1978

Introduction

Licensing is a process by which an agency of government grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the minimal degree of competency required to ensure that the public health, safety, and welfare will be reasonably well protected.

Licensing makes it illegal for anyone who does not hold a valid license to engage in the occupation, profession, trade, etc. covered by the statute. Thus, the power to license can be used to deny individuals the legal opportunity to earn livelihoods in their chosen fields. This is an awesome power—one that must be exercised judiciously.

The public seems to have accepted licensing as a restriction that is needed to protect society from incompetents and charlatans. Proponents of licensing—especially trade and professional groups—maintain that licensing benefits the public by assuring consumers of high-quality goods and services.

Critics of licensing believe otherwise. Consumer groups are asking, "Who benefits most from licensing, the public or the group being regulated?" They cite studies funded by the U.S. Department of Labor, and other agencies, which show that licensing boards often use their powers to restrict the supply of practitioners. These restrictions, say consumers, eventually affect what they must pay for services. (Selected references relating to licensing and certification are at the end of the report.)

The Federal Trade Commission (FTC) has noted that many licensing boards prohibit price advertising and that a few also prohibit competitive bidding. The FTC recently proposed rules that would outlaw such restrictions. In the meantime, the U.S. Supreme Court has decided that it is unconstitutional for licensing boards to prohibit pharmacists from advertising the price of prescription drugs or lawyers the cost of certain services. The Antitrust Division of the U.S. Department of Justice has also initiated legal action against the State Board of Accountancy in Texas, charging that its rules against competitive bidding by accountants violate the federal antitrust laws.

Nevertheless, many new licensing laws continue to be enacted each year. At a recent session, one state legislature considered bills to license auctioneers, home improvement contractors, pet groomers, sex therapists, television repairmen, electrologists, data processors, appraisers, professional salespersons, and a dozen other groups. Faced by such an onslaught, how can legislators decide when

it would be in the public interest to license members of an occupation?* What questions should legislators ask? What alternative forms of regulation should be considered before licensure is granted?

This booklet attempts to put licensing into perspective by calling attention to a number of issues that should be considered:

- Deciding whether state governments should regulate an occupational group at all.
- Drafting the regulatory statute so that it is fair to practitioners and consumers alike.
- Establishing an administrative structure that promotes accountability and public confidence.

These issues are discussed in Chapter 1.

Chapter 2 provides a guide for questioning groups that are seeking regulation of an occupation. The questions may be posed in written form to give sponsors of the legislation ample opportunity to assemble the necessary data, or they can be put orally during the course of hearings on the legislation.

Chapter 3 describes efforts in three states—California, Minnesota, and Virginia—to bring about change in their regulatory structures. In each instance, names of key contacts are provided for those wishing more information.

*Throughout this report, the term occupation should be understood as including those who engage in an occupation, profession, trade, etc.

1. Guidelines for Occupational Regulation

The following guidelines for planning or reviewing a regulatory program grew out of a series of regional conferences convened in 1975 and 1976 for the purpose of identifying ways to improve occupational regulation.[1] Participants in the conferences included legislators, administrators of state licensing programs, attorneys general, and consumer officials. The problems, issues, and concerns voiced by participants and the solutions proposed provided the basic material from which the guidelines and accompanying text were developed.

Should State Government Regulate an Occupational Group?

Regulation should meet a public need.

Requests for licensure seldom come from an outraged public seeking to end some intolerable abuse. Usually they are made by occupational associations acting on behalf of practitioners.

Unfortunately, consumers are rarely on hand at legislative hearings when such regulatory proposals are under consideration. They should be, but in most areas they are poorly organized and lack the skills and resources to assemble and effectively present data which would show the likely impact of regulation on their pocketbooks. In a few states, legislatures have created consumer advocacy agencies to intercede on behalf of consumers before legislative committees and regulatory boards. The Consumer's Council in Massachusetts and the Office of the Public Advocate in New Jersey are two such agencies which show promise of providing consumers with at least a small voice in regulatory matters.

Proponents of licensure, be they the public or an occupational group, frequently argue that regulation is needed to protect the public health, safety, and welfare. Often, however, the occupational group is the major beneficiary of a licensure law. Licensed practitioners gain an exclusive right to deliver services. They may then ask the board, made up of fellow practitioners, to use its powers to restrict entry into the field by setting high education and experience requirements, giving difficult tests, and erecting barriers to keep out practitioners from other states. Thus, the licensed group may establish monopoly conditions which enable it to control the availability and cost of services and restrict competition by prohibiting advertising and competitive bidding. Such practices often operate to raise costs to consumers.

To determine whether an occupational group should be licensed, each proposed licensure program should be carefully scrutinized to determine the precise nature and seriousness of the need. There are many situations where the public needs to be protected from dangers posed by unqualified practitioners, but

not every service represents a threat to the public health, safety, and welfare if a practitioner is unqualified.

The overriding questions that a state must answer when evaluating the need for licensing are: (1) whether the unlicensed practice of an occupation poses a serious risk to the consumers' life, health, and safety or economic well-being; (2) whether potential users of the occupational service can be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services; and (3) whether benefits to the public clearly outweigh any potential harmful effects such as a decrease in the availability of practitioners, higher costs of goods and services, and restrictions on optimum utilization of personnel.

Government should provide only the minimum level of regulation.

Even when an analysis of need shows that there are compelling reasons to regulate an occupation, it does not necessarily follow that licensure is the most appropriate mechanism for doing so. Licensure restricts the scope of practice so that it becomes illegal for unlicensed individuals to provide the services in question. That is why licensure should be used only as the remedy of last resort.

Before legislators agree to license persons in an occupation, other regulatory approaches short of licensure need to be explored. Among the alternatives to individual licensing are the enforcement or strengthening of existing statutes relating to deceptive or unfair trade practices. Another is the assignment of inspection or other supervisory authority to an existing agency, i.e., a department of health or department of licensing and registration. A third alternative is to license establishments rather than individuals. For example, restaurants are licensed, not the individuals who prepare and serve food.

If none of these approaches is considered adequate by a state, it may be necessary to consider ways to regulate individuals. However, the method of regulation and the degree to which it restricts practice should bear some relationship to the seriousness of the harm that is likely to result from the absence of regulation. Two approaches, less restrictive than licensing, are registration and certification.

Registration is an appropriate form of regulation when the threat to life, health, safety, and economic well-being is relatively small and when other forms of legal redress are available to the public. In its simplest form, registration requires that an individual file his or her name and address with a designated agency. There is usually no preentry screening by a regulatory board. Registration in this form does little more than provide a roster of practitioners. However, it is also possible to have a registration requirement in combination with minimum practice standards set by the agency. Thus, while registration would not be exclusionary, it would subject registrants to minimum standards and thereby provide some protection to the public.

Certification is a form of regulation which grants recognition to individuals who have met predetermined qualifications set by a state agency. Only those who

meet the qualifications may legally use the designated title. However, noncertified individuals may offer similar services to the public as long as they do not describe themselves as being "certified." Certification is especially appropriate when the public needs assistance in identifying competent practitioners, but where the risks to health and safety are not severe enough to warrant licensure.

There is considerable confusion surrounding the terms "registered" and "certified." Indeed, they are sometimes used interchangeably with licensure. For example, "registered nurses" are actually licensed nurses because it is illegal for anyone to practice nursing unless he or she has been granted a license by a state nursing board. Confusion is further compounded by the fact that many nongovernmental agencies, such as professional societies, offer "certification" to those who meet predetermined qualifications.

If nothing else, the confusion in terms reflects a search for alternatives to the more stringent remedy of occupational licensing. Examples of state experimentation with these alternatives are found in Chapter 3.

If an occupation is to be licensed, its scope of practice should be coordinated with existing statutes to avoid fragmentation and inefficiency in the delivery of services.

Occupational groups seeking mandatory licensing usually argue that it is necessary to have their scope of practice defined broadly in order to prevent unqualified persons from engaging in any aspect of the occupation. However, as technology expands and new occupational categories emerge, members of occupational groups often find that the existing broad scope of practice statements bring them into conflicts with already licensed occupational groups. Such conflicts may prevent them from functioning in areas where they are qualified by training to provide services.

Restrictions imposed by overly broad scope of practice statements stem, in part, from a failure to recognize that many groups within a system (such as the health delivery system) have overlapping functions. When such groups are granted mandatory licensure based on broad scope of practice statements, certain undesirable consequences, such as fragmentation of services, underutilization of manpower, and unnecessary proliferation of occupational categories, are likely to result.

A field becomes fragmented when many discrete specialty groups, each with its own scope of practice statement, obtain licensure. Fragmentation may be signaled when an already licensed group seeks to prevent an emerging group with a different occupational label from sharing the work.

Underutilization occurs when paraprofessionals, medical auxiliaries, or groups which combine parts of several already regulated occupations find that their utilization within the delivery system is impeded by jurisdictional conflicts

and by prohibitions against the delegation of functions. Such an uncoordinated delivery system forces employers to hire one of each kind of practitioner. The state policy focus should be on competence and efficiency and the avoidance of exclusive allocation of functions to certain named groups.

Proliferation or pressure to license new occupational categories sometimes happens when practice restrictions of one group prevent members of another group from providing services that the latter group is qualified to provide. For example, in some states psychologists have claimed that the provision of personal-social advisement services by counselors (with M.A. or Ph.D. degrees) constitutes an infringement on the Psychology Practice Act. The group prevented from practicing—in this case, counselors—is then likely to seek its own licensure law in order to gain statutory recognition that would legitimatize its activities.

Rather than license a new and discrete occupation, the legislature might consider alternatives such as narrowing the overly broad existing definition of scope of practice or including the new group within the definition of competent practitioners.

Licensure Laws Should Be Fair and Operate to Protect Practitioners and Consumers Alike

Requirements and evaluation procedures for entry into an occupation should be clearly related to safe and effective practice.

Regulatory laws are often exclusionary because they include requirements—such as age, years of formal education, citizenship, high license fees, and residency—which bear little or no relationship to effective performance on the job. Irrelevant requirements should be eliminated.

The completion of an approved training program and certain experience requirements are usually reasonable requirements. Yet even such requirements can become exclusionary if the time involved in training is excessive or if needless restrictions are imposed. For example, a requirement that an applicant's experience must have been acquired in a specific city or state would be difficult to justify as reasonable.

While most applicants for entry into a regulated occupation usually apply after completion of an approved program of training, the law should make allowances for those who may have acquired their competence outside the formal educational system—in the armed services, for example. It should also be recognized that for certain occupations no formal training programs presently exist. Drug and alcohol counselors, for example, often acquire their knowledge of chemical dependency through on-the-job training and experience. Ways must be found to evaluate such individuals, not in terms of their formal training, but in

terms of their demonstrated competence to perform the functions required by the job.

Indeed, all testing and evaluation procedures used in making licensing or certification decisions need to be scrutinized to be sure that they are fair to candidates and that they meet professional testing standards. Further, in those fields where employers are required by law to hire only individuals who are licensed or certified, the state boards or agencies which issue these credentials should be aware that they may be subject to the proposed "Uniform Guidelines on Employee Selection Procedures."[2] These uniform guidelines stipulate that evaluation procedures which affect employment decisions must not discriminate unfairly against members of minority groups, women, or other classes protected under Title VII of the Civil Rights Act of 1964. In addition, when the tests used in the licensing or certification process result in significant disparities in passing rates among various applicant groups, and there is a legal challenge, the board or agency which issued the license or certificate may be required to demonstrate that its procedures, including the test in question, meet the standards set forth in the uniform guidelines.

Every out-of-state licensee or applicant should have fair and reasonable access to the credentialing process.

When two states have a reciprocity arrangement, licensed practitioners from one state will be licensed by the other without further examination. However, where no such agreement exists, licensed applicants from other states may be required to undergo the entire licensing process—including written and performance examinations—regardless of their experience or qualifications. This can work a real hardship on qualified practitioners who have been out of school for many years because examinations used for initial entry tend to emphasize what is currently being taught in occupational training programs. With the passage of time, most professionals forget many of the theoretical concepts as well as specific occupational information that they learned while in school, especially if these are seldom used in their day-to-day practice. However, as they encounter new problems and situations in the course of their practice, they must acquire new knowledge and skills in order to meet these challenges successfully. Thus, the test used to screen recent graduates may not be the best or the most effective way to assess the competence of those who have been out in practice for a number of years.

Hardships can also be created by the examination process itself. In dentistry, for example, out-of-state licensees and applicants must supply their own patients for the clinical portion of the examination. The applicant must often literally walk the streets in search of individuals in need of specific types of dental work who are willing to have the work done during the course of the licensing examination. Such people are often hard to find.

Many people believe that licensure by endorsement is a more equitable procedure. Under such an arrangement, individuals who are already licensed in one state may submit their credentials for evaluation by the state to which they wish to migrate. Applicants who are as qualified as those practitioners in the state who were graduated at about the same time would be licensed without requiring them to take the initial application examination.

In order for such endorsement licensing to work, states need to adopt standards of entry that are roughly comparable to those of other states. One technique is to make use of national examinations, when such examinations are available. If an applicant has already passed an examination which is similar or equivalent to the examination given by his new state, the need for reexamination should be questioned. Any state agency that wishes to adopt standards substantially higher than those which prevail elsewhere should be required to demonstrate that these higher standards would clearly be in the public interest and not calculated to exclude qualified practitioners from entering the state.

Once granted, a credential should remain valid only for that period during which the holder can provide evidence of continued competency.

Regulatory agencies usually make a strenuous effort to ensure that applicants are initially competent, but they are often much less zealous in monitoring the competence of practitioners after they have been licensed. Thus, the public has no assurance that licensees have kept abreast of developments and can still provide high-quality services.

A number of strategies have been proposed for assuring continued competence. While many states have adopted mandatory continuing education as a condition of relicensure, there is no evidence available to indicate that mandatory continuing education assures competence. Indeed, consumer groups are asking whether the cost of such education, which ultimately must be borne by the public, will provide consumers with anyy added protection against incompetent practitioners.

The idea of reexamination as a condition of relicensure has been strongly resisted by licensees. However, a number of nongovernmental medical specialty certification boards have recently demonstrated that it is possible to develop written tests and performance measures which simulate important aspects of the physician's work. It remains to be seen whether periodic reexamination is a practical and cost-effective way of dealing with the problem of continued competency.

Peer professional evaluation—through direct observation or review of records—has been proposed as a procedure that might be used in place of or as a supplement to periodic reexamination. Unfortunately, doubts about the dependability of peer review procedures have been raised. Studies show that qualified experts often do not agree as to what constitutes acceptable

performance; neither do they apply standards uniformly. Clearly, more attention needs to be paid to defining "acceptable performance" and to training evaluators in the use of standards before peer review procedures are widely applied.

A vigorous enforcement and discipline policy for those found unfit to practice has also been proposed. This approach assumes (1) that most practitioners, acting in their own self-interest, make an effort to keep abreast of their fields; and (2) only a small minority, for a variety of reasons, fails to maintain its competence. Two such minorities are inactive and high-risk practitioners.

At present most inactive practitioners can preserve their right to practice by simply paying the renewal fee. By keeping their licenses in force, they are able to resume practice at any time even though they may have failed to maintain their competence. States should consider requiring that practitioners who have been inactive for a substantial period to demonstrate that they are still competent.

A system needs to be developed to identify high-risk practitioners against whom numerous complaints or malpractice actions are lodged. If there is evidence of negligence or incompetence following an investigation, such individuals should be subject to disciplinary action. Serious offenders could have their licenses suspended or revoked. Less serious offenders could be placed on probation, required to participate in relevant continuing education programs, or to work under supervision for a stated period.

This "enforcement" approach is selective as it is concerned only with those practitioners who are the subject of complaints. In this respect it is likely to be more cost-effective than a system which subjects all practitioners to rigid educational or evaluation procedures.

The Regulatory Structure and Board Composition Should Promote Accountability and Public Confidence

The public should be involved in the regulatory process.

For many years, trade and professional groups fostered the idea that only members of their own occupational group were qualified to make judgments about entrance standards, examination content, or disciplinary matters. This professional mystique argued that the public had no role to play in the regulatory process.

In recent years this view has been challenged. Consumers now argue that since regulation affects their vital interests, they have a right to share in the decisionmaking process. They point out that every day laymen legislators and jurors must make decisions in highly technical areas. They are able to do so by utilizing the testimony of experts to set forth the facts and clarify the issues.

There has been a growing movement to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation. Those who favor the idea believe that the

presence of public members will help to break up the in-group psychology that often prevails when all board members are practitioners. Ideally, public members will provide a point of view otherwise absent on a board composed solely of license holders.

Initial experience with public members often was not favorable because those appointed lacked the qualifications for effective service on a board. Recent experience suggests that public members can make significant contributions when they have backgrounds equipping them to deal with problems and issues likely to come before the board, a strong interest in serving, sufficient time to devote to board activities, and prior experience in community affairs so that they know how to get things done in the public arena.

While public members may not know much about the technical aspects of an occupation, they may nevertheless contribute to board deliberations by raising questions about such topics as the appropriateness of entrance requirements, board rules, tests, fees, and disciplinary procedures.

How many public members should be on a board? There is no simple answer, but if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to 10 members. In California, the legislature has decreed that for certain boards a majority shall be public members. (See Chapter 3 for a case study of the California experience.)

Complaints should be investigated and resolved in a manner which is satisfactory and credible to the public.

Many regulatory agencies are perceived as overly protective of those whom they regulate. This has led consumers to question whether professionally dominated boards are willing to deal forcefully with their peers when complaints are received from the public. Consumers also express doubts that they will receive a fair hearing before boards composed solely of licensed practitioners.

To remedy the situation, a number of states have centralized complaint handling in independent agencies whose staffs are not beholden to the regulatory board or the occupational group. Where investigation reveals that a practitioner has been incompetent or has violated board rules, such agencies can initiate disciplinary action promptly without awaiting consent from the board.

The decision of an independent agency is more likely to satisfy the consumer as a fair decision than one rendered by the practitioner's peers. Unfortunately, disciplining an errant practitioner will seldom provide relief to the client who has suffered physical injury or financial loss. A number of states have established restitution funds to which all licensed attorneys and real estate brokers contribute. Such funds are used to reimburse clients for determinable losses caused by unscrupulous practitioners. This spares clients the necessity of seeking

relief in the courts, with all the attendant costs and long delays. However, the court route remains open should the client wish to use it.

Procedures for evaluating the qualifications of applicants and disciplinary proceedings against licencees should be conducted in a fair and expeditious manner.

The constitutional rights of applicants are not always safeguarded in the present system which makes the regulatory board virtually the sole judge of who shall and shall not be credentialed. For example, applicants who are rejected on the basis of qualifications or for failing an examination may be forced to take their appeal to the same board that passed on their qualifications initially, or which was responsible for preparing and grading the examination that they failed. Arguing that such applicants always have recourse to the courts ignores the simple truth that litigation is both costly and time consuming. If licensed practitioners cannot work, they are unlikely to have the resources to pursue a lengthy legal battle. Clearly, the solution lies in providing applicants with an independent administrative appeal route either through the centralized licensing agency or through a separate board, such as that provided by the New York State Board of Regents.

The licensee who is charged with incompetence or unprofessional conduct faces the loss of his or her livelihood and is entitled to due process protection. Such protection is absent when members of a regulatory board serve multiple functions (investigator, prosecutor, judge, and jury). Once again, such investigations should be conducted by an independent unit. Where probable cause is found, the evidence should be presented before a hearing officer or an administrative judge to establish the facts and determine whether a law or board rule has been violated. To avoid allegations of favoritism, some boards rely on the hearing officer to recommend appropriate sanctions.[3]

In a number of states, boards find that they are enjoined from taking disciplinary action against errant practitioners while civil or criminal actions against such practitioners are still pending. This means that a licensee charged with negligence, incompetence, or serious breach of conduct may continue to provide services even when the evidence suggests that he or she could be a menace to society. To rectify such situations, states are granting regulatory agencies emergency powers which will enable them to suspend an individual's license for a given period where continued practice would not be in the public interest.

The purpose of regulation is to protect the public, not the economic interest of the occupational group.

Boards sometimes make decisions that serve the economic interests of the occupational group rather than those of the public. For example, a board may

tighten entry qualifications or raise the passing score in order to limit the supply of practitioners. They may also pass rules that prohibit price advertising or competitive bidding. Such rules often characterize competitive practices as "unprofessional conduct." Restrictions on the flow of truthful information concerning fees, qualifications, and professional attainments clearly hamper the consumer's ability to shop for services. Competition is lessened, thereby reducing downward pressure on fees.

Many licensing statutes substantially adopt the private ethical code of the profession. These ethical codes are the source of many anticompetitive rules and statutory provisions. Lawmakers should be wary of edifying into public law ethical codes clearly designed to serve and "dignify" the profession. One possible unintended effect of giving specific legislative sanction to prohibitions against competitive bidding, for example, might be to place such practices beyond the reach of federal antitrust law.[4]

The administrative structure should promote efficiency, policy coordination, and public accountability.

While autonomous regulatory boards continue to exist in many states, there is a growing realization that such an arrangement, besides being inefficient from the standpoint of optimal use of state resources, makes coordination and effective oversight very difficult.

Three widespread practices tend to contribute to board autonomy. They are (1) boards are often housed in their own building or rented office space, physically separated from other offices of state government; (2) boards frequently generate their own revenue through the collection of license fees, and thus exist outside the usual budget and appropriation mechanisms of the legislature; and (3) trade and professional associations frequently are vested with the power to nominate board candidates. This practice contributes to the notion that the board is an extension of the association rather than an arm of state government.

Some states have created umbrella agencies to provide administrative, clerical, and fiscal services to the various boards. These are usually "housekeeping" agencies headed by an administrator who has no authority to coordinate board activities or to question board policies. This lack of coordination sometimes results in the setting of standards or promulgation of rules by a board without taking into consideration the probable impact that these may have on other boards or agencies.

Some critics of such "housekeeping" agencies say that the authority of the administrator needs to be strengthened if policy coordination is to occur. They urge that the director have power to hire and fire board staff, control board budgets, review and approve proposed rules and regulations, initiate and conduct investigations, provide legal services to boards, and see that disciplinary

proceedings are conducted expeditiously and with adequate due process safeguards. Under such an arrangement, boards would be largely advisory. They would concentrate on formulating and proposing policies, establishing professional or technical standards, developing examinations, and recommending sanctions in disciplinary matters.

Occupational groups tend to be critical of the strong administrator approach, arguing that there is not sufficient evidence of wrongdoing to suggest that such a proposal is necessary. Moreover, they believe that such an arrangement places too much power in the hands of a single individual. To counter this latter criticism, it has been proposed that, as an alternative to a strong director, rulemaking and decisionmaking authority be placed in a board or commission made up of public members without financial, educational, or marital ties to any of the regulated occupations. Such a group would be better able to evaluate proposed rules and other board actions from a public interest viewpoint. In New York State, for example, where professional boards serve primarily in an advisory capacity, the New York State Board of Regents, a lay board, has decisionmaking authority.

The system used to finance regulatory activities can contribute to the accountability of individual boards and to the effectiveness of the overall regulatory program.

The tradition of financing regulatory activities out of income from fees has contributed to the strength and durability of many autonomous boards. Because such boards do not have to come before the legislature to obtain funds, they are seldom required to justify their budgets or to demonstrate that they are serving an important public purpose. In a very real sense, the fiscal autonomy of boards contributes to their lack of accountability. Moreover, when any of these boards has income in excess of their expenses, such funds are usually placed in segregated accounts under the control of the boards. Board members tend to think of these funds as belonging to the occupational group to be used solely for the benefit of the group.

Many people view a change in the financial structure of licensing as an effective way to make boards more accountable. They argue that since regulation is intended to protect the public, all regulatory activities should be funded, at least in part, by the taxpayers at large. They urge that any income from fees go directly into the general fund and that individual boards be allocated their operating expenses through the normal budgetary process.

Those who oppose this general fund approach express a concern that the legislature may increase regulatory fees solely for the purpose of obtaining additional revenue and that this would constitute an unfair tax on practitioners in regulated occupations. Fears are also expressed that in periods of financial stringency, board budgets would be cut and regulatory activities curtailed, even when income from fees is adequate to support the program.

Some of these fears have been allayed in states which place all income from fees into an account administered by the umbrella agency. Operating budgets for the various boards are allocated by the agency on the basis of need. This pooling arrangement makes it possible to use funds from financially strong occupational boards—usually those with a large number of licensees—to help defray the operating expenses of the smaller and financially weaker boards. Income from fees also covers the cost of operating the agency and providing all boards with essential services. The agency is, of course, accountable to the legislature for the overall effectiveness of the regulatory program.

2. Questions Legislators Should Ask

Questions legislators should ask of groups seeking regulation follow and have been drawn from a variety of sources. For example, the Bateman Commission Report to the New Jersey Legislature[5] was one of the earliest efforts to develop licensing criteria and procedures for scrutinizing applicant groups to determine (1) whether a need for regulation exists and (2) what mode of regulation would be most appropriate.

Staffs of the Educational Testing Service and the Council of State Governments have attempted to synthesize material from these and other sources in order to provide a comprehensive list of questions that legislators may wish to ask of groups sponsoring regulatory legislation. Not all questions will be applicable in every situation. However, the topics covered provide a useful checklist not only for legislators but also for groups sponsoring legislation as well.

What Is the Problem?

- Has the public been harmed because the occupational group has not been regulated?
  - To what extent has the public's health, safety, or economic well-being been harmed?
- Can the claims of proponents of regulation be documented?

Why Should the Occupational Group Be Regulated?

- Who are the users of services offered?
  - Are they members of the general public who lack knowledge necessary to evaluate qualifications of those offering services?
  - Are they institutions or qualified professionals who have the knowledge to evaluate qualifications?
- What is the extent of autonomy of practitioners?
  - Is there a high degree of independent judgment required of practitioners?
  - How much skill and experience are required in making these judgments?
  - Do practitioners customarily work on their own or under supervision?
  - If supervised, is supervisor covered by regulatory statute?
    Note: There is little justification for licensure if practitioners work under supervision. If regulation is needed, it should be the supervisor who is regulated.

What Efforts Have Been Made to Address the Problems?

- Has the occupational group established a code of ethics?
  - To what extent has it been accepted and enforced?
- Has the occupational group established complaint-handling procedures for resolving disputes between practitioners and public?
  - How effective has this been?
- Has a nongovernmental certification program been established to assist the public in identifying qualified practitioners?
- Could the use of applicable laws or existing standards solve problems?
  - Use of unfair and deceptive trade practices laws.
  - Use of civil laws such as injunctions, cease and desist orders, etc.
  - Use of criminal laws such as prohibitions against cheating, false pretenses, deceptive advertising, etc.
  - Use of existing standards such as construction codes, product safety standards, etc.
- Would strengthening existing laws or standards help to deal with the problem?

Have Alternatives to Licensure Been Considered?

- Use of an existing agency under legislative control.
- Regulation of business employer rather than individual practitioner, e.g., licensing restaurants rather than cooks or waiters/waitresses.
- Registration of practitioners coupled with minimum standards set by state agency.
- Certification of practitioners, thereby restricting use of title to those who have demonstrated competence. Occupational group, however, would not have control of field of practice.
- Why would the use of the above not be adequate to protect the public interest?
  - Why would licensing be more effective?

Will the Public Benefit from Regulation of the Occupation?

- How will regulation help public identify qualified practitioners?
- How will regulation assure that practitioners are competent?
  - What standards are proposed for granting credentials?
  - Are all standards job related?
  - How do these standards compare with those of other states?
  - If standards differ from those of other states, can the difference be justified?
  - Are there training and experience requirements?
    - —Are these requirements of excessive duration when compared with other states? Why?
    - —Does training include supervised field experience? If so, is an additional experience requirement justified?

- Are there restrictions on where or how experience may be acquired? Why?
- Will alternative routes of entry be recognized?
  - —Will applicants who have not gone through prescribed training/experience be eligible for licensure or certification?
  - —Will licensure or certification in another state automatically allow an individual to be credentialed in this state?
- Will applicants for licensure or certification be required to pass an examination?
  - —Does an examination already exist?
  - —Does it meet professional and legal testing standards (see footnote 2 on proposed uniform quidelines)?
  - —If no test exists, who will develop it and how will development cost be met?
- Is there a "grandfather" clause in licensure?
  - —Why is it necessary?
  - —Will such practitioners be required to take a test at a later date?

■ What assurance will the public have that the individuals credentialed by the state have maintained their competence?
- Will license or certificate carry expiration date?
- Will renewal be based solely on payment of fee?
- Will renewal require periodic examination, peer review, evidence of continuing education or other procedures for continued competence?

■ How will complaints of the public against practitioners be handled?
- Will there be a method for receiving complaints?
- Will there be an effective procedure for disciplining incompetent or unethical practitioners?
- What grounds will there be for suspension or revocation of credentials?

■ Is it feasible to establish a restitution fund so that the public will be able to recover money lost through actions of unscrupulous practitioners?

Will Regulation Be Harmful to the Public?

■ Will competition be restricted by the occupational group, e.g., prohibiting price advertising?

■ Will the occupational group control the supply of practitioners?
- By standards more restrictive than necessary?
- By restricting entry of those from other states who have substantially similar qualifications?

■ Will regulation prevent the optimum utilization of personnel?
- Will "scope of practice" prevent individuals from other occupational groups from providing services for which they are qualified by training and experience?

■ Will regulation increase costs of goods and services to consumers?

■ Will regulation decrease availability of practitioners?

- Are there safeguards in law to ensure that the occupational group does not use its powers to promote self-interest over those of public?

How Will the Regulatory Activity Be Administered?

- Will the regulatory entity be composed only of members of occupation?
  - Will there be public members on the regulatory entity? In what percentage?
- What powers will regulatory entity have?
  - Will it review qualifications, examinations, investigations, and disciplining of practitioners?
  - Will it promulgate rules and codes of conduct?
- Will actions of regulatory entity be subject to review?
  - By whom?
  - Will reviewing authority have power to override regulatory entity actions? Which ones?
- How would cost of administering regulatory entity be financed?
  - How will fees be set?
  - Will income from fees go into general fund, departmental fund, or special account controlled by regulatory entity?

Who Is Sponsoring the Regulatory Program?

- Are members of the public sponsoring regulatory program?
- What associations, organizations, or other groups in the state represent practitioners?
  - Approximately how many practitioners belong to each group?
  - What are the different levels of practice in each group?
- Which of the above groups are actively involved in sponsoring regulatory programs?
  - Are other groups supporting the effort? If not, why?

Why Is Regulation Being Sought?

- Is the occupational group seeking to enhance its status by having its own regulatory law?
- Is the occupational group claiming it is prevented from rendering services for which its members are qualified by "scope of practice" statement of another occupation?
  - If so, what efforts have been made to resolve differences?
- Is the occupational group seeking licensure in order to gain reimbursement under federal-state programs or private insurers, e.g., Medicare or Blue Cross?
- Is the public seeking greater accountability of the occupational group?

3. Several Case Studies

Questions are being asked about state schemes for regulating occupations. In some states legislators have undertaken comprehensive studies aimed at producing major structural changes in the licensing system. In others, legislators have focused on specific problems, such as the process by which decisions are made to license or not to license an occupation and whether the scope of practice for an occupation should be expanded. There has also been growing interest in devising ways to make boards mc ccountable. Placing public members on boards represents one such effort.

This chapter presents case studies illustrating approaches that three states have taken in dealing with licensing issues. These case studies are not offered as models to be emulated, but rather as examples of how legislators can break out of conventional molds to deal with regulatory problems.

California Public Member Act

A frequent criticism of licensing boards composed entirely of members of the regulated occupation has been that such boards sometimes use their powers to promote the interests of the occupational group rather than those of the public. Some of the ways in which they may do so are by setting excessively high entry standards or promulgating rules that unduly restrict competition.

In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decisionmaking. Such appointments were often viewed as "tokenism" since public members often lacked qualifications and therefore had relatively little impact on the regulatory process.

To increase public confidence in the regulatory process, S.B. 2116 (known as the Public Member Bill) was introduced into the California legislature in 1977. This act, coupled with S. B. 1039 and S.B. 1987, provided for a majority of public members on all boards except the health-related boards and accountancy, where the ratio is one-third public members to two-thirds licensee members. These bills were enacted and went into effect on January 1, 1977. The California Public Member law recognizes the public policy nature of many decisions faced by regulatory boards and it institutes a system that ensures that these decisions will be made by a board containing a diversity of perspectives.

The Department of Consumer Affairs (the agency assigned responsibility for regulatory boards) conducted a wide-ranging "talent search" to identify prospective board members who were either knowledgeable about the occupation or who had background or specialized skills that would enable them to contribute to the work of the board. Among the initial group of appointees were a no-fee physician offering medical services to ghetto residents to the Board of Medical Examiners, a black female law professor specializing in Title VII of the Civil Rights Act to the Board of Dental Examiners, a lawyer/accountant to the Contractor's Board, and a legal aid attorney to the Collection Agency Advisory Board. Perhaps the most widely publicized appointment was that of Robert Truehaft to the Board of Funeral Directors and Embalmers. Mr. Truehaft is the husband of Jessica Mitford, author of *The American Way of Death*. Another appointment that attracted wide attention was that of an ex-convict to the Board of Vocational Nurses and Psychiatric Technicians. It has been alleged that this board had been pursuing a policy of denying licensure to ex-offenders.

The department feels its experience with public members has been highly rewarding. It now has substantial citizen participation which has brought a new perspective to board meetings and decisions. Assumptions of the past are being challenged and a broader range of skills is available for problemsolving.

To orient and educate new public and licensee board members, the department has scheduled periodic orientation sessions of one to two days

duration and it has developed an *Orientation Manual* that details the administrative and disciplinary processes.

A board member newsletter, *Boardialogue*, describing board member activity and experience and containing information and news of interest to board members, is prepared and distributed every other month.

A congress of board members, made up of one elected delegate from each of the 38 boards, is being organized. The purpose of the congress is to provide a forum for the exchange of information, to develop positions on legislation affecting several boards, to formulate and discuss licensing issues, and to advise the director on future directions.

For further information contact: Mr. Richard Spohn
Director
Department of Consumer Affairs
1020 N Street
Sacramento, California 95814
(916) 445-4465

A Process for Screening Occupational Groups Seeking Regulation

Minnesota

In an effort to halt the unnecessary proliferation of licensing boards and to achieve greater coordination among existing boards, in 1976 the Minnesota legislature enacted an omnibus credentialing act, which amended an earlier law—the Allied Health Manpower Credentialing Act of 1973. This legislation requires that all health and other human services groups seeking to become regulated go through a review process carried out by the Minnesota Department of Health, Division of Health Manpower, for the Human Services Occupations Advisory Council (HSOAC) which advises the commissioner of the Department of Health.

Any group requesting regulation must first fill out a detailed applicant questionnaire documenting the need for regulation based on factors in authorizing legislation (Minn. Stat., Sec. 214.001). After it has been accepted by the commissioner and HSOAC, the completed questionnaire becomes a public document available for inspection by all interested parties. Staff reviews the application and circulates copies to related occupational groups, appropriate government agencies, and consumer groups. Recipients are invited to point out errors or exaggerations and to comment on problems that may arise if the regulatory proposal is implemented.

A number of public forums are then scheduled in various parts of the state so that interested parties may testify and answer questions with respect to the need for regulation, the mode of regulation, and the type of administrative structure. The forums are conducted by members of a subcommittee of HSOAC. The 26-member council is made up of representatives of the 10 existing health licensing boards, two other regulated groups, three related state agencies, and 11 members appointed by the governor, including five members from groups not credentialed at the present time. HSOAC is staffed by the Division of Health Manpower.

The application, staff reports, minutes, other data, written comments, and testimony received at the public forum are reviewed by the subcommittee. A recommendation, accompanied by supporting documentation, is then transmitted to the full council.

The recommendation may take three forms:

(1) No regulation of the occupation is warranted.

(2) The occupational group should be registered, with administrative authority to be vested in one of the existing health-related licensing boards or in the Minnesota Department of Health. Under registration (known elsewhere as "statutory certification" or "permissive licensure") only practitioners meeting certain qualifications may use a particular title. It would not be illegal for unregistered practitioners in other occupational groups to perform similar tasks, but only those listed on the official register could use the designated title. A

recommendation to register a group may be implemented without action by the legislature.

(3) The occupational group should be licensed, either through one of the existing boards, through the Minnesota Department of Health, or through the creation of a separate board. If the recommendation to license is forwarded by HSOAC to the commissioner of the Department of Health and if the commissioner agrees, he will transmit it to the legislature for appropriate action.

Following recommendation 2, administrative rules for the registration of the group are developed through the assistance of a technical advisory group and comments received through public forums held by HSOAC. When the final draft of the rules is completed, the commissioner of the Department of Health authorizes a public hearing.

Since the inception of the applicant group evaluation process in 1974 nine credentialing decisions have been made. Five decisions for registration were for emergency medical technicians, environmental health specialists, speech language pathologists or audiologists, chemical dependency generalists, and contact lens technicians. In three cases no credentialing—neither licensure nor registration—was recommended. These groups were behavioral analysts, medical laboratory personnel, and ophthalmic medical assistants. One preliminary licensure recommendation for X-ray machine operators is being refined to determine placement of responsibility and to define competency and training levels. If licensure is recommended, this recommendation will be brought to the legislature with all the background work completed for a bill and adequate data to support the recommendation.

Supporters of the program believe that it has helped to reduce unnecessary proliferation of licensure and the further fragmentation of health and human services personnel. An added benefit may be the opportunity which HSOAC provides for interdisciplinary dialogue. This dialogue may encourage licensing board members and others to examine the complexity of the health care delivery system and the issues involved in training, regulating, and utilizing health and human services manpower. With the knowledge gained, decisions can be made from a broader and more informed perspective.

For further information contact: Ms. Corrine Larson
Director, Division of Health Manpower
Minnesota Department of Health
717 SE Delaware Street
Minneapolis, MN 55440
(612) 296-5393

Virginia

The volume of requests for the creation of new regulatory boards and the need for supplemental legislation dealing with existing boards led the Virginia General Assembly in 1972 to pass Joint Resolution 41, directing the Virginia Advisory Legislative Council to study the statutes relating to professions and occupations and their administration.

The report of the committee (H.D. 31), issued in 1974, recommended the creation of a Commission for Professional and Occupational Regulation. The commission consisted of the director of the Department of Professional and Occupational Regulation as chairperson, the commissioner of the Department of Agriculture and Commerce, the commissioner of the Department of Health, the commissioner of the Department of Labor and Industry, and three public members. In 1977, under a reorganization act, most licensing was transferred to the Department of Commerce. The name of the commission was changed to the Board of Commerce. It now consists of nine public members.

The Board of Commerce (like its predecessor) is charged with the responsibility for determining whether professions and occupations not presently regulated should be regulated and, if so, what degree of regulation should be imposed. The legislation specified that the board shall recommend to the legislature only that degree of regulation needed to protect the public health, safety, and welfare. Before recommending any new regulation, the board is directed to consider as alternatives (1) possible statutory changes in civil or criminal law, and (2) possible statutory changes to grant an appropriate state agency power to impose sufficient inspection and injunction procedures.

If these approaches are deemed inadequate, the board is then directed to consider registration or certification as possible alternatives to mandatory licensing. The following criteria are to be considered in determining the proper degree of regulation.

(1) Whether the practitioner performs a service for individuals involving a hazard to the public health, safety, or welfare, if unregulated.

(2) The views of a substantial portion of the people who do not practice the particular profession, trade, or occupation.

(3) The number of states which have regulatory provisions similar to those proposed.

(4) Whether there is sufficient demand for the service for which there is no substitute not likewise regulated and this service is required by a substantial portion of the population.

(5) Whether the profession, trade, or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession, trade, or occupation, as evidenced by established and published codes of ethics.

(6) Whether the profession, trade, or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.

(7) Whether the professional, trade, or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession, trade, or occupation.

(8) Whether current laws which pertain to public health, safety, and welfare generally are ineffective or inadequate.

(9) Whether the characteristics of the profession, trade, or occupation make it impractical or impossible to prohibit those practices of the profession, trade, or occupation which are detrimental to the public health, safety, and welfare.

(10) Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

All requests for licensing must be considered by the Board of Commerce before going to the legislature. The board requires each applicant group to submit detailed information relating to the criteria listed in the law. Hearings are held to give the applicant group an opportunity to present its case and for other groups to appear in support of or in opposition to the request. After the board has reached a decision, it transmits its recommendations to the legislature, along with supporting documentation. If the recommendation is in favor of regulation, a detailed set of agreed-upon rules and regulations must be presented to the legislature before action is taken. In this way the legislature knows beforehand what standards and procedures will be used by the regulatory board, even though these details are not incorporated into the regulatory statute.

Since this screening approach was initiated in 1974, 17 groups have filed formal applications. Of these, seven were recommended for licensure, but only three received approval from the legislature. In addition, two groups were recommended for certification, but neither won approval in the legislature. Each year since 1974, fewer and fewer groups have managed to get through the screening process. In 1977 not a single group was recommended for licensure.

For further information contact: Mrs. Ruth Herrink
Director, Department of Professional
and Occupational Regulation
P.O. Box 1-x
Richmond, Virginia 23202
(804) 786-2161

California Experimental Health Manpower Projects

In the early 1970s, the California legislature was besieged with requests to license new health professional groups. At the same time, some groups (nurses particularly) were practicing functions not allowed under the current practice acts. The legislature was faced with making decisions on licensure with minimal or conflicting information and licensing boards were faced, in some cases, with widespread violations of the practice acts.

In 1973 the legislature enacted A.B. 1503. This legislation granted authority to the California Department of Health to waive practice acts or other licensing laws to enable training programs to train practitioners in expanded functions. Responsibility for administering the program is placed in the Department of Health, Office of Health Professions Development (OHPD).

Projects are generally carried out by universities, community colleges, clinics, or hospitals. They must make application for the waiver to OHPD. Applicants must provide information on the nature of the licensing/law practice act for which waiver is being requested; the tasks trainees will be trained to perform; the training program facilities, instructional materials, and faculty; and plans to evaluate the training program and the trainees. A review committee made up of Department of Health program specialists, licensing board members, professional association members, and others conducts an informal review of the proposed training program. Suggestions from the review committee frequently result in changes in the proposed program. Based on the information collected through the process, the Department of Health director makes a final decision on approval of the applications.

Currently 28 projects are in operation. Since the program began in 1973, more than 6,000 trainees have completed the more than 75 training programs. The majority of the projects and trainees have been in the nursing field.

This program is considered quite successful by the Department of Health, licensing boards, professional associations, and the legislature. By providing for experimentation with an expanded scope of practice for a particular group, the legislature has data and experience upon which to base its decisions regarding licensure. The program has contributed to changes in the Nurse Practice Act (1975) and the Dental Practice Act (1976).

This program operates on an annual budget of less than $80,000. While state government does not fund the training programs, the program does offer state policymakers an opportunity to make decisions about the shape of the health care delivery system and on professional licensure matters.[6]

For further information contact: Dale Houghland, Chief
Office of Health Professions Development
California Department of Health
455 Capitol Mall, Suite 130
Sacramento, California 95814
(916) 322-5566

Footnotes

1. Benjamin Shimberg, *Improving Occupational Regulation* (Princeton, N.J.: Educational Testing Service, 1976).

2. Draft uniform guidelines were published in the *Federal Register* on December 30, 1977. It is expected that the guidelines will be issued in final form during the spring of 1978. These guidelines expressly cover licensing and certification boards and agencies. There is some question, however, whether such boards and agencies are subject to the requirements of Title VII when carrying out their licensing or certification responsibilities.

3. See, for example, Ruth J. Herrink, "Should Hearing Officers Replace Occupational-Professional Boards?," *State Government*, vol. 51, no. 1, winter 1978.

4. *Parker* v. *Brown*, 317 U.S. 431 (1943), and several subsequent U.S. Supreme Court decisions, including *Bates* v. *Arizona State Bar*, 97 S.Ct. 1810 (1977), suggest that restrictions on competition specifically authorized by a state acting as sovereign are not subject to the Sherman Antitrust Act.

5. New Jersey Professional and Occupational Licensing Study Committee, *Regulating Professions and Occupations* (Trenton, N.J.: 1971).

6. See, *Health Manpower Licensing: California's Demonstration Projects* (Lexington, Ky.: The Council of State Governments, 1978).

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SUNSET SCHEDULE

Red = done with

SUNSET MASTER

			HEARING	Notes
J.	BARBERS & HAIRDRESSERS (COMBINED)	SB-544 (C) HB-978 in legal	April 29 CSSB-544	Passed out
J.	COLLECTION AGENCY	SB-576 HB-940	April 24,	In drafting Passed Out
J.	ELECTRICAL EXAMINERS	SB-566 HB-		Jon w/ Bob Passed bill Out draft.
C.	A.E.& L.S.	SB- ~~on my desk~~. SB572 HB-1005	April 29	Passed Out
J.	MARINE PILOTS	SB- ~~on Jons desk~~ SB 573 HB-	April 24	Passed Out
C.	REAL ESTATE	SB-on my desk. HB-1004	April 24	
	WELDING EXAMINERS	SB-553 (C) HB-994	CSSB-554 Jon gets signed to Rules.	Passed Out
F ✓	A.P.U.C.	FRANK's BILL.		Passed out
✓	PUBLIC ACCOUNTANCY	SB-552 in S(J) HB-997		Judiciary
	NURSING HOME ADM	HB-147 in (C)		Waived
	GUIDES	~~[illegible]~~ SB-574. HB	April 24	Passed Out

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Sioux Plummer
Teleconference
Room 30, Ground Floor
State Capitol

From: Jon Mathison
Administrative
Assistant

February 7, 1980

Dear Sioux:

First of all I must say that I like the way you spell your name - most unusual.

Secondly, the topics and locations needed for the teleconference hearings which I have requested are as follows:

SENATE COMMERCE COMMITTEE TELECONFERENCE REQUIREMENTS UPDATE

Thursday, February 21, 1980 - Guide Licensing and Control Board Hearing.
Statewide teleconference - all locations required.

Tuesday, February 26, 1980 --Board of Public Accountancy
SB 183 - " An Act Relating to the Regulation of Public Accountants."
SB 287 - " An Act relating to civil Liability for shoplifting and providing for an effective date."
ANCHORAGE, FAIRBANKS & JUNEAU teleconference locations.

Tuesday, March 4, 1980 - Real Eastate Commission hearing.
ANCHORAGE, FAIRBANKS & JUNEAU teleconference loactions.

Thursday, March 6, 1980 - APUC Hearing. (Locations needed for teleconferencing not yet known. Will let you know on this one.)

All hearings in Beltz Room, #209, Capitol. 3:00 p.m.

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Sioux Plummer
Teleconference
Room 30, Ground Floor
State Capitol

February 6, 1980

Dear Sioux:

The Senate Commerce Committee would like to reserve teleconference facilities for the following dates. The hearings will all be scheduled in the Beltz Room, Capitol #209 at 3:00 p.m. Additional information will be given to you as it is received. Thus far, the only hearing listed which will be statewide is the February 21, 1980. I will let you know of any changes.

SENATE COMMERCE COMMITTEE TELECONFERENCE REQUIREMENTS

Thursday, February 21, 1980 - Statewide teleconference - all locations needed.

Tuesday, February 26, 1980

Tuesday, March 4, 1980

Thursday, March 6, 1980

Thank-you,

Jon E. Mathison
Administrative Assistant
Senate Commerce Committee

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 19, 1980

TO: SENATOR ARLISS STURGULEWSKI
SENATOR TIM KELLY
SENATOR FRANK FERGUSON
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN Brad Bradley

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Tuesday, March 11, 1980
Thursday, March 13, 1980

PLACE: Beltz Room, Capitol Building, Room 209

AGENDA:

Alaska Public Utility Commission Hearing

(Teleconference: All networks)

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

March 21, 1980

CHAIRMAN: Senator Brad Bradley Brad Bradley

VICE-CHAIRMAN: Senator Arliss Sturgulewski

MEMBERS: Senator Frank Ferguson
Senator Tim Kelly
Senator Terry Stimson

ROOM: 211 - Beltz, Capitol Building

DATE: MARCH 25, 1980

TIME: 3:00 p.m.

AGENDA

SB 388 - Supplemental Appropriation/Alaska World War II Veterans Revolving Fund
SB 444 - Establishing the Alaska Veterans' Loan Corporation

SB 378 - Alaska Industrial Development Authority
SB 379 - Transfer Loans/Alaska Industrial Development Authority

SB 430 - Extending the Power of the Alaska Housing Authority
SB 387 - Clarify Authority of Alaska Housing Finance Corporation/Mobile Homes

SB 404 - Re/Alaska National Guard/Alaska Naval Militia/Retirement Benefits
SB 405 - Re/Alaska National Guard/Alaska Naval Militia/Reenlist Bonus

Hearing will be teleconferenced with all teleconference network sites participating.

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 14, 1980

TO: SENATOR ARLIS STURGULEWSKI
SENATOR TIM KELLY
SENATOR FRANK FERGUSON
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Tuesday, February 19, 1980

PLACE: Assembly Building, Room 106

AGENDA:

SB 111 - "An Act Relating to Life Insurance Policy Loans"

SB 397 - "An Act making special appropriation to the Department of Commerce and Economic Development for the prospectors' revolving loan fund; and providing for an effective date.

SB 398 - "An Act establishing the prospectors' revolving loan fund."

Senate Commerce Committee Sunset Workshop on:

The Board of Welding Examiners
The Board of Hairdressing and Beauty Culture Examiners
The Board of Barber Examiners
The Board of Marine Pilots

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 14, 1980

TO: SENATOR ARLIS STURGULEWSKI
SENATOR TIM KELLY
SENATOR FRANK FERGUSON
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN Brad Bradley

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Tuesday, February 19, 1980

PLACE: Assembly Building, Room 106

AGENDA:

SB 111 - "An Act Relating to Life Insurance Policy Loans"

SB 397 - "An Act making special appropriation to the Department of Commerce and Economic Development for the prospectors' revolving loan fund; and providing for an effective date.

SB 398 - "An Act establishing the prospectors' revolving loan fund."

Senate Commerce Committee Sunset Workshop on:

The Board of Welding Examiners
The Board of Hairdressing and Beauty Culture Examiners
The Board of Barber Examiners
The Board of Marine Pilots

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 14, 1980

TO: SENATOR ARLIS STURGULEWSKI
SENATOR TIM KELLY
SENATOR FRANK FERGUSON
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN Brad Bradley

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Thursday, February 21, 1980

PLACE: Beltz Room, Capitol Building, Room 209

AGENDA:

"Veterans' Loan Corporation" bill. (bill number to be announced)

SB 388 - "An Act making a supplemental appropriation to the Alaska World War II veterans' revolving fund; and providing for an effective date."

Teleconference: All networks.

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 14, 1980

TO: SENATOR ARLIS STURGULEWSKI
SENATOR TIM KELLY
SENATOR FRANK FERGUSON
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN Brad Bradley

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Tuesday, February 26, 1980

PLACE: Beltz Room, Capitol Building, Room 209

AGENDA:

SB 287 - "An Act Relating to Civil Liability for Shoplifting; and providing for an effective date."

SB 183 - "An Act relating to the regulation of Public Accountants."

Senate Commerce Committee Hearing on the Board of Public Accountancy.

(Teleconference: Anchorage, Fairbanks, Chaired in Juneau.)

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 14, 1980

TO: SENATOR ARLIS STURGULEWSKI
SENATOR TIM KELLY
SENATOR FRANK FERGUSON
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN Brad Bradley

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Tuesday, March 4, 1980

PLACE: Beltz Room, Capitol Building, Room 209

AGENDA:

Senate Commerce Committee Sunset Hearing on the Real Estate Commission.

(Teleconference: Fairbanks, Anchorage, Chairman in Juneau.)

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 14, 1980

TO: SENATOR ARLIS STURGULEWSKI
SENATOR TIM KELLY
SENATOR FRANK FERGUSON
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN Brad Bradley

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Thursday, March 6, 1980

PLACE: Beltz Room, Capitol Building, Room 209

AGENDA:

Alaska Public Utility Commission Hearing

(Teleconference: All networks)

Persons notified for March 11, 1980 morning meeting:

Wes Coyner (2/29/80)
Eddie Turner (2/29/80)

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 9981

March 18, 1980

Brad Bradley

CHAIRMAN: Senator Brad Bradley

VICE-CHAIRMAN: Senator Arliss Sturgulewski

MEMBERS: Senator Frank Ferguson
Senator Tim Kelly
Senator Terry Stimson

ROOM: 211 - Beltz, Capitol Building

March 20 - Thursday: AT 3:00 p.m.

Sunset Hearing on the Collection Agency Board → Board members to speak w/ individual committee members

OUT SB 64 - Exempting Business Inventory/Municipal Property Taxes

OUT SB 346 (CS) Requests the Department of Revenue to compute and report average price for Alaska Salmon

{SB 405 - Re/Alaska National Guard/Alaska Naval Militia/
{SB 405 Reenlist Bonus

OUT SJR 49 - Require Mexico to Establish Consular Office in Anchorage. all do pass

March 25 - Tuesday: AT 3:00 p.m.

SB 388 - Supplemental Appropriation/Alaska World War II Veterans Revolving Fund

SB 444 - Establishing the Alaska Veterans' Loan Corporation

SB 378 - Alaska Industrial Development Authority

SB 379 - Transfer Loans/Alaska Industrial Development Authority

SB 430 - Extending the Power of the Alaska Housing Authority

SB 387 - Clarify Authority of the Alaska Housing Finance Corporation/Mobile Homes

→ w/ CS

BOARD OF MARINE PILOTS

Key to References

(Y) - (yellow cover) - State of Alaska Sunset Review, 1979. Prepared by the Division of Occupational Licensing

(B) - (blue cover) - Division of Legislative Audit Performance Review

(W) - (white cover) - Senate Commerce Committee Public Hearing Testimony, December 10, 1979

1. Examinations - Statutory elimination of the Coast Guard exam as a prerequiste to the State Exam. Redundant.
   (Y) - p 5, last paragraph; p 6, first paragraph
   (B) - p 5, paragraph 4; p 7
   (W) - p 2, paragraph 3; p 3, paragraph 1; p 4; p 5, paragraph 4

2. Increase the biennial license fee (presently $200) and the application fee (presently $10).
   (Y) - p 3; p 11, paragraphs 2 and 3
   (B) - p 25
   (W) - page 16; page 18

3. Repeal Sec. 08.62.040 (2)(4) which gives the board the power to regulate pilotage fees. I suggest that this power be given to an existing regulation body, such as the ATC, which already has a rate structure within it.
   (Y) - p 7, last paragraph; p 8
   (B) - p 6; p 7, last paragraph; p 12
   (W) - p 6 (Capt. Ed Murphy); p 28, paragraph 1; p 30

4. The Board of Marine Pilots should be continued. (How many years?)
   (Y) - p 1
   (B) - p 7, paragraph 2
   (W) - p 2, paragraph 3; p 6, paragraph 2

5. Repeal Sec. 08.62.110 (AS 30.10 was repealed in 1970) and the portion of Sec. 08.62.120 which states "A license issued under AS 30.10 lapses at the end of calendar year 1970."
   (Y) - p 11; p 13 (obsolete)

6. AS 08.62.040(a)(3) - repeal vessels in section.
   (a) The board shall:
   (3) keep a register of licensed pilots, [vessels], operators, agents, and managers
   (Y) - This is a suggestion by OL and Elaine Cl...ett may wish to comment on this. Evidently there is no way OL is able to keep a register on all vessels. They are performing this function for the Board of Marine Pilots.

7. Section 08.62.150 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.

8. In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.040(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.

1. The Guide Licensing and Control Board should continue until July 1, 1982.

2. Eliminate the Transporter laws:

Sec.	08.54.142	(Qualification)
	08.54.144	(Restriction)
	08.54.146	(Report)
	08.54.170(c)	(License fee)

3. The Board and regulations should be transferred to the Division of Fish & Wildlife Protection, Department of Public Safety.

4. Grounds for disciplining a licensee. (08.54.200)

(a)(1) complaints concerning the licensee have been filed with the board from three or more clients of separate parties within the past five years; or

(a)(2) [A LICENSEE HAS BEEN CHARGED WITH A VIOLATION OF FEDERAL OR STATE SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS; OR]

(c) After a hearing, the board [SHALL] may revoke, suspend, or deny renewal of a license if the board finds that the licensee

(c)(3) has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations within the past five years.

5. Expiration and renewal (08.54.190)

Change license renewal from the existing one year to two years.

6. Appointment and terms of office (08.54.020)

Members of the board may not serve more than two consecutive terms.

7. Creation and membership of board. (08.54.010)

There is created the Guide License and Control Board consisting of seven members. [NO MORE THAN THREE MEMBERS OF THE BOARD SHALL HAVE A GUIDE LICENSE] Three members of the board shall be active licensed guides receiving a substantial portion of their income from guiding activities.

8. Sec. 08.54.030 Chairman of Board. The board shall annually elect one of its members as chairman [.] and one of its members as vice chairman.

9. AS 16.05.340(e) repeal of head tax.

10. Sec. 08.54.170. License fees. (a) License fees for engaging in the profession of guiding are:

1)	master guide license, biennial	[75]	$200
2)	registered guide license, biennial	[75]	$200
(3)	class A assist and guide, biennial	[15]	$50
(4)	assistant guide license, biennial	[10]	$30

11. Sec. 08.54.100(5) eliminate this section.

[MEETS ADDITIONAL QUALIFICATIONS WHICH THE BOARD MAY REQUIRE.]

This change will mean that all guides will be operating by law and not isolated regulations.

12. Examinations: Instead of one exam per year for registered and master guides there should be two exams per year in two different areas of the state-i.e., one in Anchorage, one in Juneau.

13. 08.54.110(12) eliminate this section.

A person is entitled to be licensed as a registered guide if he [MEETS ADDITIONAL QUALIFICATIONS WHICH THE BOARD MAY REQUIRE.]

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 9, 1980

TO: SENATOR ARLISS STURGULEWSKI
SENATOR FRANK FERGUSON
SENATOR TIM KELLY
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN
SENATE COMMERCE COMMITTEE

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Thursday, April ~~9~~ 10, 1980

PLACE: Room 106, Assembly Building

AGENDA:

SB 384 - Re/Alaska Housing Finance Corporation/
Various Funds and Programs

Committee workshop on the following boards:

Alaska Public Utilities Commission

The Board of Marine Pilots

The Collection Agency Board

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 16, 1980

TO: SENATOR ARLISS STURGULEWSKI
SENATOR FRANK FERGUSON
SENATOR TIM KELLY
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN
SENATE COMMERCE COMMITTEE

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Thursday, April 17, 1980

PLACE: Room 106, Assembly Building

AGENDA:

Committee Workshop on the following:

Alaska Public Utilities Commission

Committee Hearing on the following Boards:

Board of Electrical Examiners

Board of Welding Examiners

~~ANNOUNCEMENTS MONDAY, APRIL 14~~

THE SENATE COMMERCE COMMITTEE WILL MEET ~~ON TUESDAY, APRIL 15,~~ tomorrow AT 3 P.M. IN ROOM 106 OF THE ASSEMBLY BUILDING TO ~~CONSIDER THE FOLLOWING:~~ continue our work sessions on the sunset of the

~~SB 284 RE/ALASKA HOUSING FINANCE CORPORATION/VARIOUS FUNDS AND PROGRAMS~~

~~COMMITTEE WORKSHOP ON THE FOLLOWING BOARDS:~~

ALASKA PUBLIC UTILITIES COMMISSION, and

THE COLLECTION AGENCY BOARD

~~[redacted]~~ THERE WILL BE A REPUBLICAN LUNCHEON at noon today ~~[redacted]~~, IN THE CAPITAL ROOM OF THE BARANOF HOTEL. THE SPEAKER WILL BE ~~[redacted]~~ Senator STURGULEWSKI, ~~[redacted]~~

THE SENATE COMMERCE COMMITTEE WILL MEET TODAY AT 3 P.M. IN ROOM 106 OF THE ASSEMBLY BUILDING TO COMPLETE OUR WORKSHOP ON THE ALASKA PUBLIC UTILITIES COMMISSION.

Brad

Don't forget to announce this on the floor today — Jon.

WE WILL ALSO BE HAVING A COMMITTEE HEARING ON

SB 553, "CONTINUE THE EXISTENCE OF THE BOARD OF WELDING EXAMINERS."

AND THE SENATE BILL FOR THE CONTINUATION OF THE EXISTENCE OF THE BOARD OF ELECTRICAL EXAMINERS. (NUMBER TO BE ANNOUNCED)

GET EXCUSED FROM THE FLOOR SESSION ON MONDAY, APRIL 21 AND TUESDAY, APRIL 22.

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 21, 1980

TO: SENATOR ARLISS STURGULEWSKI
SENATOR FRANK FERGUSON
SENATOR TIM KELLY
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN
SENATE COMMERCE COMMITTEE

Brad Bradley

SUBJECT: SENATE COMMERCE COMMITTEE HEARING

TIME: 3:00 p.m.

DATE: Tuesday, April 22, 1980

PLACE: Beltz Room (Room 211), Capitol Building

AGENDA:

SB 543 - "Amending the Small Loan Act"

CSHB 994 am - "Continuing the existence of the Board of Welding Examiners"

Confirmation Hearing -
T. Colleen Bowers (Public Accountancy Board)

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 28, 1980

Brad Bradley

FROM: SENATOR BRAD BRADLEY, CHAIRMAN
SENATE COMMERCE COMMITTEE

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Tuesday, April 29, 1980

PLACE: Beltz Room, Capitol Building (Room 211)

AGENDA:

SB 543 - "Alaska Small Loan Act"

Confirmation Hearing for T. Colleen Bowers, appointee for the Board of Public Accountancy

Committee work session on the Sunset for the Real Estate Board

(Teleconference to Anchorage, Fairbanks, Ketchikan)

ARCTIC CIRCLE

YUKON EQUIPMENT, INC.

ADDRESS YOUR REPLY TO
2020 East Third Avenue
Anchorage, Alaska 99501

April 28, 1980

The Honorable W.E. "Brad" Bradley
Alaska State Senate
Pouch V State Capitol Bldg.
Juneau, AK 99811

Ref: Senate Bill #264

Dear Senator Bradley:

We've been advised that you're hearing on Senate Bill #264 on product liability on Tuesday of this week. Yukon Equipment will be unable to have anyone attend the hearing so we wish to enter this letter as testimony.

Yukon Equipment Inc. is a distributor of construction machinery for the state of Alaska, we are members of a national organization of equipment distributors known as "Associated Equipment Distributors" or, the AED; with headquarters in Chicago.

We have watched our premiums of product liability grow from approximately four hundred dollars a year back in 1970 to almost twenty thousand dollars a year in 1978! This raise in cost not unique to our organization but typical of most members of AED. The reason of these high rates are due to court settlements on claims against manufacturers and sellers of construction equipment. Those claims have been without regard to the age of the equipment the way that the manner in which the machinery has been used or maintained and the state of the art that was available at the time of its manufacture or sale.

As of July of last year there are approximately twenty states that have passed legislation similar to your bill #264.

For the reasons stated above Yukon Equipment will wish to go on record supporting bill #264 and urge its adoption.

Very truly yours,
YUKON EQUIPMENT, INC.

Glen D. Chambers
President

GDC/jh

EQUIPMENT FOR CONTRACTING - LOGGING - INDUSTRIAL

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 28, 1980

TO: SENATOR ARLISS STURGULEWSKI
SENATOR FRANK FERGUSON
SENATOR TIM KELLY
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN
SENATE COMMERCE COMMITTEE

Brad Bradley

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Tuesday, April 29, 1980

PLACE: Beltz Room, Capitol Building (Room 211)

AGENDA:

SB 543 - "Alaska Small Loan Act"

SB 544 - "Establishing the Board of Barbers and Hairdressers"

SB 572 - "Continuing the existence of the Board of Architects, Engineers, and Land Surveyors"

Committee work session on the Sunset for the Real Estate Board

Confirmation Hearing for T. Colleen Bowers, appointee for the Board of Public Accountancy

(Teleconference to Anchorage, Fairbanks, Ketchikan)

Thurs ~~Pacific Equip~~ Anch

√ Alaska Sales + Service - ~~278-1579~~ 274-9513
(John Deere)

√ Evans Engine + Equip - 276-4838

√ Craig Taylor Equip - 276-5050 - [illegible]

√ Nukon Equip - 277-1541

√ Northern Equip - 347-4404

Fbx Economy Tractors.
452-3280

[illegible] Earthmoving Equip - 452-4431

Craig Taylor - 452-1192

Ktch - ~~[illegible] Equip~~ Penny - 225-5188

[illegible]

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 1, 1980

TO: SENATOR ARLISS STURGULEWSKI
SENATOR FRANK FERGUSON
SENATOR TIM KELLY
SENATOR TERRY STIMSON

FROM: SENATOR BRAD BRADLEY, CHAIRMAN
SENATE COMMERCE COMMITTEE

Brad Bradley

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

DATE: Thursday, May 1, 1980

TIME: 3:00 p.m.

PLACE: Room 106, Assembly Building

AGENDA:

SB 543 - "Alaska Small Loan Act"

Worksession on the following bill:

SB 544 - "An Act establishing the Board of Barbers and Hairdressers"

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 1, 1980

Brad Bradley

FROM: SENATOR BRAD BRADLEY
CHAIRMAN
SENATE COMMERCE COMMITTEE

SUBJECT: SENATE COMMERCE COMMITTEE

DATE: Thursday, May 1, 1980

TIME: 3:00 p.m.

PLACE: Room 106, Assembly Building

AGENDA:

SB 543 - "Alaska Small Loan Act"

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 14, 1980

TO: SENATOR ARLISS STURGULEWSKI
SENATOR FRANK FERGUSON
SENATOR TIM KELLY
SENATOR TERRY STIMSON

Brad Bradley

FROM: SENATOR BRAD BRADLEY, CHAIRMAN
SENATE COMMERCE COMMITTEE

SUBJECT: SENATE COMMERCE COMMITTEE MEETING

TIME: 3:00 p.m.

DATE: Thursday, May 15, 1980

PLACE: Beltz Room, Capitol Building (Room 211)

AGENDA:

CS for HB 294 am - "Relating to Mobile Homes"

ALASKA
TRANS.
COMM.

A PERFORMANCE REVIEW
OF THE
ALASKA TRANSPORTATION COMMISSION

October 24, 1978

Commissioner of the Department of Commerce and Economic Development	H. Phillip Hubbard
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Alaska Transportation Commission

Chairman	James Johnson
Commissioner	Walter Kubley
Commissioner	Keith Miller

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

October 24, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW OF
THE ALASKA TRANSPORTATION COMMISSION

October 24, 1978

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

1-Q1 LH

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the provisions of Alaska Statutes 24.20.271 (1), 44.66.010, and 44.66.050 (sunset legislation), a review of the Alaska Transportation Commission (ATC) was conducted to determine if the Commission has been operating in an effective and efficient manner.

AS 44.66 currently specifies that this Commission will terminate on June 30, 1979 but will continue until June 30 of the next succeeding year for purpose of concluding its affairs. This report shall be considered during the legislative oversight function in determining whether the Alaska Transportation Commission should be allowed to terminate, be reestablished in its present form, or in a modified form.

Scope

The functions reviewed included the Commission's executive, administrative, enforcement, rates/tariff analysis, and records/docketing functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and regulations;

(2) Interviews with Commission members and questionnaires sent to the Commissioners;

(3) Interviews with staff members and questionnaires sent to the staff;

(4) Questionnaires sent to regulated motor and air carriers;

(5) Questionnaires sent to shippers utilizing ATC regulated carriers;

(6) Questionnaires sent to attorneys who practice before the Commission;

(7) Questionnaires sent to other states' transportation regulatory agencies;

(8) Questionnaires and interviews sent to transportation associations;

(9) Observations of Commission weekly meetings and several types of hearings held before the ATC;

(10) Tests of ATC records and documents; and

(11) Interviews with Attorney General's office.

ORGANIZATION AND FUNCTION

The Alaska Transportation Commission was established by AS 42.07.011 in 1969 consisting of three members appointed by the Governor and confirmed by the legislature in joint session. The Commissioners are appointed for staggered six year terms with one member designated by the Governor as Chairman for a two year period.

The Commission is authorized by AS 42.07.121 to administer the Air Commerce Act of 1960, the Motor Freight Carrier Act, the Bus Transportation Act, and the Ferry Transportation Act. Under these Acts, ATC is primarily responsible for assuring that all transportation activity under its jurisdiction provides safe, adequate service at reasonable rates and that sound economic conditions prevail. In addition, the Commission may adopt their own regulations within the framework of the existing statutes to accomplish these purposes.

At the present time, the Commission has a staff of 27, consisting of an Executive Director, two hearing officers, a tariff section, and an enforcement section.

The Commission must frequently exercise its quasi-judicial function by conducting formal hearings on:

- Contested applications for new or extended authority.
- Complaint and accusation matters.
- Rate matters.

In addition they may also conduct hearings required by the Administrative Procedures Act (AS 44.62) for the adoption or amendment of rules.

The tariff section reviews rate changes by ATC regulated carriers. Significant changes are brought to the Commission's attention and may be suspended and investigated. In addition, they maintain a library of tariffs filed nationwide and related publications to aid in analysis of Alaskan tariffs.

The enforcement section investigates consumer and carrier complaints, participates in public hearings and other activities necessary to maintain satisfactory compliance by the regulated carriers, and conducts carrier surveys. If a violation of the statutes or regulations has occurred, civil penalties may be assessed.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Commission practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and recommendations presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusions

In our opinion, the Alaska Transportation Commission should continue to regulate the transportation industry pending a comprehensive transportation study. The economic consequences of regulation or deregulation need to be determined in order to fully evaluate the public need for this agency.

However, in the interim, certain changes need to be implemented in order for the Alaska Transportation Commission to effectively accomplish its statutory purposes which are: (1) to provide shippers and receivers with a stabilized rate structure; (2) to foster sound economic conditions among the carriers which will guarantee transportation in the public interest; and (3) to promote adequate, economic services and reasonable charges.

The Commission has been hampered by the following problems in meeting these purposes. The statutes and regulations which affect the Commission are overdue for revision in many areas. Their inadequacy and obsolescence has resulted in several successful appeals of the Commission's decisions. The Commission staff is burdened with additional work due to obsolete legislation such as the Ferry Act as well as dump truck and recreational air carrier regulatory sections. Necessary statutory and regulation revisions must proceed if the ATC is to resolve other problems (see Recommendation Nos. 1, 2 and 3).

Improvement is needed in the manner in which ATC approaches its economic regulation mandate and its enforcement responsibilities. Obtaining data on carrier operations is a prerequisite to determining if a public need exists for the carriers and the rates which should be charged. Moreover, once available, the data must then be audited and analyzed in order to make useful comparisons. After carriers are authorized to operate, ATC must enforce the provisions of the various transportation acts with regard to their transport activities. Consistently suspending civil penalties

levied against carriers is not a useful deterrent in that connection. (See Recommendation Nos. 4 and 5).

Applications for authority to operate have not been processed in a timely fashion which is a disservice to the public. Moreover, communicating operating authority to carriers by telegram, before findings of fact and conclusions of law have been drafted, is contrary to statute and has been successfully appealed to the Superior Court. (See Recommendation Nos. 6 and 10).

The ATC Commissioners have not complied with the statutory requirement for providing notice and opening their meetings to the public. Further, the meetings have not been held weekly as is required. In addition, we have recommended both the Commissioners and the staff decline any future free offers of transportation from regulated carriers. (See Recommendation Nos. 9 and 12).

There has been a serious disregard of the prohibitions against ex parte communication by both the Commissioners and the staff. This is evidenced by phone calls to Commissioners from attorneys representing parties to a case before the Commission and orders written by staff members on cases to which they were a party. Also, it appears the Governor, through the Commissioner of Administration, has attempted to influence the judgement of the Commission. These practices must be corrected in order to avoid repercussions from the Alaska Bar Association or the Appeals Court. (See Recommendation Nos. 7 and 8).

Improvements in the efficiency of order writing and decision making would result from compiling a complete and accurate index of all prior orders and court decisions by subject, including name of case, ATC docket number, and court case number. Improvements in attorney and tariff analyst services should result from a transfer to ATC of the assistant attorney general and tariff analyst currently assigned to the Department of Law. This would be appropriate since much of their work is ATC related. (See Recommendation Nos. 13 and 14).

The primary goals of the Commission are to regulate air and motor commerce to ensure economically sound carriers and a stabilized rate structure. In general, the ATC does not have the necessary information on carriers profit, volume of traffic, trends in population, or traffic growth to make informed decisions on applications for authority or rate changes. Before ATC can develop a statewide plan for allocation of routes and rate structure, they must first complete a statewide study of all factors which concern effective and efficient movement of goods and passengers. ATC is mandated by statute to complete a statewide air commerce study and such a study, including all modes of transportation has been

started by the Department of Transportation in Southeast Alaska. The results of this study, as well as a similar study of other areas in the state should enhance ATC's ability to accomplish their primary goals.

In conclusion, the Alaska Transportation Commission should analyze and evaluate the methods of the Commission and take the necessary actions needed to perform and fulfill their responsibilities to the public.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The statutory requirements for the ATC to regulate bulk-type commodities and recreational air carriers should be eliminated.

AS 42.10.070 and .080 authorize the Commission to regulate common and contract motor freight carriers. AS 02.05.04 states that no person may engage in air commerce unless a certificate has been issued by the Commission. We believe, however, bulk-type commodity and recreational air carriers should not be regulated. Bulk-type commodity carriers (dump trucks) applications for authority are routinely issued, as we found in a 100% test of the applications for authority processed during fiscal years 1977 and 1978. The Commission granted authority to all of the applicants. The Commissioners agree that dump truck operators should be deregulated.

In another review, we determined that time was spent processing unnecessary paperwork for both dump truck operators and recreational air carriers (air guides and lodge pilots). Of the total applications for voluntary suspension of operations processed during fiscal year 1978, 25% were filed by dump truck operators and 30% were filed by recreational air carriers. Since these are seasonal operators, inactivity of business during winter months was the justification given for these suspensions. Besides processing these applications each fall, an order to resume operations is issued by the ATC each spring.

Air guides' professional skills and standards are regulated by the Guides Licensing and Control Board of the State of Alaska. In addition, both air guides' and pilots' flying qualifications and aircraft safety are regulated by the Federal Aviation Administration (FAA). The FAA's determination as to the type of safety regulations a recreational air carrier will be governed by is based solely on the carrier's type of operations, not whether ATC has or has not issued a certificate of authority to operate. Moreover, lodge pilots who service a recreational lodge and air guides are not servicing a public necessity.

Recommendation No. 2

The statutes and regulations governing the ATC should be revised.

We determined through interviews, questionnaires, and review of the ATC records that the statutes and regulations governing the ATC are conflicting, vague, obsolete and

inadequate to carry out the statutory purposes of the transportation acts. The examples received from the Commissioners, staff, and attorneys who practice before the ATC are numerous. The following are examples of the problems caused by the present statutes and regulations:

1. Cease and desist authority is needed to stop illegal carriers. These carriers' operations are oftentimes completed before the ATC can take any action.

2. A definition of a scheduled air carrier and clarification of the definition of an air taxi operator should be provided. Presently, a decision of the ATC has been appealed to the Supreme Court due to the inadequacies or absence of these definitions.

3. Procedural regulations for hearings conducted by the ATC should be adopted. The ATC is currently in the process of writing these regulations which should be implemented as soon as possible to reduce the time and expense of hearings.

4. A clarification of "incidental transportation to some other primary business" is needed. This is another example of inadequate statutes resulting in a decision of the ATC being appealed to the Supreme Court.

5. A statutory amendment is needed to give the Commissioners the authority to delegate their duty to preside over hearings to a hearing examiner. Due to the absence of this authority a decision of the ATC was successfully appealed to the Superior Court. The ATC has subsequently appealed the Superior Court decision to the Supreme Court.

6. Registration fees (air only), weight fees (motor freight and passenger) and application fees for all types of carriers have not been increased for at least nine years. Further, the fees in the Statutes for motor freight and air commerce do not agree with the amounts in the regulations. Also, the $150 civil penalty fee for motor carriers which may be assessed by the ATC for violations of the Statutes or regulations has not been increased since 1970. Inflation has invariably caused the amount of the above fees to be obsolete.

The adoption of statutes and regulations has taken excessive time in many instances. The uniform accounting regulations were drafted in 1965 but not adopted until 1972. Over two years ago, the Bus Transportation Act and regulations had been rewritten to remove the conflicts between them. However, they have not been adopted to date. In addition, 12 other sets of regulations were developed by the ATC staff over two years ago and forwarded to the Attorney General's office for review and approval. These regulations have not yet been adopted. In 1972 an attorney was engaged under a contract by the Legislative Affairs agency to rewrite the transportation acts. These revisions have not yet been enacted and are currently being reviewed by the Department of Law.

In order to ensure effective administration and enforcement of the transportation acts by the ATC, the statutes and regulations should be expeditiously revised.

Recommendation No. 3

The Commission should seek the repeal of the Alaska Ferry Transportation Act.

Presently, only one ferry operation between the Ketchikan International Airport and the City of Ketchikan falls under the jurisdiction of the ATC through this act. All state operated ferries are exempted from regulation by the ATC.

AS 45.25, the Alaska Ferry Transportation Act states that the Commission may issue a certificate of public convenience and necessity to a ferry operator engaged in the transportation of passengers or vehicles between points within the state.

Complaints from the public concerning this ferry operator may be investigated by and relief sought through a number of other existing agencies, such as the Ombudsman, Consumer Protection section of the Department of Law, Legislators, and the Better Business Bureau. Therefore, we do not find any public need for this Act.

Recommendation No. 4

ATC should regulate the economics of the transportation industry as required by the Alaska Statutes.

AS 02.05.010, AS 42.10.010 and AS 42.15.011 state in part, that the purpose of these chapters is to provide shippers and receivers with a stabilized rate structure, to foster sound economic conditions among the carriers which will guarantee transportation in the public interest, and to promote economical service and reasonable charges. In order that these statutory requirements be met, Alaska Transportation Commission should implement the following:

A. Carriers should be required to submit all pertinent financial data necessary for economic regulation.

ATC only receives financial data pertaining to the costs of operations from 20 scheduled air carriers. Only 20 out of 228 regulated air carriers are scheduled air carriers. The quarterly financial report form for air taxi operators does not include a request for costs of operations.

AS 02.05.170 states that the Commission may require reports from any air carrier covering any operations or business. The Commission may also require monthly, periodical and special reports from an air carrier and may prescribe the manner and form in which these reports shall be made.

Without knowledge as to the air taxi operators costs of operations, the Commission cannot determine if the rates are just, reasonable, and non-discriminatory. As a result the public may be paying excessive charges while air taxi operators make unreasonably high profits. Conversely, the public interest could also suffer from unstable service due to carriers not being allowed to apply rates which would return a reasonable profit. This financial instability could result in a poor quality of service or even a decrease in the number of carriers serving the public.

B. ATC should audit the carrier's accounting records to ensure they are prepared in accordance with regulatory accounting requirements and to determine the reasonableness of the financial data.

The Commission does not perform in-depth reviews of carrier accounting records. Presently, the procedures for field surveys of carriers do not include auditing the financial records. Also, out of approximately 600 regulated carriers, only 58 were surveyed during fiscal year 1978. In addition, the field surveys were conducted by personnel without accounting or auditing expertise.

Alaska Statutes 02.05.170(b), 42.10.120(a) and 42.15.041 authorize the Commission access to all accounts, books and records of the carriers for inspection and examination. AS 02.05.170(b) also states that the Commission may employ special agents or auditors to perform the examinations.

Many of the financial reports or data submitted by the carriers have not been previously audited by an independent certified public accountant. Therefore, there is no assurance that the data is uniformly prepared, consistently reported, or that it is sufficiently accurate to be used as a criteria for the decision-making process of the Commission.

We made a survey of several other states which are economic regulators of their transportation industry. All of them indicated that limited financial/compliance audits of carriers were performed on a regular basis by personnel with accounting expertise. One state required Certified Public Accountants for the Rate Analyst positions.

The following procedures should be implemented by the Commission:

1. Increase the number of field surveys performed each year.

2. Field surveys should include a limited financial/compliance audit of the carrier's accounting records.

3. Interim audits should be performed, as necessary, to verify the financial data submitted by the carriers to justify rate changes.

4. Personnel with accounting expertise and auditing experience, similar to the Utility Financial Analyst positions in the Alaska Public Utilities Commission, should perform the audits. This can be done through attrition in the Tariff Specialist positions.

   As an alternative, in order to decrease the necessary number of audits performed by the Commission staff, carriers who earn above a certain amount of dollars in gross operating revenue could be required by the ATC to submit financial data audited by an independent certified public accountant. This would require ATC to audit only the smaller carriers.

Adequate uniform audit procedures should reduce the time and expense of hearings before the Commission. This would be due to the decreased need for cross-examination to establish the credibility of the financial data introduced at hearings.

C. <u>ATC should establish written basic policies and procedures for analysis of rate changes</u>.

The ATC may require carriers to submit financial data to support and justify requests for rate changes. This financial information can be a very useful tool for the ATC in considering the merits of such requests. It is usually necessary, however, to first analyze the data and develop statistics which can be compared to industry standards in Alaska to effectively measure the justification for the rate change. We found that, in general, this is not being done.

In a review of the rate investigations of ATC, we determined that approximately 317 tariff changes were filed with the Commission during the fiscal year 1978. Of these, only 20 were suspended, pending investigation by the Commission. An examination of these 20 cases resulted in the following:

1. Of the seven cases for which hearings were held:

   - One had a final order which mentions an analysis prepared by the staff, but no work papers of the analysis could be found.

   - Another case had a final order with percentage of revenue and operating ratio calculations.

   - In a third case, a Tariff Specialist had a file containing copies of the carrier's revenue and payroll records. A schedule had been prepared of the different types and amount of revenue, however, there was no indication that some type of analysis of these figures had been done.

   - In the remaining four cases no work papers or indications of a staff analysis could be found.

2. Documents for the remaining 13 cases, for which hearings were not held, could not be found which would indicate that some type of analysis had been done by the staff.

3. Six tariff changes (less than 2% of the total tariff changes filed during the fiscal year 1978) were cancelled by ATC.

The decision whether or not to investigate and analyze the financial justification for rate changes is left to the discretion of each Tariff Specialist. Less than 1% of the tariff changes filed during fiscal year 1978 showed any indication that some type of analysis had been prepared.

We reviewed the operating ratios, (total costs expressed as a percent of revenue), for 97 out of 198 common motor carriers, which were prepared from data on the 1977 Annual Financial Reports submitted to the ATC. We found the ratios ranged as follows:

75% to 105% for Class I (carriers with gross operating revenue of $1,000,000 or more).

73% to 101% for Class II (carriers with gross operating revenue of $300,000 to $1,000,000).

31% to 972% for Class III (carriers with gross operating revenue of $300,000 or less).

The Federal motor carrier regulatory agency, the Interstate Commerce Commission, has determined an operating ratio of approximately 94% to be reasonable.

The wide variations in operating ratio of the Alaska intrastate common motor carriers could be in part a result of (1) some of the carriers' unsophisticated accounting procedures which may result in distorted and inaccurate financial data and (2) the Commission has not adequately regulated the economics of the transportation industry in order to stabilize the rate structure; to foster sound economic conditions among the carriers; or to promote economical service and reasonable charges. The Commission, as noted in part (A) of this recommendation does not obtain sufficient information from 96% of the air carriers to determine the reasonableness of their profits.

Alaska Statutes 02.05.140, 42.10.280, 42.10.285, 42.15.141, 42.15.161 and 42.15.201 require air, motor freight, and motor passenger (bus) regulated carriers, except contract carriers, to file with the ATC tariffs and any subsequent changes thereto, which may be subject to suspension and investigation by the Commission.

Two Commissioners defined a good regulatory policy as one which would allow a carrier a fair rate of return on investment. Neither could define a fair rate of return on investment. One explained that ATC really did not have sufficient information or the skilled personnel to determine the carrier's rate of return and the other did not have any specific percentage in mind but was mainly interested in whether the carrier had safe and sound equipment.

The Commission's current policies and procedures are not sufficient to ensure that the statutory purposes, to foster sound economic conditions among the carriers and to provide the public with stabilized and reasonable rates, are accomplished. We have suggested three general procedures which should assist the Commission in achieving these statutory purposes. In addition, a member of the Commission with economic or financial expertise, such as is required for the Alaska Public Utilities Commission, would be helpful in establishing these necessary policies and procedures and in continuous monitoring of their effectiveness. (See Recommendation No. 11).

Recommendation No. 5

Improvement is needed in the enforcement of the ATC statutes and regulations.

ATC is responsible for enforcing the provisions of the following acts:

1. Alaska Transportation Commission Act.

2. Alaska Motor Freight Carrier Act.

3. Bus Transportation Act.

4. Alaska Air Commerce Act of 1960.

5. Alaska Ferry Transportation Act.

A civil penalty of $150 was established in 1970 for the motor freight carriers and was later enacted into the Bus Transportation Act in 1972. Also, the Air Commerce Act in 1972 provided for a $150 civil penalty for each offense noted by the ATC.

We reviewed the enforcement activities of the Commission and noted the following deficiencies:

A. ATC does not process enforcement actions in a timely manner.

We analyzed complaint, investigation, and accusatory cases for the period of 1½ years ending June 14, 1978. We found the average delay between the initiation of an investigation and the issuance of a final order, for cases involving public hearings, was 12 months (100% test). The average delay in cases not involving a public hearing was seven months, (30% test). In addition 31% of the cases in our test involving violations of statutes pending before the Commission as of June 14, 1978, were older than six months.

None of these average delays include investigative activity prior to the formal issuance of an accusation since, in most cases, the files did not show investigation commencement dates.

Standard operating procedures for ATC enforcement activities are currently being developed. To ensure their effectiveness, they should include provisions to record the date on which investigation commences and continuous monitoring of open files in order that processing is expedient.

B. The Commission frequently suspends all or part of the civil penalties assessed for violations.

Approximately 80 cases during fiscal year 1978 resulted in fines being assessed by the Commission. In 46 cases all or a part of the fines were suspended. The amount suspended equalled 74% of the total fines assessed.

We believe, in the first place, fines limited to $150 for carriers are not a sufficient deterrent to prohibit the worst abuses of the transportation Acts. In addition, frequent suspension of fines diminishes an already weak deterrent. ATC should discontinue the practice of routinely suspending these civil penalties.

C. ATC enforcement staff duplicates the motor vehicle safety inspections done by the Department of Public Safety.

Currently, ATC enforcement agents perform safety inspections of motor carriers at scale houses along public highways and at the carrier's place of business. Field surveys at the carrier's place of business include a review of the driver's and maintenance logs. The Alaska State Troopers also make safety inspections at the scale houses. They have the authority to stop carriers on the highway for inspections also.

This results in a duplication of scale house inspections, and correspondingly, an insufficient number of field surveys performed by the Commission. Only 40 field surveys were made in FY 1978 by the ATC out of 385 regulated motor carriers.

We recommend ATC discontinue safety inspections at scale houses and on public highways. This should allow for a significant increase in the percentage of carriers surveyed by the ATC at their place of business. These surveys are particularly useful because they serve to educate the carriers on safety matters and should result in improved preventative maintenance. In addition, enforcement agents will respond to specific complaints by the general public, and by carriers themselves, in a more timely fashion.

Recommendation No. 6

Applications should be processed by the ATC in a more timely manner and temporary operating authority should be granted in accordance with Alaska Statutes.

We reviewed the applications for permanent authority (original, transfers and extensions) and temporary authority processed by the ATC for a period of 1½ years ending June 14, 1978. We found the average delay between the application date and the issuance of a final order for permanent authority applications, which included public hearings, was 12 months, (48% test). A seven month delay was found for applications without public hearings, (45% test). In a 100% examination of applications without a final order issued at June 14, 1978, 34% had been pending for six months or more.

In our review of 100% of the temporary authority applications two deficiencies were noted, untimely processing and granting temporary authority in violation of the Alaska Statutes. We found the average delay for applications involving public hearings was 13 months. Applications without a public hearing averaged nine months. Of the applications still pending at June 14, 1978, 11% were six months old to one year old and 57% were more than a year old.

According to the Alaska Statutes (AS 42.10.210, 42.15.111 and 02.05.060) the Commission may only issue a temporary permit to a carrier if it finds an emergency exists. We tested the temporary authority applications to determine if they had been granted due to an existing emergency. We determined that of the 22 applications that were granted, 12 were granted without the ATC finding an emergency public need existed. Further, we could not find any indication in the files that an emergency public need existed as justification for the application in 66% of the cases that were pending at June 14, 1978.

A decision by the ATC to grant temporary authority to a carrier was appealed to the Superior Court. The Court declared the order by the ATC void and of no effect. One reason given was that no supporting documents evidenced that an emergency existed. ATC's decision had been based solely on the application and proposed shipper's contracts. The Court further enjoined the Commission from granting temporary authority to the carrier until it had held a public hearing and received evidence that an emergency existed.

One possible cause for the untimely processing of the above applications is that the ATC does not have a written standard operating procedures manual. Our flowchart of the document flow emphasized the complexity of their present procedures. The ATC should review these procedures in order to eliminate unnecessary and time consuming processes and to streamline the flow of documents within the Commission.

Recommendation No. 7

The Commissioners and hearing examiners should write the formal written decisions (orders) on applications before the ATC.

It is a common practice of the ATC to require the staff to draft orders. A staff member generally is given the legal file and a tape recording of the hearing, if one was held, to prepare a final order. Frequently, the staff is given no instructions as to what evidence or laws support the Commissioners' decision. This practice often requires the staff to take excessive time in reviewing the legal file or tape recording to determine the evidence which supports the decision.

Not only does this practice utilize time which is needed by the staff to adequately perform their regular duties in connection with the economic regulation of carriers, (See Recommendation No. 4) and statutory enforcement (See Recommendation No. 5), but also, at times, violates the ATC's ethical regulations. This occurs when the staff drafts orders for applications for which a hearing was held and they actively participated. We found that this violation had occurred in 86% of the rate investigation hearings in which the staff had participated.

The ethical conduct regulations (3AAC60.010(a) & (h) prohibit parties in a pending matter before the ATC from communicating privately, directly or indirectly, with the Commissioners or hearing examiners about such matters or arguing the merits of those cases without their adversaries present or without notice to them. The Commission should avoid any situations that could be construed as violations of these rules of ethical conduct.

In order to effectively implement our recommendation, it would be appropriate to require one member of the Commission to be an attorney, since the deficiency most often discussed with us by the Commissioners was a lack of legal assistance (See Recommendation No. 11). In addition, a paralegal position would aid the Commissioners in both order writing and legal research.

Recommendation No. 8

The ethical conduct regulations should be complied with in matters before the ATC.

The ethical conduct regulations (3AAC60.010) apply to all persons appearing in proceedings before the Commission. Subsection (d) of these regulations specifically label unethical the practice of enlisting the aid of a public official in order to sway the Commissioner's judgement. Further, subsection (h) states that it is grossly improper for such persons to communicate privately, directly or indirectly, with the Commissioners or hearing examiners about pending matters or to argue the merits of these matters in the absence of their adversaries or without notice to them. If any person does not conform to the ethical standards, the Commission may refuse that person the right to appear before the ATC.

We noted two types of violations of the above regulations during our audit. In a pending case before the ATC an attorney for a protestant explicitly told the Commissioners what final decision should be made by them. Further, he requested the Commissioners to return his call to discuss the subject of the decision. In another case pending before the ATC, we found letters from the Commissioner of Administration to the Chairman of ATC which stated that the Governor had met with the applicant.

It also stated that the Governor had expressed his support for the applicant.

These types of communications with parties or their attorneys of a pending matter should be avoided by the ATC and the Executive branch. It is particularly improper for the Governor's preference to be communicated to the Commissioners in cases pending before the ATC because the Commissioners are appointed by the Governor. In addition, since one Commissioner's term expires in four months, such communications could give the appearance of influencing the Commission far beyond that of a simple expression of preference by a member of the general public.

Recommendation No. 9

Neither Commissioners nor ATC staff should accept free transportation from any regulated air or motor carrier.

During August, 1978, an ATC Commissioner and a staff member received free air transportation, from two regulated air carriers, between Fairbanks and Galena. We understand the sole purpose of the trip was to conduct ATC business, and therefore no personal gain resulted. However, due to the nature of the responsibilities vested with the Commissioners and their staff in regulating Alaska's transportation industry, they should decline offers of free transportation by regulated carriers for any purpose.

The conduct of the Commissioners and staff must be such that neither the public nor any regulated carrier can misconstrue any action of theirs as creating a conflict of interest. Moreover, they must at all times avoid even giving the appearance of a conflict of interest.

Recommendation No. 10

ATC should issue orders in accordance with the Alaska Statutes.

We noted several cases in which the ATC granted operating authority to an applicant by telegram prior to the preparation of a written order supported by findings of fact and conclusions of law.

According to 3AAC60.350 a decision issued by the Commission must be written and must contain required findings of fact and conclusions of law.

The Superior Court, after a telegram order was appealed, declared the order void and of no effect. Further, it stated the ATC was prohibited from granting authority unless it was granted by a written order containing the required findings of fact and conclusions of law.

The Commission continues to issue orders by telegram in the above manner. We recommend that the Commission discontinue this practice in view of the Superior Court's decision. Procedures should be followed which will minimize the possibility of the Commission's decisions being appealed, since appeals result in wasted time and unnecessary expenses.

Recommendation No. 11

The statutory qualifications for Commissioners of the ATC should require specific areas of expertise.

The statutory qualifications of Commissioners in terms of experience and education are outlined at AS 42.07.041. They are worded such that a candidate for the Commission may possess any of a variety of backgrounds however none of the specific areas of expertise included such as law or accounting, are mandatory. As noted in several of our prior recommendations there is a need for the Commissioners to have almost continuous economic and legal assistance in accomplishing their statutory goals. In order to help minimize the need for additional staffing to adequately regulate the transportation industry it should be required that the Commissioners each have expertise in a different field. One Commission member in each of the areas of transportation, law and economics would aid the ATC in performing its duties in a more efficient and effective manner.

The Alaska Public Utilities Commission (APUC) members are required by statute to have expertise in law, engineering and finance, accounting or business administration. According to the Attorney General's office the requirement for legal expertise in the APUC has partially satisfied their needs for legal advice and assistance. We believe the same would result if the ATC was required by statute to have Commission members with specific fields of expertise.

Recommendation No. 12

The ATC should give notice; hold or to the public; and maintain complete minutes of the Commission weekly meetings.

During fiscal year 1978 the ATC held 24 weekly meetings or less than 50% of the 52 weekly meetings required by statute. In addition, the ATC publishes no notice to the public of these weekly meetings. Minutes of these meetings consisted of a one or two word comment on each item on the agenda, which does not adequately describe the actions taken at the meetings.

AS 44.62.310 requires all meetings of the Commission to be open to the public except when holding a meeting solely to make a decision in an adjudicatory proceeding. Also, reasonable public notice shall be given for all meetings. 3AAC60.470 requires the Commission to meet on Monday of every week at 2:00 p.m. at the Commission office unless notice is otherwise given.

An appeal of a Commission decision before the Superior Court was due to the absence of adequate minutes of the Commission's weekly meetings. In its decision the Court stated the present Commission should be conducting regular meetings with recorded minutes so that any action occurring before the Commission would not be lost by the passage of time and dimming memories.

Recommendation No. 13

An index system should be developed for the final orders issued by the ATC and decisions on appeals from the courts.

Presently, there are three lists of decisions of the ATC which have been appealed; one prepared manually by the ATC; another by the ATC computer; and a third by the Department of Law. These lists are not uniformly cross referenced to the file docket number or the court case numbers. Moreover, each list does not contain the same cases nor do they include all cases. The decisions of the ATC are filed numerically which is not designed for quick reference to decisions made in similar type cases by the Commissioners and staff.

An index system which provides cross referencing by the subject, including the name of case, the ATC docket file number and the court case number, if any, would serve as a useful management tool. The Commission could review the decisions in a subject area to help determine the needs for statutory or regulatory changes and written internal policies within the Commission's discretionary powers. Further, it may reduce application processing and hearing time by allowing an applicant's attorney to review prior decisions and cases which are similar to his client's case.

Recommendation No. 14

The assistant attorney general and tariff analyst positions at Department of Law, which are assigned to ATC matters, should be placed organizationally and physically within the ATC.

Pursuant to AS 02.05.030(c), the ATC is authorized to represent the State in interstate transportation cases before the Interstate Commerce Commission, (ICC), and the Civil Aeronautics Board, (CAB).

The ATC is responsible for representing the State where the CAB or the ICC have authorized an air carrier or motor carrier rate change or operating authority change which is not in the State's best interest. Two positions within the Department of Law, an attorney and a tariff analyst, are assigned to assist the ATC with these matters which require their technical expertise.

In addition to these matters, the attorney position:

1. Represents the ATC before the courts in appeals,
2. Represents the ATC staff before the Commission,
3. Drafts ATC regulations, and
4. Assists in enforcement work.

These legal services are provided ATC through a reimbursable services agreement with the Department of Law.

The tariff analyst position, which is funded by the Department of Law, was initially acquired to assist with federal maritime rate cases. We understand however, the backlog of maritime cases has been cleared and the analyst has been assigned primarily to rate matters before the ICC and CAB.

We believe both these positions should be organizationally within ATC and should be physically located at ATC offices in Anchorage.

There has been disagreement between ATC and the Department of Law over assignment of the services of these positions for several years. This has led to ineffectiveness and inefficiencies at the ATC. Any arrangement where an employee performs most of his work for one agency and yet reports to, and is physically located at, another agency will result in conflicts in management policy and work priorities between the two agencies.

Since a majority of the attorney's duties are ATC matters, and the analyst's duties are ICC and CAB matters, also an ATC responsibility, they belong with ATC, not Department of Law. If the Department of Law has need of an analyst's expertise on maritime cases, ATC could provide such services to the Department of Law. It should not be the other way around because ATC has the primary responsibility for both intrastate and interstate regulatory matters.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicates both positive and negative attainments of the Commission and how its activities relate to the public need factors as defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature. It has been limited by the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

After Alaska became a State, statutes were enacted to regulate the transportation industry. Prior to enactment no study was made to determine the transportation needs or the type and extent to which it should have been regulated.

Therefore, to state whether regulation of the transportation industry is in the public interest or not, we must first have knowledge of the economic consequences which result from regulation or deregulation. Since this was beyond the scope of our audit we did not attempt to make this determination. However, we have recommended some carriers be deregulated as no public need for regulation could be determined. In addition, we have recommended to the Commission that a future study be made to determine the extent of the need for transportation regulation. (See Report Conclusion).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

Administration and enforcement of the transportation acts has been impeded by existing statutes and current practices and procedures of the Commission (See Recommendation Nos. 2, 4 and 5).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

The Commission submitted two Senate Bills to the 1978 Legislature. These bills would have amended and clarified the existing statutes which would have aided the Commission in accomplishing their statutory purposes and relaxed the regulatory burdens of the air and motor carriers.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The Commission publishes a bi-weekly journal which contains a description of each new application, the Commission's orders, enforcement actions and tariff changes. The journal is distributed to subscribers, news media, and other interested groups. A protest period of 30-days is allowed after each application has been published. Further, public hearings are held for the Commission to hear testimony and to receive evidence from any protesting party or any party who would like to attest to the public need for the services of the applicant.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

A review of the regulatory changes written by the Commission shows that the Commission had properly published and held public hearings as required by law.

However, the Commission has not given proper notice; held open to the public; maintained complete minutes; or held on a regular basis, the Commission's weekly meetings as required by statute. (See Recommendation No. 12).

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

The Commission processes complaints and accusatory cases in an untimely manner (See Recommendation No. 5).

The Ombudsman Office has received ten complaints concerning the Commission since 1975. Five cases have been closed. Of the five open cases, which were filed in 1976 and 1977, three are pending court action and two are still under investigation.

VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

The Commission, prior to granting authority to a regulated carrier, must determine whether the carrier is financially able and that it has proper and safe equipment in order to provide transportation services.

The regulated carriers are required to show proof of insurance prior to commencing operations to ensure that the public safety is protected. However, the ATC does not have all the pertinent financial data nor the procedures or staff for a proper audit and analysis to determine the financial condition of the regulated carriers. Therefore, the Commission's ability to adequately determine whether carriers are qualified to serve the public is impeded. (See Recommendation No. 4).

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

In a review of the FY 78 personnel records of the Commission, we found that it had complied with the State personnel practices and the affirmative action requirements. Further, the Commission has never received a complaint alleging discrimination on the basis of race, religious affiliation, or sex, from any applicant for authority.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

ALASKA TRANSPORTATION COMMISSION
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978

UNAUDITED[1]

Revenue Collected (See Schedule 1)	$ 135,848.80
Expenditures	1,234,136.58
Excess of Expenditures Over Revenues	$(1,098,287.78)

SCHEDULE 1
COLLECTED REVENUES

Revenues	Amount	Collection Time
Civil Penalties	Up to $150 for each offense	When assessed by Commission
Misdemeanor	Up to $500 for each offense	When assessed by Commission
Publication Fee	$40	Upon any application
Motor Freight Carriers		
Application Fee	$50	Upon application for permanent, temporary, extension or transfer of a permit.

Note 1

The records were not audited by us and accordingly we do not express an opinion on the Commission Revenues Compared with Expenditures.

Revenues	Amount	Collection Time
Initial Registration of Authority	$25	Annual
Continued Registration of Authority	$10	Annual, after initial registration
Motor Carrier-Bus		
Application Fee	$50	Upon application for certificate, transfer, lease, modification, consolidation, merger or contract to operate the property of one or more carriers
Air		
Application Fee, GTOW of 12,500 or less	$100	Upon application for permanent, temporary, transfer, amendment or lease
Application Fee, GTOW of 12,501 or more	$200	See above
Aircraft Registration Fees By Gross Take-Off Weight (GTOW)		
GTOW of 4000 or less	$25	Annually
GTOW of 4001 but less than 7900	$50	Annually
GTOW of 7900 but less than 12,500	$100	Annually
GTOW of 12,500 but less than 27,000	$150	Annually
GTOW of 27,000 but less than 50,000	$300	Annually
GTOW of 50,000 but less than 75,000	$400	Annually
GTOW of 75,000 or over	$600	Annually

APPENDIX B

PROGRAM ACTIVITY OF THE
ALASKA TRANSPORTATION COMMISSION
Fiscal Year 1978

UNAUDITED[1]

Activity	Number
New Dockets	527
Orders Issued	783
Hearings Held	125
Citations Issued	72
	Amount
Civil Penalties Assessed[1]	$134,915

Note 1

The records were not audited by us and accordingly we do not express an opinion on the Commission Revenues.

APPENDIX C

QUESTIONNAIRE SENT TO REGULATED MOTOR CARRIERS

1. Do you believe the Commission's procedures for processing applications, hearings and issuing final orders are adequate and completed on a timely basis? Inadequate? Please explain.

	Number of Motor Carrier Responses (See Notes 1 and 2)
Adequate and timely.	9
Inadequate, not timely.	4
Procedures adequate, not timely.	2
Procedures inadequate, timely.	1
No opinion.	2

Additional Comments

Carrier application misplaced by ATC.	1
Have to pay to find out about competitor's applications. Don't feel that was the intent of the statute.	1
Whole process too costly, inflationary, slow-moving to benefit the public.	1
Anyone sitting on Commission should have experience in PUC and ICC matters so they can make good judgments instead of mediocre ones as in the past.	1
Commission does not do a lot of checking on applications, not knowledgeable of bus transportation in Alaska.	1

2. Are there any statutes or regulations that you believe to be obsolete, vague, conflicting, unduly restrictive, and/or inadequate to allow the Commission to effectively and efficiently regulate transportation in Alaska? Please list and explain.

	Number of Motor Carrier Responses (See Notes 1 and 2)
Not knowledgeable enough to comment	2
No response	3
No	6
Yes	1
Some statutes and regulations vague and conflicting.	1
Need authority to stop illegal carriers.	1
15 days should be enough for tariff filing.	1
Believe should be able to tow any items they can properly handle.	1
Need more control over cabs who offer sightseeing without authority.	1
Make airlines realize air freight to small communities is essential.	1

Additional Comments

Update laws to be able to arrest illegal carriers.	2
Bill #362 would improve inadequacies, if passed.	1
Commission should have more and definite authority.	1
Enforcement of illegal carriers without authority is insufficient and a waste of tax dollars.	1
Small operators who do not do much volume dollarwise, and are fairly diverse for income, yet are expected to separate out the trucking business for reports- sales invoices, etc.	1

3. Do you feel public needs, i.e. lower costs, safer and more efficient transportation, etc., would be better met if the Commission were to relax or strengthen regulation of transportation in any specific area?

Commission doing a good job of regulation, regulation should remain as it is.	5
Strengthen regulations.	4
Relax regulations.	7
Undecided.	1
No response.	1

3. Question No. 3 (continued)

	Number of Motor Carrier Responses (See Notes 1 and 2)
Additional Comments	
Commission should have more people to travel to outlying areas.	1
Should enforce regulations more stringently.	1
Carriers should be able to expand their scope to include other zones, do away with the zone system.	2
Too costly and hopeless to get authority.	1
Allow contract or private carriers to be used by permit holders during peak demand.	1
Towing should be deregulated.	1
The only way to get lower costs, safer and more efficient transportation is to protect the people who have the investment, instead of letting everybody "just go at it".	1

4.a. Does the Commission enforce the statutes and regulations i.e. stop unauthorized carriers, safety, etc., adequately? Inadequately? Please explain.

Adequately	5
Inadequately	11
No response.	1
Don't know.	1

Additional Comments

Commission does not have any enforcement.	2
Need stronger penalties against unauthorized carriers.	1
Need regulations with more investigative and enforcement powers.	2
Need more enforcement man-power.	2
Enforcement more than adequate, sometimes nit picking.	1
Commission does not enforce statutes and regulations in any way.	1

4,a. Additional Comments (continued)

	Number of Motor Carrier Responses (See Notes 1 and 2)
ATC spends too much time harrassing carriers trying to run legally, and very seldom stopping unauthorized carriers they receive complaints about.	3
Unauthorized carriers have a financial advantage.	1
Easier to grant permits than to enforce regs.	1

4,b. In your opinion, is there a duplication of safety enforcement between the Commission and any other state agency? Please explain.

No response.	2
Unaware, don't know.	5
Yes	6
No	4
Cannot have excess of safety enforcement.	1

Additional Comments

Enforcement handled by police, troopers.	5
ATC needs to spend enforcement time getting both authorized and illegal carriers to comply with statutes.	1
Not unusual for driver and cargo to be checked more than once on trip.	1
Conflict of authority between ATC, State Labor Commission and ICC.	1

5. Any additional comments.

No additional comments.	9
Try to update present laws.	1
Failure to have automatic distribution of information pertaining to permit application to effected carriers-subscription charge seems unjust for small companies.	1
Enforcement needs to stop illegal hauling.	1
Make granting of permits more difficult for companies that have a bad record of paying their bills.	1

5. Any additional comments (continued)

	Number of Motor Carrier Responses (See Notes 1 and 2)
Trucks that operate beyond Anchorage and other cities do not give service and rates consistent with air freight forwarders.	1
Trucking industry in Alaska needs a great deal of help-problem rests with both the State and the industry.	1
Lot of government agencies are parasites of the transportation industry.	1
Expansion of ATC authority would be poor. Better to have no laws than poor ones.	1
Carrier cannot take in income necessary to upgrade equipment if others are allowed to operate illegally or too many authorities are granted in one area.	1
All in all, ATC does a good job.	1

Note 1

Number of regulated motor carriers included in sample	60
Number of motor carriers which responded	18
Response rate	30%

Note 2

Each regulated motor carrier may have responded to each question with several answers. Therefore, total responses for each question may exceed the number of motor carriers which responded.

APPENDIX D

QUESTIONNAIRE SENT TO REGULATED AIR CARRIERS

1. Do you believe the Commission's procedures for processing applications, hearings and issuing final orders are adequate and completed on a timely basis? Inadequate? Please explain.

	Number of Air Carrier Responses (See Notes 1 and 2)
Adequate	5
Inadequate	8
Adequate in some, inadequate in others.	1
No response.	1

Additional Comments

Commission slow.	8
Need to take applications in order received.	1
Limit time for hearings.	1
Too much paperwork.	1
Commission lost carrier documents filed with them.	1
Delays deprive applicant or complainant of due process.	1
Orders vague, devoid of findings.	1
Orders not adequate if not enforced.	1
Hearing Officer, or Commissioner should write order not employee who did not attend hearing.	1
Time figure will vary depending on who is filing for the authority and how much political pull he has.	1
Commission contributes to growth of monopolies.	1
Entire state licensing procedure should be abolished because it duplicates FAA.	1

2. Are there any statutes or regulations that you believe to be obsolete, vague, conflicting, unduly restrictive, and/or inadequate to allow the Commission to effectively and efficiently regulate transportation in Alaska? Please list and explain.

	Number of Air Carrier Responses (See Notes 1 and 2)
No	3
Yes	8
Existing regulations and procedures applied to enforce them are violative of due process.	1
No need for regulations.	1
No response.	1

Additional Comments

Regulation that requires prior approval of scheduled routes appear vague and unenforcable.	1
Procedure for protesting applications should be streamlined.	1
Form for quarterly reports too complicated for small carriers.	1
Commission should investigate the public need before they publish for protests.	1
Unfair operating advantage given by ATC to all "Grandfather" Operators.	1
Hearing process is one of the greatest obstacles applicants face.	1
Unduly restrictive on 45-day notice of rate increase.	1
No check to see if carrier is following regulations except if there is a complaint.	1
Should be more stringent regulations pertaining to guides flying for hire without a permit.	1
Particular statutes used by ATC in interpretation and justification of Alaska Travel Air case should be changed.	1
Entire Alaska Air Commerce Act of 1960 is not only unduly restrictive and inadequate, but also vague and conflicts with FAA and CAB regulations.	2

3. Do you feel public needs, i.e. lower costs, safer and more efficient transportation, etc., would be better met if the Commission were to relax or strengthen regulation of transportation in any specific area?

	Number of Air Carrier Responses (See Notes 1 and 2)
No	2
Strengthen	3
Relax	7
If regulations were any more relaxed, there would no longer be a need for the Commission.	1
No comment.	1

Additional Comments

Permit free competition as long as high standards are met.	2
Strengthen or drop the whole thing.	1
Liberalize or drop regulation.	3
Relax all efforts to be heavy-handed in imposing unrealistic restrictions on offenders.	1
Increase insurance coverage to protect public.	1
Public needs, per se, have not even been considered in some regulatory hearings.	1
Commission says that for authority to provide public service, only the public need is taken into consideration, when in fact all decisions are based on the protection of the industry, instead of the public.	1
Strengthen regs. for subcontractors of Wien and Alaska Mail Routes - IFR, Pilot Training.	1
Allow a reasonable time for a new certificate holder to become established before issuing other new certificates in that area.	1

4. Does the Commission enforce the statutes and regulations, i.e. stop unauthorized carriers, safety, etc., adequately? Inadequately? Please explain.

Adequately	1
Inadequately	11
As adequate as possible.	2

4. Ouestion No. 4 (continued)

	Number of Air Carrier Responses (See Notes 1 and 2)
Additional Comments	
Too many unauthorized air taxis.	6
Part 91 operators operate unsafely.	1
No enforcement against non-licensed carriers, much less efficient enforcement.	1
Six months after a complaint is filed is too long before an investigation.	1
A quick overnight visit or phone call is not adequate investigation for even a trivial complaint.	1
Insufficient number of field agents with too little travel money.	1
Let the Federal Government regulate safety.	1
Restrict pilots without sufficient Alaska flying time.	1
All the ATC does is move paper.	1
Have we combined the power of the PUC in Denver with the figurehead posture of the Texas Aeronautical Commission to produce the level of enforcement applied by ATC?	1

5. Any additional comments.

No additional comments.	5
Commission tries to do a good job, but responsibility outweighs authority.	1
Great over-supply of operators.	3
Commission available to only a select, political group.	1
Commission is a waste of the taxpayer's money.	1
Should have a minimum number of Alaska flying hours for pilots.	1
No continuity in tariffs with other carriers with like equipment.	1
Discontinue ATC, let free enterprise prevail.	3

5. Anv additional comments (continued)

	Number of Air Carrier Responses (See Notes 1 and 2)
ATC should oversee but not limit or impede private (contract) carriage or freight carriage.	1
Who do I see about protecting my operating authority given to me by the ATC?	1

Note 1

Number of regulated air carriers included in sample.	45
Number of air carriers which responded.	15
Response rate	33%

Note 2

Each carrier may have responded to each question with several answers. Therefore, total responses for each question may exceed the number of air carriers which responded.

APPENDIX E

QUESTIONNAIRE SENT TO SHIPPERS UTILIZING ATC REGULATED CARRIERS

1. Do you believe the Alaska Transportation Commission's (ATC'S) regulation of Alaska carriers has resulted in the following:

	Yes	No	No Opinion
a. lower freight costs for the consumer?	15%	70%	15%
b. stabilized transportation services?	50%	30%	20%
c. safe transportation of goods?	60%	5%	35%

2. Are you acquainted with ATC'S Journal which is published bi-weekly to give public notice of pending applications for authority, proposed rate changes and enforcement actions against Alaska carriers? 40% 60% 0%

3. Do you believe ATC'S procedures for investigating consumer complaints due to overcharges, unsafe operations, etc., are adequate? 30% 5% 65%

   If no, please explain why not.

4. Should ATC'S regulatory activities be:

   5% increased?

   40% decreased?

   55% kept the same?

   Please explain.

4. Question No. 4 (continued).

	No. of Responses
ATC appears to grant carriers anything asked for.	1
Competition should be encouraged.	5
Deregulation not in the shipping public's best interest.	1
ATC doing adequate job.	2
No major traffic problems in Alaska.	1
ATC should be more involved in activities and needs of shippers and carriers.	1

5. Can you suggest any other changes to the ATC which would be in the best interest of the public?

No comments.	13
Some shippers should be made part of Commission-ATC is biased.	1
Commission stand unclear on private carriage and freight forwarder.	1
Haul road should have been better coordinated.	1
Rates should follow "supply and demand".	1
Certification procedures unrealistic in free enterprise system.	1
Establish 3 year (instead of 6) statute of limitations.	1
Too many carriers.	1
Need checking on carrier financial back-up.	1
Greater promotion of docket and rate matters to shippers.	1
When ATC can control underlying causes of rate changes more services at reasonable cost can be provided.	1
Union wage and benefit demands hurt carriers.	1

Note 1

Number of shippers included in sample	63
Number of shippers which responded	20
Response rate	32%

Note 2

Each shipper may have responded to each question with several answers. Therefore, total responses for each question may exceed the number of shippers which responded.

APPENDIX F

QUESTIONNAIRE SENT TO ATTORNEYS WHO PRACTICE BEFORE THE ALASKA TRANSPORTATION COMMISSION

1. Are there any statutes or regulations that you believe to be obsolete, vague, conflicting, unduly restrictive, and/or inadequate to allow the Commission to effectively and efficiently regulate transportation in Alaska? Please list and explain.

	Number of Attorney Responses (See Note 1 and 2)
No	3
Not knowledgeable enough.	1
Statutes requiring air taxi operators to obtain a certificate of convenience are obsolete, monopolistic, and cause a lower quality of service - AS 2.05.055.	2
Encourages an air taxi operator to operate in a manner more specifically reserved to scheduled carriers - AS 2.05.050(d) (3).	1
Regularity of operations - AS 2.05.	2
Nobody really understands what this statute means when it refers to issuing an order for a temporary exemption under the Administrative Procedures Act (AS 44.62) - AS 2.05.060.	1
Allows a private party to bring a suit for injunctive relief against illegal operations in the Court, but the Motor Carrier Act does not allow such action - AS 2.05.210.	1
Lodge owners should be free from requirements of obtaining authority to carry their guests hunting, fishing, sight-seeing.	1
Hasn't been "regular" route application approved by Commission since Statehood - AS 42.10.420.	1
Too restrictive and presumably would prevent an owner-operator from leasing his truck to a private carrier - AS 42.10.420(2)(B).	2
Commission has never adequately defined the operations of a broker or forwarder - AS 42.10.420(2)(c).	1
Interpretation of "contract carrier" - AS 42.10.420(3).	1

1. Question No. 1 (continued)

	Number of Attorney Responses (See Note 1 and 2)
Existing exemptions too restrictive - AS 42.10.420.	1
"Incidental" has never been defined in Commission regulations as it has been by the ICC - AS 42.10.420(7)(A).	1
"Property" definition too restrictive. Many commodities of such low value should not be regulated. Deregulate dump trucks - AS 42.10.420 (11).	2
"Construction Contractor" not defined - AS 42.10.421 (12).	1
Commission's regulation over contract bus carriers has never been adequately figured out - AS 42.15.021.	1
In transferring an interest in a certificate, there has been some confusion as to whether a 50% transfer of interest requires application for approval of the transfer or just notification of the Board.	1
Confusion in trying to determine what interim management agreements are acceptable to ATC pending approval of transfer.	1
All of the statutes involved should be redrafted in a concise, simplified fashion, with a lucid and simple index.	1

2. Do you believe the Commission's procedures for processing applications, hearings, and issuing final orders are adequate? Inadequate? Please explain.

Proposed orders time consuming and unnecessary.	2
Commission should make better use of proposed decisions, findings of fact and conclusions of law prepared by applicants and protestants.	1
Commission too lenient in granting reopened hearings for applicants whose cases have been inadequately and improperly prepared in the first instance.	1
Should have at least one Commissioner present at each hearing.	1
Hearings conducted too informally.	1
Too great a lapse of time between date of application and hearing.	1
Evidentiary rules are interpreted and applied too loosely.	1

2. Question No. 2 (continued)

	Number of Attorney Responses (See Notes 1 and 2)
Should be some precise rules on confidentiality of testimony.	1
Administrative regulations do not sufficiently provide for pre-hearing discovery.	1
Increase travel budget to allow for more hearings in carriers area.	1
Procedures for processing unprotested applications should be expedited.	1
Procedures should be more explicitly defined.	1
Continued applications for the same authority.	1
Delays sometimes occur.	3
Commission does an adequate job.	4

3. Any additional comments.

No additional comments.	5
Commission has done a commendable job in enforcing the rule against ex parte.	1
Commissioners should take an added responsibility of drafting orders.	1
Commission should not have more than investigative right as to fitness of applicant, public need and necessity should be determined in the market place.	1
Surprised at attitude of existing established operators hiding behind the political skirts of the Commission in fear of competition.	1
Commission heavily influenced by big air taxi outfits.	1

Note 1

Number of Attorneys included in sample.	35
Number of Attorneys who responded.	10
Response rate	29%

Note 2

Each Attorney may have responded to each question with several answers. Therefore, total responses for each question may exceed the number of Attorneys who responded.

JAY S. HAMMOND
GOVERNOR

RECEIVED
JAN 11 A.M.
LEGISLATIVE
AUDIT

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary reports as shown below:

1. Board of Examiners in Optometry
2. Board of Dispensing Opticians
3. Board of Psychologist and Psychological Associate Examiners
4. Board of Chiropractic Examiners
5. Alaska State Medical Board
6. Board of Veterinary Examiners
7. State Physical Therapy Board
8. Board of Pharmacy
9. Board of Nursing
10. Board of Nursing Home Administrators
11. Board of Dental Examiners
12. Alaska Transportation Commission

We view these reviews of agency programs and activities which are specifically subject to termination in a manner different from those made of State departments or agencies. Usually we in the Executive Branch endeavor to respond directly to each finding and recommendation. However, in regard to the Boards and Commissions, the Executive Branch agency during a public hearing shall demonstrate a public need for its continued existence or the discontinuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

The Executive Branch of Alaska Government has made an extensive study of the above Boards and the Alaska Transportation Commission. We are continuing to study those entities, their origin, their present and future potential, and other related subjects in conjunction with Alaska statutes 24 and 44 (Sunset Legislation). As prescribed in AS 44.66.050 one or more legislative hearings are to be held to receive testimony from the public, the Commissioner of the department having administrative responsibility for each, and the members of the Boards or Commission involved. During those hearings we will present our findings and recommendations affecting each of the foregoing Boards and the Alaska Transportation Commission.

Accordingly, we are presenting this in addition to the responses from the Department of Commerce, Department of Law, and the individual Board or Commission members and others on an interim basis.

Sincerely,

Michael Harper
Administrative Assistant
to the Governor

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

ALASKA TRANSPORTATION COMMISSION

MacKAY BUILDING
338 DENALI ST.
ANCHORAGE 99501

January 3, 1979

Mr. Gerald L. Wilkerson
Legislative Auditor
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

This letter is in response to the preliminary performance review of the Alaska Transportation Commission prepared by the Division of Legislative Audit in accordance with Title 24 and 44 of the Alaska Statutes. The response represents as nearly as possible a consensus opinion of the present commission members who have independent thoughts in regard to the findings and recommendations contained in the preliminary report. The response to the recommendations will be made in the order in which they appear in the preliminary report.

RECOMMENDATION NO. 1:

<u>The statutory requirements for the ATC to regulate bulk type commodities and recreational air carriers should be eliminated</u>.

The Commission agrees that the regulation of that class of carriers transporting commodities in bulk in dump type equipment commonly referred to as dump truck operators should not be regulated in the manner presently provided for in AS 42.10. The restriction of entry provision presently contained in the Act could be substituted for the issuance of an annual permit to those wishing to engage in this type of transportation subject to having their vehicle inspected for compliance with current safety regulations and the tendering of proof that sufficient liability and property damage insurance is in effect for all vehicles while they are in use on the public highways.

The Alaska Air Commerce Act of 1960, AS 02.05, does not clearly provide for the transportation of persons or property which might be incidental to another private or primary business as do similar provisions in the Motor Freight Carrier Act, AS 42.10, and the Alaska Bus Act, AS 42.15. Accordingly the Commission has since its inception issued certificates to such carriers who have been providing in whole or in part transportation in connection with another primary business

such as guides or lodge owners. Carriers thus certificated are required to maintain adequate insurance for the protection of the public, file a tariff, register aircraft, and hold a certificate from the FAA which indicates that they are providing public transportation in conformance with specified safety regulations. Here again, the Commission believes that the entry requirements for this type of carrier could be replaced with public interest standards which would include the requirement that the carrier maintain adequate insurance for the protection of the public and require that the operation be conducted pursuant to safety standards established by the FAA for this type of operation.

RECOMMENDATION NO. 2:

The statutes and regulations governing the ATC should be revised.

The Commission is in full agreement with Recommendation No. 2 and makes no further comment to No. 2, except to say that various amendments to the regulatory acts have been introduced in almost every session of the legislature since 1970.

RECOMMENDATION NO. 3:

The Commission should seek the repeal of the Alaska Ferry Transportation Act.

The Alaska Ferry Transportation Act, AS 42.25, is serving a very limited public purpose as it is presently enacted. The Commission has no objection to the repeal of this act, but in so doing, the Legislature should give serious consideration to improving the service presently provided by vessel operators along the major riverways and coastal areas. Authorizing the ATC, together with other appropriate state agencies to conduct an investigation into the needs and services available to communities located along these waterways would be appropriate.

RECOMMENDATION NO. 4:

ATC should regulate the economics of the transportation industry as required by the Alaska Statutes.

A. Carriers should be required to submit all pertinent financial data necessary for economic regulation.

B. ATC should audit the carrier's accounting records to ensure they are prepared in accordance with regulatory accounting requirements and to determine the reasonableness of the financial data submitted to the Commission.

C. ATC should establish written basic policies and procedures for analysis of rate changes.

The Commission agrees that implementing these recommendations would enhance the agency's ability to carry out the declaration of policy

set forth in each of the transportation acts. We would point out, however, that there does not appear to be any practical way given the Commission's present budgetary and personnel limitations to implement these recommendations. The recommendations would greatly improve the quality of regulation and speed up the process of investigations, the development of adequate standards and methodology will be dependent upon the agency's ability to acquire technical personnel and sufficient funding.

RECOMMENDATION NO. 5:

Improvement is needed in the enforcement of ATC statutes and regulations.

A. ATC does not process enforcement actions in a timely manner.

B. The Commission frequently suspends all or part of the civil penalties assessed for violations.

C. ATC enforcement staff duplicates the motor vehicle safety inspections done by the Department of Public Safety.

In regard to Sub-Paragraph A, the Commission will only point out that lawyers are involved in the ATC's enforcement matters and lawyers sometimes view procedural delays as being in their clients best interests. The Commission's actions must be considered in accordance with due process provisions of the law and in many cases, due process means delay. Further, the decisions by the Commission are subject to review by the Superior Court and we have been careful not to burden the court with appeals taken from hastily prepared accusations and orders easily overturned or remanded for lack of sufficient findings of fact or conclusions of law.

In regard to Sub-Paragraph B, the Commission's policy of suspending a portion of a civil penalty is founded on the belief that the majority of the violations are a result not of intentional managerial misbehavior but rather a failure of many of the small carriers to perceive their responsibilities as members of the regulated industry. If compliance with the laws and regulations relating to transportation can be achieved through the practice of suspending civil penalties, then it appears to the Commission that this policy is in the public interest and should be used where factual situations warrant.

Regarding Sub-Paragraph C, in our opinion, the ATC enforcement staff complements rather than duplicates motor vehicle safety inspections which are performed by the Department of Public Safety. The Alaska State Troopers' vehicle safety inspections performed at the scale houses are ineffective because the scale houses are closed a large part of the time. We are not convinced that the inspection of vehicles at the carriers' place of business where he can show you just what he wants you to see is going to be a substantial deterrent to the operation of unsafe vehicles on the public highways. Additionally, there are elements of motor vehicle safety other than mechanical, for

instance, the transportation of hazardous materials where a violation of this sort almost always occurs while the commodity is being transported and not at the carrier's terminal. We agree that there is a need for more frequent and thorough safety inspections and that some, but not all, of this can be done at a carrier's place of business. We believe that there is a substantial amount of traffic moving at the present time by unauthorized carriers and in our opinion, the scale house is an invaluable tool for the ATC in both motor vehicle safety and economic regulation.

RECOMMENDATION NO. 6:

Applications should be processed by the ATC in a more timely manner and temporary operating authorities should be granted in accordance with Alaska Statutes.

The Commission's response to this recommendation is basically the same as in Recommendation No. 5A above. In addition, we note that even though there is still a substantial regulatory lag between the filing and the granting or denying of a given application, this delay has been reduced dramatically over what it was in prior years.

For the most part, the Commission grants a temporary authority subject to the recommendation of the staff who often have first-hand knowledge of a given situation or on a prima facie showing by a carrier or shipper that there is a need for the particular service. For the most part, these temporary authorities are limited to a period of ninety (90) days, although some have extended for longer periods. Many temporary authorites are ultimately turned into permanent authority subsequent to the filing of an application, notice and opportunity for hearing and a determination by the Commission that the additional authority is required by the public convenience and necessity. A substantial number of temporary authorities are granted by the Commission each year and a great portion of these temporary authorities are in the nature of a transfer of control from one business entity to another. Our recollection is that there has been only one (1) reversal by the Superior Court of the many decisions to grant temporary authority and in our opinion, this is not a bad record at all.

RECOMMENDATION NO. 7:

The Commissioners and Hearing Officers should write the formal written decisions (orders) on applications before the ATC.

The Commission agrees with this recommendation with the understanding that it would not preclude the Commissioner acting as a hearing officer in preparing a final order from availing himself of the assistance of Commission employees with expertise in technical areas, such assistance to include the actual drafting of the order under the supervision and with the assistance of the commissioner who presided over the hearing. We disagree that this recommendation would be more effectively implemented by requiring one member of the Commission to be an

attorney. At one point in time, the Commission was comprised of two attorneys and one layman and Commission records will demonstrate that the need for legal assistance was no less then than it is at the present time. Commission records might also demonstrate that the agency's productivity was considerably less during that period as compared to a similar period of time when the Commission was comprised entirely of laymen.

RECOMMENDATION NO. 8:

The ethical conduct regulation should be complied with in matters before the ATC.

The Commission agrees with this recommendation.

RECOMMENDATION NO. 9:

Neither commissioners nor ATC staff should accept free transportation from any regulated or motor carrier.

The Commission agrees with this recommendation.

RECOMMENDATION NO. 10:

ATC should issue orders in accordance with Alaska Statutes.

The Commission believes that it is issuing its orders in substantial compliance with Alaska Statutes. The granting of temporary authority by telegram is sometimes accomplished prior to the issuance of a formal written order containing findings of facts and conclusions of law in order to satisfy apparent public interest requirements. The comments made to Recommendation No. 6 are somewhat appropriate to this recommendation.

RECOMMENDATION NO. 11:

The statutory qualifications for Commissioners of the ATC should require specific areas of expertise.

The comments to Recommendation No. 7 apply in part as our response to this recommendation. In addition, we question the feasibility of the Legislature requiring one of more Commissioners to have financial or economic expertise. Expertise of this type would be of value to any Commissioner, but we are not convinced that reducing the pool of potential candidates from which the Governor can select persons to serve as ATC Commissioners is advisable. AS 42.07 requires that the Commission have access to experts in the field of law and economics and finance in order to develop a good transportation policy. Therefore, it is not necessary that individual Commissioners have this specific expertise. Experience in the field of transportation, regardless of mode, is a far greater advantage. The Governor should have the prerogative to appoint a person with the best over-all qualifications to fill Commission vacancies without the artifically imposed requirement to appoint individuals with expertise in specific fields.

RECOMMENDATION NO. 12:

The ATC should give notice; hold open to the public; and maintain complete minutes of the Commission weekly meetings.

At the present time, all of the Commission's meetings are held for the purpose of making decisions in an adjudicatory proceeding, and therefore, are not required to be open to the public. Although the procedural regulations presently require the Commission to meet on Monday of every week at 2:00 p.m., the Commission has replaced these (public) meetings with an open door policy which allows public access to the staff and the individual Commissioners at any time during the working day and throughout the working week. We find that this works very well and does not limit the public's access to the Commission to a particular time or day of the week. This open door policy does unfortunately, create the undesirable presumption that parties are conducting ex-parte communications with the Commissioners, however, generally speaking, this is not true and parties with matters pending before the Commission for a decision are admonished not to discuss the merits of these particular cases.

RECOMMENDATION NO. 13:

An index system should be developed for the final orders issued by the ATC and decision on appeals from the courts.

We concur in this recommendation.

RECOMMENDATION NO. 14:

The Assistant Attorney General and tariff analyst positions at the Department of Law, which are assigned to the ATC matters, should be placed organizationally and physically within the ATC.

We concur with this recommendation.

Yours very truly,

ALASKA TRANSPORTATION COMMISSION

Jake Johnson
Chairman

JJ/cjh

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

January 11, 1979

Gerald Wilkerson
Legislative Auditor
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The Performance Review of the Alaska Transportation Commission, conducted by the Division of Legislative Audit and issued October 24, 1978, concludes that the ATC is authorized by statute to represent the s[illegible] before the Civil Aeronautics Board and the Interstate [illegible]merce Commission. The Review recommends that in order to accomplish this task the attorney assigned to ATC matters and the Transportation Analyst employed by the Department of Law should be transferred from the Attorney General's Office to the ATC.

I feel strongly that the proposed transfer should not take place because the ATC's statutory authority to represent the state before federal regulatory agencies is unclear and anachronistic, and, generally, because of the difficulties inherent with state regulatory bodies when they depart from their quasi-judicial intrastate functions and attempt to act as advocates in interstate proceedings before federal regulatory commissions.

The auditor's recommendation that the Department of Law's Transportation Attorney and Transportation Analyst be reassigned seems to come from a misconception that intrastate and interstate matters are the opposite sides of the same regulatory coin. In fact, they are entirely separate currencies and an examination of statute and practice among Alaska's three regulatory commissions reveals the impracticality of combining both functions in the same agency.

The Alaska Public Utilities Commission has the clearest mandate to represent the state in federal matters and it stems from AS 42.05.141(6) which provides that the APUC may "appear personally or by counsel and represent the

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interests of the state in all matters and proceedings involving a public utility pending before an officer, department, board, commission, or court of the state or the United States and to intervene in, protect, resist, or advocate the granting, denial, or modification of any petition, application, complaint, or other proceeding . . . "

In practice, however, the APUC defers to the Governor's Office of Telecommunications in formulating interstate communications policy and to the Attorney General's Office in advocating the state's interest before the FCC. The reason for this deference is that a well-functioning state regulatory agency cannot act as an independent, quasi-judicial body in intrastate proceedings involving a company and then transform itself into an advocate before a federal commission concerned with regulating the same company. There would be, for example, an obvious conflict if the APUC, concerned as it is with RCA Alascom intrastate tariffs, were to appear before the Federal Communications Commission as an advocate in proceedings involving interstate rates and ownership of satellites and earth stations to which RCA was a party. In these matters policy emanates from the Governor and concerned state agencies and is presented by the Attorney General.

The anachronism of state regulatory bodies acting both as independent, quasi-judicial agencies and also as policy makers and advocates was recognized by the legislature when it amended the powers and duties of the Alaska Pipeline Commission in 1976. Initially, the power of the APC to appear before federal regulatory bodies (ICC oil pipelines, FPC gas pipelines) paralleled that granted to the APUC. However, it was soon apparent that the APC could not fulfill both intrastate and interstate functions and the legislature changed AS 42.06.140(10) to read "[the APC] shall provide all reasonable assistance to the Department of Law in intervening in, offering evidence in, and participating in proceedings involving a pipeline carrier and affecting the interests of the state, before an officer, department, board, commission, or court of another state or the United States."

Thus, with regard to the APC, the legislature recognized the conflict in function between intrastate and interstate matters and codified the ad hoc practice which exists at the APUC.

The authority of the ATC to represent the state interest in interstate proceedings before federal agencies is the vaguest of the three Alaska commissions. Under title 42 the ATC has no specific power to appear before the Inter-

state Commerce Commission, the Federal Maritime Commission, or Civil Aeronautics Board. The Alaska Air Commerce Act of 1960, however, provides that the ATC, under AS 02.05.050(c), "may apply by petition to [the CAB] when the interstate rates, fares, charges or classifications of air carriers affecting the commerce of this state are, in the opinion of the commission, excessive or discriminatory . . . or when interstate services are inadequate, unsatisfactory or discriminatory . . ."

Thus legislative authority for ATC participation in federal proceedings extends only to one of the three federal transportation regulation commissions and even before the CAB, the ATC is, by statute, to be advised and represented by the Attorney General. Further, the Attorney General has separate authority in transportation matters through AS 44.23.060 which provides for the discovery of information and data from regulated carriers "[i]n a hearing or proceeding in which the Attorney General appears before a board, court, commission, committee, or officer of the United States involving traffic and commerce or rates of transportation between points in interstate or intrastate transportation . . ." The implication here is that it is the Attorney General who represents the state interest before federal commissions and not the ATC.

Aside from statutory considerations, however, there is a question of practicality involved and the same reasons which compelled the delegation of interstate matters from the APUC and the APC to the Governor and the Attorney General apply equally to the ATC: i.e. the ATC should not act as judge in intrastate proceedings and then appear as an advocate before federal agencies in matters which involve the same regulated carriers.

A second practical problem which arises when interstate and intrastate authority is combined in a single agency is that of communications between the ATC and elected officials. Recommendation number 8 of the Performance Review criticizes contacts between the Governor and the commission asserting "[i]t is particularly improper for the Governor's preference to be communicated to the Commissioners in cases pending before the ATC because the Commissioners are appointed by the Governor. In addition, since one Commissioner's term expires in four months, such communications could give the appearance of influencing the Commission far beyond that of a simple expression of preference by a member of the general public."

While this admonition extends only to cases docketed before the ATC, it is obvious that there will always

be instances where individual carriers have similar matters docketed before both the ATC and a federal commission. It thus becomes impossible for the Governor to formulate and communicate interstate policy to the ATC without influencing intrastate decisions made by the ATC.

An example of how interstate transportation proceedings can be handled without ethical conflict is the recent Southeast Alaska Service Investigation. There, in a case involving restoration of competitive air service between Southeast Alaska and Seattle, policy was developed by the Governor's Office in conjunction with the Departments of Commerce and Economic Development, Transportation, and Community and Regional Affairs, and the ATC, and was coordinated by the Department of Law's Tariff Analyst. As the case progressed it was apparent that the ATC and the Governor held different views and, had the proceeding been handled by the ATC, the state's position would probably not have reflected the administration's views. In fact, in two earlier CAB proceedings the filings were prepared by a Hawaii Consultant under contract to the ATC and were circulated to the Governor's Office too late for comment.

The importance of close cooperation between administration policy-makers and advocates of Alaska's interstate transportation interests is particularly crucial at the present time because of deregulation of federal transportation agencies. Traditional rate and route cases, which have their courterpart among ATC proceedings, are giving way to anti-trust, subsidy, and small communities service questions at the CAB and these matters more properly fall within the scope of the Department of Law and the Governor's Office. Similarly, deregulation at the ICC and FMC is rapidly approaching and the state position on whether modifications should be sought for Alaska interests is one which should be developed by the Governor and presented by the Attorney General. This approach would parallel the state's activities regarding energy deregulation before FERC, where it is the Attorney General, not the APC, who represents the state.

Finally, the Department of Law is adamently opposed to the decentralization of the Attorney General's staff. If, as the auditor recommends, attorneys whose duties are primarily directed towards a single agency are transferred to that agency, the Department of Law would virtually disappear and the Attorney General would no longer direct the state's legal business. Obviously, if state agencies retained their own counsel there would be tremendous pressure upon the in-house attorney to issue opinions favorable to the agency's desires and there would be no control over the state's legal policy. The balkanization of the Department of Law proposed here is unworkable.

Additionally, it should be pointed out that the Department of Law's Tariff Analyst is not simply assigned to transportation regulation matters. Since pipelines, telecommunications, and surface and air carriers are all somewhat similarly regulated industries, expertise in one area is in many instances transferable from one endeavor to another. The tariff analyst has, for example, been active in pipeline proceedings and is currently being assigned an expanded role in telecommunications. Consequently, transfer of the position from the Department of Law to the ATC would simply fragment a developing cohesiveness in the state's approach to presenting its views to a wide range of federal regulatory agencies. Moreover, the position is heavily involved with consumer advocacy and reassignment to the ATC would surely restrict the Department of Law's ability to bring consumer actions before federal regulatory agencies.

Sincerely,

Avrum M. Gross
Attorney General

AMG:ams

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

January 9, 1979

Members of the
Legislative Budget and Audit Committee:

We have reviewed the responses of the Alaska Transportation Commission to our audit report dated October 24, 1978. The responses appear thoughtfully prepared and we believe they will assist you in evaluating the Alaska Transportation Commission. Our comments on the responses follow.

Recommendation No. 5

ATC enforcement staff duplicates the motor vehicle safety inspections done by the Department of Public Safety.

The response states ATC safety inspections complement rather than duplicate safety inspections done by the Department of Public Safety.

We found ATC inspections at the scale houses were performed only during the hours State Troopers were performing similar activities at the scale houses. These ATC inspections do not result in increased safety enforcement.

Further, the State Troopers provide ATC with copies of any citations for safety violations issued at the scale houses during periods ATC enforcement personnel are not present. The copies provided include any instances of failure to display required ATC certificate numbers in addition to the safety violations.

We therefore reaffirm our finding that ATC safety inspections at the scale houses do not result in additional enforcement but merely duplicate State Troopers' activities, and should be discontinued.

31-Q1LH

Recommendation No. 6

Applications should be processed by the ATC in a more timely manner and temporary operating authority should be granted in accordance with Alaska Statutes.

The Commission stated it grants temporary authority if a carrier can show a need exists for the particular service. They also stated a substantial number of temporary authorities are granted by the Commission each year of which a great portion are in the nature of a transfer of control from one business entity to another.

The Commission's response does not fully address our recommendation with regard to the granting of temporary authority. Both the Motor Freight Carrier Act and the Air Commerce Act require demonstration of either an emergency situation or unusual circumstances before temporary permits may be issued. Our test sample indicated 55% of the temporary permits were not accompanied by these criteria. Moreover, it is not relevant, with regard to Motor or Air Carrier, that the reason for issuing a temporary permit is a change in firm ownership. An emergency or unusual circumstance must first be demonstrated. The change of firm ownership exemption from the demonstrated emergency requirement applies only to Motor Passenger Carriers (buses) which constituted two percent of our sample.

Recommendation No. 10

ATC should issue orders in accordance with Alaska Statutes.

The Commission believes that it is issuing its orders in substantial compliance with Alaska Statutes.

We believe that the Commission is not in compliance with AS 42.07.141 or 3 AAC 60.350 which require the written decision to contain the findings of fact and conclusions of law. During our audit we observed a case in which authority was issued by telegram but the required findings of fact and conclusions of law were not formulated or reduced to writing until several days after the authority was granted.

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

MOTOR VEHICLES IN ALASKA

PUBLISHED BY

mvma

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
of the
United States, Inc.

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MVMA offers this publication to present factual information on motor vehicles. Contents may be reproduced or quoted without credit. Request for copies should be addressed to Communications Division, Motor Vehicle Manufacturers Association, 320 New Center Building, Detroit, Michigan 48202.

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RUSSELL E. MacCLEERY, *Vice President*

May 1977

Motor vehicles--their manufacture, sale, servicing and commercial use--represent one of the most dynamic forces affecting our national economy. About one of every six employed persons work in automotive-related occupations. Some of the facts about motor vehicles include:

- Americans now own nearly 140 million cars, trucks, and buses--40 percent of the world total--or more than one vehicle for every two persons in the country.

- Motor vehicle producers maintain plant, office, warehouse or test facilities in nearly every state and in addition purchase materials, parts, and services from an estimated 40,000 independent suppliers.

- Directly and indirectly the industry contributes a large share of taxes to national, state, and local governments.

- Nearly two million Americans own stock in the motor vehicle manufacturing companies and many others benefit through participation in pension funds and investment programs involving automotive stock.

To highlight the importance of motor vehicles, the Motor Vehicle Manufacturers Association has prepared reports summarizing significant facts concerning the automotive industry for the various states. I hope you will find the attached report for your state interesting.

W. D. Eberle

Highlights

Employment

The manufacture, distribution, maintenance, and commercial use of motor vehicles in Alaska provides employment for almost 21,000 workers.

Automotive Businesses

Almost 400 different firms in Alaska are primarily engaged in the manufacture, distribution, and servicing of motor vehicles. In addition, 170 firms engaged in highway transportation employed 2,500 workers with an annual payroll of $40 million.

Motor Vehicle Manufacturers

Manufacturers of motor vehicles in Alaska, not including independent suppliers:

- Employ about 20 workers.
- Disburse $214,000 in annual wages and salaries.
- Pay almost $140,000 a year in taxes to state and local government.

Dealers

In Alaska there are:

- 32 new car and truck dealers.
- Employing 850 workers.
- Paying $13 million in annual wages and salaries.

Stockholders

About 600 residents in Alaska own stock in motor vehicle manufacturing corporations.

Vehicle Taxes

Highway users in Alaska paid $29 million in special state vehicle taxes. Motor vehicle, fuel, and license taxes accounted for six percent of total state tax revenues.

Federal automotive excise taxes paid by users in Alaska amounted to an additional $10 million.

Motor trucks in Alaska -- 32 percent of vehicles registered -- paid 53 percent of total special state vehicle taxes.

Vehicle Registrations

Total vehicles registered in Alaska amounted to 255,000 in 1976 -- 159,000 were automobiles and 96,000 were commercial vehicles.

New Vehicle Registrations

Passenger cars newly registered in Alaska in 1976 totaled 11,900 and 11,300 new motor trucks were also registered.

Drivers

There are 242,000 licensed drivers in Alaska or .95 drivers per registered vehicle.

Automobile Ownership and Use

Four out of five households in Alaska own an automobile. Privately owned automobiles are used by 60 percent of workers in the state to get to their jobs.

LIMITATIONS OF DATA FROM "COUNTY BUSINESS PATTERNS"

- *Much of the data used in this report is derived from* County Business Patterns, *a statistical by-product of employment and payroll information reported to the Treasury Department under the Social Security Program*

- *Self-employed persons are not included in the report. As a result, the counts of establishments, employment, and payrolls are understated. In the case of repair shops, trucking firms, taxicabs, and others, the number of such firms omitted may be quite large in relation to the number listed. Total employment and payrolls would also be affected but not the same extent*

- *It should also be noted that firms are classified by their principal line of business. This is another source of understatement for certain lines of business. For example, gasoline service stations operated as part of a new car dealership are not included in the count of such stations. Similarly, the count of tire, battery, and accessory retailers or of auto repair facilities would not include new car dealers or large department stores offering such sales and services*

Economy

A special study of motor vehicle manufacturers provides some new measures of the importance of the motor vehicle industry to the economy of the State of Alaska:

> Manufacturers of motor vehicles, not including independent suppliers, employ about 20 workers, with an annual payroll of $214,000. Annual taxes paid to state and local governments by these manufacturers exceed $140,000.
>
> Some 600 persons in the state are stockholders of motor vehicle manufacturing corporations.
>
> There are 32 new car and truck dealers in the state. They employ 850 people and pay $13 million in wages and salaries.

SOURCE: Special studies by Motor Vehicle Manufacturers Association of the U.S. Inc., 1976.

Registrations

Motor Vehicles	1975	Preliminary 1976
Automobiles	142,717	159,000
Trucks and Buses	82,858	96,000
Total	225,575	255,000

SOURCE: U.S. Department of Transportation, Federal Highway Administration.

* * *

Trucks-Special Type	1975
Truck-Tractor	1,990
Diesel Trucks	2,831
Diesel Buses	398
Motor Buses	
School	425
Commercial	576
Total	1,001
Commercial Trailers	
Full-Trailers	4,416
Semi-Trailers	1,455
Total Truck-Trailers.....	5,871

SOURCE: U.S. Department of Transportation, Federal Highway Administration

* * *

New Motor Vehicle Registrations	1975	1976
Passenger Cars	15,381	11,886
Motor Trucks	14,327	11,305
Total	29,708	23,191

SOURCE: R. L. Polk & Co.

* * *

Drivers

Number of Licensed Drivers in 1976	242,000
Drivers per Motor Vehicle	.95

SOURCE: U.S. Department of Transportation, Federal Highway Administration

Automotive Businesses

SUMMARY

Industry	Total Establishments	Number of Employees, March, 1974	Total Annual Payrolls, 1974 (000)
Automotive Businesses in State			
Wholesale Trade	56	421	$ 5,506
Retail Trade	256	1,950	23,907
Services	85	344	3,885
Highway Transportation ..	169	2,564	40,071
Total Automotive Businesses*	566	5,279	$ 73,369
All Businesses in State**	7,372	65,124	$927,305
Automotive Business as Percent of all Businesses in State	7.7	8.1	7.9
Automotive Related Businesses*** (not included above, partial list)	174	429#	$ 8,146#

- Partial Total

* - Some Automotive Businesses are not included in this analysis. Self-employed persons in the Automotive Business are not included. Persons employed in Automotive Departments of establishments, such as department stores whose principal business is in non-automotive products, would also be omitted.

** - Does not include agriculture, government, railroads, or persons in domestic service or who are self-employed.

*** - Petroleum extraction, refining, and wholesale distribution; highway and street construction; trailer parks.

SOURCE: Compiled by Motor Vehicle Manufacturers Association of the U.S., Inc. from County Business Patterns, 1974, U.S. Department of Commerce, Bureau of the Census.

TRADE

Industry	Total Establishments	Number of Employees, March, 1974	Total Annual Payrolls, 1974 (000)
WHOLESALE			
Automotive Wholesale Businesses in State			
Motor Vehicles and Automotive Equipment...	56	421	$ 5,506
Automobiles and Other Motor Vehicles.....	--	--	--
Automotive Parts and Supplies.....	43	325	4,095
Tires and Tubes.....	--	--	--
Total Automotive Wholesale	--	--	--
All Wholesale Business in State	56	421	$ 5,506
Automotive Wholesale as Percent of all Wholesale Businesses in State	526	4,064	$ 63,689
RETAIL	10.6	10.4	8.6
Automotive Retail Businesses in State			
Automotive Dealers and Service Stations.....	256	1,950	$ 23,907
New and Used Car Dealers.....	32	851	12,895
Used Car Dealers.....	--	--	--
Auto and Home Supply Stores.....	28	152	1,743
Gasoline Service Stations.....	150	D	D
Miscellaneous Automotive Dealers....	--	--	--
Total Automotive Retail.	256	1,950	$ 23,907
All Retail Trade Businesses in State....	1,734	15,224	$144,592
Automotive Retail Trade as Percent of All Retail Trade in State .	14.8	12.8	16.5

SOURCE: Compiled by Motor Vehicle Manufacturers Association of the U.S., Inc. from County Business Patterns, 1974, U.S. Department of Commerce, Bureau of the Census.

SERVICES

Industry	Total Establishments	Number of Employees, March, 1974	Total Annual Payrolls, 1974 (000)
Automotive Service Businesses in State			
Automobile Repair, Services and Garages....	85	344	$ 3,885
Automobile Rentals Without Drivers.....	17	D	D
Passenger Car Rental and Leasing.....	14	94	805
Truck Rental and Leasing.....	--	--	--
Utility Trailer Rental.	--	--	--
Automobile Parking.....	--	--	--
Automobile Repair Shops.....	61	195	2,694
Top and Body Repair Shops.....	14	59	884
Tire Retreading and Repair Shops.....	--	--	--
Paint Shops.....	--	--	--
General Automobile Repair Shops.....	29	D	D
Automobile Repair Shops, N.E.C.	--	--	--
Automobile Service, Except Repairs*.....	--	--	--
Total Automotive Service Services.....	85	344	$ 3,885
All Service Businesses in State.....	1,783	14,505	$149,087
Automotive Services as Percent of all Services in State.....	4.8	2.4	2.6

* - Automotive laundries, driving instruction, towing, etc.
N.E.C. - Not elsewhere classified.
SOURCE: Compiled by Motor Vehicle Manufacturers Association of the U.S., Inc. from County Business Patterns, 1974, U.S. Department of Commerce, Bureau of the Census.
D - Withheld to avoid disclosure

HIGHWAY TRANSPORTATION

Industry	Total Establishments	Number of Employees, March, 1974	Total Annual Payrolls, 1974 (000)
Highway Transportation Businesses in State			
Local Passenger Transportation.....	71	1,273	$ 6,715
Local and Suburban Transit.....	12	388	1,388
Local Passenger Transportation, N.E.C...	--	--	--
Taxicabs.....	38	398	2,424
Intercity Highway Transportation.....	--	--	--
School Buses.....	12	174	1,041
Trucking Local and Long Distance*.....	98	1,291	33,356
Trucking Terminal Facilities.....	--	--	--
Total Highway Transportation.....	169	2,564	$ 40,071
All Transportation and Other Public Utilities Businesses in State.....	468	9,157	$162,446
Highway Transportation as Percent of: All Transportation and Other Public Utilities Businesses in State.....	36.1	28.0	24.7

* - Data shown for reporting units, employment, and payrolls of trucking firms are substantially understated. The source data does not include establishments operated by self-employed persons. Furthermore, firms operating trucks but whose principal business may fall into some other business category are not included in these totals.
D - Withheld to avoid disclosure.
N.E.C. - Not elsewhere classified.
SOURCE: Compiled by Motor Vehicle Manufacturers Association of the U.S., Inc. from County Business Patterns, 1974, U.S. Department of Commerce, Bureau of the Census.

RELATED BUSINESSES

Industry	Total Establishments	Number of Employees, March, 1974	Total Annual Payrolls, 1974 (000)
Mining			
Crude Petroleum and Natural Gas	19	D	D
Highway and Street Construction	57	D	D
Manufacturing			
Petroleum Refining	--	--	--
Paving Mixtures and Blocks	--	--	--
Lubricating Oils and Greases	--	--	--
Wholesale Trade			
Petroleum Bulk Stations and Terminals	98	429	$8,146
Services			
Camps and Trailering Parks	--	--	--
Drive-in Motion Picture Theaters	--	--	--

D - Withheld to avoid disclosure.
SOURCE: Compiled by Motor Vehicle Manufacturers Association of the U.S., Inc. from County Business Patterns, 1974, U.S. Department of Commerce, Bureau of the Census.

* * *

Visitors Travel Expenditures	Expenditures 1975 (000)
Transportation	$190,934
Lodging	28,028
Food	57,743
Entertainment	8,418
Gifts	--
Incidentals	13,971
Total	$299,094

NOTE: These data are based on travel to a place at least 100 miles or more away from home. Travel by all modes is included; nationally two-thirds of travel expenditures were made by traveling by highway vehicle.
SOURCE: Travel Market Yearbook, 1976/1977.

Taxes

Highway User Revenues in State	Estimated 1976 (000)
Motor Fuel Gallonage Tax	$ 16,695
Motor Fuel Other Receipts	3
Motor Vehicle Registration Fees	9,670
Other Vehicle Motor Fees	1,187
Motor Carrier Taxes	770
Miscellaneous Fees	500
Total	$ 28,825

SOURCE: U.S. Federal Highway Administration.

* * *

Special Motor User Taxes	Estimated 1976 (000)
State Tax on Motor Vehicle Fuels	$ 24,403
State License Tax on Motor Vehicles .	11,370
State License Tax on Vehicle Operators	466
Total Motor Vehicle, Fuel and License Taxes	$ 36,239
Total State Tax Revenue	$ 598,807
Percent Motor Vehicle is to Total State Taxes	6.0%

NOTE: These are preliminary data on a fiscal year basis.
SOURCE: U.S. Department of Commerce, Bureau of the Census, State Tax Collections: 1976

* * *

Federal Automotive Excise Tax Collections in State	Estimated 1975 (000)
Motor Fuel	$ 6,129
Lubricating Oil	90
Motor Vehicle Use(1)	511
Trucks, Buses, Trailers	2,304
Parts and Accessories	176
Tires, Tubes, Tread Rubber	970
Total	$ 10,180

(1) Tax at $3.00 per 1,000 pounds per year on vehicle with taxable GVW over 26,000 pounds operated on the highways.
SOURCE: U.S. Department of Transportation, Federal Highway Administration.

Motor Truck

Truck Taxes in State, 1975		Truck Percent of Total
Registration Fees	$ 3,948,000	46.4
Miscellaneous Receipts	940,000	51.1
Motor Fuel Taxes	8,423,000	55.3
Motor Carrier Taxes	609,000	92.1
Total User Taxes	$13,920,000	53.0

Truck Registrations, 1975	76,535
Trucks as Percent of Total Registrations	33.2%

SOURCE: Truck Taxes by States--25th Annual Edition, American Trucking Associations, Inc.

* * *

Trucking Employment and Payrolls in State, 1975

Employment	15,200
Payrolls	$264,343,200

SOURCE: American Trucking Associations, Inc.

* * *

Major Use of Trucks in State

	Percent of Total Private Trucks in Operation		
	1963	1967	1972
Agriculture	5.5	3.9	2.3
Forestry and Lumbering	--	--	--
Mining	--	--	--
Construction	14.7	14.9	14.4
Manufacturing	2.9	--	1.1
Wholesale and Retail	11.3	6.3	6.2
For-Hire	6.1	3.7	3.0
Personal Transportation	48.7	58.6	59.4
Utilities and Services	7.4	6.5	9.2
All Other	3.4	6.1	4.6

SOURCE: U.S. Department of Commerce, Bureau of the Census, 1972 Truck Inventory and Use Survey.

Automobile Ownership and Use

Mode of Transportation to Work in State, 1970

Private Automobile	Percent of Workers
Driver	51.4
Passenger	9.0
Total Private Auto	60.4
Taxi	.2
Public Transit(1)	1.2
Other(2)	38.2
Total	100.0

(1) Public transit includes bus, street car, subway, elevated train and railroad.
(2) Other includes walked only, worked at home, and other means.

SOURCE: U.S. Bureau of the Census, Census of Population, 1970.

* * *

Household Ownership of Automobiles in State, 1970

Households with Automobiles	Number of Households	Percent of Households
One	42,769	54.1
Two	17,824	22.5
Three or More	2,968	3.8
With One or More	63,561	80.4
With No Automobile	15,498	19.6
All Households	79,059	100.0

SOURCE: U.S. Bureau of the Census, Census of Population, 1970.

Employment in Highway Transport Industry in State

Petroleum Industry	429
Automotive Sales and Servicing	2,715
Road Construction and Maintenance	1,934
Truck Drivers*	15,200
Motor Bus and Taxi Employment	572
Total	20,850

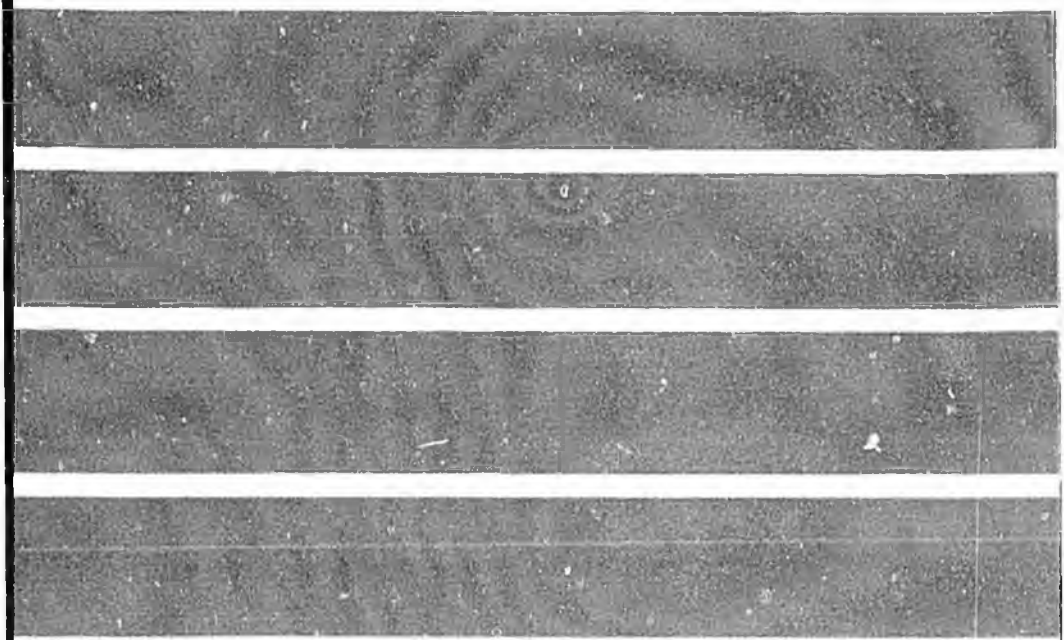
* - Including maintenance, shipping and other trucking employees.
SOURCE: Estimated by Motor Vehicle Manufacturers Association of the U.S., Inc. on the basis of latest Federal Government data by states.

* * *

Road and Street Mileage, 1975

Non-surfaced	3,780
Surfaced	6,161
Total	9,941

SOURCE: U.S. Department of Transportation, Federal Highway Administration.



MOTOR VEHICLE MANUFACTURERS ASSOCIATION
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Brad 5/4/79

attached is the recomendation for the ATC pre-conference.
From Ben B.

It does nothing but continue the ATC for 2 years and increase the enforcement authority of the ATC

Jim

Original sponsor: Commerce Committee

Offered: 4/26/79
Referred: Judiciary and Finance

IN THE SENATE BY THE COMMERCE COMMITTEE

HOUSE CS FOR SENATE BILL NO. 236 am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act continuing the existence of the Alaska Transportation Commission and amending laws relating to the commission; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.66.010(2) is amended to read:

(2) Alaska Transportation Commission (AS 42.07.011) -- June 30, 1981 [1979];

* Sec. 2. AS 02.05 is amended by adding a new section to read:

~~Sec. 02.05.035. EXEMPT AIR CARRIERS. This chapter applies to all air carriers unless specifically exempted by this section. This chapter, except when specifically otherwise provided, does not apply to~~

~~(1) the operation of rotary-wing aircraft (helicopters) by an air carrier;~~

~~(2) the operation of unscheduled, single-engine, fixed-wing aircraft with a certified gross takeoff weight of 5,500 pounds or less by an air carrier.~~

* Sec. 3. AS 39.25.120 is amended by adding a new paragraph to read:

(12) the director, deputy director, hearing officers and staff legal counsel of the Alaska Transportation Commission.

* Sec. 4. AS 42.07.101 is repealed and re-enacted to read:

Sec. 42.07.101. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The commission may employ an executive director who shall have had at least five years of experience in public transportation management or

regulation, law, accounting, or an allied field. The executive director may be a member of the commission. The commission may employ engineers, hearing officers, staff legal counsel, experts, clerks, accountants, and other agents and assistants it considers necessary. The executive director, if not a member of the commission, his deputy and staff legal counsel to the commission are in the partially exempt service under AS 39.25.120. All other employees and agents of the commission are in the classified service under AS 39.25.100. The salary of an executive director who is a member of the commission may not exceed that of a superior court judge.

(b) In addition to its staff of regular employees, the commission may contract for and engage the services of consultants and experts the commission considers necessary.

* Sec. 5. AS 42.07.121 is amended to read:

Sec. 42.07.121. GENERAL POWERS AND DUTIES. The Alaska Transportation Commission shall supervise and regulate transportation in the state as provided in this chapter and in AS 02.05 and AS 42.10 [, AS 42.15, AS 42.25], and may do all things, whether specifically designated in this chapter or in AS 02.05 or AS 42.10 [, AS 42.15, AS 42.25], or in addition thereto, which are necessary or convenient in the exercise of this power and jurisdiction.

* Sec. 6. AS 42.07 is amended by adding a new section to read:

Sec. 42.07.126. EXEMPT TRANSPORTATION CARRIERS. The jurisdiction of the commission does not extend to the regulation of ~~carriers by bus or to the regulation of~~ ferry transportation.

* Sec. 7. AS 42.07.131 is amended to read:

Sec. 42.07.131. AUTHORITY LIMITED BY FEDERAL LAW. The provisions of this chapter and AS 02.05 and AS 42.10 [AND AS 42.15] apply to transportation carriers engaged in foreign commerce and interstate commerce

to the extent permitted by the constitution and laws of the United States.

* Sec. 8. AS 42.07 is amended by adding a new section to read:

Sec. 42.07.136. INSURANCE OR DEPOSIT OF SECURITY ON EXEMPT CARRIERS. The commission shall require carriers exempted under AS 02.05.035, AS 42.07.126, and AS 42.10.020 to procure and maintain bodily injury and property damage liability insurance from a company licensed to write insurance in the state or deposit security for the limits of liability and upon the terms and conditions the commission determines necessary for the reasonable protection of the public against damage and injury for which the carrier may be liable by reason of its operation. Evidence of the required insurance shall be filed with the commission.

* Sec. 9. AS 42.10.020 is amended by adding a new paragraph to read:

(5) motor vehicles operated as tow trucks.

* Sec. 10. AS 42.10.090(2) is amended to read:

(2) require every private carrier and every exempt carrier except as provided in AS 42.10.020(4) and (5) to file information required by the commission to carry out this chapter, and supervise and regulate each private carrier in all other matters affecting its relationship with the shipping and the general public.

* Sec. 11. AS 39.23.060 is amended to read:

Sec. 39.23.060. REVIEW OF COMPENSATION AND BENEFITS; OFFICERS COVERED. The commission shall conduct an on-going review of compensation and retirement benefits for members of the legislature; the governor; the lieutenant governor; commissioners, deputy commissioners, and division directors of each executive department; members of the Alaska Public Utilities Commission; members of the Alaska Pipeline Commission; members of the Alaska Transportation Commission; members of the Alaska

Commercial Fisheries Entry Commission; and the judiciary, to determine the appropriateness of compensation and benefits.

* Sec. 12. AS 39.27.011(b) is amended to read:

(b) The salary schedule set out in (a) of this section has no effect upon other provisions of law specifying the salary of the governor, lieutenant governor, legislators, judicial officers as defined in AS 22.20.010, department heads, and members of the Alaska Public Utilities Commission, the Alaska Transportation Commission, the Alaska Pipeline Commission, or the Alaska Commercial Fisheries Entry Commission.

* Sec. 13. AS 42.07.071 is amended to read:

Sec. 42.07.071. COMPENSATION OF MEMBERS OF THE ALASKA TRANSPORTATION COMMISSION. The Commissioners are in the exempt service under AS 39.25 and shall receive an annual salary as established under AS 39.23 [SET BY AS 39.27.011(a) FOR RANGE 27, STEP C OF THE STATE PAY PLAN].

* Sec. 14. AS 42.15 and AS 42.25 are repealed.

* Sec. 15. AS 02.05.035(2), as added by sec. 2 of this Act, takes effect July 1, 1980. Sections 1 and 3 - 10 and 14 of this Act take effect July 1, 1979. Section 11 of this Act takes effect immediately in accordance with AS 01.10.070(c). Sections 12 and 13 of this Act take effect on the effective date of the next recommendation submitted to and accepted by the legislature under AS 39.23.080(c) following the effective date of sec. 11 of this Act.

Original sponsor: Sumner

Offered: 4/29/79
Referred: Rules

IN THE SENATE BY THE COMMERCE COMMITTEE

HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 60

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Transportation Commission and to its regulation of air commerce under the Alaska Air Commerce Act of 1960."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 42.07.031 is amended to read:

Sec. 42.07.031. QUORUM. Two members of the commission constitute a quorum for the transaction of business, for the performance of a duty, or for the exercise of a power of the commission, except as provided in AS 42.07.181(d).

* Sec. 2. AS 42.07.101 is repealed and re-enacted to read:

Sec. 42.07.101. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The commission may employ an executive director who shall have had at least five years of experience in public transportation management or regulation, law, accounting, or an allied field. The executive director may be a member of the commission. The commission may employ engineers, hearing officers, staff legal counsel, experts, clerks, accountants, and other agents and assistants it considers necessary. The executive director, if not a member of the commission, his deputy, hearing officers and staff legal counsel to the commission are in the partially exempt service under AS 39.25.120. All other employees and agents of the commission are in the classified service under AS 39.25.100. The salary of an executive director who is a member of the commission may not exceed that of a superior court judge.

(b) In addition to its staff of regular employees, the commission

may contract for and engage the services of consultants and experts the commission considers necessary.

* Sec. 3. AS 42.07.141 is amended by adding a new subsection to read:

(e) The commission may adopt regulations or issue orders governing the protection, assemblage, exchange, and distribution of information including the allocation of any costs incurred by a person in performing those activities.

* Sec. 4. AS 42.07 is amended by adding new sections to read:

Sec. 42.07.171. ENFORCEMENT AUTHORITY. An enforcement officer authorized and designated by the commission has the enforcement authority set out in this section in order to enforce regulations and orders of the commission and to enforce the statutes that the commission has the responsibility to administer. The commission may authorize that person to

(1) require the operator of any surface or air vehicle which may be subject to or is reasonably believed to be subject to the authority of the commission to present documents of vehicle registration, ownership, or other documents required by regulation to be in the possession of the operator;

(2) issue citations for the violation of a regulation, order, or statute under the jurisdiction of the commission; and

(3) apply to a court for an appropriate order.

Sec. 42.07.181. STOP ORDERS. (a) The commission may, following a hearing under its regulations, issue a stop order directed to a person violating a regulation, order, or statute under the jurisdiction of the commission.

(b) The commission may issue a stop order on its own motion before a hearing if it finds that immediate and irreparable harm is likely to occur to the public if the order is not issued. In addition, the commis-

sion may iss a stop order on its own motion if it finds that the party to whom the order is directed

(1) has failed to file required insurance or surety bonds;

(2) is no longer fit, willing and able to operate properly;

(3) is operating without an appropriate certificate or permit allowing him to conduct the transportation in question; or

(4) is operating in a manner that will jeopardize the public safety if such an order is not issued.

(c) A stop order issued by the commission on its own motion and without a hearing is effective for five days, and the order shall provide the respondent a hearing within five days. If requested by the respondent, the hearing shall be held in the judicial district in which the residence or principal place of business of the respondent is located. If a hearing has been provided within five days, the commission may extend the stop order an additional five days in order that the commission may decide the matter.

(d) If a single commissioner finds that a person engaging in transportation does so in a manner that creates a likelihood that the public safety will be jeopardized if a stop order is not issued, he may issue a stop order without a hearing. A stop order issued by a single commissioner is effective for 48 hours or until a stop order is issued by the commission under (c) of this section.

(e) A stop order shall be rescinded if the commission finds, upon petition or upon its own motion, that the respondent has complied with the terms of the stop order, or that the stop order was erroneously or improperly issued.

(f) If, after a hearing, the commission finds that a respondent violated the stop order, the commission may fine that person not more than $1,000 for each day the violation of the stop order continues, or

an amount equal to any revenue that person earned as a result of violating the stop order, whichever is greater. No fine may be collected if violations or alleged conditions upon which the stop order was issued are found by the commission or by a court not to apply.

(g) A respondent who is injured by the stop order or citation and is subsequently determined not to have been in violation of a regulation, order, or statute under the jurisdiction of the commission has a claim against the state. A claim under this subsection shall be filed in the superior court. It is not a defense to a claim under this subsection that the stop order or citation constituted a discretionary act on the part of the commission or the enforcement officer.

(h) In this section, "respondent" means a person against whom a stop order or citation is directed.

* Sec. 5. The Alaska Transportation Commission shall amend its rules of practice and procedure within 180 days of the effective date of this Act to insure that any person subject to a stop order issued under AS 42.07.181 has the opportunity to have the stop order rescinded because he has complied with its terms.

* Sec. 6. AS 02.05.050(d)(1) is amended to read:

(1) may, in accordance with his certificate, the limitations established by this chapter and regulations of the commission, utilize in all areas of the state from which he is authorized to operate, aircraft <u>which have a maximum payload capacity determined with reference to federal air regulations of not more than 7,500 pounds and a maximum passenger seating configuration, exclusive of any pilot's seat, of 30</u> [HAVING A MAXIMUM CERTIFICATED TAKEOFF WEIGHT OF 12,500 POUNDS OR LESS] except as authorized on certificates in effect on September 26, 1972 or as otherwise authorized by the commission;

* Sec. 7. AS 02.05.050(d)(3) is amended to read:

(3) may charge individual passenger fares and per pound cargo rates [ON BUSH ROUTES OR POINTS SERVED BY HIM ON AN IRREGULAR BASIS; HOWEVER, NO INDIVIDUAL PASSENGER FARE AND PER POUND CARGO RATE MAY BE LESS THAN THAT CONTAINED IN THE PUBLISHED TARIFF OF A SCHEDULED CARRIER BETWEEN POINTS BEING SERVED BY THE CARRIER];

XEROX

Dividends from Deregulation

A benefit, on balance, for travelers and traffic

Almost exactly a year ago, Congress passed the Airline Deregulation Act, which in the name of free market economics all but stripped away the bureaucracy that had controlled and coddled the U.S. air travel industry for 40 years. Generally, the skies were opened to many new carriers, and operators were given unprecedented freedom to change routes, flight schedules and even their fares. Result after twelve months: a spurt of competition that has brought benefits for travelers as well as some headaches, but that may be cut short by new financial woes afflicting the industry.

On balance, deregulation has led to improved service. Scheduled carriers have added flights at more than 100 cities, and 35 carriers began serving 231 routes that had not previously been flown by lines that had permission to use them. In addition, 32 carriers have taken advantage of a rule that allows each line to begin flying one new route each year without having to get the Civil Aeronautics Board's assent. Insists United Airlines Chairman Richard Ferris: "About 98% of the traveling public has as much or more service available today than a year ago."

The big gainers have been hub cities such as Los Angeles, Houston, Chicago and New York and recreation meccas like Hawaii and Florida. But there have been losers too. Some 60 cities have been stripped of all scheduled airline service. In Chattanooga, which lost much of its service when United and Eastern pulled out this year, James Hunt, a Chamber of Commerce executive, says unhappily of deregulation: "Count us as one of the minuses."

The hope was that in places where service was curtailed or ended altogether, commuter airlines flying small planes and endowed with subsidies would fill the gap. Indeed, in the past twelve months more than 60 such lines have started up. But as a group they are plagued by a shortage of suitable aircraft and a poor safety record. So far in 1979, crashes involving commuter planes have killed 61 persons, vs. 42 in all of 1978.

The increased competition brought on by deregulation has cut average air travel costs. Traffic is up by 13.5% for the first nine months of this year, on top of a 17% increase in 1978, and about half of all air travelers now pay discount fares. The flood of flights has overstrained airports, creating booking, check-in and departure delays. Planes are packed, and even first-class seats can be difficult to get because more and more passengers are paying the premium rates to avoid the crowding and hassle of cabin class. But despite this booming business and a 32% increase in basic fares, the airlines are encountering profit problems, chiefly as a result of higher fuel prices. Says Marvin Cohen, chairman of the CAB: "Fuel has been a real bitch."

Jet fuel, which cost 25¢ per gal. in 1970, is now 70¢ and rising fast; today fuel accounts for about 30% of an airline's operating costs, up from 16% only two years ago. Having earned more than $1 billion in the first nine months of 1978, the industry cleared only $580 million in the same period this year, and all carriers are scrambling to cut costs. TWA has laid off 2,500 employees; and United, which was grounded by a long strike last spring and is now being hurt by passengers cashing in and flying on half-fare coupons, has furloughed 195 pilots and 400 other employees. Braniff has pulled out of 23 of the 40 markets it entered a year ago. Pan Am, which last week got CAB approval for its plan to merge with National, has dropped some overseas routes.

Some airline executives argue that deregulation has helped the carriers cope with runaway costs. Insists John Zeeman, vice president of passenger marketing at United: "If we did not have deregulation we would have been hurt worse. We have problems catching costs but we are now more flexible and can better respond to the market." The real test of that will come next year, when air travel is expected to drop as the recession begins to bite deeper. "The jury is still out," says Edwin Colodny, chairman of USAir (formerly Allegheny). "There will be no full answer on deregulation until the industry has gone through a full economic cycle, up and down."

For now, however, the carriers seem eager to exercise their new freedom to fight for business. At present, the hottest battleground is Florida, where National, Delta and Eastern are all facing new competition on routes in and out of the Sunshine State. Since deregulation, American, Ozark and Republic have all launched runs between Florida and points in the Midwest and other areas, while Braniff has increased its service from Texas and Western states. TWA and United plan to invade Florida this winter.

RAY FISHER

Passengers board a New York–bound Air Florida flight in Miami

Some "gnats" are spreading wings, and making money too.

One beneficiary of all this competition has been the traveling public. Sun seekers can now fly more nonstops to Florida than ever before, and for a multitude of discount fares. As a result, traffic is booming; in the year ending last July, the number of passengers passing through Miami airport was up 21%.

Another beneficiary has been Air Florida, one of the many smaller carriers across the country that have been able to spread their wings under deregulation. Two years ago, it was just another rickety one-state airline, linking six Florida cities with half a dozen planes. Today it is an aggressive regional carrier that serves 23 cities, including Washington, D.C., Philadelphia and New York, with a fleet of jets. This fiscal year it turned its first real profit: $2.4 million. Says Chairman C. Edward Acker: "Without deregulation we'd still be tiny. It has given us the ability to move fast into markets."

When Air Florida expanded to New York and Washington, it undercut its bigger competitors by offering one-way fares of just over $50 (since raised to $70). In a kind of backhanded salute to its aggressiveness, Eastern and other carriers struck back with lower fares on in-state routes. They forced Air Florida to reduce sharply its Miami-Tampa flights and all but abandon the Miami-Orlando run, but the airline retaliated, charging Eastern with "predatory pricing" before the CAB. Eastern spokesmen denied the Air Florida challenge, saying, "They're a gnat. We didn't even know they were there." As a result of deregulation, that may change. ■

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM TO: Senator Clem Tillion
President, Alaska State Senate

FROM: Senator Brad Bradley
Chairman, Senate Commerce Committee

SUBJECT: Senate Commerce Committee Reports of Action Tkaen on Performance Reviews of Alaska Transportation Commission and Occupational Licensing Division

DATE: March 7, 1979

In accordance with the Secretary of the Senate Memorandum dated January 23, 1979, the Alaska Senate Commerce Committee has completed its public hearings and reviews of the Alaska Transportation Commission (Enclosure #2) and the Occupational Licensing Division (Enclosure #3) and forwards herewith the committee's reports of action taken.

WEB:jp
Encl (4)
1. Perf. Rev./ATC
2. Senate Commerce Comm. ATC Rept.
3. Perf. Rev./Occup. Lic. Div.
4. Senate Commerce Comm./Occup. Lic. Rept.

3 ATC

MEMORANDUM TO: Senator Clem Tillion
President, Alaska State Senate

FROM: Senator Brad Bradley
Chairman, Senate Commerce Committee

SUBJECT: Senate Commerce Committee Reports of Action Taken on Performance Reviews of Alaska Transportation Commission and Occupational Licensing Division

DATE: March 7, 1979

In accordance with the Secretary of the Senate Memorandum dated January 23, 1979, the Alaska Senate Commerce Committee has completed its public hearings and reviews of the Alaska Transportation Commission and the Occupational Licensing Division and forwards herewith the committee's reports of action taken.

WEB:jp
Encl

SENATE COMMERCE COMMITTEE REPORT
OF ACTION TAKEN ON PERFORMANCE REVIEW
OF THE
ALASKA TRANSPORTATION COMMISSION

STATEMENT OF PROBLEM

In accordance with the provisions of Alaska Statutes 44.66.010 and 44.66.050, the Senate Commerce Committee, as the delegated committee of reference, has conducted the required sunset review of the Alaska Transportation Commission. This report fulfills the legislative requirement for the committee of references' responsibility to make formal notification to the president of the Senate of its findings relative to the Alaska Transportation Commission.

BACKGROUND

The tenth legislature, acting in the interest of streamlining government and making it more efficient, decreed that certain bodies be reviewed and evaluated periodically to determine whether their continuation is in the best interest of the public. The Legislative Budget and Audit Committee has conducted their required performance review of the Alaska Transportation Commission and submitted it to the Legislature (attached as enclosure #1).

The Senate Commerce Committee was delegated as the committee of reference by the president of the Senate. The Senate Commerce Committee has held three public hearings during which testimony was received from all those who requested a chance to be heard. Among those who were heard were the Deputy Commissioner of the Department of Commerce and Economic Development representing the Commissioner of the Department of Commerce and Economic Development, and the Chairman of the Alaska Transportation Commission. The remainder of those who testified were from various sectors of the transportation industry, representing both the ground and air modes of transportation, and the public at large. Those individuals representing various organizations or those who themselves could not testify in person submitted written testimony.

DISCUSSION

The thrust of the testimony covered three general categories: (1) Adminstrative position, (2) Trucking Industry, and; (3) Air Industry. A summary of these positions follows.

(1) The general administrative position is to follow the recommendations embodied in the Performance Review (attached as enclosure #1). The administrative position as stated by the Department of Commerce and Economic Development included the following recommendations:

a. That the Alaska Transportation Commission not be assigned a dedicated attorney.

b. That the bulk commodity carriers (dump trucks) be de-regulated.

c. That a study should be made determining the affects of de-regulation prior to the implementation of de-regulation. In other words, the administration does not know what the consequences would be if the Alaska Transportation Commission were terminated June 30, 1979.

d. An additional recommendation made by the Chairman of the Alaska Transportation Commision was that an economist be assigned to the Commission in an advisory position.

(2) The concensus opinion presented by the trucking industry was that the Alaska Transportation Commission should be retained. It was the feeling of the industry representatives that regulation is necessary to insure a stable and responsive transportation system in the State of Alaska. One witness expressed a concern over the currently structured regulatory process. Another witness expressed a desire to de-regulate the entire commission with respect to the trucking and towing industry.

(3) The Alaska Air Carriers Association supports the findings of the Legislative Audit report and favors continuation of the Air Commerce Laws and Regulations. However, some individual air operators were for de-regulation of the air carrier portion of the Alaska Transportation Commission's

responsibilities. The central theme of their objections were concerned with limited entry provisions of the law, and a deep desire to let the public decide for themselves what they want and not be told what they can and cannot do.

CONCLUSION

The Senate Commerce Committee, after hearing the testimony, has come to the following conclusions:

(1) The Alaska Transportation Commission should be continued subject to correction of the deficiencies noted and resolution of the recommendations made by the Legislative Budget and Audit Committee (enclosure #1).

(2) The economic review study of de-regulation which was recommended by the Legislative Budget and Audit Committee should be funded by the Legislature and should be conducted by a qualified independent research organization.

(3) At this time, it does not appear that there is an alternative method of achieving the stated purposes and objectives of the Alaska Transportation Commission; however, the Economic review study (referred to in sub-paragraph (2) of this paragraph) may result in recommended administrative and operational changes.

(4) On the basis of the testimony received, it does not appear that the Alaska Transportation Commission could be consolidated with any other board or commission within the state government.

RECOMMENDATIONS

The Senate Commerce Committee recommends that the following actions be taken by the eleventh legislature.

(1) The Performance Review of the Alaska Transportation Commission, conducted by the Division of Legislative Audit, be approved and adopted as the required report to the president of the Senate together with this report.

(2) The Legislature fund an economic review study of de-regulation as recommended by the Senate Commerce Committee and Legislative Budget and Audit Committee.

(3) That legislation be drafted to extend the life of the Alaska Transportation Commission until June 30, 1980, pending the recommended economic review study of de-regulation. (see sub-paragraph (2) of this paragraph).

(4) In the interim, the Senate Commerce Committee recommends that certain legislative actions be taken to correct the deficiencies of the Alaska Transportation Commission as noted in the Legislative Budget and Audit Review. These would include, but should not be limited to SSSB 60, SB 97 and SB 236 (attached), which are currently scheduled for consideration by the Senate Commerce Committee during the first session of the eleventh legislature.

SENATE COMMERCE COMMITTEE

SENATOR BRAD BRADLEY, CHAIRMAN

SENATOR ARLISS STURGULEWSKI, V.C.

SENATOR TIM KELLY, MEMBER

SENATOR TERRY STIMSON, MEMBER

SENATOR FRANK FERGUSON, MEMBER

3/7/79
WEB:jp

SENATE COMMERCE COMMITTEE REPORT ON SUNSET REVIEW OF THE ALASKA TRANSPORTATION COMMISSION

STATEMENT OF PROBLEM

In accordence with the provisions of Alaska Statytes 44.66.010 and 44.66.050 the Senate Commerce Committe as the deligated committee of reference has conducted the required sunset review of the Alaska Transportation Commission. This report fulfilles the legislative requirment for the committee of references' responsibility to make formal notification to the president of the Senate of their findings relitive to the Alaska Transportation Commission.

BACKGROUND

The tenth legislature, acting in the interest of streamlining government and make it more efficient, decread that certian bodies be reviewed and evaluated periodically to determin weather their continuation is in the best interest of the public. The Legislative Budget and Audit Committee has conducted their required review of the Alaska Transportation Commission., and submittde their Preformance Review to the legislature (attached as inclosure #1).

The Senate Commerce Committee was deligated as the committee of reference by the President of the Senate. The Senate Commerce Committee has held three public hearings during which testimony was recieved from all those who requested a chance to be heard. Among those who were heard were the

deputy Commissioner of Commerce and Economic Development representing the Commission of Commerce and Economic Development, and the Chairman of the Alaska Transportation Commission. The remainder of those who testified were from various sectors of the industry and the public at large.

DISCUSSION

In The thrust of testimony fell into three catagories: (1) Administrative position, (2) Trucking Industry, and (3) Air Carriers. A Summery of these positions followes.

(1) The general administrative position is to follow the recomendations embodied in the Preformance Review (attached as enclosure #1). The administrative position as stated by the Department of Commerce and Economic Development included the following recomendations. (A) that the Alaska Transportation Commission not be assigned a dedicated attorney. (B)That the bulk commodity carriers (dunp trucks) be de-regulated. (C) That a study should be made determining the affects of de-regulation prior to the implementation of de-regulation. In other words thhe administration does not know what the affects of consequences whould be if the Alaska Transportation Commission were sunseted June 30, 1979. (D) An additional recomendation made by the Chairman of the Alaska Transportation Commission was that an economic economist be assigned to the commission in an advisory possition.

(2) The concenious opinion presented by the trucking industry was that the Alaska Transportation Commission should be ~~stronger~~ retained. It was the feeling of the industry representatives that regulation is an ~~absolute~~ necessity to insure a stable responsive transportation system to the State of Alaska. One witness expressed a concern over the currently structured regulatory process. Another witness expressed a desire to de-regulate the entire commission with respect to the trucking and towing industry.

(3) The conseccious position presented by the Air Carriers was for de-regulation of the air portion of the Alaska Transportation Commission responsibilities. The centeral theam of their objections were concerened with limited entry provisions of the law, and a deep desire to let the public decide for themselves what they want and not betold. The Air Carriers Association is in favor of continuel regulation.

cONCLUSION

The Senate Commerce Committee after hearing the testimony has come to the following conclusions:

(1) The Alaska Transportation Commission should be continued subject to resolution of the recomendations made by the Legislative Budgit and Audit Ckmmittee (enclouser #1).

(2) That the economic review study recomended by the Legislative

Budget and Audit Committee Report, be funded by the legislature, provided the study be conducted by an independent research orginization.

(3) It does not appear at this time that there is an alternative method of achieving the stated purposes and objectives of the Alaska Transportation Commission. The Economic review study (refered to in sub paragraph (2) of this paragraph) may ~~reeemmen~~ result in recomended changes.

(4) It does not appear, on the basis of testimony recieved, that the Alaska Transportation Commission could be consolidated with any other board or commission within the state government.

RECOMENDATIONS

The Senate Commerce Committee recomend the following actions be taken by the eleventh legislature.

(1) The Preformance Review of the Alaska Transportation Commission, conducted by Legislative Audit, be approved and adopted as the required report to the president of the Senate together with this report.

(2) The Legislature fund a review study as recommended by the Senate Commerce Committee and Legislative Budget and Audit Committee.

(3) That legislation be drafted to extend the life of the Alaska Transportation Commission until June 30, 1980, pending the recomended economic study of de-regulation. (see paragraph (2) of this paragraph.

(4) In the intrum the Senate Commerce Committee recomends that certian ~~legislatiion~~ legislative actions be taken to correct the deficencies of the Alaska Transportation Commsiiion as noted in the Legislative ~~Bugs~~ Budgit and Audit Review. These would include but not be limited to sponser substitute SB-60 and SB-97.

SENATE COMMERCE COMMITTEE REPORT
ON SUNSET REVIEW OF THE
DIVISION OF OCCUPATIONAL LICENSING,
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

STATEMENT OF PROBLEM

In accordance with the provisions of Alaska Statutes 44.66.010 and 44.66.050 the Senate Commerce Committee as the designated committee of reference has conducted the required Sunset Review of the Division of Occupational Licensing. This report fulfills the legislative requirements for the committee of references' responsibility to make formal notification to the President of the Senate of their findings relative to the Division of Occupational Licensing.

The Senate Commerce Committee is designated as the committee of reference by the President of the Senate. The Serate Commerce Committee has held one public hearing during which testimony was received from all those who requested a change to be heard. Among those who were heard were the Director representing the Division of Occupational Licensing and the Chief Investigator from Occupational Licensing. The remainder of those who testified were the Deputy Director of Commerce and Economic Development and a representative from the Alaska Health Coalition.

DISCUSSION

The thrust of testimony received fell into two categories: (1) Administration position and, (2) the Health Care Industry.

(1) The administrative position is to follow the recommendations embodied in the Performance Review (attached as enclosure #1). The administrative position as stated by the Department of Commerce and Economic Development included the following recommendations:

a., That the Division of Occupational Licensing should display better management through an in-house organization program.

b. That the Division of Occupational Licensing whose primary goal is to ensure that Alaskans are adequately protected from unscrupulous or incompetent practitioners, streamline the investigation process.

(2) The concensus position presented by the Health Care Coalition was that money is the major problem plaguing the various boards, especially money for investigative services. Lack of division funds for investigative services has stymied every board being reviewed. The Coalition also believes that more complaints would be filed if people were better informed as to the procedures for doing so. A major concern of the coalition was the lack of communication between the Division of Occupational Licensing and the boards. Reference was made that introduction of legislation directly affecting the boards

be discussed with the boards prior to introduction. The following recommendations were submitted by the Health Coalition:

a. That the Division of Occupational Licensing investigations be transferred to the Department of Public Safety.

b. The Division of Occupational Licensing be required to submit to boards all proposed legislation having a direct or indirect affect on the boards.

c. The Division of Occupational Licensing play a stronger role in settling disputes between boards and other agencies and departments.

d. Require the Division of Occupational Licensing to actively solicit names for possible appointments from the public and private sectors and that the division periodically review and update it with current information.

e. All the statutes in Chap. 08 by revised to limit the number of terms that any board member could serve to two.

f. The division should review the licensing fee structure and seek appropriate revisions.

CONCLUSION

One Senate Commerce Committee after hearing all testimony provided in the hearing has come to the following conclusions:

(1) The Division of Occupational Licensing should be continued subject to resolution of the recommendations made by the Legislative Budget and Audit Committee (attached enclosure 1).

(2) Statutory amendments are needed to assure that appropriate action is taken on consumer complaints against licensed persons.

(3) It does not appear at this time that there is an alternative method of achieving the stated purposes and objectives of the Division of Occupational Licensing.

(4) It does not appear on the basis of testimony received that the Division of Occupational Licensing could be consolidated with any other board or commission within the state government

RECOMMENDATIONS

The Senate Commerce Committee recommends the following actions be taken by the eleventh legislature:

(1) The performance Review of the Division of Occupational Licensing conducted by the legislative audit be approved and adopted as the required report to the president of the Senate together with this report.

(2) That legislation be drafted to extend the life of the Division of Occupational Licensing until June 30, 1980.

(3) In the interim the Senate Commerce Committee recommends that certain legislative actions be taken to correct the deficiencies in the Division of Occupational Licensing as noted in the Legislative Budget and Audit Performance Review. These would include, but not be limited to, SB 73.

Alaska State Legislature

Senate

Office of the Secretary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 23, 1979

MEMORANDUM TO: Commerce Committee

From: Secretary of the Senate RM

Subject: Sunset Audits with Discussion of Legislative Oversight Responsibilities

The President has referred the following reports to the Commerce Committee for public hearings:

A Performance Review of the Alaska Transportation Commission, October 24, 1978

A Performance Review of the Division of Occupational Licensing Department of Commerce and Economic Development, October 30, 1978

Also enclosed is the memorandum of January 22 from the Legislative Budget and Audit Committee pointing out the requirements set out in AS 44.66.050(c) d

President Tillion will expect to receive a report from your committee before the March 1st deadline.

Encls:

cc: President

Cross reference. — As to radiation protection, see AS 18.60.475.

Chapter 66. Review of the Activities of Agencies, Boards and Commissions.

Section	
10. Termination of state boards and commissions	30. Program identification
20. Agency programs	50. Legislative oversight
	60. Existing claims

Cross reference. — As to the termination, continuation and reestablishment of regulatory boards, see AS 08.03.010.

Editor's note. — Section 1, ch. 149, SLA 1977, provides: "The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government, and that there is need for an effective and regular system of scrutiny of the programs and activities of all agencies, boards and commissions. The legislature further finds that the establishment of a system for periodic review by the public and the executive and legislative branches of certain state agencies, boards and commissions will help the governor and the legislature to determine the need for the continued existence of each of the agencies, boards and commissions."

Sec. 44.66.010. Termination of state boards and commissions. (a) Boards and commissions listed in this subsection expire on the date set out after each:

(1) Alcoholic Beverage Control Board (AS 04.05.010) — June 30, 1979;

(2) Alaska Transportation Commission (AS 42.07.011) — June 30, 1979;

(3) State Board of Parole (AS 33.15.010) — June 30, 1980;

(4) Alaska Public Utilities Commission (AS 42.05.010) — June 30, 1980;

(5) Alaska Pipeline Commission (AS 42.05.010) — June 30, 1981;

(6) Alaska Council on Science and Technology (AS 44.19.181) — June 30, 1983;

(7) Alaska Renewable Resources Corporation (AS 37.12.010) — June 30, 1982.

(b) Upon termination, a commission listed in (a) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs.

(c) A commission scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 3 ch 149 SLA 1977; am § 3 ch 101 SLA 1978; am § 10 ch 1979 SLA 1978)

Effect of amendments. — The first 1978 amendment added paragraph (6) of subsection (a).

The second 1978 amendment added paragraph (7) of subsection (a).

Editor's note. — The reference in paragraph (5) to AS 42.05.010 should be to AS 42.06.010.

Sec. 44.66.020. Agency activities listed in this sub provided in § 30 of this c regular legislative session each:

(1) programs in the bud protection, and administra

(2) programs in the bud of Alaska — January, 19

(3) programs in the bu — January, 1982;

(4) programs in the management, developme

(b) An agency progra shall be subject to term convening four years aft termination at any time Budget and Audit Comm if under § 30 of this ch

Sec. 44.66.030. Prog session preceding each Legislative Budget and March 1 of those years, category which shall b The recommendations shall be submitted to th of a bill which, if enac programs and activitie ch 149 SLA 1977)

Sec. 44.66.050. Legi dissolution, continuati under AS 08.03.010 o under §§ 20 and 30 o house, which shall be as provided in the Un more hearings to rec of the department ha board, commission, o or commission involv committee shall als commission, or age 37.07.050(f), and the commission, or age

Sec. 44.66.020. Agency programs. (a) Agency programs and activities listed in this subsection which are specifically designated as provided in § 30 of this chapter are subject to termination during the regular legislative session convening in the month and year set out after each:

(1) programs in the budget categories of general government, public protection, and administration of justice — January, 1980;

(2) programs in the budget categories of education and the University of Alaska — January, 1981;

(3) programs in the budget categories of health and social services — January, 1982;

(4) programs in the budget categories of natural resources management, development and transportation — January, 1983.

(b) An agency program or activity designated in (a) of this section shall be subject to termination during the regular legislative session convening four years after the preceding review and may be subject to termination at any time upon the recommendation of the Legislative Budget and Audit Committee and the concurrence of the legislature as if under § 30 of this chapter. (§ 3 ch 149 SLA 1977)

Sec. 44.66.030. Program identification. During the legislative session preceding each of the years set out in § 20 of this chapter, the Legislative Budget and Audit Committee shall designate, not later than March 1 of those years, the programs and activities within each program category which shall be subject to termination in the next fiscal year. The recommendations of the Legislative Budget and Audit Committee shall be submitted to the respective houses of the legislature in the form of a bill which, if enacted into law, would terminate those designated programs and activities on or before July 1 of the following year. (§ 3 ch 149 SLA 1977)

Sec. 44.66.050. Legislative oversight. (a) Before the termination, dissolution, continuation or reestablishment of a board or commission under AS 08.03.010 or § 10 of this chapter, or of an agency program under §§ 20 and 30 of this chapter, a committee of reference of each house, which shall be the standing committee of legislative jurisdiction as provided in the Uniform Rules of the Legislature, shall hold one or more hearings to receive testimony from the public, the commissioner of the department having administrative responsibility for each named board, commission, or agency program, and the members of the board or commission involved. The hearings may be joint hearings. The committee shall also consider the proposed budget of the board, commission, or agency program, prepared in accordance with AS 37.07.050(f), and the performance audit of the activities of the board, commission, or agency program, prepared by the legislative audit

division as prescribed in AS 24.20.271(1). The committee may consider any other report of the activities of the board, commission or program, including but not limited to annual reports, summaries prepared by the Legislative Affairs Agency, and any evaluation or general report of the manner of conduct of activities of the board, commission, or agency program prepared by the office of the ombudsman.

(b) During a public hearing, the board, commission or agency shall have the burden of demonstrating a public need for its continued existence or the continuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

(c) A determination as to whether a board or commission or agency program has demonstrated a public need for its continued existence shall take into consideration the following factors:

(1) the extent to which the board, commission or program has operated in the public interest;

(2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters;

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;

(4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided;

(5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;

(6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved;

(7) the extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

(8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest; and

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

(d) As to each board, commission, or agency program assigned to it

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Sec. 44.66.060. E
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Chap

Sec. 44.77.010.

Legislative history
State v. ZIA, Inc., Su
(File No. 2518), 556 P.

for purposes of review, the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of the house. The report shall contain a summary of the findings of the committee as to the compliance of the board, commission or program with the factors enumerated in (c) of this section, together with a summary or recommendations of the committee as to each of the following:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

(3) an identification of any other programs having similar, conflicting or duplicate objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts; and

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

(e) The committee of reference may introduce a bill providing for the reorganization or continuation of the board, commission or agency program. No more than one board, commission, or agency program shall be continued or reestablished in any legislative bill, and the board, commission, or agency program shall be mentioned in the title of the bill. (§ 3 ch 149 SLA 1977)

Sec. 44.66.060. Existing claims. This chapter shall not cause the termination or dismissal of a claim or right of a citizen against a board, commission or program of an agency terminated under this chapter which is subject to litigation. Claims and rights shall be assumed by the department to which the board or commission terminated under this chapter was attached for administrative purposes. (§ 3 ch 149 SLA 1977)

Part 8. Claims and Liability.

Chapter 77. Claims Against the State.

Sec. 44.77.010. Presentation of claims.

Legislative history of section. — See State v. ZIA, Inc., Sup. Ct. Op. No. 1337 (File No. 2518), 556 P.2d 1257 (1976)

This section is only applicable after the claimant has pursued an administrative remedy. State v. ZIA, Inc., Sup. Ct. Op. No.

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

January 22, 1979

To: Presiding Officer of Both Houses

From: Legislative Budget and Audit Committee
George Hohman, Chairman

Subject: Forwarding of Sunset Audits with Discussion of Legislative Oversight Responsibilities

Enclosed are Sunset Audit Reports of 13 boards and commissions that will terminate June 30, 1979. We are forwarding these reports to you so that they may be distributed to the appropriate standing committees you will designate to perform the legislative oversight function.

According to AS 44.66.050 the standing committee of legislative jurisdiction, as provided in Rule 20 of the uniform Rules of the Legislature, shall hold one or more hearings to receive testimony from the public and other parties that have associated responsibilities or interests. In addition the Committee shall consider Legislative Audit's report, the agencies proposed budget, the agencies program performance report and any other tools that might assist them in evaluating the conduct and activities of the agency being terminated.

It is important to note that the terminating agency shall have the burden of demonstrating a public need for its continued existence during the public hearings.

The determination of "public need" for continued existence shall take into consideration the following factors set out in AS 44.66.050(c):

(1) the extent to which the board, commission or program has operated in the public interest;

(2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters;

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;

(4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided;

(5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;

(6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved;

(7) the extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

(8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest; and

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

The Legislative Audit reports have addressed these issues individually but only to the extent allowed by restricted audit scopes detailed within the reports.

The Law further states that the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of each house. The report is to include a summary of findings as to compliance with the "public need" factors enumerated above together with recommendations as to each of the following:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

(3) an identification of any other programs having similar, conflicting or duplicate objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts; and

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

The committee of reference may introduce a bill providing for the reorganization or continuation of the agency being terminated as stipulated in AS 44.66.050(c).

In addition, the Law requires the Legislative Budget and Audit Committee to designate, not later than March 1, 1979, programs or activities in the general government, public protection and administration of justice budget categories, which shall be subject to termination in the next fiscal year. It is anticipated that the Legislative Budget and Audit Committee will be recommending six to nine programs for termination which will be submitted to you in the form of bills by the required deadline.

cc: Members of the Legislature

SENATE JOURNAL
HOUSE JOURNAL
ALASKA STATE LEGISLATURE

ELEVENTH LEGISLATURE - FIRST SESSION

JUNEAU, ALASKA | Monday | June 4, 1979

JOINT FINAL SUPPLEMENT

ENROLLMENT

The following was engrossed and enrolled, signed by the President and Secretary of the Senate, and Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at 3:25 p.m., May 7, 1979:

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 142 — FCCS SB 142

MESSAGES FROM THE GOVERNOR

The following messages dated May 6, 1979 were received stating the Governor has signed the following bills and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 5 amended House — HCS CSSB 5 am H
(relating to agricultural loans under the Alaska Agricultural Loan Act; and providing for an effective date)
Chapter 50, SLA 1979

SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 141 — SCS CSHB 141
(establishing the Legislative Limited Entry Study Committee; and providing for an effective date)
Chapter 51, SLA 1979

HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 116 — HCS SB 116
(relating to public employee benefits; and providing for an effective date)
Chapter 52, SLA 1979

SENATE COMMITTEE SUBSTITUTE FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 30 amended Senate — SCS SSHB 30 am S
(relating to the Commercial Fishing and Agriculture Bank)
Chapter 53, SLA 1979

SCS CSHB 147 (Fin) am S — SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 147 (Finance) amended Senate (amending the motor vehicle code; and providing for an effective date) Chapter 54, SLA 1979

CSHB 26 — COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 26 (relating to insurance coverage for persons receiving benefits under the public employees' and teachers' retirement systems) Chapter 55, SLA 1979

CSHB 12 (Fin) am S — COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 12 (Finance) amended Senate (relating to northern technology; and providing for an effective date) Chapter 56, SLA 1979

ENROLLMENT

SR 6 — The following were engrossed and enrolled, signed by the President and Secretary of the Senate and transmitted to the Office of the Governor at 1:15 p.m., May 8, 1979:

SR 15 — SENATE RESOLUTION NO. 6

SR 15 am — SENATE RESOLUTION NO. 15 amended

SR 17 — SENATE RESOLUTION NO. 17

SCR 3 am H HCS SCR 13 — The following were enrolled, signed by the President and Secretary of the Senate, and the Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at 1:15 p.m., May 8, 1979:

SENATE CONCURRENT RESOLUTION NO. 3 amended House

HCS CSSCR 33 — HOUSE COMMITTEE SUBSTITUTE FOR SENATE CONCURRENT RESOLUTION NO. 13

HCS SJR 25 (Fin) — HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE CONCURRENT RESOLUTION NO. 33

HCS SB 4 — HOUSE COMMITTEE SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 25 (Finance)

HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 4

HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 52 (Judiciary) — HCS SB 52 (Jud)

HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 63 (Finance) amended House — HCS SB 63 (Fin) am H

The following were enrolled, signed by the President and Secretary of the Senate, and the Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at 3:40 p.m., May 9, 1979:

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 12 amended House — HCS CSSB 12 am H

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 132 (Rules) — HCS CSSB 132 (Rls)

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 137 amended House — HCS CSSB 137 am H

The following were engrossed and enrolled, signed by the President and Secretary of the Senate, and Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at 3:40 p.m., May 9, 1979:

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 14 — FCCS SB 14

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 53 — FCCS SB 53

Following is a Memorandum from J. H. Hogan, Director of the Legislative Finance Division regarding the budget:

MEMORANDUM

DATE: May 6, 1979

TO: Russ Meekins, Chairman
Free Conference Committee

John Sackett, Chairman
Senate Finance Committee

FROM: J. H. Hogan, Director
Legislative Finance Division

Following our discussion this morning, the five items listed below comprise the errata sheet for FCC for SSB 53:

FCCS
SB
53

1. Page 52, line 21

Change "Mountain Village" to read "Mountain View".

2. Page 56, line 16

The "Angoon Cultural Facility" should read "$400,000" in both the appropriation item and general fund columns.

Page 60, line 8

The "Angoon Cultural Facility" item should be deleted.

3. Page 59, line 37

The "Eagle River Fire Station Completion" should read "$210,000" under the appropriation item and general fund columns.

4. Page 61, between lines 22 and 23

A new item should be inserted: "Crawler-tractor Grant to Craig" and $50,000 in the appropriation and general fund columns.

5. Page 63, between lines 4 and 5

There should be intent language reading: "This appropriation shall be paid as a grant to Anchorage."

The following was enrolled, signed by the President and Secretary of the Senate, and the Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at 4:10 p.m., May 9, 1979:

SB
241 SENATE BILL NO. 241

The following were engrossed and enrolled, signed by the President and Secretary of the Senate, the Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at
FCCS 4:10 p.m., May 9, 1979:
SB
118 FREE CONFERENCE COMMITTEE SUBSTITUTE
FOR SENATE BILL NO. 118

FCCS
SB FREE CONFERENCE COMMITTEE SUBSTITUTE
130 FOR SENATE BILL NO. 130

The following bill was engrossed and enrolled, signed by the President and Secretary of the Senate, the Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at 4:30 p.m., May 10, 1979: FCCS SB 236

FREE CONFERENCE COMMITTEE SUBSTITUTE
FOR SENATE BILL NO. 236
(continuing the existence of the Alaska Transportation Commission and amending laws relating to the commission)

The following memorandums explain changes made in the engrossed bill as passed by the House and Senate when the bill was enrolled as recommended by the Co-Revisor of Statutes. Speaker Gardiner, Representative Brown, President Tillion and Senator Bradley concurred in the above as enrolled, when contacted on May 10, 1979:

M E M O R A N D U M May 10, 1979

SUBJECT: FCCSSB 236

TO: Peggy Mulligan, Senate Secretary

FROM: Sally McIntire, Enrolling Secretary SM

At the request of the Revisor of Statutes I have made the following clerical corrections in this bill:

(1) *Sec. 12 of the bill has been deleted from the bill and the remaining sections renumbered accordingly.

(2) On page 7, line 16 the reference to AS 42.15 has been removed from the repealer.

I have enclosed a copy of the revisor's memorandum requesting the corrections. The presiding officers should be advised of these corrections made under Rule 42 of the Uniform Rules.

FCCS
SB
236

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 10, 1979

SUBJECT: FCCSSB 236

TO: Sally McIntire, Legal Editor

FROM: David T. Walker
Co-Revisor of Statutes

My investigation of conflicts within this bill causes me to conclude that the legislature did not intend for this bill to repeal AS 42.15 (Alaska Bus Act). I have spoken with the bill drafter, reviewed our bill file, and listened to the tape recorded explanations of the Free Conference Committee version of the bill given to the Senate by Senator Bradley and to the House by Representative Brown.

All the evidence indicates that it was the intention of the Free Conference Committee, and the House and Senate, to continue regulating carriers by bus in Alaska, and their belief that FCCSSB 236 did not violate that concept.

Rule 42 of the Uniform Rules requires me, in my role as revisor, to check the engrossed bill for legal content. I have marked on it in red pencil the corrections I believe should be made so they are readily identifiable.

I request that you include them as an authorized clerical correction and report the matter to the secretary under Rule 42, Uniform Rules, Alaska State Legislature.

The history back on the engrossed bill sent to the Governor reflects the action taken above and reflects the opinions of the Free Conference Committee members contacted.

The Governor's veto on the following bill was overridden in a joint session on May 4, 1979:

SCS
HB
45

SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 45
(relating to the Alaska Legislative Council and the Legislative Budget and Audit Committee; eff. date)
Chapter 57, SLA 1979

FCCS SB 53

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M May 16, 1979

SUBJECT: FCCSSB 53 (Budget)

TO: Peggy Mulligan
Senate Secretary

FROM: Donna Spragg Pegues
Co-Revisor of Statutes

I have discovered a clerical error in the enrolled copy of FCCSSB 53 (Budget). At page 4, line 26, after "sec. 45," the words "ch. 163," should be inserted.

We plan to correct the bill before it is duplicated for inclusion in the 1979 session laws.

The following messages dated May 18, 1979 were received stating the Governor has signed the following bills and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 25 amended House — HCS CSSB 25 am H

(relating to retirement and benefits for public employees including withdrawal from the federal Social Security System; and providing for an effective date)

Chapter 58, SLA 1979

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 359 — FCCS HB 359

(relating to salmon enhancement)

Chapter 59, SLA 1979

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 34 — FCCS HB 34

(relating to budgets, to appropriations, and to fiscal information; and providing for an effective date)

Chapter 60, SLA 1979

HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 234 (Finance) amended House — HCS SB 234 (Fin) am H

(relating to materialmen's and mechanics' liens)

Chapter 61, SLA 1979

SCS HB 185 — SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 185
(authorizing state aid to municipalities for the construction and development of cultural facilities)
Chapter 62, SLA 1979

FCCS SB 142 — FREE CONFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 142
(transferring among fiscal year 1979 appropriations to the Department of Health and Social Services; making appropriations to the Department of Health and Social Services, the Department of Fish and Game, the Department of Community and Regional Affairs, the Office of the Governor, the Department of Law, the Department of Transportation and Public Facilities, the University of Alaska, and the legislative agencies; amending a condition on an appropriation made to the Department of Education in ch. 6, SLA 1979; amending certain fiscal year 1971 and 1973 capital project appropriations made to the Department of Fish and Game; continuing an appropriation made to the University of Alaska Geophysical Institute; and providing for an effective date)
Chapter 63, SLA 1979

SCS CSHB 290 (Rls) — SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 290 (Rules)
(relating to limited entry; and providing for an effective date)
Chapter 64, SLA 1979

HCS SB 192 am H — HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 192 amended House
(relating to the leasing and exploration of state land for oil and gas development; and providing for an effective date)
Chapter 65, SLA 1979

CSSB 145 am H — COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 145 amended House
(relating to implementation of the Alaska coastal management program)
Chapter 66, SLA 1979

HCS CSSB 198 — HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 198
(relating to the hiring of nonpermanent employees in the state personnel system; and providing for an effective date)
Chapter 67, SLA 1979

SENATE BILL NO. 203 SB
(authorizing the issuance and sale of an additional $8,500,000 in revenue bonds for international airports; and providing for an effective date) 203
Chapter 68, SLA 1979

SENATE BILL NO. 202 SB
(making a special appropriation from the International Airports Construction Fund for the Fairbanks International Airport; and providing for an effective date) 202
Chapter 69, SLA 1979

COMMITTEE SUBSTITUTE FOR CSHB
HOUSE BILL NO. 394 394
(relating to state aid for community schools; and providing for an effective date)
Chapter 70, SLA 1979

COMMITTEE SUBSTITUTE FOR CSHB
HOUSE BILL NO. 19 19
amended Senate am S
(relating to agricultural and industrial fairs; and providing for an effective date)
Chapter 71, SLA 1979

May 18, 1979

The Honorable Clem Tillion HCS
President of the Senate SB
The Honorable Terry Gardiner 86
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President and Mr. Speaker:

Upon the advice of the Attorney General, I am vetoing House Committee Substitute for Senate Bill 86, which expands upon the sunset program and requires fiscal notes for adopting administrative regulations. It is the Attorney General's view that combining those separate subjects in one bill and failing to express the latter subject in the bill's title are fatal defects.

Rather than permit an almost certainly invalid law to go on the books, I feel that the bill should be vetoed. If the legislature still wishes to act on the two subjects, two new bills can be enacted to achieve that result.

Sincerely,

Jay S. Hammond
Governor

The following message dated May 18, 1979 was received stating the Governor has signed the following resolutions and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

CS HJR 25 am S
COMMITTEE SUBSTITUTE FOR
HOUSE JOINT RESOLUTION NO. 25 am S
(relating to the establishment and recognition of Children's Day in Alaska)
Legislative Resolve No. 31

HCS SJR 25 (Fin)
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE JOINT RESOLUTION NO. 25 (Finance)
(urging the United States Government to release its interests in the improvements at the Aniak, Port Heiden, and Unalakleet White Alice sites and in property at the Unalakleet airport to the State of Alaska)
Legislative Resolve No. 32

The following messages dated May 18, 1979 were received stating the Governor has read the following resolutions and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

SR 17
SENATE RESOLUTION NO. 17
(relating to licensing or permit requirements for shelters for victims of domestic or sexual assault)
Senate Resolve No. 8

SR 6
SENATE RESOLUTION NO. 6
(relating to an amendment to the Icy Cape No. 1 timber sale, contract number SC-182, permitting exportation of round logs)
Senate Resolve No. 9

SR 15 am
SENATE RESOLUTION NO. 15 am
(relating to the exploration and development of Beaufort Sea oil and gas)
Senate Resolve No. 10

HR 11
HOUSE RESOLUTION NO. 11
(relating to licensing or permit requirements for shelters for victims of domestic or sexual assault)
House Resolve No. 6

HR 13
HOUSE RESOLUTION NO. 13
(relating to amendments to the 1906 Antiquities Act and the Federal Land Policy and Management Act of 1976)
House Resolve No. 7

HR 14
HOUSE RESOLUTION NO. 14
(relating to planning for the new capital city)
House Resolve No. 8

SENATE CONCURRENT RESOLUTION NO. 29 — SCR 29
(urging the Governor to direct the commissioner of administration to negotiate no salary or benefit increases which do not meet specifi d criteria)
Legislative Resolve No. 27

HOUSE COMMITTEE SUBSTITUTE FOR — HCS
SENATE CONCURRENT RESOLUTION NO. 13 — SCR 13
(directing the Department of Transportation and Public Facilities to secure possession of buildings at the Aniak, Port Heiden, and Unalakleet White Alice sites for educational purposes)
Legislative Resolve No. 28

SENATE CONCURRENT RESOLUTION NO. 3 am H — SCR 3 am H
(relating to utilization of "flex time" for state employees)
Legislative Resolve No. 29

HOUSE COMMITTEE SUBSTITUTE FOR — HCS
COMMITTEE SUBSTITUTE FOR — CS
SENATE CONCURRENT RESOLUTION NO. 33 — SCR 33
(relating to a continued study of a direct investment by the state in the Alaska natural gas pipeline project)
Legislative Resolve No. 30

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR — FCCS
HOUSE CONCURRENT RESOLUTION NO. 3 — HCR 3
(relating to the designation of incompatible uses within the Chena River Recreational Area)
Legislative Resolve No. 33

The following messages dated May 31, 1979 were received stating the Governor has signed the following bills and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR — FCCS
HOUSE BILL NO. 20 — HB 20
(relating to state loan programs and the loan programs of state agencies; and providing for an effective date)
Chapter 72, SLA 1979

COMMITTEE SUBSTITUTE FOR — CSHB
HOUSE BILL NO. 229 — 229
amended Senate — am S
(relating to fish and game licenses; and providing for an effective date)
Chapter 73, SLA 1979

SB 241 — SENATE BILL NO. 241
(continuing the existence of the Board of Nursing; and providing for an effective date)
Chapter 74, SLA 1979

FCCS SB 14 — FREE CONFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 14
(relating to agricultural development; and providing for an effective date)
Chapter 75, SLA 1979

HCS SB 63 (Fin) am H — HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 63 (Finance) amended House
(making appropriations to the Office of the Governor, to the Alaska Power Authority for feasibility studies for the Susitna hydroelectric project, and to the Legislative Affairs Agency; and providing for an effective date)
Chapter 76, SLA 1979

HCS SB 4 — HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 4
(relating to worker's compensation; and providing for an effective date)
Chapter 77, SLA 1979

HCS SB 52 (Jud) — HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 52 (Judiciary)
(relating to float planes under the Fish and Game Code; and providing for an effective date)
Chapter 78, SLA 1979

HCS CSSB 132 (Rls) — HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 132 (Rules)
(relating to fisheries taxes; and providing for an effective date)
Chapter 79, SLA 1979

FCCS SB 53 — The following message dated June 1, 1979 regarding FREE CONFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 53 (appropriating for the operating and capital expenses of the state government, effective date) was received:

The Honorable Clem Tillion
President of the Senate
The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

RE: FCCS SB 53
CHAPTER 80

Dear Mr. President and Mr. Speaker:

I am today signing Free Conference Committee Substitute for Senate Bill 53 into law. For the first time in four years the legislature has passed an appropriation bill beneath the ceiling I presented to them in my budget message. This is a most significant precedent and one which I encouraged by assuring the legislature that so long as administrative priorities were accommodated, I would not be forced to veto legislative programs falling beneath such ceiling. While I may not agree with some of the specific uses proposed for these funds, compared to those proposed in my budget, joint acceptance by the legislature and administration of a budget ceiling is a far greater consideration. FCCS SB 53

I am, however, vetoing a portion of Section 15 of this bill, which would have amended Sections 1 and 2 of chapter 2, SLA 1978 by reducing the appropriation made last year to the Department of Transportation and Public Facilities for delineation of a utility corridor and right-of-way extension of the Alaskan Railroad to the Canadian border from $865,000 to $600,000. This section then appropriated $265,000 to the Legislative Council for a similar purpose which I have allowed to stand. The Department of Transportation and Public Facilities had already obligated the majority of these funds when the Free Conference Committee on the budget was taking this action and, therefore, these funds are not available for lapse.

In addition to this veto, I feel I must notify you that there are other sections and "riders" that you placed in the bill which are not legally binding. Since these are not birding, I have -- with notable exception of the bill of attainder at page 18 -- not lined them out in the bill, but I am attaching the review of the bill performed by the Department of Law which outlines the legal responsibilities imposed by the various "riders." As you will note when you read this attachment, many of the "riders" that were placed in the bill have no legal force and in other cases are in direct violation of existing law. Of course, state agencies must follow existing law when there is a conflict between the "rider" and other statutes.

The bill in Section 20 contains language that would lead the public, and perhaps some legislators, to believe that there would be no reduction in services below the level provided in fiscal 1979. This is simply not the case. While the budget I submitted could have retained such service levels, because the legislature shifted funds from my proposed operational budget to capital projects there will be a decrease in certain services. State agencies will, of course, attempt to minimize the service reductions, but there needs to be an understanding that service and employment reductions will occur.

Sincerely,

Jay S. Hammond
Governor

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APPENDIX

Review of Riders on FY 80 General
Appropriations Bill
May 17, 1979

OPERATIONAL BUDGET.

1. Positions. After many of the entries indicating the purpose of an appropriation is a parenthetical indicating a number of positions, i.e., permanent personnel. Appropriation bills must be confined to appropriations. Alaska Const., art. II, § 13. Fixing the numbers of positions in various offices is not an appropriation. Accordingly, these parentheticals are treated as informational, reflecting a likely understanding, but not having the force of law.

2. Page 9, lines 16-19 */ (Capital '80): An appropriation bill must be confined to appropriations. Alaska Const., art. II, § 13. The Fiscal Procedures Act covers purchases of goods and services by all state agencies. AS 37.05.220--280, 320(2). The rider on lines 12-13 cannot be construed to amend the Fiscal Procedures Act.

3. Page 11, lines 25-28, 30-33 (University of Alaska): This rider would require a transfer of $125,000 from the "UNIVERSITY PLANT FUND TO THIS APPROPRIATION AS PROGRAM RECEIPTS FROM EXCESS COLLECTIONS OF DEDICATED REVENUE BOND FEES." The university has title to all its personal property. Alaska Const., art. VII, § 2. Its property is to be managed and disposed of as provided by law. Id. There is nothing in AS 14.40.280--450 which provides for the university to match appropriations from the general fund with money from one or another of its funds or accounts. Because it must be confined to appropriations, it is unlikely that an appropriation bill can be used to achieve that effect. The appropriation probably can be made conditional on a match from the university's own money. Specifying the source, however, gets into managing the university's money directly, and probably goes too far to be valid as a condition.

4. Page 12, lines 5-13, 17-25 (University of Alaska): This

*/ Page references are to the print of the bill as it will appear as a session law. The print is longer (84 pages) than the bill (71 pages) due to printing style differences. Thus, for example, page 56 of the print is page 47 of the bill.

rider contains a conditional exception to the statutory prohibition against making transfers between appropriations. Generally, an appropriation cannot amend other, substantive law. There are two reasons why the provisions here are probably valid. One, the exception made by them is one recognized by case law at any event. Even without these provisions, a reorganization which combined the two units to which the money was appropriated would result in the money's being combined. Two, the subject of the substantive law is appropriations; therefore, the bill is acting only on appropriations and does not exceed the constitutional restriction.

5. Page 13, lines 7-10 (University of Alaska): This is the same as 3, above, i.e., probably over intrusive and invalid. A less intrusive condition requiring a match from the university probably would be valid.

6. Page 13, line 21 (Ketchikan Community College): This is an explanatory item within an allocation and has no real effect.

7. Page 15, lines 20-24 (U of A, Mineral Industry Research Laboratory): The provisions in this rider for lapsing money in the event of a shortfall in the receipt of matching monies appear to duplicate the provisions of section 3 of the bill.

8. Page 16, lines 23-30 (Child Support Enforcement): This rider conditions the expenditure of funds on their not being used to invade constitutionally protected rights. It is directly and substantially related to the appropriation, and therefore, is valid.

9. Page 17, lines 14-16. (Youth Services): The use of the appropriations bill for pass-through grants where a grants program has not been established by law creates both legal and administrative problems because of the absence of standards for determining recipients and amounts. For example, if there are entities similarly situated to the named grantees which are ready, willing, and able to perform the same services, how is one selected and the other not. Does that deny equal protection. Is the legislature by selecting out a single, identified entity to perform a service for a specific amount of money actually contracting for the state for it. Does that violate the separation of powers. The Fiscal Procedures Act. Grants to municipalities (or their agencies) are clearly permissible; they are the state's political subdivisions. But grants to others must be treated as appropriations for contractual services and the provisions of the Fiscal Procedures Act must be followed.

10. Page 17, lines 18-31 (Adult Supportive Services): These

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provisions create the same problems as 9, above. Of course, many of the named recipients provide a singular service, and it can be argued that, as a practical matter, each constitutes a single source. However, under ordinary and customary practice, the state agencies would make requests for proposals and by doing so could create additional sources. As a result, legislative identification of the grantee evades the requirements of the Fiscal Procedures Act. Because this bill cannot amend that Act, its provisions must be followed.

11. Page 18, lines 5-7 (Social Services, Southern Region): This appropriation bill cannot be used to impose a legal requirement that there be a night in-take program at Ketchikan. These provisions are valid as a statement of intent and are entitled to great weight. They also afford ample reason for the agency administrators to assume that the elimination of the program will be followed by a reduction in the appropriation by an amount equal to support two positions.

12. Page 18, lines 8-10 (Social Services, Southern Region): What is true for Ketchikan is also true for Wrangell. This appropriation bill cannot dictate the staffing of the Wrangell office.

13. Page 18, lines 13-16 (Social Services, Central Office): So too, no appropriation is made by a provision, such as in the rider here, relating to deleting a position. Moreover, since this rider applies to a clearly ascertainable person, and is clearly intended as a punishment, it is a bill of attainder prohibited by the constitution. United States v. Lovett, 328 U.S. 303, 315 (1946). Its invalidity is beyond reasonable dispute.

14. Page 18, lines 21-24 (Office on Aging): This is another grant where the selection of the grantee must follow the Fiscal Procedures Act as discussed in 9, above.

15. Page 18, lines 26-27 (Grants): Same problem.

16. Page 19, lines 9-12 (Internal Audit): The Legislative Auditor probably should be funded directly by program receipts rather than by a rider for these and similar audits.

17. Page 20, lines 17-20 (Social Services, CETA): This provision creates the grants problem discussed in 9, above.

18. Page 20, lines 21-37 (Adventure-Based Education Program): Notwithstanding the need for prompt action expressed by these provisions, the agency's administrators must comply with the applicable law covering contracts for goods and services. It is not the agency's fault that this appropriation came so late in the year. The directive to encumber

$25,000 and transfer the money from other appropriations is of dubious validity. It does not effect a transfer by law as has been done in other bills this year.

19. Page 21, lines 28-29, 37-38 (Handicapped Children and Regional Labs): The direct grant raises the questions raised in 9, above.

20. Page 22, lines 7-13 (Public Health Administration): Same.

21. Page 23, lines 16-21 (Alcohol Abuse): The direct grants, because they are made to a municipality, are valid items.

22. Page 23, lines 30-34 (Mental Health): To the extent the grants are to municipalities, they are valid. To others, section 9, above, applies.

23. Page 24, lines 5-8 (Residential Care): Same.

24. Page 24, lines 10-15 (Family Support): Same.

25. Page 24, lines 20-21 (Mental Health): Same.

26. Page 25, lines 10-19 (Natural Resource Administration): Partial funding is patently inconsistent with the Executive Budget Act. This comment will not be repeated with respect to other agencies which are also partially funded.

27. Page 26, lines 35-38 (Commercial Fisheries): This appropriation bill cannot be used to set the staffing for Haines or Dillingham. This "condition" is invalid.

28. Page 27, lines 19-27 (Admin. and Support): The direct grants raise the questions discussed in 9, above. Contracts for performing the specific projects must be let under applicable law.

29. Page 27, lines 33-35 (Investigations and Research): Same as 27, above.

30. Page 30, lines 33-35 (Occupational Licensing): As this rider does, an appropriation bill can set the period for which an appropriation is made and it need not be the same as others in the same bill. Alaska Const., art. IX, § 13.

31. Page 31, lines 37-39 (Highway Safety): Same.

32. Page 32, lines 30-32 (Criminal Justice Planning): Same.

33. Page 35, lines 35-39 and page 36, lines 4-24 (Renewable Resources Board): While these provisions, being part of an

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appropriations bill, can have no lawful force or effect, they constitute a valid statement of the legislature's wishes and should be responded to accordingly.

34. Page 36, lines 36-39 and page 37, line 4 (Economic Enterprise): The problem with this provision is that the $65,000 appropriation referred to is not one expressly contained in the bill. Nevertheless, Budget and Management should be able to see that the sums come out as intended by the legislature.

35. Page 37, lines 19-21 (Tourism): Again, the direct grants must be governed by law as discussed in 9, above.

36. Page 38, lines 10-13 (Community Planning): Same.

37. Page 39, lines 5-10 (DOT/PF Commissioner's Office): These provisions add nothing to the existing law and, being part of an appropriations bill, cannot impose a legal duty on the commissioner beyond that imposed by existing laws.

38. Page 39, lines 28-36 (M & O, Administration): These provisions cannot compel the department to contract with the railroad for the specified service. This is an invalid rider on an appropriations bill.

39. Page 40, lines 14-19 (Highways): Nor can a rider be attached to provide for road maintenance on an off-system road in violation of existing law. The money probably could be used to support ferry service.

40. Page 40, lines 31-34 (Airports): The rider for a direct grant for air-taxi mail delivery raises the problems discussed in 9, above.

41. Page 42 lines 5-23 (Executive Office): The rider requiring the Governor to report on the consolidation of certain functions has no legal force or effect. The Governor can, of course, honor the rider as a request.

42. Page 42, lines 28-34 (Budget & Management): This rider, being part of an appropriation bill, has no legal force or effect. Moreover, insofar as it would intrude the legislative branch into the exercise of a power over the budget vested exclusively by the constitution in the executive, it would probably be invalid even if enacted as a separate law.

43. Page 43, lines 6-9 (Internal Audit): A rider in an appropriations bill cannot be used to effect a transfer of an agency or function between the principal departments of the executive branch. Accordingly, this is an invalid condition. The function of the Internal Auditor is not, however, placed

in the Department of Administration by law; and therefore, the Governor has authority to relocate it.

44. Page 43, lines 10-13 (Internal Audit): A rider on an appropriations bill cannot establish a legal duty. Nevertheless, duplication of functions by the executive and legislative auditors should be avoided.

45. Page 43, lines 16-20 (Bethel Office): The legislature may refuse to fund a given function, and when it does, that will generally be the end of it. The rider here, however, has no effect on the Governor's use of his contingency fund, which may be used to fund a trouble shooter at Bethel. Additionally, the legislature's power to refuse funding cannot be used to inflict a punishment, for to do so would make the rider an unconstitutional bill of attainder.

46. Page 43, lines 25-30 (AWCF Services): This is merely an explanation of an accounting adjustment.

47. Page 43, lines 34-38 (U of A Audit): This rider has no legal force or effect.

48. Page 44, lines 6-18 (Salary Increases): This rider has no legal force or effect. Neither the executive nor legislative branches are bound by it. Nevertheless, it is a valid statement of the consensus of the 11th State Legislature and entitled to great deference and respect.

49. Page 44, lines 26-32 (Risk Management): It is highly unlikely that a $13.6 million appropriation for insurance, half of which will be expended before the so-called condition can occur, will be held to be conditioned on a report concerning four positions. This rider merely illustrates how any requirement can be stated as a condition.

50. Page 44, lines 35-39 and page 45, line 4 (General Services): The rider requiring the Departments of Administration and of Transportation and Public Facilities to establish joint car rental policies can have no legal effect.

51. Page 45, lines 13-17 (Data Processing): This rider appears to make storage space a purpose of the FY 79 appropriation for data processing. In effect, it amends last year's appropriation bill. That is almost certainly permissible.

52. Page 45, lines 19-38 and page 46, lines 4-9 (Data Processing): This rider appears to both explain and reflect an adjustment by the legislature in the budget for data processing. It relates directly and solely to appropriations, and therefore, is valid.

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53. Page 46, lines 23-26 (FERC Proceedings): This language provides for a lapse of the appropriation when the tariff proceedings terminate. It is valid.

54. Page 46, lines 33-36 (Permanent Fund Management): This is a similar provision for a lapse.

55. Page 47, lines 23-31 (Procurement): This language specifies the period of a portion of the appropriation. That is valid.

56. Page 47, lines 32-35 (Tenakee Health Center): This rider has no legal force or effect.

57. Page 47, lines 36-39 and page 48, lines 4-5 (Combined Facilities): This rider has no legal force or effect.

58. Page 48, lines 17-19 (Communications): This rider has no legal effect, but it is a proper statement of legislative intent, as are similar riders mentioned above and below. Ordinarily, it is the kind of statement which is placed in a committee report, as are many of this bill's riders.

59. Page 48, lines 21-25 (Communications): This rider has no legal force or effect.

60. Page 48, lines 29-37 (Communications): The breakdown of the appropriation item contained in this rider does not impose a legal restriction on the use of the appropriated money.

61. Page 49, lines 4-19 (Television): These riders place no legal duty on anyone to do anything.

62. Page 49, lines 20-38 (Television): This rider appears to state that, notwithstanding the actual apparent appropriation of $2,170,815 for television, the agency should spend $2,553,000, the "full funding" for FY 80. Unfortunately, the language does not parallel that used by other riders which clearly state the legislature's intent to fund at a higher level than the amount appropriated in the bill. Accordingly, that intent probably cannot be inferred, and the expenditures cannot be made, absent some other evidence of it.

63. Page 50, lines 11-19 (Vehicle Repairs and Rentals): These riders have no legal force or effect.

64. Page 50, lines 24-27 (Audits): This rider has no legal force or effect.

65. Page 51, lines 5-35 (Legislative Council): This rider

is explanatory and has no legal effect. Again, it is the kind of material which ordinarily appears in a committee report.

CAPITAL BUDGET.

66. Page 55, lines 8 and 19 (Election District): The indication of election districts is informational only. An error in district designation has no effect on the appropriation or its expenditure.

67. Page 60, lines 18-27, 32, 36, etc. (Grants): The capital budget, like the operating budget, includes a large number of "grants" to nongovernmental entities for services or facilities or both. The same questions raised under 9, above, are raised by the "grants" in this portion of the bill. They will have to be handled as discussed in 9, above, i.e., under applicable statutes, most particularly the Fiscal Procedures Act and the Public Facilities Procurement Act.

68. Page 62, lines 29-30 (Sutton Community Building): There is no municipality of Sutton, and the "community of Sutton" is not a juridicial entity with which the state can transact business. It appears, therefore, that the agency must, in this and similar situations, seek out a responsible group or association in the community to be responsible legally for the community building, and to contract with the state for the money.

69. Page 63, lines 20-22 (St. James Mission): There is a City of Tanana. Presumably, the grant is to it. The purpose of the grant, rehabilitation of a mission, raises establishment of religion problems. In order to expend public funds, it must be for a non-religious purpose.

70. Page 63, lines 23-26 (Gateway R.E.A.A.): Direct grants to the named villages raise public purpose questions. This appropriation appears to be to the Department of Natural Resources for Parks and Recreation (page 62, lines 4-5) for the Gateway REAA, to be divided among five communities. No purpose is stated. Presumably it relates to recreation. The agency and the intended recipients are, however, apparently left to devise a purpose. This is almost certainly an overly broad and unconstitutional delegation of the power of appropriation. It appears that the bill contains a large number of such items. Unless there is some legislative documentation of the purpose of these grants, they raise real questions of validity.

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71. Page 66, lines 9-12 (Commercial Fisheries and Agriculture Bank): The rider's explanatory material limits the appropriation. It is a valid limitation, relating solely and directly to the appropriation.

72. Page 66, lines 22-29 (AHFC Mobile Homes): This rider states an "intent" rather than a condition. "Legislative intention without more is not legislation." Train v. City of New York, 420 U.S. 35, 45 (19[illegible]). Had the legislature intended to make $1 million solely available for a mortgage insurance for mortgage financing for mobile homes, it would have appropriated it that way. A statement of intent must be perceived as a lesser restriction.

73. Page 68, lines 8-13 (Farm Projects): These are more examples of the problems discussed above in 9 relating to legislatively prescribed, non-governmental grantees.

74. Page 68, lines 15, 17-35 (Grants): Same.

75. Page 70, lines 23-26 (Firehalls): Volunteer fire departments fall into a category which is quite close to municipalities. They probably constitute de facto service areas in the unorganized borough, and because of the statutorily prescribed governmental functions they perform, may well be de jure service areas. Grants to them should, therefore, be treated much the same as grants to municipalities.

76. Page 70, lines 30-33, 34-36, 37-39 (Grants): While these riders name entities within municipalities, it is best to infer that they are part of the object or purpose of the appropriation and that the grant is to the respective municipalities for those purposes, e.g., for recreational facilities in Spenard.

77. Page 71, lines 7-9 (Grant): The grant to the Thomas Bay Power Authority raises questions concerning its purpose. If there is no legislative documentation on the p[illegible]ose, it may well be an invalid appropriation.

78. Page 71, lines 21-24 (Takotna Grant): Takotna does not appear to be a city. If not, the grant must be handled so as to ensure its expenditure is for a public purpose and not for private benefit.

79. Page 73, lines 13-15, 16-18 (Grants): Chalkyitsik and Cantwell were not incorporated cities as of 1978. Where a grantee does not exist, the grant probably fails. Legislative documentation (or lack of it) should be determinative.

80. Page 73, lines 22-24 (Grants): Healy Lake was not an

incorporated city in 1978.

81. Page 73, lines 31-35 (Grants): These grants may be too indefinite as to recipient and purpose to be valid constitutionally. It will depend upon the existence of legislative documentation identifying both more precisely.

82. Page 75, lines 7-9 (Traffic Signals): This rider merely further identifies the purpose of the appropriation.

83. Page 75, lines 11-12 (Street Repairs): As a general rule, a "community council" cannot be given power to supervise the expenditure of public funds. This rider, therefore, does not have the force of law.

84. Page 75, lines 21-24 (Road Improvements): Same.

85. Page 76, lines 11-13 (Paradise Haven Lodge): This rider is invalid. First, in order for a condition on an appropriation to be valid, it must have a direct and substantial connection to the appropriation. Second, the lawmaking power is not the power to pick and choose the buildings to be used for park facilities.

86. Page 77, lines 19-20 (Priorities): While a valid statement of concern and entitled to great weight, this rider can have no legal effect.

87. Page 79, lines 12-23 (Landscaping): This rider's statement of intent does not have the force of law required to remove these projects from the application of other laws which could frustrate the very intent stated by the rider.

88. Page 81, lines 19-22 (Fourth Floor): This rider -- vesting the Legislative Finance Division with control over the fourth floor in the capitol -- has no legal effect. First, so long as there is space on the fourth floor of the capitol occupied by another branch of the government, an agency of the legislature cannot -- under the separation of powers -- usurp that space or have supervening control over it. Second, under existing law, space occupied by the legislature and its agencies is under the control of the Legislative Affairs Agency. AS 24.20.060(5). A rider on an appropriations bill cannot amend that substantive law. Of course, the second consideration is solely a matter of internal concern to the legislature, and no law on the subject is required at all.

The following messages were received dated June 1, 1979 stating the Governor had signed the following and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

CSHB 29 am S — COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 29 amended Senate (relating to the public employees' and teachers' retirement systems; and providing for an effective date) Chapter 81, SLA 1979

FCCS HB 260 — FREE CONFERENCE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 260 (relating to retirement and benefits; and providing for an effective date) Chapter 82, SLA 1979

FCCS SB 118 — FREE CONFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 118 (relating to financial institutions) Chapter 84, SLA 1979

HCS CSSB 12 am H — HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 12 amended House (relating to adult and adventure-based education) Chapter 86, SLA 1979

FCCS SB 130 — FREE CONFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 130 (establishing programs of financial and academic assistance to students in universities and colleges; and providing for an effective date) Chapter 87, SLA 1979

HCS CSSB 137 am H — The following message dated June 1, 1979 regarding HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 137 amended House (municipal code; effective date) was received:

The Honorable Clem Tillion
President of the Senate
The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

RE: HCS CS SB 137 am H
CHAPTER 83, SLA 1979

Dear Mr. President and Mr. Speaker:

I am allowing House Committee Substitute for Committee Substitute for Senate Bill 137 am H to become law with-

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out signature. I know that a great deal of hard work has gone into the bill and that, in most respects, it is good legislation.. Nevertheless, because it would create an impossible situation with respect to apportionment of borough assemblies and allow a multiplicity of zoning jurisdictions to exist within organized boroughs, I am compelled not to sign it. Because the House and Senate managers of the bill have promised that curative legislation will be brought to the floor during the next session, I am not vetoing the bill.

The first defect is that the provision which provides for the voters to choose the kind of apportionment a borough assembly should have creates a method by which two electorates within a borough could select two different kinds of apportionment. No means is provided for resolving the difference. If reapportionment were imminent, a veto would be necessary. But there is yet time to cure this defect, and it can be done at your next session.

The second problem concerns zoning. Since the inception of organized boroughs in Alaska shortly after statehood, it has been an accepted and indisputable fact that, at a minimum, three functions of local government were areawide by their very nature: education, planning and zoning, and tax assessment and collection. Nothing has occurred in the meantime to alter that conclusion. Indeed, if anything, the opposite is true, particularly with respect to land-use planning and zoning.

I am aware that the particular zoning needs of some cities presently appear to be very great, but they must and can be met in some other fashion than the giant step backward proposed by this bill. No greater disservice can be done to our citizens, particularly those who own homes and businesses, than to fragment our local planning and zoning. Another solution must, and will, be found, and the administration will work closely with you to find one.

Sincerely,

Jay S. Hammond
Governor

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HB
66

June 1, 1979

The Honorable Clem Tillion
President of the Senate
The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President and Mr. Speaker:

I have signed the following bill and am transmitting the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 66
(relating to the management and disposal of public land; and providing for an effective date)
chapter 85, SLA 1979

Although I am signing Free Conference Committee Substitute for House Bill 66 into law because it makes important improvements by removing statutory impediments to transfer of state land to private ownership, I would like to note that the measure does pose some serious implementation problems. There are conflicting and contradictory provisions that will make it difficult to implement some portions of the bill within the various short deadlines contained in the bill. Nevertheless, I have directed the Department of Natural Resources to aggressively find solutions to accomplish true legislative intent. Specifically, I have instructed the department to dispose of 100,000 acres during FY 80 rather than FY 81 as the act requires. In addition, I have instructed that although municipalities may no longer disapprove of state subdivision plats, the department make every effort to plat in a way the boroughs would approve, had they a choice.

Two sections of the bill are especially troublesome. Counsel advises that Sections 2-5 and 45 which could be construed as restricting the state's right to refuse municipal selections that are clearly contrary to the state's interest (the surface estate at Prudhoe Bay, for example), is almost certainly unconstitutional. Nevertheless, due to present classification of these lands, it is unlikely that such conflicts will arise and the question is probably more academic than practical.

Even worse is Section 44, which rewards trespassers by granting them an interest in public lands without due notice and without providing a similar chance to law abiding citizens to secure the same interest. On the advice of the Attorney General, I have instructed the Department of Natural Resources to not implement that provision because of its unconstitutionality. Almost surely, the matter can then be decided in court.

FCCS
HB
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All in all, however, I am most pleased to sign into law this important legislation and to pledge eager implementation of its very postive land disposal sections.

Sincerely,

Jay S. Hammond
Governor

June 1, 1979

FCCS
SB
236

The Honorable Clem Tillion
President of the Senate
The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President and Mr. Speaker:

I have vetoed Free Conference Committee Substitute for Senate Bill 236, an act continuing the existence of the Alaska Transportation Commission and amending laws relating to the commission; and providing for an effective date.

The Department of Law has pointed out serious defects in the language relating to the issuance of stop orders by the Alaska Transportation Commission, the effect of the language would be to dilute the power of the Alaska Transportation Commission's enforcement of its own orders.

Section 12 of the enrolled bill (insurance on exempt carriers) has been previously discussed in regard to the "deregulation" of air service. However, it also should be noted that sec. 12 would require all currently exempt vehicles, including motor vehicles operated by federal, state, and municipal government, those operated by ranchers, farmers, and dairymen under 12,000 pounds gross vehicle weight, and those operated by construction contractors to file insurance coverage with the commission. Such regulation would in fact, increase the scope of regulatory control by the commission and could quite possibly necessitate an increase in commission personnel. Additionally, there is doubt that the language relating to insurance requirements for exempt carriers is clear enough that the provision is enforceable.

Existing law provides that the Alaska Transportation Commission would be terminated June 30, 1979 but would continue in existence until June 30, 1980. Therefore, I

FCCS SB 236 believe that there is sufficient time for the legislature to address the issue in a timely manner. Additionally, it should be noted that the deregulation provisions relating to fixed wing aircraft would not take effect until July 1, 1980. Some operators of light aircraft that the legislature intended to exempt from regulation, i.e., guides, would continue to be regulated due to the proviso for providing 12 months of service.

The fiscal impact of the bill is significant, analysis indicares a cost of 97.7 thousand dollars annually, no funding was provided with the measure.

Sincerely,

Jay S. Hammond
Governor

Index to vetoed and reduced bills received after adjournment:

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6/1/79	FCCS SB 236 Continuing the existence of the Alaska Transportation Commission and amending laws relating to the commission; eff. date	27-28

REDUCED BILL

6/1/79	FCCS SB 53 Appropriating for the operating and capital expenses of the state government; eff date	12-23

This joint final supplemental journal completes the record of legislation for the First Session of the Eleventh State Legislature.

Peggy Mulligan
Secretary of the Senate

June 4, 1979

Irene Cashen
Chief Clerk of the House

June 4, 1979

Alaska State Legislature

House

JUNEAU, ALASKA

MESSAGE TO THE SENATE DATE ~~April~~ May 2, 1979

MR. PRESIDENT:

The House has passed SB 236 (continuing the existence of the Alaska Transportation Commission; eff. date) with the following amendment:

HCSSB 236amH (continuing the existence of the Alaska Transportation Commission and amending laws relating to the commission; eff. date)

and it is transmitted herewith for consideration.

Chief Clerk of the House

Owner-Operators of Alaska,

Have you taken a good look at your earnings lately as opposed to your expenses? How many of you are aware of the proposal and amendment presently being considered for adoption by the Alaska Transportation Commission? If adopted, your earnings will, inevitably, be reduced further. You are the only work force in Alaska that has taken a reduction in earnings for four consecutive years!

It would appear that fourteen different Carriers have conspired against you by giving their Power of Attorney to one man, enabling him to represent their desires and he presented this proposal in Anchorage at the A.T.C. Not one Owner-Operator was present at that hearing. Did you see the notice of that hearing posted in your local newspaper? To date, I have not found anyone that did.

A hearing was not scheduled for Fairbanks until Joe Gilbertson filed a formal complaint with A.T.C. A hearing was then scheduled for January 24, 1980 in Fairbanks. As I understand it, a notice is to be published in at least three different publications. This was handled by a notice in the "Juneau Southeast Empire", "Nome Nugget", and the "Journal", a magazine subscribed to by the Carriers. In all fairness, I must add that the A.T.C. claims a notice went out to all the Newspapers. I havn't as yet found any hard evidence to support the claim. This action tells me, they didn't want any Owner-Operator representation. However, as a notice was hand carried to all the Carriers shortly before the hearing, Joe Gilbertson notified as many as possible. About a dozen Owner-Operators were present.

This proposal and amendment appear fairly innocent on the surface, but was cleverly devised to shift all the operational cost from the Carrier to the Owner-Operator while at the same time rendering your Union Contract "non-applicable". Indeed, the Carrier would become a "Broker" and the Owner-Operator would be a "Sub-Contractor".

Can the Owner-Operator afford more expense? Can you pay your own Secretary, all payroll taxes, including Workmans' Comp., cargo insurance, and the deductable on the trailer belonging to the Carrier? From whom do you collect if you sustain a permanent injury on the job? Do you sue yourself?

Furthermore, this puts the A.T.C. in the position your Union has held. Basically, they are negotiating your next contract. The "Brokers" won't need a Union. You'll be loading your own loads or paying a hostler out of your own pocket as some are already doing.

Some of you claim you are happy without the Union. How happy will you be in the absence of a Union and faced with possible deregulation on June 30th? When the next pipeline begins and there isn't any control over Alaska hire, every Independent in the lower fourty-eight can come up here and take your jobs. They'll work for less, live in their trucks, and send their money outside. While you're all sitting home, who will pay your house payment, your truck payment, ard feed the family? You're kidding yourselves if you don't think it can and will happen! That is exactly what this new proposal is all about.

In fact, the same person weilding the fourteen Powers of Attorney and this proposal at A.T.C., is the same person that devised the illegal lease which was presented to the Sager drivers, in anticipation of this proposal being adopted. They are all counting on the fact that truckers seldom stick together, even on basic issues. They steadily decrease your earnings, make you dependent on the next pay check, then zap it to you. You're right on the edge of that now as each of you have consistently robbed your savings to meet Carrier "back-charges" this past year.

At the time of the Statehood Act, Owner-Operators were not a consideration under the statutes adopted for Transportation, as they were non-existant. You've all been "manipulated" under provisions concerning lease equipment. Consequently, these regulations can, at will, by requests of the Carriers, be changed at their desire and for their benefit. While requesting changes to shift more operational expense to the Owner-Operator on one hand, with the other, they are filing reduced rates to further decrease your earnings. They want all of you to be so financially dependent on them for your next truck payment, you'll work for nothing. Up to this time, and over the last three years you've all sat back and watched it happen.

This time you had better all stand up and be counted. File your objections with the Transportation Commission and your Legislators. At the end of the last pipeline there were over four hundred Owner-Operators in the State. Each one puts a mimimum of $75,000 back into the economy annually. That adds up to a basic figure of $30,000,000. On that figure alone, the Owner-Operator should have the right to request the attention of your Legislature.

You had all better insist on funding for the A.T.C. while at the same time asking for a statute to protect Owner-Operators. You need a statute depicting the minimum amount your truck will be paid, and how often it will be paid. Ask that the driver will be an employee of the Carrier so you don't get stuck with their overhead. You desperately need a statute the Carriers can't jack around!

There is a subtle conspiracy in this State to take down the Unions and reduce your wages. Consider the hardships endured and the loss of jobs when the City of Fairbanks refused to negotiate new Labor contracts this last year. Their problems are still going on. How many are aware that outside carpenters were brought in to build the new Pizza Hut in Fairbanks, while Alaska carpenters picketed. Sager Trucking in Delta Junction are bringing in outsiders while Alaskans picket. The oil companies brought in electricians, to Prudhoe Bay, a couple of weeks ago, claiming there were not enough qualified Alaskans. We have Alaskan Electricians out of work. How many non-residents were hired for pipeline security by Alyeska? I doubt most people are aware of the percentage of non-Alaskans working at Prudhoe Bay and all the Pump Stations along the way.

For once, all the Union Organizations had better stand together. All our jobs are at stake here, not just the Teamsters.

I'm asking all Owner-Operators, all Union people and all concerned Alaskans that agree with what I've said here, to cut out ~~this letter~~, sign it, include your name and address, and send it to the Legislator of your choice.

For once let ALASKANS stand up for Alaskans, before we all find out we can be replaced for less!

These are my feelings also as a 28 yr Alaskan — I approve and ask your Support.

Gene Cecil

ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • Phone (907) 276-1149

June 7, 1979

The Honorable Jay Hammond
Governor of Alaska
Juneau, Alaska

Sir:

The Special Committee of the Alaska Trucking Association wishes to thank you for allowing us the opportunity of meeting with you on June 4, 1979. I think it was agreed among our group that a frank discussion took place and that there was a free exchange of opinions. At the close of that meeting, how ver, our committee left with rather frustrated feelings. We, of course had been seeking a strong expression of support from the Administration regarding the year round maintenance of the State road from Fairbanks to Deadhorse. It was our feeling that your Administration gave us only qualified support and that you were relying on Alyeska Pipeline Service Company to provide that maintenance which we feel is the State of Alaska's obligation.

At this time we would like to summarize the key reasons that we feel that the State of Alaska should maintain that highway on a year round basis.

1. Affect on Motor Carrier Industry

We as an industry are seriously concerned that a six month closure of the road will in fact result in the demise of a significant portion of the motor carrier industry. We have provided you statistics which indicate that at a minimum $25.7 million dollars were earned in revenues by motor carriers from operations on the North Slope in 1978. Out of those revenues approximately $9.5 million dollars in wages were paid directly to approximately 308 drivers. It is our feeling that the motor carriers and the various owner/operators who operate on the North Slope could not economically maintain facilities, equipment and employees on the basis of operating less than six months per year. Consequently if the road was only open for that period of time it could be presumed there would not be sufficient transportation to haul freight over the road.

2. The Economic Impact on Fairbanks

It is well recognized that Fairbanks already has an unemployment rate of 14% or greater. Many of the motor carriers operating to the North Slope have drivers and support facilities domiciled in Fairbanks. The resultant unemployment caused by the six month closure of the road would only add to the unemployment factor in that city. Using the ripple effect, that impact would be even greater. It has been stated by one airline company in this State that if the road were closed, unemployment in Fairbanks would actually diminish because of the resultant growth in the air freight industry. It is our feeling that the closure of the road will not mean significant diversions of freight to aircraft. All indications we receive from the oil industry are that the diversion of freight will rather take place to barges traveling from Seattle to Prudhoe Bay or up the McKenzie River to Prudhoe Bay. Consequently it is erroneous to assume that the air freight industry will grow to any extent in the Fairbanks area.

3. The Economic Affect on the State of Alaska

At least one oil company (Atlantic Richfield Company) has stated that they expend approximately $78 million dollars per year for goods and services purchased from approximately 1,100 Alaskan vendors. They have indicated that if the road is closed significant portions of those expenditures would be made in the Lower 48 rather than Alaska. It is our understanding that the oil companies and Alyeska Pipeline Service Company are conducting studies at this time to provide similar statistics such as Atlantic Richfield's. We have been assured by those oil companies that when the final statistics are compiled the economic impact of a six month road closure on the State of Alaska will be staggering.

4. Future Development of Resources Within the State

Recent passage of the Udall-Anderson Bill by the U. S. House of Representatives was widely recognized as being a deterrent toward the economic development of the resources within the State of Alaska. It is particularly disconcerting at this time to see our own State government further weaken the economic development of the State and the oil industry in particular through closure of the road for six months.

It is widely known that the Atlantic Richfield Company has plans to develop the Kuparuk Oil Field. The reserves in that field are believed to be quite significant. It is obvious that if the road is closed the cost and time frame of developing that field will greatly increase. It should also

be noted that we understand that Sohio-BP has a large number of leases in that oil field. Sohio-BP has publicly stated that there will not be any significant drilling programs undertaken until such time as the State's attitude toward the oil industry improves. Obviously any closure of the road would only be a further indication to Sohio-BP that the State does not have a positive attitude toward the oil industry. Consequently the road closure could cause Sohio-BP to delay any development of the Kuparuk Field.

5. Maintenance of the Alyeska Pipeline

During the course of the meeting on June 4 you expressed great concern regarding the difficulties in safely maintaining the pipeline during the six month period when the road was to be closed. It is obvious to all that any breakdown or major oil spill that would occur on the pipeline would have a disastrous affect both environmentally and economically on the State. For instance, it has been estimated that a closure of the pipeline for one day could cause a loss of revenue of approximately $2.08 million dollars to the State. Any major breakdown of the pipeline during the winter months while the road was closed could potentially cost the State tens of millions of dollars in lost revenues. In addition, it could be visualized that the State would have some legal liability for any major oil spills due to the fact that they did not maintain adequate transportation corridors for the pipeline.

6. Alternate Modes of Transportation

During the course of the construction of the pipeline and of the development of the Prudhoe Bay oil field there were always available alternate methods of transporting goods. The most commonly used methods were either by motor truck, barge or air freight. The closure of the road for a six month period could drastically affect the alternatives of shipping goods. It should be remembered that a few years ago the sealift barge movement was prevented by ice formations from arriving at Prudhoe Bay. In that particular instance the majority of goods were diverted to motor truck. If such an occurrence should happen again only a limited amount of those goods could be diverted to air freight due to economic and size factors. It is also possible that because of weather conditions aircraft cannot serve the needs of the pipeline or the oil field for sustained periods of time. In such emergencies it would be disastrous if a maintained road was not open to serve the needs of the industries.

June 7, 1979

Over the course of the past few weeks our committee has found that the sentiment of the business community within Alaska is overwhelmingly in favor of having the State maintain the road on a year round basis. It is our understanding that various communities and Chambers of Commerce have passed resolutions in favor of such year round maintenance and have forwarded those resolutions to you. As you also know, a poll was conducted by the Resource Development Council to ascertain the sentiment of the Alaska State Legislators toward year round maintenance. Of those legislators contacted, an overwhelming majority appear to favor year round maintenance. In fact, it is obvious to all that less than a handful of legislators are the only roadblock that prevents the year round maintenance from occurring. It is our belief that the economic well being of this State and of the motor carrier industry in particular is too significant to be thwarted by the wishes of a few individuals. We believe that the climate is right for your Administration and for the State legislators as a whole to take a strong stand and once and for all demonstrate that they are concerned about the economic well being of this State. Year round maintenance of the North Slope Road by the State would be a good demonstration of that support. We do not believe that Alyeska Pipeline Service Company should be expected to provide the funds needed for that maintenance. It is obvious that they and the oil companies in the Prudhoe Bay area are by far the largest contributors toward the revenues received by the State Treasury. It is our opinion that it is the moral and probably legal obligation of the State to provide for and fund the maintenance of the road which is vital in maintaining a healthy oil industry in this State.

Because of all of the above, the Alaska Trucking Association at their Board of Directors meeting on June 6, 1979 authorized the Special Committee to send a resolution to you. That resolution is as follows:

> It is our understanding that Governor Hammond intends to call a Special Session of the State Legislature in the near future. It is our belief that when the Governor calls that Special Session, he can include the issue of year round maintenance of the State highway from Fairbanks to Deadhorse. We believe that the State has an obligation to maintain that road and

June 7, 1979

that it is paramount to the economic well being of this State that such maintenance be performed. We therefore call upon the Governor to exercise his leadership and the authority of his office to include the issue of the State highway funding on the agenda for the Special Session of the legislature.

We would appreciate receiving a response regarding the above resolution as soon as possible.

Respectfully yours,

ALASKA TRUCKING ASSOCIATION
SPECIAL COMMITTEE

H. Russell Painter
Chairman

HRP:lh

cc: Members of State House & Senate Members

SUBCHAPTER I—GENERAL PROVISIONS

§ 1301. Definitions

As used in this chapter, unless the context otherwise requires—

(1) "Administrator" means the Administrator of the Federal Aviation Administration.

(2) "Aeronautics" means the science and art of flight.

(3) "Air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation: *Provided*, That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this chapter to the extent and for such periods as may be in the public interest.

(4) "Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

(5) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(6) "Aircraft engine" means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

(7) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and (except to the extent the Secretary of Transportation may otherwise provide with respect to individuals employed outside the United States) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(8) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

(9) "Airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

(11) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

(12) "Board" means the Civil Aeronautics Board.

(13) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(14) "Civil aircraft" means any aircraft other than a public aircraft.

(15) "Civil aircraft of the United States" means any aircraft registered as provided in this chapter.

(16) "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.

(17) "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

(18) "Federal airway" means a portion of the navigable airspace of the United States designated by the Secretary of Transportation as a Federal airway.

(19) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

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(17) "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

(18) "Federal airway" means a portion of the navigable airspace of the United States designated by the Secretary of Transportation as a Federal airway.

(19) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(20) "Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(21) "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(22) "Intrastate air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage solely in intrastate air transportation.

(23) "Intrastate air transportation" means the carriage of persons or property as a common carrier for compensation or hire, by turbojet-powered aircraft capable of carrying thirty or more persons, wholly within the same State of the United States.

(24) "Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

(25) "Mail" means United States mail and foreign-transit mail.

(26) "Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations issued under this chapter, and shall include airspace needed to insure safety in take-off and landing of aircraft.

(27) "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

(28) "Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this chapter.

(29) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(30) "Propeller" includes all parts, appurtenances, and accessories thereof.

(31) "Possessions of the United States" means (a) the Canal Zone, but nothing herein shall impair or affect the jurisdiction which has heretofore been, or may hereafter be, granted to the President in respect of air navigation in the Canal Zone; and (b) all other possessions of the United States. Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this chapter to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(32) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(33) "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

(34) The term "special aircraft jurisdiction of the United States" includes—

(a) civil aircraft of the United States;

(b) aircraft of the national defense forces of the United States;

(c) any other aircraft within the United States;

(d) any other aircraft outside the United States—

(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or

(ii) having "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States;

while that aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard.

(35) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(36) "Supplemental air transportation" means charter trips, including inclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 1371(d)(3) of this title to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 1371(d)(1) and (2) of this title. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales.

(37) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

(38) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United

States, including the territorial waters and the overlying airspace thereof.

Pub.L. 85-726, Title I, § 101, Aug. 23, 1958, 72 Stat. 737; Pub.L. 87-197, § 3, Sept. 5, 1961, 75 Stat. 467; Pub.L. 87-528, § 1, July 10, 1962, 76 Stat. 143; Pub.L. 90-514, § 1, Sept. 26, 1968, 82 Stat. 867; Pub.L. 91-449, § 1(1), (2), Oct. 14, 1970, 84 Stat. 921; Pub.L. 93-366, Title I, § 102, Title II, § 206, Aug. 5, 1974, 88 Stat. 409, 419.

Historical Note

1974 Amendment. Pars. (22) to (33). Pub.L. 93-366, § 206, added pars. (22) and (23). Former pars. (22) to (31) were redesignated (24) to (33), respectively.

Par. (34). Pub.L. 93-366, §§ 102, 206, redesignated former par. (32) as (34) and, as so redesignated, relettered former subpars. (c)(i) as (c) and (c)(ii) as (d)(i), added subpars. (d)(ii) and (e), and expanded time period when, for purpose of definition, aircraft is considered in flight.

Pars. (35) to (38). Pub.L. 93-366, § 206, redesignated former pars. (33) to (36) as (35) to (38), respectively.

1970 Amendment. Pars. (32) to (36). Pub.L. 91-449 added par. (32). Former pars. (32) to (35) were redesignated (33) to (36), respectively.

1968 Amendment. Par. (33). Pub.L. 90-514 expanded supplemental air transportation to include the conduct of inclusive tour charter trips but prohibited individually ticketed service by supplemental air carriers.

1962 Amendment. Pars. (32), (33). Pub.L. 87-528 added pars. (32) and (33). Former pars. (32) and (33) were redesignated (31) and (35), respectively.

Pars. (34), (35). Pub.L. 87-528 redesignated former pars. (32) and (33) as (34) and (35), respectively.

1961 Amendment. Par. (4). Pub.L. 87-197 substituted "operation or navigation of aircraft within" for "operation or navigation or aircraft within".

Change of Name. "Federal Aviation Administration" has been substituted for "Federal Aviation Agency" in par. (1) and "Secretary of Transportation" has been substituted for "Administrator of the Federal Aviation Agency" in pars. (7) and (18) pursuant to Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation and a Federal Aviation Administration, headed by an Administrator, within such Department of Transportation and transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator and other offices and officers thereof to the Secretary of Transportation, with specific function thus transferred to be exercised by the Administrator of the Federal Aviation Administration. See section 1655(c) of this title.

Effective Date. Section 1505 of Pub.L. 85-726, provided that:

"The provisions of this Act [see Short Title note under this section] shall become effective as follows:

"(1) Section 301, section 302(a), (b), (c), (f), (i), and (k), section 303(a), section 304, and section 1502 [section 1311, section 1342, section 1343(a), (d), (g), and (i), section 1344(a), section 1345, and note set out under section 1341 of this title] shall become effective on the date of enactment of this Act [August 23, 1958]; and

"(2) The remaining provisions shall become effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now Administrator of Federal Aviation Administration] first appointed under this Act [this chapter] qualifies and takes office."

The Administrator of the Federal Aviation Agency was appointed, qualified and took office on Oct. 31, 1958.

Short Title of 1974 Amendment. Section 101 of Pub.L. 93-366 provided that: "This title [which enacted sections 1514 and 1515 of this title and amended this section and sections 1471 to 1473 and 1487 of this title] may be cited as the 'Antihijacking Act of 1974'."

Short Title. Section 1 of Pub.L. 85-726, provided that Pub.L. 85-726, which enacted this chapter, amended sections 212, 485a, 485b, 1101, 1102, 1103, 1105, 1108, 1111, 1110, 1151, 1152, 1155, 1157 and 1160 of this title, sections 81, 82 and 90 of Title 14, Coast Guard, section 45 of Title 15, Commerce and Trade, section 7a of Title 16, Conservation, section 686 of Title 31, Money and Finance, section 474 of Title 40, Public Buildings, Property, and Works, sections 485, 485c and 485d of Title 48, Territories and Insular Possessions,

section 123 of Title 50, War and National Defense, and sections 1622 to 1622c of Appendix to Title 50, War and National Defense, repealed sections 171, 174 to 177, 179 to 184, 401 to 403, 421, 422, 423 to 427, 451 to 460, 481 to 485, 486 to 496, 521 to 524, 551 to 560, 581, 582, 601 to 603, 621 to 623, 641 to 649, 671 to 681, 701 to 705, 711 to 722, and 1211 to 1215 of this title, section 7 of 1940 Reorg.Plan No. III, section 7 of 1940 Reorg.Plan No. IV, and Reorg.Plan No. 10 of 1953, and enacted notes set out under this section and sections 486, 1321 and 1341 of this title, shall be popularly known as the "Federal Aviation Act of 1958".

Separability of Provisions. Section 1504 of Pub.L. 85-726, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstance is held invalid, the remainder of the Act [this chapter] and the application of such provision to other persons or circumstances shall not be affected thereby."

Savings Clause; Effect of Transfers, Repeals, and Amendments. Section 1501 of Pub.L. 85-726, provided that:

"(a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, rates and privileges which have been issued, made, or granted, or allowed to become effective, by the President, the Department of Commerce, the Secretary of Commerce, the Administrator of Civil Aeronautics, the Civil Aeronautics Board, the Airways Modernization Board, the Secretary of the Treasury, the Secretary of Agriculture, or the Postmaster General, or any court of competent jurisdiction, under any provision of law repealed or amended by this Act [see Short Title note under this section], or in the exercise of duties, powers, or functions which, under this Act, are vested in the Administrator of the Federal Aviation Agency [now Federal Aviation Administration] or the Civil Aeronautics Board, and which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrator or the Board, as the case may be, or by any court of competent jurisdiction, or by operation of law.

"(b) The provisions of this Act shall not affect any proceedings pending at the time this section takes effect before the Secretary of Commerce, the Administrator of Civil Aeronautics, the Civil Aeronautics Board, the Chairman of the Airways Modernization Board, the Secretary of the Treasury, or the Secretary of Agriculture; but any such proceedings shall be continued before the successor agency, orders therein issued, appeals therefrom taken, and payments made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Administrator, the Civil Aeronautics Board, the Secretary of the Treasury, or the Secretary of Agriculture or by operation of law."

"(c) The provisions of this Act shall not affect suits commenced prior to the date on which this section takes effect; and all such suits shall be continued by the successor agency, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed. No suit, action, or other proceeding lawfully commenced by or against any agency or officer of the United States, in relation of the discharge of official duties, shall abate by reason of any transfer of authority, power, or duties from such agency or officer to the Administrator or the Board under the provisions of this Act, but the court, upon motion or supplemental petition filed at any time within twelve months after such transfer, showing the necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the Administrator or the Board."

Repeal of Inconsistent Laws. Section 1401(e) of Pub.L. 85-726, provided that: "All other Acts or parts of Acts inconsistent with any provision of this Act [this chapter] are hereby repealed."

Transfer of Functions. All functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof, and all functions, powers, and duties of the Civil Aeronautics Board and of the Chairman, Members, offices, and officers thereof under subchapters VI and VII of this chapter were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See sections 1655(c), (d) and 1657(f), (g), of this title.

Legislative History. For legislative history and purpose of Pub.L. 85-726, see 1958 U.S.Code Cong. and Adm.News, p. 3741. See, also, Pub.L. 87-197, 1961 U.S. Code Cong. and Adm.News, p. 2563; Pub.L. 87-528, 1962 U.S.Code Cong. and Adm.News, p. 1844; Pub.L. 90-514, 1968 U.S.Code Cong. and Adm.News, p. 3591; Pub.L. 91-449, 1970 U.S.Code Cong. and Adm.News, p. 3990; Pub.L. 93-366, 1974 U.S.Code Cong. and Adm.News, p. 3975.

Library References

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1. Purpose

Purpose of this section providing that any person who causes or authorizes operation of aircraft shall be deemed to be engaged in operation of aircraft within meaning of this chapter was to subject classes of persons named equally with pilots to the rules, regulations and penalties provided in this chapter. Rogers v. Ray Gardner Flying Service, Inc., C.A. Tex.1970, 435 F.2d 1389, certiorari denied 91 S.Ct. 1255, 401 U.S. 1010, 28 L.Ed.2d 516.

Purpose of Air Commerce Act of 1926, former section 301 et seq. of this title, was to promote safety in aircraft flight by eliminating pilot fatigue resulting from aircraft duties. U. S. v. Ozark Air Lines Inc., D.C.Mo.1974, 371 F.Supp. 234, affirmed 506 F.2d 520.

This section is not intended to replace legal relationships created by state common law or statute with respect to tort liability and does not require that negligence of pilot-lessee of aircraft be imputed to lessor and sublessor. Rosdail v. Western Aviation, Inc., D.C.Colo.1960, 207 F.Supp. 681.

Policy behind the chapter is primarily to centralize power in the public interest so as to frame rules for the safe and efficient use of the nation's aeronautics facilities, as well as to provide an agency endowed with the authority to supervise airline rates and services. Trans World Airlines, Inc. v. Hughes, Del.Ch.1974, 317 A.2d 114.

2. State or local regulation and control

This section providing that any person who causes or authorizes operation of aircraft shall be deemed to be engaged in operation of aircraft within this chapter did not preempt Oklahoma bailment law that negligence of nonagent operator-lessee of airplane may not be imputed to owner-lessor and, as to deaths of passengers killed in crash of private airplane in Oklahoma, owner-lessors were not vicariously liable for negligence of the lessee pilot. Rogers v. Ray Gardner Flying Service, Inc., C.A.Tex.1970, 435 F.2d 1389, certiorari denied 91 S.Ct. 1255, 401 U.S. 1010, 28 L.Ed.2d 516.

The Texas Aeronautics Act, Vernon's Ann.Civ.St. art. 46c-1(a, i), does not conflict with federal law, and did not preclude application of this section defining operations of aircraft to an intrastate flight. Sosa v. Young Flying Service, D.C.Tex.1967, 277 F.Supp. 551.

This chapter preempted field of interstate air transportation in regard to routes and points to be served by interstate carriers to exclusion of conflicting regulation by state, and State Railway Commission lacked authority to compel carrier licensed by Civil Aeronautics Board to continue operations over intrastate segment of route which Board had authorized to be discontinued. Application of Frontier Airlines, Inc., 1963, 122 N.W.2d 476, 175 Neb. 501.

Federal government has not preempted field of economic regulation of air carriers and the states have power to act so long as there is no conflict with federal law. Texas Aeronautics Commission v. Braniff Airways, Inc., Tex.1970, 451 S.W.2d 199, certiorari denied 91 S.Ct. 244, 400 U.S. 943, 27 L.Ed.2d 247.

3. Air carrier

Absence of allegation that parties, who allegedly engaged in selling air transportation through bogus affinity group membership certificates, were acting in concert with air carriers did not preclude determination that they acted as indirect air carriers. C. A. B. v. Carefree Travel, Inc., C.A.N.Y.1975, 513 F.2d 375.

"Social club" whose real business was selling tours and air transportation on chartered aircraft, was an "indirect air carrier" within meaning of par. (3) of this section and thus was required to have in force a certificate issued by the Board. Monarch Travel Services, Inc. v. Associated Cultural Clubs, Inc., C.A.Cal. 1972, 466 F.2d 552, certiorari denied 93 S. Ct. 1444, 410 U.S. 967, 35 L.Ed.2d 701.

"Indirect air carrier" is one who holds out to public that it will undertake to transport property by air and enters into contracts with shippers wherein it binds itself to discharge such undertaking with respect to particular shipments. Railway Exp. Agency, Inc. v. C. A. B., 1965, 345 F.2d 445, 120 U.S.App.D.C. 228, certiorari denied 86 S.Ct. 102, 382 U.S. 870, 15 L.Ed.2d 120.

Firm which assembled and shipped air freight was an "air freight forwarder" or "indirect air carrier". Airborne Freight Corp. v. Civil Aeronautics Bd., 1958, 257 F.2d 210, 103 U.S.App.D.C. 206.

Defendant who owned, operated through his employees, maintained and offered services of airplanes to others who leased airplanes for exclusive use for passengers or cargo was a "carrier" of persons and property for hire within regulation providing that no person may engage in carriage of persons or property for hire in air commerce without, or in violation of commercial operator operating certificate. U. S. v. Bradley, D.C.Tex.1966, 252 F.Supp. 804.

A city which operated and managed a public airport through its commissioners, and a corporation which operated a restaurant and other facilities at the airport, were "air carriers," within this chapter. U. S. v. City of Montgomery, D.C.Ala.1962, 201 F.Supp. 590.

Airline which operated entirely within state of California and which was not engaged in air transportation involving interstate, overseas, or foreign air commerce or transportation of mail by aircraft, was not "air carrier" within meaning of former section 401(2) of this title. In re Airlines Transport Carriers, D.C. Cal.1955, 120 F.Supp. 670.

Airline to which Board had issued letter of registration and air carrier's operator certificate, and which carried passengers in interstate commerce, was "air carrier" within meaning of former section 401 of this title. Id.

4. Air commerce

The phrase "in the conduct or furtherance of a business or vocation" appearing in definition of "air commerce" in safety regulation provisions of this chapter had no application in construction of "air transportation" subject to economic regulation under this chapter and that resort hotel did not furnish air carriage in conduct or furtherance of business or vocation could not relieve it from economic regulation. Las Vegas Hacienda, Inc. v. C. A. B., C.A.9, 1962, 298 F.2d 430, certiorari denied 82 S.Ct. 1158, 369 U.S. 885, 8 L.Ed.2d 286.

That resort hotel operator was not primarily in transportation business and that furnishing of air transportation to and from city in another state was only incidental to promotion and operation of resort hotel and that it was assertedly not interested in profiting and did not profit directly from transportation did not require Board to hold that such carriage was outside of economic regulation coverage of this chapter. Id.

Under former section 101 of this title "air commerce" applied to operation of aircraft in foreign countries only where such operation involved commerce with United States, and United States licensed airplanes privately owned by defendant and flown by copilot in foreign country and having no contact with commerce moving between United States and that country were not subject to safety regulations. Hansen v. Arabian Am. Oil Co., D.C.N.Y.1951, 100 F.Supp. 183, affirmed 195 F.2d 682, certiorari denied 73 S.Ct. 31, 341 U.S. 828, 97 L.Ed. 645.

5. Air transportation

A flight between San Francisco, California, and Los Angeles, California, was not within definition of "air transportation," as limited to "interstate air transportation" within this chapter. Dower v. United Air Lines, Inc., C.A.Cal.1961, 329 F.2d 681.

"Free" flights included in package tours sold by hotel operator to all who wished to purchase them were no less common carriage because available only to members of public interested in patronizing such hotel, and such flights constituted "air transportation" as defined in this section and prohibited thereunder in absence of authorization from Board. M & R Inv. Co. v. C. A. B., C.A.9, 1962, 308 F.2d 49.

Board's conclusion that individuals engaged in physical operation of flights conducted by hotel operator without Board authorization were themselves engaged in "air transportation" within meaning of this chapter was not supported by the record. Id.

Under certificate authorizing air carrier to engage in air transportation with respect to property between points enumerated therein including Philadelphia and that the holder could regularly serve a point named therein through any airport convenient thereto, proposed service to Philadelphia by truck through the Newark airport was adequate air service within the meaning of the certificate. City of Philadelphia v. C. A. B., 1961, 289 F.2d 770, 110 U.S.App.D.C. 104.

Where certificate authorized air carrier to engage in air transportation for property between enumerated points including Philadelphia, order granting carrier authority to move Philadelphia freight by truck to and from the Newark airport where the transcontinental air journey began or ended was not invalid as not constituting "air transportation". Id.

Flower shipping cooperative, which was incorporated for purpose of consolidating shipments of members so they would receive a reduced shipping rate, was engaged indirectly in air transportation and Board did not abuse its discretion in requiring the cooperative to submit itself to the special limited regulations the Board had set up for air freight forwarders. Consolidated Flower Shipments-Bay Area v. Civil Aeronautics Bd., C.A.9, 1954, 213 F.2d 814.

This chapter brings within its regulatory scheme all those who compete in the commercial market in the business of offering air transportation to the public generally. U. S. v. Caribbean Ventures, Ltd., D.C.N.J.1974, 387 F.Supp. 1250.

"Air transportation", as used in former section 481(a) of this title prohibiting such transportation without a certificate from Board, means the carriage by aircraft in commerce of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft. Pacific Northern Airlines v. Alaska Airlines, 1948, 80 F.Supp. 592, 12 Alaska 65.

Since Honolulu International Airport is not point of destination of residents of another island homeward bound from elsewhere, interisland airline carrying such passengers is engaged in "air transportation" within this chapter, whether such passengers are preticketed or not. Application of Island Airlines, Inc., 1963, 381 P.2d 530, 47 Haw. 1, 87.

6. Common carrier

Record supported Board's conclusion that resort hotel operator selling package tours from city in another state, including "free" airplane rides on its craft, was a "common carrier for compensation or hire" within economic regulation provisions of this chapter. Las Vegas Hacienda, Inc. v. C. A. B., C.A.9, 1962, 298 F.2d 430, certiorari denied 82 S.Ct. 1158, 369 U.S. 885, 8 L.Ed.2d 286.

Whether an air carrier is a common carrier is determined by the same principles applicable in the cases of carriers by other means. Arrow Aviation, Inc. v. Moore, C.A.Neb.1959, 266 F.2d 188, 73 A. L.R.2d 337.

A carrier is a "common carrier" if it holds itself out to the public as willing to carry all passengers for hire indiscriminately, and holding out may either be by advertising or by actually engaging in the business of carriage for hire. Id.

Air carrier which operated planes for carriage of persons and property between Alaska and the United States, seeking and advertising for the traffic and carrying all offered to the limit of its capacity, for compensation, was, as to such operations a "common carrier". Pacific Northern Airlines v. Alaska Airlines, 1948, 80 F.Supp. 592, 12 Alaska 65.

While transportation under contract from the United States to Alaska of explosives and other property not generally or ordinarily carried by air and transportation of fresh fish from Alaska to the United States under contract were such as might in themselves be classed as special services which air carriers are permitted to render without regard to certificate, when considered in connection with predominant body of Alaskan air carrier's common carrier operations, they must be classified as common carriage. Id.

Corporation, which by advertising and later by conduct held itself out to public generally as a carrier of freight and passengers by air for hire, was a "common carrier" within subds. (10) and (21) of former section 401 of this title and required to obtain a certificate of public convenience and necessity, though corporation soon discontinued advertising, did not operate planes on schedule but under charter, usually on hourly rate basis, retaining, however, control of plane, and due to limited facilities served only a portion of public. Alaska Air Transport v. Alaska Airplane Charter Co., D.C.Alaska 1947, 72 F.Supp. 769.

Aircraft common carrier may at times and for certain purposes become a private carrier or bailee for hire, when as matter of accommodation or special engagement he undertakes to carry something which is not his business to carry. Executive Aviation, Inc. v. National Ins.

Note 6

Underwriters, 1971, 91 Cal.Rptr. 347, 10 C.A.3d 709.

7. Conveyance

Under former section 401(18) of this title defining "conveyance" as meaning a bill of sale, contract of conditional sale, mortgage, assignment of mortgage or other instrument affecting title to, or interest in, property, the phrase "or other instrument affecting title to, or interest in, property" referred to transactions similar in nature to those enumerated and an attachment was not tantamount to a conveyance. Marrs v. Barbeau, 1957, 140 N.E.2d 353, 336 Mass. 416.

8. Foreign air transportation

The provision of former section 401(21) of this title that common carrier by airplane between places in and outside United States might be deemed engaged in foreign air transportation for purpose of former section 401 et seq. of this title did not constitute a corporation operating aircraft between United States and contiguous foreign country a common carrier, but its status as such had to be determined outside such provisions or by applying principles of common law, in absence of statute. Pan Am. Airways, Inc. v. U. S., Cust.Ct.1957, 150 F.Supp. 509.

9. Interstate air commerce

Scheduled flights carrying persons or property between islands of Hawaii were in "interstate air commerce" through airspace over places outside state of Hawaii, within this chapter. C. A. B. v. Island Airlines, Inc., D.C.Hawaii 1961, 235 F. Supp. 990, affirmed 352 F.2d 735.

10. Interstate air transportation

The general principle of supremacy of federal control over interstate and high sea flights must prevail over the economic importance of interisland air transportation to Hawaii. Island Airlines, Inc. v. C. A. B., C.A.Hawaii 1965, 352 F.2d 735.

The high seas over which interisland flights flew while traveling among the various islands of Hawaii, were a "place" within this section defining jurisdiction of the Board over interstate air transportation which defines interstate commerce as transportation between points in the same state over a foreign country or high seas as well as over another state. Id.

Where certificate authorized air carrier to engage in air transportation between Pacific Coast terminal point, various intermediate points and Portland, Maine, and Philadelphia was an intermediate point enumerated in the certificate, carrier was authorized to engage in interstate air transportation of freight including movements between Philadelphia and the Pacific Coast as well as between Philadelphia and intermediate points. City of Philadelphia v. C. A. B., 1961, 289 F.2d 770, 110 U.S.App.D.C. 101.

Where certificate authorized air carrier to engage in air transportation with respect to property between points enumerated therein including Philadelphia and that the carrier could regularly serve a point named therein through any airport convenient thereto and the Board authorized service to Philadelphia by truck through the Newark airport if that airport was convenient to Philadelphia, requirement of the certificate was met. Id.

Under former section 401 et seq. of this title, air express and air freight are not different classes of traffic requiring separate authority for each class from the Board, but were both included within the "property" authorization of former section 401(21) of this title. Delta Air Lines, Inc. v. Civil Aeronautics Bd., C.A. 5, 1957, 247 F.2d 327.

"Place", within par. (21) (a) of this section defining interstate air transportation as flight between a place in United States and place in any other state or through airspace over any place outside thereof, refers to definite locality or specific area within definite physical limits, and, with respect to interisland transportation, refers to place which itself has boundaries, not international waters outside boundaries of any place. Application of Island Airlines, Inc., 1963, 381 P.2d 536, 47 Haw. 1, 87.

Par. (21)(a) of this section, extending federal jurisdiction to commerce between places in same territory was continued in force in Hawaii during the two-year transitional period which had not expired or been terminated. In re Island Airlines, Inc., 1961, 361 P.2d 390, 44 Haw. 631, rehearing denied 361 P.2d 390, 44 Haw. 683.

"Through the airspace over any place outside thereof", within par. (21) (a) of this section defining interstate transportation as flights between places in same state through airspace over any place outside thereof, denotes passage through airspace over another state or country having jurisdiction of airspace, not merely passage through airspace outside state without encountering sovereignty of any other state or country. Id.

Jurisdiction of Board over air commerce between places in State of Hawaii

Note 12

continued for two-year transitional period unless assumption of state re responsibility was advanced by state enactment. Id.

11. Operation of aircraft

Congress, in enacting provisions of this chapter including rental or leasing of airplanes within definition of "operation of aircraft" and making it illegal for any person to operate aircraft in careless or reckless manner so as to endanger life or property of another, merely intended to subject owners equally with pilot to rules, regulations, and penalties provided in this chapter, and not to make them civilly responsible for pilot lessee negligence. Sanz v. Renton Aviation, Inc., C. A.Wash.1975, 511 F.2d 1027.

Even though lease provided that construction company-lessee would take over operation of helicopter, which was licensed in restricted category, rather than standard category, and was therefore not authorized under Federal Aviation Administration regulations to operate for "compensation or hire," in view of fact that pilot had been chief pilot of certified helicopter operating company, and in view of fact that that company's president controlled that company and helicopter leasing company, and, indirectly, had substantial control over the record owner of helicopter, the lessor "operated" the aircraft within meaning of par. (28) of this section. Aircrane, Inc. v. Butterfield, D.C.Pa.1971, 369 F.Supp. 598.

This section providing that any person who authorizes operation of an aircraft in capacity of owner or otherwise shall be deemed to be engaged in operation of the aircraft was applicable to flight which resulted in death of lessee-pilot and his passengers, and constituted a basis for imputing negligence of pilot to owner, even though the fatal flight was entirely intrastate. Sosa v. Young Flying Service, D.C.Tex.1967, 277 F.Supp. 551.

Provision of this section stating that any person authorized in the operation of aircraft is deemed to be engaged in operating it within meaning of this chapter did not create for widow of deceased passenger a civil remedy against owner of aircraft based upon imputed negligence of pilot operating plane with owner's consent. Nachsin v. De La Bretonne, 1971, 95 Cal.Rptr. 227, 17 C.A.3d 637.

Intrastate operations of aircraft on a civil airway or which directly affect or endanger the safety of interstate, overseas, or foreign air commerce, are subject to the provisions of this chapter. 1941, 40 Op.Atty.Gen. 95.

12. Navigable airspace

Traversing airspace above another's land is not alone a trespass, and is lawful unless done under circumstances which cause injury. Pueblo of Sandia ex rel. Chaves v. Smith, C.A.N.M.1971, 497 F. 2d 1013.

Airspace above land acquired by municipality in adjacent town at end of runway was within meaning of "clear zone" as defined in federal regulation and, as part of the navigable airspace, was subject to federal regulation and orders of state court purporting to regulate flight of aircraft in the clear zone infringed on federal regulation of navigable airspace. U. S. v. City of New Haven, C.A.Conn.1974, 496 F.2d 452, appeal dismissed, certiorari denied 95 S.Ct. 218, 419 U.S. 958, 42 L.Ed.2d 174.

Neither par. (20) of this section nor section 1101 of this title would support action by passengers who were injured in airplane crash and who sought to impute negligence of lessee pilot to the owners-lessors of the airplane. McCord v. Dixie Aviation Corp., C.A.Utah 1971, 450 F.2d 1129.

Land near airport in sparsely settled community in Mojave Desert was not in a congested area for purposes of regulation fixing navigable airspace as commencing at 500 feet over uncongested and 1,000 feet over congested areas. Aaron v. U. S., Ct.Cl.1963, 311 F.2d 708, 160 Ct.Cl. 205.

Congress has declared a public freedom of transit through the navigable airspace, and has defined "navigable airspace" to include airspace needed to insure safety in takeoff and landing. Aaron v. City of Los Angeles, 1971, 115 Cal.Rptr. 162, 10 C.A.3d 171.

"Navigable airspace" means airspace above minimum altitudes of flight prescribed by applicable regulations, including airspace need to insure safety in takeoff and landing of aircraft. Johnson v. Airport Authority of City of Omaha, 1962, 115 N.W.2d 420, 173 Neb. 801.

Superadjacent airspace between 250 feet and 500 feet above property lying near to runway of aviation authority's airport was not within "navigable airspace" which Congress has placed in the public domain and owners of the property did not have to establish a private property right in such airspace to recover from authority compensation for damages sus-

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tained by owners because of landings and takeoffs of jet aircraft. Hillsborough County Aviation Authority v. Benitez, Fla.App.1967, 200 So.2d 194.

Provision of this section defining navigable airspace as meaning airspace above minimum altitudes of flight prescribed by regulations and as including airspace needed to insure safety in takeoff and landing of aircraft did not give carte blanche authority to municipalities to appropriate whatever airspace they desired to insure safety in takeoff and landing. Jackson Municipal Airport Authority v. Evans, Miss.1960, 191 So.2d 126.

13. Public aircraft

Where defendant operated its specially developed aircraft pursuant to its contract with National Aeronautics and Space Administration and made three flights transporting spacecraft components, aircraft was a "public aircraft" within meaning of that term as used in par. (32) of this section and regulations issued under section 1421(c) of this title and exempting from regulatory control and from rules and regulations relating to civil aircraft any aircraft used exclusively in service of government, and defendant was not required to obtain a commercial operator's certificate, and was not subject to civil penalties for engaging in air commerce using aircraft of more than 12,500 pounds maximum certified takeoff weight. U. S. v. Aero Spacelines, Inc., C.A.Cal.1966, 361 F.2d 916.

14. Supplemental air carrier

The Board rule authorizing supplemental air carriers to operate foreign originating travel group charters maintained substantial and vital differences between such service and conventional service available to individual traveler. Pan Am. World Airways, Inc. v. C. A. B., C. A.2, 1974, 517 F.2d 734.

Board's decision that stockholders of parent corporation of supplemental air carrier were not eligible for charter service was not so clearly arbitrary as to warrant court's intervention. Trans Intern. Airlines, Inc. v. C. A. B., 1970, 432 F.2d 607, 139 U.S.App.D.C. 174.

Board's determination that stockholders of parent corporation of supplemental air carrier were not eligible for charter service by carrier was within scope of power of agency to interpret regulations within framework of adjudicatory proceeding. Id.

15. Supplemental air transportation

The authorization within this section of supplemental air transportation does not prohibit charters from being solicited, directly or indirectly, from general public. Pan Am. World Airways, Inc. v. C. A. B., C.A.2, 1975, 517 F.2d 734.

16. Vessel

In view of provisions of former section 177 of this title, and former section 401 et seq. of this title, a "seaplane" is not a "vessel" within meaning of section 3 of Title 1, defining vessel as including water craft or other artificial contrivance used or capable of being used as a means of transportation on water. U. S. v. Peoples, D.C.Cal.1943, 50 F.Supp. 402.

§ 1302. Consideration of matters in public interest by Board

In the exercise and performance of its powers and duties under this chapter the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the United States Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

Cite this Pocket Part by Title Number and Section Thus: —— U.S.C.A. § ——

TITLE 49

TRANSPORTATION

CHAPTER 20—FEDERAL AVIATION PROGRAM

SUBCHAPTER III—ORGANIZATION OF ADMINISTRATION; POWERS AND DUTIES OF ADMINISTRATOR

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SUBCHAPTER I—GENERAL PROVISIONS

§ 1301. Definitions

As used in this chapter, unless the context otherwise requires—

[See main volume for text of (1) to (10)]

(11) "All-cargo air service" means—

(A) the carriage by aircraft of only (i) property as a common carrier for compensation or hire, or (ii) mail, or both, in commerce between a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same territory or possession of the United States, or the District of Columbia;

(B) the carriage by aircraft of only (i) property as a common carrier for compensation or hire, or (ii) mail, or both, in commerce between a place in any State of the United States or the District of Columbia and any place in the Commonwealth of Puerto Rico or the Virgin Islands or between a place in the Commonwealth of Puerto Rico and a place in the Virgin Islands;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(12) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

(13) "Board" means the Civil Aeronautics Board.

(14) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(15) "Civil aircraft" means any aircraft other than a public aircraft.

(16) "Civil aircraft of the United States" means any aircraft registered as provided in this chapter.

(17) "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.

(18) "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

(19) "Federal airway" means a portion of the navigable airspace of the United States designated by the Secretary of Transportation as a Federal airway.

(20) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(21) "Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(22) "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the

United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(23) "Intrastate air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage solely in intrastate air transportation.

(24) "Intrastate air transportation" means the carriage of persons or property as a common carrier for compensation or hire, by turbo-jet-powered aircraft capable of carrying thirty or more persons, wholly within the same State of the United States.

(25) "Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

(26) "Mail" means United States mail and foreign-transit mail.

(27) "Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations issued under this chapter, and shall include airspace needed to insure safety in take-off and landing of aircraft.

(28) "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

(29) "Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this chapter.

(30) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(31) "Propeller" includes all parts, appurtenances, and accessories thereof.

(32) "Possessions of the United States" means (a) the Canal Zone, but nothing herein shall impair or affect the jurisdiction which has heretofore been, or may hereafter be, granted to the President in respect of air navigation in the Canal Zone; and (b) all other possessions of the United States. Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this chapter to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(33) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(34) "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

(35) The term "special aircraft jurisdiction of the United States" includes—

(a) civil aircraft of the United States;

(b) aircraft of the national defense forces of the United States;

(c) any other aircraft within the United States;

(d) any other aircraft outside the United States—

(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or

(ii) having "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States;

while that aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard.

(36) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(37) "Supplemental air transportation" means charter trips, including inclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 1371(d)(3) of this title to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 1371(d)(1) and (2) of this title. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales.

(38) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

(39) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof.

As amended Pub.L. 95–163, § 17(b), Nov. 9, 1977 91 Stat. 1286.

1977 Amendment. Par. (11). Pub.L. 95–163, § 17(b)(2), added par. (11). Former par. (11) was renumbered (12). Pars. (12)–(39). Pub.L. 95–163, § 17(b)(1), renumbered former pars. (11) to (38) as (12) to (39), respectively.

Legislative History. For legislative history and purpose of Pub.L. 95–163, see 1977 U.S.Code Cong. and Adm.News, p. 5175.

Supplementary Index to Notes

Aircraft 4a
Charter 17

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1. Purpose

By enactment of this chapter, Congress intended to impose duty on Federal Aviation Administration to promote maximum safety in use of nation's air space. Clemente v. U. S., D.C.Puerto Rico 1976, 422 F.Supp. 504, motion denied 426 F. Supp. 1.

2. State or local regulation and control

To extent that state law conflicts with any part of this chapter it is preempted by this chapter under Congress' power to regulate interstate commerce. Feldman v. Philadelphia Nat. Bank, D.C.Pa.1976, 408 F.Supp. 24.

Where state's law, as reflected by Uniform Commercial Code, did not conflict with this chapter, it was applicable to transactions involving aircraft. Id.

Recording provisions of this section do not remove transactions involving aircraft entirely from effect of state law. Id.

Despite comprehensive effect of federal regulation on air commerce, states and localities retain power to regulate ground activities not directly involving actual aircraft operation. Garden State Farms, Inc. v. Bay, 1975, 343 A.2d 832, 130 N.J. Super. 1, reversed on other grounds 370 A.2d 37, 146 N.J.Super. 438.

4a. Aircraft

Alleged failure of the Administrator of Federal Aviation Administration to determine that hang gliders were "aircraft" within meaning of this section was discretionary function so that suit thereon under Tort Claims Act, sections 1346(b) and 2671 et seq. of Title 28, was barred. Fielder v. U. S., D.C.Cal.1976, 423 F.Supp. 77.

8. Foreign air transportation

States and municipalities are without authority to regulate any operation or navigation of aircraft within limits of any federal airway or any operation or navigation of aircraft which directly affects interstate, overseas or foreign air commerce. Garden State Farms, Inc. v. Bay, 1975, 343 A.2d 832, 130 N.J.Super. 1. Reversed on other grounds 370 A.2d 37, 146 N.J.Super. 438.

17. Charter

Congress intended the word "charter," to be flexible term which Board is free to define in accordance with experience and changing circumstances as long as integrity of scheduled service traffic is not violated. Trans World Airlines, Inc. v. C. A. B., C.A.2, 1976, 545 F.2d 771.

§ 1302. Consideration of matters in public interest by Board

General factors for consideration

(a) In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(1) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the United States Postal Service, and of the national defense;

(2) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(3) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(4) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the United States Postal Service, and of the national defense;

(5) The promotion of safety in air commerce; and

(6) The promotion, encouragement, and development of civil aeronautics.

Factors for all-cargo air service

(b) In addition to the declaration of policy set forth in subsection (a) of this section, the Board, in the exercise and performance of its powers and duties under this chapter with respect to all-cargo air service shall consider the following, among other things, as being in the public interest:

(1) The encouragement and development of an expedited all-cargo air service system, provided by private enterprise, responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense.

(2) The encouragement and development of an integrated transportation system relying upon competitive market forces to determine the extent, variety, quality, and price of such services.

(3) The provision of services without unjust discriminations, undue preferences or advantages, unfair or deceptive practices, or predatory pricing.

As amended Pub.L. 95–163, § 16(b), Nov. 9, 1977, 91 Stat. 1284.

1977 Amendment. Pub.L. 95–163 redesignated existing undesignated provisions as subsec. (a) and existing cls. (a) to (f) thereof as cls. (1) to (6), and added subsec. (b).

Legislative History. For legislative history and purpose of Pub.L. 95–163, see 1977 U.S.Code Cong. and Adm.News, p. 5175.

Supplementary Index to Notes

Promotion of competition 13

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2. Purpose

Since central objective of this section is to promote regulated competition in air transportation industry and since primary means for achieving goal is certification process in which board must consider whether applicant is fit, willing and able and whether requested authority would serve public convenience and necessity, rigid constraints on board's ability to consider applications on their merits are generally disfavored. World Airways, Inc. v. C. A. B., 1976, 547 F.2d 605, 178 U.S.App.D.C. 398.

Clear intent on part of Congress in enacting this chapter was to provide against improper design and manufacture of aircraft. In re Paris Air Crash of March 3, 1974, D.C.Cal.1976, 399 F.Supp. 732.

4. Sovereignty of federal government

Doctrine of federal preemption of aviation law does not generally extend to

REPRINT OF

Title 3

COMMERCE

Part 6. Alaska Transportation Commission
Chapter 60. Practice and Procedure
(3 AAC 60.010 – 3 AAC 60.630)

ALASKA ADMINISTRATIVE CODE

September, 1973

PART 6. ALASKA TRANSPORTATION COMMISSION

Chapter
- 60. Practice and Procedure
- 64. Motor Freight Carriers
- 66. Carriers by Bus
- 68. Air Commerce
- 70. Carriers by Ferry (no regulations filed)
- 76. Uniform Systems of Accounts and Reports

CHAPTER 60. PRACTICE AND PROCEDURE

Article
- 1. Practice Before the Commission
- 2. Pleadings
- 3. Hearings
- 4. Special Procedures of Commission
- 5. General Information

ARTICLE 1. PRACTICE BEFORE THE COMMISSION

Section
- 10. Ethical conduct
- 20. Former employees
- 30. Joint hearings with federal regulatory agencies

3 AAC 60.010. ETHICAL CONDUCT. (a) These canons are in furtherance of the purp of the commision's rules of practice which enjoin upon all persons appearing in proceedings before it to conform, as nearly as may be, to the standards of ethical conduct required of practitioners before the courts of the state of Alaska, and such standards are taken as the basis for these specifications, modified insofar as the nature of the practice before the commission requires.

(b) It is the duty of the practitioner to maintain towards the commission a respectful attitude, not for the sake of the temporary incumbent of the office, but for the maintenance of the importance of the functions he administers. In many respects the commission functions as a court, and practitioners should regard themselves as officers of that court and strive to uphold its honor and dignity. The commission, not being wholly free to defend

itself, is peculiarly entitled to receive the support of the practitioner against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a member or employee of the commission, it is the right and duty of the practitioner to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

(c) It is the duty of the practitioner not only to his client, but also to the commission and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

(d) It is unethical for a practitioner to attempt to sway the judgment of the commission by propaganda, or by enlisting the influence of intercession of members of the legislature or other public officers, or by threats of political or personal reprisal.

(e) Marked attention and unusual hospitality on the part of a practitioner to a commissioner, examiner, or other representative of the commission, uncalled for and unwarranted by the personal relations of the parties, subject both to misconstruction of motive and should be avoided. A self-respecting independence in the discharge of duty, without denial or diminution of the courtesy and respect due the official station is the only proper foundation for cordial personal and official relations between commission and practitioners.

(f) The selection of commissioners is a duty of the Governor with confirmation by the legislature. It is the duty of the practitioners insofar as they attempt to advise the appointing or confirming officers, to endeavor to prevent any consideration from outweighing fitness in the selection.

(g) No client, corporate or individual, however powerful, no cause, civil or political, however important, is entitled to receive, and no practitioner should render any service of advice involving disloyalty to the law or disrespect of its official ministers, or corruption of any person or persons exercising a public office or employment or private trust, or deception or betrayal of the public. In rendering any such improper service or advice the practitioner invites and merits stern and just condemnation. Correspondingly, he advances the honor of his calling and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, although interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But, above all, he will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

(h) In the disposition of contested proceedings the commission exercises quasi-legislative powers, but it is nevertheless acting in a quasi-judicial capactiy. It is required to administer the Act and to consider at all times the public interest beyond the mere interest of the particular litigants before it. To the extent that it acts in a quasi-judicial capacity, it is grossly improper for litigants, directly or through any counsel or representative, to communicate privately with a commissioner, examiner, or other representative of the commission about a pending cause, or to argue privately the merits thereof in the absence of their adversaries or without notice to them. Practioners at all times should scrupulously refrain in their communications to and discussions with the commission and its staff from going beyond *ex parte* representations that are clearly proper in view of the administrative work of the commission.

(i) It is the duty of a practioner at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in connection with the controversy, which might influence the client in the selection of the person to represent or assist him.

(j) It is unethical to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon a practitioner represents conflicting interest when, in behalf of one client, it is his duty to contend

for that which duty to another client requires him to oppose.

(k) The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

(l) A client's proffer of the assistance of additional practitioner should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A practioner should decline association as colleague if it is objectionable to the practitioner first retained, but if the client should relieve the practitioner first retained, another may come to the case.

(m) When practitioners jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted by them unless the nature of the difference makes it impracticable for the practitioner whose judgment has been overruled to cooperate effectively. In this event it is his duty to ask the client to relieve him.

(n) Efforts, direct or indirect, in any way to encroach upon the business of another practitioner are unworthy of those who should be brethern, but, nevertheless, it is the right of any practitioner, without fear or favor, to give proper advice to those seeking relief against an unfaithful or neglectful practitioner, generally after communication with the practitioner of whom the complaint is made.

(o) A practitioner should not in any way communicate upon the subject of controversy with a party represented by another practitioner except upon express agreement with the practitioner representing such party; much less should he undertake to negotiate or compromise the matter with him, but should deal only with the practitioner who represents the other party. It is incumbent upon the practitioner most particularly to avoid everything that may tend to mislead a party not represented by a practitioner, and he should not undertake to advise him as to the law.

(p) A practitioner should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudice of a client in the trial or conduct of a cause. The client cannot be made the keeper of the practitioner's conscience in such matters. He has no right to demand that the practitioner representing him shall abuse the opposing party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

(q) Attempts to influence the action and attitude of the members and examiners of the commission through propaganda, or through colored or distorted articles, in the public press, are more apt to react against than in favor of the parties resorting to such measures. On the other hand, it is not against the public interest or unfair to the commission that the facts of pending litigation shall be made known to the public through the press in a fair and unbiased manner and in dispassionate terms. Practitioners should, themselves, avoid, and should counsel their clients against, giving to the public press any press notices or statements of a nature intended to inflame the public mind, to stir up possible hostility toward the commission, or to influence the commission's course and judgment as to pending or anticipated litigation. When the circumstances of a particular case appear to justify a statement to the public through the press, it is to make it anonymously.

(r) The practitioner must decline to conduct a cause or to make a defense when convinced that it is intended merely to harass or to injure the opposing party, or to work oppression or wrong. But otherwise it is his right, and having accepted retainer, it becomes his duty, to insist upon the judgment of the commission as to the merits of his client's claim. His appearance should be deemed equivalent to an assertion upon his honor that in his opinion his client's case is one proper for determination.

(s) When a practitioner discovers that some fraud or deception has been practiced, which has unjustly imposed upon the commission or a party, he should endeavor to rectify it; first by

advising his client to forego any advantage thus unjustly gained and, if his client refuses, by promptly informing the injured person or his counsel (practitioner), so that appropriate steps may be taken.

(t) If any such person does not conform to such standards, the commission may decline to permit such person to appear in a representative capacity in any proceeding. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.141

3 AAC 60.020. FORMER EMPLOYEES. (a) No former employee of the commission may at any time after severing his employment with the commission appear in a representative capacity on behalf of other parties in a formal proceeding wherein he previously took an active part as a representative of the commission unless written permission by the commission is granted therefor.

(b) No former employee of the commission shall at any time after severing his employment with the commission appear, except with the written permission of the commission, as an expert witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation as a representative of the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.141

3 AAC 60.030. JOINT HEARINGS WITH FEDERAL REGULATORY AGENCIES. In any proceeding wherein the commission participates jointly with the Interstate Commerce Commission, the Civil Aeronautics Board, the Federal Maritime Commission, or other federal regulatory agency, the rules of practice and procedure of such federal agency shall govern. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.141

ARTICLE 2. PLEADINGS

Section
- 40. Pleadings enumerated
- 50. Applications - contents
- 60. Formal complaints - contents
- 70. Petitions - contents
- 80. Answers
- 90. Replies
- 100. Intervention
- 110. Motions
- 120. Time for pleadings
- 130. Amended pleadings
- 140. Form and size
- 150. Filing, copies required
- 160. Service of pleadings and motions

3 AAC 60.040. PLEADINGS ENUMERATED. (a) Pleadings shall consist of applications, formal complaints, petitions, answers, replies, and motions.

(b) All pleadings except applications shall conform to and comply with secs. 40-160 of this chapter and shall have at the top of the page, *State of Alaska, Alaska Transportation Commission,* title of the case, title of the pleading and docket number, if any, as follows:

STATE OF ALASKA

ALASKA TRANSPORTATION COMMISSION

In the Matter of the Application of	)	
John D. Doe, d/b/a Doe's Flying Service, for an Air Commerce Certificate	)	Docket No.____
	)	TITLE OF PLEADING

(Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.050. APPLICATIONS - CONTENTS. (a) An application is a pleading which applies or prays for any right, power, privilege, or other authority under a statute or regulation requiring the filing of an application.

(b) Applications may be made at any time on a form provided by the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.060. FORMAL COMPLAINTS - CONTENTS. (a) Complaints shall set forth the full name and address of each party complainant and of each party defendant.

(b) Complaints shall fully and clearly set forth concisely the specific act complained of, or the alleged grievance, so as to advise the parties and the commission completely of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief requested.

(c) Complaints shall set forth a citation of the statutes or rules and regulations alleged to have been violated. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.070. PETITIONS – CONTENTS. (a) A petition is any other pleading praying for affirmative relief other than complaints, answers, replies, applications or motions and shall include requests for leave to intervene.

(b) A petition shall set forth all facts upon which the request for relief is based, with the dates of all occurrences which may be essential for the disposition of the matter, together with a citation of the statute and rules and regulations upon which the petition is based, and such other information as required by the commission's rules and regulations under which the specific type of petition is filed.

(c) In the case of petitions, the commission may require notice be given to interested parties and order a hearing. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.080. ANSWERS. (a) Any party against whom a complaint is directed or who desires to contest or make any representations in connection with an application or petition shall file with the commission an answer thereto within the time required by sec. 120 of this chapter.

(b) Answers shall be so drawn as to advise fully and completely the nature of the defense, contention, or representation, and shall admit or deny specifically and in detail all material allegations of the complaint or a protest to a tariff change as provided in sec. 190 of this chapter.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered. Any defense which challenges the jurisdiction of the commission over the subject matter of the proceeding shall be pleaded as an affirmative defense. Any defense based upon the existence of operating authority shall affirmatively allege such authority.

(d) In case a party fails to answer within the time specified in sec. 120 of this chapter, he shall be deemed in default, and all material allegations of the complaint, application, or petition may be deemed admitted and any further hearing waived. Thereafter, the proceeding may be disposed of without further notice to the defaulting party and without formal proceeding as to such party.

(e) The commission may, upon such terms as may be just, at any time after mailing of an order entered upon a default, relieve the party affected thereby where it appears the order was entered through mistake, inadvertence, surprise, or excusable neglect of such party. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.090. REPLIES. A party desiring to reply to an answer shall file the same with the commission within the time set forth in sec. 120 of this chapter. Failure to file a reply within said time shall be deemed a general denial. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.100. INTERVENTION. (a) Any person may petition the commission for permission to intervene in any proceeding in writing prior to the time of the hearing except as provided in (c) of this section. Any person can petition the hearing officer for permission to intervene orally or in writing at the time of the hearing. Such petition shall contain the following:

(1) the name and address of the party intervening and of his attorney, if any;

(2) the interest of such party in the proceeding; and

(3) the position of such party in the proceeding, including the name of the party in whose behalf such intervention is requested.

(b) Intervention shall not broaden the issues in the proceeding and may be allowed at the

discretion of the hearing officer at the hearing or the commission prior to the hearing.

(c) Intervention in any application proceeding shall be within the time specified in the notice of application as published in a newspaper of general circulation. (Eff. 12/28/69, Reg. 31)
Authority: AS 42.07.150

3 AAC 60.110. MOTIONS. Service of any motion, unless specified in these rules, shall be made on all other parties to the proceedings and the original and one copy shall be served on the commission and if the case has been given to the hearing officer, two copies thereof shall be given to the hearing officer. The commission or the hearing officer shall decide the motion with or without hearing. If the case is before the hearing officer, he will decide the motion and if the case is before the commission, the commission will decide the motion. (Eff. 12/28/69, Reg. 31)
Authority: AS 42.07.150

3 AAC 60.120. TIME FOR PLEADINGS. (a) A motion directed to a complaint must be filed before the answer is due; provided, however, a motion directed towards the legal sufficiency of a complaint to state a cause for relief may be made at any time.

(b) A motion directed to an answer must be filed before the reply is due; provided, however, that a motion directed to the legal sufficiency of any answer to state a cause of defense may be made at any time.

(c) A motion directed to a reply or to the legal sufficiency of a reply must be filed within 10 days after service of the reply.

(d) Answer, if made, must be filed within 20 days.

(e) Reply, if made, must be filed within 10 days after the service of the pleading against which it is directed.

(f) A motion directed to the legal sufficiency of an application or petition may be made at any time.

(g) Unless otherwise specified by these regulations, any reply to a motion shall be served within 10 days of the date of serving of the original motion.

(h) The commission may shorten or extend the time required to file any pleading on its own motion or on the motion of a party stating the reasons for the requested extension. (Eff. 12/28/69, Reg. 31)
Authority: AS 42.07.150

3 AAC 60.130. AMENDED PLEADINGS. Amendments to pleadings may be allowed at any time and upon such terms as may be deemed proper in the discretion of the commission. (Eff. 12/28/69, Reg. 31)
Authorityy: AS 42.07.150

3 AAC 60.140. FORM AND SIZE (a) Pleadings shall be fastened at the top, shall be typewritten on paper 8½ x 11 to 14 inches in size, and exhibits or appendices, annexed thereto, folded to that size. The impression shall be on one side of the paper only and shall be double spaced, except that footnotes or quotations shall be single spaced and indented.

(b) Reproduction of original document may be by any process, provided all copies are clear and permanently legible. (Eff. 12/28/69, Reg. 31)
Authority: AS 42.07.150

3 AAC 60.150. FILING, COPIES REQUIRED. (a) Upon the filing of an original complaint or amendment thereof, there must also be filed conformed copies equal in number to two more than the number of defendants named in the complaint.

(b) Published application and petition forms will be furnished upon request, and the original and one conformed copy shall be filed with the commission.

(c) Unless otherwise expressly provided in the rules and regulations governing a particular proceeding, an original and two conformed copies of all other pleadings shall be filed with the commission. (Eff. 12/28/69, Reg. 31)
Authority: AS 42.07.150

3 AAC 60.160. SERVICE OF PLEADINGS AND MOTIONS. (a) Service by commission: all complaints and final orders will be served by the commission. Service may be made by registered

United States mail, postage prepaid, addressed to recipient as his address appears in the records of the commission, or his agent of process. Service shall be deemed complete when said document is so deposited in the United States mail or hand delivered by an agent of the commission.

(b) Service by parties.

(1) all other pleadings shall be served by the pleader upon each other party to the proceeding or his attorney of record;

(2) service of pleadings by parties shall be made by delivering one copy to each party in person or by first-class mail, properly addressed with postage prepaid;

(3) when a party has appeared by attorney, service upon such attorney of pleadings and all decisions and order of the commission in the proceeding, will be deemed valid service upon the party;

(4) how service is made: whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the commission; service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the commission; delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is not one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; service by mail is complete upon mailing; service, execution, and return based on a copy of any paper transmitted by telegraph or radio may be made by the person to whom directed with the same effect as if such copy were the original; in such case, the original shall be filed with the commission;

(5) service by mail: whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, five days shall be added to the prescribed period except in time periods prescribed for tariff change proceedings; and

(6) there shall appear on the original of every pleading either an acknowledgement of service or certificate in substantially the following form:

> I hereby certify that I have this day served a true copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof properly addressed with postage prepaid, to the following parties or attorneys of parties:
>
> _____
>
> _____
>
> _____
>
> Dated at _____ this _____ day of _____, 19____.
>
> (Signature) _____
>
> Of Counsel for _____

Where the method of service is other than by mail, there must be attached a certification by the person who made the service stating the method of service, upon whom service was made, the time, date, and place. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

ARTICLE 3. HEARINGS

Section
170. Hearings
180. Notice
190. Protests
200. Postponement of hearings
210. Continuances
220. Consolidation of proceedings
230. Conferences
240. Stipulation as to facts
250. Subpoenas
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270. Order of procedure
280. Appearances
290. Evidence
300. Official notice
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320. Exhibits
330. Prepared testimony and exhibits in rate hearings
340. Records in other proceedings
350. Form of decision
360. Briefs
370. Oral arguments
380. Effective date
390. Reconsideration
400. Petition for reduction of penalty

3 AAC 60.170. HEARINGS. (a) Hearings may be ordered by the commission for applications, clarification of authority, transfers, investigations, tariff suspension, or other just cause not herein specified.

(b). The commission shall order the place of hearing at a place most convenient to all parties.

(c) All hearings shall be conducted by a hearing officer appointed by the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.180. NOTICE. (a) The time and place of holding formal hearings will be set by the commission and notice served on all parties or their representative at least 30 days prior to the date of said hearing, by depositing said notice in the United States mail, postage prepaid, addressed to recipient as his address appears in the records of the commission. The commission may by order or in the notice of hearing require a hearing to be held on less than 30 days' notice.

(b) The commission shall compile a journal of all applications, petitions, complaints and other proceedings to be published regularly not less frequently than once a month. Notice to all carriers and the general public shall be accomplished by publication of the journal. Official notice is completed upon publication in the journal. Upon payment of the charge therefor, any person may subscribe to the journal which shall be mailed first class to his designated address. Copies of the journal shall be maintained for public inspection at the offices of the commission in Anchorage, Fairbanks and Juneau. (Eff. Reg. 31; am 10/4/73, Reg. 47)

Authority: AS 42.07.141

3 AAC 60.190. PROTESTS (a) Any protests to an application shall state the specific grounds for the protest on one or more of the following grounds:

(1) financial ability of the applicant;

(2) deficiency in experience or inability of applicant to perform the service;

(3) lack of necessity for proposed service; or

(4) proposed service would be detrimental to the public interest.

(b) Anyone filing a protest shall indicate therein whether or not they will be present at the hearing by stating

> "I hereby certify that I will/will not appear at the hearing and will/will not participate fully in any and all proceedings concerning this application."

(c) Any protest to a tariff change shall be filed at least 15 days prior to the effective date of the tariff change. Protests shall state the specific grounds for the protest and identify the specific tariff and portion thereof. Motions for the suspension of tariffs shall be filed in accordance with sec. 410 of this chapter. The commission shall file all protests with the originator of the tariff change. Answers to protests shall be filed with the commission at least five days prior to the effective date of the tariff change. The commission may order a formal hearing to consider the tariff change.

(d) Protests shall be postmarked not later than 15 days from the last day of publication. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.200. POSTPONEMENT OF HEARINGS. (a) Any party who desires a postponement shall, immediately upon receipt of notice of the hearing or as soon thereafter as facts requiring such postponement come to his knowledge, notify the hearing officer in writing at least 10 days before the date of the hearing,

stating in detail the reasons why such postponement is necessary.

(b) The hearing officer in passing upon a request for a postponement shall consider whether such request was promptly made. For good cause shown, the hearing officer may grant such a postponement and may, for good cause shown, order a postponement upon his own motion at least 10 days before the date of the hearing. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.210. CONTINUANCES. (a) During a hearing, if it appears that further evidence or argument should be received, the hearing officer may, in his discretion, continue the hearing for good cause shown.

(b) The date of such continued hearing may be fixed at time of hearing or by later written notice to the parties. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.220. CONSOLIDATION OF PROCEEDINGS. Proceedings may be consolidated for hearing in the discretion of the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.230. CONFERENCES. (a) It is the policy of the commission, in order to make possible a more effective use of hearing time in formal proceedings, and otherwise to expedite the orderly conduct and disposition of such proceedings, to arrange for conferences between parties to such proceedings and the hearing officer to consider the following matters:

(1) simplification and clarification of the issues and elimination of irrelevant or immaterial issues;

(2) the possibilities for obtaining stipulations as to facts pursuant to sec. 240 of this chapter, authenticity of documents, admissibility of evidence, order of proof, and other matters to which stipulation might be expected to conserve hearing time; and

(3) such other matters as may aid in expediting the orderly conduct and disposition of the proceeding.

(b) In any proceeding the hearing officer may, in his discretion, call the parties together for a conference prior to the taking of testimony or may recess the hearing for such conference. The hearing officer shall state on record the results of such conference. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.240. STIPULATION AS TO FACTS. (a) Parties to any proceeding may, by stipulation of record, agree upon the facts or any portion thereof involved in the controversy, which stipulation shall be binding upon the parties thereto and may be regarded and used by the hearing officer as evidence at the hearing.

(b) Proof by evidence of the facts stipulated to may, however, be required, notwithstanding the stipulation of the parties, by the hearing officer or upon request of the parties, by the hearing officer or upon request of the commission, in either of which events notice will be given and an opportunity to produce afforded. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.250. SUBPOENAS. (a) The issuance of subpoenas, unless otherwise directed by the commission or the hearing officer on his own motion, shall be made in writing and include the name and address of the desired witness.

(b) Subpoenas duces tecum shall specify the particular document record, or part thereof, desired to be produced.

(c) Service of subpoenas shall be made as provided in civil suits in the Superior Court for the state of Alaska and the original shall be forthwith returned to the commission or the hearing officer.

(d) A subpoena issued under this section extends to all parts of the state and shall be served in accordance with the rules of civil procedure. No witness is obliged to attend at a place out of the election district in which he resides unless the distance is less than 100 miles from his place of residence, except that the commission, upon affidavit of a party showing that the testimony of the witness is material and necessary, may endorse on the subpoena an order requiring the attendance of the witness. A

witness who is not a party and who appears under a subpoena is entitled to receive

(1) fees, except a witness who is an officer or employee of the state or a political subdivision of the state;

(2) mileage in the same amount and under the same circumstances as prescribed by law for a witness in a civil action in a superior court; and

(3) an additional fee and mileage to a per diem compensation of $15 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing, if the witness attends a hearing at a point so far removed from his residence as to prohibit return to his residence from day to day.

(c) Fees, mileage, and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.260. DEPOSITIONS. (a) Preliminary:

(1) the commission may either upon its own initiative, or for good cause shown by a party to a proceeding, issue an order to take a deposition;

(2) depositions shall be taken before an officer authorized to administer oaths by the laws of the State of Alaska;

(3) unless under special circumstances and for good cause shown, no deposition shall be taken within 10 days prior to the assigned date of the hearing in such proceeding.

(b) A petition requesting an order to take a deposition shall be filed with due regard to the time periods specified in (a) (3) of this section and shall set forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition should be taken.

(c) Order and interrogatories:

(1) if the petition requesting an order to take a deposition is granted, which action may be taken without awaiting the possible filing of a reply, the commission will serve upon the parties an order which will name the witness whose deposition is to be taken, and specify the time when, the place where, and the officer before whom the witness is to testify, but such time and place and the officer before whom the deposition is to be taken, so specified in the commission's order, may or may not be the same as set out in the petition;

(2) in lieu of participating in the oral examination, parties served with the order for taking of a deposition may promptly transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(d) The officer before whom the deposition is to be taken shall observe the provisions requesting appearances, put the witness on oath, and shall personally, or by someone acting under his discretion and in his presence, record the testimony of the witness. The testimony shall be taken verbatim and transcribed unless the parties agree otherwise.

(e) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

(f) When the testimony is fully transcribed or otherwise recorded, the deposition of each witness shall be submitted to him for examination and shall be read to or by him. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall state at the foot thereof the fact of the waiver or of the illness or absence of the witness, or the fact of the refusal to sign, together with the reason, if any, given thereof; and the deposition may then be used as fully as though signed, unless, on a

motion to suppress, the commission finds that the reasons given for the refusal to sign are sufficient to require rejection of the deposition in whole or in part.

(g) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and that the officer is not of counsel or attorney for any of the parties, and that he is not interested in the event of the proceeding.

(h) The officer shall securely seal the deposition in an envelope endorsed with the title of the proceeding and shall promptly send the original and one copy thereof, together with the original and one copy of all exhibits, by registered mail to the commission. The deposition must reach the commission not later than five days before the date of the hearing at which it is to be offered as evidence.

(i) Upon payment of reasonable charges therefor, the officer before whom the deposition is taken shall furnish a copy of it to any interested party or to the deponent.

(j) The party taking the deposition shall give prompt notice of its filing to all other parties.

(k) At the oral hearing, if one is held, the deposition may be offered in evidence by the party at whose instance it was taken. If not offered by such party, it may be offered in whole or in part by the adverse party. If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it, which is relevant to the part introduced, and any party may introduce any other parts. Such deposition shall be admissible in evidence subject to such objections as to competency of the witness, or to the competency, relevancy, or materiality of the testimony as were noted at the time of taking of said deposition, or are made at the time it is offered in evidence. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.270. ORDER OF PROCEDURE. (a) The presentation of evidence as hereafter set forth shall be followed except as the hearing officer may otherwise change or modify such order of presentation

(1) upon formal complaints: complainant, defendant, commission's staff in proceedings in which the commission is not the complainant, and rebuttal by complainant;

(2) in investigation and/or suspension proceedings: respondent, commissions's staff, protestants against suspended schedules, interested parties, and rebuttal by respondent;

(3) upon applications and petitions: applicant or petitioner, protestants, interested parties, commission's staff, and rebuttal by applicant or petitioner.

(b) In hearings of several proceedings upon a consolidated record, the hearing officer shall designate the order of procedure.

(c) Interveners shall follow the party in whose behalf the intervention is made. In the event the intervention is not in support of either original party, the hearing officer shall designate when such interveners shall be heard. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.280. APPEARANCES. (a) Parties shall enter appearances at the beginning of the hearing by giving their names and addresses in writing to the reporter or hearing officer who will include the same in the record of the hearing.

(b) The hearing officer conducting the hearing may, in addition, require appearances to be stated orally so that the identity and interest of all parties present will be known to those at the hearing.

(c) An attorney who has appeared for a party in any matter pending for hearing before this commission may be permitted to withdraw as counsel for such party only as follows:

(1) for good cause shown upon motion and notice served on the other party not less than 10 days before the time specified for the hearing;

(2) where the party has other counsel ready to be substituted for the attorney who wishes to withdraw; or

(3) where the party expressly consents to the withdrawal of his attorney, orally to the hearing officer, or in writing.

(d) Any party who shall fail to appear at a scheduled conference or hearing, after being duly notified thereof shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen any matter determined at such conference or hearing, or to recall for further examination witnesses who were excused, unless the hearing officer shall determine that the failure to be represented was unavoidable or that the interests of the other parties and of the public would be prejudiced by not permitting such reopening or further examination.

(e) Every witness testifying in a proceeding before the commission shall under oath state or affirm that the testimony he gives is the truth and nothing but the truth. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.290. EVIDENCE. (a) Subject to the provision of this section, all relevant evidence is admissible when, in the opinion of the hearing officer

(1) it is the best evidence reasonably obtainable, having due regard to its necessity, availability, and trustworthiness; and

(2) relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of a common law of statutory rule which makes improper the admission of evidence over an objection in a civil action.

(b) Oral evidence may be taken only on oath or affirmation. Each party may

(1) call and examine witnesses;

(2) introduce exhibits;

(3) cross-examine opposing witnesses on matters relevant to the issues, even though that matter was not covered in the direct examination;

(4) impeach a witness regardless of which party first called the witness to testify; and

(5) rebut the evidence against himself.

(c) The hearing officer may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued.

(d) If hearsay evidence is objected to, it may not be used by itself to support a finding unless it would be admissible over objection in a civil action. Hearsay evidence may be used, however, even over objection, to supplant or explain direct evidence.

(e) Parties objecting to the introduction of evidence shall state the grounds of such objection at the time such evidence is offered. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.300. OFFICIAL NOTICE. (a) In addition to matters concerning which courts of this state take judicial notice, official notice will be taken of the following matters:

(1) rules, regulations, administrative rulings and report of the commission and other governmental agencies;

(2) orders of the commission exclusive of findings of fact;

(3) contents of permits and licenses issued by the commission; or

(4) documents and records in the files of the commission which are required by law or by the rules of the commission so filed.

(b) In addition, the commission and hearing officer may at their discretion take official notice of the results of his own inspection of the physical conditions involved and may take official notice of the results of their previous experience in similar situations and the general information concerning the subject which goes to make up their fund of expert knowledge, including findings of fact in prior orders.

(c) Where official notice is taken of any matter, the findings of fact shall so specify.

(d) Whenever practicable, the hearing officer and commission shall notify the parties to the proceeding that official notice will be taken of any pertinent facts. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.310. RESOLUTIONS. (a) Resolutions, properly authenticated, of the governing bodies of cities, boroughs, or other governmental agencies, will be received in evidence if offered at the hearing by the head of the agency or governing body or by the secretary or other officer charged with the official custody of such records.

(b) Such resolutions shall be received subject to rebuttal by adversely affected parties as to either the authenticity of the resolution or the circumstances surrounding its procurement.

(c) Recitals of fact contained in resolutions shall not be deemed proof of these facts, and such resolutions shall only be recieved for the limited purpose of showing the expression of the official action of the resolving body with respect to the matter under consideration of the proceeding. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.320. EXHIBITS. (a) Exhibits prepared for the hearing shall be upon paper 8½ x 11 to 14 inches in size or folded in multiples thereof. The impression shall be one side of the paper only and shall be double spaced, except that footnotes or quotations shall be single spaced and indented.

(b) When exhibits apart from exhibits attached to an application are offered in evidence, copies must be furnished to all parties of record and two copies to the hearing officer, except when otherwise directed.

(c) When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matters not material or relevant, the party offering the same must plainly designate the matter so offered. If other matter is in such volume as would necessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record or, if the hearing officer so directs, a true copy of such matter in proper form shall be received as an exhibit and like copies delivered by the party offering the same to all other parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the book, paper, or document, and to offer in evidence in like manner other portions thereof found to be material and relevant.

(d) An official rule, report, order, record, or other document, prepared and issued by any governmental authority, when admissible for any purpose, may be evidenced by an official publication thereof; by a publication of a recognized reporting service deemed by the hearing officer to constitute a sufficient guaranty of trustworthiness; or by a copy attested by the officer having the legal custody thereof, or his deputy, if accompanied by a certificate that such officer has such custody, and authenticated by the seal of his office. When such official records, otherwise admissible, are contained in official publications or publication by recognized reporting services and are in general circulation and readily accessible to all parties, they may be introduced by reference, provided, however, that proper and definite reference to the record in question is made by the party offering the same.

(e) Papers and documents on file with the commission, if otherwise admissible, may be introduced by reference to number, date, or by any other method of identification satisfactory to the hearing officer. If only a portion of such paper or document is offered in evidence, the part so offered shall be clearly designated.

(f) The direct testimony of a witness may be presented in writing. Unless otherwise directed by the hearing officer, such testimony, when properly authenticated by the wirness under oath or affirmation, may be transcribed into the record or marked as an exhibit. Such written testimony shall contain a statement of the qualifications of the witness, and shall be accompanied by any exhibits to which it relates. Such written testimony shall be subject to the same rule of admissibility and cross-examination of the sponsoring witness as if it were presented orally in the usual manner. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.330. PREPARED TESTIMONY AND EXHIBITS IN RATE HEARINGS. (a) The commission may require any carrier subject to its jurisdiction, filing a tariff for a rate increase, to file all proposed testimony and/or exhibits with the commission before setting a date for hearing or rendering a decision. Such written testimony shall contain a statement of the qualifications of the witness, and shall be accompanied by any exhibits to which it relates. Such written testimony shall be subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally in the usual manner.

(b) Every person or party required or who desires to submit proposed testimony and/or exhibits shall file with the commission a minimum of four copies. Where additional parties have become known before the time required to file proposed testimony and/or exhibits, then additional copies may be required to be filed with the commission for every known party. In addition, a sufficient number of copies shall be made available for distribution to all parties of record at the time of hearing if parties have not already been furnished with copies.

(c) Duplication of testimony and/or exhibits shall comply with the requirements under sec. 320(2) of this chapter. Duplicate original copies shall be submitted in easily readable form. Where duplicate original copies do not meet the requirements of legibility, the commission may require the party to submit easily readable copies.

(d) A waiver of this section, as to the testimony or exhibits or a portion of the same of a particular witness, may be obtained ex parte from the commission prior to the hearing upon a showing of good cause.

(e) Whenever, in the circumstances of a particular case, it is deemed necessary or desirable, the commission or the hearing officer may direct that oral testimony and/or exhibits be reduced to exhibit form and be offered in the manner hereinbefore described. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.340. RECORDS IN OTHER PROCEEDINGS. In case any portion of any other proceeding is admissible for any purpose and is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit, unless

(1) the party offering the same agrees to supply such copies later at his own expense, if required by the commission or the hearing officer; or

(2) the portion is specified with particularity in such manner as to be readily identified; and

(3) the parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference and that any portion offered by any other party may be incorporated by like reference. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.350. FORM OF DECISION. (a) A decision issued by a hearing officer or the commission shall be written and shall contain required findings of fact and/or conclusions of law.

(b) A decision in a primarily judicial proceeding has retroactive effect in the same manner as the decision of the state court. (Eff. 12/28/68, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.360. BRIEFS. (a) Briefs shall be bound on the top and shall be typewritten or reproduced by any process provided all copies are clear and permanently legible and shall be on paper 8½ x 11 to 14 inches in size.

(b) Briefs may be filed in any proceeding by any party within 20 days after mailing of the proposed decision by the hearing officer. Any party desiring to respond to a brief will do so within 10 days after mailing of brief. Briefs shall be filed by any party to a proceeding upon the request of the commission or hearing officer and within such time as shall be directed. The commission or hearing officer may require parties to file either separately or as a part of such brief proposed findings of fact and conclusions of law.

(c) The original and two copies of each brief shall be filed with the commission and copies

thereof shall be served on all parties in the case, or their counsel, and proof of such service furnished to the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.370. ORAL ARGUMENTS. (a) In case matters require an immediate decision, the parties or their counsel may be required to present their arguments and authority orally at the close of the hearing instead of by written brief.

(b) Any party in any case may request oral argument before the commission.

(c) If oral argument is granted to a party or parties, the commission shall order the time, date, and place of oral argument and shall give the parties at least 10 days' notice except where good cause is shown for shorter time of notice. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3AAC 60.380. EFFECTIVE DATE. (a) A commission decision or order shall become effective on the date specified in the decision or order unless the commission allows or initiates a motion for reconsideration as specified in sec. 390(f) of this chapter.

(b) Effective dates specified in any commission order shall not be less than 30 days from the date of service except as noted in sec. 390(g) of this chapter.

(c) Should the commission allow or initiate a reconsideration, as specified in sec. 390(f) of this chapter, replies will be permitted until 30 days after the effective date of the original order. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.390. RECONSIDERATION. (a) A motion seeking any change in a decision, order, or requirement of the commission shall specify whether said motion is for rehearing, further hearing, reconsideration, or modification of the effective date.

(b) A rehearing may be initiated by the commission on its own motion or on a motion of any party if there is substantial evidence showing that the original hearing was conducted in violation of Alaska statutes or commission regulations in effect at the time of the original hearing.

(c) Further hearing may be initiated by the commission on its own motion or on the motion of any party to introduce evidence. The evidence to be adduced must be stated briefly and explanation must be given why such evidence was not previously adduced.

(d) Reconsideration may be initiated by the commission on its own motion or on the motion of any party on any matter claimed to have been illegally or erroneously decided. Such motion must specifically set forth alleged violations in the case of an illegal decision or proceeding, or specifically set forth an alleged error on the part of the commission which is not within the discretionary power of the commission.

(e) Effective dates may be changed by the commission on the motion of the commission or on the motion of any party if there is substantial evidence showing that the effective date is not in the public interest, works an unreasonable hardship on the applicant or protestant, or is based on an emergency circumstance not in evidence of record.

(f) Motions for rehearing, further hearing, reconsideration, or modification of the effective date of a commission decision, order, or requirement shall be filed at least 10 days prior to the effective date of the order. Commission initiation of, or action on, the motion will be made prior to the effective date of the order.

(g) Commission orders directing compliance with statutes or commission regulations are effective upon publication and are not subject to reconsideration until such time as compliance with the law or regulation has been made and the commission petitioned for reinstatement.

(h) All commission costs incurred as result of reconsideration will be borne by the party or parties moving for reconsideration unless otherwise determined by the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.400. PETITION FOR REDUCTION OF PENALTY. The commission may, on petition filed by a carrier, reduce any penalty except that no petition requesting the vacation of an order or revocation will be considered by the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

ARTICLE 4. SPECIAL PROCEDURES OF COMMISSION

Section
410. Tariff suspension
420. Investigation
430. Temporary authority
440 Transfers
450. Declaratory ruling
460. Investigations and audits
470. Commission meetings
480. Confidential files
490. Informal complaints
500. Petitions for rule making
510. Attachments and executions
520. Filing of complaint when tariff is not on file with the commission
530. Failure to file insurance
540. Other procedure
550. Application of rules to pending proceedings

3 AAC 60.410. TARIFF SUSPENSION. (a) In any case where the commission suspends a tariff, it can do so only for a period of not more than 180 days from the proposed effective date of the tariff that is suspended, except for the statutory period specified for bus tariff suspension.

(b) The commission can suspend tariffs on its own motion at any time prior to the proposed effective date or on the request of a protestant filed 15 days or more before the proposed effective date of the tariff.

(c) In all cases where the commission suspends tariffs it shall state in its order of suspension the reason for the suspension of the tariffs. Tariff suspension orders shall be published prior to the effective date of the proposed tariff change. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.420. INVESTIGATION. The commission may at the request of a party, or on its own motion, order an investigation and hold a hearing on an investigation, to determine whether the laws, rules, regulations, tariffs, classifications of a carrier are being complied with and may order that the carrier or group of carriers be deemed a respondent, and may order such responding carriers to furnish such evidence as the commission deems necessary in order to make any appropriate findings of fact or conclusions of law. The commission may not amend or alter any certificate of permit after an investigation, except after a responding carrier, subject to its regulations, has had notice and an opportunity to be heard. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.430. TEMPORARY AUTHORITY. (a) The commission shall notice all application for temporary authority in the manner provided in sec. 180 of this chapter, except that only one day's publication shall be required.

(b) Protests to the application shall be as provided in sec. 190 of this chapter, except that protests shall be postmarked not later than 10 days from the last day of publication.

(c) All applications for temporary authority must state the statute under which temporary authority is requested and shall be accompanied by affidavits, exhibits, or other evidence necessary for the commission to make a finding that temporary authority should be granted.

(d) The commission may require any other evidence which it deems necessary to make findings as to whether temporary authority should be granted and shall require notice to carriers or shippers and may require, by order a hearing if it deems one necessary. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.440. TRANSFERS. The commission shall notice all applications for a transfer in the same manner as provided in sec. 180 of this chapter. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.450. DECLARATORY RULING. (a) Any interested person may petition the commission for a declaratory ruling. The

commission shall consider the petition and within a reasonable time the commission shall

(1) issue a non-binding declaratory ruling; or

(2) notify the person that no declaratory ruling is to be issued; or

(3) set a reasonable time and place for a hearing on the matter and give reasonable notification to the person of the time and place for such hearing and of the issues involved.

(b) If a hearing is held, as provided in (a)(3) of this section, the commission shall within a reasonable time

(1) issue a binding declaratory rule; or

(2) issue a non-binding declaratory ruling; or

(3) notify the person that no declaratory ruling is to be issued.

(c) All declaratory rulings shall be kept on file with the commission in numerical order and made available to all interested parties. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.460. INVESTIGATIONS AND AUDITS. The commission may direct any commissioner or member of the staff of the commission or authorized agent to make investigation, audits, examine records, and all commission staff members shall have proper identification indicating that they are authorized agents of the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.470. COMMISSION MEETINGS. The commission shall meet on Monday of every week at 2:00 p.m. at the commission office unless otherwise noticed. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.480. CONFIDENTIAL FILES. All files of the commission are public records except files of the commission relating to complaints, investigations, and personnel files of the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.490. INFORMAL COMPLAINTS. (a) Matters presented by informal complaint may be taken up by the commission with the parties affected, through correspondence or otherwise, in an endeavor to bring about an adjustment of the subject matter of the complaint without formal hearing or order.

(b) Oral informal complaints will be considered only if written complaint follows.

(c) Informal procedure is recommended whenever practicable, but is designed only for the amicable adjustment of disputes and no mandatory or prohibitory order shall be issued in an informal proceeding. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.500. PETITIONS FOR RULE MAKING. Petitions for rule making shall be in the form required by AS 42.62.220. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.510. ATTACHMENTS AND EXECUTIONS. Upon service of legal attachments by authorized court of law in the State of Alaska, the commission will

(1) not transfer the permit; and

(2) reserve the right to revoke or suspend permit for just cause. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.520. FILING OF COMPLAINT WHEN TARIFF IS NOT ON FILE WITH THE COMMISSION. If proper tariffs are not on file with the commission, the commission will file a complaint. The defendant shall not have to answer, but shall be required to appear at the date set for the hearing of the complaint or file the required tariff. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.530. FAILURE TO FILE INSURANCE. If proper insurance is not on file with the commission, the commission may suspend the permit without hearing provided the commission serves a notice on the carrier whose insurance is being cancelled in a form as follows:

"The Alaska Transportation Commission has received a notice of cancellation of_____

_____

insurance. Unless proper insurance is on file with the commission before the effective date of the cancellation, your permit will be suspended for a period of 60 days, during which period a hearing will be held regarding your failure to file insurance. If no insurance is on file at the end of the 60-day suspension period, your permit may be revoked."

(Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.540. OTHER PROCEDURE. Where under a statute administered by the Alaska Transportation Commission, a procedure other than one prescribed by these regulations is authorized, the commission shall follow the procedure authorized by the statute. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.550. APPLICATION OF REGULATIONS TO PENDING PROCEEDINGS. All pending proceedings before the commission at the time of the adoption of these rules shall be conformed to these regulations of practice on application by interested parties. Parties shall have until March 1, 1967, to petition the commission for relief if they are substantially prejudiced by the adoption of these regulations. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.250

ARTICLE 5. GENERAL INFORMATION

Section

560. Applicability of regulations
570. Construction and waiver of the regulations
580. Address for filings
590. Remittances
600. Fees
610. Rejection of filings
620. Commission staff as a party
630. Definitions

3 AAC 60.560. APPLICABILITY OF REGULATIONS. (a) The general regulations of practice and procedure are for general application to proceedings and hearings before the commission.

(b) Special regulations involving methods of procedure may be adopted by the hearing officer or the commission when stipulated by all parties. These special regulations so adopted will govern throughout the proceeding. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.570. CONSTRUCTION AND WAIVER OF THE REGULATIONS. (a) These regulations shall be liberally construed to secure just, speedy and inexpensive determination of the issues presented.

(b) In special cases and for good cause shown the commission or hearing officer may allow deviations from or waiver of a particular regulation. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.580. ADDRESS FOR FILINGS. All pleadings or other written communications or documents shall be filed by presentation by mail, postage prepaid, to the Alaska Transportation Commission, 1000 MacKay Building, 338 Denali Street, Anchorage, Alaska 99501, or may be delivered in person to the Alaska Transportation Commission, Anchorage, Alaska. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.590. REMITTANCES. Remittances to the commission shall be by check, money order, bank draft or certified check payable to the Alaska Transportation Commission. Remittances in currency or coin are wholly at the risk of the remitter and the commission assumes no responsibility for loss thereof. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.600. FEES. Fees, when required by law, must be tendered with any application and no such application will be considered filed until such fees have been paid. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.610. REJECTION OF FILINGS. (a) Pleadings or other documents, other than tariffs, received by the commission which are not in substantial compliance with these regulations, the commission's orders or applicable statutes,

may be rejected and not accepted for filing at the discretion of the commission.

(b) Pleadings or other documents required ro be filed with the commission within a specified time or by a specified date but which fail to substantially comply with these rules, the commission's orders or applicable statutes, will be deemed conditionally filed, for the purpose of satisfying such filing date, on the date received by the commission.

(c) Conditionally received filings shall not be deemed filed or entered on the commission's docket until approved as being in substantial compliance with these rules, the commission's orders or applicable statutes. Conditionally received filings shall be rejected unless amended or supplemental filings in compliance with the conditions are received within the time granted by the commission.

(d) Rejected filings or conditionally received filings may be returned with an indication of the deficiencies therein and the reasons for rejection or conditional receipt, as the case may be; or, if a pleading or document omits information required by these regulations, the commission's orders or statutes, the commission may require an amendment or supplement containing such information.

(e) The commission may require the filing of additional information at any stage in the proceeding. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.620. COMMISSION STAFF AS A PARTY. The staff of the Alaska Transportation Commission shall be considered a party in every case before the commission except that the staff, when it actively participates in the case, must file a notice of appearance with the hearing officer prior to the hearing. The commission may order the staff to act as a party at any time for good cause shown. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

3 AAC 60.630. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "applicants" means persons applying for any right, privilege, or other authority, under a statute requiring the filing of an application therefore;

(2) "carrier" means any person subject to the laws, rules and regulations administered by the Alaska Transportation Commission;

(3) "classification of parties" means parties to proceedings shall be styled applicants. complainants, petitioners, defendants, respondents, interveners, protestants, or interested parties according to the nature of the proceeding and the relationship of the parties thereto;

(4) "complainants" means persons who complain to the commission of any act or omission by any other person, and in any proceeding in which the commission on their own initiative files a complaint;

(5) "defendants" means persons against whom any complaint is filed;

(6) "interested parties" means all persons directly affected by an application or petition, and such person may file protests, complaints, petitions, and otherwise be given the right to appear in proceedings before the commission;

(7) "interveners" means persons permitted to intervene as provided in sec. 100 of this chapter;

(8) "person" or "party" when used in these regulations means any individual, copartnership, corporation, association, municipal organization, or other entity, and shall include the plural;

(9) "petitioner" means persons applying for permission to exercise any right or privilege under a statute requiring the filing of a petition or persons requesting a rehearing, reopening of the record, or other relief;

(10) "practitioner" means any person appearing pro persona, or the attorney for any party;

(11) "protestants" means the person who has authority to provide service or has an application for authority to provide service in the same area as the applicant and who objects on the grounds of a private or public interest to the approval of an application made to the

commission concerning the same area except as provided in (6) of this section; and

(12) "respondents" means persons designated in an investigation. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

CHAPTER 64. MOTOR FREIGHT CARRIERS

Article

1. Vehicle Leasing
2. Applications
3. Fees
4. Insurance and Bonds
5. Tariffs, Schedules and Shipping Documents
6. Contracts
7. Safety Regulations and Identification
8. General Provisions

ARTICLE 1. VEHICLE LEASING

Section

10. Leasing
20. Written lease required
30. Written lease requirements
40. Period of leasing
50. Commission approval and authorization
60. Leases by common or contract carriers
70. Compensation
80. Termination of lease
90. Disposition of lease copies
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110. Unauthorized leasing
120. Violations
130. Exemptions to leasing requirements
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150. (Repealed)

3 AAC 64.010. LEASING. No vehicle shall be leased or the possession thereof transferred, other than by sale, by any person to any other person under any circumstances except in accordance with the provisions of this article. (Eff. 7/29/64, Reg. 15)

Authority: AS 42.10.010
AS 42.10.070
AS 42.10.080

3 AAC 64.020. WRITTEN LEASE REQUIRED. Where possession or use is transferred, other than by sale, of any motor vehicle, trailer or other transportation equipment, such transfers shall be made only by written lease. Oral agreements for such transfers

are prohibited. (Eff. 7/29/64, Reg. 15)

Authority: AS 42.10.010
AS 42.10.070
AS 42.10.080

3 AAC 64.030. WRITTEN LEASE REQUIREMENTS. The lease or other arrangement for the transfer of possession or use of any motor vehicle, trailer or other transportation equipment shall

(1) be made between the common or contract carrier and the owner of the equipment;

(2) be in writing and signed by the parties thereto, or by their regular employees or agents duly authorized to act for them in the execution of contracts, leases, or other arrangements;

(3) specify the period for which it applies which shall not be less than 10 days when the equipment is to be operated for the common or contract carrier by the owner, or an employee of the owner;

(4) provide during the term of the lease for the exclusive possession, control and use of the motor vehicle, trailer or other transportation equipment to be completely vested in the lessee in such way as to be good against all the world, including the lessor; for the complete assumption of responsibility in respect to the lease by the lessee; and for the operation of the leased equipment to be conducted under the supervision and control of the lessee;

(5) provide that during the period of the lease, contract or other arrangement the driver of the leased vehicle shall be to the lessee as servant to master and the driver shall be paid by the lessee;

(6) specify the compensation to be paid by the lessee for the rental of the leased equipment; and

(7) specify the time and date of the circumstances on which the lease or other arrangement begins and the time or the circumstance on which it ends. (Eff. 7/29/64, Reg. 15)

Authority: AS 42.10.010
AS 42.10.070
AS 42.10.080

3 AAC 64.040. PERIOD OF LEASING. No common or contract carrier shall lease from any person any vehicle for period of less than 30 days except any such carrier may lease only from another contract or common carrier having an Alaska permit a vehicle or vehicles for a period of not more than 14 days within any one 60-day period and any extension of the 14-day period is prohibited. The 60-day period shall commence on the date any such lease shall become effective. (Eff. 7/29/64, Reg. 15)

Authority: AS 42.10.010
AS 42.10.070
AS 42.10.080

3 AAC 64.050. COMMISSION APPROVAL AND AUTHORIZATION. No common or contract carrier shall lease any vehicle, extend any lease of any vehicle, or commence using any vehicle under any lease, from any person without obtaining prior written approval and authorization by the commission of such a lease or extension except no such prior commission approval and authorization is required for any lease less than 14 days as permitted under sec. 40 of this chapter. (Eff. 7/29/64, Reg. 15)

Authority: AS 42.10.010
AS 42.10.070
AS 42.10.080

3 AAC 64.060. LEASES BY COMMON OR CONTRACT CARRIERS. Common or contract carriers may lease vehicles, but may not lease any vehicle to any person other than a common or contract carrier. (Eff. 7/29/64, Reg. 15)

Authority: AS 42.10.010
AS 42.10.070
AS 42.10.080

3 AAC 64.070. COMPENSATION. The amount of compensation to be paid under a lease shall not be based upon a division of revenue, including but not limited to a percentage basis dependent upon gross receipts per trip or period of time. Compensation shall not include any arrangement whereby the lessee shall pay the lessor directly or indirectly for a driver or provide a rebate therefore unless otherwise ordered by the commission upon application therefore. (Eff. 7/29/64, Reg. 15)

Authority: AS 42.10.070
AS 42.10.080

ISSUES AND ANSWERS

WHAT TO SAY
WHEN YOU'RE
ON THE
FIRING LINE . .

Additional copies available from
Public Relations Council

American Trucking Associations, Inc.
1616 P Street, N.W.
Washington, D.C. 20036
(202) 797-5242

FOREWORD

The Public Relations Council of the American Trucking Associations, Inc. is dedicated to providing trucking executives with the skills and information needed to carry out their function as highly professional spokesmen for the motor carrier industry. This booklet, "Issues and Answers" will be helpful in responding to the media, (Primarily TV and radio), legislators and public forums.

The trucking industry must work constantly for favorable publicity and media attention if the industry is to quell the myths about the motor carrier industry that pervade much of today's popular opinion. Spokesmen must be prepared with ready and honest answers to respond effectively to indictments.

The public is concerned about energy shortages, pollution, speeding, tailgating, rates and regulation vs. deregulation. By effectively responding to questions about the trucking industry from government and consumer critics as well as the media, the motor carrier executive can play a major part in bringing the message of his company and the industry to the public. He can present vital information about the trucking industry in a way which will produce better understanding and acceptance of the industry that moves America.

You may want to enlarge upon the response to a specific question . . . but remember that short answers are best for radio and TV and in public forums.

Approximate times are listed with our suggested answers. You may want to time yourself. Remember, answers as much as possible should be non-technical and in language laymen can understand. Your manner, and the image you create, is more important than slide rule responses.

You are always in control of your answers. Project! Convey! Enlighten! Frame your answers for public consumption, not for the questioners.

Joan Vinson
Executive Director
Public Relations Council

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How large is the trucking industry?

Trucking receives about three out of every four revenue dollars spent for freight movement. In 1977, motor freight carriers did an estimated 130 billion dollars in business. This figure represents more than seven per cent of the country's gross national product. There are more than 16,000 trucking companies. There are also many privately owned trucks carrying freight for individual companies. The industry is one of the most diversified in the country.

(approximately 30 seconds)

How many people are employed by the trucking industry?

About 9 million for all trucking. This covers freight, service industries and utilities. About 2½ million of these are drivers. The payroll for this total is slightly more than 100 billion dollars annually. For motor freight carriers only the yearly payroll is between 65 and 78 billion dollars, or between 50 and 60 per cent of revenues.

(approximately 25 seconds)

Why are trucks always speeding and ignoring the 55 mph speed limit?

The regulated trucking industry, of which I'm a part, has waged a national campaign for compliance with the nation's speed limits. Over all, federal studies show trucks obey the 55 mile per hour limit more than automobiles. We know the 55 mph saves both lives and fuel.

The industry has road patrols that observe truck speeds and report violations to motor carrier management. We've told the federal government and state enforcement agencies that they have the full support of the industry for enforcement of speed limits.

(approximately 35 seconds)

Why do trucks cause so many accidents?

Accidents caused by trucks are very low compared to the number of accidents involving all types of vehicles. For 1976, the National Safety Council estimated there were 16,800,000 accidents involving drivers of all types of vehicles. The larger types of trucks, such as tractor semi-trailer, and other truck combinations, were involved in only 2.9% of those accidents. Even involvement doesn't mean that these trucks caused the accident. It has been reliably estimated that in 63% of the accidents involving a truck with another vehicle, the other vehicle is at fault. Actually, larger trucks cause less than 2% of all accidents.

(approximately 40 seconds)

What training is given to drivers to promote highway courtesy and safety?

The trucking industry has a variety of driver training and safety programs. There are special truck driver training schools. And driver trainers are utilized by motor carriers to monitor experienced drivers and to provide additional training if a driver has picked up bad habits. Safety meetings are conducted regularly to remind drivers of their safety responsibilities and to pass on new rules and regulations.

(approximately 25 seconds)

Is the trucking industry fighting deregulation to prevent competition?

Regulation of trucking isn't anti-competitive. For the most part, the industry is made up of small companies, many family owned. Only two industries in the United States show a more intense competitive picture than trucking. They are the manufacturers of miscellaneous machinery and the makers of women's clothing.

(approximately 15 seconds)

Don't the big carriers really dominate the business?

Not true. The four largest carriers account for just 10 per cent of the industry's total revenues, and the eight largest for only 14 per cent. Look at three other of America's prominent industries by contrast: In automobile manufacturing four companies account for 91 per cent of the volume. In steel, the four largest companies account for 47 per cent of the volume and in cigarette manufacturing the four largest companies account for 84 per cent. According to the latest Census of Manufacturers, trucking trails 415 other major industries in terms of the market share concentration of the eight largest firms. Most trucking companies are small businesses, grossing only about half a million a year.

(approximately 40 seconds)

A specific example for competition:

Between the city of Philadelphia and, say, Akron, Ohio, a shipper has 30 single line choices for moving freight. Even most small towns have two to a dozen or more.

(approximately 10 seconds)

Don't some segments of the industry favor deregulation?

The impetus for deregulation comes from a few large shippers and a handful of academicians. I should also throw in a few justice department anti-trust attorneys. The real experts in this field—economists, bankers and transportation executives—disagree. Some independent truckers who carry exempt farm commodities to market believe they should be allowed to carry back other freight. But, this would only shift freight from one truck to another. It wouldn't reduce the number of empty trucks.

(approximately 25 seconds)

What portion of the revenues of the trucking industry comes from the top five percent of the companies?

First of all, there are more than 16,600 regulated trucking companies. To take five percent of this number would be meaningless—as it would amount to more than 800 individual firms. It would be more appropriate to talk in terms of the top 50 motor carriers. Overall, the regulated trucking industry received about $30 billion in total (gross freight) revenues in 1977. Of this, the largest 50 companies accounted for $10.9 billion—or thirty-six percent of the total. Trucking is less concentrated in terms of any measurement than virtually any industry in the United States.

(approximately 35 seconds)

There's more and more congestion on the roads. Isn't this due to trucks?

No. The vast majority of vehicles are still autos, pick-up trucks and vans. Federal government statistics show that the number of tractor-trailer combinations, the big highway "rigs," was about 1.2 to 1.3 million in 1977. That's out of 144 million registered vehicles. A proportion of the remaining vehicles, called "straight trucks," are freight oriented, but this proportion is not easily determined. The total number of straight trucks was about 700,000 in 1977. Many of these are used for the pick-up and delivery of freight in urban areas.

(approximately 35 seconds)

Radio and Television Tips

- Be on time. A live show will go on with or without you. If you're late for a taped program, you'll tie up technicians, the host, and studio time. This means money to the station. Either way you will never be invited back.
- Be flexible. Broadcasters work in a constant state of tension. The more understanding of delays and interruptions, the better the chance you'll be invited back.
- Prepare ahead of time. You should know what you want to say and be forearmed for possible trouble areas. Broadcasters will be willing to give you a few minutes of free promotion for a few minutes of interesting conversation.
- Don't rely on the interviewer's questions to cover the points you want to make. You needn't answer only the question asked. Practice turning questions to subjects you want to discuss.
- Have four or five interesting stories prepared ahead of time. If the interview becomes too technical, tell a story.
- Ignore studio technicians. Concentrate on the host and other panelists. Remember you are playing to the audience, not the people in the studio.
- Don't worry about lighting, sound levels, and camera angles. That is the technicians' job.
- Never answer questions "yes" or "no". Questions that can be answered "yes" or "no" are leading questions seeking agreement with someone else's opinion. Make your own statements.
- Let opponents speak for themselves. Don't voluntarily agree with them.
- Most often, style is more important than substance. The impression left with the audience is more lasting than any one thing said.
- Broadcasting is an intimate medium. Speak as if someone is sitting next to you.
- Don't worry about dead air time. Dead air time is the broadcaster's problem, not yours. It is not your duty to fill it.

Television Tips Only

- Don't swivel in your chair. You'll look like a child on his first amusement park ride.
- Make soft, smooth gestures. Avoid quick, jerky motions.
- If you cross your legs, cross them at the knee. If you rest your foot on your leg, your knee will keep bobbing in and out of a close-up. This also sets up a barrier between you and the audience in a long shot.
- Look at the speaker. If the camera catches you when someone else is speaking, and you're looking around the studio or at the floor, the audience will think you're bored.
- Call hosts by their first names. Television is intimate. Since hosts are seen everyday, viewers look upon them as friends.
- Television is a visual medium. If visuals—props, slides, film, models—help tell your story, bring them to the studio. They will help the interview move along.
- Do not wear hats, shiney jewelry, or plaids. Hats shadow the face, shiney jewelry reflects into the camera lens, and plaids make the television screen dance.
- Don't worry about make-up. If it is needed, a technician familiar with the studio's lights will apply it. If it's suggested don't refuse. It's for your own good.
- If you're asked to sign a release, read it carefully and make sure you get a copy. The release will basically say that you agree to be filmed.
- Try to watch a program in advance of your appearance. This will give you a feel for the show and the type of material used. It will also help you choose clothing that complements the set.

Most people feel trucks tear up the highways. Why should motorists pay for trucks using the roads?

They don't. Trucks pay 38 per cent of all state and federal highway user taxes, but they account for only 18 per cent of the traffic. In 1976, for example, motor carriers paid 8 billion dollars out of the 21 billions collected in state and federal highway user taxes. Every recent study of the user taxes has found that trucks pay more than their fair share of the costs for construction and maintenance of the nation's highway system.

(approximately 30 seconds)

How about those big tractor-trailers?

Even when the question is narrowed to combination trucks, the largest intercity vehicles, the evidence indicates they are paying more than their fair share. All combination vehicles registered in the United States paid 18.9 per cent of all federal highway user taxes in 1975, the latest available year. This compares favorably to a finding in the most recent federal highway cost allocation study that combination vehicles were responsible for 18.6 per cent of highway costs.

(approximately 25 seconds)

What is the trucking industry doing to become more fuel efficient—not only now, but ten and twenty years in the future?

Trucking has, and is, devoting much of its technological know-how toward conserving energy. New engine and transmission designs, air deflectors on some types of equipment, radial tires, demand-actuated cooling fans have all enabled the motor carrier industry to operate much more efficiently in terms of fuel used than it did just a few short years ago. Better highways, better scheduling and further improvements in maintenance procedures have also helped. On down the road, we are looking toward much greater use of diesel engines in total and especially in the smaller city-type trucks, and still more refinements in the design of the large highway "rigs" to conserve even more fuel in the future.

(approximately 40 seconds)

Example of savings:

Secretary of Transportation Brock Adams said at a press conference held August 9, 1978 that the national truck fuel economy program has saved the nation more than 1.7 billion gallons of fuel since 1973.

(approximately 10 seconds)

I keep reading that railroads are more fuel efficient than trucks.

Railroads are not more energy efficient than trucks. While rails may be more efficient in hauling certain commodities, like coal, long distances, trucks are more efficient at hauling other types of freight, such as light and bulky general merchandise. Furthermore, railroads do not serve 60% of America's communities. These communities would cease to exist, as we know them, if trucks were precluded from hauling their freight.

(approximately 25 seconds)

The following specific test result can also be used:

A 1975 study conducted for the U.S. department of Transportation by Reebie Associates of Greenwich, Conn., found that twin trailers used less fuel than other modes of transportation in a test run between Portland, Ore. and Los Angeles, Calif. comparing fuel consumed in loading, transfer, pickup and delivery as well as that used in traversing the 950-mile route.

Fully expecting to find the railroads to be more efficient than trucks, and an improved intermodal system using both trucks and trains to be better than either, the Reebie researchers were surprised at the results of their study.

(approximately 38 seconds)

Why are empty backhauls allowed? They're inefficient.

Well, a good idea, which won't work, is to "eliminate empty backhauls." Quite correctly, trucks sometimes go back empty. But that problem can only be solved by more freight. A federal government study found that the chief reasons for empty trucks are the regional traffic imbalances inherent in our society and the use of specialized equipment such as auto carriers and tank trucks. Only about three per cent of the empty miles appeared to be avoidable in the study.

(approximately 25 seconds)

A specific example on backhauls:

You can't haul heating oil in a tank truck from Oklahoma City to Milwaukee and then haul milk back to Oklahoma City in the same tanker.

(approximately 10 seconds)

Isn't the ICC in the trucking industry's pocket?

The answer is "no". Emphatically "no." We find ourselves many times in ICC rulemaking proceedings opposing a particular rule or regulation. The industry has taken the ICC to court and argued that the commission has gone beyond the bounds of its statutory authority, or acted in an arbitrary manner.

While we don't always like how the commission regulates, we do recognize the need for an umpire between the carrier and the shipper with the overall public interest in mind. The ICC is there to determine what will "promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation" as required by the National Transportation Policy set forth by Congress in 1940.

(approximately 40 seconds)

Collective ratemaking is a rip-off of the consumer, isn't it?

Quite the contrary. The system protects the consumer from damaging forms of economic discrimination. Collective ratemaking reduces the chaotic to the manageable. There's a gross misunderstanding among those promoting deregulation that rate bureaus allow motor carriers to arbitrarily set rates in a secret and collusive manner. Actually there is nothing secretive or collusive about rate bureaus.

(approximately 22 seconds)

But, rate bureaus drive up costs.

Truck rates haven't risen as fast as other prices in the present inflation. Let's compare the relative price for motor carrier service with changes in the consumer price index. From a base of 100 in 1967, the revenue per ton mile for regulated for hire motor carriers rose to 166.2 in 1977. During the same period, the consumer price index rose from 100 to 181.5, or 15 points higher than the price of motor carrier service.

(approximately 30 seconds)

Examples of typical transportation costs:

A hammer retails in a Chicago hardware store for $8.23. Total cost for transportation by motor carrier from manufacturer in Farmington, Connecticut, to Chicago—6 cents.

A washing machine retails in Butte, Montana, for $311.78. Cost for shipment by motor carrier from Columbus, Ohio, for this heavy, expensive appliance—$18.37.

A stove retails in Los Angeles for $398.88. Cost of transportation by motor carrier from Mansfield, Ohio: $17.32.

A portable electric typewriter retails in a Chicago store for $249.47. It was manufactured in New York. Cost for motor carrier transportation from New York to Chicago--$1.74, or 7/10 of 1 percent of the total price.

A man's suit retails in Indianapolis for $94.01. Cost of transportation by motor carrier from Atlanta, Georgia—28 cents, or 20/100 of 1 percent.

(Note: These are truckload rates. Transportation charges are slightly higher for less than truckload shipments, based on a graduating scale dependent on weight of shipment.)

Why do trucking companies pay millions of dollars for operating certificates?

To get additional service points so they can expand their operations. Let me point out immediately, however, that the value of the certificates doesn't enter into the rate base for rate making purposes. Lately, the cost of authorities has taken a downhill trend because the ICC is approving approximately 95 per cent of new authorities sought. The decision to control entry is an involved issue, but basically it is to prevent excessive services resulting in an unhealthy and unstable transport industry clearly not in the public interest. The point is: If the public isn't underwriting sales of operating certificates and the certificates allow carriers to obtain easier financing for capital improvements, then the sales are a benefit to our transportation system.

(approximately 45 seconds)

Why are the trucking industry minority hiring practices so poor?

They're not. The trucking industry's minority hiring practices are good and have been for many years. The trucking industry is committed to a policy of affirmative action and equal employment. In 1967, the percentage of minorities employed in the trucking industry was 6.6 per cent. Only five years later the percentage was up to 11.3. It's now at 12 per cent. Since 1969, minority hiring in the trucking industry has outpaced minority employment in the American work force as a whole.

(approximately 30 seconds)

Isn't the household goods moving industry ripping off customers by weight bumping?

Absolutely not. There have been only two indictments in as many years for weight bumping. Only one of those cases has been successfully prosecuted and it is on appeal. The other never came to trial. What is important for the customer to know is that the moving industry does not knowingly tolerate within its ranks any person who cheats a customer.

The moving industry does everything in its power to encourage the ICC and the U.S. Attorney General to bring charges in a court of law and to prosecute anyone it finds who may be involved in any alleged wrongdoing.

The moving industry handles about 1.65 million interstate moves each year. There are some 2500 companies and some 50 to 60 thousand independent contractors (owner-operators) engaged in this high volume, intensive work.

(approximately 45 seconds)

Why do trucking companies always concede to Teamster economic demands?

The question implies that hard bargaining does not take place. This assumption simply is not true.

In the major trucking labor negotiations, hard bargaining always takes place. So does much compromise. In consideration for economic gains the companies seek to negotiate agreements which recognize industry requirements to improve productivity and efficiency. Uninterrupted service to the public at reasonable rates is really the only thing the motor carrier has to sell. In an excessive settlement there are no winners, and this is true for employers and employees alike.

(Approximately 30 seconds)

How much effect does organized crime have on trucking companies and the Teamsters?

Hopefully, not much. Management and union representatives, like all other people, may be honest, dishonest, likable, or unlikable people. The vast majority cannot be tarred with the same brush which has touched some officials with known criminal records or involvements.

Having a public service obligation, the trucking industry works hard to keep theft and pilferage out of its business. Its freight security programs are sophisticated, on-going, and have achieved a measure of success.

(approximatley 35 seconds)

This paper is the result of a study
commissioned by the following
motor-carrier associations:

Central and Southern Motor Freight Tariff Association, Inc.
Central States Motor Freight Bureau, Inc.
Eastern Central Motor Carrier Association
Middle Atlantic Conference
Middlewest Motor Freight Bureau
National Motor Freight Traffic Association, Inc.
New England Motor Rate Bureau, Inc.
Niagara Frontier Tariff Bureau, Inc.
Pacific Inland Tariff Bureau, Inc.
Rocky Mountain Motor Tariff Bureau, Inc.
Southern Motor Carriers Rate Conference

Collective Ratemaking in Trucking: The Public-Interest Rationale

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I.

Introduction

The system by which motor freight rates are collectively established is a matter of no small importance to the public. Motor carriers, of course, have a vital stake in the way rates are determined for the transport services they supply. Equally, the shippers of goods transported have an important stake in the way rates are assessed for moving these goods. Over and above the interests of carriers and shippers is the interest of the general public. Motor-carrier freight rates enter into the prices of almost everything consumers buy, and rate levels and relationships can and do affect the economic well-being of industries and communities and the employment opportunities they provide. The public is entitled to assure itself that its interests are protected under the system by which those rates are established. The aim of this paper is to examine the rationale for the system of collective ratemaking in trucking in terms of its significance for the public interest.

• • • •

Under collective ratemaking, rates are established by joint consideration of the motor carriers serving a particular territory. Collective pricing action by competitors would, under ordinary circumstances, violate the antitrust laws. But when carried on in conformity with conditions specified in the Interstate Commerce Act, collective ratemaking in trucking, as in other surface transport modes, is "relieved from the operation of the antitrust

laws".[1]

A great deal of the controversy concerning collective ratemaking turns on the question of whether the reduction of rate competition among carriers, made possible by the antitrust exemption, is good or bad for the public. The basic misconception that must be overcome if clear thinking is to be applied to this question is the notion that the economic benefits ordinarily associated with competition are the only benefits that are important to the economic welfare of the public. Government policy in many cases recognizes that some restraints upon competition are necessary and desirable in the interest of achieving other economic benefits that are judged to be even more important to the public than those attributed to competition. In such cases, the application of the antitrust laws is waived. As Professor J. M. Clark has observed in his *Competition as a Dynamic Process:*

> Antitrust action, being directed against restraints of competition, may tend to develop an unspoken presumption that competition can be defective only in the direction of being too weak, never too severe ... [A]ttitudes expressed in other areas of governmental policy have in various ways sanctioned restraints on competition, on the assumption that it can be unduly severe, from the standpoint of the public interest.[2]

The principal economic benefits which are achieved by collective ratemaking in trucking relate to the avoidance of damaging forms of economic discrimination which, because of the structure and character of motor freight transport, would be inevitable under unrestrained competition. In the absence of collective ratemaking, it would be impossible to prevent rate differences which are not justified by any difference in cost or any other relevant economic consideration. It would be impossible to assure that all shippers, large and small, are treated in a nondiscriminatory way by carriers as a group, or to assure nondiscriminatory treatment among competitively-related commodities. Not only shippers, but communities and employees as well, would suffer unjustifiable economic hardship, economic resources would be misallocated, and economic efficiency would be impaired. With collective ratemaking, there exist the opportunity and the machinery for averting these consequences.

The collective ratemaking process provides the means for shippers to call the attention of motor carriers to inequities requiring remedy, and for motor carriers to act as a group in dealing with such inequities. Shippers are not guaranteed the relief they may feel is justified and carriers retain the freedom to act individually. But the forum provided for simultaneous exchange of views and information concerning proposed rate changes among all affected shippers and carriers, the important degree of insulation of the carriers from the pressures of large shippers in dealing with such proposals, and the opportunity of the carriers to act together where such action appears justified comprise a mechanism uniquely adapted to achieving as even-handed and nondiscriminatory a rate structure as the nature and organization of motor freight carriage practicably permit.

Collective price action involves by definition a restraint upon rate competition, but such a restraint does not mean that the competitive process itself is thereby undermined. Nor does an antitrust exemption automatically imply any undermining of antitrust policy. The principle involved has been neatly expressed by Professor Bastiann Fortman in his *Theory of Competition Policy:*

> It is not the purpose of antitrust policy to foster economic competition without qualification. The aim is not to maintain simply competition but to preserve competition only where it may be expected to produce desirable effects ... The exemptions concerning e.g. labour, transport and agriculture relate to specific structural conditions of demand and supply which

[1] Section 5a of the Interstate Commerce Act, 49 U.S.C. Section 5b.

[2] John M. Clark, *Competition as a Dynamic Process*, Brookings Institution, Washington, 1961, p. 48.

> render unrestricted operation of competition undesirable ... Prohibition of a certain way of competing such as price discrimination is not as such inconsistent with a policy to maintain open competition ... Preserving competition ... does not mean that all possible methods of competing in the economic process must be tolerated nor that all private economic regulation should be prohibited. [3]

As developed later in this paper, collective ratemaking in trucking co-exists with a substantial degree of price and non-price competition and is surrounded by strict provisions for government review and control to insure that the results serve the best economic interests of the public.

The collective ratemaking system in the motor-carrier industry operates through "rate bureaus". Organized according to the geographic areas their member carriers serve, these bureaus provide the administrative machinery by which carriers jointly consider, debate, decide, and publish the rates pertaining to the traffic they haul.

There are ten major territorial rate bureaus.[4] The membership of each bureau consists of carriers providing motor freight service within a particular territory or between territories. A carrier may voluntarily choose to belong or not to belong to any of the rate bureaus publishing rates covering territories applicable to its traffic. The combined motor freight services of the carriers comprising the major rate bureaus extend over the entire United States and between the United States and Canada.

[3] Bastiann de Gaay Fortman, *Theory of Competition Policy*, North-Holland Publishing Co., Amsterdam, 1966, pp. 244-246.

[4] Central and Southern Motor Freight Tariff Association, Inc.; Central States Motor Freight Bureau, Inc.; Eastern Central Motor Carrier Association; Middle Atlantic Conference; Middlewest Motor Freight Bureau; New England Motor Rate Bureau, Inc.; Niagara Frontier Tariff Bureau, Inc.; Pacific Inland Tariff Bureau, Inc.; Rocky Mountain Motor Tariff Bureau, Inc.; Southern Motor Carriers Rate Conference

Proposals for rate changes are normally initiated by a carrier or a shipper. Consignors and consignees of traffic participate actively with the carriers in discussions related to rate proposals. In most of the bureaus, the initial recommendation on a proposal for a rate change is made by a committee of rate experts employed by the rate bureau. If no party objects to the recommendation, it is published for the carriers. However, if any party does object, or if the bureau machinery does not provide for a committee of employed rate-experts, a committee consisting wholly of carrier personnel considers and acts on the rate proposal and the final decision is made by a majority vote of that group.

Every rate-bureau member, either on its own volition or through election by the general membership, has the opportunity to designate an employee to serve on the bureau's carrier committee. Each such designee may vote on the rate proposals which come before the committee, whether or not his company directly participates in the traffic involved. The action of the committee on a rate proposal is made public, but confidentiality is preserved as to the vote of any individual carrier. Any carrier member of the rate bureau may at any time establish by independent action a rate which differs from that generally applicable.

Collective rate actions resulting from rate-bureau procedures are subject to all of the tests of lawfulness laid down by the Interstate Commerce Act. Any shipper, carrier, or other interested party may protest to the Commission that any such action fails to meet those tests. The Commission is authorized to suspend any such action, and after investigation may declare it unlawful and may prescribe the rates it determines to be proper.

In addition to the ten major rate bureaus (and numerous minor rate bureaus which operate in the same territories), the ratemaking process, as contemplated by the Interstate Commerce Act, utilizes a uniform freight classification for the hundreds of thousands of products moved by motor common carriers. For most of the traffic carried, this is achieved through the mechanism of the

National Motor Freight Traffic Association.[5] This organization operates in a manner generally similar to that of a rate bureau except that its function consists not of establishing rates but of categorizing all commodities carried by motor carriers into generally fifteen classes—differentiated broadly by shipping, handling, and value characteristics—so that commodity groups possessing similar characteristics may be similarly classified and bear similar rates. The system provides a continuous opportunity to reclassify existing products as their characteristics change and to classify new products as they are introduced into the market.

The basic practice is that the member carriers within each rate bureau establish class rates which are applied uniformly throughout its territory and which are so scaled that for all of the commodities grouped in a given class the rate for all shipments of the same size over the same distance will be the same. Differences in other transportation characteristics, such as shipment size or length of haul, will be reflected in correspondingly different rates which also will be generally uniform throughout the bureau's territory. The preponderance of motor-common-carrier traffic moves under these class rates. In special circumstances justifying a rate different from (and ordinarily lower than) that applicable to a general class, an exception to the class rate may be approved or a commodity rate, governing the traffic of a specific commodity between named points of origin and destination, may be established.

General rate increases are applied essentially across the board to all traffic. The special problems of equity as among shippers are typically resolved by lowering one or more rates. In terms of the numbers of rate-bureau actions, the vast majority of rate changes, whether the proponent is a carrier, a consignor or a consignee, involve rate reductions.

Given the enormous range of commodities to be carried, the almost limitless combinations of points to be served, the complexities of alternative routings, and the multiplicity of legal, economic, and transportation factors to be accommodated, it would be futile to expect the motor-carrier collective-ratemaking system to be ideal in all respects. The real question, however, is not whether the present system is ideal but whether, in practical terms, it serves the public interest by effectively meeting the transportation requirements of the nation. In order to answer that question, it is important to have some familiarity with the historical background of collective ratemaking in trucking and with the basic public-interest considerations underlying current practice.

[5] A separate classification, the Coordinated Freight Classification, is maintained by The New England Motor Rate Bureau, Inc. for traffic moving wholly within the New England territory.

II.

Historical Background

The issue of collective ratemaking in transportation has been a subject of recurring public discussion for more than a hundred years. Collective ratemaking in trucking grew out of the ratemaking system first developed in the late nineteenth century to meet practical problems of the railroad industry.

Sixty years before the 1935 enactment which brought motor carriers under Interstate Commerce Commission regulation, the railroads organized the first broad-based freight-rate bureau, covering the territory south of the Potomac and Ohio Rivers and east of the Mississippi. By the time of the passage in 1887 of the Act to Regulate Commerce, as the initial version of the present-day Interstate Commerce Act was known, some eleven such bureaus, covering virtually all the competitive railroad traffic of the country, were in operation.

A major reason for enacting the 1887 statute had been to achieve a reasonably uniform, stable, nondiscriminatory set of railroad rates in place of the flagrant practices of railroads in according preferential treatment to some shippers, localities, and types of traffic, to the serious detriment of the public. "Wild rate cutting, rate instability, personal favoritisms, sectional discriminations, and gross prejudices between localities, had brought many carriers and shippers and great industries to the point of ruin, and had created or fostered industrial monopolies." [1]

[1] *Regulation of Rate Bureaus, Conferences and Associations*, Hearings on H.R. 2536, United States Senate, Committee on Interstate Commerce, 79th Congress, 2nd Session, (1945). Testimony of ICC Commissioner Clyde B. Aitchison, p. 1133.

The remedy which the Act undertook to provide was to outlaw rates which were unjust or unreasonable or gave any shipper, locality, or particular type of traffic an undue preference or advantage to the prejudice of another. From the beginning the Commission supported the view that, because of inevitable and aggressive rivalries among competing carriers, shippers, and localities, the statutory objective of uniform, stable, and nondiscriminatory rates could not, as a practical matter, be achieved without cooperation among the carriers in the ratemaking process.

The earliest railroad rate bureaus had not only attempted to set rates in common but generally entered into pooling arrangements, involving the sharing of traffic, revenues, or earnings. The 1887 Act specifically prohibited pooling arrangements,[2] but was silent on the question of collective ratemaking as such. The ambiguity resulting from this silence was to create legal problems when Congress in 1890 passed the Sherman Antitrust Act, which prohibited every combination, contract or agreement in restraint of trade. It was not clear whether the Sherman Act was meant to apply to railroads at all, whether collective ratemaking by railroads fell within the scope of prohibited business conduct, or whether the intent of the Act to Regulate Commerce had been to reserve exclusive jurisdiction over railroad ratemaking to the Interstate Commerce Commission.

The Supreme Court in 1897 settled these questions by holding, in a case instituted by the Department of Justice against the Trans Missouri Freight Association, that the Sherman Act applied to the activities of all industries without exception, and that the agreement establishing the rate bureau was a restraint of trade in violation of the antitrust law.[3] An identical decision was handed down a year later in a case involving a similar rate bureau

[2] The Interstate Commerce Act was subsequently amended to permit pooling arrangements when explicitly approved by the Commission, but no rate bureau in operation today embodies any pooling or market-sharing arrangement.

[3] United States v. Trans-Missouri Freight Association, 166 U.S. 290 (1897).

agreement.[4]

Some modifications were made in rate-bureau agreements as a result of the Court decisions. The practical need for collective ratemaking, however, remained manifest. Aided by a helpful opinion from the Attorney General, collective ratemaking by railroads was permitted to continue. It was clear, and strongly emphasized by the Interstate Commerce Commission, that in the absence of joint action by the carriers in the establishment of rates many of the evils which had given rise to the interstate commerce law in the first place would reappear.

In its Annual Reports to Congress, the Commission described the practical situation:

> It is alleged ... that the interests of different lines of transportation, different localities, and different commodities cannot be properly adjusted, so that the rates shall be reasonable and non-discriminatory within the terms of the act, without the power to confer, discuss, and determine by mutual agreement what the rate shall be.
>
> There is great force in this claim ... It is extremely difficult to see how carriers can intelligently adjust their rates so as to fulfill the general requirements of the act without the right to organize in some form for the purpose of obtaining necessary information and applying that information as occasion requires. To one familiar with actual conditions it seems practically out of the question to establish rates that are relatively just without conference and agreement ... [5]
>
> * * * *
>
> ... [T]he decision of the United States Supreme Court in the Trans-Missouri Case and the Joint Traffic Association Case has produced no practical effect upon the railway operations of the country. Such associations, in fact, exist now as they did before those decisions, and with the same general effect ... [I]t is difficult to see how interstate railways could be operated, with due regard to the interest of the shipper and the railway, without concerted action of the kind afforded through these associations. [6]

One of the reasons that had been cited by the government in urging the Supreme Court to find rate-bureau agreements unlawful was that as a result of judicial interpretation of the 1887 Act the Commission was without truly effective powers to regulate rates.[7] In the Commission's own words: "The principles of this law ... are conceded to be sound and beneficent, but at present they amount to little more than the declaration of a sentiment ... The machinery for enforcing its substantive provisions is fatally defective." [8]

These defects were cured in substantial measure by the Hepburn Amendment of 1906, which empowered the Commission to prescribe maximum reasonable rates, and the Mann-Elkins Amendment of 1910, giving the Commission the power to suspend rates so as to afford opportunity for investigation and a determination of lawfulness before they could become effective.

Railroad rate bureaus again became the subject of Congressional interest in the early 1920's when, pursuant to a Senate resolution, an ICC investigation into the operations of a major rate bureau resulted in a reaffirmation by the Commission of the practical importance of the system of establishing rates through collective carrier action: "It is manifest that the Transcontinental Freight

[4] United States v. Joint Traffic Association, 171 U.S. 505 (1898).

[5] Annual Report of the Interstate Commerce Commission, 1898, pp. 15-16.

[6] Annual Report of the Interstate Commerce Commission, 1901, p. 16.

[7] "The common law requires that rates shall be reasonable and fair. So does the Interstate Commerce law. But this is a mere declaration, and there is no adequate remedy to enforce the right. The commission has no power to prescribe a reasonable rate and enforce it, or to declare that a rate is unreasonable and prohibit it." Argument of Solicitor General in United States v. Joint Traffic Association, 171 U.S. 505, 557 (1898).

[8] Annual Report of Interstate Commerce Commission, 1898, p. 22.

Bureau ... is of advantage to shippers as well as carriers. The need for some organization of this character is demonstrated upon the record ... It is abundantly shown that operation of the bureau tends to obviate or remove the discriminations, as between persons and localities, the law condemns." [9]

When motor carriers were brought within the regulatory jurisdiction of the Commission in 1935, the same basic considerations that had prompted shipper and ICC support of the railroad rate bureaus gave rise, again with shipper and ICC support, to joint action in the establishment of motor-carrier rates. The main provisions of the Interstate Commerce Act relating to railroad rate regulation were applied to the regulation of motor-carrier rates. Despite numerous economic differences between the two forms of transportation, it was felt that from the public's standpoint a stable, nondiscriminatory structure of rates that were equitable in relation to each other and based upon a uniform freight classification was as essential in trucking as in railroading. The practical feasibility of achieving such a structure of rates unless carriers were free to "confer, discuss, and determine by mutual agreement what the rates shall be" seemed remote. No specific mention of motor-carrier rate bureaus was made in the 1935 legislation, but their formation and operation along lines broadly similar to the railroad rate bureaus was taken for granted and naturally ensued.

The Interstate Commerce Act had, from its passage, suffered from the lack of a broad but explicit statement by Congress to serve as a guidepost to the Commission and the courts in determining what constituted the "public interest" in the field of transportation. That lack was remedied in 1940, when Congress prefaced the Act by a declaration of National Transportation Policy. As embodied in that declaration, among the most significant Congressional economic policy objectives related to the ratemaking process were these:

[9] In re Transcontinental Freight Bureau (1923), 77 ICC 252, 279.

1. promoting adequate, economical, and efficient service.
2. fostering sound economic conditions in transportation.
3. barring unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices.
4. achieving a coordinated transportation system to meet national needs.

The National Transportation Policy decreed by Congress to guide the interpretation, administration, and enforcement of all of the provisions of the Interstate Commerce Act became a vital part of the total statutory scheme for achieving a sound national transportation system and today plays a crucial role in the basic public policy concept that governs collective ratemaking in motor-carrier transport as in other modes.

Even after the enactment of the National Transportation Policy, the Interstate Commerce Act itself still contained no specific provision with respect to collective establishment of rates. The holdings of the Supreme Court in the *Trans-Missouri* and *Joint Traffic Association* cases that rate-bureau agreements violated the Sherman Act were still the last judicial word on that subject. Following long years of official inattention to the antitrust status of rate bureaus, a number of developments in the early 1940's led to a movement to give clear legislative sanction to collective ratemaking. These developments included various antitrust suits initiated by the Justice Department against railroad and motor-carrier rate-bureau activities. In addition, the State of Georgia had sued the Eastern railroads alleging freight rate discrimination, and a Supreme Court decision on the jurisdictional aspects of that suit, holding that "none of the powers acquired by the Commission since the enactment of the Sherman Act" legalized rate bureaus, raised serious questions about the vulnerability of collective ratemaking to antitrust attack.[10]

After extensive hearings marked by a great outpouring of

[10] State of Georgia v. Pennsylvania R.R., 234 U. S. 439, 457 (1945).

support by shipper and community organizations across the country for the functions performed by rate bureaus, Congress in 1948 enacted the Reed-Bulwinkle amendment, which became Section 5(a) of the Interstate Commerce Act. Approved over a Presidential veto by a large margin in both House and Senate, that amendment gave the Commission authority to approve rate-bureau agreements under which carriers of a particular mode could jointly consider and establish rates if such agreements were found by the Commission to be in furtherance of the National Transportation Policy, preserved the right of individual carriers to take action independent of the rate bureau with regard to any rate, and incorporated conditions or procedures prescribed by the ICC. Participation in rate-bureau discussions and decisions under any Commission-approved agreement was to be free from attack under the antitrust laws. The Reed-Bulwinkle amendment provides the statutory authorization for motor-carrier collective ratemaking today.

The case for collective ratemaking from the regulator's standpoint was summarized by Commissioner Joseph B. Eastman, whose practical knowledge and dedication to the public interest during a long career on the Commission place him high in the esteem of students of transportation and of economic regulation:

> ... [I]f the carriers of the country are to respond to the duties and obligations imposed upon them by the Interstate Commerce Act, and if the rate structure is to be reasonably free from unjust discrimination or undue preference and prejudice, as simple and consistent as may be, reasonably stable, and sufficient for the financial needs of private ownership and operation, the carriers must be in a position to consult, confer, and deal collectively ... [11]

[11] *Interstate Commerce Act of 1943 (Regulation of Rate Bureaus)*, Hearing on S. 942, United States Senate, Committee on Interstate Commerce, 78th Congress, First Session (1943), Part I, p. 875. Supreme Court Justice Brandeis is said to have called Eastman "the ideal public servant." (Charles D. Drayton, *Transportation Under Two Masters*, National Law Book Co., Washington, D. C., 1946, p. 114.)

In finally enacting specific legislation on the subject of collective ratemaking, Congress recognized that the paramount issue is how best to serve the public interest. On the one hand, it recognized that cooperative action in the making of rates deprives the public of the benefits normally associated with price competition among suppliers. On the other hand, it recognized that the circumstances in transportation are not typical of those in the economy generally and that there are special practical needs to be met in order to assure the public of the benefits intended by transport regulation, practical needs which are reflected in the statement of national transportation policy. The dilemma was how best to balance these considerations. Congress resolved the dilemma by authorizing the regulatory agency to examine each rate-bureau operation, case by case, in the light of the public-interest standards embodied in the National Transportation Policy viewed against the public-interest objectives reflected in the antitrust policy of unrestricted rate competition, and to decide how, on balance, the public interest would be best served.

> Under the standard in the bill Congress entrusts to the Commission the task of applying to particular cases the general formula which Congress finds is determinative of the public interest, and directs the Commission to determine whether the advantages to the public interest, through furtherance of the national transportation policy, are such as to outweigh the disadvantages to the public interest intended to be guarded against by the antitrust laws.[12]

This "formula" for the balancing of public-interest considerations by a regulatory agency charged with administering the will of the Congress is the principle under which collective ratemaking in trucking is carried on.

[12] H. R. Report No. 1100, 80th Congress, First Session, (1947), p. 14.

III.

Basic Considerations

At the heart of the present system of collective ratemaking in the motor-carrier industry is the opportunity for carrier members of rate bureaus to establish rates by joint action under conditions which make it possible to meet regulatory and commercial needs effectively without violating the antitrust laws. The basic public policy issue posed by the collective ratemaking system is whether the benefits which accrue to the public from uniformity, stability, and equitableness in the structure of motor-carrier rates outweigh any drawbacks flowing from limitations that collective rate action places upon the workings of competition.

By definition, the collective ratemaking system involves restrictions upon rate competition of a type which would normally be prohibited by the antitrust laws. As noted earlier, the Interstate Commerce Act now specifically provides for exemption from the antitrust laws for collective ratemaking activities carried on pursuant to rate-bureau agreements found by the Commission to be in furtherance of the public interest as reflected in the Congressional declaration of National Transportation Policy.

There is an extreme view, strongly pressed by the Department of Justice at the time of the Reed-Bulwinkle hearings and from time to time voiced in academic and consumer-advocacy circles,[1] that the public policy of unrestricted rate competition associated with the antitrust laws is the only means of protecting the public

[1] See, for example, George W. Hilton, *The Transportation Act of 1958*, Indiana University Press, Bloomington, Ind., 1969, and Robert Fellmeth, *The Interstate Commerce Commission*, Grossman, New York, 1970.

interest and that collective ratemaking tends to defeat rather than advance the public interest. Even adherents of this view generally recognize that where traffic moves between points over a combination of the routes of two or more carriers, those carriers must be permitted to confer in order to be able to establish joint rates applicable to such routes. All other forms of collective rate action by carriers, however, would be condemned.

It is traditional in the United States to look with favor upon competition as an effective prod for producers to operate efficiently, maintain high quality in the goods or services they offer, and hold prices down. As Wendell Berge, then head of the Antitrust Division, expressed the point thirty years ago: "[I]t is the underlying philosophy of the Sherman Act, and deeply ingrained in our American tradition, that the public has a right to a competitive price." [2]

But the general public policy presumption in favor of competition is not a commandment to apply a policy of unrestricted competition indiscriminately in all situations. The paramount consideration is always the pragmatic one of how best to serve the public interest. The same tradition which gives a high priority to a policy of unrestricted competition enforced by the antitrust laws recognizes that, in the interest of serving the public well, such a policy can not and should not be applied in wholesale fashion across the entire spectrum of economic activities of the nation.

Outside of transportation, an outstanding instance of Congressionally-authorized collective pricing occurs in connection with broad national farm policy. The Capper-Volstead Act permits agricultural producers to price and sell their output in common through cooperative marketing associations under immunity from the antitrust laws.[3] The Congressional rationale for the immunity

[2] *Regulation of Rate Bureaus, Conferences, and Associations*, Hearings on S. 110, United States Senate, Committee on Interstate and Foreign Commerce, 80th Congress, First Session (1947), p. 73.

[3] 7 U.S.C. Sec. 291, 292.

is that in this vital segment of the economy the public is better served by collective action than by unrestricted competition of producers.

Similarly, Congress has placed major areas of the economy under the primary jurisdiction of regulatory agencies which are authorized to approve transactions, such as consolidation, facilities-sharing, and other agreements among carriers, which might otherwise be condemned under antitrust standards but which are considered to be necessary to meet objectives deemed by Congress to be of higher significance for the public welfare than rigid maintenance of competition.

In most cases, the substitution of regulatory for antitrust jurisdiction is accompanied by strict standards and procedures applied by the regulatory agency. That is not always so, however. No specific regulatory standards or procedures are prescribed for the operations of agricultural marketing cooperatives. By contrast, in order for the antitrust exemption to apply to collective ratemaking in trucking, each motor-carrier rate-bureau agreement must be subjected to scrutiny by the Interstate Commerce Commission and must incorporate such conditions as the Commission specifies as essential to the public interest.

What are the public-interest considerations that justify the continuation of the present system of collective ratemaking in trucking and the antitrust waiver it entails?

There is first the need for adequate freedom for carriers to confer with each other so that the relationships of rates established by the entire group of carriers serving a territory can equitably balance the economic position of shippers, industries, markets, localities, points, or, in the catch-all phrase of the statute, of "any particular description of traffic." Transportation rates can be, and frequently are, a crucial element in the total production cost of an enterprise — or an industry — and can exert a decisive influence on its competitive position. The Interstate Commerce Act had its origins in a fundamental abhorrence — an abhorrence still deeply felt — of "discrimination in its various manifestations", discrimination spurred particularly by the ambitious striving of shippers seeking a decisive trade advantage over their competitors in the form of favored rate treatment. The impact of such favored treatment is felt not only by the disadvantaged shipper firms and their customers or suppliers, but by their labor force and, in some cases, by the entire economy of the communities in which they are located.

As the Supreme Court has stressed: "Discriminatory rates are one form of trade barrier. Their effect is not only to impede established industries but to prevent the establishment of new ones ... Nondiscriminatory class rates remove that barrier by offering that equality which the law was designed to afford. They insure prospective shippers not only that rates are just and reasonable per se but that they are related to those of their competitors." [4]

It is elementary that in the absence of collective ratemaking, giant shippers controlling large volumes of traffic would be in a position to gain more favorable rates than smaller shippers. Under collective ratemaking, the rate charged by all the carrier members of a rate bureau for a given movement under given conditions is the same regardless of the economic power of the shipper; a carrier serving a large shipper does not maintain a lower rate than that charged a smaller shipper by another rate-bureau carrier. As Commissioner Eastman once summed it up in a Congressional hearing: "If I know anything from experience with certainty, it is that if we rely upon competition as the governing factor in the determination of freight rates by all types or any type of carrier, the benefits will go to shippers in proportion to the size of the 'traffic club' that they wield." [5]

The problem of avoiding rate favoritism has many aspects. Collective ratemaking helps to insure, for example, that two competing producers located at point A and obtaining their raw materials from point B will receive equal treatment in trucking

[4] State of New York v. United States, 331 U.S. 284, 308 (1947).

[5] *Interstate Commerce Act of 1943 (Regulation of Rate Bureaus)*, Hearings on S. 942, United States Senate, Committee on Interstate Commerce, 78th Congress, First Session (1943), pp. 822-823.

rates even if they are served by different carriers between those same two points. Similarily, the two competitors will receive equal treatment in trucking rates in shipping their finished goods to a third point. Where there are various market destinations, the class rates from a given origin to the various market points will be uniform, on a scale adjusted for distance, for all carrier members of the rate bureau. Where the raw materials come from different geographic sources in the territory, the opportunity for equality of treatment is similarly assured. Equality of treatment in trucking rates for the movement of import or export traffic to or from competing ports is facilitated. Where commodities having different physical characteristics but similar transportation characteristics compete with each other, there is again an opportunity to establish equality of treatment in transportation rates.

In each of these situations, it is not enough that any one carrier abstain from rate discrimination. If an appropriate parity of rates is to be effectively achieved it must be reflected in the rates charged by other carriers as well. The collective ratemaking process affords the opportunity for, and helps to insure, such parity with respect to the rates charged by all carriers belonging to the rate bureau.

Collective rate action is the only practical means available for avoiding the evils of favored treatment and the disruptions and dislocations it causes. Given the thousands of motor carriers, tens of thousands of geographic points, literally billions of individual rates, as well as the numerous rivalries among competing origins, destinations, commodities, markets, and routes, the temptations and opportunities for discrimination in the absence of collective ratemaking seem more than any regulatory system could be expected to control if rates were made entirely through individual carrier competition. And, of course, the extent of rate regulation required for such a control effort would be far greater than that prevailing today.

It may be possible to postulate economic models of the trucking industry under which, given conditions of perfect competition, the

evils of rate favoritism, preference, prejudice, and the like can be theorized out of existence. But the very structure and character of motor-carrier operations preclude conformance to any textbook ideal, and a theoretical "long run" is for all practical purposes an infinity away to a firm, a locality, or a port which finds itself a victim of flagrant discrimination in the here and now.

The authority of the member carriers of the rate bureau to "confer, discuss, and determine by mutual agreement what the rates shall be" provides the means for sorting out the numerous and vexing complexities of ratemaking; for keeping all parties — shippers as well as carriers — informed; for creating opportunities for the gathering of relevant information and a forum for discussion, argument, and negotiation; for appeals to consideration of equity, logic, common sense; and, above all, for a judicious balancing of all these considerations, because the process requires the continual exercise of informed, experienced judgement as well as the compilation and weighing of facts with respect to both motor transport and the markets it serves.

In order for the collective ratemaking process to work well, it is essential that shippers be heavily involved. The present system insures ample opportunity for such involvement. Shippers play an active role in the motor-carrier rate bureaus in the discussion of rate changes before such changes are acted upon. They provide indispensable intelligence as to technological developments, changing market relationships, and current and prospective competitive conditions, all of which require close consideration in the making of nondiscriminatory rates. The present system permits a shipper to file a rate proposal in a single forum reaching carriers which provide total service covering his market throughout a given rate territory. In the absence of the rate bureaus, the typical shipper would have to deal with a great number of individual carriers to establish rates to all of the relevant destination points involved. And under collective ratemaking the shipper is assured of rates reasonably related to those enjoyed by his competitors, large or small.

From the standpoint of shippers, one of the most important values of the making of rates by collective as opposed to individual carrier action lies in the high degree of rate stability that collective action affords. Because of the crucial, practical need to plan their operations with a high degree of certainty as to their own transportation costs and the corresponding costs of their competitors, many shippers place even more importance upon the stability than upon the absolute level of rates they pay. "Shippers have a basis for planning ahead by relying on a coherent rate structure reflecting competitive factors."[6] Such stability undoubtedly is an important aid in the decision-making processes of business leading to plant expansion and market growth.

Under collective ratemaking, rate changes occur only after due notice to, and opportunity for deliberation by, all interested parties, and the centralization of tariff publication gives shippers immediate and reliable intelligence as to prevailing rates. One of the prices paid by shippers for unrestricted rate competition by individual carriers would be a high degree of rate instability and corresponding confusion and uncertainty concerning applicable rates.

The rate-bureau system makes possible an enormous reduction and concomitant savings in the administrative costs associated with the processing of tariff filings by the regulatory agency, because the give-and-take of carrier and shipper discussions before rate proposals are finally decided and submitted for regulatory review tends to minimize the number of protests requiring Commission action.

It is frequently overlooked that despite the lessening of rate competition which is inherent in the process of establishing rates by collective action there remains a substantial degree of competition in the motor-carrier field.

An important source of such competition arises within the rate bureau itself from the unequivocal right written into the law guaranteeing to every carrier member the opportunity and means of establishing its own rates independent of any rate-bureau action. The "free and unrestrained" right of such independent action is a significant limitation upon the establishment of rates by simple majority rule in circumstances where a particular carrier feels that its interests and the interests of the shippers it serves require a rate action different from that resulting from collective consideration. Under the rules of the Commission, such independent action may be taken at any time — before, during, or after a collective decision — and Commission records of the number of independent actions filed demonstrate that the right of such action is invoked with considerable frequency.

The competitive significance of the right of independent action, however, goes beyond the mere number of such actions filed. In the conferences, negotiations, and compromises that are an intrinsic part of the collective ratemaking machinery, an indication that a carrier may choose to back up a proposal for a specific rate reduction with an independent filing with the Commission may well impel other carrier members, in the interest of meeting the competition, to agree to match the reduction. A similar situation may occur where an individual carrier elects not to go along with all or part of a general increase proposed by the majority. For competitive reasons, the other carriers may be forced to forego the increase as originally proposed. The result in such cases is that competition has had its effect within the rate bureau even without the formalities of an official independent action.

Other forms of competition also exert influence upon the rates established by rate bureaus. There are common carriers serving a territory that choose not to belong to the rate bureau and are not party to its rate actions. There are contract carriers operating under specific Commission authority to haul the traffic of a shipper within a broad or narrow geographic area and under rates negotiated between the carrier and the shipper involved. There are large numbers of private carriers operating truck fleets ranging in size from the modest to the mammoth, fleets wholly owned by the shippers themselves and in a position to exercise powerful

[6] State of New York v. United States, 33, U.S. 284, 308 (1947).

pressure upon the rates charged by carrier members of rate bureaus. There are numerous other shippers which can and do exercise such pressure by dint of their evident resources and capacity to undertake private fleet operations if common carrier rates become excessive. And there is ever-present strong competition from other transport modes — from railroads with respect to truckload traffic, from United Parcel Service with respect to small package freight, and from airlines for intermediate types of traffic where speed of service is a significant factor.

The combination of the unfettered independent action of rate-bureau members and the rate pressures felt from non-members, from contract carriers, from private carriers, and from other modes of transportation represents a major offset to the restrictions upon pricing competition which are otherwise embraced in collective ratemaking.

Furthermore, collective rate actions by rate-bureau members in no way inhibit the vigor of their competition for traffic by devices other than pricing. The quality of equipment, efficiency of operations, speed and reliability of service, tailoring of service to the characteristics of the cargo, attentiveness to shipper needs in the many ways that make one carrier's service more economic and appealing than another — all of these forms of competition, highly prized by the shipping public, are prominent under collective ratemaking.

An argument is often made that the general level of motor-carrier rates under collective ratemaking must be higher than would be the case if unrestricted rate competition prevailed. There is no way of determining with any degree of sureness what would happen to rates in the absence of collective ratemaking. Some rates might be higher, some might be lower. To proceed much beyond conjecture in this realm would require a whole set of assumptions about many other aspects of industry regulation and organization. It is important to realize, however, that the carrier members of the rate bureaus have only the power to propose rates, not to rule on their lawfulness. Critics of the collective ratemaking system have at times characterized it as a form of "private government",[7] but the connotations of such a label are out of line with reality. The Commission has all the authority needed to make sure that the level of motor-carrier rates under collective ratemaking is not in excess of what is reasonable from a public-interest standpoint. All rates so established are subject to close review and regulation by the Commission. Every proposal for a general rate increase must be given wide publicity and must be accompanied by an extensive body of cost, traffic, and financial data stipulated by the Commission. The proposal must meet criteria as to revenue need, capital requirements, profit margins, rates of return, and similar factors used by the Commission to enable it to assure itself that the public is adequately protected. And the right of any party to appear before the Commission and to appeal a Commission decision to the courts is secure. These mechanisms provide the necessary assurance that the rate level is consistent with the public interest.

Another criticism heard is that because rate levels established collectively are designed to produce a reasonable margin of profit or rate of return based upon the costs of member carriers as a whole, such rate levels are too high in relation to the costs of the more efficient carriers and tend to protect the carriers with relatively high cost structures. The basic answer to this criticism is that the governing consideration from the standpoint of public policy is "to insure equality of rates as to all and to prevent favoritism."[8] The long history of the country with transportation rates has left the evidence and the conviction that unrestricted rate competition among carriers can not provide that insurance. Given the public-interest importance of guarding against "discrimination in all its forms," there is no alternative to the establishment of rate levels adequate to cover the total costs of providing the

[7] Arne C. Wiprud, *Justice in Transportation*, Ziff-Davis Publishing Co., Chicago and New York, 1948, p. 77.

[8] Chicago and Wisconsin Points Proportional Rates, 17 MCC 513, 578.

services required by all shippers. The public is protected so long as these rate levels as a whole are not unreasonably high in relation to such costs, including capital costs, even if those rate levels result in different rates of profitability for individual carriers.

It is worth adding, however, that many factors having nothing to do with operating efficiency as such — factors such as the handling characteristics of the commodities carried, the nature of the routes, or the density of the traffic — can affect the costs of individual carriers. Some carrier managements are undoubtedly more skillful operators than others. But there is nothing in the collective ratemaking process as such that deters efforts to improve efficiency. Nor does the process protect the inefficient operator. General rate levels established under the collective ratemaking process are geared to the average costs of the carriers as a group, not to the costs of the least efficient among them. Carriers which can not cover their operating and capital costs at the rate levels which are adequate for bureau members as a whole will fall by the wayside. There is, therefore, the strongest incentive for marginal carriers to reduce costs through improved efficiency. In fact, the ordinary forces of profit maximization insure that *all* carrier managements will strive to optimize their returns by serving shippers as efficiently and at as low a cost as possible — the less efficient carriers, in order either to remain in business or to approach the results of the more successful operators, and the more efficient carriers, in order to maintain or improve their advantage.

As pointed out earlier, a basic aspect of the present system of collective ratemaking in trucking is the right of any carrier member of a rate bureau to avail itself of the opportunity to serve on a carrier committee which represents the bureau membership in discussing and passing upon rate proposals coming before the committee. A member of such a committee acts on a proposed rate regardless of whether the rate involves a single-line or inter-line haul, or whether the carrier itself offers service between the specific points covered by the rate, or even whether it carries the specific commodity involved. Much of the controversy relating to the collective ratemaking process in recent years has involved efforts to impose limits as to which carriers are entitled to participate in deliberations and decisions on specific proposals. It is important to understand why present practice is an integral and indispensable part of the process.

Motor-carrier traffic between two points may move either by single-line service, where one carrier handles the movement from origin to destination, or by inter-line service, where a combination of two or more carriers handles the movement. It is common for a carrier to offer single-line service between two cities and at the same time to join with another carrier to offer inter-line service via a "through" route connecting at an intermediate point. In some cases, the same carrier may participate with various other carriers to form a number of alternative inter-line routes between the two cities. For competitive reasons, the rate must be the same whether the traffic is hauled in single-line service or via any of the inter-line alternatives.

It is commonly assumed by critics of motor-carrier collective ratemaking as presently practiced that a carrier with single-line operating authority between two cities will always prefer to carry the traffic entirely on its own route rather than share the traffic by inter-lining with another carrier. Another assumption frequently made is that inter-line service is less efficient than single-line service.

Such assumptions ignore many operating realities. Inter-lining is a significant aspect of achieving a coordinated national system of efficient motor transport. Traffic patterns and densities and the imperatives of efficient operation often dictate the choice of an inter-line over a single-line route. Where the traffic consists of considerable volumes of less-than-truckload traffic, for example, it can be advantageous for a carrier, despite its own single-line authority, to route a cargo via an interchange point with another carrier so that the original load can be broken down into various

shipments destined for differing cities and integrated with other shipments destined for those cities, some of which will be served by the originating carrier and some by the interlining carrier or carriers. In such cases, interlining can produce marked advantages of efficiency and expeditiousness of service over single-line movements, to the marked and mutual benefit of both shipper and carrier. Similar efficiency and expeditiousness can be achieved by two carriers, neither of which has single-line authority between the points, who join in an inter-line service which competes with the single-line service of another carrier.

One major dimension of the competition of motor carriers for traffic is clearly the competition among carriers offering either single-line service or inter-line service or both between a pair of cities. Another major dimension of the competition for traffic is the competition between carriers moving a particular commodity from a given origin to a given destination and other carriers moving that commodity from the same origin to a competitive destination or from a competitive originating point to the same destination. Still another major dimension of motor-carrier competition for traffic involves the movement of commodities which, while different in physical terms, are in active competition with each other for specific end uses, so that the transportation rates have strong competitive implications for the carriers as well as the shippers of those commodities.

The ability of rate committees to act in a capacity which is representative of the bureau membership as a whole would be seriously impaired if the carriers serving on such committees were not free to deal with all rate proposals affecting the rate structure throughout the entire bureau territory. Even more basically, competitive rate relationships in motor freight transport are closely interlaced: the fundamental objective of motor-carrier collective ratemaking to achieve equitable and nondiscriminatory rate structures could not as a practical matter be realized if single-line and inter-line rates were established in isolation from each other; if rates for one inter-line movement were established without heed to the rates for competitive inter-line movements; if rates between one pair of points were established without regard to rates to or from competitively related points; or if rates governing one commodity were established with no concern for the rates covering another commodity for which it was a competitive substitute.

IV.

Conclusion

How is the public interest affected by collective ratemaking in trucking? The brief answer is that the public gains advantages that are obtainable only through collective rate action and, while foregoing some of the benefits of rate competition among carriers, avoids the damage and inequities that unrestricted competition would bring.

Collective ratemaking reduces, but falls far short of eliminating, competition in trucking. Within the rate bureaus themselves, actual and potential independent actions by carrier members are reflected in downward pressures on rates. Similar pressures are felt from carriers of other modes, from motor common carriers in the territory who operate outside of the rate bureau, from contract motor carriers, and from private motor carriers. And there is active vying for traffic among rate-bureau members on the basis of every aspect of quality of service which is of value to shippers.

What collective ratemaking does eliminate, to a substantial extent, are the negative and destructive impacts which, notwithstanding the advantages of competition in principle, would inevitably accompany unlimited rate competition in trucking. The basic structure and character of motor carrier transportation — its multitude of carriers, points served, alternative routings, commodities carried, and shipper and market rivalries — make it certain that without joint consideration among carriers in the making of rates it would be impossible to avoid a whole catalogue of undesirable results: favored treatment to economically powerful shippers at the expense of those less powerful; inequities among competing market or producing centers; continuous rate fluctuations and concomitant uncertainty among shippers as to rates currently being paid by their competitors; needless waste, confusion, and inefficiency in tariff publication; great additional burdens upon the Commission as a result of a proliferation of protest actions demanding regulatory consideration; and a weakening of the complex of interline arrangements which have heretofore made possible an integrated national network of motor transport in line with the goal of a "coordinated transportation system to meet national needs" sought by the National Transportation Policy.

As a matter of public policy, there are good reasons for the reliance which, in most industries, is placed upon the competitive process as the way to protect the public interest. Valid as the general presumption favoring a policy of competition may be, however, doctrinaire adherence to the presumption can defeat that purpose. In fact, public policy has long recognized that there are several areas of the economy in which traditional competition policy would damage rather than promote the public interest. In those areas, an exception to the policy of competition is implemented by an exemption from the application of the antitrust laws.

Congress has gone to considerable lengths to make certain that in granting such an antitrust exemption in the case of collective ratemaking in trucking the public interest is thoroughly protected.

First, it has laid down a statutory rule that the advancement of the public interest, as reflected in the Congressional declaration of National Transportation Policy, shall be the prime standard applied by the Commission in determining whether collective ratemaking by a rate bureau shall be allowed at all. No rate-bureau agreement may be approved by the Commission except upon a specific finding that an antitrust exemption will further that policy.

Second, it has given the Commission broad authority to condition its approval of any rate-bureau agreement upon the incorpora-

tion of such terms and conditions as the Commission prescribes as necessary to insure that the public-interest standards of the National Transportation Policy are met.

Finally, to make sure that no carrier is bound by a collective rate determination unless it wishes to be, Congress has denied the Commission the power to approve any rate-bureau arrangement which fails to provide "the free and unrestrained right of independent action either before or after any determination." [1]

No other statute providing exemption from the antitrust laws is surrounded by safeguards so explicitly framed to protect the public interest.

Further, Commission approval of the organic agreement under which a rate bureau operates does not carry with it any commitment to approve any specific collective rate action the bureau may take. Every such action must meet the same standards of lawfulness under the Interstate Commerce Act as would be applied to a rate proposal of an individual carrier acting alone. The shippers of the country are well-organized, and any shipper, whether acting individually or through an organization, may protest a rate-bureau proposal. Whether or not protested, a rate-bureau action may be suspended and investigated by the Commission. Where a general increase is proposed, the proposal receives especially close regulatory attention, is subject to the same rights of protest that apply to changes of more limited application, and must satisfy all the tests the Commission sees fit to impose to insure that the resulting rate level is reasonable from the public's standpoint. Any interested party may institute a complaint against any rate-bureau action before the Commission. As an ultimate resort, appeal to the courts is always open.

In weighing collective ratemaking against a policy of unrestricted rate competition, the practical lessons of a hundred years of transportation history, the fundamental characteristics that differentiate motor-carrier ratemaking from pricing in most industries, and the importance of uniform, stable, and equitable rates to the well-being of the country are not to be lightly dismissed. The feeling of certainty that widespread discrimination would accompany unrestricted rate competition in trucking is not baseless alarmism. It reflects not only the views of the carriers who supply the trucking service, but the judgment of shippers — particularly shippers of limited resources and limited economic leverage — who use the service and know from hard experience not only the complexities of motor-carrier ratemaking but its potentials for rate favoritism. That same feeling of certainty that collective ratemaking is necessary in the public interest is expressed in the unwavering view of the regulatory commission which is charged by Congress with acquiring expert knowledge of the industry and with regulating it with the public interest as its overriding consideration

Against this background, it requires extraordinary, if not blind, faith in the therapeutic virtues of unrestricted competition as a universal medicine to give it serious consideration as a substitute for collective ratemaking in motor freight service. The present system of collective ratemaking in trucking does not fit the dogmatic view of an economic world in which unrestricted competition is unvaryingly the best policy. For that matter, no area of antitrust exemption fits that view. But the Congressional concept of the economic world is more pragmatic. It recognizes that the paramount purpose of antitrust, as of any other public policy, is how best to serve the public interest. Such a concept envisions special situations in which an unyielding insistence on the antitrust standard would be a disservice to the public. Congress accordingly makes provision for antitrust exemptions to apply in those situations.

Collective ratemaking in trucking is such a situation. Congress regards collective rate action as the only means of realizing the public-interest goals set forth in its declaration of national transportation policy. Congress provides the opportunity for such collective action and exempts it from antitrust restraints, but only

[1] Section 5a of the Interstate Commerce Act, 49 U.S.C. 5b.

under conditions carefully tailored to protect the public from abuse of the limitations upon competition that are inherent in collective establishment of rates.

It would be difficult to improve upon the statutory and regulatory scheme designed by Congress to make sure that the opportunity granted for collective rate action serves the public interest. It has written into the law an unqualified guarantee that any carrier may make its own rates independent of the actions of any rate bureau; it has specified criteria by which the public interest must be found to be furthered in order for a collective ratemaking arrangement to win approval; it has empowered the Commission to specify the provisions and procedures which must be embodied in a collective ratemaking arrangement in order to justify an antitrust exemption; and it has maintained intact regulatory supervision over all collective rate actions of the rate bureaus operating under such an exemption.

The economic logic for the statutory policy favoring collective ratemaking over rigid rate competition is as compelling today as when it was enacted almost thirty years ago. Motor transport is of greater importance in the economy now than it was then, reaching every community in the country, large or small, and making possible a national marketing and distribution system of high efficiency. The economic leverage of powerful shippers, the potential for rate discrimination in its many aspects, the need for equitable, stable, reasonably predictable rates — all are at least as important now as when Congress formally adopted a statutory policy authorizing collective ratemaking. Congress assigned to the Interstate Commerce Commission the responsibility for implementing that policy through effective regulation. The Commission can and should be held to strict account in carrying out its responsibility. But the basic Congressional policy of permitting collective ratemaking under conditions that benefit and protect the public interest remains sound.

Jesse J. Friedman, whose experience as a government official and a consulting economist has embraced almost every aspect of competition policy, heads the economic consulting firm of Jesse J. Friedman & Associates, which since its inception in 1954 has acted in an advisory capacity to business corporations and associations in a wide range of regulated and unregulated industries. On numerous occasions his work has involved the study of the implications of government and business policies for the public interest. He was staff director of a cabinet committee established by President Truman on problems of competition and monopoly and has served as economic consultant to the Antitrust and Monopoly Subcommittees of both the United States Senate and the House of Representatives, the Senate Committee on Interstate and Foreign Commerce, and the Department of Commerce, Department of Justice, and various state agencies. His studies published by Congressional Committees include *Concentration in American Industry*, *Corporate Mergers and Acquisitions*, and *Merger in a Regulated Industry*. In private consulting, he has made and directed studies and advised corporations and their counsel on the economic soundness of business policies affecting competition and on varied economic issues of antitrust and regulatory [illegible] including issues relating to pricing and competition in air, [illegible], rail, and water transportation. He is co-author of a study entitled *Relative Profitability and Monopoly Power*, published in the December 1972 issue of the Conference Board Record, and the author of a book entitled *A New Air Transport Policy for the North Atlantic*, published in 1976.

from —

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truck line

NIT LEAGUE REAFFIRMS SUPPORT FOR COLLECTIVE RATEMAKING IN TRUCKING, SUGGESTS WAYS TO CLARIFY POLICY

In a move that may aid opponents of congressional action to end the trucking industry's exemption from federal antitrust law for ratemaking purposes, one of the nation's major shipper organizations this week reaffirmed its support for the collective rate bureau method of setting the fees for trucking services.

STRONG "ENERGETIC" SUPPORT

Members of the National Industrial Traffic League voted in Florida at the group's annual meeting earlier this week to continue strong public support for the conference method of establishing motor carrier rates -- within the League's existing policy guidelines.

ENDORSEMENT A SETBACK FOR KENNEDY

Although the shipper group said it will clarify some of its own policies about how truck rates are set, the endorsement of collective ratemaking must be regarded as a setback of sorts for U.S. Sen. Edward Kennedy, D-Mass., who has indicated he will introduce legislation in the next Congress to end current collective ratemaking practices.

SINGLE-LINE RATE QUESTION

One of the policy clarifications approved by NIT League members involves rate bureau voting on single-line rates, an issue currently under consideration by the Interstate Commerce Commission.

ICC ISSUE

The ICC wants to apply to trucking the same prohibitions that now keep railroads from voting on single-line traffic in which they do not participate.

VOTING POLICY SPELLED OUT

What the NIT League said is it believes a carrier should be allowed to vote on a tariff for any single-line or joint-line traffic in a situation where he is elected to represent other carriers, and where he and those he represents are able to participate in that traffic -- even if they might not be doing so at the time.

(more)

WHEN CAN REPRESENTATIVES VOTE?

At the same time, however, the League said it would like the various rate bureaus to set up procedures for determining that a carrier representing other carriers is absolutely sure he can vote for them on any rate proposal.

INDEPENDENT ACTIONS

According to the League's policies, there would be no voting within a bureau on single-line proposals for accounts of only one carrier. The rates in those cases would effectively be the result of an independent action.

ONLY CARRIERS CAN PROPOSE

Another item reaffirmed by NIT League members is that only carriers -- and not the staff of a rate bureau -- have the authority to make any rate proposals on their behalf.

ICC ASKS OPEN MEETINGS

Although ICC Chairman Daniel O'Neal earlier this year called for making public all voting and discussion within collective ratemaking sessions, the NIT League did not wholeheartedly endorse that approach.

VOTING RECORD SUGGESTED INSTEAD

Instead, the shippers suggested that a record of carrier voting be maintained for a reasonable amount of time -- perhaps one year -- and that the record be furnished to the ICC whenever the agency should request it.

INTRASTATE RATE AUTHORITY

One final policy clarification the shippers recommended involves the ICC's authority to rule on intrastate truck rates. Present law permits the agency to rule on intrastate rail rates when the ICC considers them so high as to be a barrier to interstate commerce.

The ICC does not have the same authority for motor carrier rates, and the NIT League recommended action to change the law in order to give the commission that authority for all modes.

Despite the spate of policy statements, in the end NIT League members endorsed a strong public stance in favor of continuing the present collective ratemaking system for trucking.

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SOME DO'S AND DON'TS AND
A WORD OF CAUTION ABOUT ANTILOCK

Comments and discussion at the recent ATA convention in New York indicate there is still some confusion about antilock in the wake of the U. S. Supreme Court's refusal to review a lower court decision voiding the antilock requirement of the federal 121 Brake Standard.

So we want to review for you one more time what you can and can't do as purchasers and operators, and to add a note of caution from our engineers about disengaging antilock from certain model year tractors.

DON'T ACCEPT ANTILOCK ON NEW TRUCKS

Purchasers: As purchasers you can now buy trucks -- tractors and trailers -- without antilock. The advice ATA's General Counsel Nelson Cooney gave in New York is that purchasers "stick to their guns". He noted that some manufacturers may have a rough time deciding just how to remove antilock in the safest way but, he said, "That is their problem."

CHECK PRIOR ORDERS

If you had an order in for new equipment prior to the Supreme Court ruling October 2, the advice is that you press for delivery of your new equipment without the antilock devices. You can argue strongly -- and correctly -- that the National Highway Traffic Safety Administration mandate for antilock no longer applies.

DISCONNECT EQUIPMENT

Operators: As operators of trucks currently equipped with antilock, you can now disconnect the antilock device if you haven't already done so.

In the past many operators did uncouple antilock because the agency charged with enforcing truck equipment standards, the Bureau of Motor Carrier Safety, never attempted to enforce the antilock requirement.

LIABILITY CONCERN FADES

Many operators, however, were wary of removing antilock because they were concerned about liability problems that might arise in an accident. In view of the court ruling that antilock is generally unsafe, it appears that this concern can be put aside.

DEALERS, MANUFACTURERS MAY ASSIST IN UNCOUPLING ANTILOCK

Moreover, you should note that in some cases the vehicle manufacturer may be willing to assist you in removing antilock. In the past, operators had to uncouple the device themselves. But in light of a NHTSA interpretation in 1977 that manufacturers could modify earlier vehicles to correspond with a revision in the standard at that time, it's possible manufacturers or their dealers may be persuaded to help in the current situation.

(over)

SOME CAUTIONS

Although operators shouldn't experience any serious problems in all of this, several notes of caution are in order.

DEALER COMPLIANCE REQUIRED

One has to do with having your dealer disconnect antilock. He must still certify that vehicles meet the parts of the standard still in effect.

STOPPING DISTANCE

The most critical requirement a dealer -- not you -- is still obliged to meet is the 60-foot stop with an unloaded truck on wet pavement from 30 mph -- without deviating from a 12-foot lane. We mention this because some earlier model trucks and tractors may not be capable of this without antilock.

AGGRESSIVE BRAKE PROBLEMS

The other note of caution involves the extremely aggressive front brakes on tractor and trailers built to conform to the 121 Standard in effect during 1975 through to mid-1976.

According to our engineers, these vehicles rely heavily on antilock to protect the driver from the aggressive braking, and if antilock is removed it should not be done without a concurrent downgrading of the steering axle brakes.

DOWNGRADING ADVISED

The engineers suggest either relining with relatively low coefficient or friction linings, or installing shorter slack adjusters or even smaller air chambers on '75-76 models.

CHECK MODULATOR VALVES

When disconnecting antilock, your dealer or maintenance section should also check modulator valves. They have air filters which can plug up and decrease or remove braking action. We suggest replacing them with relay valves or servicing them regularly.

CLEAR DASH LIGHTS

Some final notes: removing a fuse will not in all cases make the antilock inoperative. You must remove the power source. We also suggest that if you disconnect antilock you remove the dash warning light and, in fairness to your drivers, add a "disconnected" sign.

Trailer antilock systems may be disconnected with no other actions required.

PASS ALONG TO MAINTENANCE

Finally, we suggest you pass this information along to your maintenance section or use it in talking with dealers or manufacturers if they agree to help disconnect the antilock device.

NEWS

AMERICAN TRUCKING ASSOCIATIONS, INC. • 1616 P Street, N.W. • Washington, D.C. 20036
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FOR IMMEDIATE RELEASE

CONTINUED ECONOMIC REGULATION VITAL SAYS ATA OFFICIAL

WASHINGTON, Nov. 28 -- Continued economic regulation of the motor carrier industry is vital if consumers are to have a dependable supply of goods, an official of the American Trucking Associations, Inc. said here today.

Speaking before a meeting of the Washington chapter of the professional transportation society, Delta Nu Alpha, ATA Virginia State Vice President J. Harwood Cochrane also predicted financial problems for motor carriers if the industry is deregulated.

Cochrane, who is also chairman of the board of Overnite Transportation Co. of Richmond said:

"A sound and effective transportation system is essential to American business--it is essential to the consumer."

Cochrane also noted that persons advocating deregulating the industry often overlook the fact that the efficient, orderly system of ground transportation as developed under the Interstate Commerce Commission is essential to making sure all consumers have equal access to goods.

Noting that the trucking business was "shaky" in the days before coming under ICC control in 1935, Cochrane said:

"Regulation has changed all that. Today, the industry is looked upon by the financial community as stable, and necessary finances in most cases are available at rates enjoyed by the large manufacturers."

He added:

-more-

"But we have been warned by any number of financial experts that the deregulation of the system will result in a deterioration of this relationship. The money just will not be available."

Cochrane continued:

"For one thing, deregulation will make operating certificates worthless. For another, as one Wall Streeter put it recently, deregulation will re-introduce a climate of instability into the industry, and lenders are not known for advancing money for unstable enterprises."

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166/11/78

December 11, 1978

TRAFFIC WORLD

THE WEEKLY NEWSMAGAZINE OF TRANSPORTATION MANAGEMENT

NEWSPAPER
SECOND CLASS POSTAGE PAID AT WASHINGTON, D.C.

ICC Favors Exempt Fresh-Produce Hauls by Rail

Proposal to eliminate economic regulation by Commission of transportation of fresh fruits and vegetables moving by railroad, with no time limit for the exemption, is adopted unanimously by agency, but carriers would be required to comply with ICC accounting and report requirements and to submit to the Commission copies of rate quotations made under the exemption. Pages 11 and 17

Major Cases Now Pending at ICC Are Listed

Compilation of total of 41 'significant' cases in categories of operating rights, finance and rates that are awaiting final disposition at Commission, with 'target date' for the decision in each case, is made public by agency's Office of Proceedings. Page 38

History of Motor Carrier Entry Regulation Reviewed

Detailed recapitulation of developments leading to its recent adoption of regulations providing protest standards in operating-rights application cases is issued by ICC as background information for proposed general policy statement on the giving of greater weight to the benefits of competition, less to 'the historic practice of protecting existing motor carriers,' in entry cases. Page 40

SP Co. Said to Imperil SCL-Chessie Merger Plan

Attorney for Seaboard Coast Line Industries, parent company of Family Lines System, tells ICC that unification of Family Lines with Chessie System could be endangered by uncontrolled purchases of SCL common stock by Southern Pacific Co., holding company for SP Railroad. Continuance of ICC's cease-and-desist order against SP Co. to stop its acquisition of more SCL stock sought. Page 88

CAB Adopts Lottery System for Unused Air Routes

Aeronautics Board announces effectuation of system of drawing of lots to determine order of priority of competing applicants for future 'unused' or 'dormant' routes, to prevent continuance of a situation that could have resulted in 'a perpetual queue outside the board's offices' in Washington, D.C. Page 95

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Decisions and Orders

Commission Presents Detailed Review Of Regulation of Motor Carrier Entry

A detailed review of federal regulation of motor carrier entry and of developments leading to the recent adoption of regulations providing protest standards in application proceedings for operating authority was given by the Commission as background information in proposing a general policy statement under which it will give greater weight to the benefits of competition in reviewing motor carrier entry and acquisition cases and less weight to the Commission's "historic practice of protecting existing motor carriers."

The Commission's action drew a similarly detailed dissent from Commissioner George M. Stafford who, in brief, viewed the proposed policy statement as "the next logical step in the Commission's steady march toward elimination of entry controls in the trucking industry" (T.W., Dec. 4, p. 12).

Comments on the proposed statement of general policy are to be filed within 60 days of the publication of notice in the *Federal Register*. The case is Ex Parte MC-121, Policy Statement on Motor Carrier Regulation. The comments should be addressed to the ICC's Office of Proceedings at its offices in Washington, D.C. 20423.

The American Trucking Associations immediately asserted that the trucking industry is "completely opposed" to the proposed policy statement. The ICC, according to the ATA, "is administratively thwarting the intent of Congress. It is placing maximum participation in the industry ahead of exisiting carriers, which the Congress intended as a stabilizer for the industry."

In furnishing supplementary information about the proposed general policy statement on easing entry into the trucking business, the Commission said:

"Pertinent to the adoption of the policy statement are the regulations recently adopted by the Commission in Ex Parte No. 55, Sub. 26, *Protest Standards in Motor Carrier Appliation Proceedings*, 43 FR 50908 (1978) (T.W., Nov. 6, p. 117). Under the standards adopted there, the automatic right of one carrier to oppose the application of another carrier will be limited to cariers which, among other things, have performed service withic the scope of application. These are the carriers which would be in the best position to meet the burden of proof which, if the proposed policy statement is adopted, would be placed upon them. By the same token, it is anticipated that this policy statement would provide guidelines for determining whether carriers not having an automatic right to protest should be given leave to intervene in opposition to an application.

Background

"Federal regulation of motor carrier entry began with the passage of the Motor Carrier Act of 1935. The statutory test which the Commission must apply in determining whether to grant an application for new interstate motor common carrier authority—public convenience and necessity—has remained unchanged since the Act was passed. The test applied in deciding contract carrier applications—consistence with the public interest and the National Transportation Policy—was last modified legislatively in 1957.

"A number of factors combined to cause the Congress to bring motor carrier transportation under federal regulation in the 1930s. First, and probably most important, was the state of the economy itself. The worst economic depression in our history was at its height, and a great many, if not most, businesses were in serious financial difficulties. Intercity trucking, being young and just beginning to grow, suffered more problems than did most other businesses. Certainly, one of the principal purposes behind the 1935 act was to bring economic stability to an industry which was perceived by the Congress as one which would inevitably come to provide important and essential services for the public.

"There seems to have been no one who predicted the course which the motor carrer industry, under regulation, would take in the years following the passage of the Motor Carrier Act. Some observers believed that motor transportation would develop in much the same way as had the railroads, with a relatively small number of companies operating over fixed routes between major points, and a somewhat larger number of smaller companies feeding them traffic. Such large regular route carriers have indeed developed, but to a much greater extent, both in numbers and route structures, than anyone foresaw. Certainly, there was no anticipation that the highly specialized, truckload volume, irregular route trucking services which are so prevalent today would develop to the extent that they have. Nor, apparently, did anyone foresee the phenomenal growth of private transportation which has occurred and which now represents a major source of competition for the regulated carriers.

"After passage of the 1935 act, the Commission received and processed about 90,000 applications for 'grandfather' authority. Since that time, the Commission has both received and granted an increasing number of motor carrier authorities. In the first six months of fiscal year 1978, which began October 1, 1977, the Commission received an average of 950 new applications per month for permanent motor carrier authority. During the same period, of the applications for motor carrier authority which reached decision on the merits (that is, all those which were not either dismissed or withdrawn), 94.3 per cent resulted in a complete or partial grant of authority. The grant rate for June, 1978, was 98.2 per cent, and for July it was 96 per cent. The highest rate previously attained was 86.4 per cent in fiscal year 1975. The rate dropped to about 80 per cent in fiscal 1976, and rose again to 86 per cent in fiscal 1977.

"The Commission's policies for dealing with motor carrier applications have evolved gradually over the more than 40 years that regulation has been in effect. As the economy changed and the Commission's membership changed; as motor carrier technology developed and the industry became strong and more specialized; and as shipper distribution practices and techniques change, the Commission changed its policies gradually to meet what it perceived to be the needs of the shippers and the carriers.

"Thus, even though the statutory language which the Commission must follow in deciding motor carrier entry cases has remained the same for many years, the way the language has been interpreted and applied has changed over time in recognition of a constantly changing world. Over the years, the trend has been to make it easier for applicants to obtain new operating authority. What we have seen in the past year or two is an acceleration of that trend—a trend which reflects clearly discernible changes in the regulated industry and the national economy.

"The regulatory policies which became fixed in the 1930s and 1940s were characterized by a protectionist attitude which unquestionably reflected the national need for the development of a stable and profitable motor carier industry. When that industry was young and was faced with the economic disaster of the depression years—and then when it was growing stronger and developing in the post-war years—protection was necessary. Carriers needed to be protected from excess competition if they were to raise the capital, make the investments, and develop the operating patterns necessary to make them financially viable and to meet the public need for service. When stable and reliable bus and trucking services were the exception rather than the rule, and when the automobile and private truck had not yet become a practical alternative, the need for a strictly regulated motor carrier industry, upon which the common carrier obligation to serve could readily be enforced, was a necessity to travelers and shippers.

"Today, the motor carrer industry has arrived at a state of maturity characterized by routes and service patterns which blanket the nation; by financial prosperity; by the existence, side-by-side and competing, of hundreds of successful firms, meeting both new and old customer needs and earning healthy profits; and by generally highly competent managements which have developed sophisticated technologies, cost-control systems, and pricing structures. Obviously, all bus and truck companies are not uniformly well positioned or well managed. In particular, we have recognized the financial problems of the regular route sector of the bus industry.

"In the years since the Motor Carrier Act of 1935 was enacted, the regulated industry has matured into one of the most profitable, diverse, competitive, and best managed in the United States. New permanent operating authorities are being granted at the rate of almost 8,000 a year, but the nation's expanding economy continues to create an apparently never-ending need for new motor carrier services. Although the Commission has become more liberal in granting motor carrier applications, it has still, up to now, been following entry control policies which have changed but little since the advent of federal regulation. Today, the flood of applications has made it virtually impossible for the Commission to give more than passing attention to each, and has made well-informed, precise motor carrier entry regulation difficult, if not impossible.

"In responding to these changing conditions and developing service needs, the Commission has recently tended to give added weight to the needs and wishes of those supporting motor carrier applications. It has also given more weight to the benefits of competition, recognizing it as an effective force for regulating prices and service quality."

"In evaluating motor common carrier applications, the Commission has long followed the three-point test first established in *Pan America Bus Lines Operation*, 1 MCC 190, 203 (1936). That test provides that the Commission will consider an application for new authority in the light of the following criteria:

" 'Whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.'

"Common Carriage—Today's conditions require a change in that test. The criteria are overly protective for a mature and financially healthy industry, and they tend to restrain healthy competition. The third part of the *Pan American* test, which provides existing carriers with protection from competition which would endanger their abilities to continue to perform service needed by the public, offers what we are convinced is a sufficient degree of protection to carriers already in a particular market. Obviously, only the existing carrier is in a position to show that a grant of the application will have this impact upon it, and it is, therefore, the protestant which will have to bear the burden of proof as to this test. We believe that the second of the three tests laid down in the *Pan American* case—that is, the test which, in effect, requires an applicant to prove that the service it proposes cannot be performed by existing carriers—has outlived its usefulness, and it will no longer be applied.

"In determining applications for *motor common carrer authority*, the Commission will henceforth apply the following test in deciding what service is required by the present and future public convenience and necessity:

" '(1) An applicant must demonstrate that the service proposed will serve a useful public purpose, responsive to a public demand or need.

" '(2) The Commission will grant common carrier authority commensurate with the demonstrated need unless it is established by those opposing the application that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers contrary to the public interest.' "

"Contract Carriage—In determining motor contract carrier applications, the Commission must apply certain statutory tests. First, it must be shown that the service proposed is that of a contract carrier as defined in 49 USC section 10102(12) (formerly section 203(a)(15) of the Interstate Commerce Act). Under this provision, a contract carrier is defined as one which provides service 'under continuing contract with one person or a limited number of persons either (a) for the furnishing of transportation service through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer.' The Commission must also consider each contract carrier application in connection with certain criteria contained in 49 USC 10923(b)(2) (formerly section 209(b) of the Act). They require that, in determining whether to issue a permit to a contract carrier, the Commission consider 'the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of the shipper's requirements.'

"In considering *motor contract carrier* applications, the Commision's policy will be to find that the effect of a grant of contract carrier authority upon protesting carriers will not be a significant factor unless the protestants themselves can establish that such a grant would endanger or impair their operations to the extent that they would be unable to continue to provide adequate service within the scope of their authorities."

"Emergency Temporary Authorities—The Commission is considering establishing, by rule, a category of short-term, non-renewable emergency temporary authorities which would be issued upon receipt of a prospective user's certification that an immediate and urgent need for additional transportation service exists. These authorities would be limited in some respect, perhaps, in terms of a time limit, or perhaps in terms of the number of loads or trips that the carrier could preform. Longer-term temporary authorities, including any renewal of a short-term authority, would be issued only after an informal record has been completed, following *Federal Register* publication and an opportunity for the filing of protests."

"The Commission is concerned that is present policies in deciding applications of motor carriers to control, merge with, or purchase the operating authorities of other motor carrier may lead unnecessarily to the reduction of effective competition, especially with respect to short-haul markets and service at smaller communities. It has become common for a long-haul carrier to purchase the authority of a short-haul carrier, and to use that new authority solely as a means of extending its long-haul service into another market. The result is that the shippers who had relied upon the vendor's service no longer have

that service available. Admittedly, they will instead have available the vendee's new single-line service for long-haul traffic, which may well be to their advantage. However, in the short-haul market formerly served by the vendor, the amount of motor carrier competition will have been diminished. It is our firm view that a purchase proceeding should not be used solely to provide for the extension of a motor carrier's service into new markets. In determining motor finance proceedings, the Commission will authorize an acquisition of operating authorities only if the acquiring carrier establishes that it will continue to perform service similar in scope and character to that authorized by the rights being acquired. If only a new service is intended, the proper vehicle is the filing of an application for new authority.

"The Commission is also concerned that it is spending an inordinate amount of its resources considering motor carrier finance proceedings which do not have a significant effect either on the motor carrier industry or on the markets in which the carriers operate. Guidelines are now being developed to identify those motor carrier transfers and consolidations that warrant close scrutiny and possible challenge. We plan to use the guidelines to avoid a routine examination of motor carrier financial transactions and to focus only on those transactions which have discernible public interest consequences.

"In order to carry out this policy, the Commission, in reviewing motor carrier finance applications, will concentrate most heavily on the potential competitive—or anticompetitive—aspects of the transaction. The parties will be expected to develop the record fully in this respect. For our part, we will make a positive effort to increase the expertise of our staff in antitrust and related matters."

In his dissent, Mr. Stafford continued:

"A false premise underlies this proposal and, in fact, is the touchstone of almost all current Commission thinking with regard to trucking regulation. The false premise of which I speak is the theory that regulatory policies beginning in the 1930s and 1940s 'were characterized by a protectionist attitude' toward the trucking industry.

"The premise is false because it implies that protection of existing carriers was the primary consideration in the Commission's decisional process. This is wrong. The truth is that the decisional process involved a balancing of competing interests. But always the need of the public (shippers and passengers) was the primary concern of this agency. The balancing of sometimes competing interests was what Congress envisioned in the Motor Carrier Act of 1935. Congress did not want and did not need 11 Commissioners and a staff of 2,000 to act as a rubber stamp.

"Nothing evidences historical Commission policy in favor of the shipper better than the *Pan American* case cited in the proposed statement. That landmark decision requires an applicant to show that the public needs a given transportation service. Showing that, the burden switches to existing carriers to show they can meet that public need. Then, the burden reverts to the applicant, to show that its service is in some way superior to that currently available. This is the balancing; but always the assurance of adequate, responsive transportation to the public is the ultimate concern in that decisional process."

Protectionism

"The proposed statement also claims that the industry has matured and grown so sophisticated during the last 40 years of regulation that it no longer needs the alleged 'protections' referred to above. Surely, there are many more large companies, and industry leaders are far larger than any thing ever envisioned in the early days. But the large carriers are still comparatively few in number and small carriers represent the great bulk of the industry. If there ever was a need to protect the small carriers, there is no reason to believe that that need is any less today than it was 30 or 40 years ago. It is the bigger carriers, not the smaller ones, that are so much more sophisticated.

"In fact, there can be little doubt that the persons that suffer most from relaxed entry standards are the small carriers. It is generally recognized that the larger carriers could survive equally well in a regulated or an unregulated environment. They have the size, the financial wherewithal, and technical experitse, to adjust prices and meet competition at all levels. The smaller carriers, however, already are probably operating on a shoestring, and do not have the financial or operational flexibility to adjust as well to new competition."

The Real Impact

"The proposed statement of policy takes on greater significance when read in conjunction with two other recent decisions, *Liberty Trucking Co., Ext.—General Commodities* 130 MCC 243 (decided October 6, 1978) and Ex Parte 55, Sub. 26, *Protest Standards in Motor Carrier Application Proceedings* (not printed) (decided October 10, 1978). Under the proposed statement, the adequacy of existing service issue (set forth in *Pan American*) will no longer be a consideration. The third *Pan American* criterion will apparently remain intact. In *Liberty*, however, it was made clear that this criterion, potential adverse impact on existing carriers, will be virtually impossible to prove and will rarely be given consideration.

"The proposed statement also modifies the criteria that will be considered in contract carrier licensing cases again by imposing an almost impossible burden of proof on protesting carriers. In the *Protest Standards* case, it was announced that henceforth common carriers would not be allowed to protest automatically a contract carrier application. By keeping our affected common carriers, there will be no effective opposition to contract carrier applications and those carriers who are allowed to intervene will never be able to prove their case."

Conclusion

"In summary, therefore, I offer the following: The majority premises its proposal on an inaccurate statement of the way regulation has been administered. Furthermore, assuming protectionism for the industry was once an important goal of regulation, there is nothing (other than some vague, conclusory comments) to prove that small trucking companies do not still need those same protections. The proposed changes, viewed in conjunction with other recent decisions indicate that henceforth opposition to a licensing case will be a futile act. I believe that even the majority would agree that meaningful entry control in trucking will no longer exist when this statement is ultimately adopted."

Barker's Wins Authority Without Vehicle Limit

The Commission has granted Barker's School Bus Service authority to provide what has been described as a more economical type of bus service in the transportation of passengers and their baggage, in round-trip charter operations, from and to points in Indiana and extending to points in Ohio, Kentucky, Wisconsin, Illinois, parts of Missouri, and parts of Michigan.

Acting in a decision served November 29 in MC-141600, Barker's School Bus Service, Inc., Common Carrier Application, the Commission also determined that a restriction limiting the authority to service in school buses was unnecessary. It withheld issuance of the certificate, however, subject to publication of the grant of authority in the *Federal Register*.

Commissioner George M. Stafford dissented from the majority on the ground that the potential financial harm to protestant carriers "far outweighs the need for an unenforceable and speculative 'economical' service."

Earlier in the proceeding, an ICC administrative law judge approved Barker's application to provide the service. But he restricted the authority service in school buses, in an apparent effort to protect the interests of protestant carriers. On appeal, Division 1 upheld the grant of authority but deleted the restriction.

The Commission, in the latest decision, ruled that the restriction is unenforceable, would make Barker's operations more difficult, does not

enforcement is not *de minimis*. The Board seeks enforcement of its entire order in each case, to which it is entitled.

Accordingly, a decree will be entered enforcing the Board's orders.[7]

William KUREK, Walter Durdle, Robert Togikawa, Edwin Jones, and Richard Hoadley, Plaintiffs-Appellants,

v.

PLEASURE DRIVEWAY AND PARK DISTRICT OF PEORIA, ILLINOIS, an Illinois political subdivision, George L. Luthy, John R. Canterbury, James A. Cummings, Bonnie W. Noble, Clyde West, Harold A. (Pete) Vonachen, Jr., Individually and as President and Members of the Pleasure Driveway and Park District of Peoria, Rhodell [illegible]vens, Individually and as Director of Parks and Recreation, Jack M. Fuller, Individually and as Administrative Assistant, Daniel B. Ohlemiller, Individually and as Business Administrator, Frank D. Borror, Individually and as Superintendent of Maintenance, William McD. Frederick, Individually and as Attorney of Pleasure Driveway and Park District of Peoria, Golf Shop Management, Inc., an Illinois corporation, and Gordon A. Ramsey, Defendants-Appellees.

No. 76-1791.

United States Court of Appeals, Seventh Circuit.

Argued Jan. 20, 1977.

Decided May 26, 1977.

Rehearing and Rehearing En Banc Denied Aug. 11, 1977.

Golf professionals, whose concession rights to operate pro golf shops at municipal golf courses had been terminated by city park district, filed complaint against park district, president and members of park district's board of trustees, board attorney, administrative staff members, current concessionaire of pro shops, and concessionaire's sole incorporator, alleging violations of federal antitrust laws and deprivations of their federal rights under color of state law. The United States District Court for the Southern District of Illinois, Robert D. Morgan, Chief Judge, dismissed complaint, and plaintiffs appealed. The Court of Appeals, Pell, Circuit Judge, held that: (1) complaint, alleging that threat of monopolistic license and demand for uniformly increased concession fees were used by defendants as means in broader conspiracy to coerce plaintiffs into raising and fixing their retail prices and that award of monopolistic concession license to defendant current concessionaire was made to punish plaintiffs for refusing to be so coerced, and further alleging that current concessionaire made economically unrealistic "sham" proposal, not actually to be put into effect, in concert with at least some park district officials, knowing that proposal would not be acted upon as indicated in bid invitation but would, instead, be used by park district to coerce plaintiffs into conduct violative of antitrust laws, was sufficient to state cause of action and (2) with respect to count II of complaint alleging deprivation of plaintiffs' civil rights under color of state law, district court's judgment dismissing park district as defendant would be affirmed, but, district court erred in dismissing that count with respect to remaining park district officials, on basis of previous state court adjudication.

Affirmed in part; reversed and remanded in part.

1. Federal Courts ⇐932

Although the Court of Appeals reached different conclusion on sufficiency of plaintiffs' complaint, it would not disturb district

7. We express no opinion with respect to Ohmite's contentions of compliance, which it is free to assert in any further proceedings before the Board or this court arising from these orders.

...rt's denial of plaintiffs' motion for par... summary judgment, notwithstanding ... that trial court's independent consider... of that motion was precluded by its ...rmination that no cause of action was ...ged in complaint, where plaintiffs, al...gh citing freely in their briefs to mate...ls tendered in support of motion and ...esting reversal of denial thereof, never...ess made no contention at oral argu...nt that they were entitled to summary ...gment on that record.

Federal Civil Procedure ⇐2484

Summary procedures should be used ...ringly in complex antitrust litigation ...ere motive and intent play leading roles, ...of is largely in hands of alleged conspir...rs, and hostile witnesses thicken plot; ...l by affidavit is no substitute for trial ... jury. Sherman Anti-Trust Act, § 1 et ..., 15 U.S.C.A. § 1 et seq.

Federal Courts ⇐797

On appeal from dismissal of complaint, ... Court of Appeals would assume truth of ...ll-pleaded facts alleged in complaint.

Municipal Corporations ⇐57

City park district was unit of local ...ernment within meaning of Illinois Con...ution, deriving its powers from various ...ois statutes. S.H.A.Ill.Const.1970, art. ... 1.

Federal Civil Procedure ⇐1163

On appeal from dismissal of complaint ...t by golf professionals who had former...y been granted concessions by city park ...strict to operate pro golf shops at munici...l golf courses, alleging federal antitrust ...olations by park district's demanding five ...rcent of gross sales as concession fee and ...quiring as condition of concession renewal ...at plaintiffs raise and fix their prices, the ...urt of Appeals would take judicial notice ... facts that 1970 Illinois Constitution pro...ed for abolition of personal property tax... and authorized Illinois General Assembly ...o provide replacement revenue sources for ...al government units and that Illinois ...neral Assembly had not exercised its ...wer to create substitute revenues for ...al park districts, which facts apparently ...d park district in 1973 to consider possibilities of obtaining greater revenues from its golf course pro shop concessions. S.H.A. Ill.Const.1970, art. 9, § 5; Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

6. Monopolies ⇐28(6.2)

Complaint filed by golf professionals, who had previously been granted concessions by city park district to operate pro shops at municipal golf courses, against city park district and individuals associated with park district, alleging federal antitrust violations by park district's demand for uniformly increased concession fees and threat of award of monopolistic license as alleged means in broader conspiracy to coerce plaintiffs into raising and fixing their retail prices, and further alleging that award of monopolistic license to another was made to punish them for refusing to be so coerced, was sufficient to allege cause of action. Sherman Anti-Trust Act, §§ 1 et seq., 2, 15 U.S.C.A. §§ 1 et seq., 2.

7. Federal Civil Procedure ⇐1773

Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

8. Monopolies ⇐12(1)

Acts which may be legal and innocent in themselves, standing alone, lose that character when incorporated into conspiracy to restrain trade. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

9. Monopolies ⇐12(1)

City park district, which had substantially less than statewide jurisdiction, and its officials, had no state mandate or authority, for purposes of falling within "state-action exemption" to Sherman Act, to engage in activities whereby it allegedly demanded from its competing concession licensees increased concession fees for operation of pro golf shops at municipal golf courses and allegedly threatened award of monopolistic license to single concessionaire as alleged means of broader conspiracy to coerce concessionaires into raising and fixing their retail prices, in alleged attempt to

impose hidden sales tax, and whereby it subsequently awarded monopolistic concession license as alleged punishment to concessionaires for refusing to be so coerced. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

10. Municipal Corporations ⇐57

Subordinate units of government, notwithstanding that they derive their powers from state, are not entitled to all of federalistic deference that state would receive. U.S.C.A.Const. Amend. 11.

11. Monopolies ⇐12(1)

Where there are numerous subordinate units of government of a given type, each of same status under state law, it is more difficult to say that actions of any one of them are undertaken pursuant to state's command, or that state as sovereign imposed any anticompetitive restraints resulting from such actions; accordingly, subordinate governmental unit's "state-action" defense to alleged violation of federal antitrust laws is less obviously justified than is same claim made by state government, and antitrust "immunity" in former case cannot be automatic. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

12. Monopolies ⇐12(1)

For purposes of "state-action" defense to alleged violations of federal antitrust laws, adequate state mandates for anticompetitive activities of subordinate governmental units may be demonstrated by explicit language in state statutes, or may be inferred from nature of powers and duties given to a particular government entity. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

13. Municipal Corporations ⇐721

Illinois statutes empowering park districts to construct, equip and maintain golf courses, as well as necessary facilities pertinent thereto, and empowering them to contract in furtherance of any other corporate purposes, authorized city park district to operate pro shops at its municipal golf courses or to make contracts or leases allowing outside parties to operate such shops. S.H.A.Ill. ch. 105, §§ 8-1(a), 8-10, 8-16, 9.1-1.

14. Monopolies ⇐12(1)

Fact that city park district's conduct, with respect to its demand for increased concession fees for operation of pro golf shops at municipal golf courses from competing concession licensees and its subsequent award of monopolistic license in alleged violation of federal antitrust laws, concerned its golf courses and involved its statutory powers under Illinois law to contract and/or to lease did not convert state's grant of such powers into state authorization or mandate to use them to force private competitors to violate antitrust laws. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.; S.H.A.Ill. ch. 105, §§ 8-1(a), 8-10, 8-16, 9.1-1.

15. Monopolies ⇐12(1)

If it could be proven that intended incidence of increased concession fees demanded from competing concessionaires for operation of pro golf shops at municipal golf courses by city park district, which demanded as condition to renewal of concessions that concessionaires raise and fix their prices, would have operated as illegal sales tax, it would be extremely difficult, if not impossible, to find state mandate underlying park district's alleged conduct, for purposes of falling within "state-action" exemption to alleged violations of federal antitrust laws; however such proof would add nothing directly to merits of antitrust claims against park district and would be germane only to question of state mandate. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.; S.H.A.Ill. ch. 105, §§ 6-1 et seq., 8-1(b).

16. Monopolies ⇐28(6.2)

Complaint filed by golf professionals, who had previously been granted concessions by city park district for operation of pro golf shops at municipal golf courses, against party subsequently granted monopolistic concession license, alleging that defendant made economically unrealistic "sham" proposal, not actually to be put into effect, in concert with at least some park

district officials, knowing that proposal would not be acted upon as indicated in bid invitation but would, instead, be used by park district to coerce plaintiffs into conduct violative of federal antitrust laws, was sufficient to state cause of action. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

17. Monopolies ⇐12(1)

Successful bidding does not violate federal antitrust laws substantively. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

18. Monopolies ⇐28(1.5)

If current concessionaire, which was granted monopolistic concession license for operation of pro golf shops at park district's municipal golf courses, made economically unrealistic "sham" proposal not actually to be put in effect in concert with at least some park district officials, knowing that proposal would not be acted upon as indicated in bid invitation but would, instead, be used by park district to coerce concessionaires with existing licenses into conduct violative of antitrust laws, *Noerr* doctrine, under which no violation of Sherman Act can be predicated upon mere attempts to influence passage or enforcement of laws, would provide no defense to current concessionaire's alleged violations of federal antitrust laws. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

19. Monopolies ⇐28(1.5)

It could not be concluded, upon sole proof that proposal was economically unrealistic, that proposal to obtain concession for operation of pro golf shops at municipal golf courses was "mere sham" made in alleged concert with some officials of city park district in alleged effort to coerce concessionaires with existing licenses into conduct violative of federal antitrust laws. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

20. Federal Courts ⇐927

Where plaintiffs, golf professionals who had previously been granted concessions by city park district for operation of pro golf shops at municipal golf courses, attacked on appeal dismissal of second count of complaint alleging deprivation of their civil rights under color of state law only with respect to complaint's charge that they were summarily terminated from their public employment positions by park district because they asserted their rights of petition and to due process by litigating their defenses to park district's forcible entry and detainer action against them, and plaintiffs agreed that park district was properly dismissed as defendant as to that count, district court's judgment insofar as it dismissed other allegations in count and dismissed park district as defendant with respect to that count would be affirmed. 42 U.S.C.A. § 1983.

21. Judgment ⇐823(3.37)

Finding of circuit court judge, in state action for damages brought by park district for golf professionals' alleged wrongful holding over of possession of pro golf shops at municipal golf courses following termination of their concession rights, that golf professionals were terminated in their employment because they insisted on remaining in possession of shops did not preclude, on basis of prior adjudication, golf professionals' subsequent claim filed in federal district court against park district officials for alleged deprivation of their civil rights under color of state law based on their summary termination from their employment by park district allegedly because they asserted their rights of petition and to due process by litigating their defenses to park district's prior forcible entry and detainer action. 42 U.S.C.A. § 1983; S.H.A. Ill. ch. 57, § 1 et seq.

22. Judgment ⇐828(3.32)

If finding of circuit court judge in state court action had disposed of claim asserted by plaintiffs in federal action based on alleged deprivation of their civil rights under color of state law, or if state court judge had determined adversely to plaintiffs a fact critical to success of claim, relitigation in federal courts would be barred; fact that some defendants in federal action were not parties or privies in state

court suit would make doctrine of res judicata inapplicable, but it would not preclude defendants' defensive reliance on collateral estoppel. 42 U.S.C.A. § 1983.

23. Judgment ⇐663

Federal rule is that pendency of an appeal does not suspend operation of otherwise final judgment as collateral estoppel, unless appeal removes entire case to appellate court and constitutes proceeding de novo.

24. Federal Courts ⇐712

Where record on appeal from federal district court's dismissal of complaint did not reflect pendency of appeal from judgment in state court which defendants claimed precluded instant federal action, but brief of defendants represented that to be case, the Court of Appeals would take that representation as judicial admission of facts.

25. Federal Courts ⇐951

Plaintiffs' request that provisions of circuit rule governing reassignment of remanded cases be applied on remand to district court of their action for alleged federal antitrust violations and alleged deprivations of their federal rights under color of state law would be granted in interests of justice. U.S.Ct. of App. 7th Cir. Rule 18, 28 U.S.C.A.

John E. Cassidy, Jr., Peoria, Ill., for plaintiffs-appellants.

Daniel W. Hardy, Gary S. Clem, Peoria, Ill., William V. Altenberger, Wm. McD. Frederick, Peoria, Ill., for defendants-appellees.

Before FAIRCHILD, Chief Judge, PELL, Circuit Judge, and FOREMAN, District Judge.*

PELL, Circuit Judge.

[1, 2] The district court dismissed Count I of plaintiffs' complaint (alleging federal antitrust violations and invoking 15 U.S.C. §§ 1, 2, 15 and 26) on the authority of *Parker v. Brown*, 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315 (1943); and *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 81 (1961), and their progeny.[1] Count II of the complaint (alleging deprivations of federal rights under color of state law and invoking 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331(a) and 1343) was dismissed on the grounds that one defendant was not a "person" within the meaning of 42 U.S.C. § 1983 and that the remaining defendants were protected by a previous state court adjudication. This appeal followed.

I

[3, 4] We assume, of course, the truth of the well-pleaded facts alleged in plaintiffs' complaint, which are, in material part, as follows: Plaintiffs are five golf professionals, accredited as such by the Professional Golfers' Association. Defendant Pleasure Driveway and Park District of Peoria (the

* District Judge James L. Foreman of the Eastern District of Illinois is sitting by designation.

1. In its decision and order dismissing the complaint, the district court also denied plaintiffs' motion for partial summary judgment. The court's determination that no cause of action was alleged *a fortiori* precluded independent consideration of this motion. Although we reach a different conclusion on the sufficiency of plaintiffs' complaint, we see no reason to disturb the district court's denial of partial summary judgment. Plaintiffs did in their briefs cite freely to materials tendered in support of their summary judgment motion and requested reversal of the district court's denial of the motion, but they made no contention at oral argument that they were entitled to summary judgment on this record. Moreover, "summary procedures should be used sparingly in complex anti-trust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot. . . . Trial by affidavit is no substitute for trial by jury . . . ." *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 473, 82 S.Ct. 486, 491, 7 L.Ed.2d 458 (1962) (footnote omitted). We do not foreclose the possibility that summary judgment against or in favor of some or all of the defendants may eventually be justified, but we may say with confidence that the present record does not establish that all of the facts material to plaintiffs' complaint are uncontested.

Park District) is a unit of local government within the meaning of Article VII, § 1 of the Illinois Constitution, deriving its powers from various Illinois statutes which will be referred to hereinafter. The Park District owns and operates five municipal golf courses in Peoria, Illinois. Plaintiffs were, for varying periods aggregating 83 years, employed by the Park District to perform combined duties as golf course managers, greenskeepers, and golf professionals at the Park District's courses. Each plaintiff, while so employed, was granted a concession to operate a proprietary retail business (pro shop) selling golfing equipment at his golf course. In this proprietary function each plaintiff competed with each of the others, and between them they constituted the entire public market in Peoria for high quality "pro line" equipment. Eleven individual defendants are and at pertinent times were the President and members of the Park District's Board of Trustees, the Board Attorney, and administrative staff members of the Park District. Also defendants are Golf Shop Management, Inc., the current concessionaire of the pro shops at all five courses, and Gordon Ramsey the concessionaire's sole incorporator. For present purposes, these last two defendants may be treated together (GSM).

On January 19, 1974, the Park District terminated plaintiffs' concession rights, and on February 20 of that year the Park District terminated plaintiffs' employment. On January 22, 1974, GSM was awarded pro shop concession rights at all of the Park District's five golf courses. The reasons for these events, and the manner in which they came about, are at the heart of this lawsuit.

[5] The 1970 Illinois Constitution, Article IX, § 5, provided for the abolition of personal property taxes and authorized the Illinois General Assembly to provide replacement revenue sources for local government units. The General Assembly has not exercised its power to create substitute revenues for local park districts. These facts, which we may and do judicially notice, apparently led the Park District in 1973 to consider the possibilities of obtaining greater revenues from its golf course pro shop concessions.

Plaintiffs had, for some time, been paying small concession fees; each paid only $600 yearly, except for one who was assigned only a nine-hole golf course and who paid only $300. In the late summer and fall of 1973, the terms of the concession agreements for that calendar year were revised in a confusing and apparently less than harmonious series of negotiations, with the result that plaintiffs agreed to pay 1½% of their gross receipts as a fee.

Also during the fall of 1973, GSM and members of the Park District Board and Staff agreed that GSM would make an economically unrealistic "sham" proposal, which would not be performed, to pay $90,000 a year for concession rights at the five golf courses.[2] Public bidding specifications tailored exclusively for GSM's "sham" proposal were designed and advertised, and on December 17, 1973, GSM formalized its $90,000 proposal as a bid. A Park District Board meeting scheduled for December 19 for the purpose of acting on received bids was never held.

Instead, in the language of the complaint,

> [f]rom, and after, December 17, 1973, GSM's $90,000 per year proposal . . . was coercively laced with the threat of non-renewal of plaintiffs' 1973 "leases" and summary termination of their proprietary business rights and used to induce them to raise, fix and maintain their retail, rental and service prices and pay a 5% of gross concession or "lease" fee to the PARK DISTRICT.
>
> [The Park District defendants] used the GSM proposal, with GSM agreement, to

2. The plaintiffs do not explicitly allege an agreement or an understanding that GSM would not in fact pay an annual fee of $90,000. However, it is alleged that GSM would suffer net operating losses of at least $50,000 if it paid $90,000 yearly concession fees as promised. Also, the characterization of the proposal as being a "sham" would seem to imply a lack of bona fides insofar as an intent to carry out the terms and conditions of the proposal was concerned.

coerce plaintiffs into a 5% sales taxing and price raising/fixing scheme.

. . . . . .

On January 16, 1974 the PARK BOARD declared that unless plaintiffs agreed to raise their resale, rental and service prices and pay 5% of the gross receipts before 8 a. m., Saturday, January 19, 1974, their proprietary concession rights would be awarded to GSM, Inc.

. . . . . .

The plaintiffs and each of them were not summarily terminated from their proprietary business and local governmental employment rights because of the expiration of their 1973 "leases" but because, on January 19, 1974, they refused to be coercively induced into levying unlawful 5% sales tax levies on their business consumers and because they refused to contract, combine or conspire with the effect of raising, fixing and maintaining their proprietary resale, rental and service prices contrary to Illinois and Federal antitrust laws.

The complaint also alleges that plaintiffs, even after their proprietary terminations, remained in possession of the pro shops, that they litigated the Park District's state court forcible entry and detainer suit, and that this assertion of their "rights" was the cause of their employment terminations. The Illinois Appellate Court determined that plaintiffs' defenses in that suit were not germane to the narrow question of their right to possess the pro shops and that plaintiffs' rights of possession ended at the expiration of their concession agreements on December 31, 1973. *Pleasure Driveway and Park District of Peoria v. Kurek*, 27 Ill.App.3d 60, 325 N.E.2d 650 (1975). The Illinois Supreme Court denied leave to appeal. A subsequent state court damages action by the Park District sought redress for plaintiffs' allegedly wrongful holding over of possession of the pro shops, and a judgment in the Park District's favor in the amount of $127,605 is apparently pending on appeal.

As a result of the defendants' wrongful conduct, the golfing public of Peoria is alleged to have lost the benefits of competition, suffered increased prices and all of the evils of monopolistic practices without any corresponding governmental or other benefits. Substantial injury to plaintiffs is claimed. Count I (antitrust) seeks declaratory and injunctive relief against all defendants and treble damages from all defendants except the Park District. Count II (civil rights) seeks damages from all defendants except GSM.

. . . . . .

II

[6, 7] We turn to the question of whether Count I of the complaint fails to allege a cause of action under the antitrust laws. The standard we must apply is settled beyond dispute: "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957). This rule has particular force in this case, where plaintiffs' motion to amend their complaint by adding a third count, which refined their antitrust theories and made some additional factual allegations, was denied by the district judge in a short decision and order.[3]

Before considering the difficult questions which this case requires us to answer, we note briefly several background matters. First, of course, we intimate no views whatsoever on the likelihood that plaintiffs will be able to prove the allegations of the complaint.[4] Also, the district court's judgment

3. The district judge characterized plaintiffs' motion as an attempt to relitigate "antitrust and constitutional violations which simply do not exist" and dismissed the possibility that a conspiracy existed as "pure fancy," although a conspiracy is plainly alleged both in the complaint he dismissed and in the amended complaint he denied leave to file.

4. Nor do we consider the question of which, if any, of the asserted components of plaintiffs' damages will prove to be recoverable under the Supreme Court's recent decision in *Brunswick*

rests solely on the conclusion that the involvement of governmental action takes the case outside the scope of the antitrust laws. Without the benefit of a factual record, the district court's views, or briefing by the parties, we decline to address any broader question than that upon which the district court rested its decision.

[8] Moreover, this case does not present the question of whether a public agency may grant a monopolistic concession license without violating the antitrust laws, where no more is alleged or proved. Nor does the case simply involve a public agency's attempt to increase operating revenues by increasing concession fees uniformly to its competing concession licensees. The case does involve both of these elements, the defendants urge us to decide the case as if it involved no more, and the district court, in dismissing the case, apparently accepted this characterization of the issues raised. But more than this is alleged by the complaint, which charges that the threat of a monopolistic license to GSM and the demand for uniformly increased fees were used by the defendants as means in a broader conspiracy to coerce plaintiffs into raising and fixing their retail prices and that the award of the GSM license was made to punish plaintiffs for refusing so to be coerced. Acts which may be legal and innocent in themselves, standing alone, lose that character when incorporated into a conspiracy to restrain trade. *See Simpson v. Union Oil Co. of California*, 377 U.S. 13, 84 S.Ct. 1051, 12 L.Ed.2d 98 (1964); *Poller v. Columbia Broadcasting System, Inc.*, *supra*, 368 U.S. at 468-69, 82 S.Ct. 486.

III

[9] We must initially determine whether the district court correctly stated the law to be that the activities of the Park District are outside the scope of the Sherman Act, either as a general matter or, at least, in the circumstances of this case. The district court based its conclusion on the "so-called state-action exemption,"[5] *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 788, 95 S.Ct. 2004, 44 L.Ed.2d 572 (1975), which was articulated in *Parker v. Brown*, *supra*, and its progeny.

In *Parker*, the state of California's program for prorating the state's raisin crop so as to reduce excess supply and stabilize prices, which program was found to be consistent with federal agricultural regulations and policy, was questioned as to its validity under the Sherman Act, 15 U.S.C. § 1 et seq. The defendants were some of those charged by law with operating the program. The Supreme Court, assuming that the program would violate the Act if it were implemented by private persons, concluded nonetheless that the Act was not intended to prohibit the prorate program, which

> derived its authority and its efficacy from the legislative command of the state and was not intended to operate or become effective without that command. We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.
>
> The Sherman Act makes no mention of the state as such, and gives no hint that it was intended to restrain state action or official action directed by a state.

317 U.S. at 350-51, 63 S.Ct. at 313. The anticompetitive effects of California's pro-

Corporation v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 97 S.Ct. 690, 50 L.Ed.2d 701 (1977).

5. As the opinions of the Supreme Court, considered herein, have recognized, *Parker* announced no rule of antitrust *exemption* or *immunity*; rather, it determined that the Sherman Act was not intended to apply in the first place to the type of state-mandated activities there at issue. Other courts nevertheless have utilized the single-word shorthand references of "exemption" or "immunity."

rate program derived from "the state['s] command"; the state adopted, organized, and enforced the program "in the execution of a governmental policy." *Id.* at 352, 63 S.Ct. at 314. This fact was repeatedly emphasized by the Court in its brief discussion of the antitrust issue, and in its conclusion: "The state . . ., as sovereign, imposed the restraint as an act of government which the Sherman Act did not undertake to prohibit." *Id.*

Goldfarb v. Virginia State Bar, supra, presented the question "whether a minimum fee schedule for lawyers published by the Fairfax County [Virginia] Bar Association and enforced by the Virginia State Bar," 421 U.S. at 775, 95 S.Ct. at 2007, violated § 1 of the Sherman Act, 15 U.S.C. § 1. Because the Virginia State Bar was "a state agency by law," *id.* at 790, 95 S.Ct. 2004, (footnote omitted), the Supreme Court addressed the State Bar's claim, based on *Parker*, that the Sherman Act did not apply to it, and rejected the claim, without dissent. The Virginia legislature had empowered the Supreme Court of Virginia to regulate the practice of law and had authorized a role for the State Bar in that regulation as an administrative agency of the Supreme Court. The state Supreme Court had developed ethical rules for lawyers, and the State Bar was empowered to issue ethical opinions on the application of the rules. Two such opinions were an important part of the State Bar's role in enforcing minimum fee schedules.

An expansive reading of some of the language in *Parker* would have suggested that the Sherman Act could not be applied to the State Bar in these circumstances, but the Supreme Court took a closer look. Because no Virginia statute referred to lawyers' fees and the Supreme Court of Virginia had taken no action requiring the use of and adherence to minimum fee schedules, it could not be said that the anticompetitive effects of minimum fees were "compelled by direction of the State acting as a sovereign." *Id.* at 791, 95 S.Ct. at 2015. The State Bar, although it acted within the scope of its general powers, had "voluntarily joined in what [was] essentially a private anticompetitive activity," *id.* at 792, 95 S.Ct. at 2015, and was not executing the mandate of the state. The Court stated that the existence of sovereign compulsion was "[t]he threshold inquiry in determining if an anticompetitive activity is state action of the type the Sherman Act was not meant to proscribe" and there was, thus, no reason to take the matter any further. *Id.* at 790, 95 S.Ct. at 2015.

After the district court dismissed the present lawsuit, the Supreme Court decided *Cantor v. Detroit Edison Co.*, 428 U.S. 579, 96 S.Ct. 3110, 49 L.Ed.2d 1141 (1976), which also bears upon the issues in this case. In *Cantor*, an electric utility, regulated by the state of Michigan, operated a program which provided "free" light bulbs to electricity customers, the costs of the program being covered by the utility's general electricity rates. An independent seller of light bulbs charged antitrust violations, and the utility defended on the theory, based on *Parker*, that the light bulb program was included in its rate tariff filed with and approved by the state Public Service Commission and that state law required it to follow the terms of the tariff as long as it was in effect. Six Justices agreed that summary judgment for the utility, based on *Parker*, had been improperly entered.[6]

Cantor, of course, did not present the precise question addressed in *Parker* and at issue here, for in *Parker* state officials executing a state program were the defendants while in *Cantor* a private party sought to rely on state law to insulate its conduct from antitrust liability. The considerations applicable to each case are necessarily less than identical. While the Court did not develop a single opinion expressing the views of a majority of its members, *see* note 6 *supra*, a majority did agree that analysis of a private party's state law defense re-

6. Mr. Justice Stevens delivered the Court's opinion, joined in whole by Justices Brennan, White, and Marshall, and in substantial part by the Chief Justice. *Id.* at 603, 96 S.Ct. 3110; Mr. Justice Blackmun concurred in the result. *Id.* at 605, 96 S.Ct. 3110.

quires consideration of whether it would be fair to subject a party to antitrust liability when he may have been caught between inconsistent commands of his state and federal sovereigns, and of factors akin to those used to determine whether federal agency regulation of a business produces an implied antitrust immunity.

In deciding *Cantor*, the Court majority emphasized the facts that no Michigan statutes purported to regulate the light bulb industry, that neither the Michigan legislature nor the Public Service Commission had ever specifically looked into the question of the desirability of a "free" light bulb program, and that other utilities regulated by the Commission did not have such a program. The Court majority concluded therefrom that the Commission's approval of the utility's program did not "implement any statewide program relating to light bulbs" and that "the State's policy is neutral on the question whether a utility should, or should not, have such a program." 428 U.S. at 585, 96 S.Ct. at 3114. That conclusion was central to the Court's disposition of the case.

Because a private actor's state law defense is at least related to a governmental body's assertion of a "state action" defense, we think the *Cantor* Court's emphasis on the lack in that case of a "statewide program" or a state policy sheds some light on the present case. We also think that *Cantor*, read with *Goldfarb*, provides important general guidance on the question of what it means to find governmental action involved in the facts of an antitrust suit.

Cantor and *Goldfarb* demonstrate beyond serious questioning that the Supreme Court is not inclined any longer, if it ever was, to accept superficial and mechanical application of a *Parker*-based "rule" that antitrust inquiry ends upon such a finding of governmental actions or laws being involved. In the years after *Parker* and before *Goldfarb* and *Cantor*, there was a tendency in many of the reported decisions to apply *Parker* broadly and to use rather general language in so doing. For example, addressing the distinct question of whether persons may join together attempting to induce governmental action with anticompetitive effects, see part V of this opinion, *infra*, the Supreme Court stated as a building-block proposition that "where a restraint upon trade or monopolization is the result of valid governmental action, as opposed to private action, no violation of the [Sherman] Act can be made out." *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, *supra*, 365 U.S. at 136, 81 S.Ct. at 529. In the same context, this court's opinion in *Metro Cable Co. v. CATV of Rockford, Inc.*, 516 F.2d 220, 227 (7th Cir. 1975), used similarly broad language. Neither case involved a claim of governmental action violative of the Sherman Act, the facts of both cases were meaningfully different than those presented here, and we have, thus, no occasion to question whether the language used accurately stated the law as applied to those cases. We point out, however, that *Goldfarb* and *Cantor* undercut the validity of any such simple one-sentence "rule" as a general proposition.

[10, 11] We turn, then, to the instant complaint, and conclude that *Parker* and its progeny do not support the district court's dismissal thereof. The fact that the governmental body sued here is a park district, with substantially less than statewide jurisdiction, has significance. First, it is clear that subordinate units of government—notwithstanding that they derive their powers from a state—are not entitled to all of the federalistic deference that the state would receive. *See, e. g.*, in the area of the Eleventh Amendment to the Constitution, *Edelman v. Jordan*, 415 U.S. 651, 667 n.12, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974). More specifically, where there are numerous subordinate units of government of a given type, each of the same status under state law, it is more difficult to say that the actions of any one of them are undertaken pursuant to "the state['s] command," *Parker, supra*, 317 U.S. at 352, 63 S.Ct. 307, or that "[t]he state . . . ., as sovereign" imposed any anticompetitive restraints resulting from such actions. *Id. Goldfarb* established that Sherman Act suits against

state agencies may be maintained unless the conduct challenged is "compelled by direction of the State acting as a sovereign," 421 U.S. at 791, 95 S.Ct. at 2015, and the numerosity and potential variety of practices of subordinate units of government may often suggest that "the State's policy is neutral" on any given practice and that there is no "statewide program" which would require the sort of comity-based respect evident in *Parker*. *See Cantor, supra*, 428 U.S. at 585, 96 S.Ct. 3110.

We surely do not wish to be understood as saying that park districts and other subordinate governmental units may no longer avail themselves of a *Parker* defense to antitrust suits. Rather, we advert to the fact that a subordinate governmental unit's *Parker* claim is less obviously justified than is the same claim made by a state government, and we conclude that antitrust "immunity" in the former case cannot be automatic. Both the Third and the Fifth Circuits have recently so held. *City of Lafayette, Louisiana v. Louisiana Power & Light Company*, 532 F.2d 431 (5th Cir. 1976), *cert. granted*, 430 U.S. 944, 97 S.Ct. 1577, 51 L.Ed.2d 791 (1977) (two cities); *Duke & Company Inc. v. Foerster*, 521 F.2d 1277 (3d Cir. 1975) (three municipal corporations and a county commissioner); and *cf. Hecht v. Pro-Football, Inc.*, 144 U.S.App. D.C. 56, 444 F.2d 931 (1971), *cert. denied*, 404 U.S. 1047, 92 S.Ct. 707, 30 L.Ed.2d 736 (1972) (unincorporated instrumentality of the District of Columbia)

We realize that in the case of *State of New Mexico v. American Petrofina, Inc.*, 501 F.2d 363, 370 n.15 (9th Cir. 1974), involving antitrust counterclaims against a state and some of its political subdivisions, the Ninth Circuit has held to the contrary. *State of New Mexico* was, however, decided before *Goldfarb* and *Cantor* and we do not believe its holding as to subordinate units of government survives the test of their analysis. We simply see little sense in automatically treating as state mandates the activities of local governmental units when these activities may vary substantially from unit to unit and may be wholly lacking in any express or implied state authorization or command.

[12] We agree with the Third and Fifth Circuits that an adequate state mandate for anticompetitive activities of subordinate governmental units "may be demonstrated by explicit language in state statutes, or may be inferred from the nature of the powers and duties given to a particular government entity." *Duke & Company Inc., supra*, 521 F.2d at 1280; *accord, City of LaFayette, supra*, 532 F.2d at 434-35. The latter case properly notes that "all evidence which might show the scope of legislative intent" should be considered. *Id.* at 435 (footnote omitted).

[13, 14] Nothing in the Illinois statutory provisions governing park districts even remotely suggests that Illinois has authorized, let alone compelled, park districts to attempt to enrich themselves by coercing horizontal retail competitors operating under concession licenses to fix retail prices in what would otherwise be plain violation of the Sherman Act. Park districts are, of course, empowered to "construct, equip and maintain . . . golf . . . courses," Ill.Rev.Stat.1975, ch. 105, § 8-10, as well as "necessary facilities pertinent thereto . . . ." *Id.*, § 9.1-1. Power is also given for park districts "to contract in furtherance of any of [their] corporate purposes," *id.*, § 8-1(a), and "to lease real estate," *id.*, § 8-16. We think these provisions fully authorize the Park District to operate pro shops at its golf courses or to make contracts or leases allowing outside parties to operate such shops. If the complaint in this lawsuit alleged no more than that the Park District had substantially reduced relevant competition by operating the shops itself, foreclosing others,[7] or by determining that the "corporate purposes" of the District would be best served by contracting with a single concessionaire for

7. *Ladue Local Lines, Inc. v. Bi State Development Agency of the Missouri-Illinois Metropolitan District*, 433 F.2d 131 (8th Cir. 1970); and *Continental Bus System, Inc. v. City of Dallas*, 386 F.Supp. 359 (N.D.Tex.1974), both relied upon by defendants, are cases of this type.

the operation of the shops,[8] the case for a *Parker* defense would be stronger than it is here. That the Park District's conduct concerned its golf courses and involved its statutory powers to contract and/or to lease surely does not convert Illinois' grant of such powers into state authorization or mandate to use them to force private competitors to violate the antitrust laws.

[15] This conclusion is strengthened by the complaint's allegations that the Park District, in demanding 5% of gross sales as a concession fee and requiring as a condition of concession renewal that plaintiffs raise and fix their prices, presumably to cover the 5% fee, was effectively attempting to impose on the Peoria golfing public a 5% hidden sales tax that is illegal under Illinois law. We note that the Park District's revenue powers are limited to the levying of various property taxes, Ill.Rev. Stat.1975, ch. 105, § 6-1 et seq., and the charging of fees for the use of District facilities, *id.*, § 8-1(h), and we are aware of no authority that would authorize the Park District effectively to double the sales taxes currently in force in Illinois. If it can be proven that the concession fee's intended incidence would have operated as an illegal sales tax, it would be extremely difficult, if not impossible, to find a state mandate underlying the Park District's alleged conduct.[9] For this reason and the others indicated, we believe the district court improperly dismissed the antitrust claim against the Park District.

IV

The analysis set out in part III of this opinion applies directly only to the Park District. In *Parker*, *supra*, and in some cases applying it, however, officials of governmental units were sued, as is the case here, and it has generally and sensibly been held that where the activities of a governmental unit are outside the scope of the antitrust laws, the officials charged with performing those activities enjoy the same protections. *See Parker*, *supra*, 317 U.S. at 350-51, 63 S.Ct. 307; *E. W. Wiggins Airways, Inc.*, *supra*, 362 F.2d at 56; *Murdock v. City of Jacksonville, Florida*, *supra*, 361 F.Supp. at 1093-94. Even in such cases, however, it has sometimes been recognized that an official's actions ultra vires or in bad faith might present a different question. *Id.*

Neither in the district court nor in this court have the individual defendants associated with the Park District made any argument that they should be entitled to protection from antitrust liability even if the District was not. We see no *a priori* reason to determine, at this stage in the litigation, that such additional protection would or would not be justified. *See Duke & Company Inc.*, *supra*, where the Third Circuit reversed a dismissal in favor of three municipal corporations *and* a county commissioner after determining that *Parker* did not protect the governmental unit defendants. Accordingly, we reverse the district court's judgment in favor of the individual Park District defendants. We do not mean to imply thereby that some or all of these defendants may not be able to establish some sort of good faith defense, for neither facts nor legal argument in support of such a defense are before us. Nor do we suggest, even if some sort of good faith defense might be cognizable in appropriate cases, that proof in support of the complaint's allegations of bad faith and official actions illegal under state law might not operate to vitiate the defense in this case.

8. *E. W. Wiggins Airways, Inc. v. Massachusetts Port Authority*, 362 F.2d 52 (1st Cir. 1966), *cert. denied*, 385 U.S. 947, 87 S.Ct. 320, 17 L.Ed.2d 226, and *Murdock v. City of Jacksonville, Florida*, 361 F.Supp. 1083 (M.D.Fla. 1973), fall into this category, and *Metro Cable Co.*, *supra*, while distinguishable, is analogous. Although these cases and those cited in n. 7 *supra* were all decided before *Goldfarb* and *Cantor*, we may assume without deciding that the Sherman Act does not apply to these types of less-than-statewide governmental action.

9. Such proof, of course, would add nothing directly to the merits of plaintiffs' antitrust claims and would be germane only to the question of state mandate.

V

[16] We turn to GSM's contention, accepted by the district court, that its involvement with the facts of this case was limited to seeking the award of a governmental contract and accepting its benefits and obligations once awarded, and that the doctrine of *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, *supra*, and its progeny, protects GSM from antitrust liability. In *Noerr*, the Supreme Court held that "no violation of the [Sherman] Act can be predicated upon mere attempts to influence the passage or enforcement of laws." 365 U.S. at 135, 81 S.Ct. at 528. Three reasons for this rule were articulated. First, the Court found no Congressional purpose to regulate "political activity," and noted that an "essential dissimilarity between an agreement jointly to seek legislation or law enforcement and the agreements traditionally condemned by § 1 of the Act" counseled against construing the Act to apply to the former case. *Id.*, at 136-37, 81 S.Ct. at 529. Second, antitrust liability in such a case could reduce the flow of information on which governments depend and could, thus, impair their ability to take actions that operate to restrain competition, which ability was recognized in *Parker*, *supra*. *Id.* at 137, 81 S.Ct. 523. Third, "such a construction of the Sherman Act would raise important constitutional questions" because it would impute to Congress an intent to invade the First Amendment right of petition. *Id.* at 138, 81 S.Ct. at 530. The Court recognized that Sherman Act liability might be justified where conduct "ostensibly directed toward influencing governmental action, is a mere sham to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor . . . ." *Id.* at 144, 81 S.Ct. at 533. Because the *Noerr* defendants were "making a genuine effort to influence legislation and law enforcement practices," *id.*, no such argument was possible in that case.

Noerr was followed in *United Mine Workers of America v. Pennington*, 381 U.S. 657, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965), where joint labor-management inducements to the Secretary of Labor and the Tennessee Valley Authority to take action injurious to small coal operators were involved. The Court stated that

> [j]oint efforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition. Such conduct is not illegal, either standing alone or as part of a broader scheme itself violative of the Sherman Act.

Id. at 670, 85 S.Ct. at 1593.

In *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972), the Court extended the *Noerr-Pennington* rule to attempts to influence administrative agencies and judicial proceedings. Because, however, the motor carrier defendants used universal resistance to competitors' applications for new operating authority to achieve their primary purpose of deterring the making of such applications, thereby injuring competitors not through governmental action but directly, the case was held to fall within Noerr's "sham" exception.

[17] The district court accepted GSM's argument that its role in the case was solely that of the successful bidder for the Park District's pro shop concessions. We may assume arguendo that if the complaint alleged no more, GSM could not be found liable under the antitrust laws. We are inclined to the view that nonliability in such a case would flow from the fact that successful bidding does not violate the antitrust laws substantively, *cf. George R. Whitten, Jr., Inc. v. Paddock Pool Builders, Inc.*, 508 F.2d 547 (1st Cir. 1974), *cert. denied*, 421 U.S. 1004, 95 S.Ct. 2407, 44 L.Ed.2d 673 (1975), rather than from the principles of *Noerr*, which seem to address a different question.[10] Perhaps more to the

10. *See Hecht v. Pro-Football, Inc.*, *supra*, 444 F.2d at 940-42; and *George R. Whitten, Jr., Inc. v. Paddock Pool Builders, Inc.*, 424 F.2d 25, 32-34 (1st Cir. 1970), *cert. denied*, 400 U.S. 850, 91 S.Ct. 54, 27 L.Ed.2d 88, both of which take the position that the rationale of *Noerr* and progeny is directed to attempts to influence some significant governmental policy determi-

point would be the decision of this court in *Metro Cable Co. v. CATV of Rockford, Inc.*, *supra*, substantially relied upon by GSM, where defendant obtained the first granted cable television license in a city and successfully induced the city council not to license a potential competitor; this court found that *Noerr* and its progeny foreclosed antitrust liability.

[18] Neither the successful bidder hypothetical nor *Metro Cable*, however, involve what is alleged here. The complaint asserts that GSM made an economically unrealistic "sham" proposal, not actually to be put into effect, in concert with at least some Park District officials, knowing that the proposal would not be acted upon as indicated in the bid invitation but would, instead, be used by the Park District to coerce plaintiffs into conduct violative of the antitrust laws. If these allegations can be proved, and we must assume at this point that they can, the *Noerr* doctrine would provide no defense. This is so for several reasons.

First, except for the fact that GSM's agreement and conduct were in conjunction with governmental officials it cannot be said that there is an "essential dissimilarity" of the sort that troubled the Court in *Noerr*, 365 U.S. at 136-37, 81 S.Ct. 523, between GSM's conduct and activities traditionally held violative of the Sherman Act. *Albrecht v. Herald Co.*, 390 U.S. 145, 88 S.Ct. 869, 19 L.Ed.2d 998 (1968), is illustrative.

In *Albrecht*, the defendant newspaper publisher had attempted to coerce plaintiff, one of its independent home delivery carriers, into compliance with a resale price fixing scheme violative of the Sherman Act. Defendant had argued, *inter alia*, that its actions, which included termination of the carrier, were wholly unilateral and did not establish any conspiracy or combination within the meaning of the Act. The Supreme Court disagreed, and overturned a jury verdict in defendant's favor because it was "clear that a combination in restraint of trade existed." *Id.* at 151, 88 S.Ct. at 874. The only combination presented by the record and considered by the Court is quite like that which, as pertinent to GSM, is alleged here. Specifically, to put pressure on the plaintiff carrier, the defendant hired a subscription solicitation company to seek customers from plaintiff's delivery route for a new route. Twenty-five percent of plaintiff's customers agreed to switch carriers. The defendant then gave these customers to another carrier who knew that he would have to follow defendant's resale price policies and that he might have to return the customers to plaintiff if plaintiff acceded to the policies. The defendant's combination with the solicitation company and the new carrier who lent their business efforts to defendant's attempts to coerce the plaintiff into an antitrust violation supported Sherman Act liability.[11] The parallel to this case is obvious, as is the conclusion that GSM's alleged conduct is not essentially dissimilar to activities the Sherman Act was meant to proscribe.

Nor is the fact that GSM combined or conspired with governmental officials dispositive, for both of *Noerr*'s premises with respect to that point are undercut by the factual setting of this case. Our determination that the Park District and its officials had no state mandate or authority to engage in the activities attacked here necessarily reduces the applicability of the reasoning of *Noerr* to the degree it is based on the need of governmental units for citizen input in making decisions that *Parker* holds to be outside the scope of the Sherman Act. *See Duke & Company Inc., supra*, 521 F.2d at 1282. The *Noerr* decision also rests on a refusal to impute to Congress an intent to

nation and not a government's actions as a commercial entity.

11. Of course, only the newspaper publisher was sued in *Albrecht*, and it is at least possible that had the solicitation company and the new carrier been sued a defense based on their "insubstantial . . . connection with the restraint" might have been established. *See Goldfarb, supra*, 421 U.S. at 791 n. 21, 95 S.Ct. 2004. On the present complaint, there is no occasion for us to decide if such a defense might be developed in subsequent proceedings here.

invade the constitutional "right of the people . . . to petition the Government *for a redress of grievances.*" U.S.Const., Amendment I (emphasis added). We have some difficulty understanding how a contract proposal to a governmental unit falls within the ambit of that right, *see* note 10 *supra*, but even if it does, we think it clear that agreement with government officials to pressure others into an antitrust violation does not.

[19] Alternatively, another basis for finding *Noerr* protections inapplicable at this stage of the proceedings is that facts provable under the complaint could well establish that GSM's concession proposal was a "mere sham" within the meaning of that decision. 365 U.S. at 144, 81 S.Ct. 523. We are not prepared to say that this conclusion would inexorably follow upon the sole proof that the proposal was economically unrealistic, *see Noerr, supra*, 365 U.S. at 140-42, 81 S.Ct. 523; *Metro Cable, supra*, 516 F.2d at 231; *but see Woods Exploration & Producing Company, Inc. v. Aluminum Company of America*, 438 F.2d 1286, 1296-98 (5th Cir. 1971), *cert. denied*, 404 U.S. 1047, 92 S.Ct. 701, 30 L.Ed.2d 736 (1972), but the economically unrealistic nature of the proposal, alleged to have been known to Park District officials, might support an inference that GSM was not "making a genuine effort," *Noerr, supra*, 365 U.S. at 144, 81 S.Ct. 523, to obtain the concession rights but was instead lending its support to the Park District's attempted coercion of plaintiffs' pricing policies. The complaint is somewhat inconsistent in this regard, alleging as it does both that GSM's purpose was to obtain monopolistic concession rights and that GSM knowingly made its proposal to pressure plaintiffs into agreements which, if made, would have foreclosed the concession rights to GSM. Proof of the latter assertion, however, could establish a sham and take the case out of the *Noerr* doctrine even if that doctrine applied, which we have decided it does not.[12]

VI

[20, 21] Count II of the complaint alleges deprivations of the plaintiffs' civil rights under color of state law and is based on 42 U.S.C. § 1983. The district court dismissed Count II because, in its view, previous state court decisions based on the same operative facts had resolved dispositive facts adversely to plaintiffs. On appeal, plaintiffs attack this dismissal only with respect to the complaint's charge that plaintiffs were summarily terminated from their public employment positions because they asserted their rights of petition and to due process by litigating their defenses to the Park District's forcible entry and detainer action. Moreover, plaintiffs agree that the Park District was properly dismissed out as a defendant even as to this charge. Accordingly, we affirm the district court's judgment insofar as it dismisses the other allegations in Count II and dismisses the Park District as a Count II defendant.

With regard to the employment termination claim against the President, trustees, attorney, and staff of the Park District, we must reverse. The district court based its dismissal of this claim on the following finding of Illinois Circuit Court Judge Iben in the Park District's damages lawsuit against the golf professionals:

> [T]he reason for their termination clearly appears to have been the Defendant's [sic] [plaintiffs herein] insistence on remaining in the golf shop premises. There is abundant evidence that they stubbornly and intractably insisted through litigation, and other ways, on this claim, spurning other avenues. They can have no doubt about the reason for their discharge, i. e., their refusal to give up the premises.

Pleasure Driveway and Park District of Peoria v. Kurek et al., No. 75 L 2893 (10th

12. Defendants' suggestion that the "sham" exception operates only in a judicial setting is specious. The Supreme Court articulated the exception in the context of the *Noerr* facts, which in no way involved judicial settings. Nor does this court's determination in *Metro Cable, supra*, 516 F.2d at 228, that the existence of a judicial setting authorizes a somewhat broader inquiry into the "sham" issue even remotely support such a proposition.

Judicial Circuit, Peoria County, Nov. 14, 1975). This finding was made with reference to the golf professionals' counterclaim allegation that their employments were summarily and unlawfully terminated.

[22] We have no quarrel with the proposition that if Judge Iben's finding had disposed of the claim made here or had determined adversely to plaintiffs a fact critical to success on this claim, relitigation in the federal courts would be barred. *See Reich v. City of Freeport*, 527 F.2d 666 (7th Cir. 1975); *Phillips v. Shannon*, 445 F.2d 460 (7th Cir. 1971). The fact that the remaining defendants under Count II were not parties or privies in the state court suit would, of course, make the doctrine of res judicata inapplicable, but it would not preclude defendants' defensive reliance on collateral estoppel. *See Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971).

[23, 24] Nor would it matter that Judge Iben's decision has apparently been appealed,[13] for

> the federal rule is that the pendency of an appeal does not suspend the operation of an otherwise final judgment as . . . collateral estoppel, unless the appeal removes the entire case to the appellate court and constitutes a proceeding de novo.

18 Moore's Federal Practice ¶ 0.416[3], at 2254 (2d ed. 1974); *Grantham v. McGraw-Edison Company*, 444 F.2d 210, 217 (7th Cir. 1971). Illinois follows the same rule. *Sixty-Third & Halsted Realty Co. v. Goldblatt Bros.*, 342 Ill.App. 389, 96 N.E.2d 838 (1951), *aff'd*, 410 Ill. 468, 102 N.E.2d 749.

We do not agree with the district court, however, that Judge Iben's finding disposed of plaintiffs' claim herein or of critical facts pertinent to it. Illinois' Forcible Entry and Detainer Act, Ill.Rev.Stat.1975, ch. 57, § 1 et seq., plainly gives a tenant the right to remain in possession of property while litigating the question of his possessory rights. Judge Iben's determination that plaintiffs were terminated in their employments because they insisted on remaining in possession of the pro shops implies, to some extent at least, that the employment terminations occurred because plaintiffs chose to litigate their rights to possession. In fact, the finding expressly refers to plaintiffs' insistence "through litigation, and other ways" on asserting their claims to possession. Nothing in this state court judgment supports the district court's conclusion that it had been previously adjudicated that "the exercise of the right to litigate issues" was not the reason for plaintiffs' employment discharges. No other issues pertinent to Count II of the complaint were decided below or asserted in this court, so we reverse the district court's judgment of dismissal insofar as it concerns the employment discharge claim against the individual Park District defendants.

[25] For the reasons stated herein, the judgment of the district court is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. Plaintiffs have requested that the provisions of Circuit Rule 18 be applied on remand. We believe that the interests of justice would best be served, in the circumstances of this case, by granting that request. It is so ordered.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

13. Our record does not reflect the pendency of an appeal in the state court case, but the brief of the defendants who seek to rely on the state judgment represents this to be the case, and we take that representation as a judicial admission of the fact.

MT. HOOD STAGES, INC., dba Pacific Trailways, Plaintiff-Appellee,

v.

The GREYHOUND CORPORATION and Greyhound Lines, Inc., Defendants-Appellants.

No. 74-1282.

United States Court of Appeals, Ninth Circuit.

June 9, 1977.

Rehearing and Rehearing En Banc Denied Aug. 3, 1977.

Bus company brought suit against a competitor for violation of the Sherman Act. The United States District Court for the District of Oregon, Alfred T. Goodwin, J., rendered judgment on a jury verdict awarding treble damages in the amount of $13,146,090, and competitor appealed. The Court of Appeals, Browning, Circuit Judge, held that: (1) where routes were granted by the Interstate Commerce Commission to competitor, over the bus company's objection, on its representation that it would not engage in the forms of predatory conduct which it subsequently engaged in, the competitor's conduct was not immune from the antitrust laws; (2) the evidence that there was fraudulent concealment of the existence of the antitrust cause of action sufficient to toll the four-year statute of limitations was sufficient for the jury; (3) the government's intervention in ICC proceedings initiated by the bus company to require the competitor to live up to its representations tolled the running of the limitations period on the bus company's antitrust cause of action, and (4) the evidence on the issue of damages was sufficient for the jury.

Affirmed.

1. Monopolies ⇐16(1)

Where routes were granted by Interstate Commerce Commission to common carrier, over competitor's objection, on representations that it would not engage in forms of predatory conduct which it subsequently engaged in, its conduct was not immune from antitrust laws. Interstate Commerce Act, § 5(11), 49 U.S.C.A. § 5(11).

2. Monopolies ⇐12(16)

Conduct is not immunized from antitrust laws merely because it falls within jurisdiction of regulatory agency, and immunity is not implied merely because applicable regulatory standard requires agency to give weight to antitrust policies. Interstate Commerce Act, § 5(11), 49 U.S.C.A. § 5(11).

3. Monopolies ⇐28(8)

In antitrust action by bus company against competitor, district court's jury instructions on monopolization in context of regulated industry were not erroneous.

4. Monopolies ⇐28(7.3)

Trial judge must be accorded wide latitude in determining relevance of evidence in antitrust cases.

5. Monopolies ⇐28(7.3)

In antitrust action, admissibility of consent decree is matter committed to district court's discretion.

6. Monopolies ⇐28(7.3)

In antitrust action by bus company against competitor, district court did not err in allowing jury to consider antitrust consent decrees entered into by competitor and United States and competitor's conduct with respect to obeying or disobeying them in determining issues of competitor's intent and purpose and reasonableness of competitor's conduct.

7. Monopolies ⇐28(8)

In antitrust action by bus company against competitor, evidence that competitor fraudulently concealed existence of antitrust cause of action tolling four-year statute of limitations was sufficient for jury. Clayton Act, § 4B, 15 U.S.C.A. § 15b.

8. Monopolies ⇐28(4)

Statute of limitations on bus company's antitrust cause of action against competitor was tolled by government's intervention in Interstate Commerce Commission proceed-

ings in which bus company sought to compel competitor to live up to its representations that it would not engage in predatory conduct, which representations were made in obtaining routes from ICC. Interstate Commerce Act, § 5(9), 49 U.S.C.A. § 5(9); Clayton Act, § 5(i), as amended 15 U.S.C.A. § 16(i).

9. Monopolies ⇐28(7.6)

In antitrust action by bus company gainst competitor alleging that competitor acquired routes circling those of bus company and thereby deprived bus company of connecting traffic with purpose and effect of eliminating bus company as substantial competitor, evidence was sufficient to sustain jury award of treble damages in amount of $13,146,090. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

10. Monopolies ⇐28(9)

In antitrust action by bus company against competitor alleging that competitor acquired routes circling those of bus company and thereafter deprived bus company of connecting traffic with purpose and effect of eliminating bus company as substantial competitor, award of attorney's fees of $1,250,000 was not abuse of discretion.

William W. Schwarzer, San Francisco, Cal., argued, McColloch, Dezendorf, Spears & Lubersky, Portland, Or., for defendants-appellants.

Michael N. Khourie, argued, Broad, Khourie & Schulz, San Francisco, Cal., for plaintiff-appellee.

Appeal from the United States District Court for the District of Oregon.

Before BROWNING and WRIGHT, Circuit Judges, and LINDBERG,* District Judge.

* Honorable William J. Lindberg, Senior United States District Judge, Western District of Washington, sitting by designation.

BROWNING, Circuit Judge:

Greyhound Corporation and Greyhound Lines, Inc., appeal from a judgment entered on a jury verdict awarding damages to Mt. Hood Stages, Inc., for injuries resulting from violations of sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2.[1] We affirm.

I.

Immunity

Greyhound is the largest common carrier by bus of passengers and package express in the United States, moving more than 80 percent of this traffic in the western states and operating over routes throughout the country. Mt. Hood is one of Greyhound's small competitors, operating over routes in Oregon, Idaho, and Utah. The essence of Mt. Hood's antitrust claim is that Greyhound acquired bus companies whose routes circled those of Mt. Hood and thereafter deprived Mt. Hood of connecting or "bridge" traffic with the purpose and effect of eliminating Mt. Hood as a substantial competitor.

Greyhound does not deny the sufficiency of the evidence to establish a violation of sections 1 and 2 of the Sherman Act, assuming that statute applies. Its principal contention is that Mt. Hood bases its claim upon acquisitions approved by the Interstate Commerce Commission and implementation by Greyhound of control over the acquired companies, and that such activities are immune from antitrust attack by virtue of section 5(11) of the Interstate Commerce Act, 49 U.S.C. § 5(11), applied in light of the Supreme Court's analysis in *Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U.S. 363, 93 S.Ct. 647, 34 L.Ed.2d 577 (1973).

Section 5(2) of the Interstate Commerce Act, 49 U.S.C. § 5(2), provides that one carrier may acquire another with Commission approval; the Commission is required to grant such approval, subject to any terms and conditions it deems reasonable, if the acquisition "will be consistent with the

1. The judgment was for $13,146,090 (after trebling) and attorneys' fees of $1,250,000, plus costs.

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...rom 1947 to 1956 Greyhound acquired ...t bus companies operating in the area ...vant here. Each acquisition was ap...ved by the Commission pursuant to sec...n 5(2). Mt. Hood opposed four of the ...isitions. It argued that if the acquisi...s were approved, Mt. Hood would be ...rcled and Greyhound could route traffic ...and it, depriving the public of the most ...venient service and Mt. Hood of reve...s necessary to its survival. Mt. Hood's ...ument to the Commission thus foreshad...ed its present antitrust claim.

Greyhound responded by representing to ... Commission that the acquisitions ...uld not adversely affect connecting car...s; that arrangements with such carri..., including interchange of traffic and ...n gateways, would be maintained; that ...s not the policy of Greyhound to route ...sengers over circuitous routes; that its ...nts were instructed to quote the direct ...te as well as one Greyhound route and ... passengers their choice; and that ...yhound had always carried [Mt. Hood's] ...edules in its folders and cooperated in ...ery way to acquaint the public with its ...vice and thus promote additional traffic ...d business for their lines."[2] Greyhound also represented to the Commission that Greyhound would continue a joint through-bus arrangement with Mt. Hood.[3] As the Commission later found, Greyhound intended the Commission to rely upon these representations in determining whether the proposed acquisitions were in the public interest, and the Commission did in fact rely upon them in approving the acquisitions.

In 1964 Mt. Hood filed a petition with the Commission pursuant to section 5(9) of the Act, 49 U.S.C. § 5(9),[4] asking it to reopen the acquisition proceedings and enter a supplemental order requiring Greyhound to live up to its representations. The allegations in Mt. Hood's petition to the Commission were essentially the same as those Mt. Hood later made in this antitrust suit—namely, that Greyhound had cancelled the through-bus connection, had scheduled connecting service so as to preclude reasonable connections with Mt. Hood, had directed Greyhound's agents and independent joint ticket agents to send traffic by longer routes around those of Mt. Hood, and had interfered in various ways with the distribution of Mt. Hood's schedules and the quotation of Mt. Hood's rates and services, all with the intent of injuring Mt. Hood. The United States intervened in support of Mt. Hood.

After an extensive evidentiary hearing, a hearing examiner resolved all issues against Greyhound and recommended entry of the order sought by Mt. Hood. In April, 1968, the Commission issued an opinion sustaining the examiner's findings that Greyhound had made the representations alleged, that Greyhound had intended the Commission to rely on them, that the Commission had re-

2. The quotation is from the Commission's opinion in the section 5(9) proceedings, described later. *Mt. Hood Stages, Inc.*, 104 M.C.C. 449, 452 (1968).

3. This agreement, initiated in 1949, provided for a through-bus from San Francisco, California, to Spokane, Washington, using Mt. Hood's cutoff route between Klamath Falls and Biggs, Oregon. Revenue and expenses were shared according to the miles traveled over each company's route. The arrangement shortened the San Francisco-Spokane trip by 110 miles and several hours as compared with the all-Greyhound route via Portland. It provided better service to travelers and was profitable for both companies.

4. Section 5(9) reads:

> *Supplemental orders by Commission.*—The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2), or (7) of this section, as it may deem necessary or appropriate.

lied on them in approving the acquisitions, that Greyhound had not fulfilled the representations, and that Greyhound's actions "were inspired by a desire to stifle competition" and "injure or destroy" Mt. Hood. *Mt. Hood Stages, Inc.*, 104 M.C.C. 449, 459–63 (1968). The Commission concluded that Greyhound's failure to abide by its commitment "constitutes destructive competition in contravention of the national transportation policy, is not consistent with the public interest, and provides good cause" for a supplemental order under section 5(9) of the Act. The Commission deferred entry of a supplemental order to allow voluntary negotiations between the parties. *Id.* at 462–63.

Two months later, in July, 1968, Mt. Hood filed this suit alleging violations of the antitrust laws and common law and statutory unfair competition. With respect to the antitrust violations the complaint alleged that, beginning in 1947 and continuing to the date of the complaint, Greyhound had restrained and monopolized commerce in the carriage of passengers and their luggage between points in Oregon, Idaho, and Utah by means essentially the same as those that were the subject of the Commission's proceeding; that is, the acquisition of independent bus lines with Commission consent obtained by the misrepresentations outlined by the Commission and thereafter engaging in the destructive competitive tactics found by the Commission. Greyhound sought, unsuccessfully, to eliminate these issues from the litigation on the ground that they fell within the exclusive jurisdiction of the Commission.

In the Commission proceedings, meanwhile, the efforts of the parties to agree upon an order failed. The Commission entered its own order requiring Greyhound to restore the practices and traffic patterns existing when the acquisitions at issue were authorized, and, specifically, to restore the joint through-bus service, to revise Greyhound's schedules to permit reasonable connections with Mt. Hood, to see that through routes and fares were quoted and quoted accurately, and to eliminate other destructive practices. *Greyhound Lines, Inc. v. United States*, 303 F.Supp. 1033, 1037 (N.D.Ill.1970). A three-judge district court affirmed the Commission and issued its own order in similar terms. *Id.* at 1040–41. Following entry of the district court order enforcing the Commission decision, Mt. Hood amended the complaint in this antitrust proceeding to eliminate the prayer for injunctive relief.

In June, 1971, the United States and the Commission filed petitions with the district court in the enforcement proceeding, asking that Greyhound be held in contempt for failing to comply with the court's order enforcing the Commission's decision. The court found Greyhound had willfully failed to comply with portions of the order and held Greyhound in criminal and civil contempt. *United States v. Greyhound Corp.*, 363 F.Supp. 525 (N.D.Ill.1973). The court imposed fines totaling $600,000, *United States v. Greyhound Corp.*, 370 F.Supp. 881, 883–85 (N.D.Ill.1974), ordered Greyhound to file semiannual reports of compliance efforts for five years, and granted members of the Department of Justice staff "visitorial and document examination rights . . . that they may further monitor Greyhound's compliance efforts," *id.* at 886. Because Greyhound appeared to be attempting to comply fully, no further injunctive relief was ordered.

While the proceeding to enforce the Commission's order was in progress, this antitrust case had come to trial and concluded with the verdict in Mt. Hood's favor. The opinion of the court in the enforcement proceeding noted that "many of Greyhound's actions that were found to be in violation of the order, were also found to be in violation of the antitrust laws" in this private suit. *Id.* at 884 n. 2. The enforcement court denied Mt. Hood's prayer for damages for expenses related to the contempt action and for injury to its business as a result of the contempt, on the ground that the damages awarded in this antitrust proceeding "will adequately compensate [Mt. Hood] for any damages it may have also suffered as a result of Greyhound's contempt. This is particularly true since

many of the same acts of Greyhound that were found to be contemptuous were also involved in the private antitrust case." *Id.* at 888. The court of appeals affirmed the criminal contempt convictions, stating, "the record of this case shows a flagrant disregard of a court order" that was intended "to insure that Greyhound would comply with representations it made at the acquisition hearings and cease its predatory practices toward Mt. Hood." *United States v. Greyhound Corp.*, 508 F.2d 529, 540-41 (7th Cir. 1974).

From this recital it is evident that the conduct underlying the regulatory proceedings and that underlying the antitrust suit are essentially the same. The Commission's authority to regulate this conduct is not challenged.

[1] Whether conduct Congress has made subject to administrative regulation is exempt from the antitrust laws depends upon Congress' intent. No direct evidence of a congressional intent relevant here has been cited.[5] The only applicable statutory language dealing with the question of antitrust immunity is that found in section 5(11), quoted above. The conduct charged in this action is not within the express exemption afforded by section 5(11), particularly because provisions of this kind are strictly construed.[6] Since the Commission approved the acquisitions in reliance upon Greyhound's commitment that the conduct underlying the antitrust complaint would not occur if the acquisitions were approved, it can hardly be argued that antitrust immunity for such conduct is "necessary" to enable Greyhound "to carry into effect the transaction so approved . . . and to hold, maintain, and operate any properties and exercise any control . . . acquired through such transaction."

The inclusion of this express exemption in the statute implies a congressional intention that conduct not within the exemption remains subject to the antitrust laws.[7] But this conclusion does not always follow; despite a grant of express immunity that does not cover the conduct charged, antitrust immunity may still be implied.[8]

[2] Because of the "fundamental national policies embodied in the antitrust laws," *Otter Tail Power Co. v. United States*, 410 U.S. 366, 374, 93 S.Ct. 1022, 1028, 35 L.Ed.2d 359 (1973), however, repeal of those laws is not lightly implied from congressional adoption of a regulatory scheme.[9] Conduct is not immunized merely because it falls within the jurisdiction of the regulatory

5. The subject of antitrust immunity was touched upon briefly during the House debates. 58 Cong.Rec. 8593-94 (1919). The scope of the immunity was not discussed. Representative Sanders assured other House members that the antitrust laws were not being "wiped out"—that a merger will only be allowed if it would benefit the public. *Id.*

6. *Federal Maritime Comm'n v. Seatrain Lines, Inc.*, 411 U.S. 726, 733, 93 S.Ct. 1773, 36 L.Ed.2d 620 (1973); *United States v. McKesson & Robbins, Inc.*, 351 U.S. 305, 316, 76 S.Ct. 937, 100 L.Ed. 1209 (1956).

7. *Carnation Co. v. Pacific Westbound Conference*, 383 U.S. 213, 216-17, 86 S.Ct. 781, 15 L.Ed.2d 709 (1966); *United States v. Borden Co.*, 308 U.S. 188, 201, 60 S.Ct. 182, 84 L.Ed. 181 (1939).

8. *See International Tel. & Tel. Corp. v. General Tel. & Elec. Corp.*, 518 F.2d 913, 918-19 & n. 24 (9th Cir. 1975). *Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U.S. 363, 93 S.Ct. 647, 34 L.Ed.2d 577 (1973), the decision relied upon most heavily by Greyhound, involved an express exclusion, and it is not entirely clear that the conduct that case held to be immunized from the antitrust laws was within the express exclusion, narrowly construed. The Court suggested as much when it noted, "a statutory scheme that does not create a total exception from antitrust laws may, nonetheless, in particular and discrete instances *by implication* grant immunity from an antitrust claim." *Id.* at 385 n. 14, 93 S.Ct. at 660 (emphasis added). The Supreme Court has twice cited *Hughes Tool* as a case in which immunity was implied. *See Gordon v. New York Stock Exch., Inc.*, 422 U.S. 659, 682, 95 S.Ct. 2598, 45 L.Ed.2d 463 (1975); *United States v. National Ass'n of Sec. Dealers, Inc.*, 422 U.S. 694, 734-35, 95 S.Ct. 2427, 45 L.Ed.2d 486 (1975).

9. *United States v. National Ass'n of Sec. Dealers, Inc.*, 422 U.S. 694, 719-20, 95 S.Ct. 2427, 45 L.Ed.2d 486 (1975); *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 350-51, 83 S.Ct. 1715, 10 L.Ed.2d 915 (1963).

agency,[10] as it did in this case. Immunity is not implied merely because the applicable regulatory standard requires the agency to give weight to antitrust policy,[11] as it did in this instance.[12]

The applicable interpretative standard was restated by the Supreme Court in *Cantor v. Detroit Edison Co.*, 428 U.S. 579, 597, 96 S.Ct. 3110, 3120, 49 L.Ed.2d 1141 (1976): "The Court has consistently refused to find that regulation gave rise to an implied exemption without first determining that exemption was necessary in order to make the regulatory act work, 'and even then only to the minimum extent necessary.'"[13] As the Court had written in the preceding term, "Certain axioms of construction are now clearly established. Repeal of the antitrust laws by implication is not favored and not casually to be allowed. Only where there is a 'plain repugnancy between the antitrust and regulatory provisions' will repeal be implied." *Gordon v. New York Stock Exchange, Inc.*, 422 U.S. 659, 682, 95 S.Ct. 2598, 2611, 45 L.Ed.2d 463 (1975).[14]

Applying these standards, we find no reason to imply immunity here. No "plain repugnancy" exists between the Interstate Commerce Act and the Sherman Act as applied to Greyhound's conduct, and it is not necessary to exempt Greyhound's conduct from antitrust restraints "to make the [Interstate Commerce Act] work." This is evident from the course taken in the administrative and judicial proceedings under both statutes. Clearly there has been no conflict between the regulatory and antitrust regimes. On the contrary, they have accommodated and supplemented each other. The policies of both have been advanced. There has been initial resort to the Commission for an application of its expertise to the factual issues relevant to whether application of the antitrust laws would be incompatible with regulatory objectives, *see Ricci v. Chicago Mercantile Exchange*, 409 U.S. 289, 93 S.Ct. 573, 34 L.Ed.2d 525 (1973), and the Commission has unqualifiedly indicated that it has not approved and continues to disapprove Greyhound's conduct under regulatory standards applied in the light of antitrust principles. *See Mt. Hood Stages, Inc.*, 104 M.C.C. 449, 458, 460–63 (1968) (citing *Marnell v. United Parcel Service of America, Inc.*, 260 F.Supp. 391 (N.D.Cal.1966)).

The remedies afforded under the two statutes have also meshed. The injunction issued in enforcement of the regulatory determination was not duplicated in the antitrust proceeding. In assessing the penalty for contempt for violation of that injunction, the court was careful to avoid the possibility of double damages. *See United States v. Greyhound Corp., supra*, 370 F.Supp. at 888. The losses sustained by Mt. Hood during the contempt period (approximately February 5, 1970, to March 15, 1973, *see id.* at 884 n.2) were only a small part of the total damages Mt. Hood sustained from the inception of Greyhound's wrongful conduct in 1947. The remaining damages could be and were recovered only in the antitrust action. Trebling the damages—an effective support for the competitive policy reflected in both statutes—could be and was accomplished only in the antitrust

10. *Cantor v. Detroit Edison Co.*, 428 U.S. 579, 596-97 n. 36, 96 S.Ct. 3110, 49 L.Ed.2d 1141 (1976); *Gordon v. New York Stock Exch., Inc.*, 422 U.S. 659, 692, 95 S.Ct. 2598, 45 L.Ed.2d 463 (1975) (Stewart, J., concurring); *Otter Tail Power Co. v. United States*, 410 U.S. 366, 372, 93 S.Ct. 1022, 35 L.Ed.2d 359 (1973).

11. *Gulf States Util. Co. v. Federal Power Comm'n*, 411 U.S. 747, 758–60, 93 S.Ct. 1870, 36 L.Ed.2d 635 (1973); *Otter Tail Power Co. v. United States*, 410 U.S. 366, 373, 93 S.Ct. 1022, 35 L.Ed.2d 359 (1973).

12. *Port of Portland v. United States*, 408 U.S. 811, 841, 92 S.Ct. 2513, 33 L.Ed.2d 723 (1972); *Northern Lines Merger Cases*, 396 U.S. 491, 511–16, 90 S.Ct. 708, 24 L.Ed.2d 700 (1970); *McLean Trucking Co. v. United States*, 321 U.S. 67, 83–87, 64 S.Ct. 370, 88 L.Ed. 544 (1944).

13. *Quoting Silver v. New York Stock Exch.*, 373 U.S. 341, 357, 83 S.Ct. 1246, 10 L.Ed.2d 389 (1963).

14. *Quoting United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 350–51, 83 S.Ct. 1715, 10 L.Ed.2d 915 (1963). *See International Tel. & Tel. Corp. v. General Tel. & Elec. Corp.*, 518 F.2d 913, 918–19 (9th Cir. 1975).

proceeding. Since the transactions involved affected the policies of both statutes and those policies were advanced and not impaired by the application of both statutes, it is reasonable to assume Congress would have intended both to apply.

Greyhound leans heavily upon *Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U.S. 363, 93 S.Ct. 647, 34 L.Ed.2d 577 (1973). From this decision Greyhound draws the general principle that when antitrust immunity is conferred by a statute upon participants in an acquisition approved by a regulatory agency, the immunity extends to conduct made possible by the acquisition, whether or not the conduct itself was approved, at least where the agency considered the possibility such conduct might occur and retained continuing jurisdiction to regulate it in the public interest.

But antitrust exemption is implied "*only* to the *minimum* extent necessary" to make the regulatory scheme work (emphasis added). Quoting this principle, and citing *Hughes Tool* and *Pan American World Airways, Inc. v. United States*, 371 U.S. 296, 83 S.Ct. 476, 9 L.Ed.2d 325 (1963), the Supreme Court recently wrote, "[W]e have implied immunity *in particular and discrete instances* to assure that the federal agency entrusted with regulation in the public interest could carry out that responsibility free from the disruption of conflicting judgments that might be voiced by courts exercising jurisdiction under the antitrust laws." *United States v. National Association of Securities Dealers, Inc.*, 422 U.S. 694, 734-35, 95 S.Ct. 2427, 2450, 45 L.Ed.2d 486 (1975) (emphasis added).

Greyhound's generalization may accommodate the facts of both *Hughes Tool* and the present case, but it omits the distinguishing particulars that made antitrust immunity appropriate in *Hughes Tool* and would make it inappropriate here. The crux of the distinction between the two cases is that, as the Supreme Court viewed the record in *Hughes Tool*, the regulatory agency involved had considered the type of conduct which underlay the antitrust complaint and had approved it as in the public interest;[15] a successful antitrust suit therefore necessarily would have been repugnant to operation of the regulatory scheme. The opposite is true in this case; the Interstate Commerce Commission did not contemplate Greyhound's challenged conduct as likely to occur and thus did not approve such conduct when it approved the acquisitions.[16] The Commission also subsequently disapproved that conduct.

In *Hughes Tool* the Civil Aeronautics Board issued orders approving acquisition of control of TWA by Hughes Tool Co. The applicable statute relieved persons affected by such an order from operation of the antitrust laws so far as necessary "to do anything authorized, approved or required by such order." Section 414, Federal Aviation Act, 49 U.S.C. § 1384. The agency-authorized control later ended, and an antitrust suit was brought by TWA against Hughes Tool Co. based upon transactions between the two during the period of Hughes Tool Co.'s control. The antitrust complaint alleged, in effect, that the controlling company had exercised its control to dictate the completion of the transactions in a way that injured the controlled company.

Hughes Tool Co.'s control of TWA was acquired in two steps—an initial acquisition of 45.6 percent of TWA's stock, and a later acquisition increasing Hughes Tool Co.'s holdings to 80 percent. Both acquisitions were approved by the Board. In hearings relating to the second acquisition the Board examined the manner in which Hughes Tool Co. had exercised its *de facto* control over TWA in the earlier period, particularly with respect to the acquisition of new flight equipment, which was the subject matter of the transactions on which the antitrust suit was based. The Board conceded allegations

15. *See In re REA Express, Inc.*, 412 F.Supp. 1239, 1261 (E.D.Pa.1976); *Air Freight Haulage Co. v. Ryd-Air, Inc.*, 408 F.Supp. 446 (S.D.N.Y. 1976).

16. *See Scroggins v. Air Cargo, Inc.*, 534 F.2d 1124, 1131 (5th Cir. 1976).

of abuse of the kind alleged in the antitrust complaint. Nonetheless, the Board concluded that continuation and enhancement of Hughes Tool Co.'s control was in the public interest. Moreover, the Board's order required that all substantial sales transactions between the two companies be submitted to the Board for approval, and, pursuant to this requirement, the transactions upon which the antitrust complaint rested were submitted to the Board and approved as in the public interest.

The Supreme Court noted that the subject matter of the Board's approval had been the acquisition and exercise by Hughes Tool Co. of control over the same kind of transactions as those at issue. *Hughes Tool, supra*, 409 U.S. at 386, 93 S.Ct. 647. By its approval the Board had determined that such control was in the public interest and consistent with the regulatory statute's prohibitions against monopoly and restraining competition. Sections 102(e) and 408(b), Federal Aviation Act, 49 U.S.C. §§ 1302(e) and 1378(b).[17] The Court further noted that the Board had also approved the very transactions underlying the antitrust suit as meeting the same standard. 409 U.S. at 379, 387, 93 S.Ct. 647.

An antitrust suit challenging these transactions, the Court said, would seek "to negate what the Board, after full investigation, had found consistent with § 408's anti-monopoly provision, consistent with § 102's competition standard, and consistent with the public interest." *Id.* at 388, 93 S.Ct. at 661. TWA's antitrust suit sought "to terminate a relationship the continuation of which the Board had found essential to both TWA and the public interest and to penalize the type of conduct which the Board expressly contemplated and preferred would continue unless and until a different order from the Board was forthcoming." *Id.*[18] The Court concluded that the transactions were exempt from suit under the Sherman Act.[19]

17. Acquisition of control of one company by another necessarily contemplates exercise by the parent of control over the internal business operations of the subsidiary. When the agency has approved acquisition of control, exclusive agency jurisdiction over its exercise is more readily implied. *See Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U.S. 363, 355 86, 93 S.Ct. 647, 34 L.Ed.2d 577 (1973), *citing Pan American World Airways, Inc. v. United States*, 371 U.S. 296, 83 S.Ct. 476, 9 L.Ed.2d 325 (1963), as such a case.

18. *See also Pan American World Airways, Inc. v. United States*, 371 U.S. 296, 309, 83 S.Ct. 476, 9 L.Ed.2d 325 (1963).

19. The Court summarized its holding in almost identical language at two points in the opinion:

At pages 387-88, 93 S.Ct. at page 661, the Court said:

> We repeat, however, what we said in the *Pan American* case that the Federal Aviation Act does not completely displace the antitrust laws. . . . But where, as here, the CAB authorizes control of an air carrier to be acquired by another person or corporation, and where it specifically authorizes as in the public interest specific transactions between the parent and the subsidiary, the way in which that control is exercised in those precise situations is under the surveillance of the CAB, not in the hands of those who can invoke the sanctions of the antitrust laws. As noted, the parent company which controls an air carrier is subject to pervasive control by the CAB. The control which the CAB is authorized to grant or to deny under § 408 involves an appraisal of the impact of that control in terms of monopoly and competition; and the ongoing supervision entrusted to the CAB by § 415 is broad enough to put all transactions between parent and subsidiary—as originally conceived or subsequently exercised—under CAB supervision.

And again at page 389, 93 S.Ct. at page 661-662:

> We by no means hold that the Federal Aviation Act completely displaces the antitrust laws. *Pan American*, 371 U.S., at 305, 83 S.Ct. at 482. But where, as here, the CAB authorizes control of an air carrier to be acquired by another person or corporation, and where the CAB specifically authorizes as in the public interest specific transactions between the parent and the subsidiary, the way in which that control is exercised in those precise situations is under the surveillance of the CAB, not in the hands of those who can invoke the sanctions of the antitrust laws. The control which the CAB is authorized to grant or to deny under § 408 involves an appraisal of the impact of that control in terms of monopoly and competition; and the ongoing supervision entrusted to the CAB by § 415 is broad enough to put all transactions between parent and subsidiary—as originally conceived or subsequently exercised—under CAB supervision.

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In sum, in *Hughes Tool*, the propriety under the regulatory statute of the activity challenged in the antitrust suit (control by Hughes Tool Co. of the manner in which its TWA subsidiary acquired new aircraft) was the central issue presented to the agency for consideration in the exercise of its regulatory authority, and the agency had resolved the issue by approving such control as in the public interest. Exemption from the antitrust laws was implied because a successful application of the antitrust laws to the conduct would have negated the regulatory agency's determination and faced the regulated carrier with inconsistent governmental commands. In the present case, as has been seen, the premise of inconsistent regulatory and antitrust demands is absent. Also unlike *Hughes Tool*, the instant suit is not brought by a subsidiary against its parent and does not challenge the effect on the acquired company of the daily intercompany control that was integral to the acquisition. *See also Pan American World Airways v. United States*, 371 U.S. 296, 83 S.Ct. 476, 9 L.Ed.2d 325 (1963). Rather, the instant suit is brought by a third party to the approved acquisitions, challenging conduct with regard to the third party that not only was not integral to the Commission's acquisition approvals but was violative of specific representations made by Greyhound at the acquisition hearings. In these circumstances, Greyhound's conduct is not immune from antitrust strictures.

20. *See Gordon v. New York Stock Exch., Inc.*, 422 U.S. 659, 688, 95 S.Ct. 2598, 45 L.Ed.2d 463 (1975).

21. For example, Greyhound requested an instruction that since the Commission had approved the acquisitions, "the manner in which defendants have used or exercised the control of these carriers" was within the exclusive jurisdiction of the Commission, and therefore the jury "must exclude from [its] consideration all conduct by defendants involving exercise of control over the acquired bus companies." Greyhound also requested instructions referring to the specific conduct the Commission had condemned, and telling the jury that regulation of such conduct was within the exclusive jurisdiction of the Commission and could not be the basis of any findings by the jury. In addition, Greyhound requested an instruction essentially in the words of the statute, telling the jury that the antitrust laws did not apply to the approved acquisitions "or to anything done by defendants which was necessary to hold, maintain or operate the properties or operating rights obtained in these approved transactions." Since the scope of the immunity conferred by the statute was a legal question for the court to decide, this instruction was properly refused. *See* note 20, *supra*, and related text. The court's decision as to the scope of the statutory immunity shaped and conditioned the court's instructions spelling out what facts the jury must find before Greyhound could be held liable.

II.

Jury Instructions and Admission of Evidence

Many of Greyhound's assertions of error in evidentiary rulings and instructions rest upon Greyhound's theory of antitrust immunity and fall with it.

Greyhound complains of the district court's "failure to instruct on Section 5(11)." It is not clear precisely what Greyhound has in mind. The extent to which Greyhound's conduct was exempt from the antitrust laws by the Interstate Commerce Act was a legal question, not an issue of fact for the jury.[20] The instructions proposed by Greyhound were properly rejected for this reason and because they reflected Greyhound's uncompromising position that the acquisitions approved by the Commission and all conduct involving exercise of control over the acquired carriers were exempt from the antitrust laws and were not to be considered by the jury for any purpose whatever.[21]

[3] The court was required to provide the jury with standards to apply in determining whether Greyhound was liable under the antitrust laws, and it did so. The court defined the elements of monopolization, attempt to monopolize and unreasonable restraint of trade in the usual way, and Greyhound does not object to these instructions in themselves. The court also told the jury that the fact that Greyhound was reg-

ulated affected what activities of Greyhound were subject to the antitrust laws; that in a regulated industry the existence of monopoly power was not evidence of monopolization, but "use of monopoly power even if lawfully acquired, to foreclose or restrain competition, to gain a competitive advantage or to eliminate a competitor" was such evidence.[22] Under these instructions the jury could not base a finding of monopolization on the approved acquisitions themselves; improper use of the acquired power was required. This was at least as favorable to Greyhound as the law warranted.

Greyhound objects to the admission of evidence regarding the administrative and related court proceedings, and to jury instructions that this evidence could be considered "in determining the issue of Greyhound's motive, intent and purpose and reasonableness of its behavior." Greyhound objects on several grounds, but primarily on the basis of Greyhound's immunity argument, which we have rejected. Greyhound's other objections are also without merit.[23] The evidence was properly used for the purpose stated by the court.

The lengthy instructions contained two brief passages apparently inspired by *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172, 177, 86 S.Ct. 347, 15 L.Ed.2d 247 (1965), and *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972). Greyhound argues that these passages permitted imposition of liability if the jury found no more than that Greyhound had perpetrated a fraud on the Commission or had acted in bad faith in the administrative and related judicial processes, rendering those processes ineffective. Even considered alone, however, both passages also required the jury to find, as a condition of liability, that the fraud or abuse of process resulted in an administrative order that conferred a monopoly or an unreasonable competitive advantage upon Greyhound. At most, therefore, the only question raised by these passages is whether the doctrine of *Walker Process* applies outside the patent field.

When the passages are read in light of the parties' contentions, the evidence in the case, and the instructions as a whole, however, we do not believe they present even this issue. Mt. Hood did not contend that the acquisitions themselves or the power Greyhound gained through them, standing alone, constituted a violation of the antitrust laws. Mt. Hood relied instead upon Greyhound's exclusionary practices made possible by the acquisitions. The instructions were generally to the same effect. The jury was not instructed on any theory that Greyhound's purchase of other carriers might constitute the unlawful acquisition of monopoly power. On the contrary, as we have seen, the jury was told that in such a

22. The quoted portion of the instruction is settled law. *See Otter Tail Power Co. v. United States*, 410 U.S. 366, 377, 93 S.Ct. 1022, 35 L.Ed.2d 359 (1973); *United States v. Griffith*, 334 U.S. 100, 107, 68 S.Ct. 941, 92 L.Ed. 1236 (1948). Indeed, section 2 is violated if exclusionary tactics are used to maintain a lawfully acquired monopoly. *Industrial Building Materials, Inc. v. Interchemical Corp.*, 437 F.2d 1336, 1344–45 (9th Cir. 1970), *interpreting United States v. United Shoe Machinery Corp.*, 110 F.Supp. 295, 343 (D.Mass.1953), *aff'd per curiam*, 347 U.S. 521, 74 S.Ct. 699, 98 L.Ed. 910 (1954). *See also TV Signal Co. v. American Tel. & Tel. Co.*, 462 F.2d 1256, 1261 (8th Cir. 1972).

23. One of these additional grounds of objection warrants brief comment. Greyhound argues that the instructions permitting use of evidence of the administrative proceedings in determining Greyhound's intent and the reasonableness of its conduct "infringe" Greyhound's constitutional privilege to seek relief before administrative agencies, *citing Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961). But "[i]t is well settled that First Amendment rights are not immunized from regulation when they are used as an integral part of conduct which violates a valid statute." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 514, 92 S.Ct. 609, 613, 30 L.Ed.2d 642 (1972). The antitrust laws have been applied in many factual contexts that included utilization of administrative processes by the antitrust violator. *See, e. g., Otter Tail Power Co. v. United States*, 410 U.S. 366, 93 S.Ct. 1022, 35 L.Ed.2d 359 (1973); *Aloha Airlines, Inc. v. Hawaiian Airlines, Inc.*, 489 F.2d 203 (9th Cir. 1973).

regulated industry the mere possession of monopoly power did not violate the Sherman Act, and that abuse of monopoly power to eliminate competition was required. The only fraud or abuse of process presented by the evidence was that Greyhound represented to the Commission that it was not using and would not use any of the acquired routes to engage in the predatory practices we have outlined earlier, and that Greyhound nonetheless did so. Since these same predatory practices underlay Mt. Hood's antitrust claim, since the instructions also conditioned liability upon a finding of monopolization or unreasonable restraint of competition defined in the usual way, and since the judge properly ruled without submitting the issue to the jury that Greyhound's challenged conduct was not immunized from antitrust attack, the passages amounted to no more than a reiteration in another form of the general instruction that unreasonable restraint of competition or use by Greyhound of monopoly power to foreclose or restrain competition would violate the antitrust laws.[24]

Greyhound attacks the use made at trial of two antitrust consent decrees entered into by Greyhound and the United States. The decrees, which were admitted in evidence, prohibited Greyhound from refusing to establish through-routes with competitors and from continuing other practices the same as or similar to those charged in this suit. The jury was told it could consider the decrees and Greyhound's conduct with respect to obeying or disobeying them in determining the issues of Greyhound's intent and purpose and the reasonableness of Greyhound's behavior.

[4-6] A trial judge must be accorded "wide latitude" in determining the relevance of evidence in antitrust cases. *Gray v. Shell Oil Co.*, 469 F.2d 742, 751 (9th Cir. 1972). The admissibility of a consent decree is a matter committed to the court's discretion. *See Control Data Corp. v. IBM Corp.*, 421 F.2d 323, 326 (8th Cir. 1970). *See also Vitagraph, Inc. v. Perelman*, 95 F.2d 142, 146 (3d Cir. 1938). There was no abuse of discretion here. The court warned the jury of the limitations implicit in decrees entered into by consent, and confined their use to a proper purpose.

Greyhound's claim that the jury should not have been asked to determine whether Greyhound had a dominant share of the market because Greyhound's market share resulted from ICC-approved transactions is but another reflection of Greyhound's rejected theory of immunity.

Other objections to the instructions regarding the relevant market are without merit. While it is true that the court did not refer to the "interchangeability of services" in those terms, the court accomplished the same purpose by use of illustrations and by instructing the jury that a "relevant" market must be one for a "distinct service" with "peculiar characteristics," serving "distinctive purposes," with "dissimilar" price characteristics, and relatively "insensitive to price variations," so that an increase in bus fares would not result in large numbers of customers switching to other forms of intercity transportation. If these indices of distinctness were not found, the jury was told, intercity bus transportation would not constitute a relevant market for antitrust purposes.[25]

III.

Statute of Limitations

The jury awarded Mt. Hood damages for injuries sustained from 1953 to 1973. The applicable statute of limitations, 15 U.S.C. § 15b, bars all claims on which suit is not commenced within four years after they accrue—in this case, all claims that accrued

24. Thus even if appellant was entitled to an instruction that "fraud" must be proven by "clear and convincing" evidence, as Greyhound urges, failure to give it was harmless under Fed.R.Civ.P. 61.

25. Greyhound contends the jury was instructed as to several contentions for which there was no evidentiary support. We have examined the record with respect to each of these issues and conclude that either there was sufficient evidence to justify an instruction or the instruction was harmless under Fed.R.Civ.P. 61.

before July 5, 1964, since Mt. Hood's suit was filed on July 5, 1968. However, Mt. Hood asserts that the running of the limitations period was suspended from 1953 to 1960 by Greyhound's fraudulent concealment of its wrongdoing, and from 1964 to the date of suit by the intervention and participation of the United States in the section 5(9) proceedings brought by Mt. Hood before the Commission.[26]

[7] In accordance with the universal rule, our circuit holds that fraudulent concealment of the existence of an antitrust cause of action tolls the four-year statute of limitations provided by section 15b.[27] The jury found Greyhound had fraudulently concealed its antitrust violations from 1953 to December 14, 1960, and that Mt. Hood neither knew nor should have known of these violations prior to December 14, 1960.

Greyhound does not deny the sufficiency of the evidence to show it attempted to conceal its conduct. It argues, however, that Mt. Hood had notice of Greyhound's activities long before December 14, 1960.

The record shows that Mt. Hood complained about quoting and routing practices of Greyhound agents on various occasions during the 1953-1960 period. The record also shows, however, that Greyhound continuously represented to Mt. Hood and to the Commission that these were isolated incidents not countenanced by Greyhound's management.[28]

The record shows that Mt. Hood suspected Greyhound of unlawful conduct prior to December 14, 1960, but "[s]uspicion will not substitute for knowledge of facts from which fraud could reasonably be inferred." *Friedman v. Meyers*, 482 F.2d 435, 439 (2d Cir. 1973).

There was evidence that Mt. Hood's president expressed concern over Greyhound's expansion by acquiring other carriers, and that he also stated his belief that the consent decrees were being violated. Awareness of Greyhound's growing dominance of the market was not equivalent to notice of monopolization, however, for the acquisitions were approved by the Commission and presumably immunized from the antitrust laws. Nor was knowledge of violations of the consent decrees equivalent to such notice, for, as Greyhound itself is careful to point out, violations of consent decrees are not in themselves violations of the antitrust laws.

Greyhound asserts that Mt. Hood was charged with the duty to investigate once it became aware of facts from which antitrust violations should reasonably have been inferred.[29] But in the face of Greyhound's assurances and denials of responsibility, we cannot say as a matter of law that Mt. Hood's awareness of the growth of Greyhound's power through acquisitions and of the commission of predatory acts by some of Greyhound's agents amounted to notice

26. *See* note 4, *supra*, and related text. The period of fraudulent concealment and the government intervention tolling period can be "tacked" or "bridged" to suspend the statute for the entire period since the time between the two did not exceed four years, albeit short by only a day. *See, e. g., City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 460-61 (2d Cir. 1974); *Union Carbide & Carbon Corp. v. Nisley*, 300 F.2d 561, 567-72 (10th Cir. 1962); *Maricopa County v. American Pipe & Constr. Co.*, 303 F.Supp. 77, 84-86 (D.Ariz.1969), *aff'd*, 431 F.2d 1145 (9th Cir. 1970).

27. *Westinghouse Elec. Corp. v. Pacific Gas & Elec. Co.*, 326 F.2d 575 (9th Cir. 1964); *accord, Charlotte Telecasters, Inc. v. Jefferson-Pilot Corp.*, 546 F.2d 570 (4th Cir. 1976); *Dayco Corp. v. Goodyear Tire & Rubber Co.*, 523 F.2d 389 (6th Cir. 1975); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974); *Crummer Co. v. Du Pont*, 255 F.2d 425 (5th Cir. 1958).

28. Greyhound argues that such representations, denials, and other attempts at concealment are immaterial, citing such cases as *Foster & Kleiser Co. v. Special Site Sign Co.*, 85 F.2d 742, 752 (9th Cir. 1936); *Feak v. Marion Steam Shovel Co.*, 84 F.2d 670, 673 (9th Cir. 1936). But as these cases demonstrate, attempts at concealment lose their relevance only when they occur after plaintiff already knew or should have known of the unlawful conduct. In the present case the jury weighed the evidence and concluded that, in part because of Greyhound's attempts at concealment, Mt. Hood neither knew or should have known of Greyhound's antitrust violation.

29. *See* note 26, *supra*, and cases cited therein.

of potential antitrust claims against Greyhound.

We conclude, therefore, that the trial court properly refused to set aside the jury's determination that Greyhound fraudulently concealed its antitrust violation, and that Mt. Hood had neither actual nor constructive knowledge of the violation until December 14, 1960.

[8] Four years later, on December 14, 1964, one day before Mt. Hood's antitrust claim would have been barred, the United States intervened in the section 5(9) proceedings Mt. Hood had instituted before the Commission in October, 1964. The trial court held that, under the provisions of 15 U.S.C. § 16(i), the intervention and the subsequent participation by the United States in the Commission proceedings tolled the running of the statute of limitations until those proceedings terminated in 1974, well after the filing of the present suit.

Section 16(i) provides that running of the limitations period on a private cause of action is suspended during the pendency of "any civil or criminal proceeding . . . instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws."[30] Greyhound argues that section 16(i) is inapplicable because the administrative proceedings were not "instituted by the United States" and because they were not proceedings "to prevent, restrain, or punish violations of any of the antitrust laws."

The literal wording of section 16(i) is not controlling. Where one possible interpretation of the language would effect the congressional purpose and another defeat it, the former is to be adopted. *Minnesota Mining & Manufacturing Co. v. New Jersey Wood Finishing Co.*, 381 U.S. 311, 321, 85 S.Ct. 1473, 14 L.Ed.2d 405 (1965). The clearly expressed purpose of section 16(i) is to further effective enforcement of the antitrust laws by permitting private litigants to have the benefits that may flow from governmental antitrust enforcement efforts. *Id.* at 320, 85 S.Ct. 1473. This purpose would be served by interpreting section 16(i) to encompass the government's intervention and participation in the section 5(9) proceedings before the Commission—a reading the language readily permits.

The proceedings were of a kind likely to produce benefits to Mt. Hood as a plaintiff in a subsequent antitrust suit.[31] The issues, as we have seen, were largely the same. Governmental investigative and legal resources were made available to fully develop the facts and the law favorable to the common position of the government and Mt. Hood on these issues. The successful resolution of these issues was critical to the defeat of Greyhound's claim of antitrust immunity.

It would make form controlling to hold section 16(i) inapplicable merely because Mt. Hood rather than the United States instituted the proceedings. The United

30. 15 U.S.C. § 16(i) reads in part:

> Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws . . . the running of the statute of limitations in respect of every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however,* That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 or 15c of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

31. The question is not whether the government proceedings actually conferred benefits upon the private antitrust plaintiff, but whether the character of the proceedings was such that they were likely to do so. Thus in analyzing the issue the Supreme Court spoke of government action which "may aid the private litigant." *Minnesota Mining & Manufacturing Co. v. New Jersey Wood Finishing Co.*, 381 U.S. 311, 319, 85 S.Ct. 1473, 14 L.Ed.2d 405 (1965). If actual benefit were the test, it might be impossible to determine whether the government proceedings would toll the running of limitations until those proceedings were finally concluded. Private plaintiffs would be compelled to file their antitrust suits although government proceedings involving the same subject matter were still in progress.

States intervened little more than 60 days after the filing of Mt. Hood's petition and participated actively in all subsequent stages of proceedings that required nearly a decade to complete. Nothing would be gained, and a good deal of judicial and administrative time and efficiency would be lost, if the United States were compelled to institute a separate independent proceeding in district court under 15 U.S.C. § 26 to assure private treble damage litigants the benefits Congress intended they should have from the government's action. As the trial court concluded, "the Congressional intent behind [16(i)] is better served by treating intervention by Antitrust Division lawyers as the functional equivalent of a direct action by them."

In addition to relying on the language of the statute, Greyhound argues that section 16(i) applies only when the United States initiates rather than intervenes in a proceeding because of the Supreme Court's statement in *Minnesota Mining* that the purpose of section 16(i) is to permit private parties the benefit of *"prior government actions."* 381 U.S. at 320, 85 S.Ct. 1473 (emphasis by Greyhound). Obviously, the Court was referring only to actions occurring before the antitrust suit was commenced. Greyhound's argument epitomizes the kind of "grudging interpretation" which "would collide head-on with Congress' basic policy objectives." *Id.*

When the substance of the government's intervention and participation before the Commission is examined, it fall's fairly within the class of proceedings "to prevent, restrain, or punish violations of any of the antitrust laws" to which section 16(i) applies. It is not controlling that the government's action was taken in an administrative rather than judicial setting, *Minnesota Mining, supra*, 381 U.S. at 320, 85 S.Ct. 1473, nor that the proceedings were not brought under the antitrust laws, *Luria Steel & Trading Corp. v. Ogden Corp.*, 484 F.2d 1016, 1020–21 (3d Cir. 1973); *Rader v. Balfour*, 440 F.2d 469. 473 (7th Cir. 1971). The government action suspends the running of the limitation period under section 16(i) if it "is directed at alleged conduct which appears to involve an existing or incipient violation of the antitrust laws," *Rader v. Balfour, supra*, 440 F.2d at 473, for it is government participation in such a proceeding that is likely to produce the benefits that Congress intended plaintiffs in later private treble damage actions to have.

The government's petition to intervene demonstrates that its interest lay in the possibility of antitrust violations should Mt. Hood's allegations prove correct. To explain its interest in the proceedings and its desire to participate as a party, the government stated:

> The allegations of the petition of Mt. Hood Stages, Inc. make a serious charge: that Greyhound has been permitted through the series of acquisitions the Commission approved in these proceedings to extend its system in all directions around Mt. Hood; that Greyhound has now begun to route around Mt. Hood over all Greyhound routes traffic which it used to interchange with Mt. Hood or handle in through buses over shorter and quicker routes and to engage in numerous other acts and practices which as they are described in Mt. Hood's petition (pp. 8–9) have in the aggregate the appearance of a studied effort to force Mt. Hood out of business. . . .

The petition noted Mt. Hood's increasing vulnerability to and dependence on Greyhound. It referred to Greyhound's "predatory conduct" and to the possibility of Mt. Hood's "extinction at the hands of an infinitely more powerful rival." The petition concluded:

> Behind the immediate issues before the Commission are further issues of applicability of the antitrust laws. The Commission's approvals of the acquisitions relieved Greyhound and its officials from accountability under these laws only to the extent necessary to put the acquisitions into effect. While actions taken to give effect to the acquisitions are completely immune, exercise of economic power the acquisitions conferred so as to isolate and destroy a competitor is not.

As Greyhound itself admitted before the district court in its motion to dismiss the complaint, a purpose of the Justice Department's intervention was "to assure the adequate consideration of antitrust issues."

Antitrust issues were an appropriate part of the proceedings. The Commission was required to consider the anticompetitive effects of the section 5(2) transactions in framing, and modifying, its order.[32] Early in the proceedings Greyhound was reminded "that the antitrust laws and the national transportation policy . . . offer certain broad guidelines to be kept in mind in determining this proceeding." *Mt. Hood Stages, Inc., supra*, 104 M.C.C. at 451. The Commission rested its decision upon the conclusion that Greyhound's conduct "constitutes destructive competition in contravention of the national transportation policy." *Id.* at 462.[33] In sustaining the Commission's order the district court wrote:

> It is inconceivable to us that Congress intended that destructive practices made possible by acquisition approvals may not be corrected by supplemental order under Section 5(9), especially in light of the ICC's duty to take the antitrust policy of the United States into account in its decision making.

Greyhound Lines, Inc. v. United States, supra, 308 F.Supp. at 1038.

Because Congress' purpose in enacting section 16(i) will be served by this interpretation, and because the language of the section does not bar it, we conclude that the government's intervention in the section 5(9) proceedings on December 14, 1964, tolled the running of the limitations period from that date.[34] Accordingly, Mt. Hood's antitrust complaint was timely filed.

IV.

Damages and Attorneys' Fees

[9] Greyhound contends that Mt. Hood failed to offer adequate proof either that Mt. Hood was injured by Greyhound's conduct or of the amount of the damage. With respect to the fact of damage, Greyhound's claim is frivolous. The jury may infer the fact of damage if "plaintiff proves a loss, and a violation by defendant of the antitrust laws of such a nature as to be likely to cause that type of loss." *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 697, 82 S.Ct. 1404, 1409, 8 L.Ed.2d 777 (1962). Mt. Hood offered evidence that its bridge traffic declined sharply during the relevant period.[35] Greyhound's conduct found to violate the antitrust laws was directed at creating precisely this kind of loss.[36] There was no indication of an alternative source of loss sufficient to negate an inference that Greyhound's violation was a material cause. *Zenith Radio Corp. v. Hazeltine Research,*

32. *Port of Portland v. United States*, 408 U.S. 811, 841, 92 S.Ct. 2513, 33 L.Ed.2d 723 (1972); *Northern Lines Merger Cases*, 396 U.S. 491, 511-16, 90 S.Ct. 705, 24 L.Ed.2d 709 (1970); *McLean Trucking Co. v. United States*, 321 U.S. 67, 83-87, 64 S.Ct. 370, 88 L.Ed. 544 (1944).

33. The Commission rejected Greyhound's argument that Greyhound's practices were not in themselves unlawful on the basis of the antitrust principle that "actions which are not in themselves unlawful may be unlawful when they are part of a plan to monopolize or restrain commerce." *Mt. Hood Stages, Inc.*, 104 M.C.C. 449, 458 (1968). The Commission cited the Sherman Act case of *Marnell v. United Parcel Service of America, Inc.*, 260 F.Supp. 391 (S.D.Cal.1966).

34. We need not reach Mt. Hood's contention that the statute was tolled to December 14, 1960, by virtue of Mt. Hood's commencement of the section 5(9) proceedings.

35. Mt. Hood offered evidence, for example, that Mt. Hood's bridge traffic consisted of 25,258 passenger trips, or approximately 44 percent of the total relevant bridge traffic, in 1963 and had fallen to 930 passenger trips, or approximately three percent of the total, by 1969.

36. As described previously, Mt. Hood alleged and offered substantial evidence to prove that Greyhound had cancelled the north-south through-bus connection arrangement on which Mt. Hood depended for a substantial portion of its traffic, scheduled its services so as to preclude reasonable connections with Mt. Hood, directed independent and joint ticket agents to long-haul traffic around Mt. Hood, and interfered with distribution of Mt. Hood schedules.

Inc., 395 U.S. 100, 114 n. 9, 89 S.Ct. 1562, 23 L.Ed.2d 129 (1969).

Mt. Hood's proof of the amount of damage was less certain, and necessarily so. What Mt. Hood's business volume and profits would have been except for Greyhound's antitrust violation is inescapably uncertain. *See Flintkote Co. v. Lysfjord*, 246 F.2d 368, 391 (9th Cir. 1957). In such a case, the amount of damages may be shown "as a matter of just and reasonable inference, although the result be only approximate." *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 563, 51 S.Ct. 248, 249, 75 L.Ed. 544 (1931).

The premise of Mt. Hood's calculation of lost profits was that 95 percent of bus passengers would have traveled Mt. Hood's shorter bridge routes if they had had that choice. Greyhound asserts that Mt. Hood's premise "defies the record as well as common sense and is untenable," and therefore the entire calculation of damage fails. There was ample evidence from which the jury could reasonably infer that the shortest bus route is generally fastest, including studies comparing Greyhound's and Mt. Hood's schedules from 1950 to 1970 with regard to mileage and time.[37] Mt. Hood also introduced evidence from which the jury could reasonably infer that as a general rule 95 percent of bus passengers would take the fastest route when given a choice.[38] It is of course true that the evidence did not demonstrate to a certainty that 95 percent of passengers would have traveled Mt. Hood's shorter routes absent the restraints imposed by Greyhound's violation, but in the nature of the case proof to a certainty is not possible and is not required.

Greyhound challenges virtually every other facet of Mt. Hood's proof of damage. We have examined each of Greyhound's objections in light of Mt. Hood's response and the evidence in the record. No useful purpose would be served by a tedious recapitulation of these materials. We are satisfied that the evidence offered by Mt. Hood permitted the jury to make a reasonable and just inference of the amount of Mt. Hood's damage.[39]

[10] We also sustain the award of attorneys' fees. Greyhound objects that the amount of the award divided by the number of hours devoted to the litigation by plaintiff's attorneys yields an exorbitant hourly rate. But as the experienced trial judge stated, "compensation at an hourly rate would be inadequate in a case of this kind," which "is, in many ways, unusual, . . . its complexity and difficulty set it apart from the common run of antitrust cases, if such a category in fact exists." The trial court based the award upon knowledge gained in four years' involvement in all aspects of the case, the evidence presented by the parties on this issue, and the factors prescribed in *Twentieth Century Fox Film Corp. v. Goldwyn*, 328 F.2d 190 (9th Cir. 1964). The award represented an appropriate exercise of the district court's discretion.

Affirmed.

37. These studies were part of a larger damage study commissioned by Mt. Hood. The study was supplemented by the testimony of three expert witnesses over a two-week period. The study was based on statistical computations verified by Arthur D. Little & Co., an independent management consulting firm. Mr. Jizmagian, Arthur D. Little & Co.'s representative who supervised the study, testified that maximum use was made of all available data supplied by Greyhound, and where such data was not available every assumption and method "and every use of statistics and every use of ratios was done . . . with standard statistical techniques and there was, in my opinion, no speculative use of numbers." He concluded that the study accurately reflected Mt. Hood's damages.

38. For example, Mt. Hood's damage study, *see* note 37, *supra*, included a comparison of passenger utilization of three available "'All Greyhound' routes from Oregon and Washington points to Los Angeles," showing that more than 95 percent of the bus passengers chose the shortest of the three available routes.

39. This holding also encompasses the damage awards for express traffic Mt. Hood lost between 1964 and 1971, and for local traffic it lost between 1964 and 1970.

from —

Bennett C. Whitlock, Jr., President
American Trucking Associations
1616 P Street, N.W., Washington, D. C. 20036

No. 4
January 23, 1979

truck line

KENNEDY TO SEEK ABOLITION OF COLLECTIVE RATEMAKING

Senator Ted Kennedy is going to introduce legislation to abolish collective ratemaking in the trucking industry.

At a jammed press conference on Capitol Hill January 22, Senators Kennedy (D-Mass.) and Howard Metzenbaum (D-Ohio), along with a host of supporters, announced plans to seek an amendment bringing truck and freight forwarder ratemaking under the Clayton Antitrust Act, and subsequently repeal the industry's exemption from the antitrust laws.

ATA responded immediately with a statment blasting the bill, saying that it "demonstrates a complete lack of understanding of the complexities of the system of freight transportation." Our full statement is attached.

QUESTIONS ON CARTER POSITION, COMMITTEE JURISDICTION

Two aspects of this development are exceedingly important. One is the apparent waffling of the Carter administration on whether it should support the Kennedy bill. The other is that Kennedy's initiative has precipitated a fight in the Senate over committee jurisdiction.

CONFLICTING STATEMENTS

The confusion over President Carter's position stems from conflicting statements from the administration and Kennedy. Just hours before the Kennedy press conference, President Carter told a delegation of motor carrier executives that he has not made up his mind on truck deregulation. At the same time, two top Carter advisors, Ambassador-at-large Robert Strauss and assistant to the President for Domestic Affairs and Policy Stuart Eisenstat, told the executives that the administration had no position on the Kennedy bill. But at his press conference later that day, Kennedy said Carter has endorsed the bill.

(more)

ATA TELEGRAM

ATA has telegrammed President Carter a summary of the conflicting statements, saying that if he does support the bill, then continued discussion on the administration's position is moot since effective regulation is not possible without collective ratemaking. A copy of the telegram is attached.

KENNEDY, CANNON FIGHT OVER JURISDICTION

The jurisdiction fight is between Kennedy, who is chairman of the Judiciary Committee, and Senator Howard Cannon (D-Nev.), chairman of the Commerce Committee. Each thinks the issue belongs in his own committee, and Cannon has told Senate Majority Leader Robert Byrd (D-W. Va.) that he will object to joint referral and will appeal sole referral to the Judiciary Committee.

Cannon told Byrd that no matter how the bill is drafted it will go to the heart of truck regulation and thus clearly falls into the jurisdiction of the Commerce Committee. He pointed out that the Reed-Bulwinkle Act of 1948, which exempts regulated trucking from the antitrust laws, originated in the Commerce Committee, and that it would be unprecedented for legislation passed by one committee be referred to a different committee for repeal. Asked about this, Kennedy said the bill belongs in his committee because it initially addresses a provision of the Clayton Antitrust Act rather than the Interstate Commerce Act or Reed-Bulwinkle.

CANNON COMMITTEE BEST FOR TRUCKING

The industry's best hope in this is that the matter gets referred to the Commerce Committee. Cannon may wind up supporting the bill, but at least his mind is open. Kennedy has already decided that trucking should be deregulated and any hearing conducted by him would be a stacked deck.

KENNEDY SUPPORTERS

A wide range of interests were represented by supporters of the bill at Kennedy's press conference. Among them were: Alfred Kahn, the President's counsellor on inflation, who said the bill is an important plank in the administration's fight against inflation; Esther Peterson, the President's consumer affairs advisor; John Shenefield, assistant attorney general for antitrust; Rep. Parren Mitchell (D-Md.), who endorsed the bill on behalf of minority interests; Rep. Millicent Fenwick (R-N.J.); Ralph Nader, who called for legal action against the "entrenched corruption" in trucking that is protected by the "puppet" ICC; and representatives of groups such as the National Association of Manufacturers, the American Conservative Union and the American Farm Bureau.

(more)

Kennedy said this bill is a first step in a larger effort to restore genuine competition to trucking. He laid the groundwork for his proposal over the last 16 months with extensive hearings on collective ratemaking and entry.

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NEWS

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NEWS SERVICE DEPARTMENT • (202) 79 5237 • Rupert Welch • Home Phone: (202) 332-3859

FOR IMMEDIATE RELEASE

AMERICAN TRUCKING ASSOCIATIONS STATEMENT

WASHINGTON, Jan. 22 -- The American Trucking Associations, Inc., has issued the following statement on the proposal made by Sen. Edward M. Kennedy (D-Mass.):

Introduction of legislation to repeal the antitrust exemption which permits shippers and truckers to openly discuss rate proposals and which allows truckers to collectively vote on rate proposals to be considered by the Interstate Commerce Commission demonstrates a complete lack of understanding of the complexities of the system of freight transportation.

Collective ratemaking is at the very heart of carrying out the National Transportation Policy under which we have developed the finest freight transportation system in the world. It is only through collective ratemaking that the ICC can exercise effective rate regulation. Without the present basic ratemaking procedures, there will be discrimination, preference and prejudice between communities, regions, shippers and commodities.

It will be an impossible task for the shipping public to know with any degree of certainty the transportation charges on thousands of commodities which the 16,000 ICC carriers regularly transport among 125,000 communities throughout the country. Chaos and confusion will be the result.

-more-

It's unfortunate that Senator Kennedy advocating his position, is misleading the American people into believing that elimination of collective ratemaking would save the consumers billions of dollars. To the contrary, his legislation will increase the inflationary pressures facing the nation's economy.

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22/1/79

Telegram Sent to President Carter

We wish to express our appreciation for your taking time from your busy schedule to meet with us on the issues involved in truck regulation. We also appreciated your indication that although your Staff had made recommendations concerning truck regulation, you and your Administration had not reached a final position. Prior to your joining our meeting, the subject of the legislation which Senator Kennedy was to announce later in the day came up for discussion. Senator Kennedy's legislation which would repeal the antitrust exemption which permits truckers and shippers to discuss rate proposals and which gives truckers the right to collectively propose rates to the Interstate Commerce Commission goes to the very heart of effective truck regulation. Ambassador Strauss and Assistant to the President for Domestic Affairs and Policy Stuart E. Eisenstat assured us that the Administration would take no position on the Kennedy legislation at this time. Yet less than one hour after the conclusion of our meeting at which you assured us you had taken no position on truck regulation and two of your top advisors told us the Administration would not take a position on the Kennedy legislation, Senator Kennedy announced Administration support for the measure. In addition, two of your advisors, Dr. Alfred Kahn and Ester Peterson, who were present throughout our meeting with you, attended the Kennedy press conference. Dr. Kahn publicly announced that the legislation was a key plank in the Administration's program. At a subsequent press conference we stated we did not feel this was the White House position but press reports indicate that the statements

made by Senator Kennedy and Dr. Kahn were checked with the White House and the Administration does support the Kennedy legislation.

Mr. President, this either represents a complete lack of understanding of the import of Senator Kennedy's legislation by some of your advisors or a complete breach of faith with the statements which you and your advisors made to us at our meeting. We feel it is incumbent that this matter be reconciled. We would hope you would reaffirm the position which you took with us and the position which Ambassador Strauss and Stuart Eisenstat took as to the Administration's position on the Kennedy legislation. However, if indeed the Administration supports the legislation which Senator Kennedy has introduced, then continued discussion on the Administration's position on truck deregulation would be moot. Effective truck regulation is not possible without collective ratemaking.

from:
Bennett C. Whitlock, Jr., President
American Trucking Associations
1616 P Street, N.W., Washington, D. C. 20036

No. 153
December 28, 1978

truck line

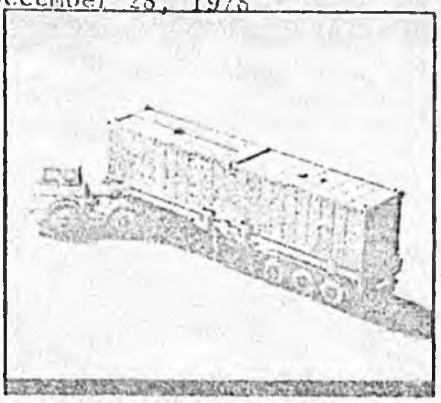
The attached article, from the January 8 edition of Forbes, presents a forceful defense of economic regulation of trucking. This is the kind of cogent, unbiased support for the regulatory system that should be distributed far and wide. We have obtained permission to reprint the piece, and we urge you to contact us for copies to send to your shippers, chambers of commerce and congressional delegates.

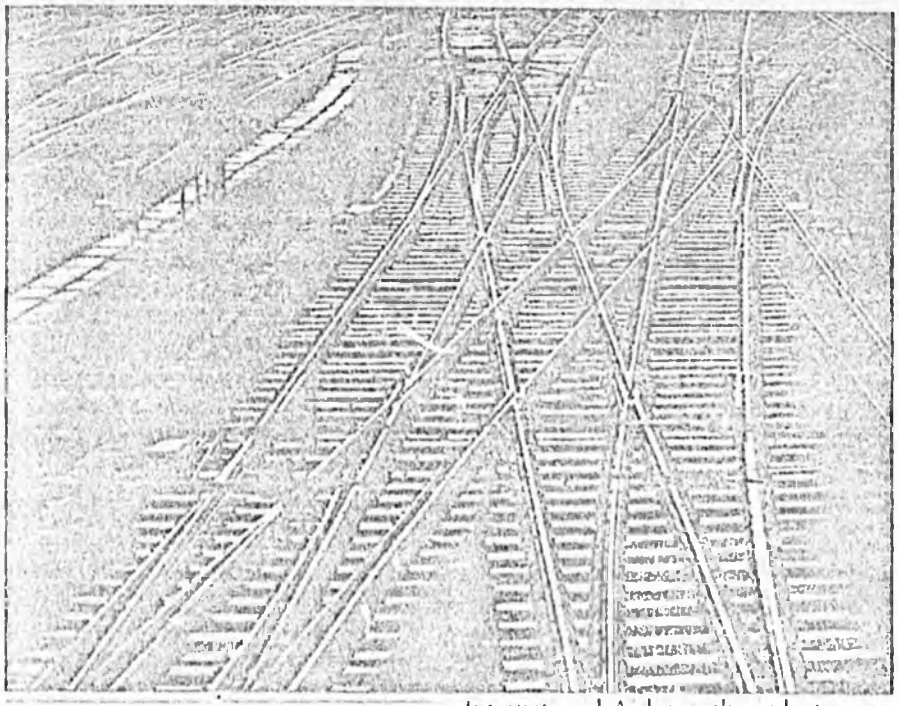
For reprints contact: Public Realtions Department, American Trucking Associations, Inc., 1616 P Street, N. W., Washington, D. C. 20036 (202) 797-5243.

Attachment to Truck Line No. 153
December 28, 1978

Anyone who thinks deregulation will bring prosperity to the railroads and truckers as it did to the airlines had better think again.

Transportation





By James Cook

IT WAS A seemingly revolutionary, but in reality, almost stupefyingly elementary notion: What if you ended those controls on market entry and pricing the government had imposed on transportation for generations, and let carriers go about their business as they pleased? Cut prices or raise them, enter new markets or withdraw from old ones as sound business judgment would dictate? In short, what if you let competition do the job that regulation had attempted and never really succeeded very well in doing?

Academicians had talked of such things for years, but on taking over as chairman of the Civil Aeronautics Board 18 months ago, Alfred Kahn, Cornell University's regulatory guru, put them into effect. A good half of the airline industry was appalled. The result would be chaos: cutthroat price competition, sagging profits, disaster. But Kahn persisted, and before he moved on to become Carter's chief inflation fighter, the airlines were propelled—some of them kicking and screaming—into a new age.

Led by a maverick Texas outfit, Texas International Airlines, the industry was encouraged to offer sharply reduced fares to passengers who were prepared to fly at times when the industry's traditional customers didn't want to. One discount fare promptly followed another. Far from bankrupting the industry, competition proceeded to transform it. Air travel turned out to be an almost classically price-elastic market. And as the airlines began offering tickets at discounts of 50% and more, depending upon the circumstances, and filling planes that had long flown empty, they found themselves tapping a vast new market for low-priced, nonessential passenger service. Overall, demand boomed, soaring 18% in the first nine months of last year, profits expanded spectacularly and an industry that only a few years ago seemed nearly bankrupt found itself being deregulated into the biggest and best year in its history. The Forbes yardsticks make clear the impact: a breathtaking 24.8% return on equity in the latest 12 months, *vs.* a 10.5% five-year average.

From Kahn's point of view, the industry's newfound prosperity was really secondary. "One reason we wanted to move toward competition," he told Forbes, not long before taking his new job last November, "is that it will be beneficial to consumers. The other proviso is the implicit premise on our part that a competitive industry is capable of being financially healthy. It is entirely conceivable that deregulation will force people to become leaner, more efficient, more careful. They're not free to overacquire, enter markets that might not be logical for them to enter, secure in the knowledge the government will bail them out."

Congress was so impressed by Kahn's argument and the industry's performance that last fall it passed a bill enacting Kahn's notions into law—freeing the industry from control over its routes by 1982 and over fares, mergers and acquisitions by 1984. In the meantime the carriers were free to enter one new market a year, pull out of an old market on 90 days' notice, cut fares in noncompetitive markets by as much as 50% or raise them as much as 5% without CAB approval or 10% in markets where there were four or more carriers competing.

The airlines are understandably uneasy sometimes, because in slashing fares, they become vulnerable to a recessionary traffic slump. But in deregulating the industry Kahn never promised them a rose garden. Deregulation wasn't supposed to spare the industry the consequences of poor business judgment, any more than regulation itself had been able to protect it from the ruinous excess capacity poor management created twice in less than two decades.

Of course, the merits of airline deregulation haven't been proved by one summer's boom, but the first results were so spectacular that the Administration and Congress promptly began talking about doing the same thing for the rest of the carriers. President Carter hoped airline deregulation would be the precursor of deregulation in other overregulated industries, and deregulator Kahn argued there was even less reason to regulate trucking than airlines.

Maybe so, but success in airline deregulation doesn't guarantee success in the rest of the transportation business. For one thing, real reform is difficult in Washington. Airline deregulation was politically popular. The public loved the

lower fares, and the public votes. However, the general public does not much use trucks and railroads—except indirectly—and therefore, deregulation of these industries does not have the same political constituency.

And politics is only half the difference. By cutting prices, the airlines have induced more people to fly. But truckers and railroads move goods, mostly, not people. Cutting freight rates is not going to expand the size of the market. Cheaper shipping rates are unlikely to cause the appliance industry to produce more refrigerators, say, or the steel mills, more steel. Instead of expanding the market and lowering unit costs in transportation, lower prices are simply going to come out of the hides of the truckers and railroads. The ultimate result could be less competition, not more, as the weaker companies are forced under.

Congress had earlier attempted to deregulate the railroads' ratemaking in the so-called 4R Act of 1976, only to be thwarted by the Interstate Commerce Commission, which interpreted the act's market dominance provisions so narrowly as to leave a good 50% of the industry's traffic still under rigid control. The free market advocates are almost certain to try again, only this time with trucking. Senator Edward Kennedy expects to introduce legislation deregulating trucking later this year, and in November 1978 the ICC's Chairman Daniel O'Neal came up with a group of proposals that would in effect deregulate all but the common carrier truckers, ease entry even there and establish a range within which price changes would not be subject to ICC review.

The other members of the Commission greeted O'Neal's proposals with a notable lack of enthusiasm, but in November, ostensibly in the interest of saving fuel, the ICC took a major step toward deregulation by authorizing private carriers to solicit backhaul traffic from other shippers for the first time. By such means, the ICC could deregulate much of the trucking industry without any need for congressional action, just as the CAB had the airlines, but the American Trucking Association denied that the ICC had the option and took the matter to court.

Cheaper shipping rates are unlikely to cause the appliance industry to produce more refrigerators, or the steel mills, more steel. Instead of expanding the market and lowering costs, lower prices are going to come out of the hides of the truckers and railroads. The result could be less competition, not more.

Trucking will be a tough nut to crack. You would be hard put to find anybody in the regulated surface transport business who thinks that truck deregulation is a good idea—not the railroads certainly, who face the prospect of their unregulated truck competition growing worse; not the common carrier truckers, who long since have found the unregulated truckers the common enemy of all regulated carriers; and not the Teamsters Union, which wants to keep the trucking rates high so as to have a healthy cow to milk.

The airlines basically compete with each other and only to a small degree with buses and Amtrak. But the trucks, barges and railroads compete not only with one another but also with other trucks, rails and barges.

Regulation has kept the trucks and water carriers healthy and prosperous, but it has helped to bankrupt a good portion of the railroad industry—not simply the seven companies absorbed by Conrail, but the Boston & Maine, the Rock Island and the Milwaukee as well—and threatens such once-prosperous carriers as the Illinois Central Gulf and conceivably even the Seaboard Coast Line. The 5.3% five-year return on capital the railroads average on the Fortune yardsticks, as against the 13.1% of the motor carriers, understates the disparity. As the ICC calculates it, the railroads last year earned only 1.3% on their net investment, *vs.* 23.8% for the truckers, 21.07% for the water carriers.

That's why Kahn and Kennedy chose the trucks as their next target.

Deregulation is never going to bring any new competitors into the railroad

Transportation—Air:
Yardsticks of Management Performance

	Profitability							Growth			
	Return on Equity				Return on Total Capital			Sales		Earnings Per Share	
company	5-year average	5-year rank	latest 12 months	debt/equity ratio	latest 12 months	5-year rank	5-year average	net profit margin	5-year average	5-year rank	5-year average	5-year rank
Emery Air Freight	36.9%	1	38.6%	0.0	38.4%	1	36.6%	5.4%	18.8%	2	17.8%	5
Braniff Intl	17.8	2	21.3	1.1	10.5	3	8.9	5.1	14.6	6	23.9	4
Delta Air Lines	17.6	3	20.2	0.2	11.5	2	9.2	6.3	17.3	4	14.0	7
Western Air Lines	16.3	4	32.8	0.5	14.0	4	7.7	5.4	13.6	6	33.7	2
UAL	11.6	5	31.1	0.7	14.2	6	6.0	7.6	11.4	11	50.6	1
Tiger International	10.9	6	16.8	2.0	6.7	9	5.4	6.9	18.9	1	4.1	9
Allegheny Airlines	10.7	7	28.5	1.8	12.6	7	5.9	4.3	16.4	5	D-P	
Northwest Airlines	10.3	8	9.7	0.1	6.8	5	7.0	8.8	14.3	7	11.1	8
Continental Airlines	10.2	9	29.5	1.4	12.5	8	5.8	7.3	12.4	9	26.7	3
American Airlines	7.6	10	15.6	0.5	8.8	10	4.8	4.5	10.5	12	D-P	
National Airlines	7.6	11	8.6	0.2	5.4	12	4.2	2.8	8.8	13	2.5	10
Eastern Air Lines	6.3	12	21.0	1.4	10.3	11	4.5	3.2	11.9	10	D-P	
Trans World Airlines	3.9	13	21.7	1.2	10.0	13	3.6	3.0	17.6	3	16.1	6
Pan Am World Airways	0.8	14	29.2	3.1	10.4	14	2.4	5.3	7.8	14	D-P	
Industry Medians	10.5		21.5	0.9	10.5		5.9	5.4	14.0		17.0	
All-Industry Medians	13.9		15.4	0.4	10.5		10.2	5.0	12.9		12.6	

Note: Explanation of Yards[illegible] calculations on page 40. D-P Deficit to profit; not ranked.

busin.ss--it costs too much. Who would invest new capital in an industry where its largest and most successful companies average less than 6% on their capital? But trucking is a different matter. In an industry where a driver can buy a $60,000 rig for maybe $9,000 down and go into business for himself, open entry could conceivably transform the industry. Thus deregulation will bring a rash of new competition into the trucking business: competitors who will price-cut their way into the market and set off a wave of mergers that will transform trucking into a far more concentrated business than it is now. The short haul and regional truckers may well be squeezed out, and the big national companies—outfits like Yellow Freight, Roadway Express, Consolidated Freightways and McLean Trucking—will come to dominate the industry. And it is likely that the same will happen with the entrenched companies in freight forwarding (Transway International) or contract leasing (Leaseway International).

Deregulating the truckers while leaving the railroads regulated could, in addition to disrupting trucking, come close to being fatal to the railroads, with newly deregulated truckers price-cutting into the railroads' remaining markets.

"I think," says ICC Chairman Daniel O'Neal, "the government will have to be concerned about the disruptive effect of changes in the system. Actions we take as far as motor carriers are concerned should be read in conjunction with how they affect the railroads. Some commodities carried by the railroads are vulnerable to motor carrier competition—agricultural commodities, anything that moves in full trucks. There's one reason for regulating the motor carriers: because of their threat to the railroad industry."

Sad to say, O'Neal has a point.

Deregulation isn't likely to produce anything like the boom conditions that airline regulation has. Freight transportation, unlike passenger traffic, is basically price inelastic. The volume of freight traffic is determined by the level of the economy. So what you may do by deregulating ratemaking is to divert traffic from one carrier or mode of transport to another.

All you really may accomplish is to reduce the general rate level of the carriers involved, a reduction that the railroads at least no longer have the financial resources to withstand.

And the truth is that, in terms of their costs, transportation rates are in general probably too low. Veteran rail analyst, Isabel Benham, head of Princeton, Kane Research, calculates that since the end of the 19th century the U.S. government has spent nearly $130 billion developing U.S. highways and waterways, as against $2 billion on railroads, and this indirect subsidy has enabled barges and truckers to price their services for less than they would have otherwise and to force the railroads, in competing with them, to underprice their services as well. The result has been a progressive dissipation of railroad capital and a corresponding inability to provide the service that in many transportation markets is far more important than costs. "The motor carriers," says ICC Chairman O'Neal, "are doing well because they provide pretty darned good service."

"Actions we take as far as motor carriers are concerned," says ICC Chairman O'Neal, "should be read in conjunction with how they affect railroads. Some railroad commodities are vulnerable to motor carrier competition. There's one reason for regulating motor carriers: because of their threat to the railroad industry."

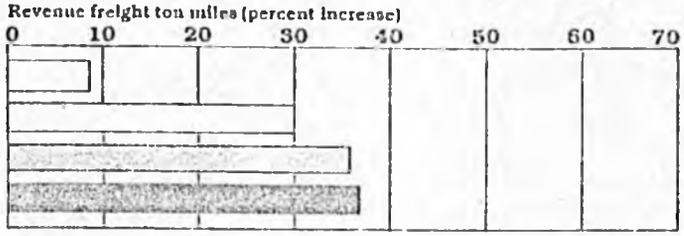
And they do. So good, in fact, that even with a rate level nearly five times that of the railroads they have easily walked off with the market. Transportation is a volume business, and the volume—the most profitable volume at that—has increasingly gone to the truckers and water carriers, leaving the railroads particularly vulnerable to the cost inflation of the Seventies. Railroad freight traffic has admittedly expanded 8% since 1970 but that compares with a 36% gain for the truckers, 37% for the barges. And the railroads, squeezed for the profits they need to keep going, have responded by increasing their rates far more rapidly than the truckers have—increasing them, over the past eight years, 60% on average *vs.* 40% for the truckers—a move that has probably cost them even more of the growth they might otherwise have been entitled to.

What the railroads obviously need is still higher rates—to restore their basic earning power—and greater flexibility in adjusting them up or down to suit the competitive environment. But ratemaking freedom is probably no longer enough. What the railroads need even more is the imposition of user charges on their competitors to even out the inequities created by government subsidized highways and waterways, and this would almost certainly mean that the rate level in both railroads and trucking would rise.

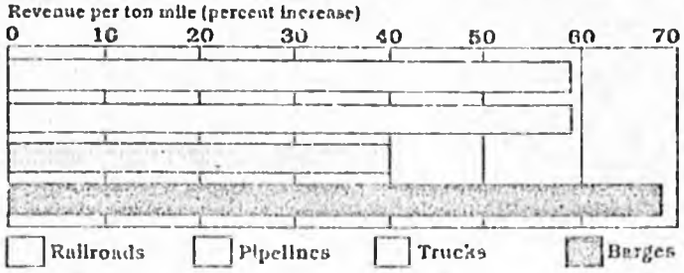
But even without user charges, Morgan Stanley's transportation expert Andras Peterey argues, long-term deregulation of trucks and rails is unlikely to produce the lower prices across the board the politicians dream about. It would only lessen competition in trucking, encourage prices to rise and could further weaken the railroad industry. "The curious effect," he says, "would probably mean many increases rather than decreases in freight rates. Once the weaker firms are squeezed out, prices will go up again." Deregulation in the air cargo in-

Growth rates & rate growth

Transportation may be a growth industry, but not everyone in it is growing at the same pace. Between 1970 and 1977, revenue ton miles increased only modestly for the once dominant railroads, but boomed for the competing oil pipelines, truckers and barges.



Over the same period the railroads magnified their competitive disadvantage by increasing their rates far faster than the truckers and increasing them nearly as fast as the lower cost barges and oil pipelines. The disadvantage is growing.



dustry may have got the air cargo business booming at last, but the result so far has been higher, not lower, fares. Kahn explains the anomaly by suggesting that fares were probably too low—just as they probably are throughout the surface transportation industry. So in the end deregulation may prove to be not the deflationary device some of its proponents suggest but an inflationary one—or if not that, one which encourages transportation to reflect its true costs for the first time in generations.

Deregulation is popular in Washington these days and *that* is good news for those who believe in free enterprise. But Congress would be wise to go slow on deregulating trucks and railroads because lower prices are not what the railroads need to survive. As things now stand, because freight rates may already be too low, the taxpayer subsidizes trucks and barges, and railroad stockholders and bondholders subsidize most railroads. If the aim of deregulation is to bring freight rates down, the result may be to increase the need for subsidies and to reduce rather than enhance competition. That's a sad thing to say but probably true.

If the politicians and bureaucrats still dream of the benefits of trucking deregulation, hardly anyone seriously suggests that this offers any solution for ocean shipping. Companies like Alexander & Baldwin (Matson Lines), Transway (Waterman Steamships), Seatrain Lines or Moore-McCormack have suffered too long at the hands of cut-rate foreign, and largely Russian, competition. What these carriers want is regulation in order to stay alive: rigid rate regulation in exchange for a secured market position. "You can't have a staunch allegiance to antitrust," says Transway's vice president-law, Lawrence Berman, "when the rules of the game are not controlled by the U.S. So pooling arrangements are the name of the game."

In short, there is no easy answer to the question of deregulation. Can one opt for inconsistency? Favor deregulation for the railroads, favor only restricted deregulation for the truckers? One probably can. What transportation needs is pragmatic, not ideological, solutions. The basic problem, of course, is how do you unscramble eggs. And the answer is, of course, you can't do it. All you can hope to do is stir them around so they don't get too lumpy.

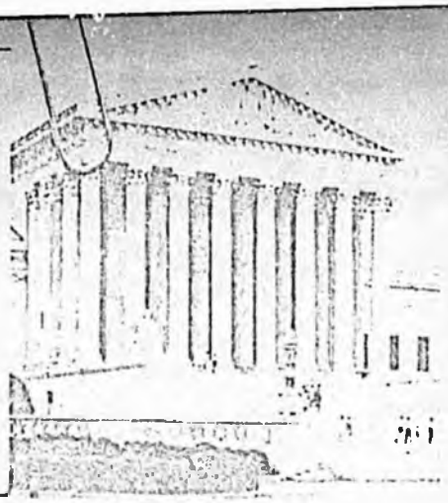
Transportation—Surface:
Yardsticks of Management Performance

	Profitability							Growth			
	Return on Equity				Return on Total Capital			Sales		Earnings Per Share	
company	5-year average	5-year rank	latest 12 months	debt/ equity ratio	latest 12 months	5-year rank	5-year average	net profit margin	5-year average	5-year rank	5-year average	5-year rank
RAILROADS												
Missouri Pacific Corp	29.3%	1	25.2%	1.4	11.1%	1	9.5%	7.7%	13.5%‡‡	3	21.8%‡‡	3
Chic & North Western	21.2	2	21.5	3.4	5.7	8	5.2	1.9	7.9‡‡	8	13.6‡‡	7
Southern Railway	11.2	3	12.0	0.6	6.9	3	6.4	9.6	9.2	7	13.1	8
Norfolk & Western Ry	10.4	4	8.4	0.4	5.1	5	5.8	9.0	3.0	13	20.5	4
Union Pacific	9.9	5	11.7	0.3	7.8	2	7.1	6.8	17.0	1	16.5	5
Santa Fe Industries	8.4	6	8.7	0.4	6.1	4	6.0	7.6	11.8	5	14.7	6
IC Industries	8.0	7	8.8	0.6	5.8	6	5.4	3.7	14.6	2	8.7	9
Chessie System	7.7	8	4.6	0.7	3.5	9	5.0	3.6	6.6	11	22.7	2
Seaboard Coast Line	7.3	9	5.7	0.9	4.5	7	5.3	3.8	13.3	4	6.3	11
St Louis-San Fran Ry	6.0	10	2.2	0.8	4.9	11	4.6	5.0	7.9	9	6.5	10
Southern Pacific	5.6	11	4.8	0.4	3.6	10	4.0	4.1	7.3	10	1.4	12
Burlington Northern	4.8	12	6.8	0.5	4.7	12	3.8	4.8	11.3	6	34.2	1
Chicago Rock Island	def	13	def	0.9	def	13	def	def	3.7	12	D-D	13
Medians	8.0		8.4	0.6	5.1		5.3	4.8	9.2		13.6	
TRUCKERS												
Yellow Freight System	26.1%	1	22.0%	0.2	16.4%	2	17.4%	5.2%	19.0%	2	20.6%	1
Roadway Express	24.5	2	21.6	0.0	20.5	1	23.1	5.7	16.4	4	20.0	2
Leaseway Transportn	24.0	3	24.3	1.7	10.6	5	9.7	4.7	13.1	5	18.4	4
Consol Freightways	21.6	4	23.6	0.2	19.1	3	16.2	4.5	12.3	6	19.1	3
McLean Trucking	19.2	5	14.2	0.5	10.7	4	13.1	2.8	17.6	3	13.1	5
Ryder System	12.9	6	25.1	1.6	9.8	7	6.6	4.9	20.1	1	6.9	6
Allied Van Lines	9.9	7	7.1	3.7	4.6	6	7.5	0.3	9.9	7	3.1	7
Medians	21.6		22.0	0.6	10.7		13.1	4.7	16.4		18.4	
OTHER TRANS												
Moore McCormack Res	20.2%	1	12.3%	0.8	7.4%	3	11.7%	7.0%	28.8%	2	221.5%	1
Transway Intl	19.1	2	20.0	0.3	15.8	1	15.6	3.6	8.9	6	13.4	4
Gelco	18.9	3	25.1	4.4	6.4	5	5.9	5.8	62.9	1	32.5	2
Alexander & Baldwin	16.7	4	9.2	0.4	6.9	2	13.6	5.9	11.3	4	28.0	3
Greyhound	11.2	5	8.6	0.5	7.0	4	8.3	1.4	8.9	5	0.7	5
Seatrain Lines	7.5	6	21.7	8.4	4.3	6	2.5	1.6	19.4	3	D-P	
Medians	17.8		16.2	0.7	7.0		10.0	4.7	15.4		28.0	
Industry Medians	11.2		11.9	0.6	6.7		6.5	4.8	12.1		14.7	
All-Industry Medians	13.9		15.4	0.4	10.5		10.2	5.0	12.9		12.6	

Note: Explanation of Yardstick calculations on page 40. ‡‡Three-year growth. D-D Deficit to deficit. D-P Deficit to profit; not ranked. def Deficit.

Supreme Court Report

by Rowland L. Young



ON JULY 6, a divided Court announced what appears to be a substantial limitation on the doctrine of *Parker* v. *Brown*, a 1943 decision holding that the Sherman Act does not apply to restraints on trade imposed by state law. The new decision seems to have narrowed *Parker* to a holding that only state officials, acting under state legislation, are exempt. The decision leaves the law in doubt, because only three justices joined in Justice Stevens's plurality opinion, with Chief Justice Burger and Justice Blackmun concurring only in the result. Justice Stewart's strong dissent, in which Justices Powell and Rehnquist join, points out that the new decision is not entirely consistent with some of the language in *Goldfarb* v. *Virginia State Bar*, 421 U.S. 773 (1975).

This month's report covers two other antitrust law cases, one holding that an allegation of a conspiracy to prevent the expansion of a proprietary hospital was closely enough connected with interstat commerce to raise a Sherman Act que tion, and the other dealing with the app' cation of the Robinson-Patman Act drugs sold to nonprofit hospitals at lower prices than to retail druggists.

On May 24, the Court refused to find an "act of state" in the refusal of Cuban authorities to return money mistakenly paid to confiscated Cuban businesses instead of to the former owners. The case is curious, both because of the complex factual situation and because only three justices (Chief Justice Burger, Justices Powell and Rehnquist) join in the major premise of Justice White's opinion for the Court—namely, that the act of state doctrine does not apply to commercial obligations of governments.

On June 21, the Court upheld a city ordinance that required voter approval of any changes in zoning restrictions. It also upheld a local school board's right to fire teachers who struck in defiance of state law. Other cases include one involving the constitutionality of a referendum on a zoning change and another on the validity of presidentially imposed licenses for the importation of crude oil.

State Sanction No Excuse for Sherman Act Violation

The first antitrust case was *Cantor* v. *Detroit Edison Company*, ___ U.S. ___, 49 L.Ed. 2d 1141, 96 S.Ct. 3110, 44 U.S.L.W. 5357, decided July 6. The decision held that action by a regulated public utility was not immune from Sherman Act liability even though the action in question was required by a state regulatory board.

Detroit Edison supplies the electricity for southeastern Michigan. It also furnishes about half of the light bulbs used in that area. Customers are billed for their electricity and are entitled to light bulbs at no additional charge. The bulb exchange program is included in the co. pany's tariff and could not be changed without the approval of the Michigan Public Service Commission.

Cantor, a druggist who also sells light bulbs, brought this Sherman Act suit against Detroit Edison, alleging that Edison's providing light bulbs was an unreasonable restraint of trade in violation of the Sherman Act. Both the district court and the Sixth Circuit held that the practice was exempt from federal antitrust laws under *Parker* v. *Brown*, 317 U.S. 341 (1943), a case that held that action by state officials under state legislation d.. not violate the Sherman Act. See 513 F. 2d 630 (1975).

In the new case, the Court reversed and remanded on the ground that the exemption created in *Parker* is limited to official action taken by state officials, and that here the only defendant was a private utility. The opinion of the Court was written by Justice Stevens. The Court reasoned that, while Detroit Edison could not maintain its lamp exchange program without the approval of the state commission and could not abandon it without permission, the option of having such a program was primarily the company's. "There is nothing unjust in a conclusion that respondent's participation in the decision is sufficiently significant to require that its conduct implementing the decision, like comparable conduct by unregulated businesses, conform to applicable federal law," the Court said.

The Court also rejected the argument that federal antitrust laws should not be applied in areas of the economy pervasively regulated by state agencies: "... [M]erely because certain conduct may be subject both to state regulation and to the fe leral antitrust laws does not necessarily mean that it must satisfy inconsistent standards," the Court declared. "second, even assuming inconsistency, we would not accept the view that the federal interest must inevitably be subordinated to the State's; and finally, even if we were to assume that Congress did not intend the antitrust laws to apply to areas of the economy primarily regulated by a State, that assumption would not foreclose the enforcement of the antitrust laws in an essentially unregulated area such as the market for electric light bulbs." Enforcement of the Sherman Act here would not interfere with Michigan's regulation of its electric utilities, the Court added.

The Court added that *Eastern Railway Presidents Conference* v. *Noerr*, 365 U.S. 127 (1961), was not applicable. That case held that lobbying by railroads against legislation favorable to motor carriers was not a violation of the Sherman Act. *Noerr*, said the Court, "did not involve any question of either liability or exemption for private action taken in compliance with state law."

To grant an exemption here, the Court contended, would "give a host of state regulatory agencies broad power to grant exemptions from an important federal law for reasons wholly unrelated either to federal policy or even to any necessary significant state interest."

The chief justice concurred in the judgment and in Parts I and III of Justice Stevens's opinion. He disagreed, however, with the plurality's assertion that the *Parker* exemption is limited to suits against state officials.

Justice Blackmun concurred in the judgment in an opinion that took the position that the Sherman Act generally supersedes inconsistent state laws and

that "at least for now" a "rule of reason" should be applied that "state-sanctioned anti-competitive activity must fall like any other if its potential harms outweigh its benefits."

Justice Stewart, joined by Justices Powell and Rehnquist, dissented, arguing that the Court was "trivializing" *Parker* to the point of overruling that decision. The dissent took the position that *Parker* had held that the Sherman Act did not undertake to prohibit restraints of trade imposed by a state and that the Court's distinction between "the exemptive force of mandatory state rules adopted at the behest of private parties and those adopted pursuant to the State's unilateral decision is flatly inconsistent with the rationale of *Noerr*." "Today's holding will not only penalize the right to petition but may very well strike a crippling blow at state utility regulation," the dissent asserted.

Conspiracy against Hospital Covered by Sherman Act

In another antitrust case, *Hospital Building Company* v. *Trustees of Rex Hospital*, 425 U.S. 738, 48 L.Ed. 2d 338, 96 S.Ct. 1848, 44 U.S.L.W. 4683, decided May 24, a unanimous Court held that a complaint of a conspiracy to prevent the expansion and relocation of a propriety hospital was a complaint upon which relief could be granted under the Sherman Act. Both the district court and the Fourth Circuit dismissed on the ground that the complaint did not adequately allege a "substantial effect" on interstate commerce. See 511 F. 2d 678 (1975).

The complaint was filed by a proprietary hospital in Raleigh, North Carolina, alleging that the trustees and officers of a private, tax-exempt hospital, along with the executive secretary of the local agency responsible for making recommendations on the need for additional hospital facilities, had acted together to block a planned relocation and expansion of the proprietary hospital. The petitioner's complaint alleged that it purchased 80 per cent of its medicines and supplies from out-of-state sellers, spending $112,000 in this manner in 1972. It also stated that a substantial number of its patients come from out of state and that a large proportion of its revenue comes from out-of-state insurance companies or from the federal government.

The Supreme Court reversed and remanded in an opinion by Justice Marshall. The Court cited prior cases holding that "[W]holly local business restraints can produce the effects condemned by the Sherman Act," that, as long as the restraint in question "substantially and adversely affects interstate commerce," the nexus required for Sherman Act coverage is established. "If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze," the Court declared.

The Court said that, "The complaint, fairly read, alleges that if respondents and their coconspirators were to succeed in blocking petitioner's planned expansion, petitioner's purchases of out-of-State medicines and supplies as well as its revenues from out-of-State insurance companies would be thousands and perhaps hundreds of thousands of dollars less than they would otherwise be."

Robinson-Patman Covers Drugs Purchased by Hospitals

Abbott Laboratories v. *Portland Retail Druggist Association*, 425 U.S. 1, 47 L.Ed. 2d 537, 96 S.Ct. 1305, 44 U.S.L.W. 4394, decided March 24, was a third antitrust case. The decision dealt with the construction of the phrase "purchases of their supplies for their own use" in the Nonprofit Institutions Act, which exempts purchases by hospitals and other charitable institutions from the Robinson-Patman Act.

The Robinson-Patman Act makes it unlawful to discriminate in price between different purchasers of like commodities when "the effect of such discrimination may be substantially to lessen competition." The Nonprofit Institutions Act exempts from Robinson-Patman some purchases made by hospitals and other charitable institutions. The issue before the Court was the meaning of "purchases of their supplies for their own use" in the case of medicines purchased by hospitals.

The suit was brought by an Oregon nonprofit corporation against twelve manufacturers of pharmaceutical products, alleging, among other counts not before the Court, that they had discriminated between nonprofit hospitals and retail druggists. The pharmaceutical manufacturers pleaded the exemption granted by the Nonprofit Institutions Act as an affirmative defense. The district court ruled that the medicines in question were purchases by nonprofit hospitals "for their own use," which were covered by the exemption. On an interlocutory appeal the Ninth Circuit vacated and remanded. 510 F. 2d 486 (1974).

The Supreme Court vacated and remanded in an opinion by Justice Blackmun. The Court found ten categories of dispensation of drugs by hospitals, three of which it said were clearly for the hospital's "own use" and therefore within the exemption: drugs for inpatient use, for emergency room use, and for outpatients for use on hospital premises. The Court decided that drugs for inpatients' personal use upon release and for outpatients' personal use away from the hospital premises also fell within the exemption, but not refills of such prescriptions. Drugs for the personal use of hospital employees and students and for physicians were held to be within the exemption so long as they were for the personal use of the employee, student, or physician, or their dependents, but not when they were to be used by anyone else. The Court said that drugs sold to the so-called "walk-in" buyer at the hospital pharmacy were not within the exemption.

Justice Marshall wrote a concurring opinion to emphasize his view that he did not read the Court's opinion "as foreclosing hospitals—or other exempted institutions—from expanding their charitable activities in highly untraditional ways and still qualifying for the exemption."

Justice Stewart, joined by Justice Brennan, dissented, arguing that the decision of the Ninth Circuit was correct.

No "Act of State" in Repudiation of Debts

On May 24, the Court held that there was no "act of state" in the failure of Cuban authorities to return to an American-based firm funds mistakenly paid for cigars sold to it by Cuban firms whose businesses were appropriated by the Cuban government. The case was *Alfred Dunhill of London* v. *Republic of Cuba*, 425 U.S. 682, 48 L.Ed. 2d 301, 96 S.Ct. 1854, 44 U.S.L.W. 4665.

In 1960, the Communist Cuban government seized five Cuban cigar manufacturing firms whose owners fled to the United States. The Cuban government appointed "interventors" to run the businesses, and the interventors continued to ship cigars to foreign purchasers. At the time of intervention, three firms owed some $477,600 for cigars shipped before the intervention.

The suit began when both the former owners of the seized businesses and the interventors asserted the right to some $700,000 due from the importers for shipments made after the intervention. The district court held that the act of state doctrine required it to give full effect to the 1960 confiscation and that the interventors were entitled to the postintervention sales proceeds. It held, however, that the situs of the preintervention sale proceeds was the United States and that the 1960 seizures did not reach those accounts, even though they had been mistakenly paid to the interventors. The district court held that the importers were entitled to set off the amounts they had mistakenly paid against the amounts due for their postintervention purchases. Two of the importers owed more than the interventors were obligated to them, and so they were satisfied, but Dunhill was

from—

Bennett C. Whitlock, Jr., President
American Trucking Associations
1616 P Street, N.W., Washington, D. C. 20036

No. 35
March 15, 1978

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ALASKA TRUCKING
ASSOCIATION, INC.

MOTOR CARRIERS, RATE BUREAU MANAGERS DEFEND COLLECTIVE RATE MAKING BEFORE SENATE SUBCOMMITTEE

Eliminating the trucking industry's antitrust immunity for collective rate making would force freight transportation costs up for hundreds of towns and destroy the coordinated shipping network the nation enjoys, witnesses told the Senate Judiciary Subcommittee on Antitrust earlier this week.

TWO DAYS OF HEARINGS

Testifying before the subcommittee on March 10 and 13 were panels of motor carrier executives and rate bureau managers as well as representatives of other trucking organizations and the Teamsters Union.

KENNEDY QUESTIONS RATE MAKING

Since last fall the subcommittee, chaired by U.S. Sen. Ted Kennedy, D-Mass., has been conducting an inquiry into the trucking industry's collective rate making practices.

RATES SET IN "CLOSED MEETINGS"

"We know that most trucking companies charge the same rates for their services," Kennedy said at the opening of Friday's hearing. "We know that these rates are set in closed meetings by the carriers themselves. And we know that the Interstate Commerce Commission can give only minimal scrutiny to the thousands of rates filed with it every day."

COMPETITION AN ISSUE

According to Kennedy, concentration in the trucking industry is accelerating, and it's not clear that ICC regulation has had a marked effect in stemming this concentration in a "naturally competitive industry.

"By allowing carriers to set rates collectively and by authority, the ICC may well have made matters worse," Kennedy suggested.

(over)

RATE MAKING NEEDED FOR "EQUAL TREATMENT"

However, Gene T. West of Consolidated Freightways Corp., Menlo Park, Cal., disputed Kennedy's allegation and said that without collective rate making "there could be no such thing as a fair, nondiscriminatory, nonpreferential rate structure under which shippers could receive equal treatment in the transportation of their supplies, materials, goods and products" regardless of location.

TRANSPORT SYSTEM WOULD FALL APART

Noting that fully one-third of Consolidated Freightways' shipments involve joint-line service with over 1,200 connecting carriers, West said the "voluntary, integrated system of transportation which exists today" would fall apart without collective rate making.

Shippers would have to work out arrangements with all the separate carriers that move their freight, West said.

SHEER LOGISTICS DEMAND RATE MAKING

"Sheer logistics," said James T. Hite, III, of Interstate Motor Freight System, Grand Rapids, Mich., is another reason why collective rate making can't be eliminated without altering many other facets of the society and the economy.

BILLIONS OF INDIVIDUAL RATES

He said the collective rate making process "maintains and organizes in a structured manner rate information that is a multiple of thousands of carriers, tens of thousands of geographical points, and literally billions of individual rates."

It would be logistically impossible, he continued, for the ICC or some federal agency to approve literally billions of prices or rates on an individual basis every time one was changed for whatever the reason.

SMALL FIRMS HELPED

Danville, N. Y., motor carrier Timothy L. Shay of Shay's Service Inc., also told the subcommittee that rate making on a collective basis makes it possible for smaller trucking firms to compete.

LACK EXPERTISE TO FIGURE RATES

Small firms simply don't have the time, the financial resources and the expertise to cost out all of their own rates, and as a result they rely on rate bureaus, he explained.

NOT A ONE-WAY STREET

Collective rate making is not a one-way street oriented for motor carriers, Gerald Cole of Coles Express said. Cole, whose company operates out of Bangor, Me., said: "All shippers or receivers, or for that matter, any interested parties, are afforded adequate opportunity to participate in the rate making process."

Another panelist, William J. Jones of Wilson Trucking Co. in Fisherville, Va., charged that small carriers would suffer most from the loss of collective rate making. "Large carriers don't dominate rate bureaus, as the experience of my company shows," he said.

PROTECTS SMALL SHIPPERS TOO

Shay added that rate bureaus help small trucking firms price their services yet "we have no problem setting an independent rate." He also said his participation in a rate bureau helps protect small shippers who aren't sophisticated enough to know if rates are fair.

TOWNS RECEIVE SERVICE

Answering a question from Sen. Kennedy about a 1975 DOT study that shows fifty percent of small towns are not served by carriers who have authority, Hite explained that just because every carrier with authority to serve a town doesn't provide that service still doesn't mean the town isn't served by regulated carriers through interlining or other arrangements.

EXEMPT TRANSPORTATION DEBATED

West also refuted an allegation about the stability of exempt transportation by pointing out that the U.S. Department of Agriculture is considering some form of regulation to save small companies hauling agricultural commodities.

TEAMSTERS SUPPORT

Testifying for the Teamsters Union was Lucien Boutin of Boston, Mass., who said that eliminating collective ratemaking would seriously affect the union's wage base because it is the only protection they appear to have.

RATE BUREAUS PARTICIPATE

In addition to James Harkins, who testified on behalf of the National Classification Board, four rate bureau executives appeared to testify on how rate bureaus operate. They were Vernon Farriba, Southern Motor Carriers Rate Conference; John Womack, Central and Southern Motor Freight Tariff Association; James T. Henry, Eastern Central Motor Carriers Association; and Samuel Herold, Middle Atlantic Conference.

(over)

IMMUNITY IS NOT TO FIX PRICES

They explained that "the immunity granted to carriers by the commission is not an immunity to fix transportation rates and prices. It is strictly limited to an immunity from the antitrust laws to permit carriers to initiate, discuss and agree upon proposals which will be submitted to the commission for its regulatory review."

Additional hearings are planned by the subcommittee March 23 in Chicago and March 24 in Denver, and April 4 and 18 in Washington, D. C.

Yet to be heard from in the hearings are shipper groups, several of which are scheduled to testify April 18.

# # # # # # # #

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January 27, 1978

P. W. Benediktsson
3915 Lacarno Drive
Anchorage, AK 99504

Re: Anit-trust legal developments

Dear Ben:

I was unable to find in the printed law reports, the Court of Appeals case which I mentioned to you, but I think that I did find two others that I think are very significant. One is Mount Hood Stages v. Greyhound which deals with the implied anti-trust exemption for regulatory activities and Kurek v. Pleasure Driveway and Park District of Peoria which again limits the imply exemption under the state anti-trust laws. Both of these cases I think should be kept by you and illustrate the importance of further clarifying the exemption that I believe the Alaska Carriers presently have a third case is Motor Carriers Traffic Assn. v. United States which decides the appropriateness of Ex Parte 297. Undoubtedly, Wayne has this although I am sending him a copy of this letter for his information. I think it is apparent that there is going to continue to be a concentrated effort to reduce the anti-trust immunity extended to various motor carrier rate bureaus. It behooves us to get a clear statement, if possible, by the Alaska Legislature or by the Transportation Commission of the status of these agreements.

Very truly yours,

Andrew E. Hoge

Andrew E. Hoge

AEH/pfm
Enclosures
cc: Wayne Lucore

that the pilferage was from penalize stealage from an interstate movement or interstate storage, but the *presumption* would not apply to any taking save one from a pipeline system.

The 1966 amendments, as discussed by the majority, sharply make the differentiation. They did not even purport to enlarge the presumption; they simply expanded the types of container embraced in the enactments. In this addition Congress was careful to enumerate each of them separately, manifesting that the legislators were preserving their several identities. With these identifications in mind, "pipeline system" was included for the first time and the presumption was confined to a pipeline system. Obviously, it was not intended to apply elsewhere.

The reason for this inclusion is obvious: a pipeline system runs for thousands of miles and Congress needed to cover every foot of it. It wished protect transportation by pipeline, a somewhat recent utility. Interestingly, the presumption provision was written by the Department of Justice and engrossed ipsissimis verbis within the law.

The Federal Government has no reason for being here.

MOTOR CARRIERS TRAFFIC ASSOCIATION, INC., Petitioner,

v.

The UNITED STATES of America and the Interstate Commerce Commission, Respondents,

and

Drug & Toilet Preparation Traffic Conference, Eastern Industrial Traffic League, National Small Shipments Traffic Conference, National Industrial Traffic League, Intervening Respondents.

ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC., Petitioners,

v.

The UNITED STATES of America and the Interstate Commerce Commission, Respondents,

and

Drug & Toilet Preparation Traffic Conference, Eastern Industrial Traffic League, National Small Shipments Traffic Conference, National Industrial Traffic League, Intervening Respondents,

and

Bulk Carrier Conference, Inc., Intervening Respondent.

ALL ISLAND DELIVERY SERVICE, INC., Feuer Transportation, Inc., John A. Jungerman Son, Inc., Pinter Bros., Inc., Troiano Express Co., Inc., Petitioners,

v.

The UNITED STATES of America and the Interstate Commerce Commission, Respondents,

and

Drug & Toilet Preparation Traffic Conference, Eastern Industrial Traffic League, National Small Shipments Traffic Conference, National Industrial Traffic League, Intervening Respondents.

Nos. 76-1329, 76-1425 and 76-1426.

United States Court of Appeals, Fourth Circuit.

Argued Dec. 7, 1976.

Decided July 21, 1977.

Proceedings were instituted to review Interstate Commerce Commission's approval of agreements establishing transportation industry rate bureaus. The Commission entered order directing that rate bureau agreements would not be accorded antitrust immunity under certain specified conditions, and various motor carrier rate bureaus and carrier members of rate bureaus appealed. The Court of Appeals, Mr. Justice Clark, sitting by designation, held that: (1) motor carrier rate bureaus did not have constitutional right to file protests

with respect to independent action proposals of any of their member carriers, and Commission was authorized to reverse itself and prohibit rate bureaus from making such protests as a precondition to granting bureaus immunity from antitrust laws; (2) Commission had authority to enter order prohibiting carriers that were in any way affiliated with a shipper from serving on rate bureau's board of directors, general rate committee or any other committee having an effect, either direct or indirect, upon rate-making function of bureau, without specific prior Commission approval, and (3) Commission had authority to prohibit motor carrier rate bureaus from operating as profit-making entities.

Affirmed.

Widener, Circuit Judge, concurred in part and dissented in part and filed opinion.

1. Commerce ⇐85.33

Motor carrier rate bureaus did not have constitutional right to file protests with respect to independent action proposals of any of their member carriers, and Interstate Commerce Commission was authorized to reverse itself and prohibit rate bureaus from making such protests as a precondition to granting bureaus immunity from antitrust laws. Interstate Commerce Act, §§ 5a(2, 7), 216, 216(e), 49 U.S.C.A. §§ 5b(2, 7), 316, 316(e); U.S.C.A.Const. Amend. 1.

2. Commerce ⇐85.33

Interstate Commerce Commission had authority to enter order prohibiting motor carriers that were in any way affiliated with a shipper from serving on a rate bureau's board of directors, general rate committee or any other committee having an effect, either direct or indirect, upon rate-making function of the bureau, without specific prior Commission approval; such order had rational basis, and was valid. Interstate Commerce Act, §§ 5a, 5a(7), 49 U.S.C.A. §§ 5b, 5b(7).

3. Commerce ⇐85.33

Action of Interstate Commerce Commission in proceeding to review its prior approval of agreements establishing transportation industry rate bureaus constituted rule making. 5 U.S.C.A. § 551(4); Interstate Commerce Act, §§ 5a, 5a(7), 49 U.S.C.A. §§ 5b, 5b(7).

4. Commerce ⇐85.33

Interstate Commerce Commission had authority to prohibit motor carrier rate bureaus from operating as profit-making entities. Interstate Commerce Act, §§ 5a, 5a(7), 49 U.S.C.A. §§ 5b, 5b(7).

J. Raymond Clark, Washington, D. C. and A. W. Flynn, Jr., York, Boyd & Flynn, Greensboro, N. C., for petitioner in No. 76-1329.

Bryce Rea, Jr., Washington, D. C., Counsel for petitioners in No. 76-1426.

Donald I. Baker, Asst. Atty. Gen., Lloyd John Osborn, Dept. of Justice, Washington, D. C., for the United States of America, respondent.

Robert S. Burk, Acting Gen. Counsel, and Hanford O'Hara, Associate Gen. Counsel, Interstate Commerce Commission, Washington, D. C., for the Interstate Commerce Commission, respondents in Nos. 76-1329, 76-1425 and 76-1426.

John F. Donelan, John M. Cleary and Frederic L. Wood, Washington, D. C., for the National Industrial Traffic League, intervening respondent in Nos. 76-1329, 76-1425 and 76-1426.

Daniel J. Sweeney, Belnap, McCarthy, Spencer, Sweeney & Harkaway, Washington, D. C., for intervenor, Drug and Toilet Preparation Traffic Conference, Eastern Industrial Traffic League and National Small Shipments Traffic Conference, in Nos. 76-1329, 76-1425 and 76-1426.

William E. Kenworthy, Denver, Colo., and Bryce Rea, Jr., Washington, D. C., for petitioner Rocky Mountain Motor Tariff Bureau, Inc. in No. 76-1425.

Leonard A. Jaskiewicz and Edward J. Kiley, Washington, D. C., for intervenor Bulk Carrier Conference, Inc. in No. 76-1425.

Before CLARK, Associate Justice*, BUTZNER and WIDENER, Circuit Judges.

* Tom C. Clark, Associate Justice of the United States Supreme Court (Ret.), sitting by designation.

MOTOR CARRIERS

Mr. Justice CLARK:

These three consolidated ap the Interstate Commerce Comm to set aside, in part, Orders th tered by the Commission in E 297, *Rate Bureau Investigation*, a broad scale study of the regu portation industry's various coll making organizations, known a reaus".

The history of collective rate forts by surface transportation the United States is both long versial. See: *United States v. souri Freight Assn.*, 166 U.S. 2 540, 41 L.Ed. 1007 (1897); *Unite Joint Traffic Association*, 171 U S.Ct. 25, 43 L.Ed. 259 (1898); *Pennsylvania R. Co.*, 323 U.S. 4 716, 89 L.Ed. 1051 (1945); *West Assn.—Agreement*, 276 I.C.C. The Congressional action took the Reed-Bulwinkle Act of 194 472, Section 5a of the Interstate Act (49 U.S.C. § 5b). Congress the problem was one of reconcil mands of the Nation's transpo tem with the policies of the ant This Act left "the antitrust law with full force and effect to car except as to such joint agreem rangements between them as been submitted to the Interstate Commission and approved by upon a finding that, by reason ance of the national transportati declared in the Interstate Com relief from the antitrust laws granted." H.R.Rep.No.1100, 80th Sess., at 5, U.S.Code Cong.Ser 1844, 1848. Surface carriers th ties to agreements concerning related matters can submit s ments to the Commission for ap if approved, the parties to the are relieved from the operation

1. 49 U.S.C. §§ 5b(4), (5), and (6) proval of agreements which:

(1) are among carriers of differ classes and are not limited to mat to transportation under joint ra through routes;

Mr. Justice CLARK:

These three consolidated appeals from the Interstate Commerce Commission seek to set aside, in part, Orders that were entered by the Commission in Ex Parte No. 297, *Rate Bureau Investigation*, which was a broad scale study of the regulated transportation industry's various collective rate-making organizations, known as "rate bureaus".

The history of collective rate-making efforts by surface transportation carriers in the United States is both long and controversial. See: *United States v. Trans-Missouri Freight Assn.*, 166 U.S. 290, 17 S.Ct. 540, 41 L.Ed. 1007 (1897); *United States v. Joint Traffic Association*, 171 U.S. 505, 19 S.Ct. 25, 43 L.Ed. 259 (1898); *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 65 S.Ct. 716, 89 L.Ed. 1051 (1945); *Western Traffic Assn.—Agreement*, 276 I.C.C. 183 (1949). The Congressional action took the form of the Reed-Bulwinkle Act of 1948, 62 Stat. 472, Section 5a of the Interstate Commerce Act (49 U.S.C. § 5b). Congress decided that the problem was one of reconciling the demands of the Nation's transportation system with the policies of the antitrust laws. This Act left "the antitrust laws to apply with full force and effect to carriers . . . except as to such joint agreements or arrangements between them as may have been submitted to the Interstate Commerce Commission and approved by that body upon a finding that, by reason of furtherance of the national transportation policy as declared in the Interstate Commerce Act, relief from the antitrust laws should be granted." H.R.Rep.No.1100, 80th Cong., 1st Sess., at 5, U.S.Code Cong.Serv.1948, pp. 1844, 1848. Surface carriers that are parties to agreements concerning rates and related matters can submit such agreements to the Commission for approval and, if approved, the parties to the agreements are relieved from the operation of the antitrust laws with regard to the same. 49 U.S.C. § 5b(2). The Act mandates the Commission to approve the agreement only if it finds that the agreement is in furtherance of the national transportation policy and is not prohibited by 49 U.S.C. §§ 5b(4), (5), and (6).[1] The Commission, in carrying out this directive of Congress is the creator of the rate bureau since without immunity from the antitrust laws, it cannot operate. Indeed, the Act requires that rate bureaus operating under approved agreements must maintain and keep open for inspection accounts and records and to file such reports as the Commission requires. 49 U.S.C. § 5b(3). The Commission is also given authority to investigate and determine whether any previously approved agreement, or any terms or conditions upon which the approval was granted, are in conformity with the standards of 49 U.S.C. § 5b(2), and further, the Commission is given the power to terminate or modify its prior approval in order to insure compliance with the standards of the Act. 49 U.S.C. § 5b(7).

Pursuant to 49 U.S.C. § 5b, the Commission has from time to time approved rate bureau agreements. See, e.g., *Western Traffic Assn.—Agreement, supra; Rocky Mountain Carriers—Agreement*, 302 I.C.C. 569 (1958); *Motor Carriers Traffic Assn., Inc.—Agreement*, 301 I.C.C. 781 (1957); *Eastern Tank Carriers—Agreement*, 301 I.C.C. 359 (1957); *Middle Atlantic Conference—Agreement*, 283 I.C.C. 683 (1951).

It was to review its approval of such prior Agreements that Ex Parte No. 297 was instituted in 1973, posing twenty-eight areas of inquiry, as specifically authorized by 49 U.S.C. § 5b(7). Numerous parties indicated an intention to participate in the proceedings; consequently, by Order dated November 15, 1973, the Commission directed the Bureau of Enforcement "to file and

1. 49 U.S.C. §§ 5b(4), (5), and (6) prohibit approval of agreements which:

(1) are among carriers of different specified classes and are not limited to matters relating to transportation under joint rates or over through routes;

(2) which involve "pooling" under § 5(1) of the Act (49 U.S.C. § 5(1)); or

(3) which do not accord to each party the "free and unrestrained right to take independent action either before or after any determination arrived at through such procedure."

serve a statement of verified facts and of argument setting forth the matters developed in the field investigations, as well as from other sources, regarding the conduct of the carrier rate bureau as a catalyst for the subsequent submission of initial statements of facts, arguments and opinion by the respondents and other interested parties." *First Report*, 349 I.C.C. at 816. Several hundred initial and reply statements were filed in response. The Orders of the Commission arising out of this survey directed that the agreements of rate bureaus would not thereafter be accorded antitrust immunity under 49 U.S.C. § 5b; (1) if such bureaus protest the independent action proposals of any of their member carriers; (2) if such carrier members are affiliated with shippers, unless the agreements of the bureau prohibit such carriers from serving on the bureau's Board of Directors, general rate committees or any other committees which have an effect directly or indirectly upon the rate-making function of the bureau, without prior Commission approval; and, finally, (3) if the bureaus involved are operating as profit-making entities.

The petitioners include Motor Carrier Traffic Association, Inc. (MCTA), a motor carrier rate bureau operating for profit, which challenges the withdrawal of antitrust immunity from bureaus which operate for profit; Rocky Mountain Motor Traffic Bureau, Inc. (Rocky Mount), a motor carrier rate bureau challenging the restrictions on carrier members of bureaus affiliated with shippers; and All Island Delivery Service, Inc., Pinter Bros., Inc., Troiano Express Co., Inc., Feuer Transportation, Inc., and John A. Jungerman Son, Inc., individual carrier members of the Middle Atlantic Conference, a rate bureau, challenging the provisions of Ex Parte 297 which withdraw antitrust immunity from rate bureaus protesting independent action proposals of member carriers before the Commission. Additionally, several organizations interested in the outcome have intervened. Respondents are the Interstate Commerce Commission and the United States (statutory respondent under 28 U.S.C. § 2344). This court's jurisdiction to review lies under 28 U.S.C. §§ 2321 and 2341 *et seq.*

The questions raised by the petitioners range from First Amendment rights to a charge of "arbitrary and capricious conduct" on the part of the Commission. None of the claims are meritorious, as we will briefly show below. In so finding, we uphold the Orders of the Commission.

[1] 1. At the outset we note that Section 5a(2) of the Act (49 U.S.C. § 5b(2)) authorizes the Commission to approve an agreement made under the provisions of the Section "if it finds that, by reason of furtherance of the national transportation policy declared in this Act, the relief provided in paragraph (9) . . . . should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied." The Commission followed this procedure and, in approving the applications, provided that they were subject to "such [general] terms and conditions as the Commission may prescribe". In addition we note that Section 5a(7) of the Act (49 U.S.C. § 5b(7)) specifically authorizes the Commission "to investigate and determine whether any agreement previously approved by it under this section . . . is not or are not in conformity with the standards set forth in paragraph [5a(2), 49 U.S.C. § 5b(2)]"—in "furtherance of the national transportation policy." In addition, Section 5a(7) provides:

> . . . after such investigation, the Commission shall by order terminate or modify its approval of such an agreement if it finds such action necessary to insure conformity with such standard, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standard . . .

Despite these clear and unequivocal words, petitioners say that under the First Amendment and Section 216 of the Act, 49 U.S.C. § 316, the rate bureaus have a constitutional right to file such protests. Section 216(c) of the Act, 49 U.S.C. § 316(c), does provide that "Any person, State board, organization, or body politic may make com-

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plaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this Section or of Section 217 (49 U.S.C. § 317). . . ." It may be that under Section 216 or 217 individual protests may be filed but, strangely enough, only Section 5a deals with "agreements concerning rates and related matters", and it requires prior approval of the Commission in order for the parties to the agreements to escape the penalties of the antitrust laws. To permit a rate bureau to protest the proposals of a member individually so chills the individual proposal that it stands little chance of adoption, while providing the opportunity for misuse of the bureaus as policing agencies against individual action. We agree with the Commission that "it is necessary to limit the bureaus' right to protest in order to foster independent action. The right of independent action is paramount to maintaining the integrity of the grant of antitrust immunity." The interpretation pressed by the petitioners would operate to repeal Section 5a, the very heart of the Act, leaving the bureaus without statutory authorization as well as antitrust immunity.

Petitioners urge that the Commission cannot reverse itself and now impose restrictions on the bureaus and that such action is arbitrary and capricious. The short answer is, of course, that reversal of views is no anomaly in democratic societies. In fact, it is the principal tool by which improvement is effected. The Supreme Court itself not only engages in the practice but has approved of its use by the Commission. See: *American Trucking Assns., Inc. v. Atchison T. & S.F. Ry. Co.*, 387 U.S. 397, 416, 87 S.Ct. 1608, 18 L.Ed.2d 847 (1967). Further, there is nothing irrational about the new rule that the Commission intends to put into effect. In fact, the new rule is in the true tradition of our free enterprise system which has been the keystone of our economic accomplishment for nearly a century. The Commission, in so acting, exercises its legislative function, and, as the Fifth Circuit has said: "may look beyond [the record] and draw upon its own expertise and experience." *General Telephone Co. v. United States*, 449 F.2d 846, 862 (1971). Based upon its experience, the Commission found that, as usual, more goes on than meets the eye. The paucity of formal bureau protests does not adequately reflect the number of threatened protests, nor has the mere existence of the right to protest had a significant anti-competitive impact, both Commission findings. Certainly the purpose of the Commission was to stimulate competition by removing the inhibitions against the filing of independent actions, a move not only in the spirit of Section 5a of the Act but in furtherance of the national transportation policy which is the essence of this case.

[2] 2. We now reach the challenge to the order prohibiting carriers that are in any way affiliated with a shipper from serving on a bureau's board of directors, general rate committee or any other committee which has an effect, either directly or indirectly, upon the rate-making function of the bureau, without specific prior Commission approval. It is said that this requirement is beyond the Commission's statutory authority and is also arbitrary and capricious. As we have already indicated, Section 5a(7) of the Act, 49 U.S.C. § 5b(7), grants the Commission full and complete authority to act as it did, and we shall not discuss the point further. See: *United States v. Chesapeake & Ohio Ry. Co.*, 426 U.S. 500, 96 S.Ct. 2318, 49 L.Ed.2d 14 (decided June 17, 1976); *United States v. Allegheny-Ludlum Steel*, 406 U.S. 742, 755, 92 S.Ct. 1941, 32 L.Ed.2d 453 (1972). Nor does the Commission's Order violate a legislative policy favoring rate bureau organizations. The Order does not destroy the basic purpose of the bureaus, contrary to the bureaus' claim, as the restrictions are not absolute—the Order itself permits exceptions. Moreover, we note that the Congress directed that the Commission should weigh the conflicting demands of the antitrust laws and the surface transportation system, resolving the same by the application of a standard involving the National Transpor-

tation Policy. H.R.Rep.No.1100, 80th Cong. 1st Sess. at 5, U.S.Code Cong.Serv.1948, p. 1844. Such a resolution requires consideration, not only of efficiency but of competitive impact. See: *McLean Trucking Co. v. United States*, 321 U.S. 67, 87, 64 S.Ct. 370, 88 L.Ed. 544 (1944).

Nor do we believe that the action of the Commission in this regard lacked a rational basis. Our study of the problem shows that the possibility of a conflict of interest is self-evident, although none was actually shown. In such a state of the record, it appears rational for the Commission to prohibit shipper-affiliated carrier participation in those activities where the possibility of a conflict of interest is high, but to permit exemptions through Commission approval of bureau applications. The Commission adopted a stance which in effect, is a case by case disposition, rather than a general rule. We find that this procedure overcomes the petitioners' objection.

The remaining contentions regarding this rule are frivolous and require no discussion.

[3] 3. The final issue presented is the question of rate bureau profit-making activities. It is contended that prohibiting profit-making is beyond the power of the Commission and that the action involved here should be classified as adjudication, rather than rule-making. As we have indicated, *supra*, we consider the action of the Commission in Ex Parte 297 to constitute rule making—and, we add, all of the petitioners, save one, agree. Under the Administrative Procedure Act "'rule' means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy . . . ." 5 U.S.C. § 551(4). Petitioner points to no applicable provision of law which requires a full-dress hearing here, nor have we found any.

[4] The petitioner finally claims that the Commission has no power to prohibit profit-making and to do so is an unconstitutional deprivation of property, but does not support this view with authority. In fact, to the contrary, the Commission found the rate bureaus to be service organizations "financed by fee assessments of the members, and not entrepreneurial. As such, the element of profit has been attacked as not compatible with the strict service function of organizations operating with antitrust immunity." *First Report*, 349 I.C.C. at 826. The bureaus act as agents for the carriers and would be in violation of the antitrust laws without the immunity bath furnished by the Commission. All of the expenses of the bureaus are passed on to the shippers and ultimately to the public. If there are services to the public, reimbursement should be on a compensatory basis. The cost of the bureaus as profit-making organizations chargeable to the shipper and the public is inconsistent with the public interest. If this drives the bureaus out of business, so be it. The public will not be saddled with their profits and at the same time afford them antitrust immunity. The orders of the Commission are

Affirmed.

WIDENER, Circuit Judge, concurring and dissenting:

I concur in the opinion of the court in Nos. 76-1329 and 76-1425. But, in No. 76-1426, I respectfully dissent.

In deciding to prohibit rate bureaus from protesting independent action proposals of member carriers, the Interstate Commerce Commission quotes language from *Arbet Truck Lines, Inc. v. Central States Motor Freight*, 321 I.C.C. 460, 471, stating that "[i]t is necessary to harmonize Section 5a [49 U.S.C. § 5b] and Sections 216(e) and (g) [49 U.S.C. §§ 316(e) and (g)] of the Act."

49 U.S.C. § 5b relieves parties to an approved agreement (rate bureaus) from the operation of the antitrust laws. 49 U.S.C. § 316(e) provides in pertinent part:

"Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 317 of this title."

For a number of years th effect to both parts of the ed by Congress. *Central Common Carriers—Agree* 773 (1957); *Southern M Agreement*, 297 I.C.C. 6 *Atlantic Conference—A* I.C.C. 683, 689 (1951).

In *Southern Motor Carri* monized the two sections in way:

"The right to take indepe conference members i from, and does not co equally established right ence, or any other perso to protest or complain of After a carrier takes ind the action taken stands o same footing with respe ence, in its efforts to foste stable rate structure in th members as a whole, as taken by a carrier not a m ber. To interpret sectio would not only contraven of section 216, paragraph stated, and of the national policy, but would jeopardi free hearing so necessary the development of comp proceedings before the Co the foregoing reasons, we cord with the protestants i that the agreement be m hibit the conference from the suspension of member participating in complai before the Commission." 616.

But now, in spite of its fin practice of rate bureaus in has been conducted in a m generally fair and devoid of and in spite of its statem have not found evidence of abuse by rate bureaus in the right to protest," the ICC de rate bureaus' right to protest ordinated" to the right of i tion.

For a number of years the ICC has given effect to both parts of the statute as enacted by Congress. *Central States Motor Common Carriers—Agreement*, 299 I.C.C. 773 (1957); *Southern Motor Carriers—Agreement*, 297 I.C.C. 603 (1956); *Middle Atlantic Conference—Agreement*, 283 I.C.C. 683, 689 (1951).

In *Southern Motor Carriers*, the ICC harmonized the two sections in the following way:

> "The right to take independent action by conference members is distinguished from, and does not conflict with, the equally established right of the conference, or any other person or body politic to protest or complain of any such action. After a carrier takes independent action, the action taken stands upon exactly the same footing with respect to the conference, in its efforts to foster a sound and stable rate structure in the interest of its members as a whole, as any such action taken by a carrier not a conference member. To interpret section 5a otherwise would not only contravene the provisions of section 216, paragraphs (e) and (g), as stated, and of the national transportation policy, but would jeopardize the full and free hearing so necessary and essential to the development of complete records in proceedings before the Commission. For the foregoing reasons, we are not in accord with the protestants in their request that the agreement be modified to prohibit the conference from petitioning for the suspension of member-carrier rates or participating in complaint proceedings before the Commission." 297 I.C.C. at 616.

But now, in spite of its findings that "the practice of rate bureaus in protesting rates has been conducted in a manner that is generally fair and devoid of base motives," and in spite of its statement that "[w]e have not found evidence of any flagrant abuse by rate bureaus in the exercise of the right to protest," the ICC declares that the rate bureaus' right to protest must be "subordinated" to the right of independent action.

The statistical background, however, which in this case must speak with more authority than mere feelings, does not show a threat to independent action; indeed I submit the contrary is shown. Of the 7,468 independent actions in 1973, the seven bureaus protested 199, only 2.66 percent. Middle Atlantic, for example, protested 46 of 1,064 independent actions in its tariffs in the twelve months ending May 31, 1973. Thirty-four of the 46 protested tariffs were rejected, suspended, or withdrawn. In 1973, Rocky Mountain Tariff Bureau protested 6 of 320 independent actions in its tariffs. Four of the six protested tariffs were suspended or withdrawn. Southern Motor Carriers Rate Conference protested 26 of the 2,914 independent actions in its tariffs. Thirteen of the 26 protested tariffs were suspended. The low percentage of bureau protests and the high percentage of their success indicate to me that the system is working as Congress intended, that is, as an "advantage and aid to the Commission in the administration of the act and the prevention of destructive rate cutting" in a situation where "[i]t is manifestly impossible, as a practical matter, for the Commission to scrutinize each and all of the multiplicity of tariffs and rate changes that are constantly being filed." *Middle Atlantic Conference*, 283 I.C.C. at 689.

For these reasons, I would preserve the rate bureaus' right to protest as Congress established it in code §§ 316(e) and (g).

Because I rely on the statutory provisions, I find no need to discuss, and express no opinion on, the first amendment issues raised in this appeal and somewhat persuasively presented under the *Noerr-Pennington* doctrine. *Ashwander v. T.V.A.*, 297 U.S. 288, 346, 56 S.Ct. 466, 80 L.Ed. 688 (1935) (Brandeis, J., concurring). See *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1971).

lowing deductions for income tax, is a step in the direction of creating a true divorce between ownership and control and of undermining the basic nature and character of our society. It is a step away from an individualistic society and toward the corporate state.

By: Milton Friedman

Chapter IX

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Occupational Licensure

THE OVERTHROW OF the medieval guild system was an indispensable early step in the rise of freedom in the Western world. It was a sign of the triumph of liberal ideas, and widely recognized as such, that by the mid-nineteenth century, in Britain, the United States, and to a lesser extent on the continent of Europe, men could pursue whatever trade or occupation they wished without the by-your-leave of any governmental or quasi-governmental authority. In more recent decades, there has been a retrogression, an increasing tendency for particular occupations to be restricted to individuals licensed to practice them by the state.

These restrictions on the freedom of individuals to use their

resources as they wish are important in their own right. In addition, they provide still a different class of problems to which we can apply the principles developed in the first two chapters.

I shall discuss first the general problem and then a particular example, restrictions on the practice of medicine. The reason for choosing medicine is that it seems desirable to discuss the restrictions for which the strongest case can be made—there is not much to be learned by knocking down straw men. I suspect that most people, possibly even most liberals, believe that it is desirable to restrict the practice of medicine to people who are licensed by the state. I agree that the case for licensure is stronger for medicine than for most other fields. Yet the conclusions I shall reach are that liberal principles do not justify licensure even in medicine and that in practice the results of state licensure in medicine have been undesirable.

UBIQUITY OF GOVERNMENTAL RESTRICTIONS ON ECONOMIC ACTIVITIES MEN MAY ENGAGE IN

Licensure is a special case of a much more general and exceedingly widespread phenomenon, namely, edicts that individuals may not engage in particular economic activities except under conditions laid down by a constituted authority of the state. Medieval guilds were a particular example of an explicit system for specifying which individuals should be permitted to follow particular pursuits. The Indian caste system is another example. To a considerable extent in the caste system, to a lesser extent in the guilds, the restrictions were enforced by general social customs rather than explicitly by government.

A widespread notion about the caste system is that every person's occupation is completely determined by the caste into which he is born. It is obvious to an economist that this is an impossible system, since it prescribes a rigid distribution of persons among occupations determined entirely by birthrates and not at all by conditions of demand. Of course, this is not the way the system worked. What was true, and to some measure still is, was that a limited number of occupations were reserved to members of certain castes, but not every member of those

castes followed those occupations. There were some general occupations, such as general agricultural work, which members of various castes might engage in. These permitted an adjustment of the supply of people in different occupations to the demand for their services.

Currently, tariffs, fair-trade laws, import quotas, production quotas, trade union restrictions on employment and so on are examples of similar phenomena. In all these cases, governmental authority determines the conditions under which particular individuals can engage in particular activities, which is to say, the terms on which some individuals are permitted to make arrangements with others. The common feature of these examples, as well as of licensure, is that the legislation is enacted on behalf of a producer group. For licensure, the producer group is generally a craft. For the other examples, it may be a group producing a particular product which wants a tariff, a group of small retailers who would like to be protected from competition by the "chiseling" chain stores, or a group of oil producers, of farmers, or of steel workers.

Occupational licensure is by now very widespread. According to Walter Gellhorn, who has written the best brief survey I know, "By 1952 more than 80 separate occupations exclusive of 'owner-businesses,' like restaurants and taxicab companies, had been licensed by state law; and in addition to the state laws there are municipal ordinances in abundance, not to mention the federal statutes that require the licensing of such diverse occupations as radio operators and stockyard commission agents. As long ago as 1938 a single state, North Carolina, had extended its law to 60 occupations. One may not be surprised to learn that pharmacists, accountants, and dentists have been reached by state law as have sanitarians and psychologists, assayers and architects, veterinarians and librarians. But with what joy of discovery does one learn about the licensing of threshing machine operators and dealers in scrap tobacco? What of egg graders and guide dog trainers, pest controllers and yacht salesmen, tree surgeons and well diggers, tile layers and potato growers? And what of the hypertrichologists who are licensed in Connecticut, where they remove excessive and

unsightly hair with the solemnity appropriate to their high sounding title?"[1] In the arguments that seek to persuade legislatures to enact such licensure provisions, the justification is always said to be the necessity of protecting the public interest. However, the pressure on the legislature to license an occupation rarely comes from the members of the public who have been mulcted or in other ways abused by members of the occupation. On the contrary, the pressure invariably comes from members of the occupation itself. Of course, they are more aware than others of how much they exploit the customer and so perhaps they can lay claim to expert knowledge.

Similarly, the arrangements made for licensure almost invariably involve control by members of the occupation which is to be licensed. Again, this is in some ways quite natural. If the occupation of plumbing is to be restricted to those who have the requisite capacity and skills to provide good service for their customers, clearly only plumbers are capable of judging who should be licensed. Consequently, the board or other body that grants licenses is almost invariably made up largely of plumbers or pharmacists or physicians or whatever may be the particular occupation licensed.

Gellhorn points out that "Seventy-five per cent of the occupational licensing boards at work in this country today are composed exclusively of licensed practitioners in the respective occupations. These men and women, most of whom are only part-time officials, may have a direct economic interest in many of the decisions they make concerning admission requirements and the definition of standards to be observed by licensees. More importantly, they are as a rule directly representative of organized groups within the occupations. Ordinarily they are nominated by these groups as a step toward a gubernatorial or other appointment that is frequently a mere formality. Often the formality is dispensed with entirely, appointment being made directly by the occupational association—as happens, for example, with the embalmers in North Carolina, the den-

[1] Walter Gellhorn, *Individual Freedom and Governmental Restraints* (Baton Rouge: Louisiana State University Press, 1956). Chapter entitled "The Right to Make a Living," p. 106.

tists in Alabama, the psychologists in Virginia, the physicians in Maryland, and the attorneys in Washington."[2]

Licensure therefore frequently establishes essentially the medieval guild kind of regulation in which the state assigns power to the members of the profession. In practice, the considerations taken into account in determining who shall get a license often involve matters that, so far as a layman can see, have no relation whatsoever to professional competence. This is not surprising. If a few individuals are going to decide whether other individuals may pursue an occupation, all sorts of irrelevant considerations are likely to enter. Just what the irrelevant considerations will be, will depend on the personalities of the members of the licensing board and the mood of the time. Gellhorn notes the extent to which a loyalty oath was required of various occupations when the fear of communist subversion was sweeping the country. He writes, "A Texas statute of 1952 requires each applicant for a pharmacist's license to swear that 'he is not a member of the Communist Party or affiliated with such party, and that he does not believe in and is neither a member of nor supports any group or organization that believes in, furthers or teaches the overthrow of the United States Government by force or any illegal or unconstitutional methods.' The relationship between this oath on the one hand and, on the other, the public health which is the interest purportedly protected by the licensing of pharmacists, is somewhat obscure. No more apparent is the justification for requiring professional boxers and wrestlers in Indiana to swear that they are not subversive . . . A junior high school teacher of music, having been forced to resign after being identified as a Communist, had difficulty becoming a piano tuner in the District of Columbia because, forsooth, he was 'under Communist discipline.' Veterinarians in the state of Washington may not minister to an ailing cow or cat unless they have first signed a non-Communist oath."[3]

Whatever one's attitude towards communism, any relationship between the requirements imposed and the qualities

[2] Ibid. pp. 140–41.
[3] *Ibid.*, pp. 129–30.

which the licensure is intended to assure is rather far-fetched. The extent to which such requirements go is sometimes little short of ludicrous. A few more quotations from Gellhorn may provide a touch of comic relief.[4]

One of the most amusing sets of regulations is that laid down for barbers, a trade that is licensed in many places. Here is an example from a law which was declared invalid by Maryland courts, though similar language can be found in statutes of other states which were declared legal. "The court was depressed rather than impressed by a legislative command that neophyte barbers must receive formal instruction in the 'scientific fundamentals for barbering, hygiene, bacteriology, histology of the hair, skin, nails, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, disease of the skin, hair, glands and nails, haircutting, shaving and arranging, dressing, coloring, bleaching, and tinting of the hair'."[5] One more quotation on the barbers: "Of eighteen representative states included in a study of barbering regulations in 1929, not one then commanded an aspirant to be a graduate of a 'barber college,' though apprenticeship was necessary in all. Today, the states typically insist upon graduation from a barbering school that provides not less (and often much more) than one thousand hours of instruction in 'theoretical subjects' such as sterilization of instruments, and this must still be followed by apprenticeship."[6] I trust these quotations make it clear that the problem of licensing of occupations is something more than a trivial illustration of the problem of state intervention, that it is already in this country a serious infringement on the freedom of individuals to pursue activities of their own choice, and that it threatens to become a much more serious one with the continual pressure upon legislatures to extend it.

Before discussing the advantages and disadvantages of licensing, it is worth noting why we have it and what general political problem is revealed by the tendency for such special legislation to be enacted. The declaration by a large number of different state legislatures that barbers must be approved by a committee of other barbers is hardly persuasive evidence that there is in fact a public interest in having such legislation. Surely the explanation is different; it is that a producer group tends to be more concentrated politically than a consumer group. This is an obvious point often made and yet one whose importance cannot be overstressed.[7] Each of us is a producer and also a consumer. However, we are much more specialized and devote a much larger fraction of our attention to our activity as a producer than as a consumer. We consume literally thousands if not millions of items. The result is that people in the same trade, like barbers or physicians, all have an intense interest in the specific problems of this trade and are willing to devote considerable energy to doing something about them. On the other hand, those of us who use barbers at all, get barbered infrequently and spend only a minor fraction of our income in barber shops. Our interest is casual. Hardly any of us are willing to devote much time going to the legislature in order to testify against the iniquity of restricting the practice of barbering. The same point holds for tariffs. The groups that think they have a special interest in particular tariffs are concentrated groups to whom the issue makes a great deal of difference. The public interest is widely dispersed. In consequence, in the absence of any general arrangements to offset the pressure of special interests, producer groups will invariably have a much stronger influence on legislative action and the powers that be than will the diverse, widely spread consumer interest. Indeed from this point of view, the puzzle is not why we have so many silly licensure laws, but why we don't have far more. The puzzle is how we ever succeeded in getting the relative freedom from government controls over the productive activities of individuals that we have had and still have in this country, and that other countries have had as well.

[4] In fairness to Walter Gellhorn, I should note that he does not share my view that the correct solution to these problems is to abandon licensing. On the contrary, he thinks that while licensing has gone much too far it has some real functions to perform. He suggests procedural reforms and changes that in his view would limit the abuse of licensure arrangements.

[5] *Ibid.*, pp. 121–22.

[6] *Ibid.*, p. 146.

[7] See, for example, Wesley Mitchell's famous article on the "Backward Art of Spending Money," reprinted in his book of essays carrying that title (New York: McGraw-Hill, 1937), pp. 3–19.

The only way that I can see to offset special producer groups is to establish a general presumption against the state undertaking certain kinds of activities. Only if there is a general recognition that governmental activities should be severely limited with respect to a class of cases, can the burden of proof be put strongly enough on those who would depart from this general presumption to give a reasonable hope of limiting the spread of special measures to further special interests. This point is one we have adverted to time and again. It is of a piece with the argument for the Bill of Rights and for a rule to govern monetary policy and fiscal policy.

POLICY ISSUES RAISED BY LICENSURE

It is important to distinguish three different levels of control: first, registration; second, certification; third, licensing.

By registration, I mean an arrangement under which individuals are required to list their names in some official register if they engage in certain kinds of activities. There is no provision for denying the right to engage in the activity to anyone who is willing to list his name. He may be charged a fee, either as a registration fee or as a scheme of taxation.

The second level is certification. The governmental agency may certify that an individual has certain skills but may not prevent, in any way, the practice of any occupation using these skills by people who do not have such a certificate. One example is accountancy. In most states, anybody can be an accountant, whether he is a certified public accountant or not, but only those people who have passed a particular test can put the title CPA after their names or can put a sign in their offices saying they are certified public accountants. Certification is frequently only an intermediate stage. In many states, there has been a tendency to restrict an increasing range of activities to certified public accountants. With respect to such activities there is licensure, not certification. In some states, "architect" is a title which can be used only by those who have passed a specified examination. This is certification. It does not prevent anyone else from going into the business of advising people for a fee how to build houses.

The third stage is licensing proper. This is an arrangement under which one must obtain a license from a recognized authority in order to engage in the occupation. The license is more than a formality. It requires some demonstration of competence or the meeting of some tests ostensibly designed to insure competence, and anyone who does not have a license is not authorized to practice and is subject to a fine or a jail sentence if he does engage in practice.

The question I want to consider is this: under what circumstances, if any, can we justify the one or the other of these steps? There are three different grounds on which it seems to me registration can be justified consistently with liberal principles.

First, it may assist in the pursuit of other aims. Let me illustrate. The police are often concerned with acts of violence. After the event, it is desirable to find out who had access to firearms. Before the event, it is desirable to prevent firearms from getting into the hands of people who are likely to use them for criminal purposes. It may assist in the pursuit of this aim to register stores selling firearms. Of course, if I may revert to a point made several times in earlier chapters, it is never enough to say that there *might* be a justification along these lines, in order to conclude that there *is* justification. It is necessary to set up a balance sheet of the advantages and disadvantages in the light of liberal principles. All I am now saying is that this consideration might in some cases justify overriding the general presumption against requiring the registration of people.

Second, registration is sometimes a device to facilitate taxation and nothing more. The questions at issue then become whether the particular tax is an appropriate method to raise revenue for financing government services regarded as necessary, and whether registration facilitates the collection of taxes. It may do so either because a tax is imposed on the person who registers, or because the person who registers is used as a tax collector. For example, in collecting a sales tax imposed on various items of consumption, it is necessary to have a register or list of all the places selling goods subject to the tax.

Third, and this is the one possible justification for registration which is close to our main interest, registration may be a means to protect consumers against fraud. In general, liberal principles

assign to the state the power to enforce contracts, and fraud involves the violation of a contract. It is, of course, dubious that one should go very far to protect in advance against fraud because of the interference with voluntary contracts involved in doing so. But I do not think that one can rule out on grounds of principle the possibility that there may be certain activities that are so likely to give rise to fraud as to render it desirable to have in advance a list of people known to be pursuing this activity. Perhaps one example along these lines is the registration of taxicab drivers. A taxicab driver picking up a person at night may be in a particularly good position to steal from him. To inhibit such practices, it may be desirable to have a list of names of people who are engaged in the taxicab business, to give each a number, and to require that this number be put in the cab so that anyone molested need only remember the number of the cab. This involves simply the use of the police power to protect individuals against violence on the part of other individuals and may be the most convenient method of doing so.

Certification is much more difficult to justify. The reason is that this is something the private market generally can do for itself. This problem is the same for products as for people's services. There are private certification agencies in many areas that certify the competence of a person or the quality of a particular product. The *Good Housekeeping* seal is a private certification arrangement. For industrial products there are private testing laboratories that will certify to the quality of a particular product. For consumer products, there are consumer testing agencies of which Consumer's Union and Consumer's Research are the best known in the United States. Better Business Bureaus are voluntary organizations that certify the quality of particular dealers. Technical schools, colleges, and universities certify the quality of their graduates. One function of retailers and department stores is to certify the quality of the many items they sell. The consumer develops confidence in the store, and the store in turn has an incentive to earn this confidence by investigating the quality of the items it sells.

One can however argue that in some cases, or perhaps even in many, voluntary certification will not be carried as far as individuals would be willing to pay for carrying it because of the difficulty of keeping the certification confidential. The issue is essentially the one involved in patents and copyrights, namely, whether individuals are in a position to capture the value of the services that they render to others. If I go into the business of certifying people, there may be no efficient way in which I can require you to pay for my certification. If I sell my certification information to one person, how can I keep him from passing it on to others? Consequently, it may not be possible to get effective voluntary exchange with respect to certification, even though this is a service that people would be willing to pay for if they had to. One way to get around this problem, as we get around other kinds of neighborhood effects, is to have governmental certification.

Another possible justification for certification is on monopoly grounds. There are some technical monopoly aspects to certification, since the cost of making a certification is largely independent of the number of people to whom the information is transmitted. However, it is by no means clear that monopoly is inevitable.

Licensure seems to me still more difficult to justify. It goes still farther in the direction of trenching upon the rights of individuals to enter into voluntary contracts. Nonetheless, there are some justifications given for licensure that the liberal will have to recognize as within his own conception of appropriate government action, though, as always, the advantages have to be weighed against the disadvantages. The main argument that is relevant to a liberal is the existence of neighborhood effects. The simplest and most obvious example is the "incompetent" physician who produces an epidemic. Insofar as he harms only his patient, that is simply a question of voluntary contract and exchange between the patient and his physician. On this score, there is no ground for intervention. However, it can be argued that if the physician treats his patient badly, he may unleash an epidemic that will cause harm to third parties who are not involved in the immediate transaction. In such a case, it is conceivable that everybody, including even the potential patient and physician, would be willing to submit to the restriction of the practice of medicine to "competent" people in order to prevent such epidemics from occurring.

In practice, the major argument given for licensure by its proponents is not this one, which has some appeal to a liberal, but rather a strictly paternalistic argument that has little or no appeal. Individuals, it is said, are incapable of choosing their own servants adequately, their own physician or plumber or barber. In order for a man to choose a physician intelligently, he would have to be a physician himself. Most of us, it is said, are therefore incompetent and we must be protected against our own ignorance. This amounts to saying that we in our capacity as voters must protect ourselves in our capacity as consumers against our own ignorance, by seeing to it that people are not served by incompetent physicians or plumbers or barbers.

So far, I have been listing the arguments for registration, certification, and licensing. In all three cases, it is clear that there are also strong social costs to be set against any of these advantages. Some of these social costs have already been suggested and I shall illustrate them in more detail for medicine, but it may be worth recording them here in general form.

The most obvious social cost is that any one of these measures, whether it be registration, certification, or licensure, almost inevitably becomes a tool in the hands of a special producer group to obtain a monopoly position at the expense of the rest of the public. There is no way to avoid this result. One can devise one or another set of procedural controls designed to avert this outcome, but none is likely to overcome the problem that arises out of the greater concentration of producer than of consumer interest. The people who are most concerned with any such arrangement, who will press most for its enforcement and be most concerned with its administration, will be the people in the particular occupation or trade involved. They will inevitably press for the extension of registration to certification and of certification to licensure. Once licensure is attained, the people who might develop an interest in undermining the regulations are kept from exerting their influence. They don't get a license, must therefore go into other occupations, and will lose interest. The result is invariably control over entry by members of the occupation itself and hence the establishment of a monopoly position.

Certification is much less harmful in this respect. If the certified "abuse" their special certificates; if, in certifying newcomers, members of the trade impose unnecessarily stringent requirements and reduce the number of practitioners too much, the price differential between certified and non-certified will become sufficiently large to induce the public to use non-certified practitioners. In technical terms, the elasticity of demand for the services of certified practitioners will be fairly large, and the limits within which they can exploit the rest of the public by taking advantage of their special position will be rather narrow.

In consequence, certification without licensure is a half-way house that maintains a good deal of protection against monopolization. It also has its disadvantages, but it is worth noting that the usual arguments for licensure, and in particular the paternalistic arguments, are satisfied almost entirely by certification alone. If the argument is that we are too ignorant to judge good practitioners, all that is needed is to make the relevant information available. If, in full knowledge, we still want to go to someone who is not certified, that is our business; we cannot complain that we did not have the information. Since arguments for licensure made by people who are not members of the occupation can be satisfied so fully by certification, I personally find it difficult to see any case for which licensure rather than certification can be justified.

Even registration has significant social costs. It is an important first step in the direction of a system in which every individual has to carry an identity card, every individual has to inform authorities what he plans to do before he does it. Moreover, as already noted, registration tends to be the first step toward certification and licensure.

MEDICAL LICENSURE

The medical profession is one in which practice of the profession has for a long time been restricted to people with licenses. Offhand, the question, "Ought we to let incompetent physicians practice?" seems to admit of only a negative answer. But I want to urge that second thought may give pause.

In the first place, licensure is the key to the control that the medical profession can exercise over the number of physicians. To understand why this is so requires some discussion of the structure of the medical profession. The American Medical Association is perhaps the strongest trade union in the United States. The essence of the power of a trade union is its power to restrict the number who may engage in a particular occupation. This restriction may be exercised indirectly by being able to enforce a wage rate higher than would otherwise prevail. If such a wage rate can be enforced, it will reduce the number of people who can get jobs and thus indirectly the number of people pursuing the occupation. This technique of restriction has disadvantages. There is always a dissatisfied fringe of people who are trying to get into the occupation. A trade union is much better off if it can limit directly the number of people who enter the occupation — who ever try to get jobs in it. The disgruntled and dissatisfied are excluded at the outset, and the union does not have to worry about them.

The American Medical Association is in this position. It is a trade union that can limit the number of people who can enter. How can it do this? The essential control is at the stage of admission to medical school. The Council on Medical Education and Hospitals of the American Medical Association approves medical schools. In order for a medical school to get and stay on its list of approved schools it has to meet the standards of the Council. The power of the Council has been demonstrated at various times when there has been pressure to reduce numbers. For example, in the 1930's during the depression, the Council on Medical Education and Hospitals wrote a letter to the various medical schools saying the medical schools were admitting more students than could be given the proper kind of training. In the next year or two, every school reduced the number it was admitting, giving very strong presumptive evidence that the recommendation had some effect.

Why does the Council's approval matter so much? If it abuses its power, why don't unapproved medical schools arise? The answer is that in almost every state in the United States, a person must be licensed to practice medicine, and to get the license, he must be a graduate of an approved school. In almost every

state, the list of approved schools is identical with the list of schools approved by the Council on Medical Education and Hospitals of the American Medical Association. That is why the licensure provision is the key to the effective control of admission. It has a dual effect. On the one hand, the members of the licensure commission are always physicians and hence have some control at the step at which men apply for a license. This control is more limited in effectiveness than control at the medical school level. In almost all professions requiring licensure, people may try to get admitted more than once. If a person tries long enough and in enough jurisdictions he is likely to get through sooner or later. Since he has already spent the money and time to get his training, he has a strong incentive to keep trying. Licensure provisions that come into operation only after a man is trained therefore affect entry largely by raising the costs of getting into the occupation, since it may take a longer time to get in and since there is always some uncertainty whether he will succeed. But this rise in cost is nothing like so effective in limiting entry as is preventing a man from getting started on his career. If he is eliminated at the stage of entering medical school, he never comes up as a candidate for examination; he can never be troublesome at that stage. The efficient way to get control over the number in a profession is therefore to get control of entry into professional schools.

Control over admission to medical school and later licensure enables the profession to limit entry in two ways. The obvious one is simply by turning down many applicants. The less obvious, but probably far more important one, is by establishing standards for admission and licensure that make entry so difficult as to discourage young people from ever trying to get admission. Though most state laws require only two years of college prior to medical school, nearly 100 per cent of the entrants have had four years of college. Similarly, medical training proper has been lengthened, particularly through more stringent internship arrangements.

As an aside, the lawyers have never been as successful as the physicians in getting control at the point of admission to professional school, though they are moving in that direction. The reason is amusing. Almost every school on the American Bar

Association's list of approved schools is a full time day school; almost no night schools are approved. Many state legislators, on the other hand, are graduates of night law schools. If they voted to restrict admission to the profession to graduates of approved schools, in effect they would be voting that they themselves were not qualified. Their reluctance to condemn their own competence has been the main factor that has tended to limit the extent to which law has been able to succeed in imitating medicine. I have not myself done any extensive work on requirements for admission to law for many years but I understand that this limitation is breaking down. The greater affluence of students means that a much larger fraction are going to full time law schools and this is changing the composition of the legislatures.

To return to medicine, it is the provision about graduation from approved schools that is the most important source of professional control over entry. The profession has used this control to limit numbers. To avoid misunderstanding let me emphasize that I am not saying that individual members of the medical profession, the leaders of the medical profession, or the people who are in charge of the Council on Medical Education and Hospitals deliberately go out of their way to limit entry in order to raise their own incomes. That is not the way it works. Even when such people explicitly comment on the desirability of limiting numbers to raise incomes they will always justify the policy on the grounds that if "too" many people are let in, this will lower their incomes so that they will be driven to resort to unethical practices in order to earn a "proper" income. The only way, they argue, in which ethical practices can be maintained is by keeping people at a standard of income which is adequate to the merits and needs of the medical profession. I must confess that this has always seemed to me objectionable on both ethical and factual grounds. It is extraordinary that leaders of medicine should proclaim publicly that they and their colleagues must be paid to be ethical. And if it were so, I doubt that the price would have any limit. There seems little correlation between poverty and honesty. One would rather expect the opposite; dishonesty may not always pay but surely it sometimes does.

Control of entry is explicitly rationalized along these lines only at times like the Great Depression when there is much unemployment and relatively low incomes. In ordinary times, the rationalization for restriction is different. It is that the members of the medical profession want to raise what they regard as the standards of "quality" of the profession. The defect in this rationalization is a common one, and one that is destructive of a proper understanding of the operation of an economic system, namely, the failure to distinguish between technical efficiency and economic efficiency.

A story about lawyers will perhaps illustrate the point. At a meeting of lawyers at which problems of admission were being discussed, a colleague of mine, arguing against restrictive admission standards, used an analogy from the automobile industry. Would it not, he said, be absurd if the automobile industry were to argue that no one should drive a low quality car and therefore that no automobile manufacturer should be permitted to produce a car that did not come up to the Cadillac standard. One member of the audience rose and approved the analogy, saying that, of course, the country cannot afford anything but Cadillac lawyers! This tends to be the professional attitude. The members look solely at technical standards of performance, and argue in effect that we must have only first-rate physicians even if this means that some people get no medical service—though of course they never put it that way. Nonetheless, the view that people should get only the "optimum" medical service always lead to a restrictive policy, a policy that keeps down the number of physicians. I would not, of course, want to argue that this is the only force at work, but only that this kind of consideration leads many well-meaning physicians to go along with policies that they would reject out-of-hand if they did not have this kind of comforting rationalization.

It is easy to demonstrate that quality is only a rationalization and not the underlying reason for restriction. The power of the Council on Medical Education and Hospitals of the American Medical Association has been used to limit numbers in ways that cannot possibly have any connection whatsoever with quality. The simplest example is their recommendation to various

states that citizenship be made a requirement for the practice of medicine. I find it inconceivable to see how this is relevant to medical performance. A similar requirement that they have tried to impose on occasion is that examination for licensure must be taken in English. A dramatic piece of evidence on the power and potency of the Association as well as on the lack of relation to quality is proved by one figure that I have always found striking. After 1933, when Hitler came to power in Germany, there was a tremendous outflow of professional people from Germany, Austria and so on, including of course, physicians who wanted to practice in the United States. The number of physicians trained abroad who were admitted to practice in the United States in the five years after 1933 was the same as in the five years before. This was clearly not the result of the natural course of events. The threat of these additional physicians led to a stringent tightening of requirements for foreign physicians that imposed extreme costs upon them.

It is clear that licensure is the key to the medical profession's ability to restrict the number of physicians who practice medicine. It is also the key to its ability to restrict technological and organizational changes in the way medicine is conducted. The American Medical Association has been consistently against the practice of group medicine, and against prepaid medical plans. These methods of practice may have good features and bad features, but they are technological innovations that people ought to be free to try out if they wish. There is no basis for saying conclusively that the optimum technical method of organizing medical practice is practice by an independent physician. Maybe it is group practice, maybe it is by corporations. One ought to have a system under which all varieties can be tried.

The American Medical Association has resisted such attempts and has been able effectively to inhibit them. It has been able to do so because licensure has indirectly given it control of admission to practice in hospitals. The Council on Medical Education and Hospitals approves hospitals as well as medical schools. In order for a physician to get admission to practice in an "approved" hospital, he must generally be approved by his county medical association or by the hospital board. Why

can't unapproved hospitals be set up? Because under present economic conditions, in order for a hospital to operate it must have a supply of interns. Under most state licensure laws, candidates must have some internship experience to be admitted to practice, and internship must be in an "approved" hospital. The list of "approved" hospitals is generally identical with that of the Council on Medical Education and Hospitals. Consequently, the licensure law gives the profession control over hospitals as well as over schools. This is the key to the AMA's largely successful opposition to various types of group practice. In a few cases, the groups have been able to survive. In the District of Columbia, they succeeded because they were able to bring suit against the American Medical Association under the federal Sherman antitrust laws, and won the suit. In a few other cases, they have succeeded for special reasons. There is, however, no doubt that the tendency toward group practice has been greatly retarded by the AMA's opposition.

It is interesting, and this is an aside, that the medical association is against only one type of group practice, namely, prepaid group practice. The economic reason seems to be that this eliminates the possibility of engaging in discriminatory pricing.[8]

It is clear that licensure has been at [illegible] of the restriction of entry and that this involves a heavy [illegible] cost, both to the individuals who want to practice medicine but are prevented from doing so and to the public deprived of the medical care it wants to buy and is prevented from buying. Let me now ask the question: Does licensure have the good effects that it is said to have?

In the first place, does it really raise standards of competence? It is by no means clear that it does raise the standards of competence in the actual practice of the profession for several reasons. In the first place, whenever you establish a block to entry into any field, you establish an incentive to find ways of getting around it, and of course medicine is no exception. The rise of the professions of osteopathy and of chiropractic is not unrelated to the restriction of entry into medicine. On the contrary, each of these represented, to some extent, an attempt to find a

[8] See Reuben Kessel, "Price Discrimination in Medicine," *The Journal of Law and Economics*, Vol. I (October, 1958), 20–53.

way around restriction of entry. Each of these, in turn, is proceeding to get itself licensed, and to impose restrictions. The effect is to create different levels and kinds of practice, to distinguish between what is called medical practice and substitutes such as osteopathy, chiropractic, faith healing and so on. These alternatives may well be of lower quality than medical practice would have been without the restrictions on entry into medicine.

More generally, if the number of physicians is less than it otherwise would be, and if they are all fully occupied, as they generally are, this means that there is a smaller total of medical practice by trained physicians—fewer medical man-hours of practice, as it were. The alternative is untrained practice by somebody; it may and in part must be by people who have no professional qualifications at all. Moreover, the situation is much more extreme. If "medical practice" is to be limited to licensed practitioners, it is necessary to define what medical practice is, and featherbedding is not something that is restricted to the railroads. Under the interpretation of the statutes forbidding unauthorized practice of medicine, many things are restricted to licensed physicians that could perfectly well be done by technicians, and other skilled people who do not have a Cadillac medical training. I am not enough of a technician to list the examples at all fully. I only know that those who have looked into the question say that the tendency is to include in "medical practice" a wider and wider range of activities that could perfectly well be performed by technicians. Trained physicians devote a considerable part of their time to things that might well be done by others. The result is to reduce drastically the amount of medical care. The relevant average quality of medical care, if one can at all conceive of the concept, cannot be obtained by simply averaging the quality of care that is given; that would be like judging the effectiveness of a medical treatment by considering only the survivors; one must also allow for the fact that the restrictions reduce the amount of care. The result may well be that the average level of competence in a meaningful sense has been reduced by the restrictions.

Even these comments do not go far enough, because they consider the situation at a point in time and do not allow for

changes over time. Advances in any science or field often result from the work of one out of a large number of crackpots and quacks and people who have no standing in the profession. In the medical profession, under present circumstances, it is very difficult to engage in research or experimentation unless you are a member of the profession. If you are a member of the profession and want to stay in good standing in the profession, you are seriously limited in the kind of experimentation you can do. A "faith healer" may be just a quack who is imposing himself on credulous patients, but maybe one in a thousand or in many thousands will produce an important improvement in medicine. There are many different routes to knowledge and learning and the effect of restricting the practice of what is called medicine and defining it as we tend to do to a particular group, who in the main have to conform to the prevailing orthodoxy, is certain to reduce the amount of experimentation that goes on and hence to reduce the rate of growth of knowledge in the area. What is true for the content of medicine is true also for its organization, as has already been suggested. I shall expand further on this point below.

There is still another way in which licensure, and the associated monopoly in the practice of medicine, tend to render standards of practice low. I have already suggested that it renders the average quality of practice low by reducing the number of physicians, by reducing the aggregate number of hours available from trained physicians for more rather than less important tasks, and by reducing the incentive for research and development. It renders it low also by making it much more difficult for private individuals to collect from physicians for malpractice. One of the protections of the individual citizen against incompetence is protection against fraud and the ability to bring suit in the court against malpractice. Some suits are brought, and physicians complain a great deal about how much they have to pay for malpractice insurance. Yet suits for malpractice are fewer and less successful than they would be were it not for the watchful eye of the medical associations. It is not easy to get a physician to testify against a fellow physician when he faces the sanction of being denied the right to practice in an

"approved" hospital. The testimony generally has to come from members of panels set up by medical associations themselves, always, of course, in the alleged interest of the patients.

When these effects are taken into account, I am myself persuaded that licensure has reduced both the quantity and quality of medical practice; that it has reduced the opportunities available to people who would like to be physicians, forcing them to pursue occupations they regard as less attractive; that it has forced the public to pay more for less satisfactory medical service, and that it has retarded technological development both in medicine itself and in the organization of medical practice. I conclude that licensure should be eliminated as a requirement for the practice of medicine.

When all this is said, many a reader, I suspect, like many a person with whom I have discussed these issues, will say, "But still, how else would I get any evidence on the quality of a physician. Granted all that you say about costs, is not licensure the only way of providing the public with some assurance of at least minimum quality?" The answer is partly that people do not now choose physicians by picking names at random from a list of licensed physicians; partly, that a man's ability to pass an examination twenty or thirty years earlier is hardly assurance of quality now; hence, licensure is not now the main or even a major source of assurance of at least minimum quality. But the major answer is very different. It is that the question itself reveals the tyranny of the status quo and the poverty of our imagination in fields in which we are laymen, and even in those in which we have some competence, by comparison with the fertility of the market. Let me illustrate by speculating on how medicine might have developed and what assurances of quality would have emerged, if the profession had not exerted monopoly power.

Suppose that anyone had been free to practice medicine without restriction except for legal and financial responsibility for any harm done to others through fraud and negligence. I conjecture that the whole development of medicine would have been different. The present market for medical care, hampered as it has been, gives some hints of what the difference would have been. Group practice in conjunction with hospitals would

have grown enormously. Instead of individual practice plus large institutional hospitals conducted by governments or eleemosynary institutions, there might have developed medical partnerships or corporations—medical teams. These would have provided central diagnostic and treatment facilities, including hospital facilities. Some presumably would have been prepaid, combining in one package present hospital insurance, health insurance, and group medical practice. Others would have charged separate fees for separate services. And of course, most might have used both methods of payment.

These medical teams—department stores of medicine, if you will—would be intermediaries between the patients and the physician. Being long-lived and immobile, they would have a great interest in establishing a reputation for reliability and quality. For the same reason, consumers would get to know their reputation. They would have the specialized skill to judge the quality of physicians; indeed, they would be the agent of the consumer in doing so, as the department store is now for many a product. In addition, they could organize medical care efficiently, combining medical men of different degrees of skill and training, using technicians with limited training for tasks for which they were suited, and reserving highly skilled and competent specialists for the tasks they alone could perform. The reader can add further flourishes for himself, drawing in part, as I have done, on what now goes on at the leading medical clinics.

Of course, not all medical practice would be done through such teams. Individual private practice would continue, just as the small store with a limited clientele exists alongside the department store, the individual lawyer alongside the great many-partnered firm. Men would establish individual reputations and some patients would prefer the privacy and intimacy of the individual practitioner. Some areas would be too small to be served by medical teams. And so on.

I would not even want to maintain that the medical teams would dominate the field. My aim is only to show by example that there are many alternatives to the present organization of practice. The impossibility of any individual or small group conceiving of all the possibilities, let alone evaluating their merits,

is the great argument against central governmental planning and against arrangements such as professional monopolies that limit the possibilities of experimentation. On the other side, the great argument for the market is its tolerance of diversity; its ability to utilize a wide range of special knowledge and capacity. It renders special groups impotent to prevent experimentation and permits the customers and not the producers to decide what will serve the customers best.

Chapter X

The Distribution of Income

A CENTRAL ELEMENT IN the development of a collectivist sentiment in this century, at least in Western countries, has been a belief in equality of income as a social goal and a willingness to use the arm of the state to promote it. Two very different questions must be asked in evaluating this egalitarian sentiment and the egalitarian measures it has produced. The first is normative and ethical: what is the justification for state intervention to promote equality? The second is positive and scientific: what has been the effect of the measures actually taken?

THE ETHICS OF DISTRIBUTION

The ethical principle that would directly justify the distribution of income in a free market society is, "To each according to

INDEPENDENT VIEW

Carl Smiley

Deregulation: Safety's Role

The objectives of government planners in different agencies are often so varied that a single policy can't meet the goals of all concerned. A prime example is the call for deregulation of the trucking industry by some members of the Council of Economic Advisors and officials of some past administrations. While these people have been mainly concerned with operation of the free enterprise system and the lowest possible consumer prices, other branches of government have been spending a lot of time—and truck buyers' dollars—trying to make highways safer.

A recent study by Dr. D. Daryl Wyckoff of the Harvard Graduate School of Business indicates that these two philosophies are not compatible in actual practice. Dr. Wyckoff distributed an extensive four-page questionnaire to drivers last December, and about 10,500 were filled out and returned. About half the responses were made by company drivers for private and common carriers and the balance were from independent contractors and exempt independents.

□ □ □

For those familiar with the trucking industry, the answers contain few surprises. They only support the contention that truckers with the least assurance of an adequate income drive faster and have more accidents and moving violations. In all three of those categories, company or independent carriers of exempt commodities vied for the doubtful distinction of ranking first. Here are some results of the survey:

Type of Operation	Cruising Speed mph	Moving Violations 100,000 mi. per yr.	Reportable Accidents 100,000 mi. per yr.
exempt, company	63.00	1.32	0.24
exempt, contractor	62.55	1.33	0.70
private	61.72	0.87	0.24
contract, contractor	60.95	0.74	0.33
common, contractor	60.26	0.77	0.31
contract, company	59.39	0.76	0.26
common, company	58.85	0.41	0.19

The number of moving violations almost perfectly parallels the average speed of various types of drivers. The number of reportable accidents is not necessarily an indication that drivers for private carriers and exempt haulers have fewer accidents. The Bureau of Motor Carrier Safety has repeatedly charged that those truckers do not report accidents unless they are major crashes.

The data in this survey supports that charge; exempt contractors admitted to having a greater number of reportable accidents than any of the regulated carrier drivers, whether on payroll or under lease. BMCS statistics, based on voluntary reports of accidents where damage exceeds $200, indicate that regulated carriers have a much higher number of accidents in relation to miles driven.

Cheating on hours of service also follows a common pattern in the survey. Here are survey results in that category:

Type of Operation	% Using Multiple Logs	% Falsifying Logs	% Driving Over 10 hrs.
exempt, company	32.74	39.28	45.98
exempt, contractor	27.37	44.94	43.87
private	9.56	29.36	25.06
contract, contractor	10.22	33.56	27.23
common, contractor	11.89	33.91	11.30
contract, company	1.87	29.26	13.05
common, company	4.90	4.27	2.48

It seems clear from the results of this survey that many exempt carriers pay little or no attention to safety regulations. Whether this is a matter of economics or simply a "Go-to-hell" attitude isn't clear. But exempt carriers as a group tend to resist rate regulation.

"Picky, picky, picky . . ."

Interestingly enough, some major rule changes have been made or are pending that coincide closely with the results of the survey. One is the new detention rule. A few days ago a common carrier executive told me: "I can't argue with the intent of the rule. But it simply doesn't take reality into account. We have a long, profitable run to our eastern terminus but only one authority on the return trip. Contractors loved it because it paid well both ways. But they often have to lay over 12 to 24 hours to get loaded out. None ever minded because the haul was profitable even considering the lost time.

"Now comes the new detention rule," he said, "and we charge the customer $18 per hour detention. He calls us and says that while he likes our service two local carriers will drop him trailers at no cost. Our contractors are perfectly willing to go on as they have. After all, they're making money on the round trip. But we can't afford to lose a certificate by waiving detention.

"We have two choices: drop the account and deadhead our contractors back, or set up a trailer pool so we can drop trailers. Problem is about 60% of our contractors own their own trailers so they aren't happy about that either."

This is one of those instances where a well-intentioned rule can hurt more than it helps. The carrier is urged by contractors to forget detention—just get them the loads. But he points out that becoming the first case in court under the new rule is hardly one of his goals.

The pending changes in the hours of service regulation are another example of the same type of situation. The survey of Dr. Wyckoff indicates that only common carrier company drivers pay any attention to hours of service as regulations are now written. Most flagrant violators are those hauling exempt commodities. If nearly half the latter can't live with present hours of service, why are they not protesting the still more stringent hours of service regulations sought by the Teamsters?

□ □ □

In a sense of the word this thumbing the nose at regulations has contributed to the chaos of the trucking industry. If a shipper doesn't like rates or delivery schedules of legitimate carriers, he only has to contact a hot freight artist who will take it across the country non-stop at half the cost. But the same people who accept those types of loads are the ones who cry loudest about the restrictions of regulation and the difficulties of surviving in the business.

The carrier who called me probably reflects a widespread opinion among legitimate carriers when he said, "All these new regulations are placing a burden of enforcement on the carrier. I for one am not going to tolerate falsified logs because BMCS will think of auditing regulated carriers first. It's about time contractors and independents either fight rule changes that take money out of their pockets or learn to live with them. I think we may be headed toward an enforcement situation that gives them no other choice."

The record of compliance with safety regulations has such a direct bearing on the amount of economic regulation that truckers live with that I begin to suspect there are two worlds in trucking: those who largely obey the law and are reasonably well rewarded for their efforts, and those who have trouble surviving even though they break every safety regulation on the books.

That fact alone is mute testimony that independents and contractors need to make their opinions heard. The attitude that BMCS safety regulations were only written to be broken is bringing on an enforcement attitude that could spell disaster for many in trucking.

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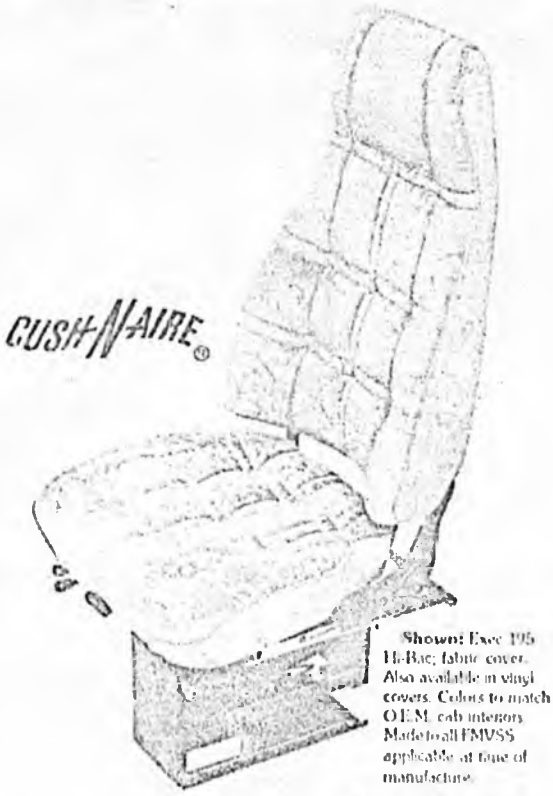

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JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

POUCH Z
JUNEAU, ALASKA 99811
(TELEX 45-328)

RE: Senate Bill 60,
Relating to Enforcement Authority

Honorable Brad Bradley
Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

The Department of Transportation and Public Facilities offers the following comments on Senate Bill 60.

The amendments proposed by this bill are in consonance with actions by National and other States' regulatory authorities for surface and air carriers, to reduce safety violations and other infractions of carrier regulations.

The debate on carrier deregulation, especially for the trucking industry, is intense at the National and State levels. Attached for your information are reports on the subject. Please note the report by the American Trucking Association, Inc., "Against Deregulation".

As discussed with the Alaska Transportation Commission, the amendments will provide the legal authority needed for enforcement of the ATC's regulations.

Sincerely,

Richard A. Holden
Deputy Commissioner

Attachment

cc: Robert W. Ward
Keith Specking

25A-71LH

Attachment

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

THOMAS D. MORELAND, President
Commissioner and State Highway Engineer
Georgia Department of Transportation

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January 8, 1979

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STATE OF ALASKA
D.O.T./P.F.

To Members of the Policy Committee
of the American Association of State
Highway and Transportation Officials

Dear Members:

Enclosed are three reports done by the Task Force on Trucking Deregulation under the Highway Subcommittee on Highway Transport. These are being supplied for your review prior to the Policy Committee meeting in Forth Worth, Texas on January 23rd.

Sincerely,

H. J. Rhodes
Deputy Director

HJR:dk

Enclosure

RECEIVED
JAN 30 1979
TRANSPORTATION PLANNING

Mississippi
State Highway Department
Jackson

John R. Tabb
Director

P.O. Box 1850
Zip Code 39205

January 5, 1979

Mr. Bill Bulley, Secretary
Chairman, Highway Transport Subcommittee
Washington Department of Transportation
Transportation Building
Olympia, Washington 98504

Dear Mr. Bulley:

The Task Force on Trucking Deregulation met on December 28, 1978, at which time we reviewed and discussed the material we had been able to accumulate at that time.

Enclosed are three reports which we feel give accurate views on the pros, cons and middle ground to this issue. Although we do not feel we will have a draft position paper prior to the Policy Committee meeting in Fort Worth on January 23, we do feel it would be most helpful if the enclosed material were reviewed by the Policy Committee prior to our meeting.

One important matter we believe must be addressed by the Policy Committee prior to our position on this issue is Section III of the AASHTO National Transportation Policy as adopted by the Policy Committee, November 16, 1975, St. Louis, Missouri. It appears that a position toward deregulation would be in conflict with the present policy.

Sincerely,

John R. Tabb

John R. Tabb, Chairman
Task Force on Trucking Deregulation

JRT:lb
Enclosures
CC: Mr. H. J. Rhodes, AASHTO
Mr. Verdi Adams, Louisiana
Mr. Marcus Yancey, Texas
Mr. Billy Cooper, Arkansas

FOR DEREGULATION

Regulation of Entry and Pricing in Truck Transportation

Edited by Paul W. MacAvoy
and John W. Snow

Ford Administration Papers on
Regulatory Reform

American Enterprise Institute for Public Policy Research
Washington, D.C.

As Analyzed and Edited
By
Task Force Committee on Trucking Deregulation

INTRODUCTION

- Motor Carrier Industry - large, complex.
- Exact number of intercity trucking firms is unknown.
  - Best total estimate in excess of 100,000 individual firms.
  - 15,000 motor carriers are regulated by ICC.
    18,000
- Trucking Industry hauls literally thousands of commodities to tens of thousands of U. S. communities.
- Total expenditures of industry in 1974 - $48.8 Billion.
- Accounts for 23% of all intercity freight transport measured in ton-miles or 64% measured in terms of transportation expenditures.
- Industry employs approximately 1.2 million people.
- Labor force heavily organized - principally by Teamsters Union.
- Despite large number of carriers, individual shipper of regulated commodities has limited choice available to him.
- No ICC-regulated carrier authorized to carry freight to any place in the U.S.
- Shipments between large cities - perhaps dozen or more carriers available.
- For smaller cities - particularly in growth areas since regulation of motor carriers began - perhaps one or two.
- In most instances - no carrier has authority to serve both the shipping and receiving points.
- Thus, two or more carriers must combine efforts to provide service required.
- Regulated carrier profits comparable with the rest of the U. S. economy.
- No information on exempt carriers - apparently good since that portion of industry continues to attract new capital. Operate good equipment - provide reliable service.
- Corporate turnover rate comparable to similar industries.
- All sectors of industry - regulated and unregulated - are affected by the regulatory system.
  - Common carriers must provide service to anyone, but cannot enter into contracts with their customers and are limited to certain commodity hauling and places served.

- Contract carriers - service by contract only and to a limited number of customers.

- Private carrier may haul goods for own company, but not for any other company - including its own corporate affiliates and subsidiaries.

- Agricultural carriers exempt from federal regulations, but are limited to unprocessed agricultural products - wheat, cabbage, corn, livestock, etc.

REGULATED CARRIERS

- Common and Contract Carriers.

  - Account for about 40% of total intercity truck freight in ton-miles.

  - ICC regulates rates of common carriers - commodities carried and routes of operation.

- Entry by new firms - limited.

- Most ICC operating authorities referred to as "grandfather rights" - in existence before 1935 Act.

- New entry granted, generally, only when ICC determines existing carriers not adequate to serve demands for truck transport.

- Expansion of existing carriers into new routes generally requires purchase of another carrier's operating authority.

- Firms regulated in one of two ways -

  - As to commodities carried, but latitude as to routes - "Specialized Commodity Carriers."

  - As to where they may operate, but latitude as to commodities carried - "General Freight Carriers."

- Specialized Commodity Carriers - generally smaller firms - specialize in truckload shipments, but do not require use of terminals.

- General Freight Carriers - 2/3 of total revenue of ICC - regulated industry.

- Truckload shipment carriers compete with railroads.

- Rates apply to both truckload (TL) and less than truckload (LTL), but affects general freight most.

- Rates determined by rate bureaus sanctioned by ICC.

- Result - LTL shippers have only one rate available - no competition.

- Private carriers and railroads provide competition for truckload rates. In fact, most TL rates are negotiated individually between shipper and carrier.

UNREGULATED CARRIERS

- Nonregulated sector of trucking industry accounts for 60% of all traffic.

- Consists for most part of exempt and private carriers.

- Unregulated carriers must not carry regulated commodities on a for-hire basis.

- Though not directly subject to economic regulation, they are severely restricted by it.

  - Example: A carrier hauling wheat to a flour mill cannot haul processed flour back to wheat growing area.

  - Example: A private trucking company may not haul goods on a for-hire basis for another company, even though it is entirely owned by the other company.

  - Example: Private carriers may not lease their trucks and drivers to regulated carriers for periods of less than thirty days. Thus, they cannot lease their trucks on a back-haul basis. Result - unnecessary empty truck mileage - higher costs to consumers.

PASSENGER CARRIERS

- Intercity Bus Industry subject to economic regulation like trucking industry.

- 1067 regulated intercity bus firms in 1973 with $884 Million in revenue.

- Bus industry dominated by two firms which account for 70% of total revenue.

- Most routes dominated by one carrier.

- Most heavily traveled routes have two to no more than three carriers at best.

- Entry tightly restricted and rates tightly regulated.

MOTOR CARRIER RATES - Description of Present System

- Rate regulation particularly affects LTL general freight traffic.
- LTL rates initiated by associations of carriers called Rate Bureaus and are granted antitrust immunity by ICC.
- Almost all LTL shipments move under these rates.
- Individual carriers permitted to file independent rates - but the important rates are almost always set by rate bureaus. If an important rate is set by independent rate filing, the ICC routinely suspends the rate pending a hearing on ultimate lawfulness of the rate.
- ICC has broad powers to supervise rates through authority to find a rate unlawful. But instead, its powers usually exercised in enforcing the price-fixing of rate bureaus - rather than promoting price competition in rate making.
- Most LTL traffic moves under Categorical Class Rates. Commodities grouped into broad classes and rates are average rates based on average costs which are published for each class.
- Placement of a commodity in a class can substantially affect the shipping rate. Not unusual for several commodities with same transportation characteristics to move under different rates because of artificial grouping into different classes.
- Classification of Commodity based on characteristics of transportation and value of the commodity.
  - Example: A product may be placed in different classes based on the method of production.
- Class rates loosely related to industry-wide or system-wide average costs.
- No allowance made for the quality of the service provided under a rate.
- Rates not affected by balance of traffic or seasonal factors.
- Fronthaul and backhaul rates; peak and off-peak rates are same. Result - little inducement to utilize space on backhaul or to ship in off-peak time.
- TL (truckload) shipments frequently move under contract based on rates reflecting actual costs of required movements.

ECONOMIC EFFECTS OF RATE MAKING

- Rates are:
  - Too high.
  - Too inflexible.

- Irrational.
- Discriminatory.

Rates too High

- Unnecessary regulatory restrictions cause less efficient operation than when based on competition.

- Regulation causes carriers to use circuitous routes and empty backhauls.

- Costs are inflated by regulation, thus rates must be higher than otherwise to compensate for such costs.

- Since LTL rates are collectively set by rate bureaus, there is no incentive for competition.

- Firms will use power to set rates to their own advantage and therefore, price-fixing is illegal in almost all other industries.

- Nothing unique about the physical or economic attributes of trucking industry to justify anti-competitive practices such as collective pricing.

- In mid-1950's fresh and frozen poultry and frozen fruits and vegetables were changed from regulated to exempt commodities. Result - "before" and "after" studies by U. S. Dept. of Agriculture showed rates dropped by 33% on poultry and 19% on fruits and vegetables. Service improved dramatically as well.

- The same study found private carriage dropped significantly after commodities were exempted.

- The ATA (American Trucking Association) states that operating rights have great value and that value increases with time. The ATA statement to the ICC indicated that recent acquisitions in the motor carrier industry indicate that amounts paid for operating authorities amount to 15% to 20% of the annual revenues produced by those authorities. This is strong evidence that the present regulatory system works to the disadvantage of the consumers.

- Operating rights would only have value if carriers were able to earn higher than competitive returns on motor carrier service.

- Studies on why firms turn from common to private carriers show they do so because they (private carriers) can provide the same service at lower cost. This can be true only if common carriers were inflated or otherwise distorted, since private carrier costs are essentially the same as common carrier costs for the same operation - and private carriers are not allowed to solicit traffic for backhauls.

- Because regulated carrier rates are too high, shippers' distribution costs are too high. Result - consumers pay more for goods than they should.

- In certain markets, carriers with stifled price competition engage in wasteful service competition. Since they are unable to compete for traffic by lowering

rates, they compete by adding more frequent service than they otherwise would. This results in increased truck costs because the trucks run less fully loaded than they otherwise would. This fuels higher rates, because rates are based on average costs.

RATES AND SERVICE INFLEXIBLE

- Since rates are not allowed to vary, service quality is constrained. Carriers are prevented from charging premium rates to offset costs of superior service.

- Considerable evidence that users of motor carrier services want a diversity of price and service-quality alternatives, but they are prevented from it by the rate regulation system.

- A DOT survey showed that about 50% of industrial shippers used private carriers.

- Reasons given by 70% of those shippers cited dissatisfaction with common carrier service.

- There are numerous examples of shippers who are willing to pay premium prices for superior service, but unable to obtain such service from common carriers.

Rates are Irrational

- No rational relation between rates charged and service rendered.

- Rates for groups of towns further from a point of origin may be charged less than those nearer. (Example: Dallas & Houston to Colorado towns).

- Rates may be different even if traveling the same route. (Rocky Mountain Study - Nine States).

Rates are Discriminatory

- ICC requires all carrier rates be reasonable and not unjustly discriminatory. ICC has decided this means the same rates apply to all shippers moving similar traffic between specific points. When costs differ, the concept of equal is actual discrimination. Some shippers are charged more than the cost of their traffic and some charged less. Result - inequitable discrimination which breeds economic inefficiencies.

- Where traffic is greater in one direction than in the other, rates should be higher on the prime haul and lower on the backhaul. This is true simply because of lower costs associated with availability of excess capacity. ICC and the industry have resisted application of lower backhaul rates because such action inevitably leads to opening most of U. S. shipping to competitive pricing.

- A serious consequence is that shippers' long-run locational decisions are distorted. Were rates related to costs, manufacturers would have economic incentives to locate in the direction of the prevailing backhaul.

Rate Structure too Complex

- Endless artificial distinctions are strictly a product of regulatory systems.

- Given a choice, customers would not tolerate present system.

- Industry claims complexity results from needs to develop rates for so many different commodities traveling to so many destinations. But many other industries, unregulated, offer product lines to millions of customers. They do so without creating demand for specialized services such as rate audit firms to "ensure that customers receive the correct price", etc.

Restrictions on Entry

- Must have a certificate from ICC.

- Obtained in one of two ways:

  - Grandfather clause of 1935 Act - 18,000 plus firms in existence at time of passage of the Act.

  - Statutory test of "Public convenience and necessity."

- PC&N tough to meet since ICC has decided statute means new carriers should not be certified as long as existing carriers have "potential" to provide adequate service for traffic under consideration. (The inequity of denying individuals the opportunity to engage in the business of their choice in order to protect the interests of existing carriers is not considered at all.)

- In recent years approximately 80% of all applications have been granted, but few of the certificates were for new carriers, and of this small number very few were for authority broader than one commodity or one place.

Economic Effects

- Market Concentration and Monopoly Power.

  - One result of severe limits on new entry is to convert a naturally competitive industry into one in which there are numerous instances of monopoly (or oligopoly) power.

  - Best evidence is market value of operating rights.

  - In 1972 the top four of the top eight firms' shares of total operating income were 17% and 23% respectively. This is low compared to most manufacturing industries, but it must be viewed in the view of individual routes. Since even the largest firms have limited authority and are unable to serve the entire market, concentration on individual routes is much higher.

- Operating Inefficiencies

  - Certificate restrictions not only limit competition, they cause regulated carriers to operate less efficiently than they could if they were free to manage their own internal operations.

  - About 30% of all commodity-restricted authorities provide only one-way authority. Result - wasted resources.

  - Route-restricted authorities specify the route carriers must travel. Result - unnecessary mileage - wasted resources.

  - No single carrier able to carry a shipment its entire journey.

- Inequities

  - Grandfathered firms were awarded, free of charge, valuable property rights. ATA estimated that by 1970 about $300 Million in operating rights had been transacted. This represents a small fraction of total because only those authorities that have actually been sold are in the figure.

  - Other individuals have been prevented from engaging in the business of their choice.

  - Others, wanted to enter or to expand, have been forced to pay huge sums to those who already possessed operating rights.

Service to Rural Communities

- Supporters of present regulatory system contend that unless competition is restricted, motor carrier service to small rural communities will deteriorate. Without the "obligation" to serve, it is contended that small rural towns would not receive service because there would be no incentive to serve them.

- A U. S. DOT study concludes that the current regulatory policies actually impair rural motor carrier service. Rural towns would be better served by a regulatory program which placed greater reliance on competitive market forces and which eliminated unnecessary and wasteful operating restrictions - lower costs result in lower rates for service.

Myths Used to Oppose Motor Carrier Regulatory Reform

- Market Chaos

  - It is argued that any reduction in regulation will result in chaotic motor carrier service. Carriers, it is said, will rush around without direction, entering and leaving markets, or concentrating on large, high-density markets. Most markets are unregulated and these markets function in a generally efficient way. Firms make long-range commitments and customers are able to secure services. It is the supplier's interest to give orderly and dependable service

While it is true that a product needs transportation, transportation without products to transport would be useless - the supplier has a deep interest in planning.

- Regulatory Reform will Lead to Monopoly.

  - For industry concentration to lead to monopoly abuses, surviving firms would have to bar new entrants. Other than by regulatory barriers, there are no effective ways to bar entry in open competition. No unusual management skills are required. Trucks and drivers are available. Capital needs are modest compared to manufacturing industries. Currently, the exempt sector of the industry has thousands of carriers with no evidence of dominance by a few large carriers.

- Predatory Practices.

  - Some opponents to regulatory reform contend it will lead to predatory price cutting as firms try to drive their competitors out of the market. Predatory competition, at best, is a short-term risk. A rational firm would engage in such a practice only where there was a likely prospect of obtaining monopoly profits by reduction of the number of competitors or by disciplining the market. The predator firm would need superior resources and real staying power. There would need to be strict barriers to entry to enable the predator firm to recoup its loss. Where entry or reentry can occur relatively easily whenever prices return to levels at or above cost, the incentive in such behavior is eliminated. Experience in the exempt sector confirms the absence of predatory behavior in an unregulated environment. Besides, other laws that operate in other industries are available to protect against predatory behavior.

- Motor Carriers are Like Public Utilities.

  - The traditional argument for public utility regulation is the industry is a natural monopoly. This argument requires there be long-run economies of scale in the industry. If this is true, the industry will inevitably become concentrated in one or a few large firms unless there are legal constraints against that. Increasing returns to scale will give larger firms a competitive advantage over others in the industry. Unit costs will be lower so that they can underprice smaller firms, thus driving those out of the market. This argument is not applicable as justification for regulation of the motor carrier industry because motor carriers are not subject to increasing returns to scale. Large firms have no competitive advantage simply from being large. There is no tendancy toward natural monopoly. A related argument is regulation is justified for the industry because, like a public utility, the industry has an obligation to provide service. To balance the burdens of this obligation, it is argued the industry should be sheltered from competition by restricting entry. This argument is based on the "cart before the horse" theory. Public utilities are regulated because they <u>are</u> natural monopolies. Because of this monopoly they are required to provide service to all customers and prices are regulated. Saying it another way, utilities are not regulated because they are required to serve; they are regulated <u>and</u> required to serve because they are monopolies.

- Price Discrimination.

  - Without safeguards under the existing system, it is argued that carriers would practice price discrimination against shippers. Under the system all shippers are charged the same rate for the same movement.

    Only a monopoly is equipped to practice price discrimination. The current system causes price discrimination against shippers because rates are not based on the specific costs of service.

- How Can Rates Drop if Costs Do Not Drop?

  - Rates will decrease with regulatory reform, not because the costs of inputs will go down, but because resources will be used more efficiently. Costs will increase if inflation continues, but not inconsistent with the rest of the economy.

- Liberalized Entry Will Lead to Increased Truck Traffic on the Highways.

  - It is argued that regulation holds down the number of trucks on the highways. This argument confuses an increase in the number of firms with increased numbers of trucks on the highways. The latter is determined by the amount of cargo to be shipped. Regulatory reform should increase efficiency in the use of resources. Result - slower increase in total number of trucks necessary to provide service - thus, less truck traffic increase on highways.

- Impact on Railroads.

  - Regulatory system applies to LTL carriers - railroads do not compete in this field.

- Recreate the Conditions of the 1930's.

  - The 1930's was a period of severe depression and not a representative period in American life. The principal proponents of motor carrier regulation in the 1930's were the railroads who wanted to impose restrictions on a growing competitor. The "chaos" of the 30's were small truckers in a severe depression seeking to stay employed.

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BACKGROUND

A Series of White Papers on Vital Transportation Issues

AMERICAN TRUCKING ASSOCIATIONS, INC., 1616 P Street, N.W., Washington, DC 20036

AGAINST DEREGULATION

Motor Carrier Regulation — The Issue in Perspective

To: Newspaper and Magazine Editors
Radio and Television News Directors and Assignment Editors
Columnists
Commentators
News Analysts
Reporters

Since 1935, the interstate motor carrier freight system in the United States has been subject to economic regulation under the jurisdiction of the Interstate Commerce Commission.

Basically, this regulation has set controls over entry into the field and has established supervision over the rates charged.

When the regulation first went into effect, there were those who said it would never work. It has, but still over the years there have been voices raised against it — few in number and representing for the most part the isolated, detached views of economists, academic theorists and Justice Department attorneys, plus a few of the largest shippers in the country.

Lately, however, what began as a few whispers now has become a more persistent campaign, though one still supported in the main by a handful of theoreticians, whether they be in government, a university or an editorial office.

For our part, we have always believed — and still want to believe — that the vast majority of those working in the news media take their responsibilities to the public seriously and want, always, to be on the side of truth, fairness and justice.

We also believe that it is virtually impossible to know the truth about this complicated subject without first acquiring some basic knowledge and understanding about the forces that brought about this regulation in the first place and knowledge and understanding about the forces at work that make this regulation just as necessary and valid today.

In the interest of fairness, objectivity and truth, we ask you to take a few minutes to read this Background material, prepared especially for you who work in the news media. You are free, of course, to use all or any part of it, if you desire, but our purpose is to give you background.

If you have any questions concerning this report, the regulatory issue or any other matters relating to the trucking industry, we at American Trucking Associations will be pleased to assist you.

Bennett C. Whitlock, Jr.

Bennett C. Whitlock, Jr.
President

March 13, 1978

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On August 9, 1935, President Franklin D. Roosevelt signed into law the Motor Carrier Act, a landmark in transportation legislation which placed the interstate motor carrier freight business under economic regulation by the Interstate Commerce Commission.

Today, despite more than forty years of phenomenal growth and progress by what is universally hailed as the finest transportation network in history, this legislation is under attack by a small but influential assortment of critics.

Certain Senators and Congressmen, a few economists, a handful of government figures, some segments of the news media and a few big shippers have been assailing the regulatory system with a barrage that is virtually all heat and no light.

"We need more competition in trucking," they say.

"Regulation is costing American taxpayers billions of dollars a year," they say.

"Trucks are forced to run around empty because of regulation," they say.

"Trucking is a closed industry that won't allow in new blood," they say.

That is what they say — but the facts show otherwise.

Generally, three basic premises underlie the deregulation rhetoric:

(1) There is a terrible mess in truck transportation that needs correcting.

(2) The solution is simple.

(3) The trucking industry is no different than manufacturing or any other industry and should be subject to the same economic ground rules.

The first premise — that there is a terrible mess in our motor carrier system — is an essential tenet for all who favor deregulation. One could not possibly cry out for "meaningful motor carrier reform," unless one actually believed that such reform was necessary; ergo, things must be in a pretty sad state of affairs.

But are they?

When is the last time you were personally inconvenienced by a breakdown in the surface freight transportation system? If you are a member of the news media, you may give the subject of freight transportation some thought on occasion in the context of a news issue — you may comment on it, you may criticize it, you may report on it. But off the job you probably don't give it a moment's consideration. You just go through your daily routine, buying what you want to buy when you want to buy it, taking for granted it will be there, and thus in your personal life giving the lie to the charge that there is a "mess" that needs correction.

In making your purchases do you ever concern yourself with the cost of transportation that is built into the retail price? Most likely you do not. The general public does not. In fact, the average consumer in the United States takes freight transportation for granted. That is the highest tribute that can be paid to the regulatory system. But if there were a mess, as the critics contend, nobody would be taking the system for granted, and truck transportation would be the butt of the same kind of jokes comedians tell about the mail service.

The second premise — that the solution is simple — points up the lack of understanding of the freight transportation system and regulation. Every critic of the regulatory transportation system has oversimplified the matter.

And finally, the oversimplification always takes the form of comparing the trucking industry with other industries, with the clear implication that there is something unethical or un-American about any industry that can avoid what is referred to as "the competition of the market place."

The plain fact is the trucking industry is *not* the auto industry; the trucking industry is *not* the steel industry; the trucking industry is *not* the chemical industry. Transportation is *not* manufacturing and is not subject to the same economic laws as manufacturing.

Transportation is as special as telephone or electric power service and cannot be left completely to "the competition of the market place," without jeopardizing the public right to such service at an equitable rate. This is not to say there is not competition in trucking. In fact competition within the regulated trucking industry is intense. But admittedly, it is competition within the limits of a federally supervised structure. But it works and it works well.

Why Regulation?

The establishment of economic regulation of surface freight transportation was no accident. Nor was it something introduced in a hasty or cavalier fashion. Economic regulation of America's surface freight system was established by an Act of Congress only after a lengthy and deliberate investigation brought on by a torrent of complaints from the shipping public.

(It is significant that such complaints are not being heard today. General R. Rosen brought out this point in the August, 1977, issue of Dun's Review. ". . . there is no grassroots pressure for it," Rosen wrote referring to trucking deregulation. ". . . freight rates do not interest the average voter.")

Back in 1885, following complaints about inadequate or discriminatory freight service, a Senate Committee, the Cullom Committee, conducted hearings in various parts of the country, taking more than 2,000 pages of testimony. This Committee, whose members all would have been labeled "economic conservatives," finally reported:

"It is the deliberate judgment of the Committee that upon no public question are the people so nearly unanimous as upon the proposition that Congress should undertake in some way the regulation of interstate commerce."

The Committee Report zeroed in on the need for regulation, a necessity that still is valid today and will be valid so long as there is a general public need for freight transportation service:

"The paramount evil chargeable against the operation of the transportation system of the United States, as now conducted, is unjust discrimination between persons, places, commodities and particular descriptions of traffic."

Thus, the seller of transportation service had it within his power to favor this shipper to the detriment of that shipper, to serve this locality and ignore that locality, to carry this freight and refuse that freight.

". . . it was a common observation," the Cullom Report said, "even among those who might hope for special favors, that a system of rates, open to all and fair as between localities, would be far preferable to a system of special contracts in which so large a personal element entered or was commonly supposed to enter. Permanence of rates was also seen to be of very high importance to every man engaging in business enterprises, since without it business contracts were lottery ventures."

The report said that not only were manufacturers ruined by transportation discrimination, but even whole towns disappeared because of it.

And thus the Interstate Commerce Commission was established, not to protect the railroads, but to protect the shipper and to assure the small community of equitable service. The Interstate Commerce Act was the public's response to the retort, "The public be damned." Anyone wishing to understand the complexities of transportation regulation must first of all understand that this federal control was born of consumerism, not special interest lobbying.

Those favoring the elimination of these controls contend that times have changed, that the railroads had a monopoly on transportation in the 1880's and that there is no longer any need for regulation.

A half a century after the railroads were brought under the ICC, the Congress found it necessary to bring in the burgeoning motor carrier industry also. The Supreme Court referred to the pre-regulation era of the trucking industry while rendering a decision on leasing regulations in 1953 in this manner:

"Then (prior to 1935) the industry was unstable economically, dominated by ease of competitive entry and a fluid rate picture. And as a result, it became overcrowded with small economic units which proved unable to satisfy even the most minimal standards of safety or financial responsibility."

Moreover, the great competitive spirit seen rising between railroads and trucks in a deregulated system is more myth than reality. Such competition is limited to begin with. Under a non-regulated system, rails could charge whatever they'd like for hauling trainloads of coal from the mine to the generating plant hundreds of miles distant. No trucking company could handle that job at *any* rate. On the other hand, rails are not suitable for hauling the less-than-carload freight, the smaller shipments they long ago abandoned to the motor carriers.

Truck-rail competition has other natural limits, including the limited number of localities served by rails. According to the Rand McNally Commercial Atlas and Marketing Guide, of the 61,000 communities in the United States, 64 percent or virtually two out of three have no rail service whatsoever. Even those which do have rail service are dependent on trucks for most of the goods imported and for door-to-door transportation on those commodities brought in by rails.

We emphasize this difference between truck and rail service because there is a noted tendency among the uninitiated to think of these modes as generally interchangeable and thus offering the public a competitive choice not known in pre-trucking days.

Why, then, one might ask, is economic regulation necessary in the freight transportation industry? Why is the New York Times in error when it states flatly, "There is no more economic justification for restricting entry or allowing price-fixing in trucking than there is in the auto or steel or chemical industry?"

The reason is that trucking has more in common with telephone service, electric power service, and natural gas service than manufacturing. Like these other regulated service industries, freight transportation has the following properties not found in the auto, steel, chemical or other manufacturing industries:

1. It is a service, not a manufactured object, and is basically the same for everyone.

2. It is essential to the public welfare and must be available on an uninterrupted basis. Just as we need continuous water service and electric power, we need continuous freight service. The major reason these services are regulated is to see that we get them under fair and equitable conditions.

3. It has a limited demand. The demand for freight service is dependent on the amount of freight to be moved. Bringing in new trucking companies will not create one additional pound of freight.

4. It entails the movement from place of origin to consumer. Thus, an entirely new dimension is introduced, one of movement across fixed lines, be they pipelines, electric wires, rail lines, air routes, air frequencies (as in the case of radio and television), or highways. Experience shows that such movements require some kind of supervision to avoid confusion and even chaos, of which the public at large would be the chief victim.

So the greatest mistake being made by those favoring deregulation is to place freight transportation in the same category as manufacturing. It is a mistake the Justice Department has been making for years in its relentless drive to place trucking under anti-trust laws, even though Congress specifically exempted the motor carrier industry from certain anti-trust restrictions in 1948 by passing the Reed-Bulwinkle amendment, which become Section 5(a) of the Interstate Commerce Act.

It is ironic that of all the public-utility type of industries, only freight transportation is broad enough and variable enough to allow for meaningful competition. Yet freight transportation is the only one singled out for attack on the grounds that it is not competitive.

Not one deregulator has suggested that regulation be removed from electric power so as to allow free entry and price competition into that business.

Lack of competition is one of three major charges levied at the regulated motor carrier system. The other two are high costs and unnecessary empty mileage. Not one of the charges can stand up to close scrutiny, as we shall see.

Truck Competition: How Many Is Enough?

Competition thrives in trucking.

This statement flies in the face of the oft-repeated charge that a relaxation of entry is needed to bring in more competition. How much competition are these critics talking about? How many trucking companies would be enough to satisfy their definition of competion? And once a number is arrived at, how do they propose to maintain it without some kind of regulation?

It is highly ironic that the Department of Justice has been arguing for years that more competition is needed in trucking and the best way to get it is to do away with entry and rate controls and let the Justice Department's Antitrust Division take over.

Let's take a look at some numbers:

There are now more than 18,000 transportation companies of all kinds under ICC regulation. More than 16,000 of these are trucking companies. Of these 16,000 motor carriers regulated by the ICC, more than 12,000 — three out of four — are small businesses, having annual gross revenues of less than $500,000.

The four largest motor carriers account for just 10 percent of the total revenue volume; and the eight largest companies account for only 14 percent. For the most part, trucking is made up of small, family-owned and operated businesses.

By contrast, let's take a look at the competition in three of America's most prominent industries — motor vehicle manufacturing, steel manufacturing and cigarette manufacturing — all of which come under the jurisdiction of the Justice Department's Antitrust Division.

In the motor vehicle manufacturing industry, the four largest companies account for 91 percent of the volume; the eight largest for 97 percent!

In steel manufacturing, the four largest companies account for 47 percent of the volume; the eight largest for 65 percent!

In the cigarette manufacturing industry, the four largest companies account for 84 percent of the total; the eight largest for virtually all of the business!

In trucking, the business is spread out among 16,000 regulated interstate carriers, not to mention the tens of thousands of companies hauling freight within the borders of a single state.

Only two industries can show a better competitive picture than ICC-regulated trucking. Of the top 35 major industries in terms of value added by manufacture, the only ones with a greater distribution of the business than trucking are the manufacturers of miscellaneous machinery and the makers of women's clothing.

Within the regulated trucking industry, competion among carriers is as fierce as in any field of endeavor. An executive of a motor carrier hauling forzen foods out of Texas says: "Not one pound of freight we move is not in competition with some other carrier."

The head of a general commodities carrier operating in the Northeast says: "We have got to be on our toes all the time. If we don't give the service, there's three or four other companies ready to jump in and take it away from us."

Phil Cochran, President of Lyons Transportation Lines, a carrier of common commodities out of Erie, Pa., put it this way at a recent symposium sponsored by the Traffic Club of Cleveland:

"The concept of easy entry creating lower rates and, therefore, reducing costs to the general public is a myth. The competitive forces within the regulated industry accomplish this purpose . . .

"There are 42 major carriers in Erie, Pennsylvania, a city of some 200,000. When I was new in this business there were probably 5 or 6 major carriers serving Erie and we've watched them come in year after year. Believe me, folks, the economy of Erie isn't growing that fast. We're all taking less. But we're competing. No competition in the trucking industry? Those guys aren't talking to the right people."

The myth of a lack of competition in the trucking industry springs from the fact that there is a control over entry. Anyone wishing to enter the business of hauling freight across state lines must make an application for authority with the Interstate Commerce Commission. The traditional criteria for the granting of this authority has been public convenience and necessity — in short, a demonstrated need for the service.

The ICC for some years has been approving applications for new operating authority at the rate of 80 percent or more.

To abolish such control would leave the reliable existent carriers fair game for the destructive competition that would inevitably follow. As the ICC put it in its White Paper on regulation in September, 1974:

"To have a sound and growing transportation system, capable of meeting challenges of our times, there must be substantial carrier investment in operating equipment and fixed property.

The costs of purchasing and maintaining both equipment and facilities are extremely high; and, properly, the industry must be given some economic inducement to invest its monies in the expansion of its facilities. This inducement comes from the knowledge that to the extent they serve the public on a reasonably satisfactory basis, carriers will not have their profits drained by unwarranted or destructive competition. This was a major reason why regulation was necessary in the 1920s and 1930s and why it remains that way today.

"Here it must be emphasized that we do not stifle competition. We promote productive competition and foster growth of strong competitors. Indeed, it would be hard to find a significant shipper or sizable area anywhere in the country dependent on only one carrier licensed to haul its traffic."

If there were a lack of competition in freight transportation, then there also would be poor service. And yet the regulated motor carrier system has an enviable reputation among America's shippers and the general public for good, reliable, efficient service.

In a survey conducted by the Department of Transportation in 1973 and 1974 among industrial shippers, 66 percent of the shippers surveyed — two out of three — labeled motor carrier service either excellent or quite good, while another 31 percent rated it adequate. The study was extensive, involving the responses of 193 industrial manufacturers in 19 major metropolitan areas, each employing more than 100 persons.

The results of that survey were not surprising. Time and again, shippers have publicly supported ICC regulation of trucking because they know it assures them of good service at reasonable rates. Here are just a few comments by shipper representatives on the subject:

"The closer people are to the transportation business, the less likely they are to support total deregulation." — Frederick W. West, Jr., President, Bethlehem Steel Corporation.

"Total deregulation would result in chaos where only the large and powerful companies would survive. Like atomic warfare, there would be only survivors, not winners." — George C. Bush, General Traffic Manager, Youngstown Sheet and Tube Company.

"Under the right of free entry, there appears to be nothing that would prevent large shippers getting together for joint enterprises on round trip truck load movements. With complete balance achieved, their costs would be lowered to the point where the most attractive tonnage would be lost to the common carrier. With the cream gone, what would be the survival rate for those who would try to exist on the skim milk?" — Edwin P. Mundy, Vice President-Traffic, National Biscuit Company.

"This economic regulation of rates and services became necessary way back in 1887 simply to protect the public against railroads' discriminatory practices. Later it was found necessary to include trucking, barge companies, express operations and pipelines. Airplanes were also regulated under the C.A.B.

"After all these years, are we now saying discriminatory practices would disappear? Does anyone believe antitrust laws can provide protection to the public? Does this mean a shipper or receiver of freight must go to the courts every time he feels he has been discriminated against? What a cumbersome, time consuming and costly system this would be is anybody's guess." — D. G. Ploetz, General Traffic Manager, Harnischfeger Corporation, Milwaukee.

The shippers — with the exception of a few giants who could make deregulation work to their advantage -- have every reason to fear the dismantling of the system that has served them so well. The few giants who would benefit from deregulation (and whose private fleets rival some of the large common carriers) have been very active on the deregulation front. Numbering only about a dozen in all, they banded together in an organization set up expressly to help bring about the lessening of regulatory controls. The organization now goes by the name of CURRENT — for the Committee Urging Regulatory Reform for Efficient National Trucking — and its members include such conglomerates as General Mills, Green Giant and Carnation. Sears, Roebuck and Company, once the driving force behind the organization, recently dropped out, believing it could be more effective operating through other channels.

The feelings of the general public, the consumers, toward the trucking industry were made clear in a survey conducted by U.S. News and World Report. According to the survey, conducted in 1976, the public ranked the trucking industry third behind the airlines and banking (also under some form of economic regulation) in service among 30 industries.

It is the need of all shippers, particularly the smaller ones, for dependable service at an equitable cost that is at the heart of economic regulation of trucking.

Regulation does not bestow on the trucker the unfettered right to carry the goods he wants to carry for the shippers he wants to serve to the locations he chooses. To the contrary: Regulation imposes on the trucker the obligation to serve all of the public within the limits of his authority without discrimination.

And if the obligation were to be removed (and how could one expect established carriers to continue to transport the less profitable freight while incoming carriers were not so obligated?) then service would deteriorate. Small towns in particular would suffer.

This was brought home recently in a number of studies. An independent study commissioned by the Department of Transportation and conducted by a research team at George Washington University showed that small-town residents regard their truck service as adequate and are concerned that such service would suffer under deregulation. That came as a revelation to the researchers who said they had expected to find truck service to small towns to be poor.

In another independent study, three University of Miami professors concluded: "If free entry and free exit is made the public policy, the result will be cessation of for-hire motor carrier service at reasonable rates to thousands of small communities and other places or routes of light traffic density. The general pattern of what was formerly common carrier service in medium density markets will become unstable; the service pattern will oscillate widely, and the oscillation will be continuous, extensive, quite erratic, and will exact a severe penalty in terms of shipper uncertainty and associated problems of shipper inventory levels and related problems."

(Shipper inventories are another key to understanding how well the regulated motor carrier service works. Thanks to this dependable service, industrial America has no need to stockpile large inventories, which has given trucking the title of "warehouses on wheels.")

Regulated motor carriers, themselves, were asked if they would suspend service to one or more points if no longer obligated to serve them, and 62 percent of those responding said they would.

This survey, conducted by American Trucking Associations among more than 3,000 Class I and II carriers, showed that on the average, carriers, relieved of the obligation to serve, would reduce the average number of towns they serve from the present 84 to an estimated 58.

As noted by the University of Miami team — Drs. Nicholas A. Glaskowsky, Jr., Brian F. O'Neil and Donald R. Huddleson — common carriage is dependent on some kind of entry control. "We also note that the concept of permitting uncontrolled entry into and exit from common carriage is a contradiction in terms," their report said. "The moment there is free entry and free exit of carriers there will no longer be common carriage because common carriage includes the obligation to serve in a reliable, constant, and consistent manner."

The inescapable conclusion is that the weakening or elimination of entry control will not enhance competition — which is already plentiful — but will instead destroy the common carrier system, disrupt service to the smaller towns, open the gates to widespread discrimination and, in the long run, eliminate all but the largest and most powerful carriers.

Then, the very people now calling for deregulation will be in the forefront of a movement to impose regulation. It may then be too late.

Transportation Cost: The Price Is Right

While the lack of competition is a charge frequently leveled at the regulated motor carrier industry, the second charge — regulation increases costs — is one that has a natural appeal.

It is equally groundless.

But groundless or not, it has been repeated often enough over the last few years to take on the aura of undisputed economic fact.

Critics, some of them respected economists, have thrown out such outlandish figures as $10 billion . . . $15 billion . . . and $16 billion. The Ford Administration made a flat statement that was given wide, supportive publicity, that government regulation (of all kinds, not just transportation) was costing Americans $2,000 per family a year, but when asked to substantiate the figure, a White House spokesman admitted the figure was not to be taken literally. On another occasion, a well-known economist conceded that the multi-billion-dollar figure he liked to use regarding the "cost" of transportation regulation had no basis in fact either.

Just what are the facts and how does one arrive at them?

For one thing, the total freight revenue for all Class I, II and III motor carriers, railroads, along with all ICC-regulated water carriers and pipelines, plus the airlines, for 1975 was an estimated $41 billion.

To suggest that deregulation would cut that bill by $16 billion, or even $10 billion, is an absurdity.

But the allegations are more than just exaggerations; they are absolute distortions. Because, far from costing consumers an excessive amount of money, the regulated transportation service in America is a real bargain in today's marketplace.

Consider that from 1972 through the third quarter of 1977, the wholesale price index rose 64 percent, while the cost of motor carrier transportation, based on revenues per mile, went up only 41 percent.

To get things in perspective, let us take a look at some typical transportation costs:

A hammer retails in a Chicago hardware store for $8.23. Total cost for transportation by motor carrier from manufacturer in Farmington, Connecticut, to Chicago — 6 cents.

A washing machine retails in Butte, Montana, for $311.78. Cost for shipment by motor carrier from Columbus, Ohio, for this heavy, expensive appliance — $18.37.

A stove retails in Los Angeles for $398.88. Cost of transportation by motor carrier from Mansfield, Ohio: $17.32.

A portable electric typewriter retails in a Chicago store for $249.47. It was manufactured in New York. Cost for motor carrier transportation from New York to Chicago — $1.74, or 7/10 of 1 percent of the total price.

A man's suit retails in Indianapolis for $94.01. Cost of transportation by motor carrier from Atlanta, Georgia — 28 cents, or 20/100 of 1 percent.

(Note: These are truckload rates. Transportation charges are slightly higher for less than truckload shipments, based on a graduating scale dependent on weight of shipment.)

And what about food, life's basic essential and a product that has been particularly affected by inflation? According to a Department of Agriculture study, the cost of intercity transport of 17 common foods making up a typical market basket is just 5.3 percent of the total retail cost.

And what should be paramount to any consideration of the regulatory question is the fact that this reasonable cost for transporting goods is extended to all, regardless of location. Thus, a resident of Spearville, Kansas, can purchase the things he or she needs and wants for the same relative price paid by the resident of downtown Manhattan or uptown Chicago.

Example: A 25-inch color television console, manufactured in Indianapolis, retails in Spearville for $629.00. Cost of transportation by motor carrier from Indianapolis to Spearville: $29.90 — less than 5 percent of the total and only 2 percent more than the Kansas state sales tax. That comes to less than 4 cents a mile for a distance of 800 miles for a bulky, space consuming, delicate luxury item. An that is in Spearville, Kansas, population 742, more than 125 miles from the nearest population center of at least 20,000.

The Spearville resident does not pay a higher rate for the transportation of that set than the resident of Wichita (population 300,000) or of Kansas City (1.5 million).

That is what regulation is all about.

Rate Bureaus

There is a gross misunderstanding among those promoting motor carrier deregulation concerning rate bureaus, what they do, and how they operate. The charge most often leveled against rate bureaus is that they allow motor carriers to arbitrarily set rates in a secret and collusive manner and that rates, therefore, are on the high side.

Actually, there is nothing secretive or collusive about rate bureaus, and the net result of their activities is to keep rates low, not high, and to keep rates from being used in a discriminatory way to the benefit of certain shippers, localities and kinds of freight and to the detriment of others.

There are ten major regional rate bureaus in the United States. Ted B. Alfriend, a transportation consultant and former head of the Middle Atlantic rate bureau, described the operation of a rate bureau before a house Subcommittee as follows:

"Any person may propose an increase or a reduction in any rate or rates. Public notice of the proposal is given either in a trade journal such as Traffic World, or in weekly bulletins of the bureau to which anyone may subscribe. Thereafter, there is a public hearing on the proposal at which any person may make his views known, orally or in writing. Following the public hearing the proposal is either approved or disapproved or modified and public notice of the action taken is given. If this process results in a decision to change a rate or rates, the change is published in a tariff which is filed with the ICC.

"Section 217(a) of the Interstate Commerce Act provides that changes in rates published in tariffs filed with the ICC cannot be made effective sooner than 30 days following the filing of the tariff absent special permission by the ICC . . . Any person may protest any changed rate to the ICC. In the event protests are filed they are referred to the Board of Suspension of the ICC. The board analyzes the changed rate, considers the facts in the protests and in any replies thereto. If the board cannot conclude that the changed rate is in fact just, reasonable and otherwise lawful, it suspends the use of the rate for a period of seven months and institutes a formal investigation of its lawfulness. If the board declines to issue an order of suspension and investigation any protestant may appeal to Division 2 of the commission itself. Division 2, which consists of three commissioners, reviews the matter and if it disagrees with the board, issues an order of suspension and investigation."

Such collective rate making does not preclude any carrier from making its own rates. Such independent actions are common. For example, the Middle Atlantic Conference reported that for the year ending May 31, 1977, 1,138 rate change proposals were independent actions — 28 percent of the total.

Here are some other most significant data covering that period of activity at the Middle Atlantic bureau, as described by the bureau's general manager, Christian A. Henriott:

"In the 12 months ended May 31, 1977, the Standing Rate Committee acted on 2,859 proposals: 31 percent were reductions in LTL (Less Than Truckload) rates and 56 percent were reductions in truckload rates. The balance or 13 percent involved various types of territorial adjustments such as changes in rules, grouping of places, distance factors, etc., the majority of which were reductions. It approved, in whole or in part, 2,641 proposals, or 92 percent of those acted on, thereby reducing thousands of rates and charges.

"In the same period there were 1,138 independent actions: 26 percent were reduced LTL rates; 57 percent were reduced truckload rates; and 17 percent were changes in rules, such as allowances and arbitraries, or exceptions ratings, most of which were reductions.

"Again, the result was the establishment of thousands of reduced rates and charges. Committee approval of practically all the proposed reductions demonstrates that the collective ratemaking process neither stifles rate reductions nor is confined to increases such as is typical of a cartel."

Congress, by passage of the Reed-Bulwinkle Amendment now known as Section 5(a) of the Interstate Commerce Act, authorized this collective ratemaking and made it immune from antitrust laws. Congress took the action in 1948 following extensive hearings which were marked by a great outpouring of support for the measure from shipper and community organizations across the country.

In a recent study of collective ratemaking, Jesse J. Friedman, an economic consultant, made this observation:

"The principal economic benefits which are achieved by collective ratemaking in trucking relate to the avoidance of damaging forms of economic discrimination which, because of the structure and character of motor freight transport, would be inevitable under unrestrained competition. In the absence of collective

rate differences which are not justified by any difference in cost or any other relevant economic consideration. It would be impossible to assure that all shippers, large and small, are treated in a nondiscriminatory way by carriers as a group, or to assure treatment among competitively-related commodities. Not only shippers, but communities and employees as well, would suffer unjustifiable economic hardship, economic resources would be misallocated, and economic efficiency would be impaired. With collective ratemaking, there exists the opportunity and the machinery for averting these consequences."[1]

And here is what the Supreme Court said about discriminatory rates while rendering a decision in 1947:

"Discriminatory rates are one form of trade barrier. Their effect is not only to impede established industries but to prevent the establishment of new ones . . . Nondiscriminatory class rates remove that barrier by offering that equality which the law was designed to afford. They insure prospective shippers not only that rates are just and reasonable per se but they are related to those of their competitors . . ."

Collective rate making reduces the chaotic to the manageable. Consider the hundreds of thousands of commodities, now reduced to 23 classification ratings, traveling between more than 117,000 points and places in the United States, and the need for some kind of stabilizing system becomes apparent. The alternative would be thousands of separate carriers setting rates for hundreds of thousands of commodities between 13.7 billion combinations of places.

No shipper would know one day to the next what his rates or the rates of his competition would be. The paperwork would be overwhelming. In short, business would be reduced to a lottery.

As the House Committee on Interstate and Foreign Commerce put, it in explaining its support of the Reed-Bulwinkle Act:

"It is recognized by all who are familiar with the problems of transportation that the carriers subject to the Interstate Commerce Act cannot satisfactorily meet their duties and responsibilities thereunder, and the basic purposes of that act cannot be effectively carried out, unless such carriers are permitted to engage in joint activities to a substantial extent. The public interest will not be served if there is permitted to continue the existing state of uncertainty as to the extent to which carriers may engage in joint activity without risk of violating the antitrust laws . . . The carriers cannot effectively meet the requirements of the law, or provide the type of transportation that the public has come to expect and demand of them, if each is to be compelled to go it alone without a reasonable degree of consultation and agreement with other carriers."

[1] Jesse J. Friedman, "Collective Ratemaking in Trucking: The Public Interest Rationale," a study commissioned by 11 rate bureaus, 1977.

The Empty Mileage Argument

While the accusations that economic regulation of the motor carrier industry stifles competition and runs up costs are error-ridden from start to finish, the allegations concerning empty backhauls or empty mileage are downright ludicrous.

The charge, "trucks are forced to run around the country empty because of ICC regulations," has a simplistic, emotional appeal. When the charge is made by someone in authority, the tendency is to believe it without question.

But a moment's reflection makes it quite clear that only in some kind of fantasy world, where the impossible becomes the rule, could we find a transportation system where all vehicles could travel loaded at all times.

The plain fact is that empty mileage is nothing more than a simple fact of transportation life. What little there is, is for the most part unavoidable.

In a recent study, made jointly by the ICC, the Productivity Commission, the Office of Management and Budget, and the Council on Wage and Price Stability, it was found that only 20.4 percent of truck miles are empty. (The figure is substantially lower for regulated motor carriers of common commodities.) The study found that the chief reasons for empty trucks are the regional traffic imbalances inherent in our society and the use of specialized equipment such as auto carriers and tank trucks. Only about 3 percent of the empty miles appeared to be avoidable, according to the study.

Picture, if you will, the freight going into Michigan's automobile manufacturing and assembly plants — ore, metal, hardware, etc. Then picture what comes back out — completed motor vehicles being hauled on special carriers.

Naturally, those trucks carrying nuts and bolts and rubber gaskets in will not be carrying automobiles out; while the autmobile carriers will not be carrying anything in.

You would not haul heating oil in a tank truck from Oklahoma City to Milwaukee and then haul milk back to Oklahoma City in the same tanker.

Some places, like Washington, D.C., import virtually everything that is needed and export practically nothing. Florida exports orange juice and frozen meats, but imports most of its manufactured goods.

There has been great sympathy expressed lately for the exempt hauler, who carries exempt agricultural products to metropolitan centers but must return empty to his home base. Critics of regulation say he should be allowed to pick up regulated freight for his return haul.

But while one may sympathize with the problem of the exempt hauler, the question persists: Just where is he going to get that regulated freight for his return haul? As was mentioned earlier, you cannot increase the amount of freight available to be carried. One man's backhaul is another man's front haul.

To create a society in which all trucks would move into all areas with full loads and would also come out of those areas with full loads is an impossible dream. It might be easier to create a society in which every community grew and manufactured everything it needed and wanted, thus eliminating the need for transportion altogether.

Motor carriers are well aware of their empty mileage and work constantly at keeping it to a minimum. They recognize — more so than anyone outside the business — that empty mileage does not bring in revenue. But they can also distinguish between reality and idealistic fantasy. Motor carriers have to operate in the real world.

Regulation Means Conservation

In this particular era, when the Nation acutely needs to conserve energy, there is an additional reason for maintaining economic regulation of the motor carrier industry: Regulation saves energy.

Under regulation, the motor carrier industry has proven itself to be an efficient user of fuel in terms of freight carried and service performed. Deregulation and the weakening of entry controls would lead to inefficient operations, greater empty truck mileage, more trucks on the highways and a waste of fuel.

As more and more carriers entered the field, there would be a general breakdown in all-around efficiency. Empty mileage would increase greatly. Many of the new companies, operating on shoestrings, could not afford even minimal investment in maintenance, which at present is a major facet of the regulated trucking industry. And a good part of that maintenance effort is directed at fuel savings.

Regulation Means Safety

An economically regulated motor carrier system is a safe motor carrier system.

Though accidents continue to happen and some involving trucks are the sensational, headline-grabbing variety, the record clearly shows that the regulated motor carrier industry is a responsible user of the nation's highways.

But that safety record is no accident.

Millions of dollars are spent annually — by American Trucking Associations, its member state associations and conferences, and individual carriers — on safety. Proper vehicle maintenance, an extensive safety program under the direction of a safety director or supervisor, road patrols, driver training and incentive programs all are important parts of the regulated motor carrier's operation.

The regulated motor carrier industry has given its support to the national speed limit of 55 mph and has backed up that support with intense public relations and industry relations programs aimed at bringing about driver compliance.

The savings in lives, injuries and property damage resulting from the safety efforts of the regulated trucking industry cannot even be estimated, but they must be tremendous.

But such a large investment would not — and could not — be made under a non-regulated system. Deregulation would mean excessive competition, much of it from economically disadvantaged and irresponsible entrepreneurs; a loss of the effective safety controls inherent in a government licensing system, and an overall dissolution of the stability that now marks the regulated industry. There would most certainly be a substantial lessening of safety investment.

There would no winners — only losers.

Motor Carrier Regulation— A Red Herring?

The economic regulation of the motor carrier industry is under particular fire these days because of the general dissatisfaction with Big Government and Big Government Regulation.

Motor carrier executives share that dissatisfaction.

Presidents, one after another, have decried the bureaucratic Big Brotherism that is threatening to smother business under an avalanche of red tape and paperwork. Everyone has heard of the bizarre lengths to which some bureaucracies have gone under the misguided belief they are carrying out their particular mandates.

And with the growing bureaucracy has come a growing fear that the basic freedoms that have made America the envy of the world are being snuffed out by all of this Big Brother concern for health, safety and welfare.

Dr. Milton Friedman, the highly reputable economist from Chicago, voiced the fear in these words following a meeting of concerned business and finance leaders and scholars:

"Too many of us tend to think the threat to our freedom is somewhere in the indefinite future. It's not in the future, it's here! A large fraction of our freedom has already been eroded, and to a large extent ours is already a controlled society."

And so the executive of a regulated motor carrier cannot help but be particularly frustrated and outraged when he sees the economic regulation of trucking under the ICC being placed in the category of this mushrooming Big Brotherism, which also victimizes him.

If overregulation by government is a serious problem in this country — and we agree that it is — then, the ICC doesn't even belong on a list of agencies needing investigation for exercising too much authority.

And yet, the ICC is frequently singled out as an example — sometimes as the primary example — of such Big Brotherism, though strangely enough, few complaints are being heard from the 16,000 motor carriers under ICC jurisdiction.

One can only conclude that those linking the economic regulation of trucking to the problem of excessive government regulation either are operating from sheer ignorance or are throwing a red herring into the issue to keep the public's mind off the true threats to freedom — the agencies operating in the fields of social welfare.

[illegible] professor and writer, is one who understands the distinction, as he made clear in one of his columns in The Wall Street Journal:

"The movement for 'de-regulation' may seem to be a healthy reaction against what Walter Lippman called 'the sickness of an over-governed society.' But in actuality it is not really anthing of the sort. It is a movement directed almost exclusively against *some* of the activities of the *older* regulatory agencies — e.g., the Interstate Commerce Commission, the Civil Aeronautics Board, the Federal Power Commission, the Securities and Exchange Commission, et al. Not *all* such agencies, it is interesting to note. There seems to be little urge to dismantle the Food and Drug Administration or the Federal Trade Commission. And there appears to be no impulse whatsoever to apply 'deregulation' to the activities of the *newer* regulatory bodies — the Environmental Protection Agency, the Occupational Safety and Health Administration, or the Consumer Products Safety Commission. On the contrary: the bureaucracy and red tape of these other agencies calmly and inexorably multiply, attracting little controversy, even as the movement for 'de-regulation' grows more popular.

"So, while 'de-regulation' sounds as if it means debureaucratization, it turns out not to have that meaning at all. Or, more precisely: it is a very selective kind of debureaucratization. And there is reason to believe that it is the wrong kind — one whose ultimate consequences will be more government control over the economy rather than less."

Agencies which are continuously expanding their control over the people are marked by a corresponding expansion of their own facilities as seen in the increasing numbers of their workforces.

The Environmental Protection Agency had more than 11,000 employees in 1976 — up 2,000 in just three years. The Equal Employment Opportunity Commission, which was organized in 1965, had an authorized staff in 1970 of 579. Seven years later, in 1977, that staff had quadrupled to 2,300. The Occupational Safety and Health Administration, created in 1971, had in 1973 a total of 1,239 employees. Four years later it had doubled its size to 2,565 employees.

These, like the ICC, are agencies and do not begin to reflect the growth of Big Government as more clearly shown in the burgeoning of the big departments, like the Department of Health, Education and Welfare, which in 17 years has expanded from 61,641 to 141,213 employees.

But these mushrooming agencies do give an accurate comparison with the ICC, which at end of 1977 had only 2,044 employees — 300 fewer than in 1960!

In fact, unlike any federal agency working in the social welfare fields, the ICC has been marked over the years by a stability in numbers employed and monies spent. It is not and never has been an agency seeking to exercise more and more control over the public; in fact, its lines of authority are clearly drawn in the IC Act, are restricted to interstate surface transportation and to the relatively narrow economic segment of that area.

To attempt to hold up this innocuous area of limited regulation as an example of Big Brotherism run rampant is far more than an injustice to the ICC and the regulated trucking industry; it is a serious distortion that takes away the heat and the light from where they rightfully should be directed. While the movement to deregulate trucking picks up more momentum, the real culprits in the expanding authoritarianism continue to grow unimpeded.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

October 24, 1978

SUMMARY OF: A Performance Review of the Alaska Transportation Commission.

PURPOSE OF THE REVIEW

In accordance with the provisions of Alaska Statutes 24.20.271(1), 44.66.010, and 44.66.050 (sunset legislation), a review of the Alaska Transportation Commission (ATC) was conducted to determine if the Commission has been operating in an effective and efficient manner. The functions reviewed included the Commission's executive, administrative, enforcement, rates/tariff analysis, and records/docketing functions.

REPORT CONCLUSION

In our opinion, the Alaska Transportation Commission should continue to regulate the transportation industry pending a comprehensive transportation study. The economic consequences of regulation or deregulation need to be determined in order to fully evaluate the public need for this agency.

However, certain changes need to be implemented in order for the Alaska Transportation Commission to effectively accomplish its statutory purposes which are: (1) to provide shippers and receivers with a stabilized rate structure; (2) to foster sound economic conditions among the carriers which will guarantee transportation in the public interest; and (3) to promote adequate, economic services and reasonable charges.

The Commission has been hampered by the following problems in meeting these purposes. The statutes and regulations which affect the Commission are overdue for revision in many areas. The Commission staff is burdened with additional work due to obsolete legislation such as the Ferry Act as well as dump truck and recreational air carrier regulatory sections.

Improvement is needed in the manner in which ATC approaches its economic regulation mandate and its enforcement responsibilities. Operating data must be obtained from a regulated carrier and properly audited and analyzed. ATC must enforce the provisions of the various transportation acts. Consistently suspending civil penalties levied against carriers is not a useful deterrent in that connection.

Applications for authority have not been processed in a timely fashion which is a disservice to the public. Moreover, communicating operating authority to carriers by telegram, before findings of fact and conclusions of law have been drafted, is contrary to statute and has been successfully appealed to the Superior Court.

The ATC Commissioners have not complied with the statutory requirement for providing notice and opening their meetings to the public. Further, the meetings have not been held weekly as is required. In addition we have recommended both Commissioners and the staff decline any future free offers of transportation from regulated carriers.

There has been a serious disregard of the prohibitions against ex parte communication by both the Commissioners and the staff. This is evidenced by phone calls to Commissioners from attorneys representing parties to a case before the Commission and orders written by staff members on cases to which they were a party. Also, it appears the Governor, through the Commissioner of Administration, has attempted to influence the judgement of the Commissioners.

Improvements in the efficiency of order writing and decision making would result from compiling a complete and accurate index of all prior orders and court decisions. Improvements in attorney and tariff analyst services should result from a transfer to ATC of the assistant attorney general and tariff analyst currently assigned to the Department of Law.

The primary goals of the Commission are to regulate air and motor commerce to ensure economically sound carriers and a stabilized rate structure. In general, the ATC does not have the necessary information on carriers' profit, volume or growth of traffic, or trends in population, to make informed decisions on applications for authority or rate changes. ATC is mandated by statute to complete a statewide air commerce study and such a study, including all modes of transportation, has been started by the Department of Transportation in Southeast Alaska. The results of this study, as well as a similar study of other areas in the State should enhance ATC's ability to accomplish their primary goals.

In conclusion, the Alaska Transportation Commission should analyze and evaluate the methods of the Commission and take the necessary actions needed to perform and fulfill their responsibilities to the public.

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH W—STATE CAPITOL

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

January 22, 1979

To: Presiding Officer of Both Houses

From: Legislative Budget and Audit Committee
George Hohman, Chairman

Subject: Forwarding of Sunset Audits with Discussion of Legislative Oversight Responsibilities

Enclosed are Sunset Audit Reports of 13 boards and commissions that will terminate June 30, 1979. We are forwarding these reports to you so that they may be distributed to the appropriate standing committees you will designate to perform the legislative oversight function.

According to AS 44.66.050 the standing committee of legislative jurisdiction, as provided in Rule 20 of the Uniform Rules of the Legislature, shall hold one or more hearings to receive testimony from the public and other parties that have associated responsibilities or interests. In addition the Committee shall consider Legislative Audit's report, the agencies proposed budget, the agencies program performance report and any other tools that might assist them in evaluating the conduct and activities of the agency being terminated.

It is important to note that the terminating agency shall have the burden of demonstrating a public need for its continued existence during the public hearings.

The determination of "public need" for continued existence shall take into consideration the following factors set out in AS 44.66.050(c):

(1) the extent to which the board, commission or program has operated in the public interest;

(2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters;

31-GILH

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;

(4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided;

(5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;

(6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved;

(7) the extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

(8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest; and

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

The Legislative Audit reports have addressed these issues individually but only to the extent allowed by restricted audit scopes detailed within the reports.

The Law further states that the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of each house. The report is to include a summary of findings as to compliance with the "public need" factors enumerated above together with recommendations as to each of the following:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

(3) an identification of any other programs having similar, conflicting or duplicate objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts; and

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

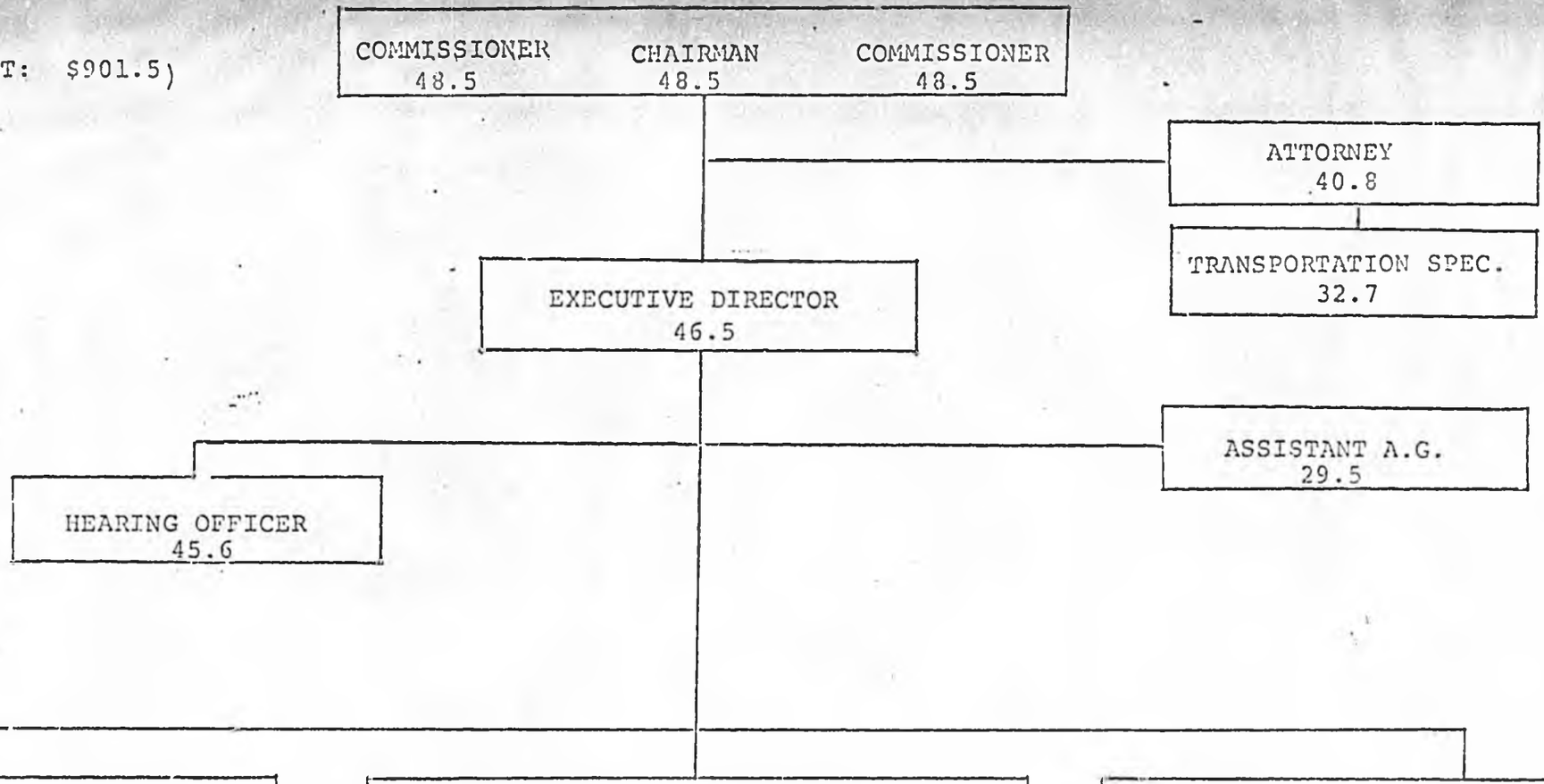
The committee of reference may introduce a bill providing for the reorganization or continuation of the agency being terminated as stipulated in AS 44.66.050(e).

In addition, the Law requires the Legislative Budget and Audit Committee to designate, not later than March 1, 1979, programs or activities in the general government, public protection and administration of justice budget categories, which shall be subject to termination in the next fiscal year. It is anticipated that the Legislative Budget and Audit Committee will be recommending six to nine programs for termination which will be submitted to you in the form of bills by the required deadline.

cc: Members of the Legislature

ALASKA TRANSPORTATION COMMISSION ORGANIZATIONAL CHART & FINANCIAL CONDITION--PROPOSED

AND TOTAL 100 ACCOUNT: $901.5)
(S NOT INCLUDE BENEFITS)



RATE & AUDIT SECTION

Transportation Spec.	44.0
Transportation Spec.	42.3
Financial Analyst IV	35.2
Financial Analyst III	30.0
Tariff Analyst III	30.0
Accounting Technician II	21.0
	202.5

ADMINISTRATIVE SUPPORT SECTION

Administrative Support Center Supervisor	20.7
Commission Recorder	18.3
Administrative Support Technician	17.7
Administrative Support Technician	17.7
Administrative Support Technician	17.1
Document Processing Clerk III	16.5
Clerk II	15.2
Correspondence Secretary	18.3
Correspondence Secretary	13.7
Correspondence Secretary	13.7
Correspondence Secretary	13.7
	182.6

ENFORCEMENT

Transportation Field Agent IV 32.3

ANCHORAGE		FAIRBANKS
Field Agent I	28.3	Field Agent III
Field Agent I	26.2	Field Agent I

JUNEAU

Field Agent II 24.4

total: 175.8

GRAND TOTAL 100 ACCOUNT: $910.0)
DOES NOT INCLUDE BENEFITS)

COMMISSIONER 48.5 | CHAIRMAN 48.5 | COMMISSIONER 48.5

EXECUTIVE DIRECTOR 46.5

ASSISTANT A.G. 29.5

HEARING OFFICER 53.8

HEARING OFFICER 45.6

RATE & AUDIT SECTION

Tariff Specialist	42.3
Tariff Specialist	44.0
Tariff Specialist	35.2
Tariff Specialist	32.7
	154.2

ADMINISTRATIVE SUPPORT SECTION

Administrative Support Center Supervisor	20.7
Commission Recorder	18.3
Administrative Support Technician	20.3
Administrative Support Technician	17.7
Administrative Support Technician	17.7
Administrative Support Technician	17.1
Document Processing Clerk III	16.5
Clerk II	15.2
Correspondence Secretary	18.3
Correspondence Secretary	13.7
Correspondence Secretary	13.7
	189.2

ENFORCEMENT

Transportation Field Agent IV 32.3

ANCHORAGE

Field Agent I	28.3
Field Agent I	26.2
Field Agent I	27.2

FAIRBANKS

Field Agent III	
Field Agent I	
Field Agent I	
Clerk Typist II	

JUNEAU

Field Agent II 24.4

total: 247.7

42.10.050
42 10 391

STATE OF ALASKA

ALASKA TRANSPORTATION COMMISSION

In the Matter of Wrecker or Tow-truck Operations subject to AS 42.10) Ruling No. 2

DECLARATORY RULING

Upon request of the Alaska Transportation Commission's staff the Commission hereby renders this Declaratory Ruling with respect to the operations of wreckers and tow-trucks when such operations are conducted on the public highways of the State of Alaska, and are subject to the provisions of the Alaska Motor Freight Carrier Act.

1. A motor carrier permit is not required for the operations of a wrecker or tow-truck when such operations are being performed as a private carrier as defined in AS 42.10.420(7).1/

Examples of such operations are as follows:

(a) No permit is required for the operations of a wrecker or tow-truck which is owned and operated by a automotive repair shop or service station wherein he transports disabled vehicles to his place of business for service or repair.

+ Ambiguous why call no permit when permitted is available

(b) No permit is required to assist or move a wrecked, damaged, or disabled vehicle which is on the roadway creating a traffic hazard to the nearest location at which the vehicle may be placed off the traveled portion of the roadway in a safe position.

SAME AS ABOVE

(c) No permit is required to assist or move a vehicle back onto the roadway from a point alongside the roadway.

2. A motor carrier permit is required when wreckers or tow-trucks are used to transport the property of others for compensation and not in connection with some other established private primary business. AS 42.10.130 2/

1/ No common carrier, contract carrier, or temporary carrier may operate for the transportation of property in intrastate commerce for compensation in the state without a permit . . .

2/ "private carrier" is:
(A) a person who transports by motor vehicle, with or without compensation, property which is owned or is being bought or sold by him, or property of which he is the seller, purchaser, lessee or bailee, and the transportation is incidental to and in furtherance of some other primary business conducted by the person in good faith.

Examples of such operations are as follows:

(a) A permit is required when a wrecker or tow-truck is used to transport an impounded or repossessed vehicle whether or not such vehicles are wrecked, damaged, or disabled.

(b) A permit is required when a wrecker or tow-truck is used to transport vehicles whether or not such vehicles are wrecked, damaged or disabled to a destination other than the wrecker or tow-truck operators own place of business.

DATED at ANCHORAGE, ALASKA this 21st day of October, 1974.

BY THE COMMISSION

ALASKA TRANSPORTATION COMMISSION

Robert C. Rocker

Robert C. Rocker, Chairman

Jake Johnson

Jake Johnson, Commissioner

Quentin L. DeBoer

Quentin L. DeBoer, Commissioner

Jim Duncan
FREEMAN
...ilson S. + Ka
...ugen Pete

NOTICE OF PROPOSED ADOPTION IN THE REGULATIONS

OF THE ALASKA TRANSPORTATION COMMISSION

Notice is hereby given that the Alaska Transportation Commission, under authority vested in AS 42.07.141(a) and (b) proposes to adopt, regulations in Title 3 of the Alaska Administrative Code to implement AS 42.07.121 and AS 42.10.110 as follows:

Section 420(2) in Chapter 10 of Title 42 (The Alaska Motor Freight Carrier Act) includes "Forwarder" as a common carrier, but no further descriptions have been made and published and no regulations have been published to afford guidelines under which this class of carrier may operate.

The Proposed Regulation:

3 AAC 64.546 FORWARDERS

Provides for concise definition, the basis for rates and charges, billing and collecting procedures, the class of service in which the carrier may operate and requirement for filing a bond.

Notice is also given that any person interested may present written statements or arguments relevant to the action proposed at the Alaska Transportation Commission, 1000 MacKay Building, 338 Denali Street, Anchorage, Alaska 99501 before 4:30 p.m. on March 12, 1979.

Copies of the Proposed Regulation are available at the offices of the Alaska Transportation Commission in Anchorage, Fairbanks and Juneau.

ATC
1000 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

ATC
P. O. Box 2172
Juneau, Alaska 99803

ATC
675 Seventh Avenue
Station A
Fairbanks, Alaska 99701

Thereafter, the Alaska Transportation Commission, upon its own motion or at the instance of any interested persons, may thereafter adopt the proposals substantially as described above without further notice or may decide to take no action on them.

DATED AT ANCHORAGE, ALASKA, this 1st day of February, 1979.

ALASKA TRANSPORTATION COMMISSION

Jake Johnson
Chairman

REFER TO DOCKET NO. 77-9-RR/A

State of Alaska
Alaska Transportation Commission
1000 Mackay Building
338 Denali Street
Anchorage, Alaska 99501

C E R T I F I C A T I O N

I HEREBY CERTIFY that I have this date mailed a true and correct copy of NOTICE OF PROPOSED ADOPTION IN THE REGULATIONS OF THE ALASKA TRANSPORTATION COMMISSION, in Docket No. 77-9-RR/A, postage prepaid to the following parties:

Southeast Alaska Empire
138 Main Street
Juneau, Alaska 99801

Fairbanks Daily News Miner
P. O. Box 710
Fairbanks, Alaska 99701

Anchorage Daily Times
P. O. Box 40
Anchorage, Alaska 99501

Alaska Carriers Association
3443 Minnesota Drive
Anchorage, Alaska 99503

All Senators
Alaska State Senate
Pouch V
Juneau, Alaska 99811

All Representatives
State House of Representatives
Pouch V
Juneau, Alaska 99811

Jack Starbird, Project Manager
Haines Sewer & Water
National Mechanical Cont.
P. O. Box 1972
Anchorage, Alaska 99510

Charles & Beverly Jones
P. O. Box 401
Haines, Alaska 99827

Mr. and Mrs. John Aske
P. O. Box 12
Craig, Alaska 99921

James M. Dodson
Executive Director
Alaska Air Carriers Assn.
P. O. Box 1608
Juneau, Alaska 99802

Mr. and Mrs. Walter E. Short
Box 531
Haines, Alaska 99827

Mrs. Richard Jackson
P. O. Box 401
Haines, Alaska 99827

Mrs. Richard Jackson
P. O. Box 401
Haines, Alaska 99827

Elizabeth Paddock
P. O. Box 106
Pelican, Alaska 99832

Mr. Malcolm A. Menzies
R & M Consultants, Inc.
P. O. Box 1786
Juneau, Alaska 99801

Martin A. Cordes, V.P.
Schnabel Lumber Co.
P. O. Box 129
Haines, Alaska 99827

Lew & Rene Rieth
P. O. Box 385
Moose Pass, Alaska 99631

Tom Owens, President
Owens Drilling Co., Inc.
P. O. Box 842
Wrangell, Alaska 99929

Tom O. Paddock, President
T. O. Paddock Co.
P. O. Box 850
Juneau, Alaska 99801

Gerald H. Grove
P. O. Box 130
Craig, Alaska 99921

Riley Pleas, President
Riley Pleas, Inc.
2404 Boyer Avenue East
Seattle Washington 98112

Mr. and Mrs. Al Dennis
P. O. Box 31
Craig, Alaska 99921

Eugene T. McNamara
P. O. Box 262
Haines, Alaska 99827

Bob and Davis Walker
Copper River Fly-Fishing Lodge
Pope Vannay Landing
Iliamna, Alaska 99606

Jerry L. Honousek
P. O. Box 335
Skagway, Alaska 99840

Polly L. Hall, Mgr.
Sears, Roebuck and Co.
P. O. Box 291
Haines, Alaska 99827

Velma Knapp
P. O. Box 297
Skagway, Alaska 99840

C. L. Taylor, President
Stikine Air Service
P. O. Box 631
Wrangell, Alaska 99929

L. Ingle, V.P. and Manager
Alaska Wood Products
P. O. Box 591
Wrangell, Alaska 99929

Allan P. Gregg
P. O. Box E
Haines, Alaska 99827

Richard Floyd
P. O. Box 70
Haines, Alaska 99827

Delaney, Wiles, Moore
Hayes & Reitman, Inc.
Attorney at Law
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P. O. Box 70438
Seattle, Washington 98107

Mayor
City of Klawock
Klawock, Alaska 99925

Charles C. Parker
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Anchorage, Alaska 99501

George Wigginton
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Juneau, Alaska 99801

Irving Bertram
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Box 68900 Sea-Tac Airport
Seattle, Washington 98188

Ann Carpenter
Legislative Counsel
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Juneau, Alaska 99801

Clinton H. Brown, DMD
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Skagway, Alaska 99840

Paul T. Breed
P. O. Box 63
Klawock, Alaska 99925

Martin J. Fabry
Log Cabin Sports Rentals
P. O. Box 54
Klawock, Alaska 99925

Mr. and Mrs. Don Thomas
P. O. Box 98
Craig, Alaska 99921

Stanley N. Jones, MD
Haines, Alaska 99827

Robert L. Syre, Sup.
Excursion Inlet Packing Co.
Excursion Inlet, Alaska 99850

Michael Frank, Esq.
Alaska Legal Services Corp.
524 West 6th Avenue, Suite 204
Anchorage, Alaska 99501

Mr. Ian Newman
Craig, Alaska 99921

Dave L. Murdey, Consultant
Alaska Pulp America, Inc.
P. O. Box 621
Wrangell, Alaska 99929

Wrangell Chamber of Commerce
P. O Box 49
Wrangell, Alaska 99929

Alaska Dept. of Public Safety
Pouch N
Juneau, Alaska 99811

Director
Division of Motor Vehicles
Alaska Dept. of Public Safety
P. O. Box 960
Anchorage, Alaska 99510

DATED AT ANCHORAGE, ALASKA, this 1st day of February, 1979.

ALASKA TRANSPORTATION COMMISSION

Carolyn J. Homme

(Mrs.) Carolyn J. Homme
Secretary

Findings, effect upon operation in public interest.

the Panama Canal, with which the applicant does or may compete for traffic, if the Commission shall find that the continuance or acquisition of such ownership, lease, operation, control, or interest will not prevent such common carrier by water or vessel from being operated in the interest of the public and with advantage to the convenience and commerce of the people, and that it will not exclude, prevent, or reduce competition on the route by water under consideration: *Provided*, That if the transaction or interest sought to be entered into, continued, or acquired is within the scope of paragraph (2) (a), the provisions of paragraph (2) shall be applicable thereto in addition to the provisions of this paragraph: *And provided further*, That no such authorization shall be necessary if the carrier having the ownership, lease, operation, control, or interest has, prior to the date this section as amended becomes effective, obtained an order of extension under the provisions of paragraph (21) of this section, as in effect prior to such date, and such order is still in effect.

—effect on competition on water route.

Applicability of sec. 5 (2). Saving clause, when order of extension obtained.

AGREEMENTS BETWEEN CARRIERS

62 Stat. 472.

SEC. 5a. [*June 17, 1948.*] [*49 U. S. C. § 5b.*]

(1) For purposes of this section—

"Carrier" defined.

(A) The term "carrier" means any common carrier subject to part I, II, or III, or any freight forwarder subject to part IV, of this Act; and

"Antitrust laws" defined.

(B) The term "antitrust laws" has the meaning assigned to such term in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

(2) Any carrier party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules and regulations as the Commission may prescribe, apply to the Commission for approval of the agreement, and the Commission shall by order approve any such agreement (if approval therof is not prohibited by paragraph (4), (5), or (6) if it finds that, by reason of furtherance of the national transportation policy declared in this Act, the relief provided in paragraph (9) should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied. The approval of the Commission shall be granted only upon such terms and conditions as the Commission may prescribe as necessary to enable it to grant its approval in accordance with the standard above set forth in this paragraph.

Application for approval of agreements.

Terms and conditions of approval.

(3) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the Commission such reports, as may be prescribed by the Commission, and all such accounts, records, files, and memoranda shall be subject to inspection by the Commission or its duly authorized representatives.

Accounts, records, files, inspection.

(4) The Commission shall not approve under this section any agreement between or among carriers of different classes unless it finds that such agreement is of the character described in paragraph (2) of this section and is limited to matters relating to transportation under joint rates or over through routes; and for purposes of this paragraph carriers by railroad, express companies, and sleeping-car companies are carriers of one class; pipe-line companies are carriers of one class; carriers by motor vehicle are carriers of one class; carriers by water are carriers of one class; and freight forwarders are carriers of one class.

Carriers of different classes.

(5) The Commission shall not approve under this section any agreement which it finds is an agreement with respect to a pooling, division, or other matter or transaction, to which section 5 of this Act is applicable.

Pooling, division.

(6) The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take

Sec. 5a

Independent action.

independent action either before or after any determination arrived at through such procedure.

(7) The Commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which such approval was granted, is not or are not in conformity with the standard set forth in paragraph (2), or whether any such terms and conditions are not necessary for purposes of conformity with such standard, and, after such investigation, the Commission shall by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with such standard, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standard or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the Commission determines to be reasonably necessary to avoid undue hardship.

Investigation.

Approval modified or terminated.

Effective date.

Hearing.

(8) No order shall be entered under this section except after interested parties have been afforded reasonable opportunity for hearing.

(9) Parties to any agreement approved by the Commission under this section and other persons are, if the approval of such agreement is not prohibited by paragraph (4), (5), or (6), hereby relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission.

Antitrust laws, relief from.

(10) Any action of the Commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or in prescribing the terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of paragraph (9).

Limitation.

Sec. 5a–6

NOTE.—Clayton Antitrust Act, see Title 15, infra.

Quotations, tenders, of rates, for United States Government, agreement approved under § 5a, see § 22 (2), infra.

Section 204 of the Emergency Railroad Transportation Act, 1933, 49 U. S. C. § 5a, June 16, 1933, provides: "The provisions of the Interstate Commerce Act, as amended, and of all other applicable Federal statutes, as in force prior to the enactment of this title, shall remain in force, as though this title had not been enacted, with respect to the acquisition by any carrier, prior to the enactment of this title, of the control of any other carrier or carriers." The U. S. Code renumbers § 5a of the act of June 17, 1918, as § 5b.

SCHEDULES AND STATEMENTS OF RATES, ETC., JOINT RAIL AND WATER TRANSPORTATION

SEC. 6. [*Amended March 2, 1889. Following section substituted June 29, 1906. Amended June 18, 1910, August 24, 1912, August 29, 1916, February 28, 1920, August 9, 1935, September 18, 1940, August 2, 1949.*] [*49 U. S. C. § 6.*] (1) That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the pas-

24 Stat. 380.
25 Stat. 855.
34 Stat. 386.
37 Stat. 568.
41 Stat. 483.
49 Stat. 543.
54 Stat. 910.
63 Stat. 486.

Schedules, printing and filing; open to public.

Components applicable when no joint rate established.

What schedules shall show.

and findings set forth in the prior report, as clarified in this report on reconsideration, within 90 days of the date of service of this report and order.

And it is further ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission.

ROBERT L. OSWALD,
Secretary.

(SEAL)

Ex Parte No 297

APPENDIX A

Ultimate conclusions and findings of prior report, 349 I.C.C. 811

1. Rate bureaus assist the making of appropriate rates.
2. Procedural changes would foster actions more favorable to bureau members, shippers, and the general public; such changes being contained in the body of the report.
3. The right of independent action does not adversely affect the rate structure.
4. A system need not be established by the Commission to monitor public hearings before rate bureaus, but that formal minutes, and not verbatim transcripts, are required of rate committee proceedings.
5. Commission representatives may attend all rate bureau meetings; but that copies of correspondence and documents concerning all rate bureau meetings need not be filed with the Commission.
6. A uniform system of accounts for rate bureaus will be promulgated.
7. Rate bureaus are not prohibited from furnishing technical and professional services to other bureaus or nonmembers provided that the limitations expressed in the report are observed.
8. Rate bureaus may not invest in another commercial business, whether related or unrelated to its primary function of processing and publishing rates and related matters for member carriers.
9. Rate bureaus are prohibited from acquiring other rate bureaus without prior Commission approval.
10. Rate bureaus should not be profitmaking enterprises.
11. A carrier member of a bureau, which carrier is affiliated in any way with a shipper, may not serve on a bureau's board of directors, general rate committee, or any other committee which has an effect, either directly or indirectly, on the ratemaking function of the bureau without specific prior Commission approval.
12. A maximum period of 120 days should be prescribed for the processing of proposals to final disposition.
13. Public notice of proposals need not identify the proponent.
14. Rate bureaus are prohibited from broadening the territorial or commodity scope of an individual rate proposal without prior adequate notice.
15. Adoption of shortened special procedures involving proposals covering special docket applications are not warranted in this proceeding.

16. Section 22 quotations require special bureau procedures limiting notification to members and the governmental agency.
17. Docketing of rate bureau proceedings with respect to general rate increase proposals need not be mandatory.
18. The Commission need not obtain and publish reports of the deliberations within the industry concerning the matter of general increases.
19. The various rate bureaus need not join in seeking general rate increases.
20. The various rail rate bureaus are not required to substantiate general increases on a regional basis only, but their regional costs should be presented in a more explicit manner.
21. Rate bureaus are prohibited entirely from protesting proposals of carrier members, and are not merely limited to instances in which the proposed rate is less than long-term variable cost or any other specific instance.
22. Rate bureaus should be prohibited from discouraging independent action proposals of member carriers in any way, including the protesting of the filing of any rates pursuant to such action.
23. Rate bureaus should be prohibited from discouraging members from publishing individual tariffs.
24. Immunity from antitrust laws shall be continued.
25. Immunity from the antitrust laws shall continue to be extended to agreements with respect to proposals of single-line movements.
26. Additional legislation is not necessary, and need not be sought, to better effect the goals for which section 5a was enacted.

APPENDIX B

List of petitioners and replicants on reconsideration

Petitioners

Carrier interests:
AAA Trucking Corporation
Association of American Railroads
Bulk Carrier Conference, Inc.
Central & Southern Motor Freight Tariff Association, Inc., individually, and joint with:
  Central States Motor Freight Bureau,
  Middle Atlantic Conference,
  Middlewest Motor Freight Bureau,
  The New England Motor Rate Bureau, Inc., and
  Pacific Inland Tariff Bureau, Inc.
Cowan, W. T., Inc.
Friedman's Express
Holmes Transportation, Inc.
Household Goods Carriers' Bureau, Inc.
Household Goods Forwarders Tariff Bureau
Jones Motor
Motor Carriers Tariff Bureau, Inc.
Motor Carriers' Traffic Association, Inc.
Movers' & Warehousemens' Association of America, Inc.
Mushroom Transportation Company, Inc.

FEBRUARY 2, 1977 ACA - TARIFFS W.E. LUCORE

ICC UNIFORM SYSTEM OF ACCOUNTS FOR RATE BUREAUS

1. EFFECTIVE FOR YEAR BEGINNING JANUARY 1, 1977.

2. ALL RATE BUREAUS OR ORGANIZATIONS SUBJECT TO SECTION 5A AND 5B OF INTERSTATE COMMERCE ACT WITH ANNUAL OPERATING REVENUES OF $100,000 OR OVER ARE REQUIRED TO COMPLY.

3. ANY REQUEST FOR EXCEPTIONS TO REGULATIONS SHALL BE IN WRITING SPECIFYING THE CONDITIONS JUSTIFYING AN EXCEPTION.

4. BOOKS SHALL BE KEPT ON THE BASIS OF EITHER (1) AN ACCOUNTING YEAR OF 12 MONTHS ENDING DECEMBER 31, OR (2) AN ACCOUNTING YEAR OF THIRTEEN 4 WEEK PERIODS ENDING AT THE CLOSE OF THE LAST 7 DAYS OF EACH CALENDAR YEAR.

5. CHARGES TO BE JUST AND REASONABLE. ALL CHARGES TO THE ACCOUNTS PRESCRIBED IN THIS SYSTEM OF ACCOUNTS FOR BUREAUS OPERATING REVENUES, OPERATING EXPENSES, AND OTHER EXPENSES, SHALL BE JUST, REASONABLE AND NOT EXCEED AMOUNTS NECESSARY TO THE HONEST AND EFFICIENT OPERATIONS AND MANAGEMENT OF THE BUREAU. PAYMENTS SHALL NOT EXCEED THE FAIR MARKET VALUE OF GOODS AND SERVICES, ACQUIRED IN AN ARM'S-LENGTH TRANSACTION. ANY PAYMENTS IN EXCESS OF SUCH JUST AND REASONABLE CHARGES SHALL BE INCLUDED IN OTHER REVENUES OR EXPENSES.

6. A CHANGE IN ACCOUNTING PRINCIPLE OR ACCOUNTING ENTITY SHOULD BE REFERRED TO THE COMMISSION FOR APPROVAL.

7. OPERATING REVEUNE CATEGORIES PRESCRIBED:
   a. Member assessments
   b. Admission fees
   c. Bulletin fees
   d. Tariff fees
   e. Participation fees
   f. Quotation fees
   g. Other
   h. Interest
   i. Gains on asset dispositions
   j. Extraordinary, unusual items and accounting changes

8. OPERATING EXPENSE CATEGORIES PRESCRIBED
   a. Salaries and wages
   b. Payroll taxes
   c. Employee benefits
   d. Professional services
   e. Depreciation
   f. Amortization
   g. Outside printing
   h. Operating supplies
   i. Postage and mailing
   j. Filing fees
   k. Utilities and communication services
   l. Rent (offices, vehicles or equipment)
   m. Travel and entertainment
   n. Uncollectible accounts
   o. Insurance
   p. Property and other taxes
   q. Miscellaneous
   r. Interest
   s. Loss on asset disposition
   t. Extraordinary, unusual or infrequent items and accounting ch...

NEW RATE MAKING AGREEMENTS

ICC Administrative Law Judge has specified issues to be considered in each of three Section 5 agreements for collective agreements. The following issues posed as questions were listed for consideration and in my opinion probably foretells the issues which any revised 5A agreement by ACA will have to face.

1. Do the amended articles of organization and procedure comply with all applicable provisions of Section 5 of the interstate commerce act.

2. Does the agreement comply with all applicable requirements in Ex Parte 297, Rate Bureau Investigation, 349 ICC 811, and 351 ICC 437.

3. What is the anti-trust immunity for a member of a rate bureau of committee, and the rail members representatives, in discussing proposals with respect to which the member cannot vote or agree under section 5b(5)(a) of the act.

4. What is the meaning of the statutory language which provides that only carriers which can "practicably participate in a particular interline movement" are permitted to vote.

5. What procedural requirements are necessary to insure compliance with the restrictions on rate bureau agreements contained in section 5b. E.g., should the Commission require that rate bureaus keep verbatim transcripts of all meetings. Should each carrier voting on a rate proposal be requried to show that it can practicably participate in the movement under question.

6. Does the Agreement properly limit the scope of participation by members with respect to matters relating to interline movements.

7. What is meaning of the statutory language "general rate increase or decreases".

8. Is not the provision in the Agreement which limits a carrier's right to withdraw from a filed joint rate inconsistent with a carrier's right of independent action.

9. Does the Commission's statement in Ex Parte 297, that "public notice of recommended final dispositions should contain the reasons for the action taken", apply to conference ratemaking .

10. Is seven days sufficient notice to the public with respect to any proposed rule, rate, or change.

11. Should any party proposing a rate increase or decrease be identified.

12. Should the members be permitted to collectively protest any rate, fare or charge.

13. Does the Agreement contain provisions for which no anti-trust immunity can lawfully be given.

14. Should two or more carriers who are not members of the same section 5b ratemaking agreement be permitted to discuss and establish rates on independent notice without section 5b arrangements.

15. What is the appropriate role of a rate bureau discussing, agreeing to or voting on intra-state rates.

16. Should Agreement be amended or modified.

March 14, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Your House Commerce Committee has had under consideration for "Sunset" review the Alaska Transportation Commission, pursuant to your referral under AS 44.66.010 and 44.66.050.

In accordance with the statutory requirements, a public hearing was held on the review of this commission. The hearing extended over a period of three days, during March 1-3, 1979 and included over twenty hours of hearings and deliberations by the committee. During that time, testimony was heard from the Deputy Commissioner of the Department of Commerce and Economic Development representing the Commissioner (in accordance with the statute), from all members of the commission itself, and substantial public testimony from interested individuals and from representatives of the private sector affected by the regulatory scheme, representing all aspects of Alaskan transportation. The last few hours of the March 3 hearing extended into the early hours of March 4, during which members of the committee asked extensive questions of the members of the commission about various matters that came to light during the "Sunset" review. Extensive use was made of the Legislative teleconferencing network, which allowed the participation by witnesses and observers in Fairbanks, Barrow, Nome, Kotzebue, Anchorage, Kodiak, Sitka and Ketchikan. Other stations may have had listeners or observers on the line but did not check in.

The committee considered the proposed budget of the Alaska Transportation Commission for FY 1980, and particularly examined the performance audit of the activities of the commission prepared by the Legislative Audit Division. Representatives of the Audit Division were present at all hearings and participated in the considerations with the committee and followed up inquiries that had begun during the audit.

Guided in part by the report prepared by the Legislative Audit Division, the committee took into consideration the factors required under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings:

The committee concurs in the nine findings made by the Division of Legislative Audit in considering the factors required under 44.66.050(c), as they appear on pages 23-25 of the Performance Review of the Alaska Transportation Commission prepared by the Division of Legislative Audit, dated October 24, 1978, which are hereby incorporated by reference as though fully set out herein. However, to the extent that the findings stated there refer to report conclusions or recommendations made within the audit, the committee drew some, but not all of the same conclusions, and will make somewhat different recommendations. However, the findings of fact anticipated by 44.66.050(c) contained within pages 23-25 of the audit report, without regard to those recommendations, are justified by our hearings and are reaffirmed by the committee. In fact, the members of the commission indicated that they had no major disagreements with the findings of the Legislative Audit Division.

The Alaska Transportation Commission exists to provide certain protections to the public with regard to the conduct of the transportation industry in the state of Alaska and to assure a viable economic climate for those parties who participate within that industry. The objective or goal is, theoretically, to have a stable and reliable private transportation system, both surface and air, available to Alaskans, with services provided at prices that are not unreasonable according to certain familiar and traditional regulatory standards. There are not any other State programs which have similar, conflicting, or duplicating objectives, in short of arguable deregulation, there appear no alternative methods of achieving the purposes of the program. This excludes consideration of relevant Federal regulation which does impact upon the transportation industry in Alaska. Some Alaskan surface carriers are certificated and regulated by the Interstate Commerce Commission, and some Alaskan air carriers are regulated by the Civil Aeronautics Board. All Alaskan air carriers are subject to the regulations of the Federal Aviation Agency, particularly as to air safety and flying practices.

During our hearings, substantial questions were raised about the need for regulation of certain industries in light of competitive factors which would normally exist and the predominant Federal regulatory scheme, particularly as it relates to air commerce. In light of these considerations, it appears that some reduction in the jurisdiction of the Alaska Transportation Commission is appropriate. This deregulation of certain areas of transportation, tied to a two-year renewal of the Alaska Transportation Commission under the "Sunset" law, will give Alaskans and their public officials an opportunity to compare certain branches of the transportation industry which remain regulated with those which become deregulated under State law. This and only this, in the opinion of the committee, can fully answer the questions raised by the Alaskan "Sunset" law and by the current inquiries into deregulation which are popular on a national level.

The above recommendations and summary comply with the requirements of 44.66.050(d), to the extent that they relate to the Alaska Transportation Commission.

The Committee on Commerce of the Alaska State House of Representatives will soon be introducing a bill which will provide for a limited two-year extension of the life of the Alaska Transportation Commission; accomplish certain reforms in the practices of the Alaska Transportation Commission as recommended by the Division of Legislative Audit in its report and as recommended by some of the witnesses who testified before the committee; provide for partial deregulation of one or more elements of the Alaskan transportation industry; provide for total State deregulation of other elements of the Alaska transportation industry. Consideration will be given to the resources of the commission, possible inclusion of a staff lawyer or law member of the commission, and consideration of the relationship of the Alaska Transportation Commission's regulatory jurisdiction to other relevant State law.

It is hoped that some of the (apparently valid) criticisms of the Alaska Transportation Commission by the Division of Legislative Audit and the witnesses can be addressed if the commission's resources are applied in more limited and concentrated areas of regulation after deregulation of certain activities. This may give the commission an opportunity to demonstrate that it can function in the public interest and that the regulatory scheme is working and is not antiquated or inappropriate.

The two-year continuation (rather than the four-year continuation anticipated by the "Sunset" law) is dictated by the questionable nature of the commission's present activities and by the substantial questions about its public justification which were raised in the committee hearings and in the report of the Division of Legislative Audit.

The committee is particularly concerned with the conduct of some of the commissioners, both as related in the report of the Audit Division and as it appeared to the committee during the hearings. The commissioners should remember that, like judges, they must not only be acting properly, they must appear to be acting properly. The confidence of the public should not be lost on the basis of some extraordinary action of a commissioner (whether accepting a free ride from a certificated carrier, or using unusual lobbying practices during "Sunset" review), even if there is available a justification or an adequate explanation. The appearance remains the same and undermines the confidence of the public in the regulatory scheme, to the same extent that it would undermine the confidence of the public in the judiciary if such actions were to be taken by a judge. Admittedly, because of the large economic stakes involved in the regulation of an industry such as the transportation industry in Alaska, the pressures upon the members of the commission are no doubt severe, and their present regulatory load is substantial. However, these pressures should not result in conduct which, even though thoroughly explainable,

might by its mere appearances call into question the integrity of the commission and of the regulatory scheme. The commission is not a political body under the law: It is a quasi-judicial regulatory agency.

Corresponding legislation will be introduced soon to accomplish the goals of this report.

Respectfully submitted,

Rep. Fred Brown
Chairman
House Commerce Committee

Rep. Hugh Malone

Rep. Joyce Munson

Rep. Alvin Osterback

Rep. Richard Halford

Rep. Robert Bettisworth

Rep. Richard Randolph

FB:kfw

ATC

CORRES.

720 West Fifth Avenue • Anchorage, Alaska 99510 • Phone (907) 276-3236, 276-2223

February 8, 1979

To: Contract Stations;
Fountain Chevron
Inlet View Texaco
Gateway Union 76
Goldrush Chevron
Hanson's Chevron
Turnagain Chevron
Sand Lake Texaco
Peter's Creek Service

From: Bob Scott

Re: Tow Truck Regulations

As you know, we wrote the other day to the Auto Clubs in Oregon and Washington asking for information about laws in their States pertaining to towing. We phoned them today. We talked to Arthur J. Lambo, General Counsel for the Automobile Club of Washington and to L. R. Knepper, General Manager of the Automobile Club of Oregon.

Mr. Lambo says Washington has no tow truck law. He says the City of Seattle has an insurance coverage requirement, but, that is the only regulation of the road service industry. He says discussions have come up from time to time at Olympia, but, each time, it has been determined any State regulations would simply be restrictive, would discourage free-enterprise and discourage the small operator, encourage inefficient operations.

Mr. Knepper told us a tow truck law went into effect in 1947 in Oregon. It was repealed in 1948. Within just 12-months it was found monopolistic practices and higher prices for the public came into being. The Oregon PUC removed the law from the records. The only reference in Oregon law today is that a disabled vehicle under tow does not come under any State regulation. On the other hand, a non-disabled vehicle under tow or being carried by truck comes under PUC motor freight restrictions.

We have been asked to testify February 13 - 15 at Juneau with Senator Brad Bradley's Senate Commerce Committee hearings on the Performance Review of the Alaska Transportation Commission. It would be important if one or more of you people or representatives of your Associations would schedule a trip to Juneau during the hearings. We have a copy of the October 24, 1978 Performance Review of the Alaska Transportation Commission in our office for your information. To schedule a time for testimony at Juneau, contact Mr. Christian Bassler of Senator Bradley's Senate Commerce Committee, State of Alaska, Pouch V, Juneau, Alaska 99801, Phone 465-3748.

Cordially,

Robert M. Scott
ALASKA STATE AUTO CLUB

cc: Per previous list

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Alaska State Auto Club
720 West Fifth Avenue • Anchorage, Alaska 99510 • Phone (907) 276-3236, 276-2223

February 2, 1979

Mr. Henry J. Allen
1545 South Hoyt - Space #74
Anchorage, Alaska 99504

Dear Mr. & Mrs. Allen,

We are most sorry we let you down on your request for service this morning. The driver took the wrong road and ended up wandering around in the parking lot of the School District Building, apparently.

And, then, we found ourselves up against the Alaska State law concerning what our Contract Stations can and cannot do. The law says they can only tow to their own station and not to another point.

We are happy to learn that due to the fact your car is still under warranty with Alaska Sales & Service you are not confronted with an expensive service call that should rightfully be covered by your membership dues with Alaska State Auto Club.

We do have a reimbursement provision for members. If Alaska Sales and Service should happen to charge you for the towing service, submit your application for refund to us along with the paid receipt from them and you are entitled to reimbursement in an amount up to $25.

We are enclosing a copy of a letter addressed to us from the Alaska Transportation Commission which mentions a move to deregulate Tow Truck Operations. We met Tuesday with Al Davis of the ATC staff and are advised the law will surely be changed just as soon as the Attorney General's office and the legislature can enact changes in regulation.

We have written to Auto Clubs in Washington, Oregon and California for copies of the law in their States. We will be providing input of our needs to the ATC, the Attorney General and to our legislative delegation.

Please feel free to call us anytime for services. That is the only reason we are here.

Cordially,

Robert M. Scott
ALASKA STATE AUTO CLUB

enc.
cc: Per List Attached Letter

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Alaska State Auto Club
720 West Fifth Avenue • Anchorage, Alaska 99510 • Phone (907) 276-3236, 276-2223

February 2, 1979

Mr. Al Davis
ALASKA TRANSPORTATION COMMISSION
1000 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Re: AS 42.10 Tow-Truck Operations

Dear Al,

Furthering our conversation of the other day, our problem has again risen so we were unable by law to properly serve our members.

We are hopeful the deregulation process might relieve us of the restrictions, but, we know the process takes time. In the meantime, would you kindly take another look at the law and determine if there is an interpretation possibility that our Contract Stations would qualify as Contract Carriers and then let us know the procedure we must follow so that designation could be established.

Many thanks for your interest and with all best wishes.

Cordially,

Robert M. Scott
ALASKA STATE AUTO CLUB

enc.

cc: Executive Committee
Contract Stations
Dealers Association
Paul J. Murray
Alaska Transportation Commission
Alaska Attorney General
Office of The Governor
Legislative Delegation

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Alaska State Auto Club
720 West Fifth Avenue • Anchorage, Alaska 99510 • Phone (907) 276-3236, 276-2223

January 31, 1979

Mr. L. R. Knepper
General Manager
AUTOMOBILE CLUB OF OREGON
600 South West Market Street
Portland, Oregon 97201

Mr. Neal Garrison
President
CALIFORNIA STATE AUTOMOBILE ASSOCIATION
100 Van Ness Avenue
San Francisco, California 94101

Mr. Russell W. Van Rooy
Executive Vice President
AUTOMOBILE CLUB OF WASHINGTON
330 Sixth Avenue North
Seattle, Washington 98109

Re: STATE TOW TRUCK STATUTES

Gentlemen:

We wish to ask each of you a favor, if we may. Our Alaska Administration, Attorney General and our Transportation Commission are looking at deregulation of the Tow Truck Industry. We would like to have the benefit of regulations in your States as we let our State authorities know of our needs. Would you be so kind as to send us a copy of your local statutes for our guidance.

In many cases, current statutes result in an inconvenience for our members and the public at large, Service stations with tow trucks and our Contract Stations are restricted to only certain types of service. We understand it is the intent to eliminate those restrictive provisions and yet assure availability of service, financial responsibility and safety compliance.

The "road-map" of your experiences in your three States would be most helpful.

Many thanks and with all best wishes.

Cordially,

Robert M. Scott
Alaska State Auto Club

cc: Executive Committee
Contract Stations
Dealers Association
Paul J. Murray
Alaska Transportation Commission
Alaska Attorney General
Office of The Governor
Legislative Delegation

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"FOR THE NORTHERN TRAVELER"
Alaska State Auto Club
A NON-PROFIT ALASKAN CORPORATION

720 West Fifth Avenue • Anchorage, Alaska 99510 • Phone (907) 276-3236, 276-2223

February 15, 1979

Mr. Christian Basler
Administrative Assistant to Senator Bradley
STATE OF ALASKA
Pouch V
Juneau, Alaska 99811

Re: Alaska Transportation Commission
Tow Truck Statutes

Dear Mr. Basler,

Mr. Bernie Bylsma, Contract Station operator for Emergency Road Service for the Alaska State Auto Club and an active member of the Chevron Dealers Association is flying to Juneau today to appear at the Senate Alaska Transportation Commission Review hearing. He will present exhibits we have accummulated from Automobile Associations of Oregon, California, Nevada and Wisconsin as part of his testimony.

In meetings of tow-truck operators here in Anchorage on February 10th and February 13th, the operators discussed public needs for vehicle disablement service. Mr. Bylsma's testimony will reflect consensus from those meetings.

Our experience and that of Auto Clubs in other States indicate free competition protects and best serves the public need.

The Alaska State Troopers who are constantly in the motor-vehicle arena, could easily integrate safety regulation and public liability insurance certification of all those who would provide vehicle disability assistance along our highways. The Department of Motor Vehicles could continue to license the vehicles which are equipped to provide roadside vehicle disability as in the past. We feel these to be the only requirements to assure service and protection the general public needs.

By way of a copy of this letter and copies of the various exhibits Bernie Bylsma is submitting to the February 15th Senate Hearing on tow-truck deregulation, we are advising Mr. Allen D. Blume of Representative Fred Brown's House Commerce Committee of our recommendations for the March 1st House hearing. We do not know if any tow-truck operators will be submitting direct testimony at that time, but, we will be happy to answer or arrange to answer any questions.

Many thanks for your interest and with all best wishes.

Cordially,

Robert M. Scott
ALASKA STATE AUTO CLUB

cc: Attached list

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Mr. James E. Johnson
1420 Inlet Place
Anchorage, Alaska 99501

Mr. Frank A. Seymour
P. O. Box 5018
Ketchikan, Alaska 99901

Mr. Ervin L. Brody
FOUNTAIN CHEVRON SERVICE
3608 Minnesota Drive
Anchorage, Alaska 99503

Mr. John V. Munroe, Jr.
2207 Spenard Road, #208
Anchorage, Alaska 99503

Mr. John Stallone
INLET VIEW TEXACO
Fifth Avenue & K Street
Anchorage, Alaska 99501

Mr. Frank Rosendale
GATEWAY UNION 76
3901 Mountain View Drive
Anchorage, Alaska 99504

Mr. Keith Beeson
GOLDRUSH CHEVRON
415 Muldoon Road
Anchorage, Alaska 99504

Mr. L. H. Wyatt
HANSON'S CHEVRON SERVICE
5210 Old Seward Highway
Anchorage, Alaska 99502

Mr. Bernie Bylsma
TURNAGAIN CHEVRON SERVICE
SRA Box 1342
Anchorage, Alaska 99502

Mr. Glenn E. Richardson
SAND LAKE TEXACO
6807 Jewel Lake Road
Anchorage, Alaska 99502

Mr. Ron Stephens
PETER'S CREEK SERVICE
Star Route Box 1050
Chugiak, Alaska 99567

Mr. Paul J. Murray
Management Field Represntve
AMERICAN AUTOMOBILE ASSOC.
8111 Gatehouse Road
Falls Church, Virginia 22042

Mr. Al Davis
ALASKA TRANSPORTATION COMMISSION
1000 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Mr. Keith H. Miller
ALASKA TRANSPORTATION COMMISSN
1000 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Office of Attorney General
STATE OF ALASKA
Juneau, Alaska 99801

Honorable Jay S. Hammond
Governor
STATE OF ALASKA
Juneau, Alaska 99801

Mr. Bill Miles
Pouch V.
Juneau, Alaska 99801

Ms. Ramona L. Barnes
Pouch V
Juneau, Alaska 99801

Mr. Joe L. Hayes
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Juneau, Alaska 99801

Mr. Mike Miller
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Mr. Joseph H. McKinnon
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Mr. Joe Montgomery
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Ms. Thelma Buchholdt
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Ms. Joyce Munson
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Mr. Russ Meekins Jr.
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Mr. Bill Parker
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Terry Gardiner
Pouch V
Juneau Alaska 99801

Mr. Ray H. Metcalfe
Pouch V
Juneau, Alaska 99801

Mr. W.E. "Brad" Bradley
Pouch V
Juneau, Alaska 99801

Alaska State Auto Club
1799
TOW TRUCK STATUTES

Mr. Tim Kelly
Pouch V
Juneau, Alaska 99801

Senator Patrick Rodey
Pouch V
Juneau, Alaska 99801

Mr. M.E. Dankworth
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Mr. Jalmar M. Kerttula
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Mr. John C. Sackett
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Mr. Bill Sumner
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Ms Susan Uchitel
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ALASKA STATE TROOPERS
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Seattle, Washington 98109

Mr. Gilbert Lomeli
Director Emergency Road Services
AUTO. CLUB OF SOUTHERN CALIF.
P. O. Box 2890 Terminal Annex
Los Angeles, California 90015

Mr. Guy Baty
Manager-Emergency Road Service
CALIF. STATE AUTO. ASSOCIATION
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San Francisco, California 94101

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Mr. Jim Collins
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Anchorage, Alaska 99502

Mr. Fred Phillips 586-2410
P. O. Box 987
Juneau, Alaska 99802

Mr. W. G. Lindquist 586
P. O. Box 2237 9765
Juneau, Alaska 99803

Mr. David Little 789-7415
Box 937
Juneau, Alaska 99802

Mr. Allen D. Blume
Administrative Assistant
Representative Fred Brown
Pouch V STATE OF ALASKA
Juneau, Alaska 99811

Representative Fred Brown
STATE OF ALASKA
Pouch V
Juneau, Alaska 99811

TRYPH'S: Philip L. Chesley
SR 90672
Fairbanks, Alaska 99701

Representative Richard Randolph
Pouch V
Juneau, Alaska 99811

Rep. Robert Bettisworth
Pouch V
Juneau, Alaska 99811

Representive Alvin Osterback
Pouch V
Juneau, Alaska 99811

Rep. Richard W. Halford
Pouch V
Juneau, Alaska 99811

Representative Hugh Malone
Pouch V
Juneau, Alaska 99811

ATC - TRANSPORTATION
no answer needed

Dear Senator Bradley,

In regard to AS42.10, State of Alaska, Alaska Transportation Commission Policy #2.

Why is it that a company such as a Service Station and Private Carrier is not allowed to be issued a permit to tow or haul any where except to their own place of business. I have been told that only the major wrecking yards are allowed these permits.

If this is true, it seems to me that the major wrecking yards want a monopoly on the towing business or are afraid of a little competition.

As a Service Station manager I am forced to turn my own customers over to the major wrecking yards when they need their vehicle towed to a body shop or major garage for repairs.

We in the service station business as private carriers are not interested in removing wrecks from the highway or impound business, but are only interested in serving our customers when they request our service for a wrecker.

Enclosed you will find several signatures on a petition requesting that the Legislature look into this matter and take necessary action to de-regulate that part of AS42.10 to allow private carriers the right to tow anywhere that they may be requested to, by the customers of their business.

Senator Bradley, please look into this matter and if it be true, I feel assured you will take any action you deem necessary to bring this before the house.

Thank you for your time and any help you may give us in this matter.

Yours truly,

Mark Leonetti

INDIAN HILLS CHEVRON
6470 DeBarr Road
Anchorage, Alaska 99504

A PETITION TO THE LEGISLATURE

OF THE STATE OF ALASKA

We, the undersigned, request freedom to choose any motor-vehicle towing service we wish to move our automobile to any location we wish, at our convenience. We request the legislature de-regulate Tow-Truck operations as part of the Alaska Transportation Commission Sunset Legislative Review.

DATE	NAME	ADDRESS	PHONE #
2/27/79	[illegible]	6470 - DeBarr	333-9000
2/27/79	[illegible]	6700 E 16th	333-8556
2/27/79	[illegible]	7800 DeBarr	333 9000
2/27/79	[illegible]	616 N PARK	276-6813
2/27/79	Harold Tolbert	3410 Boniface #44	3335810
2/27/79	Leslie L. Fitrow	7625 Dover Ave	337-7273
2/27/79	Margaret A. Fitrow	7625 DOVER AVE	337-7273
2/27/79	[illegible]	1001 Boniface SP#24B	333-8422
2/27/79	Robert L. Norman	PO BOX 632A Chugiak 99567	694-3662
2/27/79	Jim Harkey	732 Pearl St.	349-3418
2-27-79	Debbie Col	1411 Inspin Street	333-5117
2-27-79	Glenn A Borders	1405 Nunaka Dr Anch 99504	333-7022
2-27-79	[illegible]	7800 DEBARR	333 5961
2-27-79	[illegible]	7800 DEBARR	333-4292
2-27-79	[illegible]	7800 DeBarr	333 1441
2-27-79	Richard [illegible]	7500 E. 17th Ave	337 2348
2-27-79	Brenda J. Beck	7820 Island Dr. #3	333-0654
2/27-79	Jack F Poff	6801 E. 10th Anchorage	333-9797
2-27-79	John R. Weys	1510 [illegible] Anch Ak	863-1204
2-27-79	Richard D. Shelton	801 Erickson #14	2749168
2/28/79	John R Burkman	2110 Otter St	333-6166
2/28/79	Richard E [illegible]	6710 E 16th Cir Anch	333-1698
2-28-79	Fred R Elubik	1122 Rich Cir. Anch Ak	3371899
2-28/79	Jackie A Barnette	7800 DeBarr Rd Sp 209 Anch Ak	337-5850
2/28/79	Gail M Savage	4282 REKA DR Anch AK	3337403
2/28/79	[illegible]	Box 4-1504 ANCHORAGE AK	2784390
2/28/79	[illegible] A. Watts	6610 Sherwood Circle Anchorage AK 99504	333-4509
2/28/9	Arlene R Dauwer	7735 Lake Clark Anchorage Ak	333-8396
2/28/9	Paul J Bogdanski	1601 Wolverine St Anch 99504	337 2115
2/28/9	William D Epperson	6420 E 8th Ave	333 7978
2/28/9	Harold McClain	19-397 Richards Vista	272 2618
2/28/79	Mary H. Miner	1841 Salmon Cir	333-9374
2/28/79	Dick Crissinger	7800 DeBarr Space 119	337-4432
2/28/79	[illegible]	801 Airport Heights	276-4059

A PETITION TO THE LEGISLATURE

OF THE STATE OF ALASKA

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DATE	NAME	ADDRESS	PHONE #
2-28-79	Neil Person	434 Turpin St	333 7982
2-28-79	John D. Hillman	6900 Foothill Dr	333 6080
2-28-79	Carl V. Wallace	7800 DeBarr Rd #457	333-5133
2-28-79	H D. Le Vau	431-12th	277 3446
2-28-79	J B Burt	1901 - Otter Street	333-9862
2/28/79	Annie Nunn	3904 Hayes St	274-8371
2/28/79	Robert H. Nietz	Box 385 St Rt #2	688-2303
2/28/79	Otis J McCammon	7800 Debarr Rd SP#124	344-8165
2/28/79	Valarie Davidson	6501 E 9th	337-7645
2/28/79	Hartley B. Saxton	1920 Northwind Ave Anc. AK 99504	333-7345
3/1/79	W. L. Thomson	6516 E 9 ANCH AK	333-0839
3-1-79	Marty W. Mayday	6800 Cherokee Way Anch. AK	337-5666
3-1-79	K Hensley	7201 E 17 Anch. AK	333-0920
3/1/79	B J Carney	1101 Ekmore Ak	333-6130
3/1/79	Bill Williamson	1011 Florence Ave	333-4306
3/1/79	Larry M Luedke	1913 Diomede, Anch, Ak 99504	333 8697
3/1/79	Jim Estes	1512 Otter Anch	337-3839
3/1/79	Mrs John W Shupe Jr	1410 Wolverine Anch 99504	Unlisted
3/1/79	[illegible]	1901 E 20th Anch	277 9386
3/1/79	[illegible] Wright	7001 Foothill Dr Anch	333-9487
3/1/79	Ed Staley	7020 E 11th Anch	333 7153
	Bill Bowers	1405 Nunaka	333-7022
3/1/79	Kenneth [illegible]	7800 Debarr Rd sp 436	337-3437
3/1/79	Carl Oehlert	Star A Box 1413.1F	349 3147
3/1/79	Fred E. Downs	7901 Brink Court	333-9960
3/1/79	Ralph Frazier	7800 Debarr	333-7553
3/1/79	Tracy Sonzales	2941 Madison	276-3750
3/1/79	M A Hulquist	7800 Debarr Sp 21	337-6381
3/1/79	Ken Beisl Jr.	4010 APOLLO DR.	332-1259
3/1/79	Dwight Forge	5901 E. 6th Anchorage	333-9102
3/1/79	Neale Shineman	3500 Robin	333-2187
3/1-79	Don A. Carlson	1001 Turpin ST	333 8024
3-1-79	Chris E Rowe	1236 Medfra apt A	276-2891
3-1-79	Bernie [illegible]	8201 DuBen ST	333-6718

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DATE	NAME	ADDRESS	PHONE #
3/2/79	BRUCE VAN BUSKIRK	1604 TURPIN	333-6572
3/2/79	Perley Jones	6604 Mink	3336685
3/2/79	Bill [illegible]	7800 DEBARR SP #535	333-1404
3/2/79	Linda D. [illegible]	3523 Alexander Dr. 99504	278-9912
3-2-79	Harold D. Bryan Jr	PO Box 10-1012 99511	3449752
3-2-79	[illegible]	P.O. Box 10-1012 99511	344-9752
3-2-79	[illegible]	7110 E 20th 99504	3330373
3-2-79	[illegible]	1916 Dixmude 99504	337-5655
3/2/79	RONALD D. MARSHALL	SR BOX 3120 WASILLA AK 99687	376-2628
3/2/79	[illegible]	6005 MORELANE 99504	333-8669
3/2/79	Charles [illegible]	501 Airport Heights Anc Ak 99504	3327402
3/2/79	Mitch M. Peery	1548 SUMITVIEW ST 99504	3332853
3/2/79	Carol L. Jones	7109 Old Harbor Anch Ak 99504	333-7059
3/3/79	T K Sprague	1901 S Bragaw Suite #105 99504	272-1471
3-3-79	[illegible]	6346 Colgate Dr. 99504	337-5196
3-3-79	[illegible]	6701 E 12th Ave 99504	333-6336
3-3-79	[illegible]	2438 East 86th Court	349-3829
3/3/79	Violet McConnell	6470 [illegible]	3447669
3-3-79	[illegible] McConnell	Box 1251 Soldotna Alaska	262-4158
3/3/79	Mike Kemper	1916 Beaver Place #3	337-7068
3-4-79	[illegible] Cotton	6435 Citadel Lane	337-5861
3-4-79	Chris Hansen	1515 Ermine St. 99504	333-9235
3-4-79	[illegible]	7800 DeBarr SP #533 99504	337-7775
4 Mar 79	[illegible]	7040 Potomac Dr. Anch AK 99504	333-4334
4 Mar 79	Michael [illegible]	PO Box 3116 D7 99520	274-8671
4 Mar 79	[illegible]	2400 Lee Rd 99504	3336494
3-5-79	DeBorah E. Lawson	7800 Debarr Rd Space 102 99504	333-6969
3-6-79	Raymond [illegible]	1510 Patterson, Anchorage 99504	333-9054
3-6-79	Charles W. [illegible]	1001 Boniface 15E-1 Anchorage 99504	—
3-6-79	[illegible]	1189 Illian Lane Ach. AK.	99504 333-6556
3-6-79	[illegible]	1201 Richardson Vista Bldg 2 Apt 391 Anch AK	278-1302
3-6-79	Jeanette Van Buskirk	1604 Turpin Anch 99504	3331977
3-6-79	Michael Van Buskirk	1429 Atkinson Anch 99504	333-8935
3-6-79	John D. [illegible]	7519 Island Dr Anchorage AK	99504 333-4445

A PETITION TO THE LEGISLATURE

OF THE STATE OF ALASKA

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DATE	NAME	ADDRESS	PHONE #
3/7/79	Patricia S. Oldacre	2010 More St. Anchorage 99504	333-8045
3/9/79	Arthur H. Whitmer	3713 Alexander 99504	272-6948
3/9/79	[illegible]	6607 Mink Ave 99504	333-8429
3/9/79	[illegible]	Box 871 Soldotna	262 9252
3/9/79	Burleigh Thornton	372 Idaho St Apt #1 Anch Ak	337-7726
3/11/79	A D Gaches	2407 46th Apt AK	222-9504
3/12/1979	William D. Devine	310 FERN ST. ANCHORAGE ALASKA	333-0737
3/15/79	Edwin M Manthey	1418 Twining An. AK	333-8791
3/20/79	[illegible]	PO 321 Anch.	99510
3/23/79	Carl P. Harden	6510 E 10th Anch.	337-7296
3/28/79	Charles F. Brenner	5901 E 6th Ave Ap 118 Anch	333-1290
3/28/79	K. K. Turlington	7800 DeBarr Anch	333-1583

Alaska State Auto Club
"FOR THE NORTHERN TRAVELER"
A NON-PROFIT ALASKAN CORPORATION

720 West Fifth Avenue • Anchorage, Alaska 99510 • Phone (907) 276-3236, 276-2223

March 16, 1979

Mr. Christian Basler
Administrative Assistant to Senator Bradley
STATE OF ALASKA
Pouch V
Juneau, Alaska 99811

Re: ALASKA TRANSPORTATION COMMISSION
TOW TRUCK STATUTES

Dear Mr. Basler,

Service Stations in the Anchorage area, some of them Contract Stations to the Alaska State Auto Club, have been compiling signatures on petition forms for de-regulation of Tow Trucks. We are enclosing, herewith, petitions with 333 names of people who signed the following statement:

> "We, the undersigned, request freedom to choose any motor-vehicle towing service we wish to move our automobile to any location we wish, at our convenience. We request the legislature de-regulate Tow-Truck operations as part of the Alaska Transportation Commission Sunset Legislative Review".

We are providing these to you in entirety, in the original. We are sending a copy of this letter to Mr. Allen D. Blume in the event he would also like to review the petitions and could ask you for access to them.

We believe the testimony of Mr. Bernie Bylsma and the various exhibits we have provided to your committee fully justify de-regulation of the Tow Truck operators on the basis we have suggested. If your committees feel there is a need for further testimony, we will be happy to comply.

Many thanks and with all best wishes.

Cordially,

Robert M. Scott
MT. McKINLEY ALASKA GLACIER TOURS

cc: Allen D. Blume
Contract Stations

BOARD OF DIRECTORS:
James E. Johnson, *Chairman;* Robert M. Scott, *President;* Frank A. Seymour, *Secretary/Treasurer;* Ervin L. Brody, *Executive Committee. Members:* Connel L. Murray; William J. Sheffield; John V. Munroe; C.R. 'Steve' Hafling; Robert E. Baer; Joe D. Blackard; Charles K. Cranston.

A PETITION TO THE LEGISLATURE

OF THE STATE OF ALASKA

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DATE	NAME	ADDRESS	PHONE #
2/28	Michael L. Quick	808 N. Bragaw #2	272-1868
2/28	L. R. Hoag Jr.	4503 Garfield	279-5226
2/28	William C. [illegible]	4110 DeSarr S-2	333 2907
2/28	Thomas Mansfield	P.O. Box 10-1155	349 3797
2/28	[illegible]	4104 Northwood	243 4194
2/28	Roger J. Everett	4104 Northwood	243 4194
2/28	[illegible]	2524 Boniface Pkwy #1	277-0049
2/28	[illegible]	2530 Abby Lane	243-1115
2/28	Warren Fred Krueger	1800 E 24th Anch. Alaska	272-6782
2/29	Doug Hendricks	2607 Klamath Dr.	243-6253
3/2/79	Brooke Marston	2001 Turnagain Pkwy	277 9356
3/2/79	David D. [illegible]	2921 Sanctuary Dr E.R.	694-3346
3/2/79	[illegible]	4503 Garfield St	2764887
3-2-79	C. Allen [illegible]	Box 4-446 Anch Ak 99509	272-0902
3-2-79	Randy Davidson	833 W. 75th	344 2263
3-2-79	RAY TESTARO	3402 Dorbrandt #31A 99503	272-1331
3-2-79	Stuart S. Brewer	3105 W. 35th 99503	243-6874
3-3-79	Roy Hammoker	3402 DORBRANDT 99503	276-0488
3-5-79	Hans Allen	3701 Eureka 75A 99503	274-1800
3-5-79	[illegible]	4203 [illegible] Dr. 99503	243-0887
3-4-79	David Thompson	2201 Dahl Lane	279-2140
3-4-79	[illegible]	13601 [illegible]	344-1903
3-4-79	[illegible]	1200 W Dimond Blvd SP 614 Anch AK	243-8075
3-5/79	E. P. Brautigam	1017 W. Fireweed	279-2824
3-6-79	[illegible]	3806 Barbra Anch Ak.	243-6863
3-12-79	[illegible]	6839 Stella Anch. Ak.	344-6243
3-12-79	[illegible]	SRA Box 32 Anch AK	349-2085
3-12-79	Kim L. Tuhune	3738 W 43RD Ave Anch AK	274-0455

2/27/79

A PETITION TO THE LEGISLATURE

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DATE	NAME	ADDRESS	PHONE #
3:5	James E Jones	Paya rawick Park Sp. 25	none
2/5	Thomas Smith	SR A Box 29-F Anch	99507
3/5	Jim Duncan	1500 Uk Otis Apt #11 Anch	99502
3/5	Jim Sohn	8520 Dagan	99502
3/5	Mark Phillips	702 W 32 NP AVE	272-5114
3/5	Dean Gallery	1205 E 72nd Anch	344 5092
3/5	Melvin Otto	2344 D ST #2	276-4877
3/5	Pat Allen	170 Grandberry Ct C8	3338245
3-5	Patty Scott	Box 1746 Kenai	
3/5/79	Kim J. Party Ka	1055 West 27th # 315 Anch. AK 99503	
3/6/79	Cecil E Hazen	4563 E 4th Ave, Anchorage AK	3330851
3-6-79	Randy Stolander	417 E. 15th Terr Anc AK	272-7348
3-9-79	Gordon B Cooper	3302 EIDE ST ANCH AK.	276-7401
3-6-79	Kim Hagen	230 W 14 Anch. AK	278-2951
3-7-79	Linda F. Yarbrough	3504 E. 67th Ave., Anchorage, AK.	349-3445
3-7-79	Barbara O'Connor	SRA Box 7 Anch. AK 99507	344-0101
3-7-79	James E Lewis	220 W 88th 99503	344-7682
3/7/79	Jerry Hatch	Box 1 Chitina Alaska	Bush
3-7-79	Micki Brown	4736 West 29th An. AK	—
3-8-79	Barbara Owens	113 E 23rd	277-9370
3-8-79	Darlyn Clark	4629 Ak	333-1234
3-8-79	Ed Zastrow	2449 Ob	272-2672
3-8-79	Norman D Eben	PO Box 4-2795	274-4987
3-8-79	JOAN Paddock	1500 W 29th	279-3014
3-8-79	Virginia Higgs	1205 W 4 7th	2746786
3-8-79	Chuck Rogers	Star Rt A Box 3882	344-0796
3-8-79	David Hilman	1202 Bannister Drive	274-6716
3-8-79	DAVID Thacker	Box 2203 Kodiak AK	486-4119
3-8-79	Mike Smith	2024 Waldron Dr Anch. AK	344-5542
3-8-79	Edith Hodgen	3402 Lakeshore Dr. #1 Anch. AK	243-4827
3-9-79	Bernard Jackson	3201 Montpelier	
3-9-79	Maggie Jackson	3201 Montpelier	
3-9-79	Kent B Anderson	Box 101 - Anchorage AK	
	Carlene Stipp	2809 Iris Dr	

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sign and win!!!

DATE	NAME	ADDRESS	PHONE #
2/1/79	Karl Bowerman	P.O Box 4-551	
3-1-79	Kenneth Riley	10840 Kamishak Bay Circle Anch	3495318
3-1-79	[illegible]	P.O. Box 3501	344-4447
3-1-79	[illegible]	1218 E [illegible]	[illegible]
3-1-79	James Barker	425 W 22nd	276 6855
3-1-79	Craig Stoskopf	4700 Kerstner Ave.	2433925
3-1-79	[illegible] Bowles	1575 "E" Anc.	-
3-1-79	[illegible]	133 [illegible]	279-4645
3-1-79	Bill R. Lane	2436 Beluga	864-1163
3-1-79	[illegible]	2-740 [illegible] Elmendorf AFB	753-[illegible]
3-2-79	Shirley J Clark	149 Micheal Ct Anc Ak	3375109
3-2-79	[illegible]	5256 Cortland	337-5009
3/2/79	J. H. Rakie	1104 C STREET	272-8225
3/2/79	Oscar Weber	8207 RAINY PLACE	349-1126
3/2/79	John O'Leary	Box 163 Galena	656-1280
3/3/79	Debrina Woods	Box 4-2313	2430505
3.3.79	Tahud Warner	P.O. Box 873 Anch	2435048
03/02/9	Scott D Fish	PSC#1 PO BOX 297 ELMENDORF AFB AK 99506	753-2109
3/4/79	[illegible]	412 W 27 ANCH AK 99503	279-5001
3/4/79	Vince [illegible]	3407 [illegible] Ak. AK 99503	274-9189
3/4/79	Donnell L Bangamer	3201 EUREKA SP50B	274-9024
3/4/79	William C. Lowe	3101 W. 69th Anch. Ak	274-6355
3/3/79	Corinne A Beirne	936 W. 10th Ave Anch. AK	277-2903
3/4-79	Nathaniel Shaw	6211 DEBARR Rd. Anchorage	333-1138
3/4/79	Angelic Eardley	6211 De Barr Anch Ak	333-1138
3/5/79	Dan Hutto	P.O. BOX 4-966 Anch. Alk	No Phone
3/5/79	[illegible]	5250 E Glenn Hwy #17 Anch AK	333-5248
3/5/79	Kaylee D Haunold	4915 Roger Dr. Anch	
3/5/79	Glenn O [illegible]	80 Echo Eagle River AK	694-2081
3/5/79	Mike W. Robertson	1528 E 14th #2 Anch. AK	274-[illegible]
[illegible]79	Jake Webster	141 West 11th	
[illegible]	E V Carter	3405 Eureka Ave	
	Loyd H. Peterson	1001 West 23rd Ave	
	R E Eden	4903 Cambridge Anch 2[illegible]	

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DATE	NAME	ADDRESS	PHONE #
2/28/79	Darlene Romer	2834 W 42 Pl #1	243-3505
2/28/79	Kurt Wellenz	1344 West 25th Ave	277-5268
2/28/79	Greg Halagera	2107 Jefferson #5	—
28 FEB 79	Patrick Wright	1343 W. 25TH AVE	279-1340
28 FEB 79	Kent M Bo[illegible]	P.O. 112X 277	272-2762
2-28 79	Dan Morgan	3151 Country Woods	344-4027
2-28-79	Kim Morgan	11	11
2-28-79	Andrew P. Harris Jr	1200 Diamond Blvd. #P1320	344-5795
2/28/79	Ann Brown	625 Highlander 99502	271-4275
3/1/79	Steve Tallin	13810 LAUI Dr.	344-3162
3/1/79	John & Kwiggins	6401 Askoland Dr. Anch	344-6757
3/1/79	Dale Zapata	2938 Colgate Rd	694 9482
3/1/79	Ed Horn	2442 OAK	272-2692
3/1/79	Earl W Ritter	2201 D St Anchorage	272-4152
3/1/79	Bev Spilin	801 Airport Wt. #304 Anch	272-0326
3/1/79	Mark Tinley	1200W Diamond Space 101	349-2096
3/1/79	[illegible]	1200 W Diamond Blvd #101	349-2096
3/1/79	Gabriel Hodgett	3540 Peronosa Ave. 99502	344-6428
3/1/79	Charles A. Hodgett	4316 BUTE CIRCLE	333-0144
3/1/79	Donald G. Thompson	8227 26th Ave Anch AK 99503	279-4054
3-2-79	[illegible]	1531 - 14th Ave	272-8906
3-02-79	[illegible]	Space 2000 Wildwood Ln.	279-2451
3-2-79	Salem Kathy E Kenneth Shaw	PO Box 3-604 (ECB) 99501	279-7611
3-2-79	R. C. PHILLIPS	Box 11-2762 99509	279-4270
3-2-79	Jack Farrell	2044 Shepherd 99504	276-1794
3-6-79	Dan Morgan	Valdez AK. - Box 1579 99686	835-2856
3-6-79	Cathy Magee	Box 1579 Valdez Ak 99686	835-2857
3-6-79	Michael R Yarbrough Jr	3509 E 67th Ave Anchorage AK 99507	349-3445
3-6-79	[illegible]	7 mile China Ridge Rd Fbks 99712	479-35[illegible]
3-9-79	Patrick D. Ahyly	2215 W. 40TH 99503	27[illegible]
3-9-79	PAUL LARIVIERE	Box 141 74 Anch 99510	
3-10/79	Ron Lowry	112 E 24th Ave #102 Anchor	
3-10/79	Thos J Fehr	Box 4-1095 Anchorage	
3/10/79	Pamela Dilley	1010 W 11th #2 Anch	

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THANK YOU FOR YOUR Support

DATE	NAME	~~ADDRESS~~	PHONE #
3/1/79	Jan C Mills	SR Box 5516 Eagle River	694-9842
3/1/79	Joan Sillon	3706 Coventry Dr. Anchorage, Ak.	344-7465
3/1/79	Audrey Olivier	2127 Dawson St	277-5478
3/1/79	Alfred J. Kirsch	8524 Emerald St	243-8642
3/1/79	Ernestine M. Motuskin	3275 Montclaire CT	272-4898
	Jack Zeigler	3701 Eureka #36 SR56B	277-3451
3-2-79	Karl Kettelkamp	SRA Box 1444K	344-1363
3-2-79	Thomas S. Hart	1201 B ST Anch AK	278-4356
3-2-79	Helen Johnson	909 Chugach way #23 Anch Ak	—
3-2-79	C C Westcott	WA Waterfall Valdez AK	835-2483
3-2-79	William H. McCollum	208 E. 23rd, Anchorage	279-9168
3-2-79	Gwyn Kennedy	Box 684 Valdez AK 99686	835-4304
3-2-79	DA Kremmick	227 W 22nd Anch AK 99503	274-7949
3-2-79	[illegible] Hall	SRA Box 1434 Anch AK 99502	349-3416
3-2-79	Dorothy Minnier	3530 Glenn Don Anch. 99504	333-5886
3-3-79	Gary Rilea	8409 Corbin 99507	—
3-3-79	B Barnetto	7800 DeBarr #201	337-5850
3-3-79	Lorraine Carothers	138 W 23rd 99503	277-1809
3-3-79	Jane A Boyd	2456 Spurr Lane	243-3251
3-3-79	Carol Bagley	7716 E 20th	333-5092
3-3-79	Jim Kerr	3343 E 15th	278-3728
3-3-79	James P Dragan	3261 Montpelier Court	279-0767
3-3-79	Lesie J. Edwards	202 W. 22nd Ave.	277-4447
3-3-79	Ken Kowalski-Mai	1304 W. 31st Apt 2	277-7188
3-3-79	Greg D. Hanfe	8303 RAINY	349-4389
3-3-79	Ben Mellen	1808 W 39th	278-0593
2-3-79	[illegible]	124 Heintzleman	276-3094
2-3-79	Guard Mitchell	1716 Crescent Dr.	277-3143
2/3/79	Ronald D. Kunkel	646 West 21st Ave.	272-9043
3/10/79	Jennifer E. Neff	1135 E 15th AVE	279-3769
3/10/79	Thomas Spurlock II	1135 E 15th AVE	279-3769
3/10/79	Jeff Long	3101 Eide St # E	279-1352
3/11/79	Monique McCartney	901 W 86th Ave	278-1289

A PETITION TO THE LEGISLATURE

OF THE STATE OF ALASKA

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DATE	NAME	ADDRESS	PHONE #
2-27	Mike Courtney	6222 W Dimond	243-8132
2/27	Dave Barker	4225 Spenard Rd #58	243-6463
	Roy D. Southerland	204 Heitzleman Dr.	272 9226
2/28	D. G. Stevig	2209 N. Lights Anch AK.	
2/28	J. L. Humphrey	1231 FRIENDLY AVE Anc AK	337 4819
2/28	Michael T. Pittsburg	P.O. BOX 1771 ANCH AK	337-9745
2/28	[illegible]	9296 Vesser Dr. Anch AK	274 0284
2/28	Quentin Rat Dorne	3701 EUREKA Anch. AK	277-6480
2/28	Glen M. Pinney	1110 W 20th Anch AK	272-2411
2/28	Dawn Moncrief	1105 Chugach Anch AK	279-9182
2/28	R. L. McNaughton	3701 Eureka St 548 Anch AK	272-6281
2/28	H J Eggleston	1110 W 6th	272.2323
2/28	Barbara Caraway	704-B Fischer	349-1891
228	HOWARD KEEMAN	704 B FISCHER	349 1891
2-28	Arthur Smith	5304 Dorbrant ST	277-5129
2-28	David Henry	5013 Marlowe ST	333-1826
2-28	Karen Henry	"	"
2-28	JOHN ECKHART	2225 "D"	279 1649
2-28	ED KIRSCHBAUM	SUNRISE LANE STERLING ALASKA	No/name
2-28	R. A. Bel[illegible]	2609 KONA LN Anchorage	2438575
2-28	Mike Russell	2426 Lord Baranof	277-1990
2-28	[illegible]	873 Kalm Place Anch.	2745651
2-28	Paul [illegible]	Anchorage AK	NO/phone
2-28	Linda Lewis	125 E 23rd Anch.	274-7162
2-28	Carol Hart	3701 Cove Ct Anch.	243-3271
2/28	Carl G. Cavis	SRA Box 1561 R Anch	344-0861
2/28	Frances Humphrey	1231 Friendly Ln.	337-4819
3/1	John Hansen	2324 North Star	
3/1	Stephen Long	3301 Ea. 52nd	344-838
3/2	Colin S. Casani	1412 Hyde St	274-9097
3/1	Harley C. Minnick	4004 Apt. 1 Cope	274-1828
3/1	RICHARD W. Schelin	801 E 11TH #13	
[illegible]	Kenneth D. Cannon	8313 Dewberry	243-
[illegible]	Sharon M. Warren	3938 Cope St. #17	

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DATE	NAME	ADDRESS	PHONE #
2/27/79	Fred C. Hafner	601 E. Northern Lights Blvd 99503	276-4251
2/27/79	Donald W. Hoadley	3104 W 34th ave Anch. Ak 99503	243-1640
2/27/79	Betty J. Hoadley	3104 W 34th ave #17 Anch AK 99503	243-1640
2/27/79	Ellie Muir	3835 Carleton Anchorage	243-1941
2/27/79	Dorotha Muir	SR.A. Box 1620 Anch 99504	344-2833
2/27/79	Michael L Stone	701 S. Klevin #46A Anch 99504	337-5661
2-27-79	Mary Lee Varner	3835 Carleton # 4 Anch Ak 99503	243-1668
2-27-79	William Pearson	Kelly-O Cafe Lounge & Cheyenne Way #23 99503	270-0409
2-27-79	Mary David	SRA 250 M Anch AK 99507	344-5887
2-27-79	Martin K Hall	4004 Cope Anch AK 99503	274-1828
2-27-79	Larry Vanlb	1320 Richardson Vista 99501	278-350
2-27-79	Russell D. Fjeldheim	303 W Fireweed Lane Anch, AK 99501	276-4257
2-27-79	Steve Zingle	Box 1192 EAGLE RIVER	688-307
	Edgar Gamez	1214 H ST ANC. 2-27-79	
2/28/79	Ed. Otten	2509 Bicentennial St. 99503	276-4925
2/27/79	Patrick Plemmons	3730 W. 6th Anch. Ak.	243-7217
2/27/79	Carlene Hoadley	4720 1st Street ER 99577	694-3674
2/27/79	Robin S Daley	St. Rt. Box 9121 Eagle River AK 99577	
2/27/79	Winifred F. Alex	P.O. Box 114, Chugiak, Alaska 99567	688-2211
2/27/79	K Brabanski	621 W 47th # 5B Anch. AK 99503	
2-27-79	Wilma Jones	1530 Marena at Anchorage AK 99504	
2/27/79	Donnie Hoadley Jr.	4720 1st Eagle River 99577	694-3674
2/27/79	Thomas Watson Jr.	2403 Eureka #15 99503	
2/27/79	Gary Kruse	8217 Dunberry 99503	243-6268
2/27/79	Scott Swan	423 W. 22nd Ave #205 99503	273-7394
2/27/79	Edward Stephens	1741 Beaver St. #3 99504	337-9383
2/27/79	Robert P. Manson	3232 Wolcott Circle #1 99507	277-4965
2/27/79	Chad R. Wagner	2201 Romig Place	
2/27/79	Peter L. Smith	2605 W. 29th Anch AK 99503	
2/27/79	Hugo Mapes	Fadian AK	
2/28/79	Ken Kelso	4121 Brantley Pl.	
2/28/79	Edgar Gamez	4129 VANCE DR 99504	3339934
2/28/79	Dale Brandt	Box 4 Lits Eagle River	
	Mary Symons	801 Airport Hgts "2"	

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DATE	NAME	ADDRESS	PHONE #
2/28/79	Lois Hautanen	3157 W 64th	243-5683
2/28/79	Benjamin L Glenn	707 W. 22	274-0742
2/28/79	[illegible] C Dobson	2140 W Saratoga	272-7641
2/28/79	Joseph N [illegible]	1435 K	272-0819
2-28-79	[illegible]	3115 W 43rd	243-4188
2-28-79	Mel Gorrod	3303 Wyoming Dr	277-5045
2-28-79	Mel Shisaas	2400 Barrow #30	—
2/28/79	[illegible]	4300 Arctic #75	279-6192
2/28/79	A. McLaring	905 Chugach #3	272-6346
2/28/79	J W Boles	SRA Box 1311	344-0052
2-28-79	[illegible]	139 W Fireweed	276-1558
2/28/79	Roy Hampton	2209 Eureka St #16	276-2597
2/28/79	[illegible]	1510 Beaver Pl	333-7226
2/28/79	Jonita Cowden	6849 Whitehall	243-6288
3/1-79	Don Lawson	4341 Edinburgh Dr	243-0934
3-1-79	Steve Silvernail	1211 Amarack	274-8977
3-1-79	Steve Schreiber	7400 Petersburg	344-3360
1 March 79	[illegible]	Box 1052 DT	276-2722
	Steve Nelson	Box 3605 DT	272-5381
3-1-79	[illegible]	544 Aurora Dr.	272-8765
3-1-79	Randall C. [illegible]	1921 E. 72nd Ave.	344-5729
3-1-79	James Shaalard	6160 Collins Way	243-7452
3-1-79	Doris A Pederson	Box 6504 Anch	243-4867
3-1-79	Patricia [illegible]	265 Dowling #11	278-9087
3-1-79	[illegible]	#501-2211 E. Nth Ln.	279-6573
3-1-79	[illegible]	Anchorage, Ak	277-5551
3/1/79	[illegible] Kathwell	3815 Hampton	
3/1/79	[illegible]	SRA Box 368B Anch. AK.	349-3691
3/1/79	[illegible]	AMU Anc 99504	276-5345
3/1/79	[illegible]	2617 Darby Anch AK	—
3/1/79	[illegible]	3701 Eureka Ans AK	
3/1/79	James Rodgers	3307 Boniface Pkwy #138x Anc.	333-5684
3/1/79	[illegible]	631 W 31st Anc	274-0762
3/11/79	S.R. Swett	S.T.A. Box 1620 E Anch.	344-4649

Sand Lk Chevron 2/27/79 1799

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OF THE STATE OF ALASKA

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DATE	NAME	ADDRESS	PHONE #
3/3/79	Paul T Liby	7632 Wandering Dr. Anch.	243-3210
3-3-79	James [illegible]	6901 TANAINA DR ANC	243-3239
3-3-79	Douglas B. [illegible]	2711 W. 84TH AVE. ANCH.	243-7189
3-3-79	Jim Torsen	6943 Terry Pl.	243-5524
3-3-79	[illegible]	1901 Shoshone Cir.	344-0047
3-3-79	Mike Eddins	5700 Lake Otis	344-4500
3/4/79	Frank Smith	1200 W Dimond	344-1223
3/4/79	Dan Munroe	3731 Cove Ct	243-8191
3/4/79	[illegible]	3510 ARLENE, ANCH	243-5025
3/4/79	[illegible] C. [illegible]	7085 WHITEHALL ANCH	243-3757
3/4/79	[illegible]	6200 Jewel Lake Rd. Anch.	243-7690
3/4/79	[illegible]	7221 Chad St. Anch	344-5349
3/4/79	Dan [illegible]	6960 CRANBERRY	243 1048
3/4/79	Jack L Walle	6514 Linden Dr. Anch.	243-5505
3/4/79	C Alene Palmer	4220 Tahoe Dr Anch	243-8564
3-5-79	George Alan Meyer	7941 Ingram St. Anch	243-6767
3-5-79	Clara R Ross	4501 Arctic Anch	—
3-6-79	Sue Grey	8132 Endicott St Anch AK	—
3-6-79	Kyle Weaver	3931 W. 72d Ave " "	243-4349
3-7-79	[illegible]	2950 CONCORD LN Anch. AK	243-2901
3-7-79	Ellen Beltrer	3107 Eide St Anch Ak	277-3350
3/7/79	[illegible]	4336 E 7TH	265-9334
3/7/78	Roy S Weger	Box 130 Chugiak AK	274-5493
3/8/78	[illegible]	7111 Chester Ct Anch AK	333-7282
3-8-79	[illegible]	3662 W 88 #109	—
3/8/79	[illegible]	4810 Malibu	243-6688
3/9/79	[illegible]	6906 Terry	243-1855
3/9/79	[illegible]	7821 [illegible]	243-6722
3/10/79	Madeline H Keller	1200 W. Dimond #526	349-4162
3/10/79	William B. Keller	1200 Dimond #526	349-4162
/11/79	Volker J. Hurley	9340 [illegible] St. 99502	243-4704
/2/79	John M [illegible]	1430 W 12th Ave 99501	243-4315
/79	Patricia Drewery	7320 Silver Birch Dr 99502	243-6187

Sand [illegible] 2/27/79 1799

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DATE	NAME	ADDRESS	PHONE #
2-27-79	Fred Heinzelmann	Eagle River	694-9578
2-27-79	John C [illegible]	Mountain View	2798859
2/26/79	Scott LeBar	Anch	337-1170
2/27/79	Henry W Smith	Eagle River	688-3668
2/27/79	Linda Heinzelmann	Eagle River	6949578
2-27-79	Anna M. Smith	Chugiak ak	688-3668
2-27-79	Lee Hale Anthony	2021 Lake Otis Pkwy., Anchorage	279-4702
2-27-79	Ed Langdon	1435 NOBENE ST.	277-4100
2-27-79	Gary L. McCrory	801 Airport Hgts SP#51 ANCH, AK	277-6388
2-27-79	Ed Tuck	Eagle River	N/A
2-28-79	Gary Mullen	243 S. Park Anch. Ak.	333-8607
2-28-79	Carl Chentwood	169 SR B Box PALMER, AK	745-2518
2-28-79	David E. Ramsey	1580 Noreen St. Anch A.K.	276-3527
3-1-79	Hal Robinson HAROLD W	2735 Kobuk Ct Anch	279-0277
3/1/79	[illegible]	801 Airport Hgts #366	2747406
3-1-79	[illegible]	Box 4-2453 Anc AK 99509	344-7189
3-1-79	Jim [illegible]	2700 E 2TH	344-0024
3-1-79	Michael A. Seeley	4302 COPE ST	278-2020
3-1-31-79	Paul Sisson		688-2802
3-1-79	George Bognor	1417 Columbine	2783774
3/2/79	Bill [illegible]	S.R.Rt. Box 1101	6883087
3/2/79	Frank R Fisher	3523 Stanford Dr	279-2055
3/2/79	W C Woods	1830 Talkeetna	277-7878
2/79	Richard	2501 E 17th	2776467
3/3	John [illegible]	4446 Sam Roberts	337-1944
3/4/79	Lee Richardt	1705 McKinley ST	274-1365
3/3/79	[illegible]	625 W Bliss #3 Anch AK	274-3307
3/3/79	Lew Craig	2320 MAUDEST PL.	333-1464
3/3/79	Mike [illegible]	2201 ALDER DR	
3/3/79	Michael P. Malone	1625 Katrina Anch. AK.	333-8439
3/3/79	Fred & Flora	1826 LAURA CIR	333-0781
3/3/79	Carl E. Rist[illegible]	801 airport Hgts SP#71 ANC, AK	274-4755
3/12/79	[illegible]	1305 W 47th Ave Anch AK	279-8048
3/13/79	Vivie Kemmerer	3206 Lloyd Dr 99502 Anch	243-6052

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DATE	NAME	ADDRESS	PHONE #
3-4	Stanley Sunderford	4010 Reka # F-2	333-0789
3-5	Mike Caprio	2151 Alder Dr	
3-5	FD Tucker	POBox 1123 Eagle River	
3.6	Eric Ekvall	2635 Lovejoy	276-0836
3-6	Margaret Mcgeachy	2034 Cliffside Dr.	279-7602
3-6	Donna P Clark	4576 Latouche #3	279-7781
3-7	Calvin Kinney Jr	1583 Gardena St	279-4805
3-7	Mike Hinshaw	POB 1767 Anc. 99510	
3-7	John MacInnis	Box 8-173	279-8252
3-7	Chris D. Smith	Chugiak Ak	688-3668
3-7	Margaret McKay	1205 E 4th 99504	337-3252
3-7	Kirkpatrick Gallery	2220 Colchi 99504	277-4702
3-7	Virgil P. Kinney	1625 Orca 99501	279-5505
	(CASSIE)		279-8205
3-7	Edwin Dale	Adak	
	Tom Mills	1908 Hillcrest	272-8153
3-8	Rosalie Osborne	SP 2B Hilo Debark Hwy	333-0201
3-8	Keith M Osborn	117 Sunny Circle, Eagle River	694-5459
3-8	Bruce A. Robertson	Box 1015 DELTA JCT.	895-4316
3-8	Howard L Hawkins	801 Airport Hts.	272-5918
3-8	Alvin J. Faulner	1569 Garden St.	279-3037
3-8	Dwayne A. Tuck	PO Box 1123 Eagle River, AK	
3-8	Linda Ann Zehman	Box 8-416 Eagle River AK	694-4578
3-6	K Taylor	4523 C 70th Anch	337-6235
3-9	Edward Langston	1435 NORENE ST.	277-4400
3-9	[illegible]	2201 Fairview	243-0270
3-9 79	Alta Odom	4828 E 24TH	333-7012
3-9-79	Edward J Rayche	24-3681 Circle St.	753-3321
3/9/79	Kelly Samuelson	Box 11 Chugiak AK	688-2923
3/10-79	Andrew DiSalvi	1549 AIRPORTS HTS	277 1342
3-9-79	James Shertter	1506 Twining St.	333-4142
3-9-79	Robert C Matovich	Box 1174 Anc AK.	274-2492

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DATE	NAME	ADDRESS	PHONE #
3 10 79	THIELSEN J. R	3514 E 19TH ANCH	277 2937
3-12-79	Denman, K.A.	4333 San Ernesto Anch.	276-2866
3 11 79	Jeff Hoehne	1011 W 71st Ave	344 5571
3 11 79	Mark Holland	3210 Davis Dr Anch. Ak 99503	277 1020
3-12-79	R E Corder	801 Airport Hgts	272-6246
3-13 79	Conrad Y. Miller	1545 S. Hoyt Anch. Ak	337-1840
3-13-79	Fred Hanshaw	Eagle River Ak	694-9578
3/13 79	Charles Henderson	2124 Sunrise Dr	272-2389
3/13/79	H. Frank Bowey	5040 E 24th AVE. AK	333-9764
3/13/79	Bill Cannon	6609 E. 12TH	337-2206
3-13-79	DAVID L. Guriman	4200 E 4th st	333-0679
3/14/79	Terry Sappah	1711 LOGAN ST	277-8907
3/14/79	Elizabeth Henderson	2124 Sunrise Ak 99504	272-2389
3/14/79	B B Hicks	1435 Airport Hts.	272 7220
3/15/79	Joe W. Thompson	2401 OAK Dr	2790357
3-15-79	[illegible]	3500 Mt Vein/ Sp 15 Ak 99504	2748102
3-15-79	[illegible]	3500 MT VEIN SP15 Ak 99504	2748102

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DATE	NAME	ADDRESS	PHONE #
3/13/79	[illegible]	Box 4- D.D.J	344-8481
3/13/79	Ken [illegible]	4411 Lake ofc	277052

TUESDAY - February 13, 1979

Jake Johnson (789-0644)
Chairman
Alaska Transportation Commission

Ben Benediktssen (586-2660 ext. 503)

Richard Dunham (344-4819)
Alaska Dump Truck Association

Robert M. Scott (276-3236)
Chairman
Alaska State Auto Club

Jim Christopher
Manager
Alaska Towing and Wrecker (ANK)

Frank Chapadots
H & S Warehouse (FBX)

Bob Moskal
Marketing Manager
Alaska Sea Land Rep)

THURSDAY - February 15, 1979

Henry Camorot (279-9574)

Bob Ward (3900)
Commissioner
Department of Transportation
(or)
Dick Holden
Deputy Commissioner

Bud Hansen (789-0434)
Manager
Lynden Transportation (Juneau Office)

Jim Dodson (277-4886)
Manager
Alaska Air Carrier Association
(or)
Jim Willson

Buzz Van Alstine (789-0950)
Manager
Douglas Trucking Company
(Was with Lynden Transfer)

Charles Webber (2500)
Comm. of Commerce
(or)
Bert Wagnon, Deputy Commissioner

Bernie Bylsma
Turnigan Chevron Service
Wrecker

3:00 PM on Tuesday and Thursday
Beltz Room #209 Capitol Building

Copies of PREFORMANCE REVIEW OF ATC can be obtained from Division of Legislative Audit - - - Ext. 3830

(H) 773-1221
(W) 773-1219

Helicopter Operator

April 7, 1979

Gordon McDonald
Circle, Alaska 99733

Dear Mr. McDonald:

As a result of our phone conversation last week, I am sending you a copy of the Performance Review of the Alaska Transportation Commission. It was the basis on which the Senate Commerce Committee held hearings for two weeks. As a result of these hearings,a report was written indicating the Senate Commerce Committee's recommendations for future conduct of the Alaska Transportation Commission. (Also enclosed please find a copy of Senate Bill 97, Committee Substitute for Senate Bill 60 amended, and Senate Bill 236.)

You may want to contact the House Commerce Committee for any current action being taken by that body, on matters concerning the Alaska Transportation Commission. Fred Brown is the Chairman and can be contacted in Room 206 Assembly Building, Juneau, Alaska 99811 (Telephone: 465-3834).

If you have any further questions, please feel free to call or write. (My telephone number is 465-3748.)

Sincerely,

Christian Basler

Christian Basler
Administrative Assistant
to Senator Bradley

Enclosures (5)

Bonding very - very difficult to get for any one - contractor or truck operator

ATC Budget = $1.4 million
Highway Oper = $40 million

SENATE COMMERCE COMMITTEE
Denator Brad Bradley Chairman

Adjenda: February 22, 1979 3:00PM Room 209 Capitol Bldg.

Air-Taxi

J. B. Haroldson --- From Bethal, comm. pilot for 20 years
Born in Bethal. Solid Community Citizen.
De-Regulation.

Vickie Malone --- Bethal. De-regulation.

Susan Murphy --- Bethal De-regulation

Tilly ~~Wallis~~ WALLACE ---

John Lee ---

Ralph Doyle --- Chugiak Aviation De-Regulation

~~Sli-Verbish~~ ---

S. F. Rebischko
Rep. Hurlburt

Turcking

① Ben Benediktssen --- Read into the record a statement from
Sea Land Trucking Inc.

② Tobie Miller --- De-regulation.

Testimony to be scheduled

Ralph Doyle (Chugiak) 688-2752
Chugiak Aviation 688-2824 / 22nd

his home → 789-0772
Toby Miller 586-1792
Local Trucking firm.

Dr Orth / U of AK. FAX
479-7281 Dean of Management
6457 N.E. 135 Place
Kirkland Washington State 98033
822-8076

Douglas Trucking
Buzz Van Alstine

789-0950

call Friday →
Linda in Seattle

Seattle 206 - 764-6300

Bill Barrier → (3867)
Anyone handle Transportation Bills
Come to C.C Hearing for future
drafting of Bills.
no → not advisable
→ not necessary
→ not good policy

Donald Keil -
ANC 265-4201
will be new → Faith, Bob

Don Bobcock →
ATC - economic
FAA - Safty, navagation

F.A.A → head of in Alaska
Se 78 92193

Ralph Doyle 688-2752
Chugiak Aviation ---
688-2824

Jake Johnson (Chairman ATC) Tu Audit Report Leg Info. #789-0644 279-1951 ANC

Henery Camorat (Att.) Th Jim Willson #279-9574

Jim Dodson (General Mgr. Ak Air Carrier Association) ANC 277-4886

Ben Benediktsson Tu (5) #586-2660 Rm. 503

Richard Dunham ANC (Tu) (Ak. Dump Truckers Ass.) home 344-2359 → 344-4819 (off)

Bob Wood - Commissioner Dept of Transportation Th
Bill Hudson (Dept. of Transportation; Merien Hgw. System) # 3900
Dick Holden - 42.25.012/20/20/40

Charles Webber (Chng) Th. (Commissioner of Commerce) #2500
Bert Wagon. Dept Comm.

Robert M. Scott (Chairman, Ak. Auto Club) Tu (Report) 276-3236 /2223

Jack Mc Gee (Ass. Aterny General of Transportation) #3630
(Joe Danahue 3674)

Truck Firms
Lynden Transport (Th) 789-0434 2/15 Bud Hansen
Miller Pung & Miller 586 0772 Toby (opposed)
Juneau Read Mix 586-3412 can't attend
Kaiser AN & Sons 789-7441 maybe Sons

Oligopoly
Regional Monopoly
Monopolistic Comp.

Time
Date 2/13
Place

Ben -

How should we schedual these people?
And in what order

What are they to testify on? Audit Report
Relative to Audit Report
result of Sunset
Law -

Do you want T.V. coverage?

Cpt. -79

John Hail
Hall
586-1670

K-2

Controversial issue

Will we have successive meetings → Thursday

TTO - 586-6176 Cap 79

ATC

1000

1. What will be the impact of deregulation on
   a. Rural Alaska.?
   b. Large cities ?
   c. Transportation Industry?

2. How will free competition in transportation help you and your?

3. What benefits do you realize now from transportation regulation?

4. What are the trade-offs you see between regulation and de-regulation?

5.

Dave Walker #3896 Legal Services

(one bill)

A.T.C Sunset Legislation

Changes in present law

1. Deregulation of Recreational Aircraft
2. Deregulation of Incedental Aircraft Use
3. Deregulation of Dump Truck (Bulk Commodity) & Tow Trucks
4. Elimination of the "Ferry Act" (between airport in Kiticican and town)

42-10 Motor Carrier
42-15 Bus Act

Rick Carry 5 passengers or more.

~~Jim Dodson~~ - Director A ~~Air Carrier~~ Ass
Call Jessy (his wife)

SB ~~221 - last year~~

Filed Tomorrow
(as soon as possible)
☆ If it gets on ~~docket~~ calenda call Colletta

(~~362~~) ~~Old~~
Old Senate Bill 362
Passed 17 to 3 last session.
On Reconsideration it passed 18 to 2.
Vote Against (1) Curtulla J.

It never got to house floor.

It (Bill) can be run through Rules and Filed as is!

Jack Johnson (x-trucker) (Head ATC) will testify
favorably for this legislation. 279-1451 ANC.
other Commissioners { Wally Kubly (air guide, 600 Leg lesson man)
Keith Miller (x-governor)

Feb 20, 79

Meeting in Rick Halfords office, myself and Rep. Dick Randolph.

Questions that should be answered w/r to reg. or de-reg.

1. Cost to Consumer --- U.S. de-regulation has decreased cost of air fair substantia-ly.
--- Cost per hour estimated by Halford of air taxi time is $13.50 to the consumer. Due to ATC reg.

2. Safty to Consumer --- The Fed. regulation does ample job of regulating safty. No need for duplication.
--- Perhaps a witness should lead the committe through the process of obtaining an application.
--- Post record of Insurance in place of business and in the aircraft for the general public to see

3. Terriff --- Post teriff in place of business and in aircraft for public to see.

4. Insurance --- See Safty part 3.

March 7, 1980

Commerce Committee
Pouch U
Juneau, Alaska 99811

Senator Brad Bradley & Commerce Committee:

A continuation of the Alaska Transportation Commission will again be reviewed by your committee in the coming months. It is my opinion that the trucking industry should be required to provide the public with (1) safe operating equipment and (2) insurance or bonding to cover the value of the cargo carried. It seems to me these two functions can best be handled by the Department of Public Safety and perhaps the insurance commissioner.

The transportation commission is a regulatory body to control (harass) the trucking industry and does not serve a useful purpose. The commission adds to the public's cost of transportation by dampening free enterprize which made this country great in the first place.

Except for items 1 and 2, above, I see no reason for government controls on trucking anymore than opening a shoe store, a consulting service or any other business where one may enter or leave the marketplace at will. The airline deregulation has been successful in allowing free enterprize to govern the marketplace and if you will allow the Alaska trucking industry the same opportunity, the public will be well served. Additionally, the funds required to staff and operate the commission would be a significant step in reducing government costs and bureaucracy.

Sincerely,

Jeff Blevans

Bering Engineering & Supply
137 First Ave
Fairbanks, ak 99701

Duane R. Carlson
1157 Coppet
Fairbanks, AK 99701

March 7, 1980

Commerce Committee
Pouch U
Juneau, Alaska 99811

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Sincerely,

Duane R. Carlson

DOUGLAS
TRUCKING

BOX 2238
JUNEAU, ALASKA 99803
PHONE: 907-789-0950

Owners:
PAT ORME
FRANK PALMER
BOB DILG

February 22, 1979

Senator Bradley
Pouch V
Juneau, Alaska 99811

Dear Senator:

On February 15, 1979 I testified before your committee reviewing the performance of the Alaska Transportation Commission and spoke out against deregulation on behalf of Douglas Trucking, Inc. Douglas Trucking is a young, Juneau based class 2 carrier. The purpose of this letter is to highlite the areas we feel strongest about.

Most importantly, through regulation and enforcement, a network has been established to provide to the general public a transportation system unequaled in service anywhere in the world. Regulation has established a framework in which schedules are set up and maintained, interlines with other carriers established, and has provided for tariffs open to public inspection. Enforcement of regulations by a commission is necessary to insure that these services are made available to all individuals and businesses. With regulation, Douglas Trucking can guarantee service to the general public in the area we serve, with connections with reasonable dispatch to anywhere in the U.S. and most foreign countries! Without regulation, we would not be able to do this because interlines with connecting carriers and tariffs would not remain stable.

It is recognized that the general public and this state require an organized transportation system. It also recognized that the basis of this country is the free enterprise system and that the individual or small business must be able to operate along with big business and goverment. We at Douglas Trucking believe that through regulation and enforcement (the commission), both systems can be maintained.

Douglas Trucking, as it is today, was able to start as three individuals who with very limited funds were able to enter the trucking business and operate successfully. The Alaska Transportation Commission review their application weighing several factors including the general public's intrest and approved their

application. Douglas Trucking is proof that even an individual can start and survive in Transportation in Alaska. Entry and exit from the transportation system requires applicants to prove some financial responsabilities and operational abilities to serve the public and to ensure a responsive transportation system. A strong commission is needed to police the network we all depend on.

Deregulation is not a cure for a commission that needs more strength. The Alaska Transportation Commission must be given the necessary support in all areas including Law, Economics, and Statistics to effectively protect the intrest of the general public. Senate Bill 60 is a step in the right direction. Douglas Trucking favors a strong commission.

The State of Alaska is very dependent on its thin lines of transportation, and is in an extremely poor position to experiment with the effects of deregulation. A wrong decision would have very serious effects for this state. The "Lower 48" has a much more concentrated system and if any experimenting is to be done, it should be there. The State of Alaska would lose nothing, and could very possibly save a lot if we would just "wait and watch" for the time being.

Best Personal Regards,

W. Van Alstine

W. 'Buzz' Van Alstine
General Manager

cc: Jim Jansen
Govenor Hammond

WVA/cd

Senator W.E. Bradley, Chairman
Senate Commerce Committee
Alaska State Legislature

Dear Senator Bradley,

I, as a commercial pilot in the Bethel Area since Jan 1959, suport the deregulation of Air Taxis. This I believe to be a benefit to the publick as all Air Taxis in the business now cater to their own clientele, so the general publick is unable to find an aircraft to charter. I believe economics would neglect the type and amount of aircraft. As the people only fly with the pilots that they know and trust, this would hinder newcomers and draw the old and reliable pilots back into the area.

Inclosed is a letter from Eddy Hoffman, President of Alaska Village Presidents, supporting deregulation of Air Taxis.

Sincerely,

John W. Haroldsen

Bethel, Alaska

Ralph Doyle
Chugiak Aviation
Chugiak, Alaska 99567

Senate Commerce Committee
Alaska State Senate

Re: Alaska Transportation Commission

Dear members:

I have been a state certificated fixed base operator at Birchwood Airport since 1969. I have state-wide authority for fixed wing aircraft and also have helicopter authority. I support deregulation because I cannot see one single thing the ATC has done for my company or the taxpayer of the State of Alaska.

1. The ATC and some of its supporters speak of ATC's importance in the safety aspect of aircraft and pilot capabilities. The ATC has no safety inspection for aircraft or pilots. The safety of all commercial and private flight operations is overseen by highly qualified FAA personnel. For authority to fly for hire whether it be a single pilot operation or a large fixed base operator, the applicant must meet the qualifications of the FAA safety inspectors before commercial operator specifications are issued to a company.

a. Aircraft are inspected by FAA maintenance personnel and listed on the operating specifications according to type and conditions under which the aircraft are authorized to fly commercially.

b. Pilots are tested by an FAA flight proficiency inspector who then issues, if the test is satisfactorily completed, an 135.138 authorization listing the aircraft the pilot may fly and under which conditions, such as VFR, night and so on. This is renewed each year by another flight check for VFR, and every six months for IFR conditions.

c. Proof of insurance must be on file with the Civil Aeronautics Board for all Part 135-licensed FAA commercial operators. The minimum liability insurance requirements for commercial operators by CAB exceed the minimum requirements by ATC.

2. With deregulation some operators and public officials are concerned about outside operators and new operators. These operators will, and must now, meet all safety requirements of FAA. The pilots must also meet the minimum pilot requirements established by the person or company for which they are flying. All contracts I have seen and bid on issued by the State of Alaska, oil companies, mining companies, etc. have minimum pilot requirements of 500 hours or more Alaska time. All federal government contracts also have minimum pilot requirements which equal or exceed the above minimums, but anyone can bid these jobs or perform these charters are not regulated by ATC in any case.

Outside and new operators will be self-regulated due to competition and available space at airports. At almost all state-operated airports lease lots available are already occupied such as Anchorage International, Merrill Field, Birchwood, Bethel, St. Mary's, Aniak, Dillingham, to mention a few

3. The $1.4 million tax dollars now spent on regulation could be better spent elsewhere. The taxpayer is now getting nothing whatsoever for his money.

I see no reason for further study on ATC. The past 10 years' record at the commission has shown that ATC can only deteriorate Alaska aviation. Our country was founded on free enterprise. I would like to see the islands of monopoly within our free system cut out.

Ralph Doyle,

Chugiak Aviation

Shaw Flight Service, Inc.
Box 6003, International Airport • Anchorage, Alaska 99502 • 907-243-1573

CHAIRMAN
Senate Commerce Committee
State of Alaska

February 21, 1979

Gentlemen.

The Alaska Transportation Commission is a totally unnecessary government agency. Your review under the Sunset Law of its value and public need should consider the following:

1. The Federal Aviation Administration provides more than adequate operational controls and Public safety through their certification procedures and their governing regulations and enforcements thereof. Their primary concern is that of Public Safety with particular emphasis upon aircraft, personnel and air carrier operations, and all navigation systems and airports.

2. The ATC functions are contrary to the Free Enterprize system, the foundation of our Nation.

3. The ATC promulgates and fosters monopolies in Aviation and restricts competition. Many of our Alaskan cities and villages are at the mercy of a single large Air Carrier. Small towns are denied the services of large aircraft needed for outsized cargo. Numerous examples can be made available upon request.

4. The United States Congress has recognized the imminent death of the Air Transportation industry like that of the Railroads, under the strangleholds of the Civil Aeronautics Board. They have acted by deregulation and the elimination of the CAB. All greatly to the benefit of the American Public.

5. In the Airline Deregulation Act of 1978, CAB authority, in the case of Alaska has been delegated to the State. This action in effect creates a new all powerful bureaucratic monster. With former CAB authority and present ATC authority this agency will slowly stifle and deteriorate Alaskan Aviation.

In event you hold hearings in Anchorage or desire documentation of the above I will be most happy to supply it. I hope you take the view of the Public Interest, heed small business, avoid large aviation monopolies and Unions, and let the ATC die a natural death. It is an agency no longer needed.

Sincerely,

Robert E. Gay
General Manager

Robert E. Gay

Chairman
Senate Committee Hearing
On Alaska transportation Commission

I favor deregulation of air taxi Certificates for Bush planes

I would think that any Charter Operators Now flying to my 57 AVCP should be permitted to fly if the Village People want to fly with them. They Know who is safe and dependable.

The safety record of the Operator as judged by the Village People and not by Some boards someplace. I belive in Competion not regulation

Edward Hoffman
Chairman A.V.C.P.

STATEMENT FOR SENATE COMMERCE COMMITTEE
ON SUNSET LEGISLATION CONCERNING
THE ALASKA TRANSPORTATION COMMISSION

SEA-LAND FREIGHT SERVICE BELIEVES THE LEGISLATURE SHOULD CAREFULLY WEIGH THE ADVANTAGES OR DISADVANTAGES OF ANY DEREGULATION IN LIGHT OF THE FOLLOWING FACTS:

1. TRANSPORTATION IS A VITAL LIFELINE TO COMMERCE IN ALASKA. MOTOR CARRIERS ARE ADEQUATELY PROVIDING FOR THE NEEDS OF ALASKA CITIZENS. DEREGULATION MAY HAVE AN ADVERSE EFFECT ON SUCH A SYSTEM.
2. MOTOR CARRIERS ARE UNDERGOING SEVERE FINANCIAL DIFFICULTIES AT THE PRESENT TIME. ARCTIC MOTOR FREIGHT, AR-DEES, KAPS TRANSPORT, ETC. IN CHAPTER XI BANKRUPTCY. WEAVER BROS. HAVE SHUT THEIR DOORS. INDUSTRY MUST RECEIVE SOME REGULATORY PROTECTION IN ORDER TO REMAIN VIABLE.
3. LACK OF REGULATION WOULD PROVIDE OPEN ENTRY FOR CARRIERS WHICH WOULD SIPHON OFF PROFITABLE OIL FIELD RELATED FREIGHT FROM EXISTING CARRIERS. RESULTING DRAIN IN REVENUES WOULD HAVE SEVERE IMPACT ON CARRIERS SERVING THE GENERAL PUBLIC AS WELL AS THE OIL INDUSTRY.

SEA-LAND STRONGLY FEELS THAT ATC SHOULD CONTINUE TO EXIST AS REGULATORY AGENCY. WE URGE THE ADMINISTRATION TO SUPPORT SUCH CONTINUANCE BEFORE THE LEGISLATURE. WE FEEL AT THE SAME TIME THAT THE ATC SHOULD BE IMPROVED IN THE FOLLOWING MANNER:

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2. ACA PROVIDES FOR RIGHT OF INDEPENDENT ACTION FOR INDIVIDUAL CARRIERS TO INITIATE THEIR OWN RATE ACTIONS. CONSEQUENTLY THERE IS NO RESTRAINT OF TRADE.
3. LACK OF ANTI-TRUST IMMUNITY COULD HAVE SEVERE IMPACT UPON MOTOR CARRIER INDUSTRY ALREADY HAVING SEVERE ECONOMIC DIFFICULTIES.

IN CLOSING WE WISH TO THANK THE SENATE FOR PROVIDING SEA-LAND WITH THE OPPORTUNITY OF BEING HEARD.

R. P. MOSKAL
SEA-LAND FREIGHT SERVICE, INC.
2600 DENALI STREET
SUITE 602
ANCHORAGE, AK 99503

John S. Lee
P.O. Box 168
Palmer, Alaska 99645

Commerce Committee
Alaska State Senate

In re: Alaska Transportation Commission Hearing

Dear members:

This letter is intended to document my view that the transportation industry in Alaska should be deregulated.

I have been a pilot in Alaska for the past 12 years and am a resident by birth. I have worked for four certificated air taxis and have been involved in regulatory matters of two of them. I am currently a licensed general contractor. I operate a flight school in Palmer. Additionally, I am a civil engineer.

In 1973 I applied for and received certification by the Alaska Transportation Commission for a bus line linking the Matanuska Valley to Anchorage. I am therefore familiar with certification requirements.

I have reviewed the Performance Review of the Alaska Transportation Commission, completed by the Division of Legislative Audit. I have some problems with the findings of that report.

1. The report purports to evaluate the necessity of the ATC. However, in context it seems to accept the current regulatory goals pursuant to further study. I don't believe further study is needed based on the ongoing.

   a. National studies have concluded that there is no economic justification to consumer or producer for regulating the transportation industry.

   b. It is intuitive that the presence of regulation increases the costs of operation to both producer and consumer, mainly through the costs of managing required reports etc. Additionally, regulation has attached a monetary value to saleable existing certificates. A new operator must include an amortization of his certificate cost in his rates. Prices of certificates for air carriers vary in the range of $25,000 to over $100,000, depending on location, authority and other variables. Additionally, taxes to support the regulatory agency add indirectly to transportation costs.

   c. The presence of regulation and accompanying lack of sound economic judgements coupled with the absence of free enterprise create prices that can exceed fair market values of the free enterprise system.

   d. There would be no safety penalty in air commerce due to the effective presence of the Federal Aviation Administration.

2. The report does not contradict economically unsound philosophies of the present commission.

   a. The report states that the commissioners considered fair rates to be determined by a fair return on investment, although they could

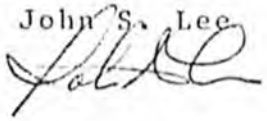
not define what a fair rate was. This is an incorrect incentive for a regulated entity, although it is quite typical. Prices set by investment and cost relationships in an isolated supply-demand environment leads to inefficient rate base padding (unneeded or extravagant expenditures for the purpose of building the base for rate increases). To effectively control this sort of thing requires that regulators staff sufficiently to evaluate and correct the internal efficiencies of each regulated entity.

3. The report fails to identify several major deficiencies that currently exist.

a. In granting new certificates, the Commission frequently imposes operation radii on air carriers that are absurd and destroy the economic viability of the operators' intent. There are cases of radii of 25 miles on new air taxis. This is ludicrous in Alaska. One operator's airspace includes only about 100 square miles of land and the rest is open water. These area limitations are imposed by the Commission without consulting the operator.

In essence, the basic goals of the existing regulatory body are not economically sound. Additionally, as the report states, the present goals are not pursued with management effectiveness. It would be in the public interest to let the free enterprise system prevail.

John S. Lee



HOGE, LEKISCH & LAWRENCE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
3201 "C" STREET, SUITE 401 • ANCHORAGE, ALASKA 99503
(907) 276-1726

ANDREW E. HOGE
PETER A. LEKISCH
BILL LAWRENCE
WARREN G. KELLICUT

January 19, 1979

P. W. Benediktsson
c/o Baranof Hotel
Juneau, AK

Re: AS 44.66.010(a)(2)
Termination of Alaska Transportation Commission

Dear Ben:

I have reviewed the above-referenced statute and the applicable legislative history. As you are aware, AS 44.66 was a new chapter added to the statutes by the Legislature in 1977 as the result of Chapter 149, Session Laws of Alaska. I am enclosing a copy of the chapter as adopted.

You will note that under AS 44.66.010(a)(2), the Alaska Transportation Commission will terminate on June 30, 1979, unless the Commission is continued or reestablished by the Legislature for a period not to exceed four years (AS 44.66.010(c)). Before the termination of the Commission, a committee of reference of each house must hold one or more hearings to receive testimony from the public and must consider the proposed budget of the Commission and the performance audit of the activities of the Commission (AS 44.66.050(a)). During the public hearing, the agency (Commission) has the burden of showing a public need for its continued existence (AS 44.66.050(b)).

The committee of reference must then, not later than the 60th day of the legislative session, submit a report to the presiding officer of the House (AS 44.66.050(d)), containing a summary of the findings of the committee and the recommendations. The committee may introduce a bill to provide for the reorganization or continuation of the Commission (AS 44.66.050(e)).

The statute is clear as to the legislative method for determining the propriety of the continuation of the Commission, and I have enclosed a draft of a bill apparently for referral

to any committee of reference to perpetuate an agency. You will note each agency must be perpetuated by its own bill. I would suggest you indicate to the presiding officer of the respective body of the Legislature that the committee report must be submitted within 60 days of the beginning of the session, and this is after the requisite public hearing so the process can begin.

Very truly yours,

Andrew E. Hoge

Andrew E. Hoge

AEH/ms
Enclosures

COMMERCE COMMITTEE

January 30, 1979

Mr. Richard Pegues
Administrative Officer
Department of Law
Pouch K
Juneau, Alaska 99811

Dear Mr. Pegues:

Enclosed are SENATE BILLS 37, 43, 44, and 60.

I would appreciate your comments/position papers on this SENATE BILL to include a fiscal note, if appropriate. If you decide that a fiscal note is not required, please make such a statement in your reply. If your Department recommends specific changes, in addition to general comments, I would prefer that they be keyed to page and line numbers.

If you know of other departments or agencies that have an interest in this legislation, please let me know so that I may get the benefits of comments from all knowledgeable and interested parties.

In consideration of a productive and expeditious session, we request that your comments/position be returned to the Senate Commerce Committee within 10 days.

Sincerely,

Brad Bradley
State Senator
Chairman
Senate Commerce Committee

WEB/jp
Encl

Alaska State Legislature

Senate

Committee on Commerce

FILE COPY

Official Business

January 30, 1979

Pouch V
State Capitol
Juneau, Alaska 99811

Mr. Dick Holden, Deputy Commissioner
Facility Planning & Research
Department of Transportation
Pouch Z
Juneau, Alaska 99811

Dear Mr. Holden:

Enclosed is SENATE BILL 60 relating to enforcement authority/Alaska Transportation Commission.

I would appreciate your comments/position papers on this SENATE BILL to include a fiscal note, if appropriate. If you decide that a fiscal note is not required, please make such a statement in your reply. If your Department recommends specific changes, in addition to general comments, I would prefer that they be keyed to page and line numbers.

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Brad Bradley
State Senator
Chairman
Senate Commerce Committee

WEB/jp
Encl

SHATTGRUMM JNU

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PMS P W BENEDIKTSSON CARE SHATTUCK AND GRUMMETT TLX45313
301 SEWARD ST TF586-2414
JUN

SEALAND REPRESENTATIVES UNABLE TO ATTEND MEETING WITH GOVERNOR HAMMOND TODAY DUE TO UNAVOIDABLE CIRCUMSTANCES. WOUD APPRCIATE YOUR CONVEYING SEA-LAND POSITION ON DEREGULATION TO GOVERNOR AS WELL AS PRESENTING HIM A COPY OF THIS THELEGRAM.

SEA-LAND FREIGHT SERVICE BELIEVES THE ADMINISTRATION SHOULD CAREFULLY WEIGH THE ADVANTAGES OR DISADVANTAGES OF ANY DEREGULATION IN LIGHT OF THE FOLLOWING FACTS:

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3. LACK OF ANTI-TRUST IMMUNITY COULD HAVE SEVERE IMPACT UPON MOTOR CARRIER INDUSTRY ALREADY HAVING SEVERE ECONOMIC DIFFICULTIES.

SEA-LAND BELIEVES THAT SOME MEMBERS OF THE ATTORNEY GENERALS STAFF ARE CAUSING DIFFICULTY IN OBTAINING NEEDED ANTI-TRUST IMMUNITY. WE BELIEVE THAT THOSE MEMBERS OF THE ATTORNEY GENERALS STAFF ARE NOT FULL COGNIZANT OF THE URGENT NEED FOR ANTI-TRUST IMMUNITY AND SUGGEST THAT THEY OPEN LINES OF COMMUNICATION WITH CARRIERS AND ACA TO RESOLVE THE QUESTIONS THEY HAVE.

IN CLOSING WE WISH TO THANK GOVERNOR HAMMOND FOR PROVIDING THE CARRIERS THE OPPORTUNITY OF MEETING WITH HIM. WE ALSO EXPRESS OUR APPRECIATION FOR HIS EFFORST IN KEEPING THE NORTH SLOPE ROAD OPEN.

WE LOOK FORWARD TO MEETING WITH HIM IN THE NEAR FUTURE EITHER INDIVIDUALLY OR COLLECTIVELY AS A GROUP OF CARRIERS TO FURTHER DISCUSS THE FUTURE OF TRANSPORTATION AND REGULATION IN THE STATE.

R P MOSKAL
SEA-LAND FREIGHT SERVICE INC.
2600 DENALI STREET SUITE 602
ANCHORAGE ALASKA 99503 53)3079,3 277-6413

ANCHORAGE OFFICE
Stephen S. DeLisio
Alan Sherry
Henry J. Camarot
Mark A. Sandberg
Kathleen Harrington
Randolph W. Hunter
Judith J. Bazeley
Joseph N. Barcott
Joseph M. Moran

750 W. 2nd Avenue
Anchorage, Alaska 99501

Tel. (907) 279-9574
Cable Address—MERANCH

LAW OFFICES OF
MERDES, SCHAIBLE, STALEY & DeLISIO, Inc.
A PROFESSIONAL CORPORATION
P. O. BOX 2840
ANCHORAGE, ALASKA 99510

FAIRBANKS OFFICE
Edward A. Merdes
Grace Berg Schaible
Howard Staley
Dennis E. Cook
Barbara L. Schuhmann
Stephen D. Cramer
Robert B. Groseclose
Charles D. Silvey, Jr.

January 9, 1979

Robert H. Ziegler, Esquire
ZIEGLER & CLOUDY
307 Baldwin Street
Ketchikan, Alaska 99901

Dear Bob:

I have been meaning to write you for some time, because as a longtime friend, lawyer, legislator and one concerned for the well being of the free enterprise system, I know you are interested in anything that will improve governmental administrative agencies operations, particularly those who are performing quasi-judicial functions involving commerce generally.

I am particularly concerned with two agencies, the Alaska Transportation Commission (ATC) and the Alaska Public Utilities Commission (APUC), as to certain activities and functions by which they operate.

My main thesis is Alaska badly needs regulatory reforms. At the outset, let me first establish that I believe both of these administrative agencies should be continued and not disbanded under the so-called "Sunset Law". However, let me be quick to say that a balancing factor is needed, and their regulatory powers should be spelled out with more clarity and definitiveness. As noted hereinafter, within a different framework, both agencies need technical assistance. I am sure you and other legislators must know many in the private sector have serious problems with the present systems.

Write many aviation & trucking businesses for comments

The two matters that most concern me with respect to the two agencies are as follows:

1. The need to restructure both agencies so that the Commission is properly staffed; but, in addition, there should be an attorney, an economist and other technicians to represent the public interest. Such persons should be allowed to operate independently, and on behalf of the

public without having to answer to the Governor, the Attorney General's office or to the Commissioners. I find it difficult to understand how a staff, such as operates for the Public Utility Commission, can operate on behalf of the public and at the same time advise the Commission. It is not unlike the District Attorney representing the public, and simultaneously advising the Judge who is hearing the case. I have heard it said from good authority that APUC Commissioners have suggested to the staff what their reports should contain, which recommendations then conveniently correspond with the Commission's ruling. The relationship particularly in the APUC, is badly blurred. I think a total divorcing of a staff, who will represent the public is critical.

It is also my view and opinion that the ATC needs a much stronger technical staff. At this time, the ATC does not employ a single economist or accountant and has the services of only one attorney. An agency with such poor staffing, in my opinion, cannot regulate effectively.

Businesses subject to regulatory agency decisions are severely threatened under the present structure. An overhaul within the agencies or new corrective legislation is mandatory. Either that, or totally deregulate carriers and truckers and follow the practice of the new Airline Deregulation Act of 1978 (49 USCA 1301 et seq.).

Get copy (2)

The APUC has other problems besides those listed above. Recently, the APUC Commissioners made a determination that was clearly not within the public interest. In fact, it will cost the Fairbanks residents over $400,000 a year more for cable service because of the Commission's action, or lack of action. Because this matter is in litigation, for the moment I will only make limited comment in regard thereto.

2. A second point of concern is the lack of insulation from political influences the individual commissioners are subject to, direct or otherwise. In other words, administrative agency commissioners have as delicate a job in the decisions they have to make as superior court judges or supreme court judges. Yet the rumble and street talk is that commissioners and hearing officers are frequently

contacted ex-parte by persons in government regarding proceedings that are pending before the commissioners or the hearing officers. It should be and must be totally prohibited. I am seriously considering making this an issue in one matter and deposing certain Commissioners and staff.

Both of these regulatory bodies are hearing cases that involve literally millions of dollars and far more than the major portion of cases in the courts. Yet and unless something is done to better assure the independence of these decision makers and their ability to truly resolve causes in accordance with the evidence under clearly established standards set by law, real harm will result. Indeed, it will create hardships on companies who have large investments and interests in businesses being mandatorily regulated by these agencies.

Furthermore, I am absolutely appalled at the lack of legal understanding of their responsibilities by some of the commissioners. In a recent proceeding before the APUC, one of the commissioners was far more of an advocate for a particular applicant (there were six applicants) than most of the attorneys involved in the case. He hardly maintained himself as an unbiased, independent arbitor. As a trial practitioner I am sure you readily appreciate how this thwarts both the fairness of the proceedings and due process of law.

I am not an advocate of government regulation of any industry; but if regulations are to be, they should be consistently and fairly applied. I do not expect business to be unrealistic towards regulatory agencies; but in the same vein, regulatory agencies need to be more realistic towards business.

In simple terms, business needs to make money to provide the jobs, facilities, etc., and to give the stockholders a reasonable return on their investment. At this point in time, a regulatory analysis by an independent body is definitely needed because regulatory reform is critical.

It is my understanding that there will be names coming from Governor Hammond's office nominating persons to serve as Commissioners on these Commissions within the next 20 days. It is also my understanding that the legislative

performance audit of the ATC will be presented during this upcoming session. In addition, I am told there may be legislation involving both these agencies. I expect the legislature will be much more involved in the appointment process because of these upcoming events. But for both, I would appreciate being given a sufficient amount of notice beforehand so that I may personally appear and testify before any legislative committee who would be involved in considering or approving commissioners or legislation relating to the above.

Have Don comment on audit

Notify Camarot to comment & testify

I am sending Governor Hammond a copy of this letter because I am sure the matters discussed herein will also be of interest to him.

Personal regards,

MERDES, SCHAIBLE, STALEY
& DeLISIO, INC.

By: Henry J. Camarot

HJC:db

cc: Governor Jay Hammond
APUC
ATC
Other Legislators

Linder Quits APUC Post

After only three months on the job, Ronald G. Linder has resigned his $43,400-a-year position as executives directing of the Alaska Public Utilities Commission because he believes the agency's control of utility businesses is excessive.

Linder also says the commission's staff has no independence and that commissioners routinely interfere with the staff's work.

A retired Air Force colonel and five-year Alaska resident, Linder was selected for the position after a four-month search attracting more than 50 applicants. He took office Oct. 8.

"The commission seems to want to take over management prerogatives of the utilities," he said Monday. "All they're left with is meeting the payroll."

He said when the federal government is moving to less regulation of airlines, the trucking industry and broadcasting, the commission here insists on more.

"More regulation costs more," Linder said.

(See Page 2 Col. 2)

Call Ron to testify

Resignation

Excessive Control Of Utilities Prompts Linder's

(Continued from Page 1)

He said the state's utilities, from the smallest on up, were being suffocated in paperwork and that staff morale was poor because staffers were called on to do too much.

"Many times when they get paperwork in, they've told me they don't know what to do with it so they just throw it in the file," Linder said.

He said the staff has to get commissioners' approval "even on the smallest items." Some other states, he said, have the utility regulatory agency's staff completely separated from the commissioners.

Marvin Weatherly, engineering member of the commission, said Linder is a "great guy. We were sorry to see him go. We asked him to reconsider."

He said Linder had objected to requiring a small cable television company serving several Aleutian villages to obtain a certificate.

Linder said he did not believe cable television should be regulated at all, since it is not a necessity. He objected to the state's "moving into regulating pay television and creating monopolies."

In Anchorage, he said, several companies should be given the opportunity to compete. If problems arise, he said, they should be solved at the municipal level.

Robert Stoller, assistant attorney general assigned to the commission, said Linder is "an excellent man who had extraordinary rapport with the staff. He was a humanist; we'll miss him. But no one is indispensable."

The commission has already moved to replace Linder, offering the job over the weekend to Cale Herry, a New Mexico resident who Weatherly said came in second in the search.

Herry is also a retired military man. He came to Anchorage Friday, Linder's last day, was interviewed by the commissioners and accepted the job. He will begin work in February.

Weatherly said Herry's interview contained questions on his philosophy of utility regulation.

Linder, Weatherly said, was driven to resign because of "a philosophical difference as to what regulation is all about."

This came out of the January 9, 1979 "Anchorage Times". Thought it might be of added interest.

return address } Shaw Flight Service
P O Box 6003
Anch. AK. 99502

Airport and Aircraft Services, Inc.

BOX 6147, ANCHORAGE, ALASKA 99502
(907) 279-0031

P. O. BOX 1
DEADHORSE, ALASKA 99701

P. O. BOX 436
CORDOVA, ALASKA 99574
(907) 424-7429

W.E. BRAD BRADLEY
The Chairman
Senate Committee on Commerce
Legislature of Alaska
Pouch B
Juneau, Alaska 99802

February 21, 1979

Dear Brad.
~~Gentlemen~~

I heard that you are considering the continuance of the Alaska Transportation Commission under the Sunset Law. This is one government agency that would never be missed by anyone. I ask that you do not reinstate it. The only results of its demise will be a revitalization of Air Commerce, a great increase in services to the People, and lower fares that result from greater competition.

In many cases there is no question of competition but just an air carrier wanting a chance to serve the Public. This is denied by the ATC because of unwillingness to take action and their adherence to the wishes of big business. My company is a classic example. In 1972 we applied for Air Taxi authority in Cordova and Yakutat. Two and one half years later the ATC granted provisional authority, not to just our company but to about eight. They actually solicited applications in this case. My company had helicopters in 1972 and 1973 but was forced to sell them in early 1974 because of no authority to operate. The belated temporary ATC certificate in late 1974 was too late.

Now in 1979 we see that Yakutat has no air service and Cordova has lost Parkair. The other operator closes down all winter. In general all the communities in the Gulf have lost air services because the ATC granted authority to everyone in locations where the market would not support it. Of course this was done after many expensive hearings and years later. They have no business trying to regulate the economics of air commerce.

In 1970 as President of Gay Airways, Inc. we applied for authority to operate Air Taxi from Deadhorse, Alaska, a service then in critical need. The ATC after three years of expensive hearings finally granted us authority, again along with about seven other companies. Today all are out of business except the monopoly ERA Helicopters, Inc. and SEAIR. That market cried for one or perhaps two operators but could not support seven, five at Deadhorse and two close by. Again the poineer, Gay Airways, Inc. got shot down for early efforts to serve the Public need.

Airport and Aircraft Services, Inc.
BOX 6147, ANCHORAGE, ALASKA 99502
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Please consider the precedent of Congress in the Airline Deregulation Act of 1978. What is good for the other 49 States should certainly be good for Alaska, the State most dependent upon Air Transportation. This in spite of Senator Ted Stevens who excepted Alaska at the behest of Reeve Aleutian Airways, Wein Airways, and Alaska Airlines who wish to retain their monopolies. Now the ATC has been delegated all CAB power which creates an even worse situation. Alaskan Air Carriers are limited by the size of aircraft and by the locations they may serve both of which are detrimental to the Public.

Many of our towns can be served only by aircraft under 12,500 pounds. This denies them large cargo by air because the airlines do not serve them and the ATC will not let Alaskan Air Carriers do it. The size of aircraft used by an operator is very effectively regulated by the Federal Aviation Administration. Their is no need for arbitrary control by the ATC.

I would like an opportunity to testify in event you or the House Committee hold hearings in Anchorage. Please call if I may provide further information.

Sincerely yours,

Robert E. Gay
President

Robert E. Gay

Shaw Flight Service, Inc.
Box 6003, International Airport • Anchorage, Alaska 99502 • 907-243-1573

CHAIRMAN
Senate Commerce Committee
State of Alaska

February 21, 1979

Gentlemen.

The Alaska Transportation Commission is a totally unnecessary government agency. Your review under the Sunset Law of its value and public need should consider the following:

1. The Federal Aviation Administration provides more than adequate operational controls and Public safety through their certification procedures and their governing regulations and enforcements thereof. Their primary concern is that of Public Safety with particular emphasis upon aircraft, personnel and air carrier operations, and all navigation systems and airports.

2. The ATC functions are contrary to the Free Enterprize system, the foundation of our Nation.

3. The ATC promulgates and fosters monopolies in Aviation and restricts competition. Many of our Alaskan cities and villages are at the mercy of a single large Air Carrier. Small towns are denied the services of large aircraft needed for outsized cargo. Numerous examples can be made available upon request.

4. The United States Congress has recognized the imminent death of the Air Transportation industry like that of the Railroads, under the strangleholds of the Civil Aeronautics Board. They have acted by deregulation and the elimination of the CAB. All greatly to the benefit of the American Public.

5. In the Airline Deregulation Act of 1978, CAB authority, in the case of Alaska has been delegated to the State. This action in effect creates a new all powerful bureaucratic monster. With former CAB authority and present ATC authority this agency will slowly stifle and deteriorate Alaskan Aviation.

In event you hold hearings in Anchorage or desire documentation of the above I will be most happy to supply it. I hope you take the view of the Public Interest, heed small business, avoid large aviation monopolies and Unions, and let the ATC die a natural death. It is an agency no longer needed.

Sincerely,

Robert E. Gay
General Manager

Robert E. Gay

ALASKA AIR CARRIERS ASSOCIATION INC.

BOX 6469
ANCHORAGE, ALASKA 99502

Mailing address for quick communications —
BOX 1608, JUNEAU, ALASKA 99802

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Irvine, California

February 27, 1979

Honorable W. E. "Brad" Bradley
Chairman,
Senate Commerce Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

I would like to apologize for requesting input into the Sunset Legislation as regards the Alaska Transportation Commission at this late date. I was just elected President of the Alaska Air Carriers Association February 24. At that time I was not sure what our prior input was but feel very strongly that the Transportation Commission is needed for the best interest of the traveling public.

As you are aware, much of this state is completely dependent on aircraft support -- much different than states with no Transportation Commission. The Number One Priority of everyone should be safety. There is absolutely no question in my mind that safety is directly related to regulation of the industry. If you open it up there will be numerous little guys with beat-up Cessna 180's wanting to make a fast buck and since they will be operating on shoestrings, they will cut corners on maintenance, training and pushing to complete the trip to make the buck.

We are not concerned about the long run as individual operators. In my own company, which is Peninsula Airways, Inc., at King Salmon, we now operate 18 aircraft with annual revenues exceeding Two Million Dollars. I built my company over the last 25 years in the face of a lot of competition. The unfortunate thing is that the shade tree operators, before they go bankrupt or kill themselves, are liable to take some of the innocent general public with them.

We are not saying the Alaska Transportation Commission is perfect. In fact, there are some serious problems but it seems this should be the ideal opportunity to correct some of these problems. In particular, we would like to see Senate Bill 60 passed, giving the Commission cease and desist powers and giving the Commissioners more control over the hearing examiner. In fact, we think the report by the Legislative Audit Committee contained a lot of good recommendations and could be used as a guide. There was one recommendation that would not be too practical, that being that the Alaska Transportation Commission gather profit and loss figures and regulate those also. We feel that is a very big job, far beyond practical budget considerations at this time.

In summation, we strongly urge the retention of the Alaska Transportation Commission and that it be endowed with the power to provide competition in markets where needed but also able to keep out the "fast buck" operators. Such action can only provide safer, more dependable service to the general public.

Sincerely,

ALASKA AIR CARRIERS ASSOCIATION, INC.

Orin Seybert
President

OS:ur

ATC HEARINGS

-Bernie Bylsma (Turnigan Chevron, Wrecker)
also. . . Alaska State Auto Club and some other service station dealers and operators.

. . . I am here to ask for the deregulation of tow trucks. The Consumer, I think, should be able to have who he wants tow his vehicle. We believe that. The consumer wants it. How many times we have to turn away people who want us to tow their vehicles but due to regulations, we arent' allowed to do it. The public has to pay some times as much as three and four times more to a licensed tower than we can do it for. Those three or four times are rare cases and basically those cases would come only under the state automobile club where there are set rates, for instance; if you have a brand new car that you just bought and you get 4 miles away from the dealer and it goes dead and you call the Alaska Auto Club of which you are a member, you should be able to get the car towed back for twelve dollars ($12) is what the tower charges the auto club, the contract towers for the auto club for that distance where it would cost just about 4 times as much and the auto club has to simply say "we can't do it" and then of course, the auto club member is all up in the air, he's paid his dues and can't do it. It keeps membership out of the auto club, it keeps the auto club from growing, there have been a number of cases where people have asked for their dues back because that has happened. Convenience is often less as far as convenience, what I mean is, they get there quickly. I'll give that an example in a minute. License operators basically have a monopoly on the towing, there's no. . . uh, and with that monopoly comes <u>inefficiency</u>. Their ability to charge the rates that basically they have set up and they have to be called so it only makes for inefficiency on their part. Towing in the states of Washington, Oregon, and California is unregulated. I've got a . . . I wanted to read this from. . . uh . . . it's a letter to us from our state auto club who was in contact with the auto clubs

in Oregon and California. It concerned Arthur Lamboldt from Washington, and L. R. Nepper from Oregon. Mr. Lamboldt said Washington has no tow truck law, the City of Seattle has an insurance coverage requirement but that is the only regulation of the road service industry. He says, discussions have come up from time to time at Olympia, but each time it has been determined any state regulations would simply be restricted would discourage free enterprise and would discourage the small operator and encourage inefficient operations. Mr. Nepper told us a tow truck law went into effect in 1947 in Oregon, it was repealed in 1948 within just 12 months it was found monopolistic practices and higher prices where the public came into being. The Oregon PUC removed the law from the records. The only reference in Oregon law today is that a disabled vehicle under tow does not come under any state regulation. On the other hand, a non-disabled vehicle under tow or being carried by truck comes under their freight restrictions. And in California, this is directly from the California State Automobile Assn., except for accident towing on inter-state and state highways, the state of California does little to regulate the towing industry. For these relatively few calls, the California highway patrol has set up a zone system. They inspect and improve tow operators from within the zone who are then called out on a rotation basis as the need arises. For the most part, the towing industry is relatively clean in California. Active competition keeps it that way. They go on about saying they have it in Nevada, where they have the auto club there has great difficulty with them one place we do encounter government control is in the state of Nevada where the entire towing industry is regulated by the state public service commission. Frankly it's a headache. The law requires that anyone who does towing for hire must have a certificate of

.of public convenience and necessity and so forth as much as we do. I wanted to give a few specific examples of what happens. This is a couple things that have happened to myself. We had towed a mustang into our place of business to repair. Now we are allowed to do that . . . to tow it to our own pl .e. When we told him how much the repairs were, he said it wasn't worth it, it was an old car. They sold it to somebody in Fairbanks as a relic or something and wanted it shipped it up there. We could not tow it from our place of businesss to the railroad yard. The price of our tow would have been $32.50 had we done it. It cost them $51.00 to do it with a licensed company. There was a case just about a month ago where there was an accident less than a half a mile from where my business is. There were two cars involved, state troopers called us, I guess the customer had asked that we tow his car away, the state troopers called us, we answered the call, licensed operator was there to tow the other one away and he said "no, we can't take that one, it's against the regulations." They called me on my driver called me on the radio and I said "ask him to call his dispatcher, if its alright, we can do it if his dispatcher says no leave it alone, even though the state troopers wanted us to take it away. But they said no so I told the driver to come on back. It took him 45 minutes to geth another wrecker there to tow that vehicle away. That is not convenience, by any means. We had a one of my collegues in the business, another station were called by the state troopers, there had been an accident at Tooter and the new Seward Highway, the same thing happened except he picked the car up and towed it away. Even though he was called by the state troopers, he picked the car up and towed it away and he was cited by the ATC for doing it and given a $150.00 fine suspended or something like that. We have another case, these cases come up all the time.

I think a couple weeks ago, Al Davis from the Transportation, he's on the commission made some remarks to us in a meeting about that Globe Automotive had a car that they discovered that they towed in was under warranty and the customer wanted it taken to Alaska Sales and Service. Globe called the Trans/Comm. and they gave him permission, said that it was alright to do that, so by so doing Al Davis told us at this meeting that that type of thing was alright if we had towed it in, had worked on it, found we couldn't do it, we could tow it some place else. Yet, two years ago I was cited and fined, again suspended, for exactly the same violation. It's a controversial type of thing, evidently they don't know what they're doing themselves. Al Davis also made a remark that he didn't want to see alot of unsafe record drivers alot of 16 year old kids pulling cars out of ditches and so forth and he cited a time when I guess near Glennallen somewhere in that area he was going down the highway just in time saw a cable across the road with a car in a snow bank on one side and somebody to anchor their vehicle had driven off the other side and had a cable stretched across the road. Certainly, it is extremely dangerous but theres no law now, theres nothing to keep that driver from pulling it out the way it is now. It is a safety hazard, theres no regulation to keep that driver or that wrecker from pulling that vehicle out onto the road. There are certainly laws against what he did. He was merely breaking the law and anybody would do that I don't think it was valid thing to say that because someone did that because anyone with a four-wheel drive vehicle pulls people out off the side of the road constantly that are stuck in the and can't get out. They're private individuals helping each other. They're still responsible for what they do but they don't take adequate precautions they certainly would have the responsibility.

We're not asking for towing that involves more than two parties. Deregulation of that, the two parties being the vehicle operator, the owner of the vehicle and the tow truck operator. In any case that involves impounding, repossession that involves a third, like the state or anyone else, there should be some regulation of that and we aren't asking for that we are only asking that we be able to tow a vehicle from one place to another and not being. . . and . . . uh. . . to be able to do it legally. The state of Oregon has . . . that any disabled vehicle does not come under freight cargo, or they don't have it in their regulations, or their exempt from the Trans/Com regulations. That's about it. Unless you have any questions.

(Brad)

Yes, we have situations in numerous states in the lower 48 which . . . Washington, Oregon state and california, Bernie. What would you think about having various classifications of certificates maybe one for your level whereby you could have a Class C or A which ever way you might want to go. You could tow in smaller cars with a small wrecker that you might have. You couldn't have the big jobs of course.

(Blysma)

Well, certainly, but is there a need for it? I'm not going to tow in a large vehicle with my small one ton wrecker. It's inconceivable that I do it.

(Brad)

The reason I asked that is because we've had the other sides

testimony and they claim that if you don't have a certificate that you can't make them come up to any particular standards and too, sometimes they will wench out or tow out a vehicle and do damage to the car because they do a little more than they're capable of or possibility of not properly maintaining the towing equipment or a cable may break or they don't have torches to put on the highway and they don't have a lot of the safety requirements or don't satisfy those who have expensive equipment and do have to come up to certain standards but they maintain quality service. I have discussed this with some of the others that testified from the other side and they thought it might be a good idea. Of course, your certificate would'nt be quite as expensive, and it wouldn't permit you to do the big jobs that you probably wouldn't do anyway.

(Bernie)

True, anybody that pulls a vehicle out though, is gonna have to accept responsibility of the vehicle that he is pulling out. I think that about three times in the last twelve that I have had a tow truck that we have damaged a vehicle. One time it was an inexperienced operator drug it along the bank and damaged the side another time an inexperienced operator had a cable where he shouldn't have, the people should have stopped but he had the road blocked and they thought they saw a way to shoot through it they shot through and caught the cable. But, we assumed the responsibility for it. We assume the responsibility for our damages and if somebody is grossly negligent, certainly they have to assume the responsibility. We discussed this with a group of operators last week and we came to conclusion that really . . . uh what really is the necessity of it. And it's just alot more work and regulation and costly, time consuming

work to regulate them that way when what really is the necessity?

(Brad)

I'm not trying to give you the impression that I am an advocate of regulation because I am a firm believer in competitive free enterprise system and as much deregulation as possible. .

(Bylsma)

We came to that conclusion really how much good does it do to classify if you classify them you have to do a lot of regulations and handle the regulations and is it really necessary?

SENATE COMMERCE - ATC HEARINGS - 2/15/79

Mr. Buzz VanAlstein (Douglas Trucking, Juneau, General Manager)

Speaking for Douglas Trucking, we would like to go on record as saying that we are not in favor of deregulation per se simply because we feel there too many advantages to the consumer being offered that we don't think would be available especially in the smaller towns like Juneau and I think it would affect the smaller communities in the state and in the bush communities also simply because there is with the system we have not, there is a network where people can ship long distances regularly and consistently that we don't feel would be available or as good if they were deregulated. Simply by having the certificates we have, we are obligated, and it says so right on the certificate, convenience and necessity for the general public. We have to serve all of the people within the scope of our authority thoroughly and equally and I think that as far as the larger carriers are concerned it would affect them even more because the large communities are usually the easiest ones to serve, however, the small communities I think with deregulation, would not be getting the service. There would be several people handling the larger communities point to point and there would be quite a problem with the smaller communities. The reason I bring up the smaller community thing is because we live in one of them. Of course, we are a smaller trucking company and our scope of authority is basically within 50 miles. But with the network that is set up here we have a structure and framework with which we can work with other carriers so when a customer comes to us and wants to ship to the lower 48 overseas, if necessary, or anywhere else in the state, we have the connections with the other carriers

who also have a scope of authority that is well defined, a tariff structure and a schedule where we can tell this customer with a reasonable amount of satisfaction that we can deliver those goods in a timely manner consistently. For the individual consumer as well as the businessman. The farther the busines· or person is away from the trade centers, the more important this is. The farther you go the harder it is. Especially in this state. . . smaller communities are entitled to the same service if possible that the larger communities have. With the structure we have here now we can provide a schedule and a network and we feel that especially from a smaller companys standpoint that having the structure to work in for we can go to whatever carrier that would be or would have the authority that would interline with us. We could serve this community better because our authority is only within 50 miles but if we want to serve customers in this city and offer them service and as you know, the transportation lines into this state are quite long. It's not like shipping from Seattle to San Francisco that's quite easy to do. . . it's not so here. Harder business here we rely on some of the bigger carriers to interline with, whose business <u>is</u> interline transport, where·: ours is the local community we know the community, we know where things are at here, we know the individual problems some of the people have just getting their goods in and out of the city itself. Our business is not long distance transportation, however, there are other carriers whose business is this. But the network we've got I think we can provide a very good service because we can combine those two things and help those people move their goods in a timely manner . . . if we don't there is a structure set up for entry and exit into this market and it is a regulated market, but it will not support the poor operator . . . it's just a matter of time just like in any business,

but we feel that . . . uh . . . with the structure provided with the system we've got, we can provide a better service. There's a tariff structure where the rates are published. We feel that with deregulation, and less emphasis on a published rate that a businessman could get a nipment in, people delivering the load could say "by-the-way, next week it goes up 20%" This makes it awful hard for a businessman to plan strategy in his market and for him to survive because there's nothing for him to count on consistently at least with the tariff structure we have now there is a time frame in there where you have to publish a notice and people can be made aware of it, it's public record, there's a time limit in there, that once it's been reviewed and it's kind of a cushion on the market for these people. We feel that without some sort of regulation . . . there's no protection from companies you've never heard of before. With the system we've got, there's a policing agency there that if I didn't get my money, there is someone I can go talk to, a commission that's going to go over there and talk to that carrier and have the ability to level fines, and in general, polices public interest. We are in favor of a strong commission because they have got to be a go between between the general public and the carrier. Deregulation will eliminate alot of this and alot of the control and we don't feel it would be in the best interests of the public. I feel that one of the areas where it would hurt the most . . . of course if you get the shippers that ship alot of stuff, like the major business's they're used to the shipping rules and regulations and can work with anything because they do alot of it, but I think the part that hurts the most and what most people listen to and what we have to listen to also is to the individual. Small shipments going long distances . . . what assurance does he have that this

is going to be done at all and that he is going to be treated fairly. Without the network, without the system with regulation I don't think that this person would be able to say 'I can ship from Juneau, Alaska to San Francisco' with any amount of security that that shipment is going to get there. And if it doesn't, where do I go to find out about it? It does not restrict free enterprise, I think it is ensuring the public with the system that they can move in and with a certain amount of satisfaction, without it we're in trouble. SB 60 is going in this direction and I am in favor of it.

(Senator Stimson)

How do you feel about the way the trans/commission is presently regulating the industry?

(Van Alstein)

I think the commission is in a position to control the industry which it should, and the 's always room for improvement in anybodys position as far as I have ever seen but I think that they are. . . have given us the guidelines and some kind of a framwork that we can expect to work in and the limits of their authority are pretty spelled out and how they want to use it is up to them. Frankly, as far as Douglas Trucking is concerned, we feel that the commissin has been fair we've certainly enjoyed all the decisions they've made but that's the case then I 'd have to say they weren't far. The commission has been fair. . .....

(Senator Stimson)

You made the reference a number of times to the need for a stronger commission . . . do you consider this a strong commission?

(Van Alstein)

I feel the commission for what has begun and where it's going I think it is definately positive. I hope it continues and can be made stronger through things such as this bill and so on . . . to where they can be even stronger. We would very definately be in favor of that. That's going to be the arbitrator. Basically, from where we stand is that it will give the commission some bigger teeth to enforce. If your'e going to reprimand a company or fine a business for operating illegally no matter what industry their in, the fine has got to be of enough magnitude to make any business in any line of work they're in, to think twice about entering any illegal action. This will help.

(Brad)

Do you think its possible for a man with very moderate means that has a desire to go into the trucking business possible for him to get into the trucking business, get a certificate, get approved by the commission?

(Van Alstein)

I'm glad you asked that question, I really do, because the company I work for is a classic example of that. One of the owners,

was to inherit his fathers business when his father died and because of several things did not. He was working as an employee for Orme Transport (father's business) and he just at one point finally quit and obtained a certificate because there was a piece of authority on the market not being fully utilized, he was being worked but nothing to his capacity for sure and with a couple of other people that he is with association with now bought this piece of authority and is now we feel one of the major carriers in Juneau. You can buy a piece of authority, you can apply for a piece of authority and its for the commission to view and rule on.

(Brad)

Suppose you only had the means to purchase only a couple of trucks to go into a small trucking business, is the system so constructed that its possible for that individual to get into the system and compete against some of the big guys?

(Van Alstein)

Yes, I think so. With hard work , it can be done and I believe quite successfully. I think the entry in and out of the market is quite open. One must realize that a poor operator will not and should not survive.

(Brad)

Have you ever gone before the commission to testify for or against someone else who is trying to get licensed or certificated to operate

a trucking company?

(VanAlstein)

Yes, we had a case here in Juneau to sit in on hearings on the transfer of authority.

(Brad)

I know you are not into the towing and wrecking business, and I have a good general understanding of that business plus the trucking business, but do you think that there's as much necessity for regulating the towing and wrecking business as it is the trucking business?

(VanAlstein)

Well, I don't think that I am very qualified to answer that because my exposure to the towing and wrecking business is quite limited. I've frankly, never even had to use one and I've not ever talked to any people in that part of the industry. I'm really not in a position to say.

(Brad)

One reason I asked the question, is because most states regulate trucking, but all states don't regulate towing and wrecking.

Burt Wagnon (Dep. Commissioner, CED)

The ATC occupies the position of very limited line of authority with the Dept. of Commerce & Economic Development. I do have a few things I would like to mention to you and answer any questions you may have, but I'll keep them very brief. We have reviewed the audit and we are generally in agreement with most of these findings. One exception would be item 14 pertaining to positioning of attny. general's staff within the ATC. The attny. general has a 4-page letter in there that is quite self-explanatory and if you'll permit, we'll just let that letter stand as it is. There are alot of questions and problems raised by the audit that need to be addressed. As I said, we are generally in agreement, but I'd wish to temper that with the fact that the state is in a financial position now where funds are a very limited resource so to speak. And, I would hope, that as we go through the hearing process we keep in mind the money problems we have we evaluate very carefully how much do we spend to correct certain problems and cost benefits related to them? Deregulation and regulation review are very strong topics. We're generally in favor of deregulation, but also have a concern for the consequences that might come about. I wish to take a few minutes to expand upon that, if I may. There are certain factors that have come about recently that we feel may complicate the picture somewhat. The recent airline deregulation has raised some questions concerning air service to small communities. We are concerned that if the ATC were sunsetted, what consequences this may have on air transportation to the bush communites. The CAB is going commence holding hearings in the state of Alaska shortly and will come up with a position I understand not long thereafter. There are alot of questions that we feel are unanswered about what would be the consequences

SENATE COMMERCE COMMITTEE
February 22, 1979
3:00 p.m., Capitol Bldg. Room 209

Sen. Bradley: Performance review hearings on the Alaska Transportation Commission and the first one to testify is Mr. Benedicktsson.

Benedicktsson: Mr. Chairman, for the record I am Ben Benedicktsson, managing director of the Alaska Trucking Association. I would like to take this opportunity even though I have already testified to testify on behalf of one of my board of directors members, Mr. Robert C. Moskal, Sea-Land Freight and Service, Inc. I have provided copy of the written testimony, if I may read into the record and then as much as I can respond to your questions. (See written testimony) If there are any questions, sir, I would like to

Senator Kelly: You're concerned with the deregulation of the ATC, is that still mainly in the highway transportation area?

Benedicktsson: That's true. I can't speak for the air carriers. I don't represent them. I have no background in air carrier equipment. I speak for the motor carriers.

Sturgulewski: Can you respond, Ben, regarding the tow truck operators and some of the bulk haulers?

Benedicktsson: I certainly can. First of all, we are opposed to any deregulation, for a couple of reasons.

Sturgulewski: Now would you state for whom?

For tow trucks?

Sturgulewski: Well, would you say you oppose deregulation?

Benedicktsson: The Alaska Trucking Association, on behalf of our board of directors, in order to keep the record clear. Let me pose you a problem if I may. Suppose, as part of the wreckers and towers, suppose you were travelling through Fairbanks in the middle of the night in February, snowing or whatever you want to have it, you go off the road and you don't happen to know the corner, guy who owns the corner Chevron station, you are going to have to go to someone to pull you out of the ditch. I used this example before... With the present system the regulated wrecker and tower operator is flat required to come out and haul you out of the ditch. He may not be able to do it for a couple of hours, what with problems or whatever, but he has someone on duty 24 hours a day. Second case in point, suppose one of my...uhhh tractor trailer combinations belongs to one of you, turns over and blocks the road. You're going to have to have specialized equipment that the corner Chevron is not going to have to move that. You simply cannot go to the small wrecker. I think in testimony earlier a wrecking tower of the capabilities we're talking about runs in the terms of $100,000 to $110,000 to buy. Somebody has to go out here to support that operation and the guy on the corner is not going to do it. As far as the bulk commodity people are concerned, here it's as much a matter of principle as anything else. We just don't feel that if you deregulate anybody, open the

door, who'll come in it. It would tend to hurt the whole industry to have anyone deregulated.

Sturgulewski: If I could explore that just a little bit, there is a hue and cry across the country for the extraordinary amount of regulations and what we tended to do is create economic boxes when we regulate it, and there seems to be a great deal of hue and cry if we talk about on a specific basis of deregulating. Would you care to share a little philosophy with us?

Benedicktsson: I kind of feel that people who talk about deregulation are putting themselves in the boxes you mentioned earlier. . . Those who don't read history are going to have relive it. The r ason we have regulation is because the shippers and the carriers together demanded regulation. Uhhh as an example, the .....Bullwinkle Act of 1947 was guarenteed ....nationally with immunity from heavy trucks, provisions for collective rate-making was passed resoundingly over .....Truman's veto.....no question about it, because the shipper, the national industrial transportation....NIT.... NIT League recently has come solidly and resoundingly behind regulations.....going to have it. These are in essence the people who ship, the people who receive, the .....they could be ....happens if you disturb, seriously disturb, the stability of the transportation system that is required to keep our market economy going, and if we don't do this work, we don't retain the stability every-body's in trouble, not <u>just</u> the trucking industry.

Senator Kelly: You said when talked about they were ....deregulation, are you talking ....big national carriers....Alaska .....big carriers. The problem seems to be....that Brad talks about all the time and I've heard this at home, too. The problem seems to be with the little guy who can't get a foot in the door.

Benedicktsson: Whose the little guy....rhetorical.... Nationally there are 15,000 carriers who handle the ....or common authority. Uhhh, the top 50 using a market analysis, represent only 10% of that total value of uhhh money to be spent on transportation and .... So, really we are talking about existing. Nationally uhhmm something like 94% of .....authority.... The objective, one of the objectives, of both the ITC and ATC is to insure that the number of trucks out there equals the amount of trade. You have to have that. So when someone comes in and says I'm a little guy, I want a trucking outfit, I requested authority, and has not been granted it, probably because for good and solid reasons there was not enough traffic to warrant one more trucking ....That's the way the system is, designed,.....

Sen. Bradley: As has been explained, they have to have a quorom in the other committee, too, and we've got one excused today uhh, Senator Stimson, so it makes it little hard he's on both committees. So we can continue now since we've had a quorom. One, two questions, Ben, and that is ..uhhh. How do you justify uhhh eight towing and wrecking certificates in

Fairbanks with approximately 60,000 population and only five in the greater Anchorage area with approximately 250,000.

Benedicktsson: Economies of scale, I think is what the answer is because in Anchorage with the five enterprises you have, they are are larger, their capacity meets the necessities for towing and wrecking..uhhh the organizations in Fairbanks, I know, are considerably smaller, so it's not a matter of how many firms, but what the capacity is and the capacity meets ....

Sen. Bradley: Is Anchorage Towing and Wrecking that has 14 vehicles of every size to take of, has the capability of taking care of all types of wrecks, accidents, towing,..... and 12 drivers is that the largest in Anchorage, most capable?

Benedicktsson: Uhhh, I don't know if the most capable or not, but I think they are the largest.

Sen. Bradley: Does Fairbanks have one with similar capabilities?

Benedicktsson: Gee, I don't believe so.

Sen. Bradley: The one we had testifying.

Benedicktsson: He's from Glennallen. Jeff Moore.

Sen. Bradley: Uhhh, I was talking about Mr. Gillespie.

Benedicktsson: Ohh, I'm sorry, Mr. Gillespie, I would have to hold off and give you some answers after I go back and check on it, but as far as I know they seem to be smaller.

Sen. Bradley: Assuming that we are over-regulated, suppose we dere-regulated all modes of transportation for a year.... see if it would work better. What good or damage do you think we would have?

Benedicktsson: Let me draw an analogy with New York City...What would happen if you closed every corner drug store in the city of New York tomorrow? My answer was probably in .....immediate medical care of one type or another. You'd probably notice the difference.

Sen. Bradley: Uhhh, we are not closing the trucking, we're just deregulating it.

Benedicktsson: ......If the trucking industry were deregulated in this state, then I think you would find that the .... out from the Anchorage, Fairbanks, Kodiak,....whatever areas, would really start to suffer. It's very simple.

Sen. Bradley: But, we wouldn't be closing, it's not a good comparison. We wouldn't be closing the railroads down, we just de-regulating them.

Benedictsson: But with all due respect, we, the American Trucking

Association, conducted a survey a couple of years ago and we asked our members, what would you do in terms of your ....operating authority if they were deregulated and the answer of 82% was to stop serving the smaller communities.

Sen. Bradley: Well, what about, what is it? Twenty-six of the major airlines were deregulated and they haven't stopped.

Benedicktsson: According to our figures, however, 67 communities in the United States a few months ago were without air transportation they had before.

Sen. Bradley: Won't that enable the smaller operation like we have around here and in Anchorage to get some of that business.

Benedicktsson: Only if they are able to react on a fast enough basis. And it's not our feeling that they are. But you can't all of a sudden insert a trucking company and pull it out .....whatever without disturbing the flow of commerce.

Sen. Bradley: You mean a big trucking company will just stop operating and go bankrupt possibly if we deregulate?

Benedicktsson: No sir. They would stop serving the small community. There is a certain social costing involved in transportation. Anchorage tends to support Glennallen to a

small extent, Eagle River, and the likes. Uhh, if the analogy I use at the University when I .....it's the little old lady in Osh-Kosh had to pay for her hundred baby chicks ....she probably couldn't afford it. Instead that costing is spread across the larger communities and this is very simply the way the system is developed. and it's made ...

Sen. Bradley: Senator Ferguson has now joined us. Well, don't you think that maybe uhhh these big companies, these big trucking outfits that didn't or wouldn't serve the couldn't economically serve the small communities, don't you thi k that would enable a lot of these areas to have to spring up little trucking firms to take care of their communities, ...in the line of free enterprise?

Benedicktsson: Yes sir. Given time, if they have the time. But I don't feel that. We are talking about 20% and probably more than that.... But 20% of gross national product goes to transportation. Of that figure probably about uhhh 12 to 15% goes to trucking. My figures may be a little high on the 12%, let's be conservative and say 7%. That's a lot of bucks and that's a lot of ....for the suburban areas, for the Glennallen, for the Osh-Kosh, or whatever, unless you have that very basic underpenny of the economic fabric that we have developed, then you may be will tend to get back to the middle ages. I making a really strange statement.

We'll all gather around the moat. How are you going have the.... How are you going to have shopping centers? If I go into a shopping center and I pick out refrigerator that I would like to have and there happens to be the only one on the floor that is green and purple with orange polka dots or whatever. I recognize that's what I really have to have. Well, let me check. Let's see where, we have one back in the warehouse. He calls back and you know they always have one in the warehouse, but you know what they can't deliver it until next Tuesday. Well, it's not coming from the warehouse, it's coming from the central distribution point, by virtue of having a stable transportation system, that the shipper can depend on, he knows what it's going to cost next Tuesday. ... He knows that it's going to be delivered. If it isn't and we find out about it, the Alaska Transportion Commission finds out about it, we can pull the guy's permit.

Sen. Bradley: But don't you think uhh you know if you had a complete free enterprise, unregulated system, regulate only for say insurance and safety ....and so on....Sears is going to take the guy that gives them the quickest service and the best price and when he doesn't respond properly they are going to get somebody else who wants that business. So whether you regulate it or not they're still going to know what the price is going to be, because if you switch that price suddenly, they're going to have a little hassle and they're either get back and standardize that price or you're going to get somebody else that wants his business.

Benedicktsson: Well, a couple of alternate things could happen. One, especially in Anchorage and in Alaska, you'll have the people coming in from the outside. The trucker from Texas with his one truck operating out of a motel room somewhere. Comes in for the summer and then leaves. Leaving your stable companies that are here year-round to in essence handle the ... of the trade and the wintertime trade. The second possibility and one that we have seen happen nationally though not to my knowledge in Alaska is that a large company can go to the small ....firms and say, "We'll give you 100% of our business, if we can charge it." That will be probably....probably be something that is ....if not perhaps...compensatory costs. In which case the guy is faced with a cash flow problem. Either he gives into the big shipper or he's put in a position where he has to comprise on the very things you talked about, safety and maintenance or whatever. In order to keep a cash flow going to the point you can make a living. Uhhh this is one of the protections .....

Sen. Bradley: Senator Ferguson do you have any questions? Thank you very much, Mr. Benedicktsson.

Benedicktsson: Thank you, Mr. Chairman, on behalf of both Sea-Land and Alaska Trucking Association.

Sen. Bradley: Okay, Mr. Miller. Timothy Miller.

Tim Miller: My name is Tim Miller. I am represenging myself as an owner operator, and I am in strong favor of deregulating the trucking industry. ....feel free to ask any questions as I go along. I've operated trucks both in Alaska and outside and parts of Canada. I've delivered freight from the Artic Ocean to the Gulf of Mexico. Uhhm, I have no operating authority, except as a private carrier and I have run trucks both as for private carriers and for common carriers. I've operated trucks common carriers who have ATC rights and I feel because of these rights I was lost $80,000 that was never paid to me because of the regulations. I have hauled for both private carriers but you have. See the reason I lost $80,000 was that I was put in the same position of hauling for a private carrier which I said was illegal for me to do that and I know a number of people that do it. ... that when I delivered a freight for a private carrier and he doesn't pay the money, I can take his freight put a lien on it. ... Now as a common carrier since he does not own that freight he just stalls and you've got no recall,that's due to the regulations. I feel that in a free society market forces and not governments dictates should regulate transportation to a community. I also feel that in a free society the government should not discriminate between one class of people and another class. Meaning that they're

discriminating with the truckers with authority and giving them preferential treatment to the truckers without authority. I also feel that if the industry was deregulated better service at a lower cost would be provided to the consumer. I have a case in point the construction on the Trans-Alaskan Pipeline. The common carriers they had beat up equipment at the time at the start of the construction, they could not deliver the freight. They had to lease owner-operators. Uhhh, the freight, if would had been deregulated at that time the freight would have been delivered cheaper, and faster. I would have been delivered cheaper because the owner-operators who were delivering it the freight had run on percentage of the tariff. The majority in run on percentage of tariffs, some ran on mileage but it was also they run on someone else's authority, the trucking permit, the trucking companies were taking their cut and still making money off of it. So we were making money, too. We're making money at running at a lower tariff. We could deliver the freight faster, if it had been deregulated, we'd have delivered the freight faster because the inefficiencies of you had to pick up like I ran out of Fairbanks. Fairbanks to Prudhoe Bay. They had to pick up the freight at the pipeline yard, that was where the oil companies, Alyeska's yard, pipe terminal, they deliver to the terminal, individual trucking company's terminal and there it was redispatched going north. Sometimes it set in the trucking terminal for two weeks waiting to be dispatched. Now if it had

been deregulated we could have just through contract carrier or other ....gone directly to the oil company, picked up the freight at the pipeline and we would have delivered it north, and I say it. I was at the time running at 70% of the tariff. At 30% less costs we would delivered the freight. Okay. Also the large companies here because of the regulations I feel were very, very inefficient. They had, that one outfit that I ran for there during the time of the pipeline, we had 40 drivers and 45 nondrivers, either rate and tariff men, people who are out hustling freight, uhh mechanics, uhh, you know, big overhead and in a trucking business a driver is a production and he's the guy that makes the bucks. It's not just these people that are sitting on the desk. You know if you have that kind of overhead, you are bound to go broke. I feel that if long-haul trucking was deregulated and safer. If every truck driver knows that's ever driven a truck, knows that each truck handles differently. A cabover handles differently than a conventional model truck. ...two identical trucks...sitting up there, they can have both identical component parts and you get in each one, they are going to drive differently, they're going to handle differently. It's a dangerous and what happens to large trucking outfits is that they practice hot....they take a hotseating is a term used for when a driver is assigned a different truck for every trip. It's a very dangerous situation.

They do not know. You know you are running an Alaskan road. You run into mud and slick roads...one time I was running in mud that was up to my knees. You know chained up and everything else. You are coming down off mountains and it's very slick. But as an owner-operator with a small, we call them jippos, the owner-operator if they can run a truck, you run the same truck and know that truck and they take care of that truck. They know everything about that truck. I got two trucks and I know everything about both them trucks. I can take them over any roads, any condition, and I'm sure I wouldn't wreck it and I proved that over the pipeline. I made trip, after trip, and ran it for two years, on the Haul Road and all those accidents were taking going on, I was off the road one time and I ran in the ditch forced off by a company driver. I took the ditch. I was out in fifteen minutes, but anybody that's seen the trucking operation on the pipeline, I think you've heard about it, accidents upon accidents. One time I drove from Fairbanks to Prudhoe Bay and I counted on trip which I made in about three days to deliver that load on that trip I counted 18 wrecks on that road. Uhh I don't want to give any names, but I would if it was asked. I wish also that a study by the State of Alaska was on during the pipeline construction would take a study on who caused the accidents, but whether it was the company drivers, company ran equipment, or whether it was independently owned trucks that caused the accidents. I through my own observation, I would

come to the conclusion that the company ran equipment, company truck and company drivers were the cause of the majority of the accidents. This also jacked up all our insurance rates. I think that safety is the only part of this industry that should be regulated. I think that the safety of the vehicle and the competency of the driver should be the only thing and uhhh the only thing and that could be handled by the Department of Public Safety and not have a separate committee to do it.

Sen. Bradley: What about insurance?

Tim Miller: Insurance, I think that if it was deregulated, hopefully it will be deregulated, that each operator should have to get a performance bond, like any contractor. Get a performance bond and carry insurance. ...posted per-performance bond. I think that would eliminate people from flocking in from the outside. To become bonded you have to be stable and you have to have a stable business. I think that's the only thing that would be required that you have to be bonded and you know, like I say let the free market control services. Don't ... it seems so ridiculous that we have uhhh, all this ... you ....on regulation so that places like Glennallen or Copper Center, or Nenana can get two boxes of freight delivered uhh twice a year or something. It's to me, it's absurd. I also feel that those communities would be served. Cause it's probably ...economically viable

for a small outfit to go in and service them. But, the way it's set up right now, my personal opinion is that due to this regulation the state is giving indirect subsidies to the large operators, people with money. And I've heard testimony in here before saying that it's easy to get rights. I'm saying that we shouldn't have to get rights. I'm saying that we should have the right to operate, you know, you should not have to file any paperwork. After when you spend like myself, I probably got ohhh, replacement value on my equipment would be close to $200,000. Why should I have to spend that kind of money and then have to go through this bureaucracy to get rights to operate it. Now, I just don't feel that just .....Hell, I can't push a pencil, I have to drive a truck. You know, that's the way things are. I would like to say in conclusion that if the money was spent the same they spend it on regulating us, was put into highway construction that we would all have much better transportation system. You know, I hope you have questions, because I would like to really get into it.

Sen.Bradley: Do you have any questions Senator Ferguson? Hey, you've answered a lot. Such good testimony, I don't have any either.

Tim Miller: Can I add some more? Thank you. Is that saying that the freight will not be delivered is I just can't believe it. I know too many independent operators who would

like myself. I've got two trucks, if there is freight going have to be delivered. Even right today, now it's illegal for me to haul for a private carrier, the only time I can haul is for my own self. Even today, you know, someone wants, I'll take the chance. Someone wants to pay me money to go to Fairbanks or go to from Juneau go to Fairbanks and pick up freight, I'll go pick up his freight and I'll work out my rates and tariffs. I'll work out over the phone. I won't have to have a rate and tariff man to sit down and do it. You know, and I'll figure out what it's going to cost me and I'll put a markup on it, like any other business. I think that's the way the system should be. It's just that I can't believe in a free enterprise society that they if you are competent to do the job they won't let you. I'm quite upset about it and hopefully that things will change in ....

Sen. Bradley: You think it will be better if we deregulate rather than regulate.

Tim Miller: I think that the consumer, the taxpayer, everybody will benefit, including us, the people that actually do the work. That's the guys that drive the trucks. Everybody will benefit. The consumers will get a much better service, they'll get at a much cheaper rate and they'll get I mean faster services. That's like getting back to the pipeline, I could deliver that freight but it probably took a week on an average to deliver a load

of freight, I could ....deliver in two and a half days that's from Fairbanks to Prudhoe Bay, the Fairbanks pipeline camp. You know, you just can't believe the amount because of the regulation the mass amount of paper work, the system is set up so, there are so many paper shufflers in it that, and I consider them nonproductive. It's part of ....but it's still as a mass of bureacracy there, just protecting it. I think the most important man for a trucking company today is the rate and tariff man, you know, what's .....he can interpret the tariff if he's sitting down. I mean he doesn't probably the next most important man will be an attorney to make sure that they can keep all the competitions out, ...keep it out. You know, if it was deregulated I would be advertising in the morning. Advertising in the morning, I'd be setting up a network. I think also that if it was the ....of market. The market is not there. I'm saying that if it was deregulated we would get out and develop our own market, that individuals truckers would go out and develop their own market. There's markets that probably have never going to be touched or haven't been touched. People you know it's like certain people don't know if they need this service. That's where advert'sing comes in. You've got to explain to them that they actually do need this service. That they would basically that your freight can be delivered as fast by truck as it can by airplane or almost. .....you can do it cheaper you know you just gotta ...but I think that

the market is there and could be developed if it was deregulated. So I'm saying that we would have better services.

Sen. Bradley: Any questions by any other members? Okay, ...to hear the other side. From an individual who has experienced a lot of the trials and tribulations advantages and disadvantages.

Tim Miller: I'm saying that the world would not come to an end if the trucking industry was deregulated.

Sen. Bradley: Some of the members have knocked around what about deregulating for a year or so. No decisions have been made, you know. Would that be a better way of doing it rather than I could assume I suppose from your testimony that you would be willing to deregulate ....to see if things improved or got worse. I may be wrong.

Tim Miller: Sure, I mean at least.

Sen. Bradley: I'm not making decisions. I'm not cause anybody to assume anything but ...we just knocked it around.

Tim Miller: Loose systems that are set up in the outside are almost like deregulation...okay, like you are saying that they have ....truck terminals in Alaska. You know that you got truck terminals, Sea-Land has

truck terminals, Weaver Brothers alway got an outfit ...have truck terminals in that they are...there point. Another in the outside, you can have a they have such a thing as you can trip ....in the State of Alaska you can't ...trip permit. In the State of Alaska you can only lease a truck for a minimum of thirty days. And it doesn't take thirty days to make a trip in the State of Alaska, you know, and in the outside you have to pay a trip permit and they have brokers. If you want to pick up a load and let's say if you are in Oklahoma City and you are heading for Seattle or something like that you have a broker...who hustle freight, they do nothing but hustle. They are out there and they are calling different places and they got phone banks there and they have permits, permits can ....for ...rights in one or two states you don't ....all fifty if you want to go that way. What they will do is they'll charge you roughly $30 a load for hustling their freight. What they've got is they have their own terminal set up. You know it's the brokers that are doing this. You know phone banks and they're moving a lot of freight to.....owner-operators running outside. That's the way they are doing it. Some are running leased to common carriers and others are hauling illegal freight or you know going through ....you have what they call a bingo card on the outside. They call bingo card and what it is you have a different company ...authority to go to different states, hauling in different in

states and if you have the a card has all fifty states on it and you have a stamp on it. If a police officer asks you for the card and you're ...out of state you better have a stamp on that. Well, I did pick up a load once in Oklahoma and I delivered it in Idaho and he give me a bingo card and I have two stamps. One in Oklahoma and one in New Mexico, but the freight was delivered with no problem, but that the brokers you know are hedging on the law a bit.

Sen. Bradley: I don't have any further questions, do you Senator Ferguson? Thank you very much. We appreciate it very immensely. Okay, Mr. Doyle. Wait. Mr. Hurlbert. I'm sorry Ralph. We're trying to get out here in 100 days and it will probably be 110 or 120, let's let these legislators get back to the job.

Rep. Hurlbert: Mr. Chairman, I am Representative Hurlbert, and uhh I represent district 18 out in western Alaska and I'm also an air taxi pilot. Primarily for Western Alaska. I've got about 8,000 hours out there. Uhhh I want to support deregulation for the air taxi. Now I am not getting into the trucking industry, that's their own argument. I do know that there's substantial inequities in the air taxi ....as it stands and I ....being regulated by ATC would be allotment of air taxi certificates under the tariffs that are alloted by the ATC and I just like to go into it briefly.

Now I've been involved personally myself with trying to get an air taxi certificate out in the Bethel area several years ago. Uhhh It was a very big shoot out in that if you when you boil it down to a situation when you've got other people deciding whether you ought to get a certificate or not the cards are more or less stacked. It boils down to a situation of the haves or the have nots. There's established air craft. They can stack the cards in their favor by the mere fact that they are in business. It's all predicated on a need for the server, the financial ability of a newcomer into the business and so forth and so on. Well, I have seen in the particular instance there was need for new air taxis, uhhh at the same time there was a heck of a need. This particular instance before the hearing was come up air taxis in the area would stack a whole bunch of leased airplanes and show a big surplus of pilots. All this it was stacked more or less to where they could show that it was being crowded. Consequently, they had an argument in their case and it was put out. Of course, after the claim was denied it went back to the same old ballgame on an economic basis. They finally dropped the airplanes and delivered them back. I have seen the instances where (some of them are in the house here now) ....lived in the Bethel area, flew out there for twenty years, 20,000 hours or more, denied good .....accident free ....was denied certificates on that very basis alone. When we get into the area of tariffs you are ....it builds a monopolistic atmosphere whenever you are

certain individuals to perform a service.and they've got complete control over them. Not complete control because they are regulated, but I mean they have the entity within itself, nobody can compete with them from an outside source Right? So they apply for tariffs for to go from point A to point B and back. They have hourly rates, hours tariff on the aircraft, I've been involved in this as a pilot and seen how exactly they fly from point A to point B on a point to point tariff and at the same time some ....at an hourly rate to go to point A to point B to pick up another person to go to point C or point B, all this time gathering revenue under their supposedly hourly and then point to point on these other rates and it accumulates way and above what they are supposed to be gathering to start with. Simply through ....on this where it's noncompetitive really. It is competitive in the fact that there's other air taxis, but not really on a scale that we know competion. The safety, we are already regulated in the area of FAA. ....when it comes into safety ATC does not go into the area of safety as we know it. Now there has been an instance where they ....knocked out an air taxi strip...under the auspices of safety where there was accidents over ....You probably know what I am talking about, but primarily most of your all of your safety factors come under the FAA inspection so really as far as the regulatory powers it's all on an economic rather than safety when you come into the ATC. Safety is already regulated by the FAA. Okay,

....so consequently if you're regulated by two source ...economic and one on safety, the enterprising aspect should be regulated by itself on its on merit.... the safety end is already there ...the regulations for you... I have one other item, I didn't write it down. Anyway that's my argument, I would like also reiterate that there's people that in back here that are coming forward that ....namely Haroldson and they've been through this whole ball of wax out in western Alaska and they know what they are talking about. I like to ...very clear to you.

Sen. Bradley: Thank you very much Rep. Hurlbert. Let's take about a two minute break. We'll continue right on. Anybody needs the washroom its the first room on your left past the elevator. Mr. Doyle.

Ralph Doyle: I'm Ralph Doyle. I own and operate ....I have statewide (See written testimony.)

Sen. Bradley: Next one is Mr. Rebische. Sli Rebische.

Sli Rebische: I'm for deregulation for the simple reason that I think that we can get better service, faster service, cheaper service. But the way it is now I order something that a big outfit has to bring out me. (I'm in the block business. They wait until they get damned good and ready to get it to me. I've got three men

tied up waiting for a load of blocks. For instance, if I can't get them until Thursday, this is Monday I'm losing a whole weeks time. If it was deregulated I could go to any dude I wanted to and get them to bring out the day I wanted them. And to me it's hurting me doing it. And these guys are afraid these fly-by-nighters from the outside. I welcome them in the block business. Because if I'm there ten years in the block business and some dude comes alongside and out-bids me it just proves that I've been taking the public. I've been fleecing them. So I don't I'm fleecing the guy, they could bring ten block layers in my area, I say all the more power to them. I'll work for them, against them, anyway I want to. But I not afraid to lose my business. I'm not taking people now. And I don't see how these fly-by-nighters can even get a foot hold, unless the company has got tied up today or is giving them the shaft to start with. So I'm strictly for deregulation and give it a chance, if it don't work you can always come back to it. So anybody that is worry about outside help as far as I'm concerned or somebody taking their business, they are screwing the public today or they wouldn't be worrying about it. Thank you.

Sen. Bradley: May the best man win.

ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • Phone (907) 276-1149

STATEMENT ON REGULATION OF THE
INTRASTATE TRUCKING INDUSTRY
IN ALASKA

I AM BEN BENEDIKTSSON, MANAGING DIRECTOR OF THE ALASKA TRUCKING ASSOCIATION. MY ASSOCIATION IS COMPRISED OF SOME 450 MEMBER COMPANIES. THE TRUCKING INDUSTRY IN THIS STATE WHICH WE REPRESENT, EMPLOYEES SOME 17,000 EMPLOYEES AND ACCOUNTS FOR BETWEEN 15 AND 20 PERCENT OF THE STATE'S GROSS NATIONAL PRODUCT.

WE HAVE AN ASSOCIATION MOTTO THAT SAYS, "IF YOU GOT IT, IT CAME BY TRUCK." WITH THE STATE'S VERY LIMITED TRANSPORTATION NET WORK, I DON'T THINK THAT THERE IS ANY QUESTION THAT OUR MOTTO IS TRUE.

THE SYSTEM OF REGULATION WHICH HAS LED TO PRESENT INTER AND INTRA STATE ECONOMIC CONTROL OF THE TRUCKING INDUSTRY, IS BY NO MEANS A NEW CONCEPT. FOR EXAMPLE, THE IDEA OF THE COMMON CARRIER COMES DOWN TO US THROUGH BRITISH COMMON LAW FROM THE TIME OF CHAUCER. THE REQUIREMENT TO SERVE ALL WITHOUT DISTINCTION WHICH WAS IMPOSED ON THE MILLER AND THE INNKEEPER IN CHAUCER'S DAY VARIES LITTLE FROM THAT REQUIRED OF A COMMON CARRIER IN TODAY'S SOCIETY.

ON A NATIONAL LEVEL, THE ECONOMIC REGULATION OF THE TRUCKING INDUSTRY DERIVES FROM THE INTERSTATE COMMERCE ACT OF 1887, AMENDED MANY TIMES SINCE THEN. ONE OF THE MAJOR AMENDMENTS

WAS THE MOTOR CARRIER ACT OF 1935, WHICH PUT THE MOTOR CARRIER INDUSTRY UNDER THE INTERSTATE COMMERCE COMMISSION FOR ECONOMIC AND OPERATIONAL CONTROL. AS IT CURRENTLY STANDS, EVERY STATE IN THE UNION, AND THE FEDERAL GOVERNMENT, HAS A REGULATORY AGENCY WHICH PROVIDES ECONOMIC REGULATION FOR THE TRUCKING INDUSTRY. IN OUR OWN STATE, OF COURSE, THE ALASKA TRANSPORTATION COMMISSION FULFILLS THAT FUNCTION.

REGULATION INVOLVES A THREE WAY PARTNERSHIP AMONG THE STATE, THE TRUCKING INDUSTRY AND THE GENERAL PUBLIC. EACH HAS A SUBSTANTIAL PART TO PLAY IN THE REGULATORY PROCESS. THE COMMON CARRIER AGREES TO SERVE ALL WITHOUT DISTINCTION WITHIN THE GEOGRAPHICAL AREA WHICH HE SERVES AND WITHIN THE LIMITS OF ANY SPECIALIZED SERVICE WHICH HE MIGHT OR MIGHT NOT HAVE TO PROVIDE. THE STATE, THROUGH THE MEDIUM OF THE REGULATORY AGENCY, WILL THEN LIMIT THE NUMBER OF TRUCKS ON THE ROAD TO MATCH THE AMOUNT OF TRAFFIC AVAILABLE. THE REGULATORY AGENCY ALSO ASSUMES ANTI-TRUST PROTECTION FOR THE GENERAL PUBLIC IN REGARD TO THE COLLECTIVE AND INDIVIDUAL RATES WHICH ARE MADE BY THE TRUCKING INDUSTRY. THE GENERAL PUBLIC, AS THE THIRD PARTNER, HAS THE BENEFITS OF A STABLE, SOUND TRANSPORTATION SYSTEM. IN THE AREA OF RATE MAKING, THE GENERAL PUBLIC ALSO HAS THE BENEFIT OF A READILY AVAILABLE RATE STRUCTURE KNOWN IN ADVANCE. THE ALTERNATIVE IN THIS REGARD WOULD BE TO FORCE THE SHIPPING PUBLIC TO EXAMINE THE RATES AVAILABLE OF LITERALLY HUNDREDS OF COMPANIES.

INTERESTING ENOUGH, IT WAS THE LACK OF A STABLE TRUCKING OPERATION AND A STABLE RATE STRUCTURE WHICH FORCED THE PASSAGE OF THE MOTOR CARRIER ACT, AND LATER, THE REED/ BULWINKLE ACT OF 1947, PERMITTING COLLECTIVE RATE MAKING. IT WAS THE SHIPPERS WHO DEMANDED CONTROL.

THERE IS ONE OTHER BENEFIT TO THE GENERAL PUBLIC FROM THE REGULATORY PROCESS THAT IS NOT TOO OFTEN DISCUSSED. TRANSPORTATION PLANNING MUST DERIVE ITS NEEDS FOR EXPANSION AND MAINTENANCE ON A TRAFFIC DATA BASE. IN THIS STATE, THAT DATA BASE IS DEVELOPED BY THE ALASKA TRANSPORTATION COMMISSION. WITHOUT IT, THERE IS NO OTHER PRESENTLY EXISTING METHOD FOR THE STATE DEPARTMENT OF TRANSPORTATION TO OBTAIN THE DATA ON WHICH THEY BUILD THEIR LONG RANGE PLANNING.

THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE, OPERATING UNDER THE PROVISIONS OF ALASKA STATUTES 24 and 44, (THE SUNSET LEGISLATION), CONDUCTED REVIEW OF THE ALASKA TRANSPORTATION COMMISSION. THE STATES INTENT OF THE REVIEW WAS TO DETERMINE IF THE COMMISSION IS OPERATING IN AN EFFECTIVE AND EFFICIENT MANNER. THAT STUDY HAS BEEN COMPLETED AND THE REPORT ISSUED TO THE LEGISLATURE. THE ALASKA TRUCKING ASSOCIATION CONCURS WITH [redacted] SUPPORTS THE BASIC CONCLUSIONS PUBLISHED IN THE PERFORMANCE REVIEW BY THE BUDGET AND AUDIT COMMITTEE. WE STRONGLY AGREE THAT THE ALASKA TRANSPORTATION COMMISSION SHOULD CONTINUE TO REGULATE THE TRANSPORTATION INDUSTRY. WE ALSO AGREE THAT THE ECONOMIC CONSEQUENCES OF

REGULATION OR DEREGULATION NEED TO BE DETERMINED IN ORDER TO FULLY EVALUATE THE PUBLIC NEED FOR THIS AGENCY. IN THE INTERIM, HOWEVER, THERE ARE CERTAIN RECOMMENDATIONS MADE BY THE BUDGET AND AUDIT COMMITTEE WHICH SHOULD BE ADOPTED. THE ENFORCEMENT RESPONSIBILITIES OF THE ALASKA TRANSPORTATION COMMISSION HAVE NOT BEEN PURSUED AS STRONGLY AS THEY SHOULD BE. IN THIS REGARD, THE ATC IS HAMPERED BY A VERY CUMBERSOME ENFORCEMENT PROCESS AND A LACK OF ABILITY TO ASSESS FINES WHICH ARE MEANINGFUL. ~~[illegible]~~

IT IS OUR CONTENTION THAT IF THE TRUCKING INDUSTRY, WERE IT TO BE DEREGULATED, AS HAS BEEN ADVOCATED BY SOME, WOULD RESULT IN THE GENERAL POPULACE FINDING ITSELF FACING THE SAME CHAOTIC CONDITIONS WHICH BROUGHT ABOUT REGULATION IN THE FIRST PLACE. SMALLER COMMUNITIES SIMPLY WOULD NOT BE SERVED. THERE WOULD BE NO WAY THAT THE SHIPPING PUBLIC COULD EITHER DEPEND ON SERVICE OR ON RATES, BUT INSTEAD, WOULD BE FORCED TO NEGOTIATE ONE ON ONE WITH A VERY LARGE NUMBER OF CARRIERS. OUTSIDERS COULD COME INTO THE STATE FREELY DURING OUR HIGH TRAFFIC MONTHS, TAKING OFF THE CREAM OF THE BUSINESS, AND THEN DISAPPEARING, LEAVING THE PUBLIC WITH A VERY DIMINISHED TRUCKING CAPACITY. THIS, OBVIOUSLY, ALSO WOULD NOT BE AT ALL

GOOD FOR THE TRUCKING INDUSTRY OR ITS EMPLOYEES.

THE AIRLINE INDUSTRY IS BEING POINTED OUT BY PROPONENTS OF DEREGULATION AS A SUCCESSFUL EXPERIMENT IN EXTENSIVE DEREGULATION. WE ARE NOT PREPARED TO ARGUE THE MERITS OF AIRLINE DEREGULATION EXCEPT TO COMMENT THAT THE DEREGULATION PROCESS AND ITS IMPACTS HAVE NOT YET BEEN FULLY EVALUATED. FURTHER, THERE IS NO WAY TO COMPARE PASSENGER TRAVEL AND COMMODITY MOVEMENT. THEY SIMPLY DO NOT REFLECT OR REACT TO THE SAME PROCESSES. REDUCING FARES MAY SIGNIFICANTLY INCREASE AIR TRAVEL. SIGNIFICANT REDUCTIONS IN TRANSPORTATION COSTS FOR COMMODITIES ON THE OTHER HAND, WILL NOT INCREASE THE AMOUNT OF COMMODITIES USED. WE CONSIDER IT VERY DOUBTFUL THAT DEREGULATION WOULD LEAD TO REDUCED TRANSPORTATION COSTS FOR COMMODITIES. THIS CERTAINLY HAS NOT BEEN THE CASE WITH AIR FREIGHT DEREGULATION.

THE REGULATORY SYSTEM IS NOT PERFECT. THERE ARE AREAS WHERE IMPROVEMENT COULD BE ACCOMPLISHED. WE FEEL THAT DOING AWAY WITH THE ENTIRE PROCESS, HOWEVER, WOULD BENEFIT NO ONE.

P. W. BENEDIKTSSON,
MANAGING DIRECTOR

Value of insurance $30,000

THINGS TO CONSIDER ON NON-REGULATED TOWING:

1. Non-regulated tow trucks have no insurance requirements - e.g. adequate limits of BI & PD; Cargo insurance - most have insurance that covers a service car, but not a tow truck.

2. Non-regulated towers are not obligated to take tow calls - e.g. inclement weather; small hours of the morning; old abandoned cars blocking or impeding traffic; bad road conditions, etc.

3. Very few non-regulated tow trucks are properly equipped - e.g. flares; scotch blocks; lighting; tie straps; tools to unlock steering gears and transmissions, or knowledge of how to use these tools.

4. Very few (if any), receive information on procedures for towing new model cars, and bulletins from manufacturers on those vehicles that cannot be towed without causing major damage: (Corvettes, Saab, Mercedes, Mercury Capri, pickup campers, motor homes, Fiat, late model VW, and many others).

5. I do not know of any non-regulated tower that has equipment to handle vehicles that cannot be towed by a regular tow truck.

6. Very few non-regulated towers have a driver that is fully trained on all types of towing and recovery. Safety

7. Most non-regulated towers have just one small truck - no large wrecker and no slide-back.

8. Very few non-regulated towers have a secured storage facility for damaged or disabled vehicles. w/ dogs

9. Non-regulated towers charge what they feel like, depending on conditions. We are much busier when cold, snowing and windy.

Jim Christopher
Alaska Towing + Wrecking

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Jim Christopher
Alaska Towing & Wrecking

Senator Bradley, Chairman
Senate Commerce Committee
Alaska State Legislature

Gentlemen:

I have been in the trucking business in Alaska since 1955, which was several years prior to any regulation by the Alaska Transportation Commission.

When the A.T.C. came into being I was forced to comply with its regulations or go out of business. As I had grandfather rights it was no problem to get a contract carriers permit. I was upset about the formation of the ATC however as it seemed to be a government tool to restrain free competition. Over the years I have paid out thousands of dollars to help support the A.T.C. Dollars which ultimately come from the consumers in the form of higher prices.

I have carefully read the 40 some page report, "Performance Review of the A.T.C." dated October 24, 1978, which was compiled by the Commissioner of the Dept. of Commerce & Economic Development. It clearly reveals that the A.T.C. has operated since its conception in utter confusion, with regulations already being enforced by other agencies. The A.T.C. is of doubtful benefit to the firms it regulates and does the public a great disservice by creating monopolistic kingdoms where the public becomes the looser.

The free enterprise system is what made our country the most productive on earth. I think it is about time we dare to trust it again. It will not only eliminate meaningless, expensive, chaotic and duplicated control, but it will benefit the general public, which is what it is all about.

If you have any doubt about the past efficiency of the A.T.C. just study the Performance Report mentioned previously.

As a permit-holder, I concur with it's findings.

The A.T.C. has been around for too many years to the benefit of a few with a vested interest. It should NOT be allowed to survive another year to try to get its act together. The A.T.C. has been a case of the blind leading the blind since its creation.

Let's give the Alaskan people credit for being intelligent enough to know what is in their best interest. They don't need the A.T.C. to "protect" them.

Sincerely,

Til Wallace

Til Wallace
P.O. Box 632
Chugiak, Alaska 99567
(907) 688-2161

Comment by State of Alaska Att General on - - - 1978

SB 166 essentially allows the Alaska Transportation Commission (ATC) to regulate price fixing and other varieties of agreements between common carriers. Such agreements are generally prohibited by § 1 of the Sherman Act, 15 USCA § 1, and AS 45.52.010, but certain exemptions from the ambit of the antitrust laws have been accorded to regulated industries. The purpose of SB 166, as stated by its proponents, is to bring the Alaska Motor Freight Carrier Act into conformity with certain provisions of its federal counterpart - particularly, § 5a, 49 USCA 5b, of the Interstate Commerce Act - by allowing parallel antitrust exemptions. The principal beneficiaries of SB 166 would be the rate bureaus, which collectively organize and publish joint and individual rates for its members, in that they would be immunized from the force of the antitrust laws. Rate bureaus are currently operating in Alaska and elsewhere, but recent federal action demonstrates conclusively that they are subject to antitrust attack. (See United States v. Southern Motor Carriers Rate Conference, et al., 61,555 CCH 72, 174).

The problem confronted here is essentially one of attempting to balance two aspects of the public interest; on the one hand, there is the necessity of stable, consistent, and rational public transportation, and unrestricted price-cutting and destructive competition are inimical to this goal; on the other hand, is the public desire for the lowest rates possible and this mitigates in favor of competition. The remedy sought by this bill should thus be directed towards defining the antitrust exemption as narrowly as possible so as not to eliminate healthy competition as well as destructive competition.

Congressional action in this area has taken the form of the Reed-Bullwinkle Act of 1948, and that act attempts to reconcile the demands of the national transportation system with the policies of the antitrust laws. The

166. It provides for, among other things, collusive rate-making when such action is in the furtherance of the national transportation policy and it thus provides the basis for rate bureaus, since without antitrust immunity bureaus cannot operate.

The Interstate Commerce Commission (ICC) has authority to approve the establishment of rate bureaus and grant them antitrust immunity under the terms of Reed-Bullwinkle. The ICC also has authority to review previously approved agreements to determine whether the agreements have continued to be in the national interest and, should the ICC find that they have not, the Commission is empowered to terminate or modify their prior approval. The ATC would enjoy similar powers under § 1(i) of SB 166. In furtherance of this power to review previously approved agreements, the ICC instituted an investigation in 1973 to determine whether the scope of the antitrust immunity granted to rate bureaus should be more narrowly defined. In 1976, following extensive field investigations and hearings, the Commission issued Order Ex Parte 297, which directed that the agreements of rate bureaus would no longer be accorded antitrust immunity; (1) if such bureaus protest the independent action proposals of any of their member carriers; (2) if such carrier members are affiliated with shippers, unless the agreements of the bureau prohibit such carriers from serving on the bureau's board of directors, general rate committees, or any other committees which have an effect directly or indirectly upon the rate-making function of the bureau, without prior Commission approval; and, finally, (3) if the bureaus involved are operating as profit-making entities. These rule changes were challenged by the bureaus, but were upheld in Motor Carriers Traffic Association, Inc. v. United States, decided July 21, 1977 by the United States Court of Appeals, Fourth Circuit.

It is these changes, based on nearly thirty years of ICC experience in regulating rate bureaus and upheld by

the federal courts, that I suggest be added to SB 166 in order to more nearly balance the two possibly conflicting aspects of the public interest in stabalizing the transportation industry and preserving competition.

The proposed amendments are as follows:

(e)(1) No conference, bureau, committee, or other organization established under (e) of this section may file a protest or appear as a party before the commission in opposition to any independant action taken by a member carrier.

(e)(2) No conference, bureau, committee, or any other organization established under (e) of this section shall in any way discourage member carriers from publishing individual tariffs or proposing independent action.

The right of indivisual members to file tariffs independently is guaranteed by SB 166, AS 42.10.350(e), however, to permit rate bureaus to protest the proposals of a member so chills the individual proposal that it stands little chance of adoption, while providing the opportunity for misuse of the bureaus as policing agencies against individual action. It is the position of the ICC that unless independant action is protected there can be no antitrust immunity.

(e)(3) A conference, bureau, committee, or other organization established under (e) of this section may not allow any carrier which is in any way affiliated with a shipper to serve on the board of directors, general rate committee or any other committee which has an effect, either directly or indirectly, upon the rate-making function of

one user of the transportation system pays less, another user must pay more. This proposal simply keeps carriers which have a compromised interest in rates, by dint of their control by a shipper, from taking a leadership role in rate-making. It is, in other words, designed to remedy a possible conflict of interest.

> (e)(4) A conference, bureau, committee, or other organization established under (e) of this section may not be a profit-making organization.
>
> (e)(5) No conference, bureau, committee, or any other organization established under (e) of this section shall invest in any commercial business, whether related or unrelated to their primary function of processing and causing to be published rates and related matters for member carrier, nor may any such organization acquire other rate bureaus without prior commission approval.

Rate bureaus are financed by assessing fees from their member carriers and these costs are passed along to the public in the form of increased rates. Obviously, profit-making is incompatible with service organizations which operate under an antitrust immunity.

In addition, the language in section (c) should be modified so that it parallels that which is used by the ICC:

> (c) Agreements between or among carriers of different classes may only be concerned with matters relating to joint rates or through routes and may only be approved if the policy declared in sec. 10 of this chapter is advanced and approval is consistent with the

public interest. For purposes of this section, carriers by motor vehicle are carriers of one class; carriers by water are carriers of one class; carriers by railroad are carriers of one class; carriers by air are carriers of one class; and freight forwarders are carriers of one class.

Finally, in order that the ATC might monitor the operation of the rate bureaus, I would suggest the addition of a section which parallels 49 USCA § 5b(3) which provides:

> Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission under the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the commission such reports, as may be prescribed by the commission.

I would add to this provision the requirement that rate bureaus be required to keep formal minutes of all rate committee proceedings and make such minutes available for inspection by the commission. This addenda is consistent with Ex Parte 297.

AK. PUB.
UTILITIES
COMM.

BURTON CARVER & CO., INC.

P. O. Box 40
SOLDOTNA, ALASKA 99669
(907) 262-9111

TRANSPORTATION
CHARTER SERVICE

REFUSE SERVICE
EQUIPMENT RENTAL

MASTER FILE COPY
HOUSE COMMERCE COMMITTEE

January 23, 1980

House Commerce Committee
Hugh Malone
Pouch V
Juneau, Alaska 99811

Re: APUC/Sunset Review

Dear Mr. Malone:

My name is Sky Carver. I am the manager of two Class II ($100,000 to $250,000) refuse utilities owned by Burton Carver & Co., Inc.; a family held corporation which is involved mainly with transportation.

Our entrance to the refuse business typifies the problems faced by small utilities who deal with the APUC. Both refuse utilities we purchased were owned by individuals who never had received an increase in rates and were on the brink of bankruptcy.

One of these companies, Homer Refuse, located in Homer and who's permit extends to Soldotna, had tried twice unsuccessfully to get an increase. The other, Alpine Refuse, located in Hope and who's permit covers the northern Kenai Peninsula and north of Turnagain Arm to Anchorage, to my knowledge had never applied for an increase. These companies had gone four and five years respectively without increases. Compare this to Anchorage Refuse which files a rate case every six months.

The reason these companies had never received rate increases was the lack of cash needed to hire a utility specialist. After purchasing Homer Refuse in 1977, we made two attempts in four months to get an increase. Our CPA firm prepared the case, but the first case was rejected because of insufficient data. For the second case we asked the staff of APUC for forms that would help us present the necessary information. We were given incorrect and outdated forms.

In the spring of 1978, Alpine Refuse temporarily went out of business. It's one truck broke down and the overflowing garbage dumpsters this caused brought about the Quality of Service Investigation that Commissioner Guess spoke of at the December 17 hearing.

Alascom, Inc. | 949 East 36th Avenue | Pouch 6607 | Anchorage, Alaska 99502 | Tel (907) 264-7000

APUC

The House Commerce Committee
Box 1370
Fairbanks, Alaska 99707

Attention: Mr. Allen Blume

Dear Mr. Blume: December 21, 1979

In accordance with the expressed wishes of the Co-Chairpersons at the Performance Review of the Alaska Public Utilities Commission Hearing held on December 17, 1979, there is attached a copy of the outline which I utilized in presenting my testimony to the Commerce Committee. I would be most grateful if you would see that all members of both the Senate and the House Committees were provided with a copy of this material.

In addition to the points set out in the outline of my presentation, there were certain additional points made during subsequent questioning which I believe might provide clarification on certain portions of my testimony. They are:

1. In response to an inquiry of Senator Sturgulewski, I indicated it was my belief that the distinction made between economic regulation and regulation for the purpose of certification might be an improper distinction. It was suggested that perhaps the regulation associated with certification should be ongoing in the area of quality of service provided by the certificated utility. This would result in economic regulation looking only at the level of rates and rate design. It would appear that such clarification could be provided through concise definitions in any legislation which might result from the performance review.

2. In response to Representative Brown's questions concerning the use of hearing officers, it was suggested that hearing officers could be reasonably expected to utilize their expertise in the regulation of divergent utilities. The basic underlying principles of utility regulation should be readily applicable by a hearing officer for regulation not only of telecommunications but also electric, pipeline, transportation utilities, etc. I was in agreement with the Chairman of the committee that in certain highly technical areas a specific hearing officer might be required to preside because of his expertise in the area of telecommunication separations, peak load pricing for electric utilities, etc. Additionally, it is possible that staff support for one area of regulation could provide needed assistance in another area of regulation.

I wish to express my gratitude to the Chairpersons and each of the members of the committee for allowing me the opportunity to testify before them and for their sincere expression of interest and concern in this area.

Very truly yours,

ALASCOM, INC.

John E. McGill, Director
Regulatory Affairs

JEM:bl
Attachment: Testimony Outline

12-19-79

TESTIMONY OF ALASCOM, INC. REGARDING THE PERFORMANCE REVIEW OF THE PUBLIC UTILITIES COMMISSION. DECEMBER 17, 1979

I. Alascom is a regulated utility providing long lines communications within the state and between Alaska and other points in the world.

   A. Regulation of utilities is designed to protect the public interest; an elusive and sometimes difficult goal which by its very nature must consider conflicting claims.

   B. Alascom has willingly submitted to regulation and recognizes the need for such submission.

   C. Alascom supports continued regulation by the APUC in those activities subject to its jurisdiction.

II. Alascom shares the concerns of the APUC regarding the merger of the three regulatory bodies with one Commission.

   A. Unclear that work load can be accommodated with one Commission.

   B. Other states, having one Commission, are functioning in a mature circumstance while Alaska continues to be in its adolescence from a utility development point of view.

   C. We do not oppose the consolidation of three Commissions into one, provided that it results in more efficient and effective regulation.

III. Alascom does not oppose the recommendations of the report to de-regulate CATV; refuse collection; telephone and electric cooperatives or small utilities with less than $100 K gross

revenes. There are, however, a few considerations we would offer:

A. Some regulation should be retained concerning pole attachment agreements between CATV operators and other utilities.

B. As a partner with telephone cooperatives and small telephone companies in the provision of communications, it is important for Alascom to be able to approach the Commission with matters disputed between Alascom and the operating telephone company. Such matters could include:

1. Level and quality of service.
2. Settlements between the companies.
3. Charges for through private line services.

The removal of such companies from economic regulation appears to indicate that they would be relieved of regulation as to rates, rate design and quality of service.

C. Although the de-regulated telecommunications company may be small or controlled by its own members, it can have a substantial impact on state-wide service if the quality and level of service is substandard.

IV. Alascom supports the need to clarify the statute and administrative code presently used by the APUC.

A. Although we recognize the validity of the particular recommendation in the legislative audit, we believe there are other areas requiring review.

B. We recommend that the Commission, through its staff, conduct a thorough review of AS 42.05 and 3AAC48 to further the benefits of this recommendation. We would

hope that members of the regulated industries would have an opportunity to participate in this review and recommend up front various amendments. An Industry Task Force with the APUC staff would be effective.

V. Alascom supports the recommendation that professional salaries be reviewed to determine whether they are adequate to attract and retain professional staff.

A. We would urge a comparable review of Commissioner's salary levels.

1. Alascom as a responsible public utility, constantly reviews its salary grades for various professional and/or exempt employees in order to assure itself that it offers compensation competitive in the labor market. These reviews lead us to believe that the Commissioner's salaries, in the present labor market may not be competitive enough both to attract and retain qualified personnel.

VI. Alascom does not believe it is proper for it to comment on the internal administration of the APUC. However, we do believe it is necessary to clearly delineate the statutory role of the Commission staff. On page 24 of the Audit Report there is mention of ex parte communications between the staff and the Commission when the staff assumes the role of a party to Commission proceedings.

A. When the staff is indeed a party to a proceeding (e.g. a rate case) the Commission does not have available to it

the necessary support and assistance the Commission would normally expect from its staff.

b. Solution

Alascom would support limiting the role of the staff to one of support for the Commission without designation as a party to proceedings. The staff would prepare material for the Commission to be used in conducting proceedings. The Commission would be expected, through this collective expertise to represent the public interest. Alascom would favor this solution.

VII. Alascom offers no opinion as to implementation of a time management system or collocation codes.

VIII. General Observations

A. The Performance Review does not comment on the level of staffing at the APUC. It is Alascom's opinion that the Commission is understaffed and unable to deal with the many questions brought before it in a timely manner. Nor does the Commission staff possess expertise in all areas adequate to evalute major policy questions in all of their facets. Too often telecommunications policy is formulated by default rather than by design. The public interest is not best served by this circumstance.

B. Alascom believes that it is necessary to limit regulatory lag statutorily. Such a limitation would be beneficial not only to the utility but also the ratepayer. Additionally, Alascom would suggest that consideration be given to utilization of hearing officers under the guidance of the Administrative Procedures Act.

File AFVC re: co-op doc

MASTER FILE COPY
HOUSE COMMERCE COMMITTEE

February 4, 1980

Aaron

Representative Fred Brown
Assembly Building Room 206-207
Pouch V
Juneau, Alaska 99801

Dear Representative Brown:

The rate hike requested by GVEA disgusts me--10 times Seattle rates, 5 times Anchorage rates, and 40% above permanent rates. I personally have seen my bill go from $25.00 (summer rate) to $73.00 (highest winter rate). My husband and I have conserved and have knocked the GVEA bill back down to $54.00 and will continue to do whatever we can. This reduction in our bill is no thanks to GVEA; the reduction is something we have done.

I requested the APUC to not allow any rate hike through a note taken to them when they were in Fairbanks giving more detail than I am giving you. So, APUC decides that GVEA needs a higher rate hike. I believe that GVEA and APUC should be replaced by organizations that will truly bring us the cheapest rates possible as is GVEA's slogan and purpose.

If GVEA's rate hike is due to government intervention and regulation, I suggest that GVEA prove the regulations to be unnecessary and get government off GVEA's back. This matter between GVEA and EPA should be settled before GVEA is granted any rate hike.

Why are businesses and government so quick to just pass any monetary increases on to the public? It seems to me that either GVEA has a problem or the government has a problem. Why pass this on to me?

I have not even had a cost of living allowance increase since 1978!

Thanks for your time and patience.

Sincerely,

Karen Flesher

Karen Flesher (Mrs.)
101 Maple Drive
Fairbanks, Alaska 99701

Copied 8/16/80

9-4514

RURALITE ARTICLE
May 1977 Issue

Dear Members:

The lack of a needed right-of-way easement could hold up your service for months--it's happened more than once already and things are not getting better.

When MEA was just starting back in 1942, the cooperative's biggest worry was getting the poles up with wire and transformers hung on them. But, now, the right-of-way acquisition job threatens to be the largest and most costly problem, taking longer than either engineering or construction. One five-mile line project MEA recently did required three years of work to get the easements. We recall numerous service extensions run last summer that were delayed anywhere from a few days to many months--some never got built at all because of right-of-way problems!

Why is this? There's many reasons, maybe the owner lives in Mexico, Florida, or Saudi Arabia, or possibly right in Anchorage at an unknown address. Maybe he won't answer his mail or stalls if we call on the long distance telephone or just plain turns us down when at long last we locate the land owner. Maybe we can find an alternate route and start the process all over again. Maybe we can't! While we go through all the easement work, an impatient and often desperate customer fumes over the delay while he waits, but we dare not go ahead without the easement. If we do, we're certain to be sued as a result of the most minor encroachment.

More and more owners of land whom we contact are tightening the restrictions they place on us as conditions for granting the easement. Access is being limited, the amount and method of clearing are conditional, and right-of-way widths are being reduced so that construction and maintenance gets more difficult and costly. Rights-of-way are often so narrow and tree cutting is so restricted that line security is in jeopardy every time it storms!

More people get in the act everyday. We now find that we must deal with private landowners, many non-residents. There are all kinds of organizations, including corporations or developers, State and National parks, National monuments, State and National forests, public lands held by the Borough, State and Federal government, mental health lands, school lands, Indian lands, withdrawn lands, and Native land selections. The list goes on and on, including environmental groups.

We have to deal with cities, boroughs and divisions of the State, such as Department of Highways, Department of Fish and Game, sometimes the State clearing house, Division of Aviation, Division of Lands, Division of Parks and the Department of Environmental Protection. Federal agencies include the Bureau of Land Management, National Park Service, National Forest Service, Corps of Engineers,

Alaska Railroad, Federal Aviation Agency, and more!

Right now we are applying to the State Division of Lands for a right-of-way permit for a transmission line that's desperately needed to furnish the electric needs of residents in a major portion of MEA's system. Three months have rolled by with no real sign of progress. The outlook, if it's granted at all, is continued delay that will see construction delayed for at least a year--a delay almost certain to see MEA members exposed to sub-standard service conditions and MEA construction crews working on a costly crash program to prevent serious consequences.

This immensely complicated right-of-way problem has become frightfully costly! The burden of this skyrocketing cost is right on the pocketbook of every one of us every time we pay a light bill--that's where the money comes from in the end! No relief will come until private individuals and all public officials recognize this fact and adopt a realistic approach to the need for adequate rights-of-way free of the cost burden now placed on your Rural Electric Coop.

- - - - -

NOTICE--MEA is currently advertising for an electrical engineer to fill the Manager of Engineering Services position. Applicants must have a B.S. degree in Electrical

Engineering, a minimum of five years of electrical utility design, construction supervision, and operation experience. Must have demonstrated ability to plan, organize, and manage at the departmental level. Interested and qualified persons should contact or send resume to me at the above address.

Willard H. Johnson, P.E.
General Manager
Matanuska Electric Association, Inc.

A·PUC

21 April 1977
P.O. Box 456
Eagle River, AK 99577

Senator JOHN RADER
Senator ED WILLIS
Senator JOE ORSINI
Senator BRAD BRADLEY
Representative TIM KELLEY
Representative SAM COTTON
Representative RANDY PHILLIPS
Representative BOB BRADLEY

Hi,

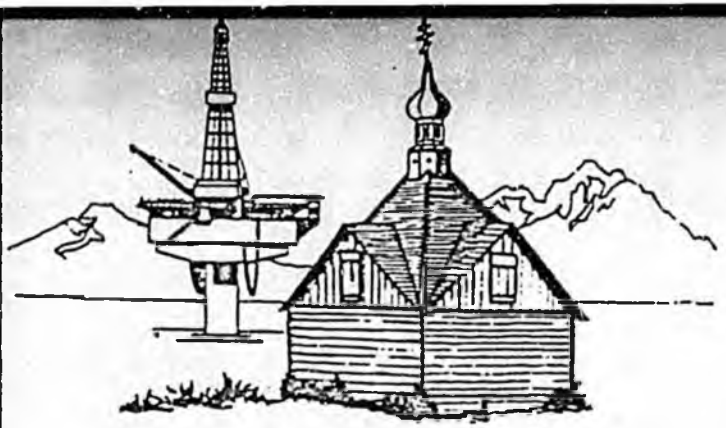
Enclosed is a copy of Matanuska Electric Association's Managers letter for May publication in the Ruralite magazine. I am sending this to you to call attention to a very real obstacle hindering Electric Utilities in Alaska at present. Hopefully, a little Legislator involvement with the State Agencys may do much to alleviate the excessive time delays spoken of on page three of the letter.

Also another subject: Member owned utility Associations (Cooperatives) are under a certain amount of fiscal control by the Rural Electrification Administration in Washington, D.C. User/Members also have the opportunity every year or two to elect new Directors should they believe new leadership favoring another policy or direction is advisable. Thus, members have a stronger voice in controling their Co-ops than have users of Municipal owned utilities.
During the next ten or so years the cost of electricty is predicted by experts to increase more than six times over present costs due both to inflation and to the Federally required changes in generation fuel from gas and oil to coal. This will require numerous rate increases which, if under P.U.C. requirements, will cost Matanuska Electric Association alone well in excess of $100,00.00 just in preparing rate studies for presentation to the P.U.C. This, in my opinion, is totally a waste of the consumer's money especially since utility Co-ops are of a non-profit nature anyway.

I would propose that the Legislature remove Co-ops from rate regulation by the Alaska Public Utility Commission. They should, however, retain the power to determine and control territorial boundaries of all Utility Co.

Sincerely

Robert C Johnson



CITY OF KENAI

"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

March 10, 1980

FOR PRESENTATION AT TELECOM CONFERENCE:

TO: State Senate Committee

FROM: Vincent O'Reilly
Mayor

RE: Combining Alaska Public Utilities Commission, Alaska Transportation Commission, etc.

The City of Kenai has benefitted from the regulatory methods as regards refuse collection inside the City.

First: no complaints as to service, rates or collection procedures have been brought to Council or City attention.

Second: The Council had the responsibility of selecting refuse collectors and was not performing at optimum in this regard due to inexperience of technical matters, lack of knowledge on comparability and inability to choose between two or more local proposers.

Third: The refuse problem is of an area-wide nature and should be dealt with by an area-wide agency experienced and competent in this field.

I would recommend continuation of the present regulatory arrangement.

This matter has not been brought to full Council consideration but are my views of the sense of Council.

VOR:jw

Anchorage Refuse, Inc.

PHONE 344-1542 · 6301 Rosewood St.

ANCHORAGE, ALASKA 99502

December 14, 1979

House Commerce Committee
Box 1370
Fairbanks, AK 99707
Attn: Allan Blume

Re: Performance Review of Alaska Public Utilities Commission

Gentlemen:

Reference is made to your teleconferencing public hearing scheduled for December 17, 1979. By letter dated November 26, 1979, Gordon J. Zerbetz, Chairman of the Alaska Public Utilities Commission, indicated written testimony in lieu of oral testimony at the hearing could be sent to you at the above address.

Please find enclosed written testimony I would appreciate being entered of record for the above hearing.

If you should have any questions on this written testimony, please feel free to bring your request to my attention.

Sincerely yours,

ANCHORAGE REFUSE, INC.

John P. Culhane

John P. Culhane, President

JPC/csn

WRITTEN TESTIMONY OF JOHN P. CULHANE, PRESIDENT
ANCHORAGE REFUSE, INC. FOR THE DECEMBER 17, 1979
HOUSE COMMERCE COMMITTEE HEARINGS
REGARDING THE REFORMATION OF THE
ALASKA PUBLIC UTILITIES COMMISSION

Anchorage Refuse, Inc. is a utility regulated by the Alaska Public Utilities Commission serving most of the area outside of the old city limits of Anchorage within the Municipality of Anchorage. Anchorage Refuse, Inc. has been in operation for several years and was regulated by the Alaska Transportation Commission prior to the 1973 legislative amendments that placed refuse regulation under the Alaska Public Utilities Commission.

It appears that it is not in the public interest to deregulate the service area or rates of refuse companies or to change the service area regulation or rate regulation from the APUC to the municipalities. If you deregulate the service area, the public will find:

(1) Increased frequency of refuse trucks on residential streets. There will be the same amount of refuse containers on the streets to pick up, however, there will now be more trucks from different refuse companies to provide the service. This could provide a safety hazard, noise pollution and considerable inconvenience

to the residents of the area where the refuse is being collected.

(2) The times during any given week of collecting the refuse from a certain area will not be consistent by each of the companies operating in the area. This will cause refuse containers to be placed on the sides of the streets in a given area more than the once or twice a week required when one refuse company is serving the area. This would be unsightly and could provide unhealthy conditions.

(3) The type of equipment that would collect the refuse could not be the modern refuse truck. The refuse business would be relatively easy to enter by any person wishing to purchase unsafe, unsanitary and inefficient equipment. You could find dump-type equipment used in the collection of refuse. Safe, sanitary and efficient compactor truck equipment are relatively expensive.

(4) In the refuse business it would be just as easy to abandon your customers as

it would be to acquire customers. Such abandonment of the service by a refuse company could provide considerable inconvenience to the abandoned customers until another refuse company was able to start service to the effected customers.

It does not appear to be in the public interest to have economic deregulation while at the same time maintaining area regulation. Basically, this would give a monopoly the right to charge what the market will bear. The considerable inconvenience to persons hauling their own refuse would probably dictate a high rate in the market if the rate was not regulated.

Regulation of refuse companies should be maintained at the Alaska Public Utilities Commission. Placing such regulation with municipalities will require most municipalities to create a new structure to handle such regulation. This new structure will increase the demand upon the municipal budgets. It appears more economical to have one centralized structure handling many utilities to be responsible for regulating refuse companies rather than having many smaller regulating structures spread through the municipalities of the State of Alaska. A slight increase in the Alaska Public

Utilities Commission's budget to handle refuse company matters may be more economical to the residents of the State than having each municipality hiring experts to regulate only one or two refuse utilities in the municipality. The public might also save by having the Alaska Public Utilities Commission regulate refuse because of the experience of the Alaska Public Utilities Commission in regulating utilities. This experience insures that the refuse company will make no less and no more than a reasonable rate of return. A municipal government inexperienced in the complicated rate regulation concepts would be more likely to err in establishing rates. A rate too low would severely injure the services of the refuse company which would not be in the public interest and a rate too high would result in the public paying more than is necessary for this type of service.

Finally, it should be noted that we have had very few customer complaints concerning the regulation of refuse companies or the services of our company. It does not appear necessary to change the process that the public appears to be satisfied with because of a desire by some to have the Alaska Public Utilities Commission budget be dedicated to regulation in other areas. Rather than

disturb something that is workable, it is suggested that if necessary, the budget of the Alaska Public Utilities Commission be increased to add new staff members so that all utilities can be properly and expeditiously regulated, including refuse utilities.

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100

DEPARTMENT Legislature

ATTENTION Senator Wilkes

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

FROM:
MAIL STATION NUMBER 3100

DEPARTMENT Legislature

BY Rep. Kris Lethin DATE 4/12/77

02-002 (REV.10/73)

Alaska State Legislature

POUCH Y, STATE CAPITOL
JUNEAU, ALASKA 99811

TO: All Members
Alaska State Legislature

DATE: April 12, 1977

FROM: Kris W. Lethin
Representative

SUBJECT: SB 259
Municipality Utilities Regulation

Attached, for your information, is a copy of a memorandum to the Anchorage Municipal Assembly from Richard E. Hanger, President of Automated Communications, Inc.

The attached memorandum outlines the facts in favor and against both methods of regulating the Utilities.

ACI

Automated Communications, Inc.

Legal Monopoly not a question of regulation but who regulates

March 17, 1977

TO: ANCHORAGE MUNICIPAL ASSEMBLY
FROM: RICHARD E. HANGER, PRESIDENT
AUTOMATED COMMUNICATIONS, INC.

SUBJ: UTILITY REGULATION

As I indicated at your meeting of March 8, 1977, our expertise is only in the area of ATU.

The purpose of this letter is to objectively give each of you what we consider facts in favor and against both methods of regulating the Utilities.

Assembly Regulation of the Utilities

Pro

1. More citizens attend and participate in Assembly meetings than attend PUC hearings. ACI has been the only participants and formal parties at the ATU hearings throughout the past 15 months, at the PUC.

2. Assemblymen are elected officials and are directly accountable to the people.

3. The Assembly may have fewer legal restrictions affecting their judgement and decisions.

Con

1. Tariffs are complex and difficult to understand. In order for the Assembly to effectively "judge", it will necessitate many hours of "homework".

2. Being elected could make it difficult to make good business decisions if decisions would be unpopular politically.

3. The Assembly would have to add additional staff with expertise in tariffs, legal, and accounting. No citizen's committee could spend the time necessary to handle this job.

4. The Municipality would be subject to far more legal suits, -- class action, individual, and special interest groups.

5. Must contend with the morality of the "Board of Directors" regulating their own company, which is a legal monopoly.

6. ATU is tied to a state-wide network, as well as to the "south 48". This automatically involves regulations of the FCC and PUC for inter and intra state activities. The Assembly would have to inter-relate with those agencies.

PUC Regulation of the Facility

Pro

1. Appointed officials are normally less likely to be influenced politically or by special interest groups.

2. Specializes in utility tariffs.

3. Required by law to:

   a. Protect the financial viability of the Utility.
   b. Assure them a fair rate of return.
   c. And determine that tariffs are fair, just, non-discriminatory, non-preferential, and compensatory.

4. Already have a staff, on the Public payroll, who specialize in Utility matters.

5. Have access and experience with the other Utilities throughout Alaska, National Trade Associations (NARUC) etc., to compare requests and filings.

Con

1. Are required by law to adhere to "Due Process" which necessitates formal hearings and notice to the Public.

Miscellaneous "Grey Areas"

1. ATU spent over $400,000 on rate cases in the past 15 months. Some of that was attributable to deficient filings and questionable appeals, and some was attributable to the PUC being excessively lenient with ATU. If filings were better prepared and the regulating body were firmer, there would definitely be savings. Question -- Would the Assembly be more decisive than the PUC, thereby shortening the process?

2. With Assembly control -- They and the Mayor would have direct control over the cash, profits, charges, and where the money was used. Is this good or bad?

3. Would the taxpayers be paying for a second level of government staff, or would the PUC reduce their staff in proportion to that added to the Assembly?

4. The major motivations for the pending Resolution and changes to AS 77-59 Utilities seem to be:

   a. the excessive costs of recent rate cases.
   b. the over-ruling by the PUC of the Municipal Ordinance which would have returned 100% of the profits to the original City Service Area.
   c. the dismissal of a rate structure that would have increased cash flow and income in initial years, but left expenses and costs to be absorbed by future rate payers.
   d. the refund of 1.2 million that is pending per PUC and Court Order, and which is being contested by ATU.

   Are these valid motivations, and would they have arisen if ATU had been regulated by the Assembly rather than the PUC is a question which should be addressed.

5. Chairman Rose and Assemblyperson Sturgulewski have suggested amendments which would allow the Assembly to monitor and prejudge filings before they go to the PUC. This would seem to be a "safe" way to arrive at some of the answers to the above questions.

ACI, as the only formal participant from the private sector in the past 15 months of hearings, feels qualified and willing to answer any questions of either side.

ACI, being in the telephone business and regulated by the free enterprise system and competition, rather than a regulatory body, feels we should abstain from taking sides. On behalf of our 200 business subscribers, we would need to poll them prior to speaking for them.

Sincerely,

AUTOMATED COMMUNICATIONS, INC.

Richard E. Hanger
President

cc: Major George Sullivan

Al Pistorius, Manager
Anchorage Telephone Utility

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

ANCHORAGE ASSEMBLY

April 4, 1977

Honorable Ed Willis
Vice Chairman, Community and Regional
Affairs
Pouch V
Juneau, Alaska 99811

Dear Ed:

The draft of the minutes of the Assembly meetings regarding Resolution No. AR 77-7 were available this morning. Since Senate Community and Regional Affairs has scheduled a hearing on SB 259 on Tuesday, April 5, I am sending this information via special carrier.

Many entities are involved in utility regulation. Charter provisions calling for profits of the utilities to accrue to the old City Service Area for a period of five years dictate complex considerations. It seems to me that before de-regulation is seriously considered, we must develop locally a specific method for handling utility rates and service areas.

Please understand this letter states my individual concern.

Very truly yours

Arliss Sturgulewski

Enclosures: AR 77-7
copy of letter from Norman Kaelber
portion of draft Minutes, 3/22/77 Spec. Meeting
portion of draft Minutes, 3/8/77 Regular Meeting

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

801 W. FIREWEED LANE • SUITE 101 • ANCHORAGE, ALASKA 99503 • (907) 276-3235

November 20, 1979

Senator W.E. Bradley
P.O. Drawer 8-Q
Anchorage, Ak. 99508

Dear Senator Bradley:

Alaska is facing many energy related issues on which decisions need to be made soon. Last month, the managers of the electric utilities in the state were invited to sit down informally and discuss from their individual perspectives the issues which affect their utilities. A two day conference ensued, and the enclosed "Statement Toward a State Energy Policy" is a product of that meeting.

We know that the collective decisions made by Alaskans on these issues in the relative near future will profoundly affect the state for a long time to come. We submit this brief document to you in the hope that our views will be considered as you deal with these issues.

Sincerely,

Dave

David Hutchens
Executive Director

DH:ra

Chris,

Notify Dave Hutchens to testify on APUC - I figure APUC + the Guide Licensing + Control Bd will be our "biggies".

DEMOCRACY IN ACTION

We need to get these going

Brad

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

801 W. FIREWEED LANE • SUITE 101 • ANCHORAGE, ALASKA 99503 • (907) 276-3235

November 19, 1979

STATEMENT TOWARD A STATE ENERGY POLICY

On October 24th and 25th, 1979, an ad hoc group of ten electric utility managers, hosted by the Alaska Rural Electric Cooperative Association, met in Anchorage. We discussed the energy situation in Alaska and the probable impact of various state policy decisions which could be made. The following statement does not attempt to be encyclopedic, but it represents the majority view of the participants. We urge that this statement be considered in the formulation of a state energy policy.

I. Energy problems exist in every region of Alaska.

Rural villages face current costs so staggering that economic development is effectively precluded, the availability of energy to maintain bare existence is in question in some areas, and the people are suffering real hardship. The regional trade centers enjoy modest economies of scale, but energy costs there are rising so rapidly that their future, projected from present trends, approximates the conditions which exist in the villages today. The energy problems of both villages and regional trade centers come from their dependence on oil which is rapidly rising in cost.

Interior Alaska finds it uneconomic to further develop its use of coal because of the Clean Air Act Amendments of 1978. This federal legislation is not satisfied with achieving objective standards in protecting air quality, but insists that "best availble control technology" be used regardless of the quality of coal that is used.

The production of Cook Inlet natural gas for liquifaction and export will certainly raise the price and possibly threaten the supply of natural gas for southcentral Alaska. The long-term energy supply for this region is further threatened by the Powerplant and Industrial Fuel Use Act of 1978. This federal law prohibits the use of oil or natural gas in new powerplants. Although exemptions from this Act are possible, there is no certainty that natural gas can be used in new powerplants in the future, even if it is available.

II. We must strive for the optimum use of energy.

It must be recognized that because of climate and geography, life in Alaska will always be contingent on a relatively high per capita energy use. There is a direct relationship between the productive use of energy and the productivity of an economy. In the rural villages, the productive use of energy

is so low that a great deal of desirable economic activity is prevented. In this kind of situation, we must encourage increases in the productive use of energy.

It must also be recognized that energy conservation can and should be encouraged. Every region within this state can improve its efficiency in using energy, and in some instances, the appropriate use of insulation and weatherization can reduce the energy consumption of an individual consumer enough to prevent personal hardship. The State, through the Division of Energy and Power Development, must be encouraged to continue to lead and coordinate efforts to insulate and weatherize existing buildings which have a remaining useful life of reasonable duration.

III. An efficient energy delivery system must be encouraged by actions of public agencies.

To encourage economies of scale, the State must confirm as its policy that all public agencies and institutions under its authority will purchase their electricity from the public utilities certificated to serve that area. The State could then cease the unnecessary expense of duplicating in its own facilities the generating capacity which already exists in the community. Federal agencies and institutions operating in Alaska should be requested to take similar action.

IV. The rise in oil prices has dramatically increased revenues to the State of Alaska.

As a major landowner, second only to the U.S. Government, the State of Alaska controls much of the energy wealth of this state. Revenues from energy production which the State receives either in its capacity as landowner or taxing sovereign now account for more than 81% of total revenues received by the State.

The State has pursued a policy of maximizing revenues from State owned resources. The world market for petroleum now has prices administered by the Organization of Petroleum Exporting Countries. With each new price increase by OPEC, state revenues increase. While these price increases cause a permanent and increasing drain on the people of Alaska, the state government is awash in new revenues. If 1979 taxing and spending policies remain unchanged, tremendous surplus revenues will accumulate in 1980, and for a number of years thereafter.

V. The State must assist in solving Alaska's energy problems.

The State may well decide to distribute "energy dividends" to its citizens, reduce taxes, or refine and sell oil to its citizens at less than market price. All of these proposals would help, and none of them would be in

conflict with the following policies which we urge the State to adopt and implement:

1. A portion of this state's oil and gas reserves adequate to meet the needs of Alaskans must be retained for consumption within the State. The State should not commit future production of royalty oil and gas to the export market without call back provisions adequate to meet in-state needs.

2. A major effort must be directed toward developing our hydroelectric and other renewable or long-term energy resources. Alaska has a great opportunity to use revenues from depletable resources to develop our renewable resources. Innovative financing and power marketing arrangements for these projects must be developed and used by the Alaska Power Authority. When it is necessary, the State should assist with the front end costs of these long-term solutions to our energy problems so they can be accepted without hardship by the first consumers served by them.

3. The State must promptly develop an energy plan which includes a list of the energy projects suitable for development. This inventory must show estimated costs, estimated output, deliverability of energy produced, estimated time for construction, and indicate the reasonable environmental issues which must be considered. All utilities and other power generators - private, state and federal - will need to participate in this study. This inventory of resources should be completed within one year.

4. The State must promptly consider and make a decision on all pending energy projects. When the lead agency has determined that a project should be developed, all other state agencies must be required to cooperate in promptly resolving any remaining concerns within their jurisdiction.

5. While these long-term solutions are being developed, the State should provide interim direct subsidies to electric utilities with above average fuel costs to offset the tremendous increases they have experienced in their fuel costs, provided that continuing best efforts are being made toward long-term solutions.

The following utility managers may individually differ with specific items in this statement but participated in its formulation:

Thomas Stahr, Anchorage Municipal Light and Power
Loyd Hodson, Alaska Village Electric Cooperative
LeRoy J. Schultz, Chugach Electric Association
James Palin, Copper Valley Electric Association
Douglas Bechtel, Cordova Electric Cooperative
Robert Hufman, Golden Valley Electric Association
W.C. Rhodes, Homer Electric Association
Malcolm Cheek, Matanuska Electric Association
David Bouker, Nushagak Electric Cooperative
Robert Martin, Tlingit/Haida Regional Electrical Authority

3-3-80

Aaron

DEAR SIR,

I AM OPPOSED TO THE HISTORY OF CONTINUED RATE INCREASES GRANTED TO GOLDEN VALLEY ELECTRIC ASSOCIATION. I AM A MEMBER OF THAT ASSOCIATION AND FEEL THE INCREASES ARE NOT JUSTIFIED.

THERE MUST BE OTHER ALTERNATIVES OTHER THAN CONTINUOUS RATE INCREASES. FOR EXAMPLE, STAFF REDUCTIONS, LIQUIDATION OF ASSETS, CONSOLIDATION OF DEPARTMENTS, REDUCING FIXED OR VARIABLE EXPENSES.

I URGE YOU TO REQUIRE G.V.E.A. PROVE BEYOND A REASONABLE DOUBT THEY HAVE DONE EVERYTHING POSSIBLE BEFORE THEY ARE GRANTED A RATE INCREASE.

THANK YOU FOR LISTENING.

SINCERELY,

Mark R. Townsend

called on 3/9/80 2-6774

MR & MRS MARK R TOWNSEND
201 HAMILTON AVE #19
FAIRBANKS AK 99701

APUC

JAY S. HAMMOND, Governor

STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Phone (907) 276-6222

March 25, 1980

Representative Robert H. Bettisworth
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Bettisworth:

Enclosed is a compilation of 1979 unaudited gross revenue figures for all regulated utilities. As you can see, a number of utilities did not respond to our initial request. As a result, the Commission has initiated a second request to these utilities requesting this information. Hopefully, it will be forthcoming within the next month. In the meantime I wanted you and the Commerce Committee to have the results of our inquiries to date.

Sincerely,

csg

Carolyn S. Guess
Commissioner

cc: Rep. Fred Brown, Chairman House Commerce Committee
Senator W.E. Bradley, Chairman Senate Commerce Committee

Enclosure
CSG/rt

3-H6LH

ID	UTILITY	GROSS REVENUE	TYPE
1	AEL&P	5,578,801	Electric
2	GHEA	737,299	Electric
3	Homer Electric Assoc.	8,112,651	Electric
4	Nushagak Electric Coop.	907,734	Electric
5	Municipal Light & Power	16,794,180	Electric
6	Naknek Electric	981,700	Electric
7	Kodiak Electric	6,538,098	Electric
8	Barrow Electric Coop.	2,309,354	Electric
9	Pelican Utility Co.	141,583	Electric
10	Sand Point Utility	422,020	Electric
11	Kotzebue Electric Assoc.	154,375	Electric
12	Yakutat Power Inc.	430,975	Electric
13	Barrow Utilities & Electric	879,366	Electric
14	Chugach Electric	35,172,472	Electric
15	MEA	11,222,142	Electric
16	Copper Valley Electric Assoc.	4,543,820	Electric
17	Aniak Power Co.		Electric
18	Northway Power & Light		Electric
19	Bethel Utilities corp.		Electric
20	McGrath Light & Power		Electric
21	Teller Power Co.		Electric
22	Fort Yukon Utilities		Electric
23	Manley Utility Co., Inc.		Electric
24	Northern Power & Engineering Corp.		Electric
25	Tanana Power Company		Electric
26	Bettles Light & Power		Electric
27	Alaska Village Electric Coop.		Electric

ID	UTILITY	GROSS REVENUE	TYPE
28	AMFAC Foods, Inc.		Electric
29	Tlingit-Haida Regional Elect. Authority		
30	Circle Electric		Electric
31	Golden Valley Elect. Assoc., Inc.		Electric
32	Haines Light & Power		Electric
33	Cordova Electric		Electric
34	AGAS	35,166,237	GAS
35	KUSCO	761,747	GAS
36	Greatland	513,528	Telephone
37	ATU	46,800,241	Telephone
38	Gabtel	129,355	Telephone
39	National Telephone	516,970	Telephone
40	OTZ Telephone Coop.	808,321	Telephone
41	General Telephone	4,210,599	Telephone
42	Copper Valley Telephone	2,218,988	Telephone
43	Interior Telephone	1,740,733	Telephone
44	MTA	7,168,466	Telephone
45	Alascom	150,797,429	Telephone
46	Nushagak	589,589	Telephone
47	Sitka	2,253,140	Telephone
48	Juneau Douglas Telephone	8,131,895	Telephone
49	GSTC	16,208,462	Telephone
50	United Utilities	222,266	Telephone
51	Cordova Telephone		Telephone
52	Girl Friday		Telephone
53	Bristol Bay Telephone Comm.		Telephone
54	Yukon Telephone Co.		Telephone

ED	UTILITY	GROSS REVENUE	TYPE
55	Whittier Telephone Co.		Telephone
56	Communications Engineering, Inc.		Telephone
57	ASTAC		Telephone
58	Thorne Bay	20,175	Cable TV
59	B-C Cable	1,039,000	Cable TV
60	Sitka	471,631	Cable TV
61	KATV	797,200	Cable TV
62	Port Lions General Store		Cable TV
63	ASRC Communications		Cable TV
64	KCCS TV Cable		Cable TV
65	Kotzebue TV Cable		Cable TV
66	Bethel Cablevision		Cable TV
67	Cordova Cable System, Inc.		Cable TV
68	WPTV, Inc.		Cable TV
69	Capital Cable Vision		Cable TV
70	Nome TV Cable, Inc. & KOTV, Inc.		Cable TV
71	Skagway Network Television		Cable TV
72	Eklutna	2,023	Water
73	Settlers Bay	904	Water
74	Salmantoff	480	Water
75	CAU	2,600,198	Water
76	College	478,723	Water
77	S & S	81,822	Water
78	Valley	48,904	Water
79	Pelican Utility Co.		Water
80	Robert Lee Stewart		Water
81	Romig Park Dev.		Water

	UTILITY	GROSS REVENUE	TYPE
82	Sunny Slopes		Water
83	Dawn Development		Water
84	Equitable Inc.		Water
85	Matanuska Utility Co.		Water
86	College	352,118	Sewer
87	Far North Sanitation	622,103	Garbage
88	Carver	120,456	Garbage
89	Carney	69,803	Garbage
90	J.D. Refuse	11,730	Garbage
91	N.S. Borough	198,910	Garbage
92	Kodiak Sanitation	280,000	Garbage
93	Tongass	196,883	Garbage
94	Peninsula Sanitation	365,984	Garbage
95	Dillingham Refuse	36,335	Garbage
96	Eagle River Refuse	206,441	Garbage
97	Anchorage Refuse	3,717,674	Garbage
98	Copper Valley Const. Co.	34,274	Garbage
99	Anderson Garbage		Garbage
100	Lando Collection & Disposal		Garbage
101	Yakutate Disposal		Garbage
102	Eagle River Hts. Utilities, Inc.		Garbage
103	Seward Service		Garbage
104	Allan W. Duke		Garbage
105	Drakes Sanitation		Garbage
106	March Disposal		Garbage
107	Interior Service		Garbage
108	David R. Shelbourne		Garbage

ID	UTILITY	GROSS REVENUE	TYPE
109	Patterson Sanitation & Refuse		Garbage
110	Anchorage Refuse, Inc.		Garbage

Alaska State Legislature

House of Representatives

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

Chris —
Call Sen. Sturgalewski
& give her full assistance
Thanks —
Brad

Dec. 10, 1979
FOR IMMEDIATE RELEASE
Commerce Committee to begin "Sunset Review" of APUC

Rep. Fred Brown, Chairman of the House Commerce Committee announced today that joint hearings between the House and Senate Commerce Committees would be held on the "Sunset Review" of the Alaska Public Utilities Commission.

"We will be convening at the Anchorage Legislative Information Office at 11:00 A.m., December 17 to take public, industry and regulated utility testimony on the Legislative Audit of the Commission," Brown said.

Use of the Legislative Teleconference Network is planned for Fairbanks, Anchorage and Juneau. Other sites may be activiated as demand warrants.

"There are significant areas of public policy involved in this review, not the least of which is the possible transfer of some utility authority from the state to local government entities. Further the audit recommends the combination of the Commission with the Alaska Transportation Commission and the Pipeline Commission,

State Senator Arliss Sturgelewski, of Anchorage, Vice-Chair of the Senate Commerce Committee will preside along with Brown.

The committee is seeking preliminary testimony from groups affected by the APUC regulatory authority, as a first step to the formal hearings planned during the legislative session in Juneau.

Persons wishing to testify are urged to obtain copies of the audit report titled A Performance Review of the Alaska Public Utilities Commission, dated August 1, 1979. This report is available from the Division of Legislative Audit, Pouch W, Juneau, Alaska 99811, State Legislative Information Offices, and is on file with the Public Utilities Commission, and may be reviewed during regular business hours.

For further information, contact the House Commerce Committee, P. O. Box 1370, Fairbanks, Alaska 99707, Attention: Allen D. Blume, or telephone 456-8370. In Anchorage, contact Christian Basler, 1016 W. Sixth Ave., Suite 201, telephone 278-1581.

KENAI PENINSULA BOROUGH
BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

DON GILMAN
MAYOR

April 22, 1980

Fred Brown, Chairman
House Commerce Committee
Pouch V
Juneau, Alaska 99811

W. E. Bradley, Chairman
Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: Alaska Public Utilities Commission;
Sunset Bill Hearings

Dear Chairmen Brown and Bradley:

In connection with the Sunset Bill hearings regarding the Alaska PublicUtilities Commission, it is my understanding that a proposal has been made that municipal corporations split the jurisdiction over certain truckers, namely solid waste haulers and carriers, with the Alaska Public Utilities Commission.

As I understand it, the Alaska Public Utilities Commission would act in an appellate capacity on appeal from the municipal corporation's legislative body.

This is to advise you that the Kenai Peninsula Borough is strongly opposed to any such split jurisdiction because it not only creates another layer of government regulation, but more importantly it places the primary jurisdiction to regulate these carriers in the municipal corporation which has neither the expertise nor the administrative set up nor the budget to undertake this highly technical regulation. It would take considerable amount of investigation and the establishment of other

machinery in order to effectuate such primary jurisdiction at the municipal level. In view of the highly specialized nature of this matter of regulating private enterprise, the Alaska Public Utilities Commission must either be permitted to exercise efficient and qualified expertise, and resume its lawful jurisdiction, but this attempt to split the regulation between jurisdictions would only be duplicative, cost inefficient and a pragmatic approach which would further compound the problem and not assist it in anyway.

Yours very truly,

Donald E. Gilman

Donald E. Gilman
Borough Mayor

DEG/tb

3/11/80

SB 577

"AN ACT CONTINUING THE EXISTENCE OF THE ALASKA PUBLIC UTILITIES COMMISSION AND AMENDING THE STATUTES RELATING TO ITS RESPONSIBILITIES; AND PROVIDING FOR AN EFFECTIVE DATE"

1. THIS BILL IS THE RESULT OF THE "SUNSET" REVIEW LEGISLATION AS 44.66.010 AND 44.66.050.

2. THIS BILL PROVIDES FOUR NEW EXEMPTIONS FROM ECONOMIC REGULATION BY THE APUC:

(A) THE FIRST EXEMPTION IS AVAILABLE TO ALL UTILITIES AND PROVIDES FOR RATE DEREGUALTION FROM THE APUC. THE TELEPHONE AND ELECTRIC UTILITIES WITH GROSS REVENUES OF UP TO $250,000 AND ALL OTHER UTILITIES WITH GROSS REVENUES OF UP TO $100,000 HAVE THE OPTION OF POLLING THEIR SUBSCRIBERS ONCE EVERY 2 YEARS BY A BALLOT PROCEDURE.

A BALLOT MAY BE INITIATED BY THE UTILITY OR BY A PETITION OF 10 PERCENT OR MORE OF ITS SUBSCRIBERS. TO ELEC. AN EXEMPTION, 51 PERCENT OF THOSE ELIGIBLE TO VOTE MUST VOTE AND A MAJORITY OF THOSE VOTES MUST BE FOR AN EXEMPTION.

(B) THE SECOND EXEMPTION IS FOR ELECTRIC AND TELEPHONE COOPERATIVES. THESE ORGANIZATIONS MAY ELECT ECONOMIC DEREGULATION BY THE SAME BALLOT PROCEDURES ALREADY MENTIONED FOR THE UTILITIES.

(C) THE THIRD EXEMPTION IS FOR ECONOMIC DEREGULATION FOR CABLE TELEVISION, WHICH IS PRESENTLY EXEMPTED FROM REGULATION BY APUC, BUT WILL BE REVIEWED PRIOR TO JULY 1, 1983. IF THE LEGISLATURE FAILS TO EXTEND THE EXEMPTION PRIOR TO THAT DATE, CABLE TELEVISION THEN WILL BE REGULATED BY APUC.

IN EACH OF THESE THREE CASES, THE EXEMPTION IS FROM

ECONOMIC REGULATION BY THE APUC, BUT CERTIFICATION WILL REMAIN WITH APUC.

(D) THE FOURTH EXEMPTION IS FOR REFUSE UTILITIES. THIS EXEMPTION WILL ALLOW EITHER APUC OR THE MUNICIPALITY TO REGULATE RATES AND BE RESPONSIBLE FOR CERTIFICATION franchise. HOWEVER, A REFUSE UTILITY THAT IS COMPLETELY OUTSIDE THE BOUNDARIES OF A MUNICIPALITY WILL BE REGULATED BY THE APUC.

3. THESE CHANGES IN THE STATUTE HAVE THE CONCURRENCE OF THE APUC, DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS, AND ALL UTILITIES INVOLVED.

4. MR. PRESIDENT, I RECOMMEND CONTINUING THE EXISTENCE OF THE APUC AND AMENDING ITS RESPONSIBILITIES AS I HAVE SUMMARIZED AND WHICH ARE EXPLAINED IN DETAIL IN THE SECTION-BY-SECTION ANLAYSIS PLACED ON YOUR DESK YESTERDAY.

APUC

MR. CHAIRMAN - MEMBERS OF THE COMMITTEE. MY NAME IS ROY PASCHAL. THANK YOU FOR THE OPPORTUNITY TO TESTIFY TODAY. I APPEAR AS PRESIDENT OF THE ALASKA CABLE TELEVISION ASSOCIATION.

WE ARE OPPOSED FIRST OF ALL TO COMBINING THE PUBLIC UTILITIES COMMISSION WITH SEVERAL OTHER COMMISSIONS THAT PRESENTLY REGULATE OTHER INDUSTRIES. THE EXPERTISE THE PRESENT VARIOUS PUBLIC UTILITIES COMMAND FROM THE ALASKA PUBLIC UTILITIES COMMISSION IS SPREAD THIN ENOUGH NOW AND TO EXPAND THE FIELDS COVERED BY THE COMMISSION WOULD APPEAR TO ONLY REDUCE EFFICIENCY.

WE ARE OPPOSED TO COMPLETE REMOVAL OF ALASKA PUBLIC UTILITIES COMMISSION REGULATION FROM CABLE TELEVISION. ALTHOUGH CABLE DOES NOT IN TRUTH MEET THE CRITERIA OF A TRUE PUBLIC UTILITY THERE ARE ASPECTS OF THIS BUSINESS THAT ARE BETTER COORDINATED BY A STATEWIDE BODY THAN ON A LOCAL LEVEL. THE MAIN ONES ARE THOSE OF ALLOCATION OF SERVICE AREAS AND SETTING STANDARDS OF PERFORMANCE. THEREFORE WE ARE OPPOSED TO COMPLETE REMOVAL OF ALASKA PUBLIC UTILITIES COMMISSION REGULATIONS.

CABLE IS ONLY PARTIALLY REGULATED TODAY IN ALASKA. FEDERAL LAW HAS PREVENTED THE ALASKA PUBLIC UTILITIES COMMISSION FROM REGULATING "PREMIUM" SERVICES, SUCH AS HBO, SHOWTIME, MADISON SQUARE GARDEN, ETC.

WE DO BELIEVE THAT REMOVING RATE REGULATION IS IN THE PUBLIC INTEREST. IT HAS BEEN NECESSARY TO GO THROUGH A VERY COMPLICATED, LENGTHY AND EXPENSIVE ACCOUNTING AND LEGAL PROCEDURE TO OBTAIN RATE INCREASES THAT WERE VERY EVIDENTLY NEEDED SIMPLY BY LOOKING AT THE FINANCIAL STATEMENTS. IT WAS NECESSARY TO COMPLETELY RE-DO THE ACCOUNTING SYSTEMS, ONES THAT WERE ACCEPTABLE TO THE IRS BUT NOT TO THE ALASKA PUBLIC UTILITIES COMMISION.

JUST TO PAY FOR THE RATE CASES AMOUNTED TO APPROXIMATELY A 7 1/2 PERCENT INCREASE TO EACH SUBSCRIBER, AND THIS PERCENTAGE WOULD INCREASE DRASTICALLY AS THE SYSTEM DECREASES IN SIZE. WE BELIEVE THE MARKET PLACE WOULD HOLD CABLE TV RATES TO A REASONABLE AMOUNT BETTER THAN REGULATION. TO THE BEST OF OUR KNOWLEDGE EVERY SINGLE CABLE TV RATE INCREASE THAT HAS BEEN REQUESTED FROM THE ALASKA PUBLIC UTILITIES COMMISSION HAS EVENTUALLY BEEN GRANTED TO WITHIN A FEW CENTS PER MONTH OF THE REQUEST. IN MOST CASES IF THE FULL RATE REQUESTED HAD BEEN GRANTED SERVICE WOULD HAVE BEEN EXPANDED AND AT AN EARLIER DATE.

IN CONCLUSION WE SUGGEST:

1. THE ALASKA PUBLIC UTILITIES COMMISSION NOT BE MERGED WITH ANY OTHER COMMISSION.
2. THAT THE ALASKA PUBLIC UTILITIES COMMISSION CONTINUE TO REGULATE CABLE TV IN ISSUANCE OF CERTIFICATES OF PUBLIC CONVENIENCE AND TO DETERMINE AREAS OF SERVICE.
3. CONTINUE AS A "WATCHDOG" OVER PUBLIC COMPLAINTS ABOUT SERVICE WITH THE POWER TO LEVY CIVIL PENALTIES AND REMOVE CERTIFICATES.
4. ELIMINATE ECONOMIC REGULATION.

I ESTIMATE THE ELIMINATION OF ECONOMIC REGULATION OF CABLE TV WOULD REDUCE THE PORTION OF THE ALASKA PUBLIC UTILITIES COMMISSION BUDGET ALLOCATED TO CABLE TV BY 95 PERCENT.

ELIMINATION OF ECONOMIC CONTROLS WOULD SAVE CUSTOMERS "PASSED ALONG COSTS" OF EXPENSIVE AND UNNECESSARY RATE HEARINGS.

WE ARE MORE THAN WILLING TO WORK WITH THE COMMITTEE IN DRAFTING PROPOSED LEGISLATION AND OFFER ANY ASSISTANCE THAT THE COMMITTEE OR STAFF MIGHT REQUIRE.

THANK YOU AGAIN FOR THIS OPPORTUNITY TO TESTIFY.

Box 1081
Petersburg, Ak 99833
13 Mar 1980

Senator Bradley
Senate Commerce Committee
Pouch V
Juneau, AK 99811

Dear Senator Bradley;

I wish to comment on the actions or rather non-actions of the Alaska Public Utilities Commission.

Over one month ago I sent a letter to the Chairman of the Commission expressing my concern over the way the commission allowed Alascom to refund the excess rate increases.

So far I have not even received an acknowledgement of receipt from the commission. On Capitol 80 I saw some of their replies to questions from the public and surely financial constraints cannot be so pressing that a letter of reply is too costly.

The reason that I wrote to the commission is that at least two weeks of January has gone past before I was informed about the "Great consumer refund" policy which Alascom was allowed. Lower phone rates in Alaska during the months of January and February. If I had not accidently bought a paper I would not have known about the refund at all. At the very least the commission should have made Alascom wait until it had informed the public via our usual monthly bills. I felt that the very secretive way Alascom was allowed to refund to its customers did not benefit the public at all. I thought one of the commissions duties was to safeguard the interests of the public.

Sincerely yours,
T Osborne
Timothy Osborne

APUC SUNSET REVIEW

CERTIFICATION:

Before a utility may operate in the State of Alaska application for a Certificate of Public Connvenience and Necessity must be made to the APUC as prescribed in AS 42.05.221 - 281. The Commission reviews the application and may reject, modify, or award a Certificate to the applicant. The Certificate may be as broad or as specific as the Commission chooses to issue and this is stated on the face of the Certificate.

AS 42.05 is quite specific as to the types of endeavors that are classified as utilities. Although, CATV is not mentioned in the statute the definition of telecommunications (AS 42.05.701 (2A and 8) states; "the transmission and reception of messages, impressions, pictures and signals by means of electricity." This clearly indicates that CATV meets the criteria of an utility and is subject to the provisions of AS 42.05.221 (Certification) to protect the public interest.

Therefore, the APUC may judge the qualifications of an operator on criteria established by the Commission. Due to the fact that the language used on the face of the Certificate, is prescribed by the Commission, an operator is subject to that criteria. Since no utility may operate without a Certificate the APUC has ultimate control as to the qualifications of an operator.

In other language contained in AS 42.05.221 - 281 no Certificate may be transferred without making application to the Commission. Once again, the APUC has complete control over new or existing services.

Since such a structure is in place to protect the public interest it does not make sense to remove the Certification of CATV from the APUC who is best equipted to handle it.

RATE REGULATION:

It is interesting to note that the language contained in AS 42.05 (Ch 113 SLA 1970) is permissive vs. mandatory regarding the regulation of utilities. The rate regulation and proceedings have evolved through regulations adopted and decrees of the Commission. Since the rate proceedings have become more complicated, during this evolution, they have also become longer and more costly. After the passage of ten (10) years, since the enabling legislation (SCSCS HB 202 am (S); CSHB 202 am, passed the House 30-7-3, April 9, 1969; SCSCSHB 202 am (S), passed the Senate 16-4, April 22, 1970; the House concurred in the Senate amendment) it is appropriate that the Legislative Audit and the Legislature's Sunset Review of the APUC is under consideration.

Rate deregulation of the Cable TV industry is an interesting concept due to the fact that an operators revenues are divided

between regulated rates and non-regulated rates and that may vary from a 20% - 80% split to a 50% - 50% split. Thus, two systems with gross receipts annually of $1,000,000 may be broken down as follows:

System J	
Gross Receipts	$1,000,000
80% non-regulated	$800,000
20% regulated	$200,000
System K	
Gross Receipts	$1,000,000
50% non-regulated	$500,000
50% regulated	$500,000

This indicates a disparity of $300,000 of revenue on regulated rates when the actual reason for the difference is purely economics based on agressive marketing and the variety in programing offered to the public and to the public's taste in viewing matter.

Another factor of economics that applies, is that the cost of a rate proceeding is passed through to the consumer. This is by decree of the APUC. An example would be that the operator of system "K" feels that due to economic conditions (i e. renegotiated labor contracts, increase in energy costs, inflation, etc.) a rate increase of $1.00 per month per subscriber in in order. He makes application to the Commission for this increase and the proceedings goes forth. With the time involved and the special consultants, auditors and legal counsel the pass through, varies but, could make the increase granted $1.50 per month or a 50% increase over the original request and/or higher. This 50% is not reflective of expanded or improved service but just the cost of the rate proceeding that the consumer must pay.

Rate deregulation would save the consumer the cost of the proceeding and would let the economic conditions and consumer demand establish the rate charged for service provided. In most cases this would mean no increase or an increase that would be less than in the regulated circumstance. Under the regulated rate structure there is not a difference in proceedings according to the size of the operator's system. Thus, the system in a small community is subject to the same proceeding as a system in a large metropolitan area. And the small system may be less able to afford the cost as would the larger operator.

CONCLUSIONS:

It could be concluded that the public interest is best served by the APUC retaining the function of Certification and evaluating the operators and systems qualifications and rate deregulation to eliminate the disparity of controlled vs. noncontrolled revenues and the added expense to the consumer of the rate proceeding. It should be noted that the controlled and noncontrolled rates are first subject to the approval of the

FCC and this circumstance exisits because of an order by the FCC.

Applying this set of criteria to the Cable TV industry would allow the APUC full control over the operation of a system, through its authority under AS 42.05, and allow the market place, through economic conditions, to establish the rate. Provision should be made that after a period of time (3 to 5 years) the Legislature (perhaps through Legislative Audit) have an overview of the Commission and the industry to evaluate the workings of these circumstances and offer a further check and balance.

Another benefit would be the cost saving to the Commission. Those public funds (now used for rate regulation) could be applied to other functions, that APUC is charged with, and staff time would be available for other purposes.

In conclusion it is noted that AS 42.05 is specific in definition and procedure for Certification of a cable system where as the rate regulation provisions are not as specific and the public would be best served by rate deregulation of Cable TV by the Legislature.

APUC: Alaska Public Utilities Commission

Commission: APUC

CATV: Community Antenna Television

FCC: Federal Communications Commission

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

April 26, 1980

SUBJECT: SB ~~556~~ 577 - APUC Sunset Legislation

TO: Senate Commerce Committee
ATTN: Frank Lee

FROM: Thomas A. Sofo
Legislative Counsel TAS

Under the most recent version of this bill, those utilities which might be exempted from APUC regulation by an amendment to AS 42.05.711 (pp. 5 and 6) are potentially exposed to municipal regulation by virtue of an existing statute, AS 29.-48.060. If further review of this area convinces you that municipal regulation, or the potential thereof, is undesirable, the following amendment should be offered:

page 3, line 4:

Insert "or exempt under AS 42.05.711(e) - (h)" after "AS 42.05".

TAS:jdn

APUC

(SEN. BRADLEY)

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

March 13, 1980

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Your Senate Commerce Committee has had under consideration for "Sunset" review the Alaska Public Utilities Commission, pursuant to your referral under AS 44.66.010 and AS 44.66.050.

In accordance with the statutory requirements, a public hearing was held on the review of this commission. An additional hearing was held on March 13, 1980, as the Committee Chairman had been notified that additional witnesses wished to testify regarding the Alaska Public Utilities Commission.

Guided in part by the report prepared by the Legislative Audit Division, the Committee took into consideration the factors required under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings:

The Committee finds some merit in recommendation number one which recommends that the Alaska Public Utilities Commission, the Alaska Transportation Commission and the Alaska Pipeline Commission should be combined into a single regulatory commission. However, this will require considerable further study. The Committee finds it is not in the public's interest to do so at this time.

In recommendation number two, the Legislative Audit Division recommends that AS 42.05 should be amended to allow the Alaska Public Utilities Commission to cease all certification and regulation of cable television. The Committee does not concur. Cable systems in Alaska, particularly in the remote areas, do not serve a mere entertainment function. Cable television in some areas of Alaska is the only source of information and entertainment. It is felt that regulation

should continue in these areas. In urban areas, where alternative forms of entertainment and information are available, the Committee agrees that certification and regulation may not be necessary. Recent legislation passed in the state of California provides a formula that the Committee believes will, with modification, provide for deregulation of the cable systems in major urban areas of Alaska while providing regulatory protection for Alaska's rural population.

Recommendation number three asks that AS 42.05 should be amended to allow the Alaska Public Utilities Commission to cease certification and regulation of those utilities furnishing collection and disposal service of garbage, refuse, trash and other waste materials. In both the Legislative Audit Report and the public hearing, the reason most often heard for this deregulation was that "We don't have the staff to do this." An assertion is made in the Performance Review that the refuse industry is not capital intensive and that competition in this industry would not be as detrimental to the public's interest as competition among more capital intensive industries.

However, it has also been argued to the Committee that there should be some limited activity by the Alaska Public Utilities Commission in this area. Contentions have been made in favor of the Commission having appellate authority over local government units which may assume the regulatory function; and it has also been argued that the APUC be allowed to have jurisdiction "by consent," when a municipality and a utility have both agreed to that jurisdiction. While the Committee tends to agree with the recommendations of the Legislative Auditor about deregulation in this area it will consider these arguments about very limited jurisdiction during the preparation of the Committee's legislation.

Recommendation number four asks that AS 42.05 be amended to allow nonprofit telephone and electric cooperatives to petition for withdrawal from APUC economic regulation. It further recomends that the membership of the cooperatives, by a vote of a majority of the members, be given an opportunity on a utility by utility basis to determine whether their cooperative should remain under APUC regulation. The Committee finds several problems in considering deregulation of the

cooperatives. One, as pointed out by the Performance Review, is the large number of consumer complaints received by the APUC against cooperatives. The second, which was brought out in public hearing, is that the annual meetings of the cooperative associations have a less than representative number of members present. Before the Committee can consider deregulation of the utilities by vote of the membership, the Committee would have to be assured that the vote in fact represented a majority of the actual members as opposed to a majority of the members present at any given annual meeting, or that similar safeguards are provided.

With this modification, the Committee's legislation will reflect this recommendation.

The Committee in general concurs with recommendation number five that asks that AS 42.05 be amended to exempt from economic regulation all utilities with annual gross revenues not exceeding $100,000. We agree with the Legislative Audit Division that the cost of regulation "on a percentage basis" to a small utility may outweigh the potential benefits. However, when considering regulation of a utility we must look not only to the cost factor but also to the factors of public safety that are involved. Many of these small utilities provide vital needs to communities, for instance, water utilities. The Committee while including deregulation for these utilities in its legislation, will attempt to include some triggering device that would submit the utility to regulation if serious consideration of public health and safety should warrant such action.

The Committee concurs with recommendation number six that the statutes and regulations governing the Alaska Public Utilities Commission should be revised, and will work with the Commission to accomplish this.

The Committee concurs with recommendation number seven that salary levels for the professional and technical support staff should be upgraded. If salaries are not competitive with private industry in Alaska, we cannot expect qualified personnel to work for the APUC on an extended basis: The Commission will only become a training ground for industry.

The Committee concurs with recommendation number eight that the APUC should implement a time management system. We

were informed during the public hearing that new concepts are being implemented by the Executive Director and the situation is improving. If this is accomplished within a reasonable length of time, no legislative action will be necessary.

Recommendations number nine, ten, and eleven address "housekeeping" functions of the APUC. It is our understanding, as a result of testimony by the Alaska Public Utilities Commission, that action is being taken on these recommendations. If this action proceeds in a timely manner, it is felt that no legislative action will be necessary in this area.

Recommendation number twelve urges that the Office of the Governor keep the appointment of the Chairman of the Alaska Public Utilities Commission current. Complaints that the Office of the Governor has been slow in making appointments to boards and commissions have appeared often in the Performance Reviews. It is hoped that the Governor's Office will make timely appointments to boards and commissions in the future.

Corresponding legislation will be introduced soon to accomplish the goals of this report.

Respectfully submitted,

Brad Bradley

Senator Brad Bradley
Chairman
Senate Commerce Committee

BB:jss

ALASKA PUBLIC UTILITIES COMMISSION
1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Gordon J. Zerbetz, Chairman
Marvin R. Weatherly
Carolyn S. Guess
Susan M. Knowles
Stuart C. Hall

In the Matter of the Application of PACOM, INC., a Wholly Owned Subsidiary of PACIFIC POWER & LIGHT COMPANY for Authority to Acquire a Controlling Interest in RCA ALASKA COMMUNICATIONS, INC.	U-79-11 ORDER NO. 2

ORDER CHANGING HEARING LOCATION

Subsequent to the issuance of Order No. 1 in these proceedings which scheduled, and established procedures for the conduct of, a public hearing with respect to this application, the Alaska State Court System has made available to the Commission a court room in the Boney Memorial Court Building in which to conduct the scheduled public hearing. In view of the widespread interest in this matter, the Commission believes that the facilities available in the court building would be more suitable for the conduct of this hearing than those in the Commission's office in the MacKay Building. Accordingly, the hearing scheduled for 9:00 a.m., Monday, March 19, 1979, will be held in Courtroom "K" (Room 201) of the Boney Memorial Court Building, instead of the hearing room in the Commission's office in the MacKay Building.

ORDER

THE COMMISSION FURTHER ORDERS, That, the location of the public hearing concerning the application of PACOM, Inc.,

ALASKA PUBLIC UTILITIES COMMISSION
1100 MACKAY BUILDING
338 DENALI STREET
ANCHORAGE, ALASKA 99501
PH 2HE 276.6222

for authority to acquire a controlling interest in RCA Alaska Communications, Inc., is changed from the hearing room in the Commission's Office, 1100 MacKay Building, 338 Denali Street, Anchorage, to Courtroom "K" (Room 201), George Boney Memorial Building, 303 "K" Street, Anchorage, Alaska. The time and date of the hearing are not changed by this Order.

DATED AND EFFECTIVE at Anchorage, Alaska, this 7th day of March, 1979.

BY DIRECTION OF THE COMMISSION
(Commissioner Carolyn S. Guess not participating)

ALASKA PUBLIC UTILITIES COMMISSION
1100 MACKAY BUILDING
338 DENALI STREET
ANCHORAGE, ALASKA 99501
PHONE 276-6222

(S E A L)

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Gordon J. Zerbetz, Chairman
Marvin R. Weatherly
Carolyn S. Guess
Susan M. Knowles
Stuart C. Hall

In the Matter of the Application of PACOM, INC., a Wholly Owned Subsidiary of PACIFIC POWER & LIGHT COMPANY for Authority to Acquire a Controlling Interest in RCA ALASKA COMMUNICATIONS, INC.	)	U-79-11

CERTIFICATION OF MAILING

Sandra S. Thomas certifies as follows:

That I am Clerk Typist III in the offices of the Alaska Public Utilities Commission, 1100 MacKay Building, 338 Denali Street, Anchorage, Alaska 99501.

That on the 8th day of March, 1979, I mailed true and accurate copies with postage thereon to the parties indicated on the attached service list of

ORDER NO. 2

ORDER CHANGING HEARING LOCATION

in the above entitled cause.

DATED at Anchorage, Alaska, this 8th day of March, 1979.

Sandra S. Thomas

Service List

U-79-11

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Rural Cap.
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AFN Telecommunications Committee
c/o Paul Sherry
Tanana Chiefs Conference
Doyon Bldg.
First & Hall
Fairbanks, Alaska 99701

The Honorable Oral Freeman
Pouch V
Juneau, Alaska 99811

The Honorable Terry Gardiner
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Code 105
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The Honorable Jim Duncan
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The Honorable Margaret Branson
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The Honorable Pat Carney
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The Honorable Mike Beirne
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The Honorable Russ Meekins, Jr.
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The Honorable C.V. Chatterton
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The Honorable Ramano Barnes
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The Honorable Ray Metcalf
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The Honorable Joyce Munson
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the Honorable Joe Hayes
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The Honorable Joe Montgomery
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The Honorable Hugh Malone
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The Honorable Pat O'Connell
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The Honorable Fred Zharoff
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The Honorable Alvin Osterback
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The Honorable Nels Anderson, Jr.
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The Honorable Phillip Guy
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The Honorable Vernon Hurlbert
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The Honorable Hoyt Moss
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The Honorable Robert Bettisworth
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The Honorable Fred Brown
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The Honorable Charlie Parr
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The Honorable Richard Randolph
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The Honorable Brian Rogers
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The Honorable Sarah Smith
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The Honorable Leo Schaeffer, Jr.
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The Honorable Jack Fuller
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The Honorable Robert Ziegler
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The Honorable Pet Meland
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The Honorable Bill Ray
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The Honorable Tim Kelley
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The Honorable Arlis Sturgulewski
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The Honorable Bettyr Farhenkamp
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Sitka Telephone Company
P.O. Box 257
Sitka, Alaska 99835

United Utilities, Inc.
P.O. Box 4-2730
Anchorage, Ak. 99509

Whittier Telephone Co.
3025 E. Tudor Road
Anchorage, Alaska 99507

James Clifton Eller d/b/a
Yukon Telephone Co.
P. O. Box 96
Tanana, Alaska 99777

Alaska Power & Telephone Co.
P. O. Box 222
Port Townsend, WA 98368

Interior Telephone Co.
508 W. 6th Avenue
Anchorage, Alaska 99501

Bristol Bay Telephone Communications
Cooperative, Inc.
P.O. Box 36
Naknek, Alaska 99633

Bush-Tell, Incorporated
P. O. Box 508
Aniak, Alaska 99557

Capitol Communications, Inc.
139 W. Second Street
Juneau, Alaska 99801

Communications Engineering, Inc.
P. O. Box 89190
Anchorage, Alaska 99508

Communication Equipment & Svc. Corp.
1010 College Road
Fairbanks, Ak. 99701

Continental Telephone Svc. Corp.
P. O. Box 5246
Bakersfield, CA 93308

Continental Telephone Corp.
1621 114th Ave., S.E., Suite 210
Bellevue, WA 98004

Copper Valley Telephone Cooperative, Inc.
P. O. Box 337
Valdez, Alaska 99686

Fairbanks Municipal Utilities System
P.O. Box 2215
Fairbanks, Alaska 99707

General Telephone Company of Alaska
8625 Evergreen Way, Suite 102
Everett, WA 98206

Girl Friday, Inc. d/b/a/
Girl Friday Communications
600 Hughes Street
Fairbanks, Alaska 99701

Glacier State Telephone Co.
909 West 9th Avenue, Suite 340
Anchorage, Alaska 99501

Wire Communications, Inc. d/b/a/
Greatland Telephone
4134 Ingra Street
Anchorage, Alaska 99504

Greater Anchorage Borough
Telecommunications Company
308 G STreet - Central Building
Anchorage, Alaska 99501

Interior Telephone Co.
508 W. 6th Avenue
Anchorage, Alaska 99501

Juneau & Douglas Telephone Co.
909 West 9th Avenue, Suite 340
Anchorage, Alaska 99501

Ketchikan Public Utilities, City of
Ketchikan
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Ketchikan, Alaska 99901

Matanuska Telephone Association, Inc.
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Palmer, Alaska 99645

Mukluk Telephone Co., Inc.
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National Utilities, Inc.
P. O. Box 222
Port Townsend, WA 98368

Nushagak Telephone Coop., Inc.
P.O. Box 197
Dillingham. Alaska 99576

OTZ Telephone Coop., Inc.
P. O. Box 324
Kotzebue, Alaska 99752

HOUSE RESEARCH AGENCY
Pouch Y - State Capitol
Juneau, Alaska 99811
465-3991

MEMORANDUM March 5, 1980

TO: Representative Fred Brown

FROM: Elaine Mitchell, Research Analyst

RE: California Deregulation of Cable TV
Research Request No. 83

Background

California Assembly Bill 699 was signed into law September 28, 1979, deregulating cable TV rates under specified conditions. The bill was introduced by Assemblyman Bruce Young at the request of the industry. In its original form, the bill would have prohibited a city, county, or city and county from regulating the rates imposed by a franchise or licensee on individual subscribers, but would have allowed proposed subscriber rates to be made a condition to the granting of a franchise or license. It was expected that Governor Brown would veto the bill.

Legislative Action:

During the course of legislative consideration, the California Department of Consumer Affairs proposed amendments which would have given the Public Broadcasting Commission an intensive regulatory overview role. This was unacceptable to the California Community TV Association.

The bill progressed to a conference committee where negotiations between the industry and the Administration resulted in a compromise bill which passed the legislature and was signed into law.

Negotiations:

Monroe Price, a lawyer representating the cable industry, worked out the compromise bill. He told us that the basic points in the negotiations were:

1. to avoid intensive regulations by the Public Broadcasting Commission, and

2. to avoid monopolistic situations which might arise for any cable TV operation.

Under provisions of the law, before deregulation may occur, the cable companies must show that they have met the following criteria:

1. deliver 20 or more channels;

2. have a satellite earth station to receive satellite signals;

3. are located in an area with three significantly viewed stations (viewable by a certain percentage of homes) or two significantly viewed stations and an education station; and,

4. provide a community services channel program.

Rates are completely deregulated for systems which are subscribed to by less than 70 percent of homes passed by the cable meeting these requirements. For systems with more than 70 percent subscribers, certain restrictions are placed on increasing rates. This is the key provisions designed to avoid monopolies.

According to Mr. Price, the cable TV industry wished to modernize, but needed added assurances of returns on investments that they felt deregulation would bring. Under the new law, deregulation has not been fully realized, because the possibility offered by deregulation has given the industry added leverage in negotiations with local governments on regulated rate increases.

Attached are the bills as originally introduced and the bill as passed. If you desire more information, please let us know.

EM/dp

Attachment

CALIFORNIA LEGISLATURE—1979–80 REGULAR SESSION

ASSEMBLY BILL No. 699

Introduced by Assemblyman Young

March 1, 1979

REFERRED TO COMMITTEE ON FINANCE, INSURANCE, AND COMMERCE

An act to amend Section 53066 of the Government Code, relating to community antenna television.

LEGISLATIVE COUNSEL'S DIGEST

AB 699, as introduced, Young (Fin., Ins., & Com.). Community antenna television: subscriber rates.

Under existing law, the governing body of a city or county or city and county may authorize by franchise or license the construction of a community antenna television system. The law presently imposes maximum limitations on the amounts of fees for the granting of such a franchise or license and permits the award of a franchise to be made on the basis of, among other things, the rates to the subscriber.

This bill would prohibit a city, county, or city and county from regulating the rates imposed by a franchisee or licensee on individual subscribers but would allow proposed subscriber rates to be made a condition to the granting of a franchise or license.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 53066 of the Government Code is amended to read:

53066. *(a)* Any city or county or city and county in the State of California may, pursuant to such provisions as may be prescribed by its governing body, authorize by franchise or license the construction of a community antenna television system. In connection therewith, the governing body may prescribe such rules and regulations as it deems advisable to protect the individual subscribers to the services of such community antenna television system. The award of the franchise or license may be made on the basis of quality of service, rates to the subscriber, income to the city, county or city and county, experience and financial responsibility of the applicant plus any other consideration that will safeguard the local public interest, rather than a cash auction bid. The maximum franchise fee for any franchise or license hereafter awarded pursuant to this section or pursuant to any ordinance adopted under authority of this section by any city or county or city and county shall be 5 percent of the grantee's gross receipts from its operations within such city or county or city and county. Any cable television franchise or license awarded by a city or county or city and county pursuant to this section may authorize the grantee thereof to place wires, conduits and appurtenances for the community antenna television system along or across such public streets, highways, alleys, public properties, or public easements of said city or county or city and county. Public easements, as used in this section, shall include but shall not be limited to any easement created by dedication to the city or county or city and county for public utility purposes or any other purpose whatsoever.

(b) The rates imposed by a franchisee or licensee on individual subscribers shall not be subject to regulation by a city, county, or city and county; provided, however, that proposed subscriber rates may be made a condition to the award of a franchise or license.

O

CHAPTER 1086

(Assembly Bill No. 699)

An act to add Section 53066.1 to the Government Code, relating to community antenna television.

[Approved by Governor September 27, 1979. Filed with Secretary of State September 28, 1979.]

LEGISLATIVE COUNSEL'S DIGEST

AB 699, Young. Community antenna television: subscriber rates.

Under existing law, the governing body of a city or county or city and county may authorize by franchise or license the construction of a community antenna television system. The law presently imposes maximum limitations on the amount of fees for the granting of such a franchise or license and permits the award of a franchise to be made on the basis of, among other things, the rates to the subscriber.

This bill would, upon request of the franchisee or licensee, modify local regulation by the franchisor, under specified conditions, of the rates, charges, and rate structures of a franchisee or licensee if such franchisee or licensee provides a community antenna television system, as defined, which provides a community service channel program, as specified.

It would permit the franchisor to act as a public trustee of such community service channel or channels, as specified. It would exempt a franchisee or licensee from liability for acts arising from the use of the community service channel by others.

It would prescribe a complaint system with respect to such a franchisee's or licensee's services and provide for the levying of certain penalties for failure to remedy a complaint, as specified.

The bill would cease to be operative on January 1, 1984, except a provision would remain in effect beyond that date requiring that rates then in effect shall not be subject to reduction by local authorities below the average rate in the state for the class of service provided.

Finally, the bill would require the California Public Broadcasting Commission to make a specified report by April 15, 1982, regarding the effect of the bill, and would impose specified filing requirements upon cable television systems.

The people of the State of California do enact as follows:

SECTION 1. Section 53066.1 is added to the Government Code, to read:

§ 53066.1. (a) Notwithstanding the provisions of Section 53066, any cable television system which:

(1) Provides 20 or more channels to the cable television subscriber,

(2) Receives or has contracted to receive television signals by satellite earth receiving station,

(3) Has a subscriber penetration ratio of less than 70 percent certified by the cable television system, subject to review by the franchisor or licensor,

(4) Is located in a county or portion of a county which has available three significantly viewed television stations, as defined by the Federal Communications

Commission, or two significantly viewed television stations and an educational television station, and

(5) Is providing or has agreed promptly to provide a community services channel program as defined in subdivision (d),

shall, upon election by the cable television system and upon the filing of a declaration to that effect with the franchisor, be exempt from regulation or control by a city, county, city and county, or other authority as to rates, charges and rate structures, except for the first year following the date of delivery of service pursuant to the initial grant of a franchise.

(b) Notwithstanding the provisions of Section 53066, any cable television system which:

(1) Otherwise meets the requirements of subdivision (a) except for the requirement of paragraph (3) of subdivision (a), or

(2) Provides between 12 and 20 channels of television service in a franchise area with fewer than 3,500 subscribers in a community of less than 20,000 in population, and otherwise meets the requirements of paragraphs (4) and (5) of subdivision (a),

may, upon election by the cable television system and declaration filed with the franchisor, adjust its rate by an amount not to exceed 75 percent of the percentage increase in the Consumer Price Index for the period since the date of the last previous rate increase, or December 31, 1975, if there have been no increases since December 31, 1975. A system may make a rate adjustment under the preceding sentence only for the period occurring within three years from the date a system would be entitled under such sentence to make an adjustment. A cable television system which, prior to January 1, 1980, had 12 or fewer channels, and subsequently rebuilds its system to 20 or more channels, may raise its rates to a level, within three years of completion of the rebuild, not to exceed the statewide average rate for those cable television systems having 20 or more channels.

(c) (1) Prior to April 15, 1982, the California Public Broadcasting Commission shall report to the Legislature concerning the effect upon subscribers and upon the telecommunications policy of the state of the rate adjustments by cable television systems as a consequence of this section, including such recommendations for legislative modification as may appear desirable. Each cable television system adjusting its rates pursuant to this section shall file with the California Public Broadcasting Commission prior to September 15, 1981, the rates of the system on January 1, 1980, and all subsequent adjustments, and information concerning number of subscribers and services provided. After the required filing on September 15, 1981, all systems shall promptly file any subsequent rate adjustments with the California Public Broadcasting Commission.

(2) This section shall cease to be operative on January 1, 1984, unless on or before such date its operative date is extended by the Legislature, except that rates in effect on January 1, 1984, shall not be subject to reduction by local authorities having rate reduction authority in their franchise below the average rate in the state on that date for the class of service provided.

(d) A cable television system shall be deemed to be offering a community service channel program if the system does all of the following:

(1) (A) Provides for those systems which furnish between 12 and 20 channels, a dedicated channel for local community, public access, educational and government access purposes, except that the one channel may be a composite containing the functional equivalent of a single community service channel; or (B) provides for those systems which furnish more than 20 channels, in addition to the first dedicated channel, a second such channel if the first channel is in use during 80 percent of the weekdays for 80 percent of the time during any consecutive 13-hour period for 10 consecutive weeks, except that for systems with 24 or fewer channels

the second channel, if required, may be a composite containing the functional equivalent of a single community service channel; or (C) provides, if such system furnishes more than 30 channels, a third channel if the second channel is in use during 80 percent of the weekdays for 80 percent of the time during any consecutive 13-hour period for 10 consecutive weeks.

(2) Participates in a statewide cooperative program, administered by an association of cable operators, with the advice of potential users, that: (A) provides instruction and training for individuals, groups, entities and agencies interested in using community services channels, (B) furnishes guidelines for the use and allocation of such channels, and (C) creates a foundation for community service channels, with an independent board of directors, including representatives of local nongovernmental user groups and public agencies. Such foundation shall have grant-making authority to users and shall have, as its primary purpose, the promotion and encouragement of use of community service channels.

(3) Provides fifty cents ($0.50) per subscriber per year to the foundation established pursuant to paragraph (2) of subdivision (d).

(4) Provides to individuals, groups, and entities using community service channels technical advice by local program staff and reasonable access to local studio facilities, if such facilities and staff are part of the local system.

(5) Cooperates with courses and programs in secondary schools, community colleges and elsewhere which furnish training in the uses of community service channels.

(6) Has available for use without charge tape playback facilities for entrance into the system.

(7) Provides through display information on community service channels, and by other means, including written notice to subscribers, information to potential users of the opportunity to have access to community service channels.

(8) Unless the franchisor elects to act as trustee for the community channel or channels, consults with the franchisor in establishing policies for the use of community service channel or channels.

(9) Provides to government and educational agencies reasonable access to earth station facilities for the receipt of programming for the community service channel.

(10) Regularly provides to the foundation for community service channels and to the public and public agencies information containing the name, address and telephone number of the system, the name of the system manager, and the status and utilization of the community access channels.

(e) The franchisee or licensee may utilize any community service channel which is not used for community service programming so long as community service programming is given scheduling priority.

(f) The franchisor may elect to act as public trustee or appoint a delegate reporting to the franchisor, to act as public trustee of the community service channel, to ensure the use of such channel or channels for public access, state or local government or education access purposes.

(g) The franchisee or licensee, or such delegate as is appointed a trustee of such community service channels, shall not be liable for acts arising from the use of such channel or channels by persons other than the franchisee or licensees. The franchisee or licensee shall establish regulations governing the use of such channels which provide uniform and nondiscriminatory standards, ensure adequate opportunity for participation by local nongovernmental users and incorporate restrictions on libelous or slanderous or illegal programs.

(h) The California Public Broadcasting Commission, in cooperation with the California Arts Council, the Office of Appropriate Technology, the State Depart-

ment of Education and the State Department of Consumer Affairs, and such other agencies as requested by the commission, shall undertake efforts to encourage state and local government and educational use of the community service channel or channels and shall prepare a report by January 1, 1983, indicating the uses that government and educational agencies and community organizations have made of such channel or channels.

(i) The Regents of the University of California, if it so elects, the Trustees of the California State University and Colleges, the Board of Governors of the California Community Colleges and the State Department of Education shall negotiate with representatives of cable television systems providing community service channels concerning appropriate provision for access to the community services channel or channels for educational agencies using such channels and shall implement by segment, or collectively, a program for the use of such community service channel or channels for educational purposes. Each of the agencies named in the preceding sentence shall report to the Legislature on or before June 15, 1981, concerning the extent to which there has been use of television, including satellite interconnection, to fulfill the mission of each agency and actual use of community service channel and other cable and broadcast facilities. Such report shall also indicate the prospect for additional uses of such interconnected facilities and shall make recommendations for such legislation as may be needed to assure appropriate use of such channels.

(j) For purposes of this section, the following definitions shall apply:

(1) "Cable television system" means a community antenna television system serving a franchise area or two or more contiguous franchise areas.

(2) "Class of service" means a category as described in subdivision (a), or in paragraphs (1) or (2) of subdivision (b).

(3) "Consumer Price Index" means the consumer price index published at the end of the month following the rate adjustment by the United States Bureau of Labor Statistics for the area in which the cable television system is located or the nearest area for which such index is published.

(4) "Satellite earth receiving station" means any structure or device utilized to receive signals from a satellite.

(5) "Subscriber penetration ratio" means the number of subscribing residences divided by the total number of residences having cable available.

(k) In addition to any other penalty provisions in the franchise or license, if a franchisee or licensee files a declaration pursuant to subdivision (a) or (b) the franchisor or licensor may unilaterally amend the franchise or license to provide that if a subscriber files in writing with the franchisor a complaint for a service problem which is preventable and reasonably within the franchisee's or licensee's control, and if such franchisee or licensee fails within a reasonable period following receipt of written notice by the franchisor to remedy the problem, the franchisor may levy a penalty of up to five hundred dollars ($500) for any occurrence or series of related occurrences, unless the franchisee or licensee has fewer than 5,000 subscribers, in which case the penalty shall not exceed two hundred dollars ($200). If the franchisee or licensee objects to the penalty in writing to the franchisor, the franchisee or licensee and franchisor shall conduct arbitration in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be final.

Such amendment to the franchise or license shall provide that the franchisee or licensee shall provide written notice to each subscriber at intervals of not more than one year, of the sanctions provided in this section, and of the procedure for reporting and resolving subscriber complaints, including the subscriber's right to complain in writing to the franchisor of the franchisee's failure to resolve a service complaint which is preventable and reasonably within the franchisee's or licensee's

control. The proper address of the franchisor or licensor to which complaints may be directed shall be included in such notice.

SEC. 2. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

HISTORY: A.B. 699, approved September 27, 1979, filed September 28, 1979.

McCAW
COMMUNICATIONS
COMPANIES

February 28, 1980

The Honorable W.E. Bradley
Chairman, Senate Committee on Commerce
The Legislature of the State of Alaska
Pouch V
Juneau, Alaska 98111

Dear Senator Bradley:

I am vice president and one of the principal stockholders of Frontier ColorCable, Inc., which operates a cable television system in Fairbanks, Frontier began construction in June 1979 and now has approximately 3,200 customers. We expect to complete the 1980 phase of construction by October and to have 5,000 customers by the end of 1980. Frontier received its certificate from the Commission late last year after lengthy hearings, and competition from four other applicants. During and since the hearings, I have had extensive contact with the Commission and its staff and therefore believe that I am qualified to comment on the recommendations contained in the legislative audit of the Commission.

I am also the vice president and a major shareholder of Radio Communications Engineering, Inc., which has reached an agreement with Communications Engineering, Inc., to purchase all of its assets. Communications Engineering, Inc., is a public utility which offers radio-telephone and paging service in the Mat Valley-Anchorage-Kenai area.

I have more than ten years of experience in the cable television and telecommunications business. My comments, based on that experience and my contact with the APUC are:

Recommendation No. 1 - Combine the APUC with the Transportation Commission and the Pipeline Commission.

I feel that there are no "economies of scale" and the expertise required of the staff and commissioners is substantially different for each of the three commissions. It has been recommended that fewer commissioners preside at hearings. The effect of this

situation seems detrimental for two reasons: While I can only speak of matters pertaining to the APUC, the commissioners are much overworked as it is, making attending additional hearings an impossibiliy; and fewer commissioners at each hearing would greatly reduce the scope and depth of expertise at each hearing. As it is at present, each commissioner, while being well rounded, is a specialist in one aspect of the jurisdiction.

I do not believe, as suggested by the review, that one staff is capable of staying abreast of all of the issues of several industries which differ greatly. I think a survey would indicate that most individuals have enough trouble keeping up with changing regulations and complexities of one industry let alone three. Please note that it was the Commissioners in "one commission" states that responded that Commissioners could develop enough expertise to serve all three functions. It would be interesting to hear how the regulated utilities in those states would have responded to the same question.

Recommendation No. 2 - Stop all regulation of cable television.

Certification of Cable Television Companies in Alaska is a necessary and important function of the APUC. In the lower 48 and Hawaii, franchising or certification is under the jurisdiction of state, city or county in 99.9% of all cases. This aspect of regulation is vital to consumers and cable companies alike.

If the APUC were removed from the jurisdiction of cable television companies, the consumer would have no recourse if dissatisfied with its service. At present if a company ceases to be fit, willing and able to provide quality service, the APUC has the power to reprimand and if necessary, to remove the Certificate of Public Convenience and Necessity from the existing operator and grant it to an operator who is fit, willing and able to provide quality service. The overview of the APUC covers many areas including consumer protection, reliablity of service, quality and diversification of programming and consumer complaints.

APUC jurisdiction of certification also provides an important service to cable operators. Without APUC involvement, there would be no protection from exorbitant pole attachment rates. If these rates are arbitrarily raised to unreasonable levels, the cable operator has no choice but to pass on the costs to the subscriber in the form of rate increases. Arbitrary pole attachment rate increases are not an unfounded fear since it has been a severe problem in many communities in the lower 48. In addition, the APUC provides protection against duplication of services of high fixed-cost

utilities, which would result in artificially high prices for the consumer.

It is important that the certification of cable utilities remain under the jurisdiction of qualified and impartial professionals. If the APUC is deprived of it's regulatory power, cities and boroughs will regulate unless specifically prohibited from doing so. Therefore, if it is determined that deregulation is good, alternative regulation by others must be precluded by legislation.

Rate regulation of cable television utilities by the APUC is not necessary and in some cases detrimental to subscribers. Effective in 1976 the FCC removed the obligation of state and local franchising authorities to regulate rates for basic cable service. Furthermore, it actually prohibited rate regulation of "pay television" i.e., services such as HBO, Showtime, Star Channel, etc. Even though I believe rate control is advisable in some small communities where there are not alternate entertainment sources and there is a captive audience; the subscriber in larger communities has may forms of entertainment available such as free network and public television, movie theatres and radio, which compete with cable television. In communities which fit the latter description, the free market influences rates and forces the operator to provide quality service at a reasonable price.

Deregulation of rates would encourage and facilitate the introduction of new services and development of cable television in Alaska. The high cost of rate studies and paperwork involved in changes of any kind place a burden on the cable operators and the resources of the APUC.

The marketplace can and will regulate rates effectively in those markets which have a variety of entertainment sources. Deregulation of the larger cities can only speed the advancement of cable innovation in Alaska.

Recommendation No. 7 - Upgrade salary levels for staff.

I strongly support a well educated, motivated and adequately compensated professional support staff. The APUC should have the resources to pay whatever salaries are necessary to attract and retain such a staff. In addition, it has been my observation that the APUC does not have sufficient staff to process its present workload on a timely basis.

Recommendation No. 9 - APUC should develop an index and cross-reference to its orders and decisions.

The introduction of a professionally designed and implemented index and cross-reference system would greatly benefit both the APUC and the utilities. At present it is very time consuming and expensive to track down relevant court decisions and precedents set by Commission decisions.

I would like to thank the Committee on Commerce for giving me this opportunity to voice my opinions. I would be happy to come to Juneau to give additional testimony or answer questions on this written testimony, if the committee so wishes.

Sincerely,

John E. McCaw, Jr.

John E. McCaw, Jr.
Vice President

JEM/wlb

John E. McGill
Director, Regulatory Affairs

Alascom, Inc.
949 East 36th Avenue
Pouch 6607
Anchorage, Alaska 99502
907 / 264-7922

Senator Brad Bradley
Chairman Senate Commerce Committee
Pouch 5, P.O. Box 3100
Juneau, Alaska 99811

Dear Senator Bradley: March 05, 1980

This is written with regard to the proposed hearing to be held on March 11, 1980 for the purpose of reviewing the activities of the Alaska Public Utilities Commission. On December 17, 1979 I made a statement on behalf of Alascom, Inc. before a Performance Review Hearing co-chaired by Senator Sturgulewski and Representative Fred Brown.

Rather than burden the Senate Commerce Committee with further duplicative testimony, there is attached a copy of the outline used in the presentation of the Company's testimony at that earlier hearing as well as a letter containing further clarification in response to specific questions of the Committee members. This material is being provided to each of the members of the Senate Commerce Committee as well as to Mr. Jon Mathison.

If you or any members of the Committee have any questions regarding this material please feel free to contact me.

Very truly yours,

ALASCOM, INC.

John E. McGill

cc: Senate Commerce Committee Members: W. Bradley
A. Sturgulewski
T. Kelly
F. Ferguson
T. Stimson

Mr. Jon Mathison

Alascom, Inc. | 949 East 36th Avenue | Pouch 6607 | Anchorage, Alaska 99502 | Tel (907) 264 7000

ALASCOM

The House Commerce Committee
Box 1370
Fairbanks, Alaska 99707

Attention: Mr. Allen Blume

Dear Mr. Blume: December 21, 1979

In accordance with the expressed wishes of the Co-Chairpersons at the Performance Review of the Alaska Public Utilities Commission Hearing held on December 17, 1979, there is attached a copy of the outline which I utilized in presenting my testimony to the Commerce Committee. I would be most grateful if you would see that all members of both the Senate and the House Committees were provided with a copy of this material.

In addition to the points set out in the outline of my presentation, there were certain additional points made during subsequent questioning which I believe might provide clarification on certain portions of my testimony. They are:

1. In response to an inquiry of Senator Sturgulewski, I indicated it was my belief that the distinction made between economic regulation and regulation for the purpose of certification might be an improper distinction. It was suggested that perhaps the regulation associated with certification should be ongoing in the area of quality of service provided by the certificated utility. This would result in economic regulation looking only at the level of rates and rate design. It would appear that such clarification could be provided through concise definitions in any legislation which might result from the performance review.

2. In response to Representative Brown's questions concerning the use of hearing officers, it was suggested that hearing officers could be reasonably expected to utilize their expertise in the regulation of divergent utilities. The basic underlying principles of utility regulation should be readily applicable by a hearing officer for regulation not only of telecommunications but also electric, pipeline, transportation utilities, etc. I was in agreement with the Chairman of the committee that in certain highly technical areas a specific hearing officer might be required to preside because of his expertise in the area of telecommunication separations, peak load pricing for electric utilities, etc. Additionally, it is possible that staff support for one area of regulation could provide needed assistance in another area of regulation.

I wish to express my gratitude to the Chairpersons and each of the members of the committee for allowing me the opportunity to testify before them and for their sincere expression of interest and concern in this area.

Very truly yours,

ALASCOM, INC.

John E. McGill, Director
Regulatory Affairs

JEM:bl
Attachment: Testimony Outline

12-19-79

TESTIMONY OF ALASCOM, INC. REGARDING THE PERFORMANCE REVIEW OF THE PUBLIC UTILITIES COMMISSION. DECEMBER 17, 1979

I. Alascom is a regulated utility providing long lines communications within the state and between Alaska and other points in the world.

A. Regulation of utilities is designed to protect the public interest; an elusive and sometimes difficult goal which by its very nature must consider conflicting claims.

B. Alascom has willingly submitted to regulation and recognizes the need for such submission.

C. Alascom supports continued regulation by the APUC in those activities subject to its jurisdiction.

II. Alascom shares the concerns of the APUC regarding the merger of the three regulatory bodies with one Commission.

A. Unclear that work load can be accommodated with one Commission.

B. Other states, having one Commission, are functioning in a mature circumstance while Alaska continues to be in its adolescence from a utility development point of view.

C. We do not oppose the consolidation of three Commissions into one, provided that it results in more efficient and effective regulation.

III. Alascom does not oppose the recommendations of the report to de-regulate CATV; refuse collection; telephone and electric cooperatives or small utilities with less than $100 K gross

revenes. There are, however, a few considerations we would offer:

A. Some regulation should be retained concerning pole attachment agreements between CATV operators and other utilities.

B. As a partner with telephone cooperatives and small telephone companies in the provision of communications, it is important for Alascom to be able to approach the Commission with matters disputed between Alascom and the operating telephone company. Such matters could include:

1. Level and quality of service.
2. Settlements between the companies.
3. Charges for through private line services.

The removal of such companies from economic regulation appears to indicate that they would be relieved of regulation as to rates, rate design and quality of service.

C. Although the de-regulated telecommunications company may be small or controlled by its own members, it can have a substantial impact on state-wide service if the quality and level of service is substandard.

IV. Alascom supports the need to clarify the statute and administrative code presently used by the APUC.

A. Although we recognize the validity of the particular recommendation in the legislative audit, we believe there are other areas requiring review.

B. We recommend that the Commission, through its staff, conduct a thorough review of AS 42.05 and 3AAC48 to further the benefits of this recommendation. We would

hope that members of the regulated industries would have an opportunity to participate in this review and recommend up front various amendments. An Industry Task Force with the APUC staff would be effective.

V. Alascom supports the recommendation that professional salaries be reviewed to determine whether they are adequate to attract and retain professional staff.

A. We would urge a comparable review of Commissioner's salary levels.

1. Alascom as a responsible public utility, constantly reviews its salary grades for various professional and/or exempt employees in order to assure itself that it offers compensation competitive in the labor market. These reviews lead us to believe that the Commissioner's salaries, in the present labor market may not be competitive enough both to attract and retain qualified personnel.

VI. Alascom does not believe it is proper for it to comment on the internal administration of the APUC. However, we do believe it is necessary to clearly delineate the statutory role of the Commission staff. On page 24 of the Audit Report there is mention of ex parte communications between the staff and the Commission when the staff assumes the role of a party to Commission proceedings.

A. When the staff is indeed a party to a proceeding (e.g. a rate case) the Commission does not have available to it

the necessary support and assistance the Commission would normally expect from its staff.

b. Solution

Alascom would support limiting the role of the staff to one of support for the Commission without designation as a party to proceedings. The staff would prepare material for the Commission to be used in conducting proceedings. The Commission would be expected, through this collective expertise to represent the public interest. Alascom would favor this solution.

VII. Alascom offers no opinion as to implementation of a time management system or collocation codes.

VIII. General Observations

A. The Performance Review does not comment on the level of staffing at the APUC. It is Alascom's opinion that the Commission is understaffed and unable to deal with the many questions brought before it in a timely manner. Nor does the Commission staff possess expertise in all areas adequate to evalute major policy questions in all of their facets. Too often telecommunications policy is formulated by default rather than by design. The public interest is not best served by this circumstance.

B. Alascom believes that it is necessary to limit regulatory lag statutorily. Such a limitation would be beneficial not only to the utility but also the ratepayer. Additionally, Alascom would suggest that consideration be given to utilization of hearing officers under the guidance of the Administrative Procedures Act.

APUC SUNSET REVIEW

CERTIFICATION:

Before a utility may operate in the State of Alaska application for a Certificate of Public Connvenience and Necessity must be made to the APUC as prescribed in AS 42.05.221 - 281. The Commission reviews the application and may reject, modify, or award a Certificate to the applicant. The Certificate may be as broad or as specific as the Commission chooses to issue and this is stated on the face of the Certificate.

AS 42.05 is quite specific as to the types of endeavors that are classified as utilities. Although, CATV is not mentioned in the statute the definition of telecommunications (AS 42.05.701 (2A and 8) states; "the transmission and reception of messages, impressions, pictures and signals by means of electricity." This clearly indicates that CATV meets the criteria of an utility and is subject to the provisions of AS 42.05.221 (Certification) to protect the public interest.

Therefore, the APUC may judge the qualifications of an operator on criteria established by the Commission. Due to the fact that the language used on the face of the Certificate, is prescribed by the Commission, an operator is subject to that criteria. Since no utility may operate without a Certificate the APUC has ultimate control as to the qualifications of an operator.

In other language contained in AS 42.05.221 - 281 no Certificate may be transferred without making application to the Commission. Once again, the APUC has complete control over new or existing services.

Since such a structure is in place to protect the public interest it does not make sense to remove the Certification of CATV from the APUC who is best equipted to handle it.

RATE REGULATION:

It is interesting to note that the language contained in AS 42.05 (Ch 113 SLA 1970) is permissive vs. mandatory regarding the regulation of utilities. The rate regulation and proceedings have evolved through regulations adopted and decrees of the Commission. Since the rate proceedings have become more complicated, during this evolution, they have also become longer and more costly. After the passage of ten (10) years, since the enabling legislation (SCSCS HB 202 am (S); CSHB 202 am, passed the House 30-7-3, April 9, 1969; SCSCSHB 202 am (S), passed the Senate 16-4, April 22, 1970; the House concurred in the Senate amendment) it is appropriate that the Legislative Audit and the Legislature's Sunset Review of the APUC is under consideration.

Rate deregulation of the Cable TV industry is an interesting concept due to the fact that an operators revenues are divided

between regulated rates and non-regulated rates and that may vary from a 20% - 80% split to a 50% - 50% split. Thus, two systems with gross receipts annually of $1,000,000 may be broken down as follows:

System J	
Gross Receipts	$1,000,000
80% non-regulated	$800,000
20% regulated	$200,000
System K	
Gross Receipts	$1,000,000
50% non-regulated	$500,000
50% regulated	$500,000

This indicates a disparity of $300,000 of revenue on regulated rates when the actual reason for the difference is purely economics based on agressive marketing and the variety in programing offered to the public and to the public's taste in viewing matter.

Another factor of economics that applies, is that the cost of a rate proceeding is passed through to the consumer. This is by decree of the APUC. An example would be that the operator of system "K" feels that due to economic conditions (i.e. renegotiated labor contracts, increase in energy costs, inflation, etc.) a rate increase of $1.00 per month per subscriber in in order. He makes application to the Commission for this increase and the proceedings goes forth. With the time involved and the special consultants, auditors and legal counsel the pass through, varies but, could make the increase granted $1.50 per month or a 50% increase over the original request and/or higher. This 50% is not reflective of expanded or improved service but just the cost of the rate proceeding that the consumer must pay.

Rate deregulation would save the consumer the cost of the proceeding and would let the economic conditions and consumer demand establish the rate charged for service provided. In most cases this would mean no increase or an increase that would be less than in the regulated circumstance. Under the regulated rate structure there is not a difference in proceedings according to the size of the operator's system. Thus, the system in a small community is subject to the same proceeding as a system in a large metropolitan area. And the small system may be less able to afford the cost as would the larger operator.

CONCLUSIONS:

It could be concluded that the public interest is best served by the APUC retaining the function of Certification and evaluating the operators and systems qualifications and rate deregulation to eliminate the disparity of controlled vs. noncontrolled revenues and the added expense to the consumer of the rate proceeding. It should be noted that the controlled and noncontrolled rates are first subject to the approval of the

FCC and this circumstance exisits because of an order by the FCC.

Applying this set of criteria to the Cable TV industry would allow the APUC full control over the operation of a system, through its authority under AS 42.05, and allow the market place, through economic conditions, to establish the rate. Provision should be made that after a period of time (3 to 5 years) the Legislature (perhaps through Legislative Audit) have an overview of the Commission and the industry to evaluate the workings of these circumstances and offer a further check and balance.

Another benefit would be the cost saving to the Commission. Those public funds (now used for rate regulation) could be applied to other functions, that APUC is charged with, and staff time would be available for other purposes.

In conclusion it is noted that AS 42.05 is specific in definition and procedure for Certification of a cable system where as the rate regulation provisions are not as specific and the public would be best served by rate deregulation of Cable TV by the Legislature.

APUC: Alaska Public Utilities Commission

Commission: APUC

CATV: Community Antenna Television

FCC: Federal Communications Commission

STATE OF ALASKA

JAY S. HAMMOND, Governor

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Phone (907) 276-6222

March 24, 1980

Senator W. E. "Brad" Bradley
Chairman, Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

As a follow-up to the Sunset Review of the Alaska Public Utilities Commission I am enclosing supporting documentation for additional Commission staff in order to carry out our existing responsibilities in a timely manner.

As the audit verified, the present level of staffing is inadequate to meet the responsibilities mandated to the Commission under AS 42.05. Testimony from utilities and ARECA during the public hearings of both the Senate and House Commerce Committees support this fact.

To summarize the contents of the enclosed package, 15 additional personnel would be needed if the APUC is to continue its ongoing responsibilities in a more responsive and efficient manner, i.e., the way "we would like to do the state's business". These personnel would be assigned to the following sections:

Engineering - (4)

- Engineer II - cable television
- Engineer II - energy
- Engineer I - energy
- Engineer I - telecommunications

Utility Financial Analysts - (3)

- UFA III
- UFA I
- UFA I

Tariff Analyst - (1)

TA III - (new classification)

Communications Carrier Section - (3)

Economist II

Research Analyst II

Clerk Typist III

Administrative Support for above personnel - (4)

Word Processing Supervisor

Word Processing Operator

Clerk Typist III

Clerk Typist I

The approximate salaries of these individuals is $603,000. Our current budget which is before the Finance Committees is approximately $1.6 million. This does not include an increase to raise the professional staff salaries to a comparable level; if that occurs, and the Commission is optimistic that it will, an additional $60,000 would be added to our current budget.

In order to give your committee an idea of the impact of the deregulation recommendations, the Commission provides the following observations: (all elimination of positions refer to the 15 additional positions and not existing positions)

Sunset Recommendation 2 - total deregulation of cable-television utilities: - eliminate one engineering position.

Sunset Recommendation 3 - total deregulation of garbage and refuse utilities: eliminate one financial aralyst.

Sunset Recommendation 4 - deregulation of telephone and electric cooperatives: if the 12 electric cooperatives and 7 telephone cooperatives elected deregulation by September 1, 1980, eliminate 1 financial analyst and 1 Engineer II.

Sunset Recommendation 5 - economic deregulation of all small utilities grossing less than $100,000: This would not materially affect personnel requirements.

Whether or not which, if any, adminstrative support positions could be eliminated would depend on the implementation of Sunset Recommendations #2 - #5.

In summary, 4 of the 15 additional professional personnel would not be required if the legislature deregulated cable-television, and garbage, and if all REA co-ops elected deregulation by September 1, 1980.

Sincerely,

Carolyn S. Guess
Commissioner

Enclosure
CSG/rt

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A. Administrative Section

- FY 81 Budget Allocations
- APUC Staff Organization Chart
- Administrative Support Organization Chart
- Adjusted FY 81 Budget

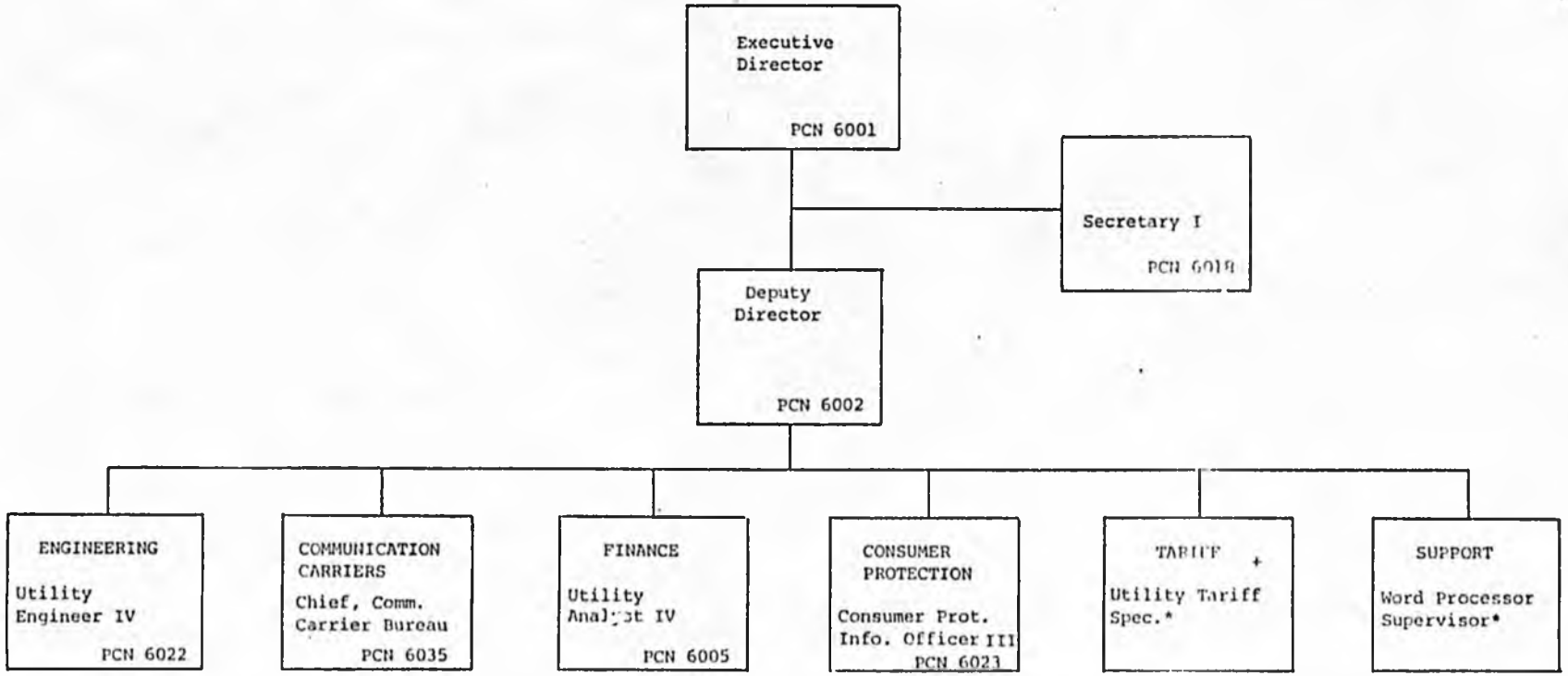
ALASKA PUBLIC UTILITIES COMMISSION

ALLOCATION OF GOVERNORS BUDGET
FY 81
(In Thousands)

		Commissioners	Administration	Engineering	Communications Carriers	Finance	Tariff	Consumer Protection	Total
100	Personal Services	$352.9	$232.7	$300.3	$46.6	$255.5	$76.7	$122.1	$1,386.8
200	Travel	15.0	2.8	16.3	6.4	16.1		1.5	58.1
300	Contractual Services	49.2	112.9	7.8	3.3	9.9	4.5	17.1	204.7
400	Commodities	2.5	3.7	1.7	1.0	1.7	1.0	3.0	14.6
500	Equipment		5.4	1.0		1.6		2.0	10.0
	Total	$419.6	$357.5	$327.1	$57.3	$284.8	$82.2	$145.7	$1,674.2

ALASKA PUBLIC UTILITIES COMMISSION

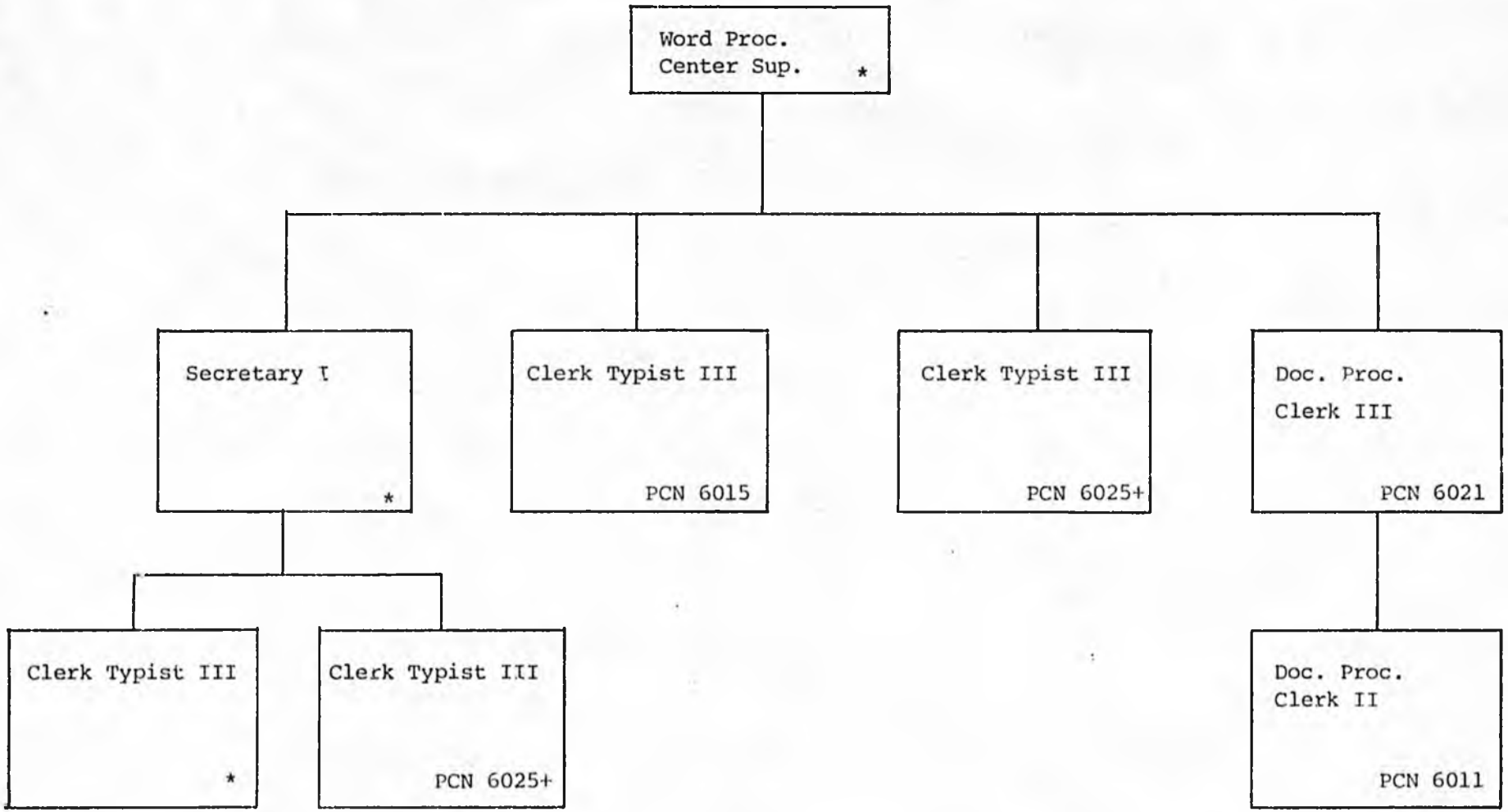
STAFF ORGANIZATION CHART



*New position
+New classification requested

ALASKA PUBLIC UTILITIES COMMISSION

SUPPORT ORGANIZATION CHART



*New position requested
+Permanent 1/2 time position

EXECUTIVE DIRECTOR
ADMINISTRATION
FY 81 BUDGET
(In Thousands)

		Allocated FY 81 Budget	Comparable Salary Increment		Adequate Staff Increment	Adjusted FY 81 Budget
100	Personal Services	$232.7	$	(1)	$79.4	$312.1
200	Travel	2.8				2.8
300	Contractual Services	112.9		(2)	1.5	114.4
400	Commodities	3.7		(3)	1.5	5.2
500	Equipment	5.4		(4)	2.0	7.4
	Total	$357.5			$84.4	$441.9

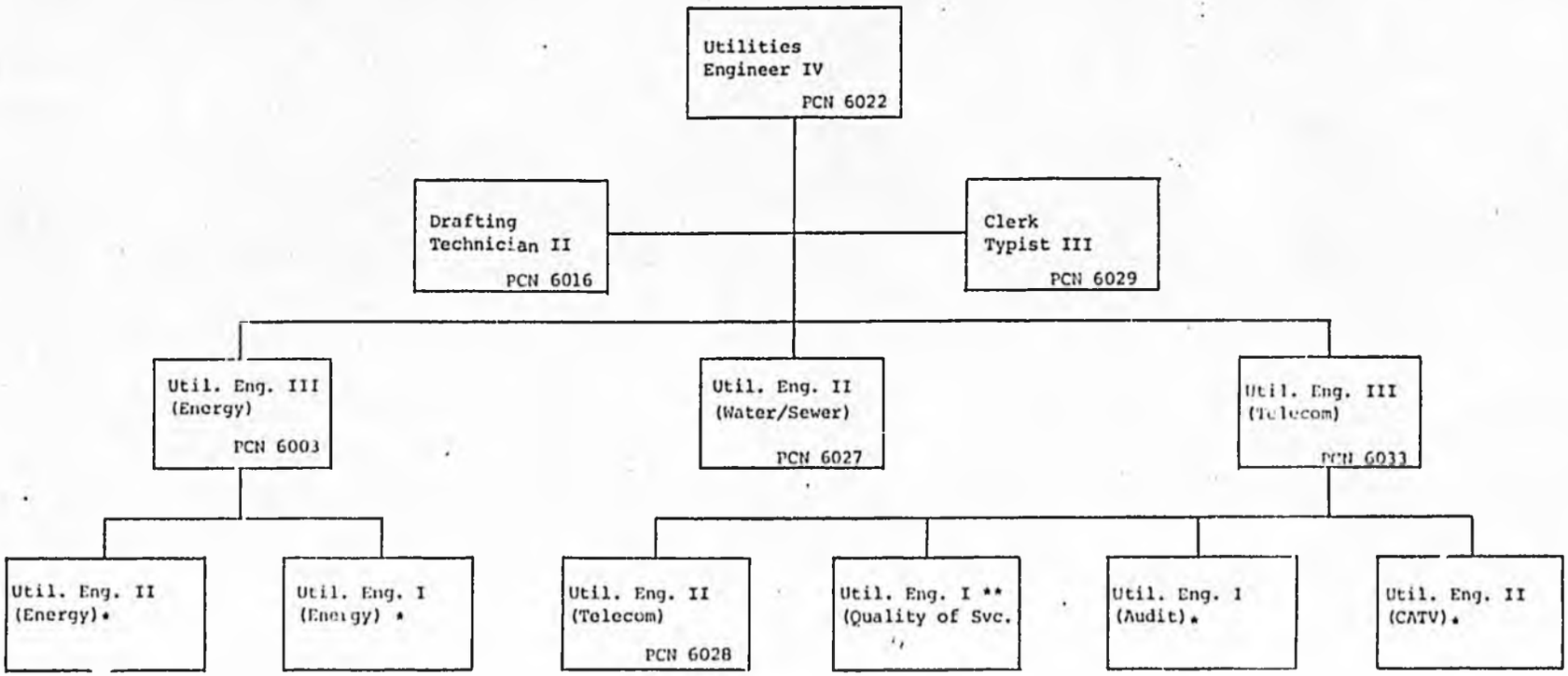
(1)	Word Processing Supervisor	$25,373
	Word Processing Operator	19,883
	Clerk Typist III	18,243
	Clerk I	15,944
		$79,443
(2)	Maintenance of Equipment	$ 1,000
	Training Fees	500
(3)	Office Supplies	$ 1,500
(4)	Office Equipment	$ 2,000

B. Engineering Section

- Organization Chart
- Principal Programs
- Adjusted FY 81 Budget

ALASKA PUBLIC UTILITIES COMMISSION

ENGINEERING ORGANIZATION CHART



*New position requested

**New position requested in Governor's FY81 Budget Request

Principal Programs in Engineering

Rate Base

1. Audit Continuing Property Records and determine whether plant is used and useful.

This involves auditing on a sampling basis and requires the use of layout drawings and staking sheets to determine the actual location of the equipment. Physical testing of telephone equipment (amplifiers, etc.) may be required to assure that particular equipment is actually in use.

2. Determine if rate base is reasonable or unduly inflated due to poor decisions.

Work done on occasional basis at the Commission has revealed that some utilities do not have sufficient control over the rate base. Examples include: 1) Plans based on outdated forecasts done in the lower 48 which also ignored higher Alaskan labor rates have resulted in uneconomical additions to plant and 2) projects placed in limbo before they materialize accumulate excessive engineering labor hours before they became active.

3. Audit of Work Orders and associated accounting.

This is necessary to establish the reasonableness of material, engineering, labor, supply and overhead charges to determine the proper allocation between capital and expense costs, and to insure prompt capitalization and retirement of property.

4. Review depreciation rates and studies.

In many locations of Alaska, depreciation rates may differ from industry norm due to the unique conditions encountered.

Rate Design/Tariffs

1. Review allocation studies.

This involves detailed studies of equipment and of the effort involved to put it into service which will determine a fair and reasonable allocation of charges to the various types of services offered by utilities. In telecommunications utilities tend to assign excessive costs to noncompetitive services.

2. Review reasonableness of material, engineering and labor rates used to develop individual tariffs. Work is similar to that described in 1 above and may include the witnessing of actual installations.

3. Approve portions of tariff text that is related to equipment and engineering.

Quality of Service

1. Develop and update service standards.

To date, only telecommunications service standards have been promulgated (3 AAC 52.200-3 AAC 52.340). Standards should be developed for electric, water/sewer, and other utilities. Once developed, standards must be updated to keep current with changing conditions.

2. Field Testing

Only actual on site testing can determine the quality of service provided. It is planned to have an Engineer I "on the road" about 40% of the time who will use specialized test equipment and will audit outage logs to determine the level of service provided by utilities. The engineer will also analyze service problems and determine whether they are caused by faulty or insufficient equipment or poor management control. Emphasis will be placed in telecommunications which is particularly sensitive to service problems where localized minor problems often affect the entire network. For example, poor operator answer time, aside from irritating customers, causes needless use of long distance circuits for the sole purpose of ringing the operator. This in turn distorts usage data and leads to major expenditures for unnecessary equipment additions. Another example is the underprovision of low cost terminal equipment which causes backups in the satellite network.

3. Review of service reliability and contingency plans. Age and reliability of primary and backup equipment will be considered to determine their adequacy. It is planned to study the economic feasibility of providing equipment diversity. Commission involvement seems also necessary to encourage utilities to develop and maintain contingency plans for emergency situations.

4. Review adequacy of system design.

On site review of existing and planned additions to facilities frequently reveal bottlenecks and weak spots which require urgent correction. Besides on site review, it is planned to maintain usage trend data of principal equipment and facilities to pinpoint potential deficiencies.

5. Test accuracy of long distance billing.

Long distance billing is performed by equipment that is integral with central office switching machines. For this reason, the testing of the accuracy of this billing lies with the APUC rather than the Weights & Measures Section.

6. Investigation of Quality of Service Complaints.

This work consists in conducting special investigations related to specific customer complaints.

Management Review

1. Evaluation of Utility Construction Programs.

Construction programs will be reviewed to determine whether they are adequate to meet current and future service needs. Work will consist in ferreting out weak points and in determining whether plans are compatible between utilities. Included will be discussion with utilities whether corrective action is practical and a review regarding practical implementations of new or alternate technologies (e.g, energy sources). It is expected that economic studies will be made or reviewed where alternate courses of actions are possible. It is believed that Commission review of construction programs is especially necessary when such programs are dictated by parent companies in the lower 48 without much regard or appreciation of Alaskan needs.

2. Productivity Studies.

Labor costs and productivity will be examined for reasonableness. This will include a comparison of productivity rates between companies and include a careful review of cases where productivity rates in Alaska deviate from those in the lower 48.

3. Maintenance Programs.

Utility maintenance programs will be evaluated through examination of records and routine maintenance procedures.

4. Investigation of Management Trcublespots.

Programming is now underway to establish computer auditing of utility annual reports. It is planned to have computerized ratio and trend analysis pinpoint possible management trouble spots which subsequently will be investigated (e.g., strong deviations from the mean of General & Administrative expenses per customer; excessive uncollectibles per customer, etc.).

Certification/Transfers

Applications for, or transfers of a certificate of public convenience and necessity require an investigation in the applicant's fitness, willingness and ability to operate the contemplated utility service. Engineering applies this criterion to the review of the applicant's plans, of his management, engineering and operational strengths, and coordinates with the finance section in determining financial fitness.

Special Projects

These will primarily consist in the establishment of new methods and procedures for the engineering section.

ENGINEERING, ENVIRONMENTAL PROTECTION
AND PLANNING SECTION
FY 81 BUDGET
(In Thousands)

		Allocated FY 81 Budget	Comparable Salary Increment		Adequate Staff Increment	Adjusted FY 81 Budget
100	Personal Services	$300.3	$16.2	(1)	$139.7	$456.2
200	Travel	16.3		(2)	8.3	24.6
300	Contractual Services	7.8		(3)	20.8	28.6
400	Commodities	1.7		(4)	.2	1.9
500	Equipment	1.0		(5)	3.8	4.8
	Total	$327.1	$16.2		$172.8	$516.1

(1)	Engineer II - CATV	$ 38,592
	Engineer II - Energy	38,592
	Engineer I - Energy	31,258
	Engineer I - Telcom	31,258
		$139,700

(2)	Staff Audits	$ 2,500
	NARUC School	1,200
	NARUC Meetings	1,400
	Industry Schools	1,200
	Compliance Investigation	2,000
		$ 8,300

(3)	Postage and Telephone	$ 2,400
	Office Space	16,500
	Maintenance of Equipment	1,000
	Training Fees	900
		$ 20,800

(4)	Office Supplies	$ 200

(5)	Office Equipment	$ 3,800

C. Communication Carrier Section

- Organization Chart
- Principal Programs
- Adjusted FY 81 Budget

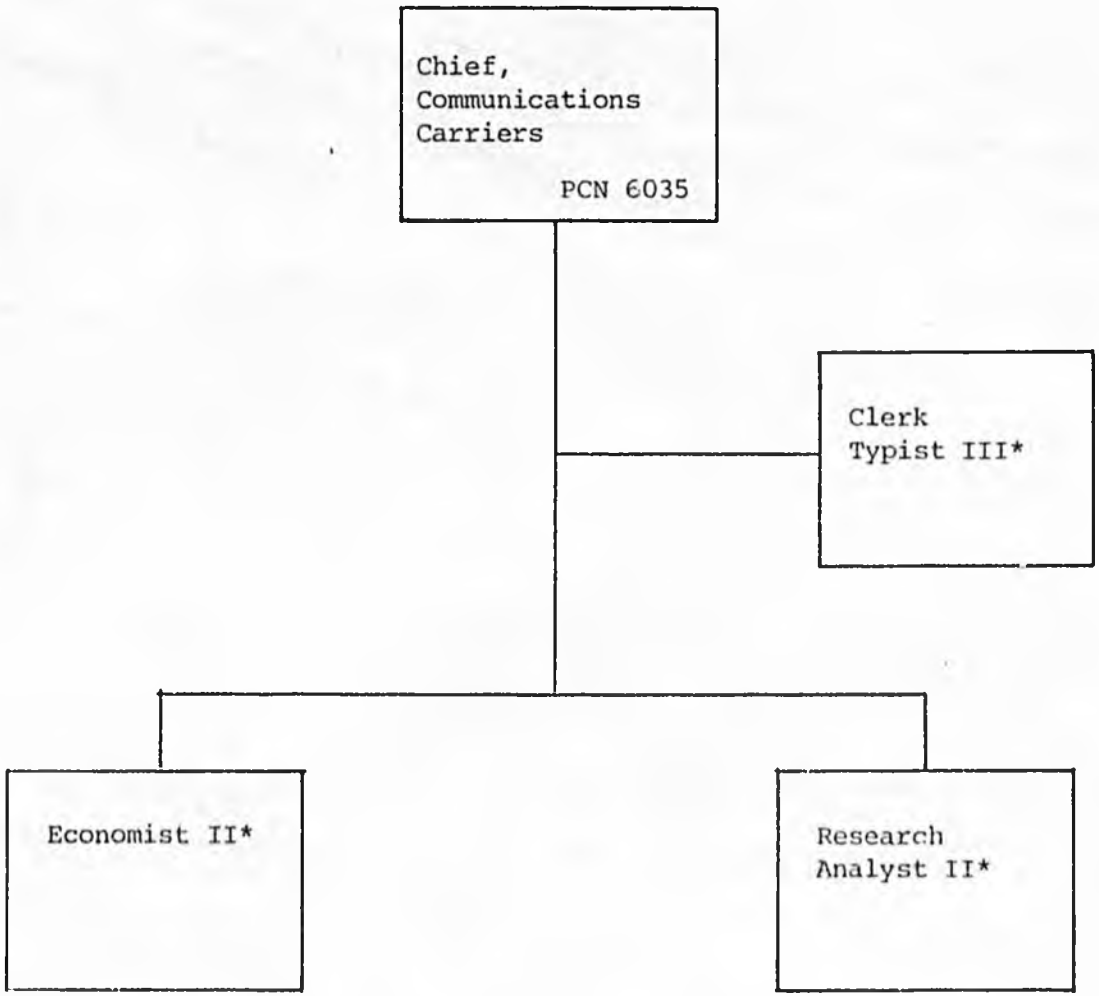
COMMUNICATIONS CARRIERS SECTION
FY 81 BUDGET
(In Thousands)

		Allocated FY 81 Budget	Comparable Salary Increment		Adequate Staff Increment	Adjusted FY 81 Budget
100	Personal Services	$ 46.6	$ 3.3	(1)	$ 86.0	$135.9
200	Travel	6.4		(2)	3.5	9.9
300	Contractual Services	3.3		(3)	8.8	12.1
400	Commodities	1.0		(4)	.4	1.4
500	Equipment			(5)	2.1	2.1
	Total	$ 57.3	$ 3.3		$100.8	$161.4

(1)	Utility Economist	$38,592
	Research Analyst II	29,164
	Clerk Typist III	18,243
		$85,999
(2)	Administrative	$ 900
	NARUC School	1,200
	NARUC Meetings	1,400
		$ 3,500
(3)	Printing	$ 1,000
	Office Space	7,800
		$ 8,800
(4)	Office Supplies	$ 400
(5)	Office Equipment	$ 2,100

ALASKA PUBLIC UTILITIES COMMISSION

COMMUNICATIONS CARRIERS ORGANIZATION CHART



*New position requested.

PRINCIPAL PROGRAMS IN COMMUNICATION CARRIERS

COMMUNICATIONS ACT REWRITE

Congress and the Administration are currently considering amending the Communications Act of 1934, the legislation that created the Federal Communications Commission. Four bills have been introduced, two in the Senate and two in the House, and the Administration is aggressively promoting its own proposal through the National Telecommunications and Information Agency.

Some of the proposals would drastically alter the arrangements under which telephone companies are interconnected. Specifically at issue is the division of toll revenue between long distance companies and local companies. One proposal is that the present system of toll settlements be replaced by a system of "access charges".

Just as the viability of telephone service in Alaska is sensitive to specific toll settlement arrangements, it would be similarly sensitive to specific access charge or other arrangements. It is essential that the APUC monitor rewrite progress and provide input as appropriate.

TOLL RATE DESIGN

In considering Alascom's request for a permanent general rate increase (Docket U-78-4) the APUC has elected to separate the issue of toll rate design and first consider the

question of an "across the board" rate increase. The first phase of the proceeding is expected to reach a conclusion in the near future and the Commission will soon begin consideration of rate design.

Rate design is the process whereby, having determined the utility's overall revenue requirement, the Commission determines specific rates for specific services. Toll rate design answers such questions as whether a call from Anchorage to Iliamna should cost more than a call from Anchorage to Juneau, considering that the distance is smaller but the cost of completing the call may be greater.

Toll rate design is a very complex matter and will require a great deal of attention by the Section as well as the services of one or more consultants.

RURAL TELEPHONE DEVELOPMENT

Although telephone service is generally available to all Alaskans, many villages are served by only a single telephone. In the past few years, few companies have applied to the APUC for certification to provide local exchange service in villages, and a small number of villages are presently receiving such service.

Local exchange operation in a village is, unfortunately, an economically marginal operation. The viability of a local exchange company is very sensitive to the toll settlements arrangements (or access charge arrangements that may be instituted by a

Communications Act rewrite) in effect. To insure continued rural telephone development, it is essential that the Commission, through this Section, monitor the progress of rural telephone developments and the economic health of the small local exchange companies.

STATE NETWORK DEVELOPMENT

As the State's telecommunications needs grow, so its telecommunications network must grow to meet those needs. The network must provide a sufficient number of circuits of adequate quality, and in addition, the circuits must be reliable.

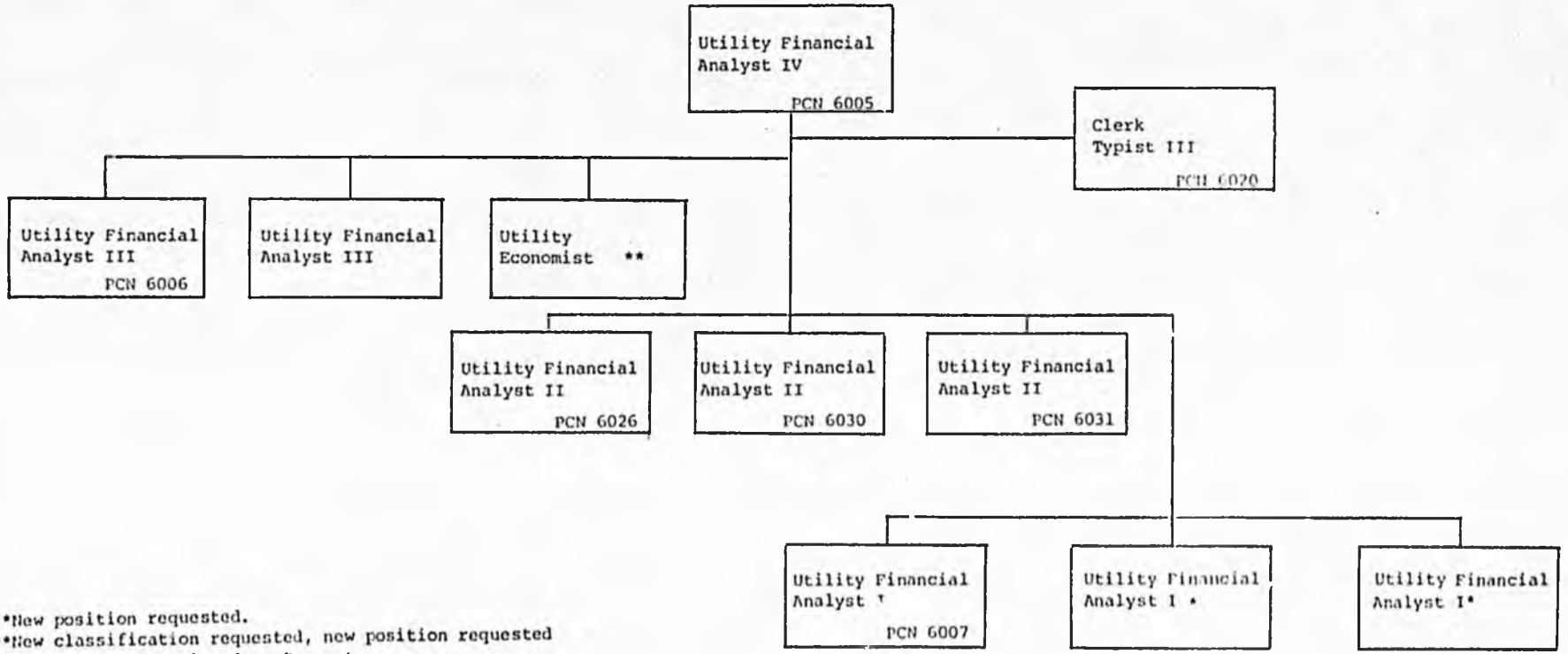
The network will meet needs only if it is developed in accordance with good engineering practice. To insure proper network development, the Section must, with the support of the Engineering Section, monitor the process.

D. Finance Section

- Organization Chart
- Principal Programs
- Adjusted FY 81 Budget

ALASKA PUBLIC UTILITIES COMMISSION

FINANCE ORGANIZATION CHART



*New position requested.
**New classification requested, new position requested in Governor's FY81 Budget Request.

PRINCIPAL PROGRAMS IN FINANCE

Interim Rate Requests

1. Review filing for compliance with 3 AAC 48.275.

2. Review comparative balance sheets and income statements, tracing amounts shown to annual report filings.

3. Review filing for mathematical accuracy and consistency of figures used in all schedules.

4. Review previous rate request filing granted by the Commission for the same utility and review available history of the utility.

5. Review utility surcharge history, if any, and effect of its incorporation in present filing.

6. Note any discrepancies found in performing steps 1 through 4 and investigate to the extent possible without on-site audit.

7. Review utility determined revenue requirement and remove items traditionally disallowed by this Commission.

8. Compute revenue requirements; compute revenue deficiency; and determine whether there is a prima facie showing by the utility that its present rates are confiscatory.

9. Write tariff action memorandum on utility request, explaining results of steps 1 through 8.

10. Write interim order expressing Commission action on filing.

Permanent Rate Requests

1. Follow steps 1 through 6 as shown under "Interim Rate Requests".

2. Write tariff action memorandum on utility request, explaining results of step 1.

3. Write order suspending permanent rates or expressing other Commission action on filing.

4. Based on steps 1 through 3, determine scope of on-site audit necessary.

5. Perform on-site audit.

   a. Follow-up on discrepancies found in step 1.
   b. Follow-up on particular Commission concerns.
   c. On a sample basis, verify balance sheet (except plant), income statement and revenue requirement figures shown in filing by tracing final figures to source documents.
   d. Verify that proforma adjustments are known and measurable.
   e. Verify compliance of accounting records with Uniform System of Accounts prescribed for the utility.
   f. Note general condition and operating environment of the utility.
   g. Investigate elements of revenue requirement traditionally disallowed by the Commission. Revenue requirement analysis includes operating expenses, taxes, depreciation, rate base, cost of debt, and return on equity or TIER. Rate base includes net plant and a working capital component.

6. Compute revenue requirement, revenue deficiency, and percentage across-the-board increase required by the utility, based upon the results of steps 1 through 5.

7. Write Staff pre-filed testimony, presenting Staff position on the case and explaining the results of steps 1 through 6.

Rate Design

1. Review cost-of-service study prepared by utility in support of its proposed rate design.

2. Audit, as necessary, to verify cost allocations.

3. Research, as necessary, to determine validity and appropriateness of utility cost-of-service and rate design methodology.

4. Perform cost-of-service study when necessary.

5. Write Staff pre-filed testimony, presenting Staff position on the case and explaining the results of steps 1 through 4.

Rate Development - Telephone

1. Review rate development worksheets for conformance with acceptable Commission methods; and analyze appropriateness of any new method.

5. Perform on-site audit.

   a. Follow-up on discrepancies found in step 1.
   b. Follow-up on particular Commission concerns.
   c. On a sample basis, verify balance sheet (except plant), income statement and revenue requirement figures shown in filing by tracing final figures to source documents.
   d. Verify that proforma adjustments are known and measurable.
   e. Verify compliance of accounting records with Uniform System of Accounts prescribed for the utility.
   f. Note general condition and operating environment of the utility.
   g. Investigate elements of revenue requirement traditionally disallowed by the Commission. Revenue requirement analysis includes operating expenses, taxes, depreciation, rate base, cost of debt, and return on equity or TIER. Rate base includes net plant and a working capital component.

6. Compute revenue requirement, revenue deficiency, and percentage across-the-board increase required by the utility, based upon the results of steps 1 through 5.

7. Write Staff pre-filed testimony, presenting Staff position on the case and explaining the results of steps 1 through 6.

Rate Design

1. Review cost-of-service study prepared by utility in support of its proposed rate design.

2. Audit, as necessary, to verify cost allocations.

3. Research, as necessary, to determine validity and appropriateness of utility cost-of-service and rate design methodology.

4. Perform cost-of-service study when necessary.

5. Write Staff pre-filed testimony, presenting Staff position on the case and explaining the results of steps 1 through 4.

Rate Development - Telephone

1. Review rate development worksheets for conformance with acceptable Commission methods; and analyze appropriateness of any new method.

2. Review rate development factor methodology for conformance with acceptable Commission methods; and analyze appropriateness of any new method.

3. Trace components of rate development factor computations to utility's most current operating results; investigate any discrepancies.

4. Review application of elements in steps 1 through 3 in deriving rates for service and equipment; reconcile differences between Staff and utility rates derived.

5. Write tariff action memorandum or pre-filed testimony, presenting Staff position on the case and explaining the results of steps 1 through 4.

Certifications

1. Review applicants for financial fitness by reference to source and cost of financing, equity structure, form of organization, and financial history of prospective owners.

2. Review pro forma rates for reasonableness based on knowledge of utility type (and inherent costs) weighted cost of capital, and elements allowed by this Commission in setting rates.

3. Write memorandum or pre-filed testimony, presenting Staff position on financial fitness of applicant.

Certificate Transfers

1. Review applicants for financial fitness by reference to form of organization and financial history of prospective owners.

2. Write memorandum or pre-filed testimony presenting Staff position on financial fitness of applicant.

Other

1. Perform financial and statistical analyses, accounting and regulatory research, and investigations as necessary.

2. Review utility annual report filings for unusual items and to determine the return on rate base earned from operations.

3. Compile information from utility annual reports and rate increases granted for incorporation into the APUC annual report of operations.

FINANCE AND ACCOUNTING SECTION
FY 81 BUDGET
(In Thousands)

		Allocated FY 81 Budget	Comparable Salary Increment		Adequate Staff Increment	Adjusted FY 81 Budget
100	Personal Services	$255.5	$29.2	(1)	$ 95.8	$380.5
200	Travel	16.1		(2)	14.0	30.1
300	Contractual Services	9.9		(3)	13.5	23.4
400	Commodities	1.7		(4)	1.2	2.9
500	Equipment	1.6		(5)	2.8	4.4
	Total	$284.8	$29.2		$127.3	$441.3

(1)	UFA III	$41,462
	UFA I	27,159
	UFA I	27.159
		$95,780

(2)	Staff Audits	$ 8,200
	NARUC School	3,900
	NARUC Meetings	700
	Rate Design Education	1,200
		$14,000

(3)	Office Space	$13,000
	Training Fees	500
		$13,500

(4)	Books & Reasearch Material	$ 1,000
	Office Supplies	200
		$ 1,200

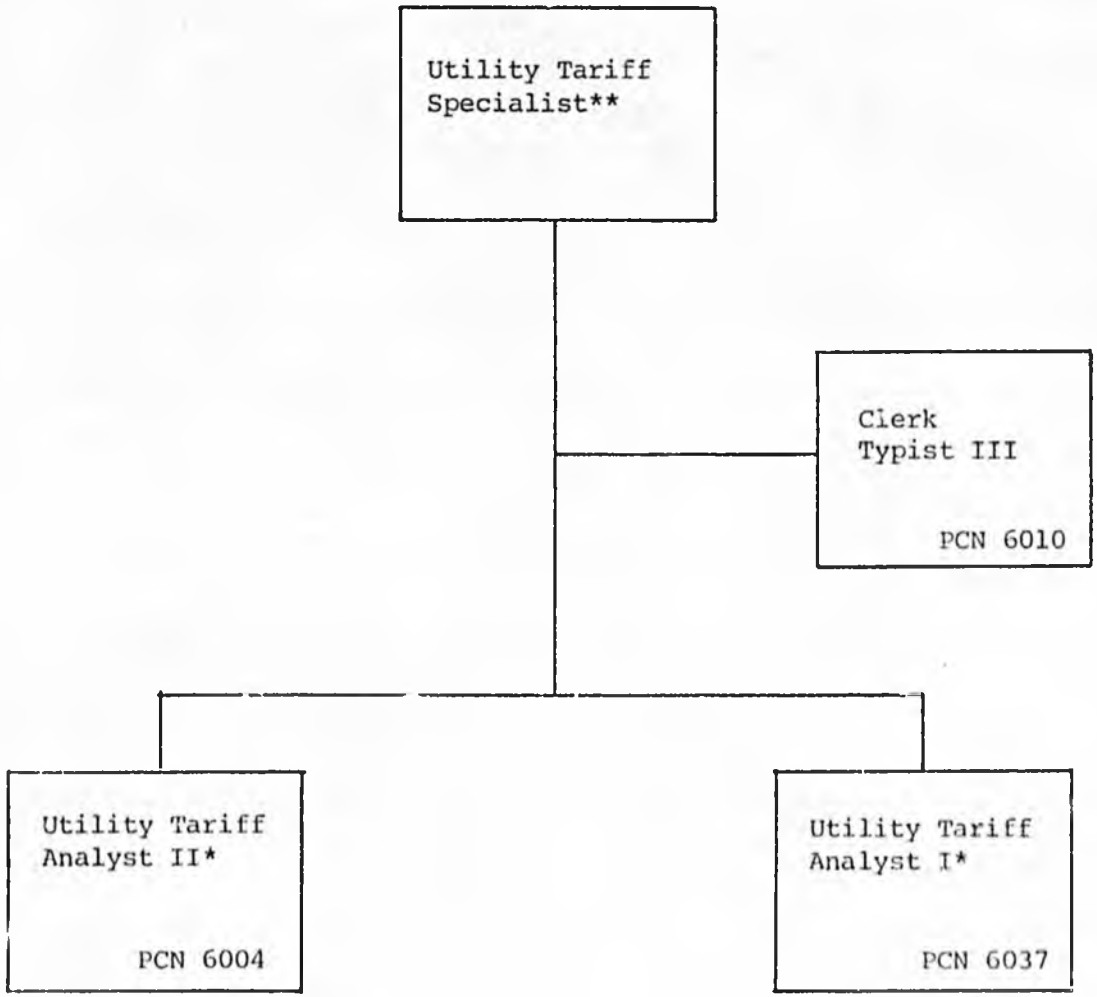
(5)	Office Equipment	$ 2,800

E. Tariff Section

- Organization Chart
- Principal Programs
- Adjusted FY 81 Budget

ALASKA PUBLIC UTILITIES COMMISSION

TARIFF ORGANIZATION CHART



* New classification and reclassification of existing position requested.

** New classification and new position requested.

PRINCIPAL PROGRAMS IN TARIFF SECTION

Tariff Filings

1. Preliminary review.

   A. Type of filing.
   B. Compliance with regulations and adequacy of information.
   C. Applicable time constraints.

2. Noticing procedures.

   A. When to notice.
   B. Where to notice.
   C. Notice format.

3. Review of filings.

   A. Service rate change request.
      1. Interim.
      2. Permanent.
   B. Fuel cost rate adjustments.
   C. Equipment offerings.
   D. Textual changes.
   E. Billing procedure and deposit changes.
   F. New total tariff filings.
   G. Special charges.
   H. Contracts.
   I. Other.

4. Tariff action meeting.

   A. Preparation of memos expressing Staff position.
   B. Distribution of memos.
   C. Explanation of recommendations and filings in tariff action meetings before the Commission.

5. Notification to utility of Commission decisions.

   A. Letters.
   B. Letter orders.
   C. Orders.

Other

1. Perform statistical analyses and research as necessary.

2. Compile information from utility tariffs for incorporation into the APUC annual report of operations and for quarterly sample electric bill summaries.

3. Upon request, provide public information concerning approved and pending tariffs.

TARIFF SECTION
FY 81 BUDGET
(In Thousands)

		Allocated FY 81 Budget	Comparable Salary Increment		Adequate Staff Increment	Adjusted FY 81 Budget
100	Personal Services	$ 76.7	$ 5.1	(1)	$41.5	$123.3
200	Travel			(2)	1.3	1.3
300	Contractual Services	4.5		(3)	2.6	7.1
400	Commodities	1.0		(4)	.5	1.5
500	Equipment			(5)	.8	.8
	Total	$ 82,2	$ 5.1		$46.7	$134.0

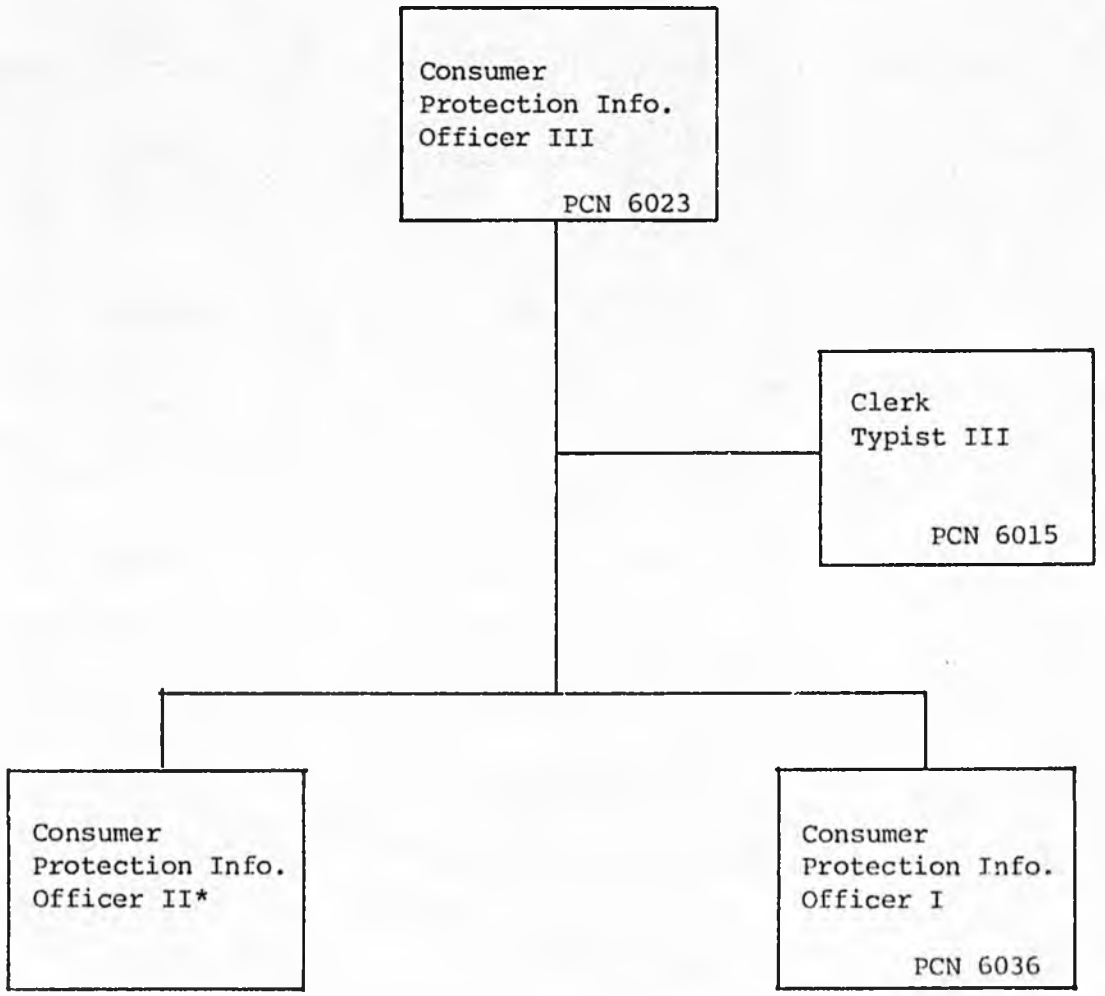
(1)	Utility Tariff Specialist	$41,462
(2)	NARUC School	$ 1,300
(3)	Office Space	$ 2,400
	Training Fees	200
		$ 2,600
(4)	Subscriptions	$ 300
	Books & Research Material	200
		$ 500
(5)	Office Equipment	$ 800

F. Consumer Protection

- Organization Chart
- Principal Programs
- Adjusted FY 81 Budget

ALASKA PUBLIC UTILITIES COMMISSION

CONSUMER PROTECTION ORGANIZATION CHART



*New position in FY81 Governor's Budget Request.

PRINCIPAL PROGRAMS
FOR
CONSUMER PROTECTION SECTION

Informal Complaints

It is a primary function of this section to provide a forum for utility customers to air their grievances. Also, it must resolve or attempt to resolve these complaints informally rather than bringing matters formally before the Commission unnecessarily.

Through the implementation of toll-free calling and the strengthing of this section, customers of the regulated utilities throughout the State will have increased access to the Commission. While the number of complaints received will increase, the overall length of time required to respond and resolve customer complaints will be compressed. Thus, those customers with complaints which require timely action will be accommodated. Also, the development of a broader information base regarding consumer issues will occur from which the Commission may make decisions.

Under this program, the Commission will receive complaints from a broader base of utility customers. As a result, the insight which the Commission has into utility customer problems will be expanded and its knowledge base supplemented. From this additional information, the section will be better able to define problems and develop recommendations to meet immediate and future needs. In other words, Staff's diagnostic and prescriptive capabilities will be enhanced.

This program will take into account the increased number of substantive informal complaints being received. Many of the consumer issues which are evolving are not necessarily resolved by either current or historic standards. More time will be allocated to the investigative process which will result in the proposal or negotiation of equitable solutions based on current conditions.

Formal Proceedings

This section must from time to time recommend to the Commission that formal action be instituted when warranted by the circumstances. Under this program, additional time will be allocated to prepare for participation in proceedings which are instituted as a result of the section's recommendation. Also, time will be available for review of utility tariff filings which seek to change or implement the rules and regulations under which utility services are offered to the public. Additional time will be used to meet with the utilities and applicants to provide assistance in the evaluation of their tariffs and to propose both formally and informally those revisions or rules reflective of both utility and customer requirements.

This section's participation in the rule-making process will increase. This activity will include researching and drafting of proposed rules as well as the other phases of their promulgation, including hearings.

Education and Information

Consumer reaction to the ever increasing financial impact that utility services have on their daily lives has created a need for a clearer understanding by the public of utility operation and regulatory matters. By increasing its informational programs and implementing educational projects, the public will be better able to wisely use those services offered by the utilities.

The first year of the educational program will consist primarily of identifying target areas and the means by which they may effectively be approached.

Although the Commission has an on-going public information program, its regularity must be reinstituted and its substance revitalized. This will be accomplished at the time the section is strengthened.

CONSUMER PROTECTION
AND INFORMATION SECTION
FY 81 BUDGET
(In Thousands)

		Allocated FY 81 Budget	Comparable Salary Increment	Adequate Staff Increment	Adjusted FY 81 Budget
100	Personal Services	$122.1	$ 6.2	$	$128.3
200	Travel	1.5			1.5
300	Contractual Services	17.1		(1) 5.6	22.7
400	Commodities	3.0			3.0
500	Equipment	2.0			2.0
	Total	$145.7	$ 6.2	$ 5.6	$157.5

(1) Office Space $ 5,600

STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

JAY S. HAMMOND, Governor

1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Phone (907) 276-6222

RECEIVED
OCT 5 1979
LEGISLATIVE AUDIT

October 5, 1979

Mr. Gerald L. Wilkerson
Legislative Auditor
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following is the response of the Alaska Public Utilities Commission to the Performance Review of the Alaska Public Utilities Commission by the Division of Legislative Audit.

Recommendation No. 1

The Alaska Public Utilities Commission, the Alaska Transportation Commission and the Alaska Pipeline Commission should be combined into a single regulatory commission.

The Alaska Public Utilities Commission (referred to hereinafter as APUC or Commission) believes it is appropriate to re-evaluate the merits of a single commission mode of regulating utilities. At this time, however, the APUC cannot unequivocably state that the three regulatory commissions should be combined into a single agency because no documentation that would support that conclusion has been made available to the Commission. The Commission believes it is misleading to make a recommendation of this significance solely on the basis of a comparison of "schemes" used by other states. Certainly the dominant regulatory framework in other states lends credence to the proposition that it is timely to reassess the value to the Alaska public to continue three separate regulatory agencies.

A tabular comparison of various regulatory frameworks is presented to support this recommendation. While informative, the Commission does not believe this analysis is sufficient

documentation on which to base this substantive recommendation. As the analysis indicates, the number of Commissioners has a direct relationship to the number and type of professional Staff. This, in turn, is influenced by its methods of operation, the scope of a Commission's statutory responsibilities, and the number of utilities subject to regulation.

The Commission offers the following comments regarding the advantages postulated by the auditors of a single regulatory agency.

(1) The Commission concurs that a single regulatory agency could result in a reduction in the number of regulatory Commissioners. However, someone must preside at hearings; and, therefore, the establishment of hearing officer positions would be required to offset the diminution in Commissioners. There are jurisdictions that utilize hearing officers to conduct public hearings and to draft proposed decisions for Commissioners' review and determination. The APUC Commissioners hear cases and write substantive orders without the benefit of such Staff* assistance.

(2) Because of the specialization required of the Commission's professional Staff, i.e., expertise in telecommunications, electric, gas, sewer and water utilities, the Commission questions the degree of flexibility that would exist with a combined Staff. The Commission believes that the interchangeability of staff could be limited in practice to emergency-type situations. An analysis of the regulatory responsibilities of the Alaska Pipeline Commission and the Alaska Transportation Commission should provide more factual information in this regard. The Commission does agree that a combined clerical support Staff could provide more flexibility and create a more efficient flow of paperwork.

(3)(4)(5) The Commission believes that joint hearing and reproduction facilities and a shared publications library would provide for more efficient services, not only for a consolidated regulatory body but also for the existing regulatory Commissions. To this end, the Commission has recommended in its last two budgets that the three Commissions be physically co-relocated to a facility that would permit realization of these economies.

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*The average regulatory commission in the United States has approximately 200 Staff members as contrasted with 32 Staff assigned to the APUC.

(6) The Commission does not have enough firsthand experience with sophisticated word-processing equipment to comment on this possible reduction.

The APUC strongly supports the concept that adequate human resources, whether in the form of commissioners, hearing officers or other staff, must be provided if the regulatory duties and responsibilities delegated by the Legislature are to be performed in an efficient and effective manner. Moreover, sufficient resources to perform the job are as important under the existing regulatory configuration as they would be in a prospective consolidation into one agency.

Reliance on outside regulatory formulae to support a merger should also be tempered by recognition of circumstances which make regulation unique in Alaska. For example, the APUC is still actively involved in the certification of utilities, in marked contrast to most jurisdictions in the "Lower 48" which have been fully carved up into utility service areas. This is especially pertinent not only to rural Alaska which is in a developmental stage in the utility arena but also extends to the State's largest metropolitan areas where telecommunications utilities have been the subject of recent certification proceedings. While not commanding the newspaper headlines generated by rate increases, the certification process is critical to the public protection function of regulation because it establishes the foundation for a utility's future service and rates.

The APUC believes that concurrent with the sunset review of the Alaska Pipeline Commission, the Division of Legislative Audit or an independent consulting firm should perform a cost-benefit analysis of combining the three regulatory commissions into one. The study should examine both the existing and alternative regulatory frameworks to identify the potential operational and financial gains and losses to be realized under a single consolidated agency.

If the desirability of implementing this recommendation is affirmed by such an in-depth analysis, the Commission strongly believes that the Legislature should assess the scope of the existing responsibilities of the three regulatory commissions before the decision to merge is made. Should the Alaska Transportation Commission continue to regulate dumptrucks and helicopters? Should the APUC continue to regulate

garbage and cable television utilities? What will be the magnitude of the workload of the Pipeline Commission after the TAPS case is completed? Resolution of these and other policy issues would facilitate the Legislature's efforts to define the appropriate regulatory framework for Alaska inasmuch as a determination of whether one commission would better serve the public interest than the existing three do is, in part, dependent on what responsibilities would reside with the single successor agency.

It may be difficult to divorce the mechanics of a merger from any assessment of its practicality and desirability. In this regard affirmative action to consolidate the existing regulatory agencies should include a detailed implementation plan with a realistic timetable which acknowledges that preservation of pending, current, and past decisions of each Commission is critical to the successful transition to one regulatory agency.

The fundamental purpose of the Alaska Public Utilities Commission is to protect the public by awarding certificates of public convenience and necessity to qualified providers of utility services and to ensure that certificated utilities, except where exempted by statute, provide adequate, efficient, and safe services and facilities to the public at just and reasonable rates, terms, and conditions. These two major functions are broadly defined as certification and economic regulation. It should be noted that the consumer protection function of the Commission falls within the broad definition of economic regulation.

The following four recommendations have a common theme. They propose to reduce the scope of the Commission's duties and responsibilities under AS 42.05 by deregulating certain types and sizes of public utilities. These recommendations reflect the audit team's awareness of the acute strains that the APUC's current workload places on its limited resources and ability to competently perform the responsibilities delegated by the Legislature. Additionally, it represents some of the current thinking regarding the necessity and desirability of regulation. After consideration of these

factors, the auditors identified those utilities where they perceived deregulation would have the least detrimental impact on the Alaskan public.

The Legislature faces the choice, implicit in the audit, of prioritizing the responsibilities of the APUC by deregulation of certain utilities or the allocation of adequate resources to the agency to fulfill its statutory assignments. The ultimate policy determination of which, if any, utilities should be exempt from regulation resides exclusively within the purview of the Legislature as the sole source of the Commission's authority. If the deregulation course is elected, it is the Commission's position that the audit team's priorities are generally acceptable with some specific exceptions. These exceptions and the Commission's view of the potential impact of deregulation in the recommended areas are provided to ensure that the ultimate decision is made with the experience and information of the APUC in concert with input from the private sector and the consuming public.

Recommendation No. 2

AS 42.05 should be amended to allow the Alaska Public Utilities Commission to cease all certification and regulation of cable television.

The Commission believes that the definition of telecommunications as found in AS 42.05.701(8) mandates the certification and regulation of cable television (CATV).

The Commission believes that certification should be required for CATV utilities providing service to 10 or more customers. This provides certain minimal protection to the public with respect to the fitness and ability of the serving utilities as more fully discussed in the response to Recommendation #5. More importantly, certification is necessary to assure the orderly development of basic telecommunications services throughout Alaska in light of nationwide technological developments and regulatory trends.

Current legislation before Congress and a more liberal regulation policy by the Federal Communications Commission indicate that telephone companies will shortly be in the position to offer broadband communications* which could

*Broadband communication includes the full range of communication information including, but not limited to, basic telephone, data, and television.

include facilities for television distribution. Ultimately, basic telephone and television service could become so commingled that the economic viability of regulated communication services could be affected.

In some jurisdictions, municipalities award a franchise to a CATV utility. While on the surface this appears to be an attractive alternative to state regulation, the record in recent CATV certification proceedings involving Anchorage and Fairbanks indicates that in the "Lower 48" there has been political abuse of this process and that municipalities which do not have technical and rate-making expertise are unduly burdened by the responsibility to assess which applicant best serves the public interest. In place of economic regulation, municipal bodies have in some instances substituted a shortening of the franchise period, hoping to influence the franchise holder to charge reasonable rates and provide adequate service -- a practice that could backfire and leave the consumer without any service.

The APUC has determined that the public interest is not necessarily served by economic regulation of small cable television utilities and has exempted small CATV's from regulation in a number of instances. These are Eielson Air Force Base, Metlakatla, Craig, Klawock and Thorne Bay. While independently assessing the "nonessential" quality of cable television services, the Legislature should be aware that the APUC files are replete with complaints against CATV utilities, particularly from rural parts of Alaska where there is a captive audience with no alternative form of entertainment and where the entities providing the service have their base of operations outside the State of Alaska.

Recommendation No. 3

AS 42.05 should be amended to allow the Public Utilities Commission to cease certification and regulation of those utilities furnishing collection and disposal service of garbage, refuse, trash, and other waste material.

The Commission supports the elimination of regulation of garbage utilities from its responsibilities and agrees with the economic justification articulated by the sunset auditors.

The Commission would be remiss, however, if it failed to apprise the Legislature of its concerns regarding deregulation

of this public utility service. Based on Commission experience there is a need for some governmental entity to oversee garbage, refuse and disposal operations. Garbage and refuse disposal has long been considered an essential public health and sanitation service, more frequently than not owned, operated or contracted for by municipal governments. The impact of deregulation in this area would be felt primarily by a small percentage of consumers residing outside municipal boundaries. The Commission believes it would be in the public interest to ensure that the municipalities have sufficient extraterritorial jurisdiction under AS 29.48.037 and AS 29.48.040 to oversee the entirety of these operations.

The Commission would also point out to the Legislature that the Department of Environmental Conservation (DEC) currently issues permits for sanitary landfill use and promulgates regulations governing solid waste management. In this regard, the Legislature may wish to consider the DEC as an alternative to municipal regulation of garbage and refuse. The adequacy and availability of a sanitary landfill to a garbage utility is frequently a significant problem which has been brought to the Commission's attention. Because of DEC's current responsibilities in this area, it is appropriate to consider this alternative which would provide end-to-end regulation of garbage utility services.

If a legislative determination is made that garbage utilities should come under the jurisdiction of a state regulatory commission, it may be more in keeping with transportation regulatory practices for the Transportation Commission to resume this function.

Recommendation No. 4

AS 42.05 should be amended to allow non-profit telephone and electric cooperatives to petition for withdrawal from APUC economic regulation.

The Alaska Public Utilities Commission will concur with this recommendation. However, it is the Commission's experience that consumers of electric and telephone cooperatives frequently perceive little difference between co-ops and other public utilities, even though the members own the business and elec the board of directors. The Commission believes that if AS 42.05 is amended to incorporate this recommendation, it would be desirable to promulgate regulations establishing

an orderly procedure for withdrawal from economic regulation by cooperatives.

To further expand AS 42.05.711(b) to allow cooperatives that have withdrawn from economic regulation to subsequently return to the full regulatory jurisdiction of the Commission, while a desirable safeguard of the public interest, could have a detrimental effect on the ability of the APUC to administer and finance its on-going functions. For example, relevant Commission experience is the refusal of the Rural Electrification Administration to provide additional loan monies to the Tlingit-Haida Regional Electric Authority (THREA) until it submitted to APUC jurisdiction. THREA acceded to the jurisdiction of the APUC in December, 1978, because of its financial crises. Significant concerns of the THREA ratepayers and the mayors of the respective villages in which the utility is located has required the Commission to expend dollars for consultant services that would otherwise have been available to fund other existing responsibilities of the agency. Realizing that the decision to return to economic regulation will likely occur only when the cooperative is experiencing significant difficulty, the Commission believes it would be necessary and appropriate to minimize any impact on its existing workload by promulgating regulations governing reinstatement of full regulation after such an election.

It should also be noted that an unregulated telephone cooperative could cause unnecessary expansion of toll facilities of the long lines carrier. A local telephone cooperative not only has an impact on its primary customers but on those who utilize one or two communication networks desiring access to the local exchange. For example, a small deficiency in an unregulated telephone central office switch can deny access to 10 percent of incoming toll calls. It is uneconomical to have a telephone call cross the lower 48 states and be transmitted to the satellite and an Alaska terrestrial facility only to be denied at the terminating central office.

Recommendation No. 5

AS 42.05 should be amended to exempt from economic regulation all utilities with annual gross revenues not exceeding $100,000.

The Commission concurs with this recommendation.

However, the Commission believes it is in the public interest to continue to require certification of all utilities providing service to 10 or more customers, irrespective of annual gross revenues.

A certificate of public convenience and necessity from a qualified independent agency assures the consuming public that a utility is fit, willing and able to provide service. In addition, a certificate provides economic protection to the small business from unauthorized or potentially ruinous competition. The Commission believes that certification is particularly important to protect the public interest when a small utility will be physically tied to a larger utility network, such as the case of a local exchange telephone company interconnected to the long lines telecommunications carrier or an electric grid system connecting more than one power utility.

Based on the APUC's 1978 Annual Report, 13 utilities currently subject to economic regulation would become exempt if this amendment were approved with the $100,000 cutoff level. The majority of the 13 utilities are small water companies which historically have generated numerous consumer complaints. These complaints have required a significant commitment of time by the APUC Consumer Protection Section for its investigation and possible resolution and by Commissioners and Staff in public hearings. The Commission would be remiss if it did not point out to the Legislature that the volume of complaints received from the consumers of these relatively small utilities indicates reliance on the public protection provided by regulation for adequate service. Because water service is a necessity, some entity, be it legislative or administrative, will inherit the consumer protection function that the APUC has provided.

The comments of the APUC's Chief of Finance are germane and the Commission believes they should be drawn to the attention of the legislature:

"Water bills have a tendency to be lower than electric or telephone. Therefore, I question whether a gross revenue standard is a fair reflection of the number of people involved. I do not believe the same gross revenue cutoff should be applied to all types of utilities. I think the deregulation of electric and telephone under $100,000 gross revenues is a good recommendation. Water and sewer should have a different standard.

Some of our most difficult and demanding cases are water utilities. The filings are often poor and inaccurate and accounting records are often nonexistent or in 'shoe-boxes.' We truly protect the public in our review of these utilities. Any given case may require a great deal of time on our part, but I feel it is time well spent. Unlike garbage collection, water service is definitely a necessity."

Recommendation No. 6

The statutes and regulations governing the Alaska Public Utilities Commission should be revised.

The Commission agrees that its statutes and regulations should be revised. The following comments are offered in response to the specific examples delineated by the auditors.

(1) The two cases cited by the auditors "mix apples and oranges." In one, Docket U-75-95 a Commission decision has been upheld in Superior Court that disallowed unamortized rate case expense in a utility's rate base. At issue in the other, Docket U-76-66, was the protection of the public from duplicative utility expenses. Both of these issues are matters of regulatory policy over which the APUC needs discretion and flexibility to respond to current theories and to individual cases.

The Commission believes, however, that regulations establishing guidance for supporting documentation required to justify both internal and external rate case expense are necessary and desirable. The Commission's posture for four years has been reactive. Unfortunately, its workload, mandated by other statutory requirements, has preempted the time necessary to notice, consider and adopt regulations that would allow the regulatory process to function more efficiently.

(2) The Commission concurs that the promulgation of industry performance standards for all regulated utilities is necessary and desirable, but it is also a function of available resources to establish the standards and to enforce them. At the present time the APUC has no operational budget to enforce the existing telephone service standards.

(3) The Commission has requested clarification of its

statute regarding the transfer of certificates of public convenience and necessity. (HB675, 1978 Session.) More interest was generated in the existing statutory ambiguity as a result of PACOM's announced intentions to acquire a controlling interest in RCA ALASCOM. However, the statute remains; and, to date, affected utilities have acceded to Commission jurisdiction in this matter in accordance with the Commission's interpretation of its statute and regulations. Nonetheless, the Commission continues to support clarifying legislation.

(4) The Commission plans to eliminate the discrepancies between its statute and regulations by January 1, 1980.

Recommendation No. 7

The APUC should seek upgrading of salary levels for professional support staff.

There is no question that the most frustrating, expensive and time-consuming problem in the Commission's operation has been the vacancy factor and turnover of its professional Staff as a result of the compensation level.

A salary survey performed by the Division of Personnel in 1977 compared salaries of the Commission's professional Staff to salaries paid by regulatory commissions in other states with a cost-of-living additive. This did not and does not consider reality. The Commission loses its professional people to consulting firms and utilities operating in Alaska, not outside of Alaska. In addition, the Commission has experienced turnover because other State agencies offer a higher salary for the same qualifications and experience. Effective protection of the public interest and efficient utilization of its financial resources dictate that the APUC compensate its professional Staff at a level which attracts and retains qualified and experienced personnel.

Recommendation No. 8

The APUC should implement a time management system.

The Commission concurs that a time management system is a useful administrative tool. The Commission's experience in filling successive vacancies in the Executive Director position has not allowed institution of such a system to date. However, the Commission anticipates that the new

administrative Staff will implement such a system as rapidly as time, knowledge, and experience permit.

Recommendation No. 9

The APUC should develop a cross-reference system for Commission orders and decisions by the courts.

The cross-reference system suggested by this recommendation is desirable and necessary. With adequate funding the computer capability of the Commission could provide the foundation of a cross-reference system for current Commission actions. To recover the decisions of the first eight years of the Commission requires time and budget that is non-existent at present. The Commission plans to dedicate a portion of the time of its newly classified paralegal position to this assignment.

Recommendation No. 10

The Commissioners of the APUC should restrict their involvement in the administrative function of the agency.

The theory behind this recommendation is sound but its strict application must be tempered by reality. As one Staff section head stated in response to this recommendation, "Until we have written policies, a topical reference system and a knowledgeable, interested, hard-working executive director, I don't see how the Commissioners can be expected to restrict their involvement in the administrative function of this agency."

It is the goal of the Commissioners to be relieved of their direct involvement in the administration of the APUC. History dictates this is an evolutionary process. Reality dictates that the Commissioners are ultimately responsible for the public perception of the APUC. Their oversight responsibilities and input in administrative matters will continue as an informative tool for the Staff's managers.

It should be noted that the Commissioners have no independent professional staff and must rely on existing staff personnel for technical expertise and advice only when it does not compromise the independence of the parties in proceedings.

Recommendation No. 11

The APUC should seek to establish separate collocation codes for each section of the Commission.

It may be that the implementation of this recommendation is desirable.

The Commission does have some reservations in this regard due to the small size of its sections, ranging from one to six people. In the past the budget has been earmarked to the workload confronting the Commission. In most proceedings at least two staff sections, the Commission's legal personnel and the Commissioners are involved. Budgeting has been a matter of compromise, cooperation, and re-prioritizing to address the situation at hand.

The Commission will explore with the auditors the perceived benefits to be gained through section collocation codes.

COMMENTS ON ANALYSIS OF PUBLIC NEED

II. "There is also a need for statutory and regulatory amendments to allow for more effective case management and to avoid court appeals of Commission decisions (see Recommendation No. 2 through No. 6).".

It is overly simplistic to assume that statutory and regulatory amendments will eliminate court appeals of APUC decisions. Regulatory and administrative law are evolutionary elements in the system of common law applicable to Commission proceedings. Also, the volatility of regulatory theory and policy combined with the likelihood of a dissatisfied party is conducive to litigation in some instances. Given the nature and scope of APUC activity during recent years, there has been a relatively small number of Commission orders that have been appealed to the Superior Court.

An appeal of a Commission decision, per se, is not an undesirable result of Commission action. In certain instances it is in the public interest to have the case law and statutes clarified and amplified through the appeal process.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

The APUC has been actively involved in reacting to substantive

pieces of legislation proposed by others in the past few years. In addition, the Commission has served as a resource to both the Governor's office and the legislative branch of government in the energy and telecommunications fields. And, it well may be more fruitful for deregulation recommendations to come from without rather than from within the Commission.

The Alaska Public Utilities Commission believes that the audit conducted by the Division of Legislative Audit was a constructive exercise for the Commission and commends the auditors for the performance of their responsibilities in a thoughtful and unobtrusive manner.

Respectfully submitted,

Gordon J. Zerbetz, Chairman

Marvin R. Weatherly, Commissioner

Carolyn S. Guess, Commissioner

Susan M. Knowles, Commissioner

Stuart C. Hall, Commissioner

File 8
Dept Commerce 79-80

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL 360 K STREET — SUITE 105
ANCHORAGE 99501

TO: John M. Stern, Chairman
Alaska Public Utilities Commission

January 22, 1973

Thru: Kenneth W. Kadow, Commissioner
Department of Commerce

FROM: B. Richard Edwards
Assistant Attorney General
Attorney General's Office
Anchorage Civil Section

RE: Jurisdiction of APUC over rates of municipally owned utilities

Please refer to your memorandum of October 1972 wherein you request an Attorney General's opinion on two questions. The first question deals with the general application of AS 42.05.711 (b) and is based on the facts set forth in your memorandum. The Fairbanks Municipal Utility System (FMUS) applied for a certificate of public convenience and necessity under the grandfather rights of AS 42.05.221 to provide electrical service in the Fairbanks area. In the same area Golden Valley Electric Association, Inc. (GVEA) had a certificate of public convenience and necessity to furnish identical electrical service. On August 11, 1972 the APUC issued two decisions, one which granted the FMUS a certificate of public convenience and necessity to supply electrical service in an area which would not compete with the GVEA.

Your opinion request is based on several assumptions. In your request you assume the competition between FMUS and GVEA has been eliminated. You also assume that there is no competition between the other FMUS utilities and any other public utility and that FMUS until the elimination of competition was clearly under the complete jurisdiction of the APUC.

Based upon these facts and assumptions it is our opinion that the rates charged by the Fairbanks Municipal Utility System for electrical service cannot be regulated by the Alaska Public Utilities Commission in light of AS 42.05.711 (b).

AS 42.05.711 (b) provides:

> Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with an other utility, are exempt from the provisions of this chapter, other than the provisions of §§ 221-231 of this chapter, unless such an owner and operator elects to be subject to all provisions of this chapter.

It is clear from this provision [illegible] operated by a political subdivision of the State is not in competition with any other utility it is exempt from the Alaska Public Utilities Act except for the provisions dealing with certificates of public convenience and necessity found at AS 42.05.221-281.1/ No ambiguity is found with respect to this part of the statute and where a statute is unambiguous the statute expresses the legislative intent without the necessity of aids from the legislative history. Alaska Mines and Minerals, Inc. v. Alaska Industrial Board, 354 P. 2d 376, 379 (Alaska 1960); City of Seward v. Wisdom, 413 P. 2d 931, 936 (Alaska 1966); Homer Electric Assn., Inc. v. City of Kenai, 423 P. 2d 285, 289 (Alaska 1967). The legislative intent , however, is supported by the legislative history of the exemption provision.

A review of this legislative history would not be complete without first reviewing the statutory history of regulating the rates of municipally owned utilities. When the Alaska Public Service Commission Act first became law in 1959 municipal utilities except for water and sewer were regulated pursuant to AS 42.05.640(2). In 1963 this provision was amended to entirely exclude municipally owned utilities from Public Utilities Commission regulation. This statutory history is explored in detail in Homer Electric Assn., Inc. v. City of Kenai, 423 P. 2d 285 (Alaska 1967).

In the 1971 Legislature, Senate Bill 128 was introduced into the Senate by the Senate Rules Committee at the request of former Governor Keith H. Miller. The requested legislation was accompanied by an introductory executive message2/which provided with respect to municipalities as follows:

> Municipally owned and operated utilities are exempted from regulation only in certain respects. These are specified in subsections AS 42.05.631 (b)-(d). In brief, a municipal utility would be exempt from rate regulation for services provided within the city boundaries. Services which it provides outside the municipal

---

1. For discussions of the ramifications and policies of exempting municipally owned utilities from the various forms of Public Utilities Commission regulations see State Supervision Over Municipally Owned Utilities, 49 Col. L.R. 180 (1949); State Regulations of Municipally Owned Electric Utilities, 7 Geo. Wash. L.R. 557 (1939); State versus Local Control of Municipally Owned Utilities, 41 Yale L.J. 121 (1931).

2. "... it is an accepted method of determining legislative intent to look to introductory executive messages." Homer Electric Assn., Inc. v. City of Kenai, 423 P. 2d 285, 289 (Alaska, 1967)

> boundaries would not be exempt. Municipal utilities would also be exempt en toto from Sections AS 42.05.491 - 511 concerning financial and management regulation, and from Section AS 42.05.641 concerning regulatory fees. [1969 Senate Journal, p. 84].

It is apparent that municipal utilities under the bill introduced by the Governor would be exempt from rate regulation of its utilities located within the city boundaries.

In the same Legislature, House Bill 202 was introduced into the Alaska House of Representatives. The legislative history of this bill in the House includes the following from the House Judiciary Committee report on the Public Utilities Act:

> AS 42.05.711. In its comparable section, SB 128 provided for the exemption of municipally owned and operated utilities from the provisions regarding the regulation of rates, financial management regulations, and the requirement of a regulatory fees. (Cf. present AS 42.05.645 and Pa. Stat., Title 66, sec. 1141.) The original HB 202 deleted the exemption regarding rates. [1969 House Journal, Supplement No. 4 (4/9/69), p. 7]

From this it appears that the original House Bill contemplated the regulation of rates charged by municipally owned utilities. This was changed, however, by an amendment on the floor of the House. This amendment read as follows:

> Municipally owned utilities (except those consenting to all provisions of this chapter) are exempt from the provisions of this chapter if there is no other utility in the integrated economic area or in an adjacent service area competing or having the potential to compete with any other of the municipally owned utilities. [1969 House Journal, p. 705]

House Bill 202 with this amendment passed the House of Representatives and was forwarded to the Senate. It is clear from this amendment that the House of Representatives also intended that the rates of a municipally owned utility should not be regulated except where competition was present. No legislative history was found which would indicate any ambiguity in AS 42.05.711(b) or indicate that the legislature intended that the rates of municipal utilities not in competition with other utilities be regulated by the APUC.

Your second question requests an opinion from this office on the issue of whether the Fairbanks Municipal Utility System is "in competition" as that phrase is used in AS 42.05.711 (b) where FMUS is attempting to gain authority from the Commission to supply terminal equipment (such as teletype, telex units and other more sophisticated hardware) in the Fairbanks area and in the same proceedings before the Commission, prevent RCA-Alascom from continuing to provide such terminal equipment. It appears from the facts of this situation that the FMUS is merely applying and attempting to gain the authority to compete with RCA-Alascom or to exclusively provide the terminal equipment in the Fairbanks area. Apparently the FMUS is not presently providing such terminal equipment in the Fairbanks area. RCA-Alascom is now providing that terminal equipment. The matter is a dispute over which of the two entities has the authority from the APUC to install terminal equipment.

Under this set of facts it is the opinion of this office that by entering into this dispute the FMUS is not "in competition with any other utility" as that phrase is used in AS 42.05.711 (b). This results in the APUC not being able to regulate the rates, services and facilities, accounts records and reports, and financial and management regulations of the FMUS.

In construing what the Legislature intended by the phrase "in competition with any other utility" a basic fundamental rule of statutory construction requires that the legislative purpose or intent in using the subject phrase be extracted from the entire Public Utilities Act. In other words since this phrase in not defined in the definitional section of the enactment (113 SLA 1970) the other sections in the enactment should be looked at to determine the legislative intent of the phrase. In re Delinquent Tax Role, 16 Alaska 286, 295 (D. Alaska 1956); State v. American Can Co., 362 P. 2d 291, 296 (Alaska 1964); 2 Sutherland, Statutory Construction, (3 Rd. ed.) §§ 4703, 4704.

In 113 SLA 1970 the only other provision which discusses "competition" between public utilities is found in AS 42.05.221 (d). This provision provides:

> (d) In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract which, among other things would:
>
> (1) delineate the service area boundaries of each in those areas of competition;

(2) eliminate existing duplication and paralleling to the fullest reasonable extent;

(3) preclude future duplication and paralelling;

(4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling; and

(5) provide such other mutually equitable arrangments as would be in the public interest.

From this it appears that the legislature intended the use of the word competition to mean actual competition. A mere dispute before the Alaska Public Utilities Commission does not constitute such competition. AS 42.05.221 indicates that competition exists where two or more public utilities are furnishing identical utility service in a designated area and where these two utilities have authority for duplication and paralleling of facilities. No other statutory provision was found in 113 SLA 1970 which would shed any light upon the meaning of competition as used in AS 42.05.711 (d).

Our opinion is further supported by another statutory construction rule which dictates that statutes must be given their reasonable meaning.

If a public utility owned by a political subdivision is subject to rate regulation by the APUC each time the political subdivision requests extended authority or has a dispute with another utility with respect to the extent of either of the utilities authority then an unreasonable result may occur because the utility owned by the political subdivision would probably be under the rate regulation of the APUC only until the dispute or request for extended authority is resolved by the APUC. Such resolution could take place in a short period of time. The present fact situation appears to present a case which could reach this unreasonable result. If the rates of the FMUS were to be regulated by the APUC during the pendency of the dispute between FMUS and RCA-Alascom it appears that those rates would be regulated only for a short period of time. Once the dispute was resolved the FMUS would again be in a position of not having its rates regulated by the APUC unless the APUC were to grant competing authority to both FMUS and RCA-Alascom, or the FMUS elected to be regulated.

Additionally, the common usage of the words "in competition with any other utility" indicates that the political subdivision owned utility must be furnishing identical facilities or service as another utility in the same authorized area before it can be considered in competition with that utility.

JOHN E. HAVELOCK
ATTORNEY GENERAL

By: B Richard Edwards
B. Richard Edwards
Assistant Attorney General

BRE/jt

Pelican Utility Company
P.O. Box 5538
Seattle, WA 98105

March 19, 1980

Senator Brad Bradley, Chairman
Senate Commerce Committee
Pouch V Mail Stop 3100
Juneau, AK 99811

Dear Senator Bradley:

My name is Cavin Philbin and I am representing Pelican Utility Company (PELCO).

The following is written testimony reflecting PELCO's opinions and attitudes toward the Alaska Public Utilities Commission's past performance. This testimony is subsequent to testimony given in front of the Senate Sunset Legislative Review Board by Mr. Charles N. Drennan, an attorney from the law firm of Faulkner, Banfield, Doogan & Holmes and PELCO's representative. PELCO encourages the Sunset Legislation Committee to take into consideration this testimony to aid in the evaluation of the Alaska Public Utilities Commission (APUC).

PELCO is in support of Recommendation No. 5 of the August 1979 review. The company feels that by exempting utilities with gross revenues of $500,000 or less (instead of $100,000), the commission would be allowed additional time and revenue to protect a larger percentage of the public interest by concentrating on larger utilities that serve the majority of Alaska's citizens.

PELCO feels it is disproportionate for a utility of its size to pay the same price for complying with APUC rate case requirements as larger utilities. The high cost of preparing a rate case is passed on to the customer in the form of higher rates which means that a utility customer of a smaller utility has to bear the brunt of higher regulation costs than a customer of a larger utility company.

With the increase in the cost of fuel, utility companies will be forced to file rate cases more frequently to maintain a rate of return allowed by the Commission. APUC is presently offering assistance to utilities in the form of a fuel rate adjustment clause which allows utilities to increase rates proportionate to the increase in fuel. Despite the fuel rate adjustment clause, electric utilities still must file rate cases after the price of fuel increases by 30%. Progressively increasing fuel and regulation costs will continue to outweigh any benefits derived from regulation in its present form.

It may well be that the Commission will require approval of an exempted utility's rate increase. If this is the case, PELCO recommends using a shortened, single page form for supplying a regulatory board with pertinent rate case information. Utility costs, past KWH production, the utility's customer base, rate of return information and other necessary information could be listed "in house" on a form similar to a tax return. This would cost the utility less to compile and the regulatory board less to analyze. The expense for complying with cost of service studies and rate case requirements should be relative to the gross revenue and customer base of the utility. If this is not possible, the regulatory agency should pay the cost of supplying such burdensome information.

PELCO is not in favor of the statute now in effect by APUC stating that if 25% of the customer base of a utility sign a petition protesting the utility's exemption from regulation, the utility is automatically regulated by APUC.

PELCO has a customer base of 64 people living in an area of approximately one square mile. This has always been a problem for PELCO. With Pelican Cold Storage Company (Pelican Utility Company) as the major employer in such a small village, even a slight rate increase is highly controversial. The present statute states that 16 protests are all that are required to cancel or defeat a PELCO exemption, but even with a single protest, the review of a rate case or special request can come to a standstill.

The management at PELCO invites customer input in determining the extent of company regulation, but feels the decision should lie with a State Regulatory Board and not a few citizens. For instance a percentage of customers could request a state commission to review a utility's performance but a state review board should be responsible for determining the utility's degree of regulation.

Attached to this testimony is a copy of a diary kept by Mr. J. G. Ferguson, President of PELCO, during our last approved electric rate case. As the diary illustrates, rate case proceedings began on April 20, 1975 and although the diary was not carried through to the time the final rates were approved on August 1, 1976, it can be seen that it is especially costly and time consuming for a utility of Pelican's size to comply with the myriad of information required by APUC, especially relative to the utility's customer base.

Since the 1976 electric rate case, PELCO has filed for a new water rate and a Petition for Exemption for a new Cable Television System.

PELCO initiated the water rate case in November of 1977 and was granted the rates on February 14 of 1980. In that 26 month period, having our attorney compile the necessary information cost the utility $50.00 an hour in legal fees for a total cost of $3,424.00. A minimum of three hours a week was needed in that period of time for Seattle administrative personnel to produce information for this particular case. This cost PELCO $2,000.00 a year, not to mention the time that was needed for the PELCO staff in Alaska to supply the Seattle office with additional support information. With a gross water utility sales revenue of $6,450.00 for FY 1978 and 1979, the cost to comply with APUC information requirements for these years totaled roughly 60% of the water utility's sales revenue.

For the Cable Television Petition for Exemption, it took over a year to obtain a certificate to operate. The legal expense in that period for Cable Television was $1,250.00.

In closing, PELCO encourages the Sunset Review Committee to do anything within its power to decrease Commission staff turnover. It has been our experience in rate cases that each time an APUC staff member quits, the replacement invariably requires information that has already been supplied. This is burdensome to the utility and adds to the inefficiency of APUC.

Respectfully,

Cavin W. Philbin
Utility Administrator

CWP:lm

Attachment

PELICAN UTILITY RATE CASE:

April 20, 1975	Requested Banfield to start on rate case
June 25	Pelican answers phone request for information
July 28	" " " " " "
August 13	" " " " " "
Sept. 4	" " " " " "
Sept. 8	Banfield sent 33 page application for increased rates 15¢/KWH effective Oct. 12, 1975 with Interim Rates 11.8¢ KWH effective Sept. 29, 1975
Sept. 19	Received letter from Alaska Public Utilities Commission advising request received
Sept. 25	Advised Banfield depreciation methods used
Sept. 26	Rate Notice published in Southeast Alaska Empire Newspaper
Oct. 1	Letter to Banfield on case
Oct. 2	Received letter from Banfield on case
Oct. 2	Answered requests about fuel storage
Oct. 7	Received letter from City of Pelican on case advising rate for street lights will go from $492.00 to $4,688.64 under new rates, requests relief
Oct. 7	Received telex from Pelican, City going to file protest with Alaska Public Utilities Commission. I advised Banfield.
Oct. 8	Received letter from Banfield showing rates from other remote communities in Alaska
Oct. 9	Advised Banfield additional costing figures
Oct. 10	Received letter from Banfield on case
Oct. 29	Advised Banfield of three protest letters sent to Public Utilities Commission
Nov. 3	Received 3 letters from PUC on protest, we advised Banfield by letter
Nov. 4	Advised Banfield requested usage information
Nov. 7	Banfield sends Pelican letter on protests and advised PUC filed order Nov. 3 suspending operation of tariff revision and instituting investigation. Suspension not to go later than May 1, 1976, Reasons: 1.) Petition containing 83 names from consumers in Pelican 2.) Commissions staff requested more financial supportive information
Nov. 17	Pelican recieves copies of petition
Dec. 9	Pelican answers Banfields letter on usage and meters
Dec. 12	Pelican talks with Lowell Jensen PUC on tariff requirements
Dec. 31	Pelican advised summary to Banfield on consumption and production meters.
Dec. 31	Pelican withdraws and cancels interim and permanent tariff request with PUC
Jan. [illegible] 1976	Pelican/Banfield file revised rate increase with regular rate 7.5¢ KWH, industrial 6¢ KHW
Jan. 23	Wrote City of Pelican on rate case - allow industrial for all their service
Jan. 23	Received letter from Banfield on rates
Feb. 3	Arthur Andersen & Co. advised PUC on audit
Feb. 25	Met with Banfield in Seattle on case
March 18	I wrote PUC requesting relief and cooperation on rate case

continued...../

March 22	Received letter from PUC advising that second rate request suspended - no later than August 26. Reasons: 1.) Request for additional information on fuel consumption, 2) Advised that public hearing needed
March 29	Pelican wrote Banfield on case
April 28	Pelican copies PUC on Pelican Utility Annual Report
May 5	Received letter from Banfield
May 11	P. S. Ganty called M. Oaksmith, Assistant Director PUC requesting action
May 15	Received letter from PUC requesting additional information
May 19	Banfield's office answers PUC letter
May 24	Pelican advised Banfield on usage study
August 1, 1976	New rates become effective

Box 1081
Petersburg, Ak 99833
13 Mar 1980

Senator Bradley
Senate Commerce Committee
Pouch V
Juneau, AK 99811

Dear Senator Bradley;

I wish to comment on the actions or rather non-actions of the Alaska Public Utilities Commission.

Over one month ago I sent a letter to the Chairman of the Commission expressing my concern over the way the commission allowed Alascom to refund the excess rate increases.

So far I have not even received an acknowledgement of receipt from the commission. On Capitol 80 I saw some of their replies to questions from the public and surely financial constraints cannot be so pressing that a letter of reply is too costly.

The reason that I wrote to the commission is that at least two weeks of January has gone past before I was informed about the "Great consumer refund" policy which Alascom was allowed. Lower phone rates in Alaska during the months of January and February. If I had not accidently bought a paper I would not have known about the refund at all. At the very least the commission should have made Alascom wait until it had informed the public via our usual monthly bills. I felt that the very secretive way Alascom was allowed to refund to its customers did not benefit the public at all. I thought one of the commissions duties was to safeguard the interests of the public.

Sincerely yours,
T. Osborne
Timothy Osborne

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 13, 1980

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Your Senate Commerce Committee has had under consideration for "Sunset" review the Alaska Public Utilities Commission, pursuant to your referral under AS 44.66.010 and AS 44.66.050.

In accordance with the statutory requirements, a public hearing was held on the review of this commission. An additional hearing was held on March 13, 1980, as the Committee Chairman had been notified that additional witnesses wished to testify regarding the Alaska Public Utilities Commission.

Guided in part by the report prepared by the Legislative Audit Division, the Committee took into consideration the factors required under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings:

The Committee finds some merit in recommendation number one which recommends that the Alaska Public Utilities Commission, the Alaska Transportation Commission and the Alaska Pipeline Commission should be combined into a single regulatory commission. However, this will require considerable further study. The Committee finds it is not in the public's interest to do so at this time.

In recommendation number two, the Legislative Audit Division recommends that AS 42.05 should be amended to allow the Alaska Public Utilities Commission to cease all certification and regulation of cable television. The Committee does not concur. Cable systems in Alaska, particularly in the remote areas, do not serve a mere entertainment function. Cable television in some areas of Alaska is the only source of information and entertainment. It is felt that regulation

should continue in these areas. In urban areas, where alternative forms of entertainment and information are available, the Committee agrees that certification and regulation may not be necessary. Recent legislation passed in the state of California provides a formula that the Committee believes will, with modification, provide for deregulation of the cable systems in major urban areas of Alaska while providing regulatory prctection for Alaska's rural population.

Recommendation number three asks that AS 42.05 should be amended to allow the Alaska Public Utilities Commission to cease certification and regulation of those utilities furnishing collection and disposal service of garbage, refuse, trash and other waste materials. In both the Legislative Audit Report and the public hearing, the reason most often heard for this deregulation was that "We don't have the staff to do this." An assertion is made in the Performance Review that the refuse industry is not capital intensive and that competition in this industry would not be as detrimental to the public's interest as competition among more capital intensive industries.

However, it has also been argued to the Committee that there should be some limited activity by the Alaska Public Utilities Commission in this area. Contentions have been made in favor of the Commission having appellate authority over local government units which may assume the regulatory function; and it has also been argued that the APUC be allowed to have jurisdiction "by consent," when a municipality and a utility have both agreed to that jurisdiction. While the Committee tends to agree with the recommendations of the Legislative Auditor about deregulation in this area it will consider these arguments about very limited jurisdiction during the preparation of the Committee's legislation.

Recommendation number four asks that AS 42.05 be amended to allow nonprofit telephone and electric cooperatives to petition for withdrawal from APUC economic regulation. It further recomends that the membership of the cooperatives, by a vote of a majority of the members, be given an opportunity on a utility by utility basis to determine whether their cooperative should remain under APUC regulation. The Committee finds several problems in considering deregulation of the

cooperatives. One, as pointed out by the Performance Review, is the large number of consumer complaints received by the APUC against cooperatives. The second, which was brought out in public hearing, is that the annual meetings of the cooperative associations have a less than representative number of members present. Before the Committee can consider deregulation of the utilities by vote of the membership, the Committee would have to be assured that the vote in fact represented a majority of the actual members as opposed to a majority of the members present at any given annual meeting, or that similar safeguards are provided.

With this modification, the Committee's legislation will reflect this recommendation.

The Committee in general concurs with recommendation number five that asks that AS 42.05 be amended to exempt from economic regulation all utilities with annual gross revenues not exceeding $100,000. We agree with the Legislative Audit Division that the cost of regulation "on a percentage basis" to a small utility may outweigh the potential benefits. However, when considering regulation of a utility we must look not only to the cost factor but also to the factors of public safety that are involved. Many of these small utilities provide vital needs to communities, for instance, water utilities. The Committee while including deregulation for these utilities in its legislation, will attempt to include some triggering device that would submit the utility to regulation if serious consideration of public health and safety should warrant such action.

The Committee concurs with recommendation number six that the statutes and regulations governing the Alaska Public Utilities Commission should be revised, and will work with the Commission to accomplish this.

The Committee concurs with recommendation number seven that salary levels for the professional and technical support staff should be upgraded. If salaries are not competitive with private industry in Alaska, we cannot expect qualified personnel to work for the APUC on an extended basis: The Commission will only become a training ground for industry.

The Committee concurs with recommendation number eight that the APUC should implement a time management system. We

were informed during the public hearing that new concepts are being implemented by the Executive Director and the situation is improving. If this is accomplished within a reasonable length of time, no legislative action will be necessary.

Recommendations number nine, ten, and eleven address "housekeeping" functions of the APUC. It is our understanding, as a result of testimony by the Alaska Public Utilities Commission, that action is being taken on these recommendations. If this action proceeds in a timely manner, it is felt that no legislative action will be necessary in this area.

Recommendation number twelve urges that the Office of the Governor keep the appointment of the Chairman of the Alaska Public Utilities Commission current. Complaints that the Office of the Governor has been slow in making appointments to boards and commissions have appeared often in the Performance Reviews. It is hoped that the Governor's Office will make timely appointments to boards and commissions in the future.

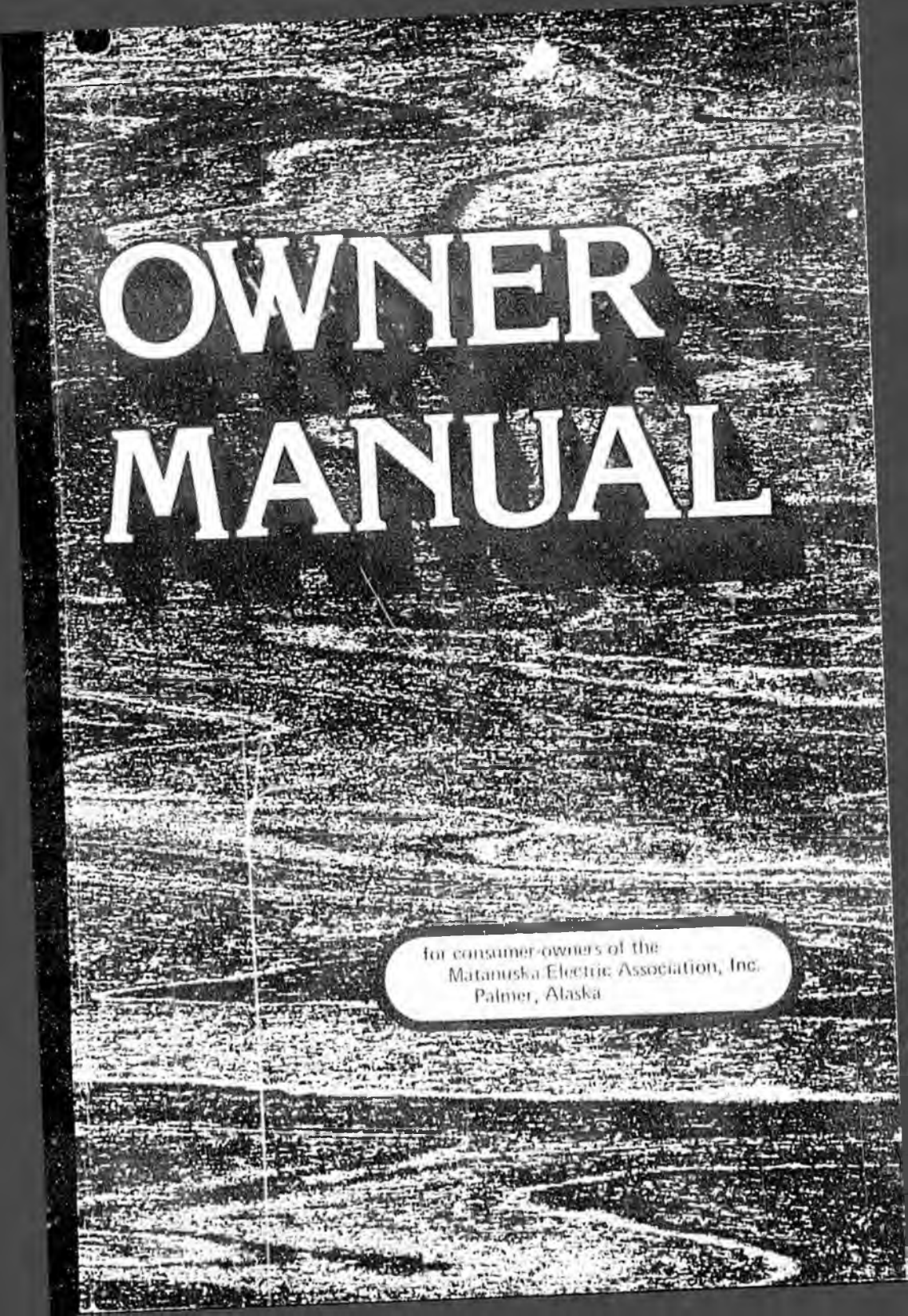
Corresponding legislation will be introduced soon to accomplish the goals of this report.

Respectfully submitted,

Brad Bradley

Senator Brad Bradley
Chairman
Senate Commerce Committee

BB:jss


OWNER
MANUAL
for consumer-owners of the
Matanuska Electric Association, Inc.
Palmer, Alaska

MATANUSKA ELECTRIC ASSOCIATION, INC.: CONSUMER-OWNED/CONSUMER-ORIENTED

Your electric cooperative is committed to provide the best electric service at the lowest possible cost. We are always striving to assist and educate our membership in order to fulfill the true cooperative spirit.

This owner's manua. is provided as a part of our continuing effort to enlighten interested consumers. It should answer many of your questions and serve as an informational guide to your cooperative.

Please complete the following information and keep it handy in case of service interruptions or other consumer inquiries.

_____ _____

SERVICE LOCATION (Pole Number) METER NUMBER

_____

ACCOUNT NUMBER

MEA OFFICES AND TELEPHONE NUMBERS

	8:00 a.m. - 5:00 p.m.	After Hours
Palmer Headquarters	745-3231	745-3235
Eagle River Branch	694-2161	694-2161
Big Lake Branch	892-6021	745-3235

Collect Calls will be accepted from Talkeetna

This manual is published by the Matanuska Electric Association, Inc., a rural Electric Cooperative owned by the members it serves. Information contained in this manual is judged to be correct at day of publication. MEA's policies and tariff, however, are subject to change, periodically superceding parts of this manual. These changes will be published in future revised editions or made available on an insert basis.

Part 17, "What to do if fuses blow or circuit breakers trip frequently" copyright 1969 Sears Roebuck & Company is printed herein by permission of Sears Roebuck & Company.

Edited at MEA by Budd Goodyear

Printed in Alaska

Matanuska Electric Association, Inc.
P.O. Box 1148
Palmer, Alaska 99645

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GENERAL MANAGER'S MESSAGE

Welcome to MEA. You are now a part of Alaska's oldest REA cooperative, organized in 1941. Whether you are a "Cheechako" or a "Sourdough," I am sure you'll be interested in a few facts about MEA.

Our service area is large – 3,360 square miles (twice the size of the entire state of Delaware). Growth has been a real factor at MEA, as we have experienced the fastest growth-rate in the state and have been one of the fastest growing areas in the country during the past several years. We now serve over 13,000 consumers in the Matanuska-Susitna and Anchorage boroughs.

The material contained in this owner's manual will provide you with valuable and interesting information about your electric cooperative. It defines your rights and responsibilities; answers questions; gives you information and phone numbers, and will help you to understand MEA.

One of the important processes we have is the annual membership meeting. There, directors are elected, the business of the past year discussed, and a future outlook given. It is an important part of your Co-op membership that you attend and participate. Notices are published three weeks in advance of the meeting which is in April each year.

I hope you will take a few minutes to become familiar with the information in this manual. It will not only help you understand MEA's operation and service policies, but it will also make reporting outages simple, and finding answers to your questions easier.

Again, welcome to membership in MEA. Welcome to the MEA service area. Let's work together for the future of Alaska and its heartland – Southcentral.

Malcolm Cheek
General Manager

Part 2 MEA IS

MEA is a Rural Electrification Administration cooperative, a type of business which belongs to the people who use its services, its members. Matanuska Electric Association, Inc. is the oldest REA cooperative in Alaska. Since 1941, you, our members have controlled the business of providing rural power supplies. The annual election of directors who represent you and consider your wishes when setting policy by which the cooperative business is conducted, gives you a voice in the operation of your electric utility.

MEA is a business which consumers operate to obtain electric power, one which began when no other utility entity would invest in rural society and provide power. When you become a member of MEA you join 12,000 consumer-members who have built an association providing power to 3,360 square miles of south-central Alaska. From Eagle River to Hurricane, south to north, and Sheep Mountain to Petersville, east to west, MEA, your Co-op, is truly on the "cutting edge of progress."

Part 3 REA IS

REA is the Rural Electrification Administration which was established by President Franklin D. Roosevelt by executive order in 1935. REA and Rural Electric Cooperatives brought power to the rural residents across the country . In 1935 only 10.9 per cent of farms in the country had electric power. In 1969, 98.4 per cent of all farms were energized with electricity. REA does not subsidize rural electric co-ops, but it is a banker and regulator, making loans to co-ops and insuring sound business practices are followed.

Part 4 YOUR ROLE AS A MEMBER–OWNER

One of the more important facts about REA cooperatives is that they are controlled by the people they serve. MEA, as a member-owned business, gives you the unique opportunity of participating in both the role of an owner and role of consumer. The typical MEA consumer-owner . . .

*Pays energy bills on time.
*Gives easement for construction and service of electric facilities on his property
*Cooperates with

Got an idea for improving the Co-op? Share it with us, we listen.

right-of-way brush control programs

*Notifies Co-op of any system damages and service interruptions

*Keeps informed by reading *Ruralite* and energy related articles

*Attends Association community and annual meetings

*Offers suggestions for improved service

*Serves on special Co-op committees

*Observes the Co-op's rules, regulations and by-laws

*Cooperates during storm emergency situations

*Helps provide transportation to inaccessible areas

*Votes for directors to guide the Association

*Notifies Association of electric power diversions and equipment misuse or theft

*Participates in wise energy use programs and uses energy wisely

The annual membership meeting is an important part of being a REA co-op member.

Part 5

TARIFF

MEA operates under a tariff approved by the Alaska Public Utilities Commission (APUC). This tariff covers rates as well as service rules and regulations. Copies of the current tariff may be inspected at MEA offices in Eagle River, Palmer and Mile 51, Parks Highway at the Big Lake Office.

The following are some of the important items in our tariff:

MEA will provide electric service to customer premises that are utilized on a seasonal basis as provided in the applicable rate schedules.

MEA may require the customer to sign a contract guaranteeing a certain minimum level of revenue for a specified period of time, prior to new construction.

The customer shall use electricity from the Association (MEA) exclusively at the premises designated by his order and shall not generate or cause to be generated any electricity which is or may be connected to Association service.

The Association (MEA) will read all meters monthly. If, for any reason, reading cannot be obtained for any particular period, the billing may be based on an estimated energy use and demand.

MEA will, at its own expense, inspect and test its meters as required to insure a high standard of accuracy. Each meter is tested before it is installed.

Additional tests at request of customer will be made, and if the meter is found to register within 2 per cent (2%) of accuracy the customer shall pay the test fee as determined by Tariff Rule 9 and the Schedule of Fees.

Part 6 MANAGEMENT'S ROLE

MEA's Manager is entrusted by its members and directed by the board to provide electrical power at the lowest possible costs and to engage in accepted business practices which will produce the necessary power economically and with fairness to all members. As the tariff provides, MEA is responsible for and may:

*Make service charges as outlined in the schedule of fees.
*Assess a four ($4.00) handling charge for dishonored checks
*Refuse to connect and will disconnect service for violation of service policies.
*Temporarily suspend service to make repairs and improve the system.
*Provide construction service to a consumer-member meeting cost specifications as agreed upon. This is a temporary service limited to 90 days.
*Provide underground service for primary voltage when consumer pays difference between overhead and underground installation costs.
*Provide underground service for secondary service or voltages for a minimum charge when consumer digs his own trench, and fills it, according to specifications, after MEA installs cable.
*Provide line extension for a minimum monthly charge based on the estimated cost of construction of a line.
*Review line extension contracts on an annual basis (calendar year) to determine status of gross revenue from extension contracts.
*Terminate extension contracts when gross revenue derived from the extension exceeds required return on the investment in construction costs.

Part 7 MEA IDEALS

We believe that:

it is the right of persons to provide for themselves a vitally needed service, in the form of an Electric Co-op;

the Association exists primarily to serve its consumer-owners;

the Association exists for the mutual benefit of its member-owners, directors, employees and the public;

the Association must provide the highest quality electric service at a cost consistent with sound business practices;

the opportunities in the enterprise carry with them both economic and social

responsibilities;

the ability of the Association to continue providing this essential service depends upon its attracting and retaining capable employees;

the natural resources of this country should be developed to provide an abundance of power consistent with other resource development needs;

the economic future of the State of Alaska depends upon its having an abundance of electric power available to persons who can use it;

the Association must exemplify leadership in the community by doing all things essential to good management;

attaining these ideals will require our constant and untiring efforts.

"I warned Elrod I was going to get him to an annual meeting—one way or another."

MEA OBJECTIVES

TO OPERATE the Association as a non-profit enterprise on a continuing and progressive basis;

TO ASSURE the availability of a constantly high quality of central station service to members;

TO KEEP the member-owners fully informed on the affairs, problems, and methods of the Association;

TO DEVELOP among members, through democratic processes of participation, a recognition of member-ownership and accountability;

TO ENHANCE the Association's reputation for fair dealings, prompt and efficient service, dependability, integrity, courtesy, productive ability, and technical competence;

TO STRIVE constantly for ever higher standards of service through progressive management;

TO STIMULATE and support rural development programs, especially those which will increase and stabilize the economic level of the Association's service area;

TO DEVELOP, operate and maintain the system at optimum performance;

TO PROVIDE the means whereby the member-consumers can build and maintain the Association by contributing a reasonable amount of essential capital;

TO RECOGNIZE that our greatest assets are our human assets;

TO OBTAIN acceptance of the ideals which emphasize the obligations involved in doing a job well;

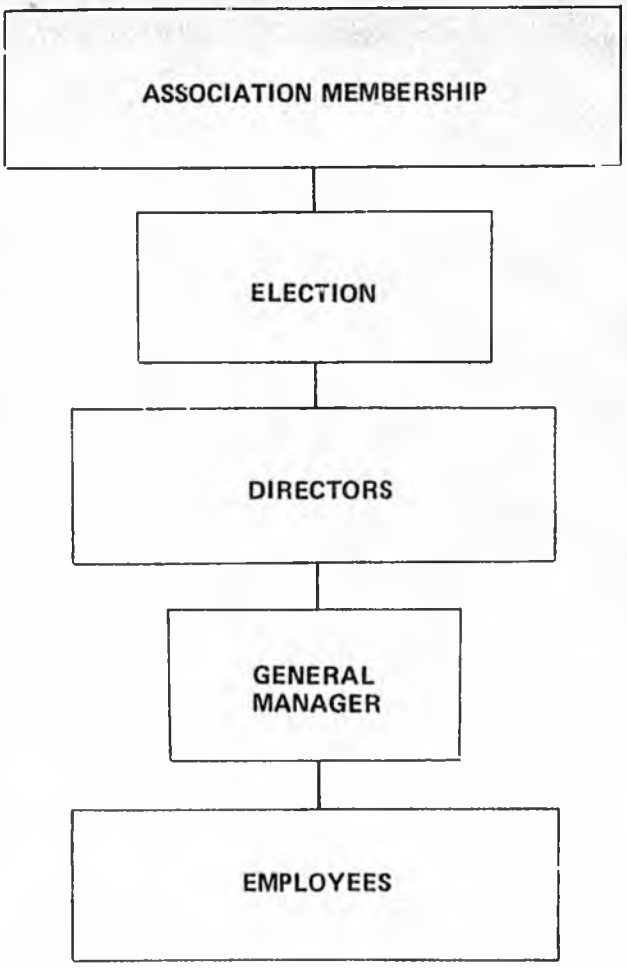
TO REWARD, encourage progress, inform, train, develop and properly assign all employees;

TO DEVELOP understanding, acceptance, and support of the Association's objectives, plans and programs, and

TO PROVIDE leadership and to cooperate with other community and civic groups.

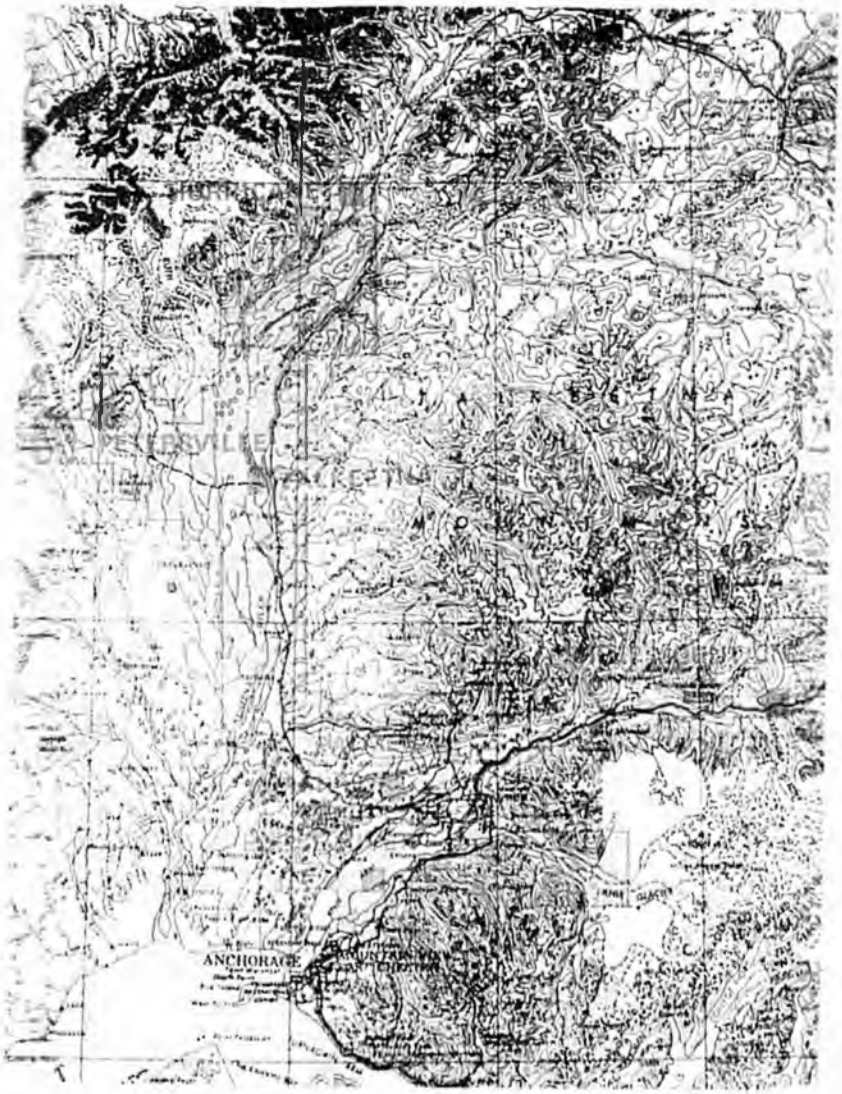
Kick out the old! Bring in the new! MEA is dedicated to bettering the lifestyle of its members.

ORGANIZATION CHART

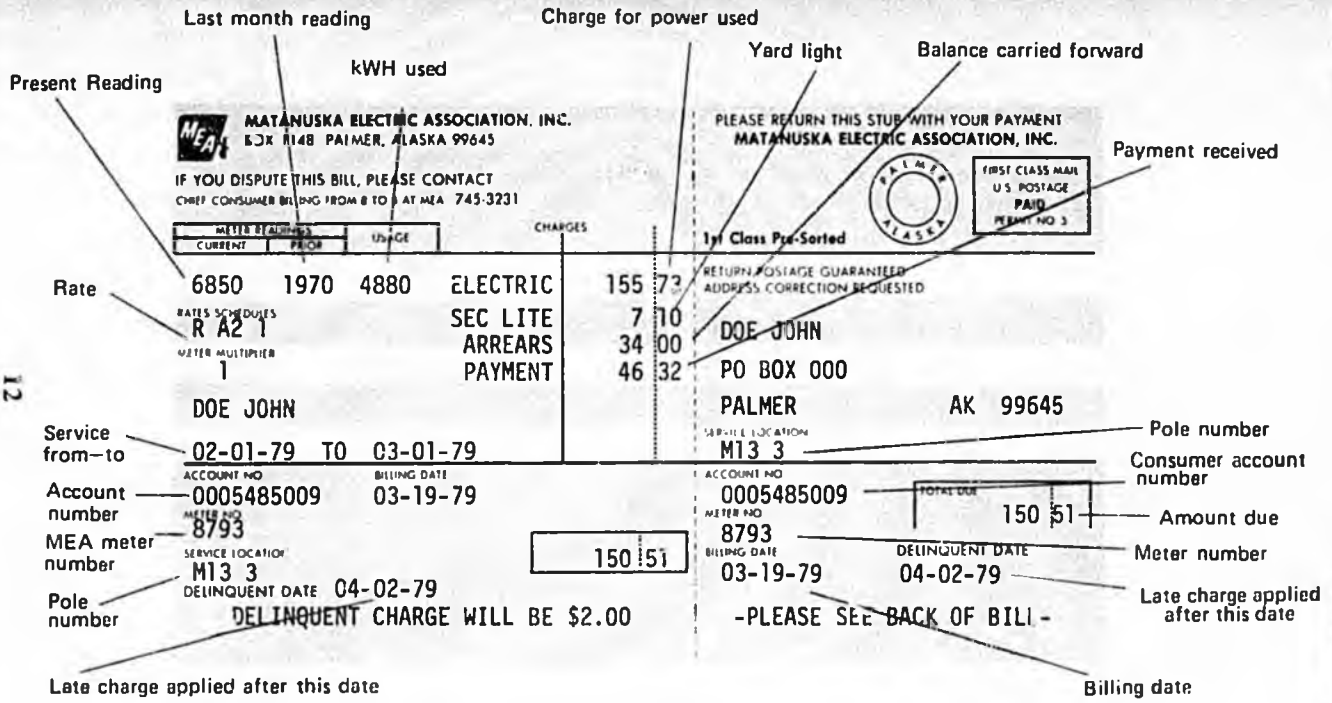


This organization chart of the Matanuska Electric Association, Inc. indicates the valuable role each member plays in the operation of the Association. Members, attending the annual meeting each spring, elect the board of directors which in turn set the policies, hire the general manager, and oversee the operation of the Association as your representative. The board of directors meets once a month. It is not paid a salary but is given travel pay and per diem for meetings it or its members must attend to further the business of operating the Association.

SERVICE AREA MAP



The MEA service area includes 3,360 square miles of south central Alaska. It is three times larger than Rhode Island, twice as large as Delaware and 3/5ths the size of Connecticut.


Last month reading
Charge for power used
Yard light
Balance carried forward
Present Reading
kWH used
Payment received
MATANUSKA ELECTRIC ASSOCIATION, INC.
BOX 1148 PALMER, ALASKA 99645
IF YOU DISPUTE THIS BILL, PLEASE CONTACT
CHIEF CONSUMER BILLING FROM 8 TO 5 AT MEA 745-3231
METER READINGS
CURRENT
PRIOR
USAGE
CHARGES
6850
1970
4880
ELECTRIC
155 73
SEC LITE
7 10
ARREARS
34 00
PAYMENT
46 32
Rate
RATES SCHEDULES
R A2 1
METER MULTIPLIER
1
DOE JOHN
Service from—to
02-01-79 TO 03-01-79
Account number
ACCOUNT NO
0005485009
BILLING DATE
03-19-79
MEA meter number
METER NO
8793
Pole number
SERVICE LOCATION
M13 3
DELINQUENT DATE 04-02-79
DELINQUENT CHARGE WILL BE $2.00
Late charge applied after this date
150 51
PLEASE RETURN THIS STUB WITH YOUR PAYMENT
MATANUSKA ELECTRIC ASSOCIATION, INC.
PALMER ALASKA
FIRST CLASS MAIL
U.S. POSTAGE
PAID
PERMIT NO 3
1st Class Pre-Sorted
RETURN POSTAGE GUARANTEED
ADDRESS CORRECTION REQUESTED
DOE JOHN
PO BOX 000
PALMER AK 99645
SERVICE LOCATION
M13 3
Pole number
ACCOUNT NO
0005485009
Consumer account number
TOTAL DUE
150 51
Amount due
METER NO
8793
Meter number
BILLING DATE
03-19-79
DELINQUENT DATE
04-02-79
Late charge applied after this date
-PLEASE SEE BACK OF BILL-
Billing date

*85% to 88% of MEA's consumers keep their accounts current with timely payments.

*Consumers who do not pay their accounts on time increase the operating expense for the entire membership.

*It costs your Association as much as 25% of the billed amount to collect delinquent accounts–as much as $10.00 to collect $40.00

*Consumers with serious financial problems who are unable to make a payment on time should contact MEA to discuss possible arrangements to help bring an account up to date.

MEA'S BILLING PROCEDURE

*Meters are read and billed monthly at regular intervals.

*Bills are due within 2 weeks of the billing date, and a delinquent date is indicated on each bill.

*If payment has not been received within 2 weeks, a $2.00 late charge is added to the account, and a "Past Due" notice is mailed.

*If payment has not been received within 20 days from the original billing date, a "Disconnect Notice" is mailed stating the disconnect date.

*If payment has not been received within 24 days from the original billing date, a "Disconnect Order" is issued to field personnel.

*A $10.00 service charge is made for delinquent account disconnects.

*Member-Consumers will be given the opportunity to pay their account in full at the time of disconnect if they are on the premises. The total amount due must be paid in full in order to stop the disconnect order.

*IMPORTANT: If you are leaving your residence for an extended period of time, 3 weeks or longer, be sure to arrange with MEA billing section for the payment of your energy bill and continuation of service during your absence. To reduce energy consumption during extended absences, unplug all appliances not required, turn thermostat down to minimum temperature, and shut lights off. In winter, care should be taken to protect your home water system from cold winter temperatures. MEA recommends you drain your home water system prior to extended winter absences.

Paying your energy bill on time helps your Co-op save money.

Part 13 SCHEDULE OF FEES AND CHARGES

You may receive upon request a copy of the Schedule of Fees and Charges as appears in the approved tariff. The schedule states rules for determining account deposits, fees for disconnects, reconnects, meter test, service call, late payments, dishonored checks, service relocation and etcetera. Copies of the schedule are available at any MEA office.

"We think of it as early American with just a touch of the modern."

RETAIL RATES

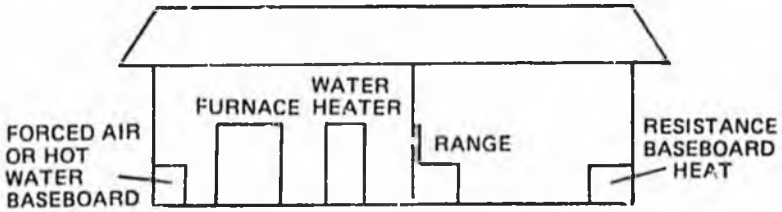
You will receive, along with this copy of the Owner's Manual, a Retail Rate Notice, which will give you the current rates charged for electrical energy purchased through your Association. If you did not receive one you should ask for a copy the next time you visit one of your Association's offices. A copy of the rate notice can be mailed to you upon request.

Supplying energy efficiently, quickly, at low costs, that's our job!

In all homes most of the electricity is used to generate heat, in one form or another, for hot water, cooking, drying or space heating for comfort. The highest use of electricity, even in homes with oil or gas furnaces is by the furnace heat circulating system. The balance is used for non-heat items such as televisions, stereos, lights, refrigerators, freezers, vacuums, microwave ovens and so on.

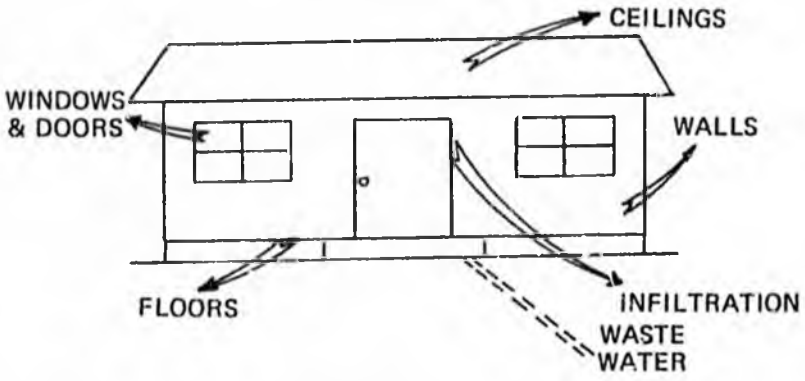
"Insulation doesn't cost, it pays."

HEAT SOURCES



The heat that has been produced is lost out of the home at a rate that is dependent on the outside temperature and the construction of the home.

HEAT LOSSES



INSULATION CHART

TYPE OF INSULATION	R-VALUE per INCH	ADVANTAGES	DISADVANTAGES
Fiberglass Batts or Blankets	3.7	1. Do it yourself installation 2. Stable R-value 3. Non-corrosive; non-flammable 4. Does not expand or contract after installation.	1. Can be irritable to the skin 2. Can leave empty space if care is not taken on installation.
Cellulose (Blown)	3.5	1. Inexpensive 2. Seals itself guarding against empty spaces	1. Has a tendency to settle which lowers R-Value 2. May be flammable or corrosive depending on manufacturer 3. Greatly affected by air currents
Urethane Foam	6.7 (ave)	1. High R-Value upon installation 2. Forms tight bond to building materials.	1. Expensive 2. Flammable 3. Loses R-Value as it ages 4. Releases deadly cyanide gas when it burns 5. Has a tendency to expand with age after curing.
Urea-Formaldehyde Foam	4.6 (ave)	1. High R-Value	1. If not properly mixed will release formaldehyde fumes (health hazard) 2. Has reputation of shrinking with age. 3. Cure time must be strictly controlled

RECOMMENDED R-VALUES FOR MEA SERVICE AREA

CEILINGS	R-38
WALLS	R-19
FLOORS	R-22
WINDOWS	TRIPLE GLAZED

These Values Apply Whether You Heat With Oil, Gas, Coal, Wood, or Electricity.

APPLIANCE GUIDE

Following are approximate wattage ratings for typical appliances and estimated kilowatt-hour usage per month for an average family of four.

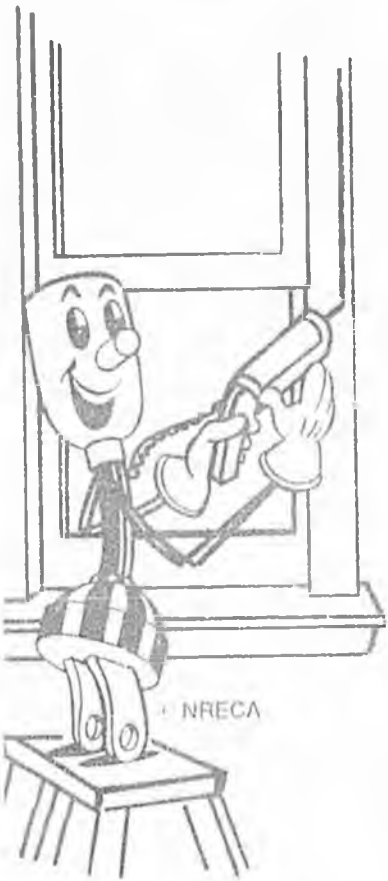
MAJOR ELECTRICAL APPLIANCES	Average Wattage	Est. KWHs consumed monthly
Water Heater	4,500	500
Refrigerator/Freezer (14 cu.ft)	325	112
Refrigerator/Freezer (frost-free 14 cu.ft.)	600	150
Freezer (15 cu.ft.)	350	135
Freezer (frost-free 15 cu.ft.)	440	17[illegible]
Range	12,200	93
Self-Clean Cycle	4,000	4
Microwave Oven	1,450	15
Clothes Dryer	6,000	120
Clothes Washer (incl.hot water)	500	9
Dishwasher (incl. hot water)	1,000	30
ELECTRICAL HOUSEWARES		
Coffeemaker	800	12
Blender	350	1
Fry Pan	1,150	15
Crock Pot	240	8
Toaster	1,150	5
Toaster Oven	1,500	8
HOME ENTERTAINMENT		
Radio	60	7
Record Player	160	10
Television/B&W	200	36
Television/B&W (solid state)	55	10
Television/Color	350	63
Television/Color (solid state)	200	36
OTHER SERVICES		
Clock	2	1
Bed Covering	190	15
Hair Dryer Blower	1,000	65
Portable Heater	1,300	14

"YOU CAN FIGURE IT OUT"

Use the information provided in the Appliance Guide to compute your estimated kilowatt-hour usage per month.

Average Wattage	X	hrs./mo. usage	=	÷ 1,000	=	KWHs used/mo.
Television/Color						
350 watts	x	128 hrs./mo.	=	44,800	÷	1,000 = 45Kwh

If you take the time to develop a good energy consciousness, you can save. Put your conservation efforts where they count.



Warm air can escape into arctic cold through the tiniest crack with chilling efficiency.

WATER HEATER

Operate food disposers with cold water.

Operate dishwasher and clothes washers with full loads only.

Wash clothes in a cold or warm water wash.

Install a flow restrictor in your shower head.

A 3-minute shower uses less energy than a full tub bath.

REFRIGERATOR-FREEZERS

Frost should be removed when it is ¼-inch thick.
When frost gets thicker the refrigerator becomes less efficient and uses more electricity.

Be sure your refrigerator door is air tight. Check gaskets.

Avoid opening the refrigerator door more frequently than necessary.

LIGHTING

The amount of light a bulb gives off is measured in lumens. The most efficient light is one that gives off the most lumens per watt. Carefully study bulb packages.

Turn lights off in unused rooms or when leaving a room.

Fluorescent tubes are more economical to operate than incandescent. Fluorescent lamps produce up to five times as much light for the same energy, and last up to ten times longer.

Utility bills can also be affected by your electric energy use and one or more of the following:

CONDITIONS BEYOND YOUR CONTROL OR KNOWLEDGE

- Seasons of the year
- Light and weather
- Daylight Saving Time
- Five-weekend months
- Longer billing periods
- Defective house wiring
- The number of days between meter readings sometimes varies

CHANGES IN NORMAL LIVING CONDITIONS

- Size of family
- Average age of family
- Visiting relatives
- Children – new babies
- Changes in living habits
- Spring cleaning
- Vacations
- Repairs or renovations
- Roomers
- Hired help
- Sickness or convalescence
- Special diets
- Therapeutics
- Guests and entertainment
- Sporting or special events on television

APPLIANCES

- New appliances installed
- Additional use of older appliances
- Frost on refrigerator unit
- Defective appliances –shortage of refrigerant
- Inefficient use –oven for househeating
- Excessive use of hot water
- Leaking hot water faucets
- Exposure of hot water pipes to air
- –clogged air filters in furnace
- Excessive househeating –thermostat control setting

NEW HOME OR APARTMENT

- Larger than former home
- Windier or colder location
- More heat leakage through windows
- Less weatherstripping, fewer draperies
- Larger heating equipment
- Manual heating controls
- Larger water heater
- Ceilings not adequately insulated

© NREGA

Dial down to save energy and money.

CONSUMER'S TEST SUGGESTIONS for Part 16 SHORTS, HIGH BILLS, and SHOCKS

MEA recommends that a consumer arrange to have a qualified electrician check their electrical wiring should there be an indication of short circuits or shocks. However there are a few checks the homeowner can make safely.

Step 1: Turn **off** all circuit breakers including the mains usually found directly below the meter. The meter should stop completely without making another revolution.

Step 2: With **all circuit** breakers **off** turn on the mains. The meter should remain stopped. If the wheel turns, even slightly, it would indicate some leakage between the mains and the circuit panel. Call your electrician to replace wiring.

Step 3: With the mains on proceed to turn each circuit on separately with all the others still off. If one should make the meter move determine what that circuit's for and disconnect, if possible, any appliances. With nothing apparent on and the meter is still turning it could be an indication of a partial short. Whenever the wheel in your meter is turning it indicates electrical current is flowing somewhere.

Step 4: If all the circuits appear to be correct at this point, high use or shocks could be caused by faulty appliances. Check anything that works automatically such as water pumps, water heaters, heat tapes, freezers and refrigerators, and electric heaters such as well house, car, or small room heaters. Other things to consider would be frost build-up in wall outlets and switches, uninsulated hot water pipes, anti-sweat valves on toilets that can cause excessive use of hot water, or anything that has recently not been functioning as it should.

Not all electrical problems are easy to find. If you have any further questions on any of the above don't hesitate to call your electrician or MEA offices: Palmer 745-3231, Eagle River 694-2161, and Big Lake 892-6021. Remember, be careful around any electrical wiring.

FUSES AND BREAKERS ARE SAFETY VALVES

A blown fuse or a tripped circuit breaker is a signal that something has gone wrong with your electrical system and should not be ignored. If it happens frequently, it could run up your electric bill, cause appliances to give poor service, or set fire to your house.

There are four types of circuit failure. The following will tell you how to identify and correct each type.

WHY DO CIRCUITS FAIL?

1. Loose connection. A screw may be loose in the socket into which the fuse is inserted. If the **bottom** of the fuse is severely discolored or pitted, you have a loose connection. After making certain that the main switch is disconnected, tighten screw in bottom of fuse socket.

2. Improperly seated fuse. If the fuse window shows no evidence of a blown fuse or if bottom of fuse is not pitted or discolored, the fuse is either not seated properly or is not long enough to make contact. Replace with another fuse that will make contact.

3. Short circuit. If the window of the blown fuse is discolored, you have a short circuit. This means that somewhere on this circuit, a bare wire is touching another bare wire or other metal. In circuits protected by circuit breakers or by cartridge-type fuses, there is no visible clue as to what might be at fault but the procedure to follow is the same.

(A) Unplug all lights and appliances served by the blown circuit—in other words, all lights and appliances that don't work.

(B) When the circuit is clear, replace fuse or flip the circuit breaker switch back on.

(C) Turn each lamp or appliance on one at a time. When you reach the faulty lamp or appliance, the new fuse will blow or circuit breaker will trip. Examine the lamp or appliance and you will probably find the bare wire in a frayed cord or in the wiring of the appliance. Repair it and your problem should be solved.

(D) If the new fuse blows or the circuit breaker trips when the circuit is completely clear, there is a short in the wiring of the circuit itself, and the wiring will have to be repaired or replaced.

4. Overloaded circuit. If the window of the blown fuse is clear, you have an overloaded circuit. This is the most common cause of circuit failure. In circuits protected by breakers or cartridge-type fuses, there is no visible clue but the procedure to follow is the same. There are two types of overloads—

(1) TEMPORARY OVERLOAD. The typical temporary overload exists when a motor kicks on because, during starting, an electric

motor will draw about three times its normal current. You can remedy this by using a time-delay fuse of the correct size (either 15 or 20 amp.). Its purpose is to absorb temporary overloads without blowing. If it does not blow with everything on the circuit turned on, then you had a temporary overload and the problem has been corrected. In circuit breaker systems, the breakers will absorb temporary overloads without tripping.

(2) CONSTANT OVERLOAD. If you determine from your tests that the overload is not temporary and continue to experience circuit failure, you can either shift some appliances from the overloaded circuit to another circuit or add a new circuit or circuits to your system.

It is advisable at this point to make a survey of all circuits so that you know how big a wattage load each is carrying. Number each fuse or circuit breaker number 1, number 2 etc., then follow this procedure:

(a) Turn on all of your lights and be sure all bulbs are burning. Remove fuse number 1 and go through the house marking a No. 1 on the chart for every light that's out. Do the same for all wall outlets, using a night light to make sure which receptacle outlets are on the circuit being tested.

(b) Make a list of the wattages of everything served by this circuit and list them in the column for the number 1 fuse. The wattage of an appliance is usually shown on the name plate or underside. If amperes is shown instead of wattage, multiply amperes by 120 to convert to wattage (example: .75 amp. X 120 volts = 90 watts). If only a horsepower figure is given, multiply horsepower by 746 (1 horsepower equals 746 watts).

(c) Repeat steps (a) and (b) for each circuit. Don't overlook closets or tools and appliances that are not permanently on such as fans, furnace motors, sump pumps, air conditions, etc.

(d) Add up the wattages of the lights and appliances on each circuit and figure the various appliances that might be plugged in at one time. If, for example, you find you have a circuit with a 15 amp. fuse and 14-gauge wire with an estimated load of over 1650 watts, you have an overloaded circuit. A circuit using a 20-amp. fuse and 12-gauge wire should not carry more than 2200 watts.

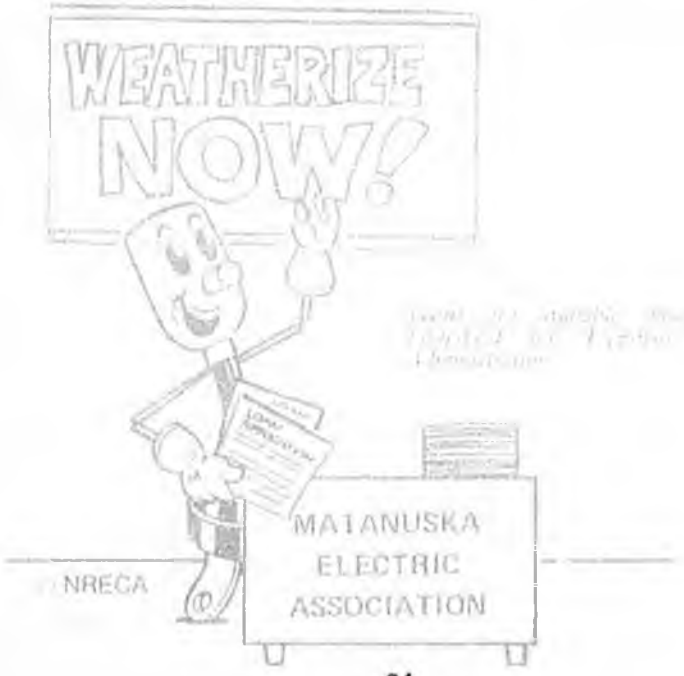
Circuit breaker switch. When overloads or shorts occur, it will switch off automatically. Reset it immediately after correcting trouble.

How ordinary fuse works

This is a standard plug-type fuse. The current passes through the metal strip running across face of fuse. It is designed to protect the circuit against shorts and overloading.

Fuse blown by short circuit. Metal strip is instantly heated to an extremely high temperature, causing it to vaporize. Fuse window discolors.

Fuse blown by overload. Metal strip overheats and melts at the weakest point, breaking flow of current to circuit. Fuse window remains clear.



Every so often we, at MEA, have something happen along an electric line right-of-way that serves to remind us that there is often confusion in someone's mind as to what the actual significance of an easement is, what rights it grants to MEA, and what rights are retained by the land owner or grantor.

When a property owner grants an easement to MEA for the purpose of constructing an electric distribution line, he is only giving MEA the right to enter the property, remove obstacles such as brush and trees, place its electric lines or cables on or under the land surface, and perpetually maintain the facilities. The land owner agrees in granting the easement not to place anything that would interfere with the operation of an electric line or cable. Examples of things that could interfere are buildings, TV antennas, or high signs and fences.

The owner reserves and retains all the other rights to the land and is free to do with it as he wishes. He can improve it, till and farm it, or anything else that doesn't interfere physically with the line or its maintenance and operation.

Some persons are under the impression that when MEA enters the land on the strength of an easement that the Association has acquired the right to do as it pleases to the exclusion of the control of the owner. This is not true. For example, contrary to the belief of many, no one but MEA has the right to enter the owner's land. The line right-of-way is not a public access route! This mistaken belief has been the source of controversy and has resulted in what amounts to acts of trespass and violation of the rights of the land owner. We strongly emphasize this point. Pole line easements on private property do not create public access and no one has the right to enter the property without the approval of the property owner. Everyone is cautioned that the land owner retains the right to control his land against trespass by anyone who does not have permission from the owner.

Historically, during its more than 35 years of service to the membership, MEA has relied heavily on easements to provide rights-of-way for its distribution lines. Free easements granted by land owners, most of whom are also members, have been a major factor in the continuing effort to keep costs down. Continued violations and acts of trespass upon the properties of private owners will result in increased reluctance by the property owner to grant easements to MEA for new lines in the future and will work to drive everyone's cost of service up.

Q. Why do I have to become a member to have electricity?

A. The by-laws of this electric cooperative require that each person receiving electric service from the cooperative be a member. A membership in the cooperative is similar to a share of stock in a corporation.

Q. Does this mean that I am part owner of the cooperative?

A. Yes. This cooperative is owned by the people it serves.

Q. Does my membership entitle me to a dividend?

A. No. The cooperative operates as a non-profit organization and dividends to its members are paid in the form of low-cost electricity and capital credits. (See MEA Bylaws, Article VII, Appendix B to this manual).

Q. Am I required to pay a deposit in addition to my membership?

A. Yes. Your cooperative requires an account deposit.

Q. Are memberships and deposits refundable?

A. Yes. Membership and deposits are 100 per cent refundable after the payment of your final electric bill. However, no interest is paid on any deposit.

Q. Are consumers who pay energy bills late disconnected?

A. Yes, after a due process, service is disconnected if the account is not paid.

Q. When the electric cooperative representative visits to collect late payment, are there extra charges?

A. Yes, a fee is charged for a visit made by a Co-op representative to collect or disconnect a consumer.

Q. Where can I pay my electric bill?

A. At a cooperative office: Eagle River, on Old Glenn Highway; Big Lake, Mile 51, Parks Highway; Palmer on Industrial Way; and at all Matanuska Valley Federal Credit Union offices. MEA offices are equipped with night depositories for the convenience of consumers.

Q. Can I pay by mail?

A. Yes, you may mail your check or money order. However your payment must be received by the due date marked on your bill so mail early.

Q. What should I do if my electricity goes off?

A. Call your neighbor to see if they are without service. If their power is still on, it could be your fuses or circuit breakers. Check to see if your fuses are good.

Q. Whom should I call if my electricity is off and I have found my fuses to be good?

A. Call the local MEA office and give the message to the person who answers. If it is after office hours, call one of the after hours numbers listed herein.

Q. Where does the Cooperative get the money to construct its buildings and lines?

A. We borrow money from the Rural Electrification Administration on long-term notes. This money must be repaid to REA with interest. The system is used as security on these loans. Additional money is borrowed from the National Rural Utilities Cooperative Finance Corporation.

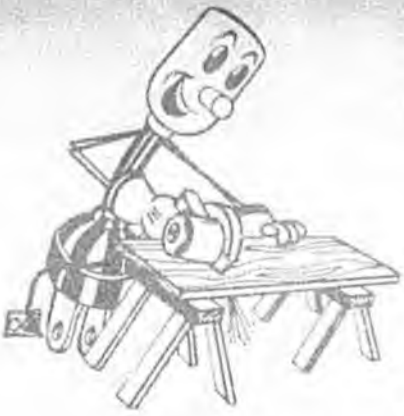
Q. I have heard that cooperatives do not pay taxes. Is this true?

A. No. Cooperatives pay all taxes that are applicable to any business. But, because your cooperative is operated as a non-profit organization, there is no income tax payable. A gross receipts tax is paid to the State based upon gross revenues.

Q. Do we build underground distribution lines?

A. Yes. Underground electric services are available for residential, commercial and industrial accounts. Member-consumers requiring underground service must pay the construction cost difference between overhead and underground hook-ups.

Winter storms can mean MEA employees must use snowshoe or use tracked vehicles to reach work areas.



NRECA

Temporary service for construction is available from MEA; there is a 90 day limit on it.

Q. How can I know that my electric meter is accurate?

A. The cooperative considers them to be accurate if they are within two per cent plus or minus when tested. Meter tests will be made at the request of the consumer for a nominal charge. All meters are tested prior to initial installation.

Q. What is required in the way of electrical wiring?

A. MEA has published a Service Assembly Guide which gives requirements for service construction. All wiring on the owner's side of the meter is the responsibility of the service owner. We suggest close attention be given to wiring to insure safe conditions exist.

Q. Is temporary electric service available?

A. Yes. Provisions have been made to provide temporary electric service for consumers who have a need for it. Full details on this can be obtained from the offices.

Q. If the current goes off, is the Cooperative liable for damages that might be incurred as a result of the power interruption?

A. No. Because the Cooperative cannot guarantee one hundred per cent continuity of electric service. Forces beyond the control of the company such as automobile wrecks, storms and freezing rain and other acts of God make it impossible to operate without some power interruptions.

Q. Am I responsible for the Cooperative's property?

A. All meters, service connections and other equipment furnished by the cooperative shall be, and remain, the property of the cooperative. The member shall provide a space for and exercise proper care to protect the property of the cooperative on his premises; and in the event of loss or damage to the cooperative's property arising from neglect of members to care for same, the cost of the necessary repairs or replacement may be billed to the member.

Q. If for some reason I feel the service is unsatisfactory, what can I do?

A. The member should notify the cooperative immediately

if the service is unsatisfactory for any reason, or if there are any defects, trouble or accidents affecting the supply of electricity. Such notices, if oral, should be confirmed in writing.

Q. Must I notify the cooperative when I move?

A. Whenever a change of occupancy or of legal responsibility takes place on any premises, written notice of such change must be given to the office within a reasonable time prior to the date of such change, or the outgoing member will be held responsible for all service supplied until such notice has been received by the cooperative.

Q. Should I inform the cooperative when I add a new load?

A. The member should inform the cooperative if possible of any unusual or additional load in advance of installation. This will enable the cooperative to upgrade facilities when necessary for the continuance of dependable, uninterrupted service.

Q. Must I furnish an easement?

A. Each member is asked to sign an easement giving the cooperative the right to construct the necessary facilities.

Q. What are the rights of your electric cooperative to members' premises?

A. The cooperative shall have the right to enter upon the premises of the member at all reasonable times for the purpose of reading, inspecting, repairing or removing the metering devices, appliances and wiring of the cooperative. The member shall not permit access to such devices to other than authorized representatives of the cooperative. The member shall obtain and grant all necessary permission to enable the cooperative to install the service and carry out its contracts.

NRECA

Pulling the drapes is pulling for energy conservation, pulling for U.S. energy independence, and pulling less money out of your pocket to pay your electric bill.

Part 20 STATEMENT OF NON–DISCRIMINATION

Matanuska Electric Association, Inc. has filed with the federal government a Compliance Assurance in which it assures the Rural Electrification Administration that it will comply fully with all requirements of Title VI of the Civil Rights Act of 1964 and the Rules and Regulations of the Department of Agriculture issued thereunder, to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the conduct of its program and the operation of its facilities. Under this Assurance, this organization is committed not to discriminate against any person on the grounds of race, color or national origin in its policies and practices relating to applications for service or any other policies or practices relating to treatment of beneficiaries and participants including rates, conditions and extension of service, use of any of its facilities, attendance at and participation in any meetings of beneficiaries and participants or the exercise of any rights of such beneficiaries and participants in the conduct of the operations of this organization.

Any person who believes himself, or any specific class of individuals, to be subjected by this organization to discrimination prohibited by Title VI of the Act and the Rules and Regulations issued thereunder may, by himself or a representative, file with the Secretary of Agriculture, Washington, DC 20250, or this organization, or all, a written complaint. Such complaint must be filed not later than 90 days after the alleged discrimination, or by such later date to which the Secretary of Agriculture or the Rural Electrification Administration extends the time for filing. Identity of complainants will be kept confidential except to the extent necessary to carry out the purposes of the Rules and Regulations.

Matanuska Electric Association, Inc.
P.O. Box 1148
Palmer, Alaska 99645

APPENDIX A

ARTICLES OF INCORPORATION
OF
MATANUSKA ELECTRIC ASSOCIATION, INC.

(As Amended April 27, 1974)

We, the undersigned, being natural persons of the age of twenty-one years or more and citizens of the United States of America and residents of the State of Alaska, do hereby associate ourselves together for the purpose of forming a non-profit cooperative association under and by virtue of Articles VII, Chapter XI of the Compiled Laws of Alaska, 1933 and all laws amendatory thereof and supplemental thereto, and do hereby adopt the following articles of association:

ARTICLE I

The name of the Corporation is MATANUSKA ELECTRIC ASSOCIATION, INC.

ARTICLE II

The object or objects and purpose or purposes for which the Corporation is formed are:

(a) to generate manufacture, purchase, acquire and accumulate electric energy; to transmit, distribute, furnish, sell and dispose of such electric energy; and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold , maintain, operate, sell, dispose of, lease as lessor, exchange and mortgage plants, buildings, works, machinery, supplies, apparatus, equipment and electric transmission and distribution lines or systems necessary, convenient or useful for carrying out and accomplishing any or all of the foregoing purposes;

(b) to acquire, own, hold, use, exercise, sell, mortgage, pledge, hypothecate and in any manner dispose of franchises, rights, privileges, licenses, rights of way and easements necessary, useful, or appropriate to accomplish any or all of the purposes of the corporation;

(c) to purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, use, convey, sell, lease as lessor, exchange, mortgage, pledge or otherwise dispose of any and all real and personal property or any interest therein necessary, useful or appropriate to enable the corporation to accomplish any or all of its purposes;

(d) to assist its members to wire their premises and install therein electrical and plumbing appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character (including, without limiting the generality of the foregoing, such as are applicable to water supply and sewage disposal) and, in connection therewith and for such purposes, to purchase, acquire,

lease, sell, distribute, install and repair electrical and plumbing appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character (including, without limiting the generality of the foregoing, such as are applicable to water supply and sewage disposal) and to receive, acquire, endorse, pledge, guarantee, hypothecate, transfer or otherwise dispose of notes and other evidences of indeptedness and all security therefore;

(e) to borrow money, to make and issue bonds, notes and other evidences of indebtedness, secured or unsecured, for money borrowed or in payment for property acquired, or for any of the other objects or purposes of the corporation; to secure the payment of such bonds, notes or other evidences of indebtedness by mortgage or mortgages, or deeds or deeds of trust upon, or by the pledge of or other lien upon, any or all of the property, rights, privileges and permits of the corporation, wheresoever situated, acquired or to be acquired;

(f) to do and perform any and all acts and things, and to have and exercise any and all powers, as may be necessary or convenient to accomplish any or all of the foregoing purposes or as may be permitted by the act under which the corporation is formed;

ARTICLE III

Section 1. The Corporation is formed without any purpose of pecuniary profit to itself and shall have no capital stock.

Section 2. Each member shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members. At all meetings of the members at which a quorum is present, all questions shall be decided by a vote of a majority of the members voting thereon in person, except as otherwise authorized by law and provided in the Bylaws. If a husband and wife hold a joint membership, they shall jointly be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members.

ARTICLE IV

Section 1. Except as limited elsewhere in these Articles or in the Bylaws of the corporation, the business and affairs of the corporation shall be vested in and managed and controlled by a Board of Direcotrs; and the Officers of the corporation shall be a President, a Vice-President, a Treasurer, and a Secretary. The offices of Secretary and Treasurer may be held by the same person.

Section 2. The officers of the corporation shall be elected annually by and from the Board of Directors. When a person holding any such office ceases to be a director, he shall cease to hold such office. Any officer may be removed from office and his successor elected in the manner prescribed in the Bylaws.

Section 3. The number of directors of the corporation shall not be less than five (5), each of whom shall be a member of the corporation or of another cooperative which is a member thereof. The Bylaws shall prescribe the number of directors, their qualifications other than those prescribed by law, the manner of holding meetings of the Board of Directors, and of electing successors to directors who shall resign, die or otherwise be incapable of acting. At each annual meeting of the members, directors shall be elected by the members to fill the position of directors whose terms have expired or are expiring, to hold office during the term to which they are elected or until their successor shall have been elected and qualified. The Bylaws shall provide for the removal of directors from office and for the election of their successors.

Section 4. The Bylaws may provide for the division of the territory served or to be served by this corporation into two or more districts for any purpose, including without limitation, the nomination and election of directors and the election and functioning of district delegates. Such delegates, who shall be members, may nominate and elect directors. The Bylaws shall prescribe the boundaries of the districts or the manner of establishing such boundaries, the manner of changing such boundaries, and the manner in which such district shall function. No member at any district meeting and no district delegate at any meeting shall vote by proxy or by mail.

Section 5. Directors shall not receive any salaries for their services as directors and, except in emergencies, shall not receive any salaries for their service in any other capacity without the approval of the members. The bylaws may, however, prescribe a fixed fee for attendance at each meeting of the Board of Directors and may provide for reimbursement of actual expenses of attendance.

ARTICLE V

Section 1. (Repealed April 27, 1974)
Section 2. (Repealed April 27, 1974)
Section 3. (Repealed April 27, 1974)

Section 4. Bylaws may be adopted, amended or repealed by the affirmative vote of a majority of those members voting thereon at a meeting of the members. The notice of such meeting shall have contained a copy of the proposed adoptions, amendments or repeal.

Section 5. The Bylaws of the Corporation may define and fix other duties and responsibilities of the members and prescribe other terms and conditions upon which members shall be admitted to and retain membership in the Corporation, make provisions for annual and special meetings of members and directors and notices thereof, provide for methods of voting, quorum requirements, and any other matters relating to the internal organization and management of the Corporation, provided that such provisions shall not be inconsistent with these Articles of Incorporation or the laws of the State of Alaska.

ARTICLE VI

The term of existence of the Corporation shall be perpetual.

ARTICLE VII

The principal place of business of the Corporation shall be at Palmer, Alaska.

ARTICLE VIII

The Corporation may amend, alter, change or repeal any provisions contained in these Articles of Incorporation in the manner now or hereafter prescribed by law.

ARTICLE IX

The names and addresses of the incorporators who shall constitute the first Board of Directors are as follows:

Walter E. Huntley	Palmer, Alaska
Ross L. Sheely	Palmer, Alaska
Laurence Arndt	Palmer, Alaska
C. Earl Albrecht	Palmer, Alaska
Edward I. Wineck	Palmer, Alaska

IN WITNESS WHEREOF, we have hereunto set our hands in quadruplicate this FIRST day of MARCH, 1941.

Walter E.Huntley, Ross L.Sheely, Laurence Arndt, C.Earl Albrecht, Edward I.Wineck

APPENDIX B

BYLAWS
OF
MATANUSKA ELECTRIC ASSOCIATION, INC.

(As Amended April 27, 1974)

ARTICLE I

MEMBERSHIP

SECTION 1. Requirements for Membership. Any person, partnership, firm, association, corporation, or body politic or subdivision thereof will become a member of Matanuska Electric Association, Inc. (hereinafter called the "Association") upon receipt of electric service from the Association, provided that he or it has first:

(a) Made a written application for membership therein;

(b) Agreed to purchase from the Association electric energy as hereinafter specified;

(c) Agreed to comply with and be bound by the articles of incorporation and bylaws of the Association and any rules and regulations adopted by the Board; and

(d) Paid the membership fee hereinafter specified.

No member may hold more than one membership in the Association, whether held by an individual person or held jointly by husband and wife, and no membership in the Association shall be transferable, except as provided in these Bylaws.

SECTION 2. (Repealed April 22, 1972.)

SECTION 3. Joint Membership. A husband and wife may apply for a joint membership and, subject to their compliance with the requirements set forth in Section 1 of this Article, may be accepted for such membership. The term "member" as used in these Bylaws shall be deemed to include a husband and wife holding a joint membership and any provisions relating to the rights and liabilities of membership shall apply equally with respect to the holders of a joint membership. Without limiting the generality of the foregoing, the effect of the hereinafter specified actions by or in respect of the holders of a joint membership shall be as follows:

(a) The presence at a meeting of either or both shall be regarded as the presence of one member and shall constitute a joint waiver of notice of the meeting;

(b) The vote of either separately or both jointly shall constitute one joint vote;

(c) A waiver of notice signed by either or both shall constitute a joint waiver;

(d) Notice to either shall constitute notice to both;

(e) Expulsion of either shall terminate the joint membership;

(f) Withdrawal of el r shall terminate the joint membership; and
(g) Either but not both may be elected or appointed as an officer or board member, provided that both meet the qualifications for such office.

SECTION 4. Conversion of Membership. (a) A membership may be converted to a joint membership upon the written request of the holder thereof and the agreement by such holder and his or her spouse to comply with the Articles of Incorporation, Bylaws, and Rules and Regulations adopted by the Board.

(b) Upon the death of either spouse who is a party to the joint membership, such membership shall be held solely by the survivor. However, the estate of the deceased shall not be released from any debts due the Association.

SECTION 5. Membership Fee. The membership fee shall be five (5) dollars.

SECTION 6. Purchase of Electric Energy. Each member shall, as soon as electric energy shall be available, purchase from the Association all electric energy used on the premises specified in his application for membership and shall pay therefor at rates which shall from time to time be fixed by the Board. It is expressly understood that amounts paid for electric energy in excess of the cost of service are furnished by members as capital and each member shall be credited with the capital so furnished as provided in these bylaws. Each member shall pay to the Association such minimum amount regardless of the amount of electric energy consumed, as shall be fixed by the Board from time to time. Each member shall also pay all amounts owed by him to the Association as and when the same shall become due and payable.

SECTION 7. Termination of Membership. (a) Any member may withdraw from membership upon compliance with such uniform terms and conditions as the Board may prescribe. The Board may, by the affirmative vote of not less than two-thirds of all the members of the Board, expel any member who fails to comply with any of the provisions of the Articles of Incorporation, Bylaws, or Rules and Regulations adopted by the Board, but only if such member shall have been given written notice by the Association that such failure makes him liable to expulsion and such failure shall have continued for at least ten days after such notice was given. Any expelled member may be reinstated by vote of the Board or by vote of the members at any annual or special meeting. The membership of the member who has ceased to purchase energy from the Association may be cancell l by resolution of the Board.

(b) Upon the withdrawal, death, cessation of existence or expulsion of a member, the membership of such member shall thereupon terminate. Termination of membership in any manner shall not release a member or his estate from any debts due the Association.

(c) In case of withdrawal or termination of membership in any manner, the Association shall repay to the member the amount of the membership fee paid by him, provided, however, that the Association shall deduct from the amount of the membership fee the amount of any debts or obligations owed by the member to the Association.

ARTICLE II

RIGHTS AND LIABILITIES OF MEMBERS

SECTION 1. Property Interest of Members. Upon dissolution, after

(a) All debts and liabilities of the Association shall have been paid, and

(b) All capital furnished through patronage shall have been retired as provided in these bylaws, the remaining property and assets of the Association shall be distributed among the members and former members in the proportion which the aggregate patronage of each bears to the total patronage of all members during the ten (10) years next preceding the date of the filing of the certificate of dissolution, or, if the Association shall not have been in existence for such period, during the period of its existence.

SECTION 2. Non-liability for Debts of the Association. The private property of the members shall be exempt from execution or other liability for the debts of the Association and no member shall be liable or responsible for any debts or liabilities of the Association.

ARTICLE III

MEETING OF MEMBERS

SECTION 1. Annual Meeting. The annual meeting of the members shall be held during the month of April of each year beginning with the year 1969 at any place served by the Association, as selected by the Board and which shall be designated in the notice of the meeting, for the purpose of electing board members, passing upon reports for the previous fiscal year and transacting such other business as may come before the meeting. It shall be the responsibility of the Board to make adequate plans and preparations for the annual meeting. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Association.

SECTION 2. Special Meetings. Special Meetings of the members may be called by resolution of the Board, or upon a written request signed by any three board members, by the President, or by ten per centum (10%) or more of all the members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the members may be held at any place served by the Association as designated by the Board and shall be specified in the notice of the special meeting.

SECTION 3. Notice of Members' Meetings. (a) Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting or an annual meeting at which business requiring special notice is to be transacted, the purpose or purposes for which the meeting is called, shall be delivered not less than twenty (20) days nor more than forty (40) days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary or upon a default in duty by the Secretary, by the persons calling the meeting, to each member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Association with postage thereon prepaid. The failure of any member to receive notice of an annual or special meeting of the members shall not invalidate any action which may be taken by the members at any such meeting.

(b) The membership books of the Association shall be closed by order of the Board not more than thirty-one (31) days prior to the time of the members' meeting, for the purpose of giving notice of such meeting. Any member accepted for membership after such closing of the books shall not be entitled to participate in such meeting.

SECTION 4. Quorum. While the Association has more than one thousand (1,000) members, a quorum for the transaction of business at all meetings of the members shall be fifty (50) members, present in person. If at any time the Association has less than one thousand members, a quorum for the transaction of business shall be five per centum (5%) of total number of members, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

SECTION 5. Voting. (a) Each member shall be entitled to only one vote upon each matter submitted to a vote at a meeting of the members. All questions shall be decided by a vote of a majority of the members voting thereon in person except as otherwise provided by law, the Articles of Incorporation or these Bylaws.

(b) The vote of a member which is a partnership, firm, association, corporation, or body politic or subdivision thereof, shall be cast by no person except an owner, officer or employee of such member, whose authority to act for such member shall be in writing, duly authorized and signed by the governing authority of such member or by some officer empowered to do so. Such written authority, which shall be filed with the Secretary or other designated officer at each

meeting, shall constitute a certificate of authority to act for such member and in nowise shall be deemed a 'proxy' within the spirit and meaning of these Bylaws.

SECTION 6. Order of Business. The order of business at the annual meeting of the members and, so far as possible, at all other meetings of the members, shall be essentially as follows, except as otherwise determined by the members at such meeting:

1. Report on the numbers of members present in person in order to determine the existence of a quorum.
2. Reading of the notice of the meeting and the certificate of the Secretary or some other officer of the Association that due notice of the meeting has been given to each qualified member in accordance with the provisions of the Bylaws of the Association.
3. Reading of unapproved minutes of previous meetings of the members and the taking of necessary action thereon, unless the members vote to dispense with such reading.
4. Presentation and consideration of reports of officers, directors and committees.
5. Election of board members.
6. Unfinished business.
7. New business.
8. Adjournment.

ARTICLE IV

BOARD MEMBERS

SECTION 1. General Powers. The business and affairs of the Association shall be managed by a board of five (5) members which shall exercise all of the power of the Association except such as are by law, the Articles of Incorporation or these Bylaws conferred upon or reserved to the members.

SECTION 2. Election and Tenure of Office. Directors shall be elected by ballot, by the members, at the annual meetings of the members, for terms of two years or until their successors are elected and qualified, subject to the provisons of these Bylaws with respect to the removal of directors. The terms of Directors shall be staggered so that two shall be elected in even-numbered years and three shall be elected in odd-numbered years. If an election of board members shall not be held on the day designated herein for the annual meeting, or at any adjournment thereof, a special meeting of the members shall be held for the purpose of electing board members within a reasonable time thereafter. Board members shall be elected by a plurality vote of the members.

SECTION 3. Qualifications. No person shall be eligible to become or remain a board member of the Association who:

(a) is not a member and bona fide resident in the area served by the Association; or

(b) is in any way employed by or financially interested in a competing enterprise or a business selling electric energy, or supplies to the Association, or a business primarily engaged in selling electrical or plumbing appliances, fixtures or supplies to the members of the Association.

Upon establishment of the fact that a board member is holding the office in violation of any of the foregoing provisions, the Board shall remove such board member from office.

Nothing contained in this section shall affect in any manner whatsoever the validity of any action taken at any meeting of the Board.

SECTION 4. Nominations. It shall be the duty of the Board to appoint, not less than forty (40) days nor more than sixty (60) days before the date

of a meeting of the members at which Board members are to be elected, a committee on nominations consisting of not less than five (5) nor more than eleven (11) members who shall be selected from different sections so as to insure equitable representation. No member of the Board may serve on such committee. The committee, keeping in mind the principle of equitable representation, shall prepare and post at the principal office of the Association at least thirty (30) days before the meeting a list of nominations for board members which shall include at least two candidates for each board position to be filled by the election. The Secretary shall be responsible for mailing with the notice of the meeting, or separately, but at least twenty (20) days before the date of the meeting, a statement of the number of board members to be elected and the names and addresses of the candidates nominated by the committee on nominations. Any fifteen or more members acting together may make other nominations by petition and the Secretary shall post such nominations at the same place where the list of nominations made by the committee is posted. Nominations made by petition, if any, received at least fifteen (15) days before the meeting shall be included on the official ballot. Later nominations by petition shall be treated as nominations from the floor. The chairman shall call for additional nominations from the floor. No member may nominate more than one candidate.

SECTION 5. Removal of Board Member by Members. Any member may bring charges against a board member and, by filing with the Secretary such charges in writing together with a petition signed by at least ten per centum (10%) of the members or 300, whichever is the lesser, may request the removal of such board member by reason thereof. Such board member shall be informed in writing of the charges at least twenty (20) days prior to the meeting of the members at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person or persons bringing the charges against him shall have the same opportunity. The question of the removal of such board member shall be considered and voted upon at the meeting of the members and any vacancy created by such removal may be filled by vote of the members at such meeting without compliance with the foregoing provisions with respect to nominations.

SECTION 6. Removal of Board Member by Board of Directors. Directors absent from three (3) consecutive regular board meetings without leave of absence granted by the Board of Directors may be summarily removed from office by the Board. The Board, in its discretion, shall take such action by declaring the office vacant and proceeding forthwith to fill such vacancy in accordance with the provisions of Article IV, Section 7, of these Bylaws, provided, however, that written notice of such contemplated action has been given to and received by all the Directors at least twenty-four (24) hours before the time of the meeting at which such action is to be considered.

SECTION 7. Vacancies. Subject to the provisions of these Bylaws with respect to the filling of vacancies caused by the removal of board members by the members, a vacancy occurring in the Board shall be filled by the affirmative vote of a majority of the remaining board members for the unexpired portion of the term.

SECTION 8. Compensation. Board members shall not receive any salary for their services as such, but shall, however, be paid the sum of twenty dollars ($20.00) for attendance at each meeting of the Board. If authorized by the Board, board members may also be reimbursed for expenses actually and necessarily incurred in carrying out Association business or granted a reasonable per diem allowance by the Board in lieu of detailed accounting for some of these expenses. No board member shall receive compensation for serving the Association in any other capacity, nor shall any close relative of a board member receive compensation for serving the Association, unless the payment and amount of compensation shall be specifically authorized by a vote of the members or the service by the board member or his close relative shall have been certified by the Board as an emergency measure.

ARTICLE V

MEETINGS OF BOARD

SECTION 1. Regular Meetings. A regular meeting of the Board shall be held without notice, immediately after, and at the same place as, the annual meeting of the members. A regular meeting of the Board shall also be held monthly at the principal business office of the Association, at such time as designated by the Board. Such regular monthly meeting may be held without notice other than such resolution fixing the time thereof.

SECTION 2. Special Meetings. Special meetings of the Board may be called by the President or by any three board members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. The President or board members calling the meeting shall fix the time and place for the holding of the meeting.

SECTION 3. Notice of Board Meeting. Written notice of the time, place and purpose of any special meeting of the Board shall be delivered to each board member either personally or by mail, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the President or the board member calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the board member at his address as it appears on the records of the Association, with postage thereon prepaid, at least five days before the date set for the meeting.

SECTION 4. Quorum. A majority of the Board shall constitute a quorum, provided, that if less than such majority of the Board is present at said meeting, a majority of the Board present may adjourn the meeting from time to time; and provided further, that the Secretary shall notify any absent board members of the time and place of such adjourned meeting. The act of a majority of the board members present at a meeting at which a quorum is present shall be the act of the Board, except as otherwise provided in these Bylaws.

ARTICLE VI

OFFICERS

SECTION 1. Number. The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be determined by the Board from time to time. The offices of Secretary and Treasurer may be held by the same person.

SECTION 2. Election and Term of Office. The officers shall be elected by ballot, annually by and from the Board at the meeting of the Board held immediately after the annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until the first meeting of the Board following the next succeeding annual meeting of the members or until his successor shall have been elected and shall have qualified. A vacancy in any office shall be filled by the Board for the unexpired portion of the term.

SECTION 3. Removal of Officers and Agents by the Board. Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby. In addition, any member of the Association may bring charges against an officer, and by filing with the Secretary such charges in writing together with a petition signed by ten per centum (10%) of the members or 300, whichever is the lesser, may request the removal of such officer. The officer against whom such charges have been brought shall be informed in writing of the charges at least ten (10) days prior to the Board meeting at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person or by counsel and to present evidence in respect of the charges; and the person or persons bringing the charges against him shall have the same opportunity. In the event the Board does not remove

such officer, the question of his removal shall be considered and voted upon at the next meeting of the members.

SECTION 4. President. The President shall:

(a) be the principal executive officer of the Association and, unless otherwise determined by the members of the Board, shall preside at all meetings of the members and the Board;

(b) sign, with the Secretary, any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and

(c) in general perform all duties incident to the office of the President and such other duties as may be prescribed by the Board from time to time.

SECTION 5. Vice President. In the absence of the President, or in the event of his inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall also perform such other duties as from time to time may be assigned to him by the Board.

SECTION 6. Secretary. The Secretary shall be responsible for:

(a) keeping the minutes of the meetings of the members and of the board in books provided for that purpose;

(b) seeing that all notices are duly given in accordance with these bylaws or as required by law;

(c) the safekeeping of the corporate books and records and the seal of the Association and affixing the seal of the Association to all documents, the execution of which on behalf of the Association under its seal is duly authorized in accordance with the provisions of these bylaws;

(d) keeping a register of the names and post office addresses of all members;

(e) signing, with the President, certificates of membership, the issue of which shall have been authorized by the board or the members;

(f) keeping on file at all times a complete copy of the Articles of Incorporation and Bylaws of the Association containing all amendments thereto (which copy shall always be open to the inspection of any member) and at the expense of the Association, furnishing a copy of the Bylaws and of all amendments thereto to any member upon requests; and

(g) in general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board.

SECTION 7. Treasurer. The Treasurer shall be responsible for:

(a) custody of all funds and securities of the Association;

(b) the receipt of and the issuance of receipts for all monies due and payable to the Association and for the deposit of all such monies in

the name of the Association in such bank or banks as shall be selected in accordance with the provisions of these Bylaws; and

(c) the general performance of all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board.

SECTION 8. Manager. The Board may appoint a manager who may be, but who shall not be required to be, a member of the Association. The manager shall perform such duties and shall exercise such authority as the Board may from time to time vest in him.

SECTION 9. Bonds of Officers. The Treasurer and any other officer or agent of the Association charged with responsibility for the custody of any of its funds or property shall be bonded in such sum and with such surety as the Board shall determine. The Board in its discretion may also require any other officer, agent or employee of the Association to be bonded in such amount and with surety as it shall determine.

SECTION 10. Compensation. (a) The powers, duties and compensation of officers, agents and employees shall be fixed by the Board subject to the provisions of these Bylaws with respect to compensation for a board member.

(b) No close relative of a Director shall receive compensation as an employee or for otherwise serving the Association unless such employment or service shall be specially and specifically authorized by vote of the members of the Association. "Close relative," as herein used, shall include but in nowise shall be limited to wife, husband, son, daughter, father, mother, brother, sister, step-father, step-mother, step-son, step-daughter, step-brother, step-sister. Candidates for the office of director having close relative in the employ or service of the Association shall disclose the fact to the Secretary prior to the printing of the notice of the next meeting at which Directors are to be elected and said notice shall state the fact and the relationship of the parties. If such candidate is elected, the members having been previously notified as aforesaid, then the fact of such election shall constitute a conclusive presumption that the members have approved the payment of compensation to the new Director's relative.

SECTION 11. Reports. The officers of the Association shall submit at each annual meeting of the members reports covering the business of the Association for the previous fiscal year. Such reports shall set forth the condition of the Association at the close of such fiscal year.

ARTICLE VII

NON-PROFIT OPERATION

SECTION 1. Interest or Dividends on Capital Prohibited. The Association shall at all times be operated on a cooperative non-profit basis for the mutual benefit of its patrons. No interest or dividends shall be paid or payable by the Association on any capital furnished by its patrons.

SECTION 2. Patronage Capital in Connection with Furnishing Electric Energy. In the furnishing of electric energy the Association's operations shall be so conducted that all patrons will through their patronage furnish capital for the Association. In order to induce patronage and to assure that the Association will operate on a non-profit basis the Association is obligated to account on a patronage basis to all its patrons for all amounts received and receivable from the furnishing of electric energy in excess of operating costs and expenses properly chargeable against the furnishing of electric energy. All such amounts in excess of operating costs and expenses at the moment of receipt by the Association are received with the understanding that they are furnished by the patrons as capital. The Association is obligated to pay by credits to a capital account for each patron all such amounts in excess of operating costs and expenses. The books and records of the Association shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each patron is clearly reflected and

credited in an appropriate record to the capital account of each patron, and the Association shall within a reasonable time after the close of the fiscal year notify each patron of the amount of capital so credited to his account. All such amounts credited to the capital account of any patron shall have the same status as though they had been paid to the patron in cash in pursuance of a legal obligation to do so and the patron had then furnished the Association corresponding amounts for capital.

All other amounts received by the Association from its operation in excess of costs and expenses shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose, allocated to its patrons on a patronage basis and any amount so allocated shall be included as part of the capital credited to the accounts of patrons, as herein provided.

In the event of dissolution or liquidation of the Association, after all outstanding indebtedness of the Association shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the Board shall determine that the financial condition of the Association will not be impaired thereby, the capital credited to patrons' accounts may be retired in full or in part. Any such retirements of capital shall be made in order of priority to the year in which the capital was furnished and credited, the capital first received by the Association being first retired.

Capital credited to the account of each patron shall be assignable only on the books of the Association pursuant to written instruction from the assignor and only to successors in interest or successors in occupancy in all or a part of such patron's premises served by the Association unless the Board, acting under policies of general obligation, shall determine otherwise.

Notwithstanding any other provisions of these Bylaws, the Board, at its discretion, shall have the power at any time upon the death of any patron, if the legal representatives of his estate shall request in writing that the capital credited to any such patron be retired prior to the time such capital would otherwise be retired under the provisions of these Bylaws, to retire capital credited to any such patron immediately upon such terms and conditions as the Board, acting under policies of general application, and the legal representatives of such patron's estate shall agree upon; provided, however, that the financial condition of the Association will not be impaired thereby.

The patrons of the Association, by dealing with the Association, acknowledge that the terms and provisions of the Articles of Incorporation and Bylaws shall constitute and be a contract between the Association and each patron, and both the Association and the patrons are bound by such contract, as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of this article of the Bylaws shall be called to the attention of each patron of the Association by posting in a conspicuous place in the Association's office.

ARTICLE VIII

DISPOSITION OF PROPERTY

SECTION 1. The Board of Directors shall have full power and authority to sell, mortgage, lease or otherwise dispose of or encumber, any of the following property of the Association:

(a) Personal property acquired for resale.

(b) Services of all kinds, including electric energy.

(c) Property which in the judgment of the Board of Directors neither is nor will be necessary or useful in operating and maintaining the Association's system and facilities; provided, however, that all sales of such property shall not in any one year exceed in the aggregate ten per centum (10%) of the value of all of the property of the Association.

SECTION 2. The Board of Directors shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages, or a deed or deeds of trust of any and all of the property, rights, privileges, licenses, franchises and permits of the Association, whether acquired or to be acquired, and wherever situated, as well as the revenues therefrom, all upon such terms and conditions as the Board of Directors shall determine, to secure any indebtedness of the Association.

SECTION 3. The Association may not otherwise sell, lease, or otherwise dispose of all or a substantial portion of the Association's property unless such sale, lease, or other disposition is authorized by the affirmative vote of not less than the majority of all the members of the cooperative; provided, however, the Board of Directors may, upon the authorization of the majority of those members of the Association present at a meeting of its members, sell, lease, or otherwise dispose of all or a substantial portion of its property to another cooperative or to the holder or holders of any notes, bonds, or other evidence of indebtedness issued to the United States of America or any agency or instrumentality thereof.

ARTICLE IX

SEAL

The corporate seal of the Association shall have inscribed thereon the name of the Association and the words "Corporate Seal" and "State of Alaska."

ARTICLE X

FINANCIAL TRANSACTIONS

SECTION 1. Contracts. Except as otherwise provided in these Bylaws, the Board may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances.

SECTION 2. Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers, agent or agents, employee or employees of the Association and in such manner as shall from time to time be determined by resolution of the Board.

SECTION 3. Deposits. All funds except petty cash of the Association shall be deposited from time to time to the credit of the Association in such bank or banks as the Board may select.

SECTION 4. Change in Rates. Written notice shall be given to the Administrator of the Rural Electrification Administration of the United States of America not less than ninety days prior to the date upon which any proposed change in the rates charged by the Association for electric energy becomes effective.

ARTICLE XI

MISCELLANEOUS

SECTION 1. Membership in Other Organizations. The Association shall not become a member of or purchase stock in any other organization without an affirmative vote of the members at a duly held meeting, the notice of which shall specify that action is to be taken upon such proposed membership or stock purchase, provided, however, that the Association may upon the authorization of the Board, purchase stock in or become a member of any corporation or organization organized on a non-profit basis for the purpose of engaging in or furthering the cause of rural electrification, or with the approval of the Administrator of REA, of any other corporation for the purpose of acquiring electric facilities.

SECTION 2. Waiver of Notice. Any member or board member may waive in writing any notice of a meeting required to be given by these Bylaws. The attendance of a member or board member at any meeting shall constitute a waiver of notice of such meeting by such member or board member, except in case a member or Board member shall attend a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

SECTION 3. Policies, Rules and Regulations. The Board shall have power to make and adopt policies, rules and regulations, not inconsistent with law, the Articles of Incorporation, or these Bylaws, as it may deem advisable for the management of the business and affairs of the Association.

SECTION 4. Accounting System and Reports. (a) The Board shall cause to be established and maintained a complete accounting system which, among other things, and subject to applicable laws and rules and regulations of any regulatory body shall conform to such accounting system as may from time to time be designated by the Administrator or the Rural Electrification Administration of the United States of America. The Board shall also after the close each fiscal year cause to be made by a certified public accountant a full and complete audit of the accounts, books and financial condition of the Association as of the end of such fiscal year. A report of such audit, in condensed form, shall be submitted to the members at the next following annual meeting.

(b) The audit report shall be available to the members upon compliance with the policies, rules and regulations promulgated by the Board.

SECTION 5. Area Coverage. The Board shall make diligent effort to see that electric service is extended to all unserved persons within the Association's service area who (a) desire such service, and (b) meet all reasonable requirements established by the Association as a condition of such service.

SECTION 6. Rules of Order. The rules contained in the latest edition of Robert's Rules of Order shall govern the Association in all cases to which they are applicable and in which they are not inconsistent with law, the Articles of Incorporation, or these Bylaws.

ARTICLE XII

AMENDMENTS

SECTION 1. Amendment, Repeal, or Adoption. These Bylaws may be amended, repealed, or new bylaws adopted by the affirmative vote of a majority of those members voting thereon at a meeting of the members, provided that the notice of such meeting, whether regular or special, shall have contained the proposed amendment, repeal or new bylaws.

SECTION 2. Placement of Proposed Amendment on Official Notice by Member. A member may have a proposed amendment of the bylaws placed on the official notice to the members by one of the following procedures:

(a) Filing the proposed amendment in writing together with a petition signed by at least ten per centum (10%) of the members or 300, whichever is the lesser, with the Secretary of the Association at least thirty (30) days before the meeting; or

(b) Filing the proposed amendment in writing with the Board of Directors at least thirty (30) days before the meeting for its consideration and decision for placement on the official notice; or

(c) Motion from the floor at a membership meeting, duly seconded and carried by majority vote of those members present at the meeting, for placement on the official notice of the next scheduled meeting of the members.

COLD WEATHER OUTAGE

IF THE POWER IS OFF FOR AN EXTENDED PERIOD:

Picture this: It's cold, very cold. All of a sudden you realize that it is getting cold inside the house too. You have no heat. Would you know what to do to protect yourself and your house?

If the heat should go off, it is important to have emergency heating equipment. A wood burning stove and plenty of firewood is perfect. But you can get by with a small camp stove, the tent heating type, as long as you have adequate ventilation.

To keep yourself warm in the unheated house, wear several layers of clothes. Since the body loses between half and three-quarters of its heat through the head, wear a warm hat—even in the house and especially when you are sleeping in an unheated house. Use several blankets for sleeping rather than one heavy one. The air trapped between them is excellent insulation.

When the temperature inside the home falls to 40°, it is time to drain your water system to keep distribution pipes from freezing and bursting. In order to accomplish this task your water system must have a draining feature built-in and you must be aware of the procedure to follow to drain it. During bad winter storms, with power outages, knowing how to drain your water system can save you money!

If your home has a hot water heating system, be sure to have it adequately protected with liquid anti-freeze

HOW TO LIVE WITH A SERVICE INTERRUPTION!

Interruptions in your electric service may occur from time to time.

There are four rules to follow when you experience a service interruption:

NUMBER 1. Check and, if necessary, replace your fuses or reset your circuit breakers. If you are still without power,

NUMBER 2. Check your nearest neighbors to determine if they too are experiencing a power loss. If so,

NUMBER 3. Report the service interruption to Matanuska Electric Association and be prepared to supply the following information:

a. Your name and address.

b. Whether your neighbors have service

c. Your pole number (service location) and phone number.

d. Time power was interrupted.

e. The cause of the interruption if you know it.

NUMBER 4. Call these numbers to report a service interruption:

	8:00 a.m. - 5:00 p.m.	After Hours
Palmer Headquarters	745-3231	745-3235
Eagle River Branch	694-2161	694-2161
Big Lake Branch	892-6021	745-3235

Collect calls will be accepted from Talkeetna.

MATANUSKA ELECTRIC ASSOCIATION, INC.

P.O. BOX 1148

PALMER, ALASKA 99645

MALCOLM CHEEK, GENERAL MANAGER

TELEPHONE
(907) 745-3231

SUMMARY OF TESTIMONY PRESENTED BY MALCOLM CHEEK, GENERAL MANAGER, MATANUSKA ELECTRIC ASSOCIATION, INC., BEFORE THE SENATE COMMERCE COMMITTEE REGARDING THE ALASKA PUBLIC UTILITIES COMMISSION

As discussed in the Performance Review of the Alaska Public Utilities Commission dated August 1, 1979, recommendation no. 4, MEA feels that non-profit electric cooperatives should be removed from economic regulation by the APUC upon an affirmative vote of the majority in attendance at the cooperative's annual membership meeting.

1. Existing APUC economic regulation is unnecessary and costly.

2. MEA spent over $100,000 in 1978 rate case with APUC. These expenses were in addition to costs which would have been required without dealing with the APUC.

3. MEA has spent over $20 00 in its 1980 tariff rules and regulations revision. Again, these costs are those which have been required due to APUC procedures.

4. In addition to high costs, utilities must wait out the backlogged APUC calendar. These months of delay cost dearly.

5. Reports such as the APUC Annual Report are voluminous and costly to prepare.

6. It is a matter of record that non-profit cooperatives have consistently requested less than could have been justified from the APUC.

7. Board of Directors elected by the consumer members are very sensitive to the economic conditions of their neighbors and are very careful with the cooperatives finances.

8. The nature and structure of a cooperative affords ample protection of consumer interests.

9. REA and CFC provide significant financial and operating controls over utility operations on a regular basis. In addition, an annual CPA audit is required.

10. REA makes loans to cooperatives in 46 states. In 28 of the 46 states the cooperatives are regulated in at least one area. In 18 states they are not subject to any state commission regulations.

It has been suggested that cooperatives are not responsive to their consumers. This is not true.

1. Consumers have ready access to the cooperative's management and Board of Directors. (see attached MEA policies)

2. Cooperatives have established procedures for handling complaints efficiently. (see attached MEA Form and Policy)

3. Board members are sensitive to consumer requests. As a practical matter board members can be replaced reasonably easily as a few organized voters can influence an annual meeting election.

4. Board members take seriously the ideals and objectives under which non-profit cooperatives operate. (see attached MEA ideals and objectives)

5. REA has influence over cooperative's operating policies, especially with regard to services, area coverage, postage stamp rates, etc.

The case of Tlinget-Haida Regional Electrical Authority has been

cited as a reason for keeping cooperatives under APUC economic regulation. I believe that the particulars of this case have been confused and do not support continued regulation of cooperatives.

1. As the REA Field Representative in Alaska at the time THREA applied for additional funding and REA took the position that APUC regulation would be necessary, I made this recommendation for exactly the reasons which would have made it unnecessary had THREA been a cooperative.

2. THREA is NOT a cooperative! The consumers do not have the ability to elect their Board Members. They do not have ready access to the governing Board which is appointed by the Central Council of the Tlinget-Haida Indians.

3. THREA also did not have good operating policies at that time or procedures to deal with consumer complaints and inquiries.

4. THREA was a small, new, inexperienced utility.

MEA supports the need for continued territory regulation. The certification process is necessary. However, economic regulation for a non-profit electric cooperative is not needed and is a waste of consumer's and taxpayer's money.

MC
3/11/80

Attachments to the testimony submitted by Malcolm Cheek, General Manager, Matanuska Electric Association, Inc. before the Senate Commerce Committee regarding the Alaska Public Utilities Commission:

1. MEA Management Policy No. 105-1, Visitors: Board Meetings
2. MEA Board Policy No. 105-1, Visitors
3. MEA Management Policy No. 202-50, Consumer Complaints and Inquiries
4. MEA Form MSD 002, Consumer Complaint & Inquiry Form
5. MEA Statement of Ideals
6. MEA Statement of Objectives With Member-Owners
7. MEA Owner Manual

MC
3/11/80

MATANUSKA ELECTRIC ASSOCIATION, INC.
PALMER, ALASKA

Management Policy No. 105-1

VISITORS: BOARD MEETINGS

Board Resolution No. 777 defines the policy of members' attendance at Board Meetings. Members of the Association may attend any Board Meeting to listen to the Board transact business. If a member wishes to address the Board or discuss a particular topic, advance notice should be provided to assure a position on the agenda for the meeting. The Board may exercise an executive session for personal or confidential matters which need action.

Employees wishing to attend Board Meetings must advise the General Manager of their intent prior to the meeting in question.

MALCOLM CHEEK, GENERAL MANAGER

Effective: 7/10/79

(Original)

Reference: Board Resolution No. 777

MATANUSKA ELECTRIC ASSOCIATION, INC.

P.O. Box 1148

PALMER, ALASKA 99645

TELEPHONE
(907) 745-3231

RESOLUTION NO. 777

POLICY NO. 105-1

SUBJECT: VISITORS
REFERENCE: RESOLUTION NO. 18, POLICY NO. II A-1, 1/11/60, 7/9/79

WHEREAS, the Board of Directors recognizes the need to provide for attendance at regular Board of Directors meetings by the members of the Association, and to keep the members informed of the business activities of the Association; and

WHEREAS, it is the policy of the Board of Directors that an informed membership is essential for the success and the progress of the Association.

NOW THEREFORE BE IT RESOLVED by the Board of Directors of Matanuska Electric Association, Inc. that the members of the Association shall have the right to attend any Board meeting to listen to the Board of Directors transact the business of the Association; except that personal or temporarily confidential negotiations may be conducted at an executive session.

PASSED AND APPROVED by the Board of Directors of Matanuska Electric Association, Inc., this 9th day of July, 1979.

Benjamin R. Cattle (VICE PRESIDENT)
DALE D. BRIGGS, PRESIDENT
MATANUSKA ELECTRIC ASSOCIATION, INC.

(SEAL)

ATTEST:

Phil O'Neill
PHIL O'NEILL, SECRETARY-TREASURER
MATANUSKA ELECTRIC ASSOCIATION, INC.

MATANUSKA ELECTRIC ASSOCIATION, INC.
PALMER, ALASKA

Management Policy No. 202-50

CONSUMER COMPLAINTS AND INQUIRIES

All consumer complaints and inquiries are to be handled promptly and recorded in accordance with this policy.

1. All complaints and inquiries are to be recorded on MEA form "MSD Form 02--MEA 11/73" which is to be completed in full and routed to the appropriate Department or Section.

2. The original of the above form is to be routed directly to the appropriate individual handling the particular type of inquiry in question:

   Management: General Manager (Malcolm Cheek)

   Operations and Maintenance:
   Manager, Electric Operations (Bud Fritz)

   Engineering, Voltage: Distribution Engineer (Jim Cadden)

   Damage Requesting Payment:
   Consumer Services Section (Dale Wahlen)

   Right of Way and Clearing:
   Real Estate & Properties Officer (Dave Ingalls)

   Consumer Billing: Consumer Accounts Supervisor (Mary Davis)

   Energy Use: Energy Use Advisor (Jerry Deems)

   New Services: Chief, Consumer Services Section (Dale Wahlen) or appropriate Branch Manager

   Branch Offices: Branch Manager (Bill Foster or Frank Smith)

3. The carbon copy of each MEA Form 02 is to be routed to Consumer Services for recording and follow-up action. If there is any question on the disposition of the original of this form, route to Consumer Services along with the carbon copy.

4. When possible, inquiries should be routed to Consumer Services when received. Consumer Services will, then, complete MEA Form 02 and route the inquiry. If it is not possible to route the initial inquiry to Consumer Services, obtain the necessary information to complete MEA Form 02 and advise the consumer that the inquiry will be turned over to Consumer Services for action.

5. All complaints and inquiries should be given immediate attention.

All action taken should be recorded on MEA Form 02 under "Comments," and Consumer Services must be advised (by phone or copy of said form) of any action taken including routing to another individual for additional work.

6. Consumer Services will prepare a weekly report listing all active complaints and inquiries. This report will be prepared each Monday and will show the status of all outstanding complaints and inquiries as of the close of business the preceding week. This weekly report will be forwarded to the General Manager. In addition, Consumer Services will prepare a monthly summary for the information of the Board of Directors.

7. All questions on this policy should be addressed to Consumer Services Section.

MALCOLM CHEEK, GENERAL MANAGER

Effective Date: 7/16/79

(Second Revision)

MATANUSKA ELECTRIC ASSOCIATION, INC. No. 3972

CONSUMER COMPLAINT & INQUIRY FORM

NAME _____ DATE _____ 19____

ADDRESS _____ HOME PHONE _____ WORK PHONE _____

_____ A/C# _____ POLE# _____ METER# _____

Details

Received by: _____

ROUTED TO: _____ DATE _____ 19____

Comments

Date completed _____ 19____
and routed to Member Services

Personal Contact ☐ Phone ☐ Letter ☐

By _____

FOLLOW-UP DATE

MEMBER SERVICES TO LOG DATE COMPLETED AND DESTROY ACCUMULATED FILE MATERIAL AND BOTH COPIES OF THIS FORM.

MSD FORM 02 MEA 11/73

Printing

MATANUSKA ELECTRIC ASSOCIATION, INC.
Palmer, Alaska

STATEMENT OF IDEALS

Matanuska Electric Association, Inc., was established by its member-owners to provide themselves with a vitally needed service not otherwise available which would improve their economic and social standards with significant long-range benefits to the well-being of the various communities in which it operates.

WE BELIEVE:

1. That it is the right of persons to provide for themselves a vitally needed service and that the Association effectively provides this service in a manner consistent with the highest objectives of free enterprise.

2. That the Association exists primarily to serve its consumer-owners and that the services it provides are essential to the people of our area, of the Matanuska Valley, of the State of Alaska, and of our Nation.

3. That the Association exists for the mutual benefit of its consumer-owners, directors, employees, and of the public and recognized that full participation, understanding and support by each of these groups is necessary for its continued success.

4. That the Association must provide the highest quality electric service at a cost consistent with sound business practices and necessary to assure its continued existence and viability.

5. That the opportunities in the enterprise carry with them both economic and social responsibilities; our obligations and responsibilities as a local business enterprise are to the community, the public, and to our employees, as well as to our members, and those groups other than members also will benefit from leadership in economic and social development within and adjacent to the service area of the Association.

6. That the ability of the Association to continue providing this essential service depends upon its attracting and retaining capable employees who must be paid adequately and given every opportunity for personal development and for advancement within the limits of their demonstrated capabilities.

7. That the natural resources of this country should be developed to provide an abundance of power consistent with other resource development needs and at a cost which is equitable for all who benefit from such development.

STATEMENT OF IDEALS

8. That the economic future of the State of Alaska depends upon its having an abundance of electric power available to persons who can use it and that organizations engaged in the generation or distribution of electricity have the responsibility of cooperating fully with each other to make certain that this is accomplished by the most efficient means possible.

9. That the Association must exemplify leadership in the community by doing all things essential to good management, including proper organization, sound financing, leader development, adequate research, and by continuing a high quality of electric service.

10. That the attaining of these ideals will require our constant and untiring efforts.

MEA, STATEMENT OF IDEALS
APPROVED BY THE BOARD OF DIRECTORS
OCTOBER, 1977

REAFFIRMED DECEMBER, 1979

MATANUSKA ELECTRIC ASSOCIATION, INC.
Palmer, Alaska

STATEMENT OF OBJECTIVES WITH MEMBER-OWNERS

1. TO OPERATE the Association as a non profit enterprise on a continuing and progressive basis in strict accordance with its corporate documents and other legal and contractual requirements.

2. TO ASSURE the availability of a constantly high quality of central station service to its members and at a cost consistent with sound management of the Association and necessary to assure its continued existence and viability.

3. TO KEEP the member-owners fully informed on the affairs, problems, and methods of the Association; TO OBTAIN their understanding, acceptance, and support; TO PROVIDE every reasonable means through which the feelings and wants of the member-owners can be expressed and acted upon if appropriate; and TO EXPECT them to act intelligently and constructively in their support of the Association, its ideals, and its objectives.

4. TO DEVELOP among members, through democratic processes of participation, a recognition of member-ownership and accountability which will create the desire and feeling of obligation to participate in programs and services and benefit the membership as a whole.

5. TO ENHANCE the Association's reputation for fair dealings, prompt and efficient servide, dependability, integrity, courtesy, productive ability, and technical competence.

6. TO STRIVE CONSTANTLY for ever higher standards of service through progressive management, utilization of new equipment and techniques, and improved methods of operations.

7. TO STIMULATE AND SUPPORT rural area development programs, especially those which will increase and stabilize the economic level of the Association's service area by adding value to the raw materials and products supplied and processed, by providing job opportunities for its people, and by furnishing goods and services required but not now available within or immediately adjacent to the area which the Association serves.

8. TO DEVELOP, OPERATE, AND MAINTAIN the system at optimum performance, both electrical and physical, as to assure the quality of service the members want while maintaining investment at a reasonable level and minimizing premature obsolescence.

9. TO PROVIDE the means whereby the meber-owners can build and maintain the Association by contributing a reasonable amount of essential capital.

WITH EMPLOYEES

1. TO RECOGNIZE that our greatest assets are our human assets and that these must be developed and improved as a matter of moral obligation as well as one of material advantage.

2. TO OBTAIN acceptance of the ideals which emphasize the obligations involved in doing a job well.

3. TO REWARD, ENCOURAGE PROGRESS, INFORM, TRAIN, DEVELOP, AND PROPERLY ASSIGN all employees in order to attract and keep in its service those who seek a career with the Association so that their lives and work will be given meaning, dignity, satisfaction, and purpose both on and off the job.

WITH THE PUBLIC

1. TO DEVELOP understanding, acceptance, and support of the Association's objectives, plans, and programs.

2. TO FOSTER AND DEVELOP the acceptance of the Association as an effective citizen and as a respected member of the business community.

3. TO PROVIDE LEADERSHIP AND TO COOPERATE with other community and civic groups in furthering programs of mutual interest.

MEA, STATEMENT OF OBJECTIVES WITH MEMBER-OWNERS
APPROVED BY THE BOARD OF DIRECTORS
OCTOBER, 1977

REAFFIRMED DECEMBER, 1979

ELECTRIC RATES* FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS

SEPTEMBER, 1979

MASTER FILE COPY
HOUSE COMMERCE COMMITTEE

*Utilities Regulated by the Alaska Public Utilities Commission.

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
AEL&P	General Residential 1st 200 - 5.8¢ Over 200 - 4.4¢	$4.00	U-75-65(4) (12/19/75)	.11¢	Juneau Douglas Auke Bay
	Small Commercial 1st 1000 - 5.8¢ Next 3100 - 5.4¢ Over 4100 - 4.3¢	$25			
ALASKA POWER & TELEPHONE	1st 40 - 15.29¢ Next 60 - 13.11¢ Over 100 - 10.93¢	$3.30	U-78-79(2) (1/15/79)	2.96¢*	Craig
	1st 40 - 16.55¢ Next 60 - 14.35¢ Over 100 - 12.15¢	$3.30	Same as above	1.78¢	Hydaburg
	1st 100 - 14.1¢ Next 300 - 7.8¢ Over 400 - 7.1¢	$5.00	U-78-62(3) (1/15/79)	1.29¢*	Skagway
	1st 100 - 13¢ Next 100 - 12¢ Next 800 - 9.5¢ Over 1000 - 8¢	$7.50	Original Tariff (7/15/71)	4.29¢*	Tok
	1st 100 - 15¢ Over 100 - 14¢	$10.00	Original Tariff (3/29/78)	0	Dot Lake

* Those surcharges have not been approved by the Commission as of 9/1/79.

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
ALASKA VILLAGE ELECTRIC COOPERATIVE	Residential All KWH - 37.2¢	$18.60	U-77-77(4) (3/1/78)	0	46 villages
	Small Commercial All KWH - 34.2¢/KWH	$34.20			
	Large Power Demand Charge 1st 10 KWH - 0 Over 10 KWH - $10/KWH Energy Charge 1st 1,500 KWH - 32.5¢ Over 1,500 KWH - 24.8¢	$250.00			
AMFAC FOODS, INC.	Farm & Home 1st 200 - 15¢ Over 200 - 13¢	$7.50	Original (4/19/77)	0	Sandpoint
	Commercial Demand Charge 1st 10 KWH - 0 Over 10 KWH - $3.00/KWH Energy Charge 1st 100 - 13¢ Next 100 - 11¢ Over 200 - 7¢	$7.50			
ANCHORAGE, MUNICIPALITY OF	Residential	$3.84	U-79-13(6) (7/11/79)	.2399¢	Anchorage
	Small General Services Demand Less than 10 KWH 4.16¢	$6.10			
ANIAK POWER	Residential 1st 250 - 20¢ Over 250 - 18¢	$20.00	Original Tariff (6/30/74)	4.61¢	Aniak

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
ANIAK POWER (continued)	Commercial 1st 1600 KWH - 18¢ Over 1600 KWH - 16¢	$20.00			
ARCTIC UTILITIES	1st 10,000 - 25¢ Over 10,000 - 19¢	Demand Charge 1st 100 KWH - $10/KW Over 100 KWH - $5/KW	Original Tariff (10/6/75)	0	Deadhorse
BARROW UTILITIES & ELECTRIC COOPERATIVE	Residential 1st 200 - 15¢ Next 300 - 12¢ Over 500 - 11.112¢	$10.00	Original Tariff (4/13/74)	0	Barrow
	General Service 1st 220 - 15¢ Next 450 - 12¢ Next 450 - 10¢ Over 1120 - 9¢	$20.00			
BETHEL UTILITIES	Residential 1st 50 - 18.94¢ Next 200 - 15.81¢ Over 250 - 11.82¢	$5.54	U-79-47(1) (5/15/79)	.94¢	Bethel
	Commercial 1st 50 - 18.94¢ Next 450 - 14.24¢ Next 2,500 - 12.67¢ Next 22,000 - 11.82¢ Over 25,000 - 11.39¢	$5.54 for 5 KVA or less $1.11 per KVA additional			

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
BETTLES LIGHT & POWER	General Service 24¢		2nd Revision (2/1/74)	4.5¢	Bettles
CHUGACH ELECTRIC	General Residential Urban 1st 50 - 8.7¢ Next 200 - 4.4¢ Next 500 - 2.7¢ Next 750 - 2.4¢ Next 1500 - 2.0¢	$4.36	U-77-68(4) (3/16/78)	0	Anchorage
	Commercial L&P Urban 1st 100 - 6.2¢ Next 400 - 4.0¢ Next 1000 - 3.5¢ Next 1500 - 3.2¢ Over 3000 - 2.9¢	$4.36			
	General Residential Suburban 1st 50 - 8.7¢ Next 200 - 5.4¢ Next 500 - 4.0¢ Next 750 - 2.4¢ Over 1500 - 2.0¢	$4.36	Same as above	0	Anchorage Moose Pass Cooper Landing
	Commercial L&P Suburban 1st 100 - 7.5¢ Next 400 - 5.4¢ Next 1000 - 4.4¢ Next 1500 - 3.7¢ Over 3000 - 2.9¢	$4.36			

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
CHUGACH ELECTRIC (continued)	General Residential 1st 90 - 12.5¢ Next 160 - 10.6¢ Next 500 - 6.2¢ Next 250 - 3.5¢ Over 1000 - 2.0¢	$11.21	U-77-68(4) (3/16/78)	0	Kenai
	Commercial L&P 1st 100 - 10.2¢ Next 400 - 8.1¢ Next 1000 - 6.7¢ Next 1500 - 6.2¢ Over 3000 - 4.4¢	$11.21			
	General Residential 1st 90 - 12.5¢ Next 160 - 10.6¢ Next 500 - 6.2¢ Next 250 - 3.5¢ Over 1000 - 2.0¢	$24.92	Same as above	0	Hope
	Commercial L&P 1st 100 - 10.2¢ Next 400 - 8.1¢ Next 1000 - 6.7¢ Next 1500 - 6.2¢ Over 3000 - 4.4¢	$24.92			
CIRCLE ELECTRIC	Residential & Commercial 1st 100 - 32¢ Next 100 - 22¢ Over 200 - 17¢	$10.00	Original Tariff	0	Circle

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
COPPER VALLEY ELECTRIC	Residential 1st 200 - 13¢ Next 800 - 11¢ Over 1000 - 9¢	$15.00	Tariff No. 2 U-77-88(5) (6/2/78)	3.22¢*	Glennallen Copper Center
	Commercial 1st 500 - 13¢ Next 500 - 11¢ Next 1000 - 10¢ Over 2000 - 9.5¢	$30.00			
	Residential 1st 200 - 13¢ Next 300 - 11¢ Next 500 - 9¢ Over 1000 - 8¢	$15.00	Same as above	2.50¢*	Valdez
	Commercial 1st 500 - 13¢ Next 500 - 11¢ Next 1000 - 10¢ Over 2000 - 8¢	$30.00			
CORDOVA ELECTRIC COOPERATIVE, INC.	Residential 1st 200 - 15.5¢ Next 300 - 13.5¢ Next 500 - 11.0¢ Over 1000 - 9.0¢	$15.00	Original Tariff (3/15/79)	0	Cordova

*These surcharges have not been approved by the Commission as of 9/1/79.

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
CORDOVA ELECTRIC COOPERATIVE, INC. (continued)	Small Commercial 1st 300 - 15.5¢ Next 700 - 11.0¢ Over 1000 - 8.5¢	$42.00	Original Tariff (3/15/79)	0	Cordova
FORT YUKON	Residential 1st 100 - 31.86¢ Next 400 - 19.11¢ Over 500 - 12.74¢	$10.00	U-78-92(2) (5/1/79)	2.545¢*	Fort Yukon
	Commercial & Governmental 1st 100 - 38.23¢ Next 400 - 31.86¢ Next 500 - 25.49¢ Next 1000 - 19.11¢ Over 2000 - 16.57¢	$10.00			
GLACIER HIGHWAY ELECTRIC ASSOCIATION	Residential 1st 250 - 12.3¢ Next 250 - 9.6¢ Next 250 - 7.7¢ Over 750 - 4.7¢	$12.00	U-78-88(2) (5/23/79)	0	Auke Bay
	Commercial & Large Power Demand Charge 1st 25 KW - 0 Over 25 KW - $3.70/KW	$12.00			

*These surcharges have not been approved by the Commission as of 9/1/79.

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
GLACIER HIGHWAY ELECTRIC ASSOCIATION (continued)	Commercial & Large Power Energy Charge 1st 250 - 12.3¢ Next 250 - 9.6¢ Next 500 - 7.7¢ Next 9000 - 6.1¢ Over 10,000 - 4.0¢	$12.00			
GOLDEN VALLEY	Residential 1st 100 - 14.03¢ Next 1400 - 7.54¢ Over 1500 - 5.91¢	$10.00	U-79-56(1) (9/1/79)	0	Fairbanks Big Delta Nanana Delta Junction North Pole Healy
	General Service - 1 1st 400 - 14.03¢ Next 600 - 9.12¢ Next 4000 - 7.02¢ Over 5000 - 5.61¢	$10.00			
	General Service - 2 Demand Charge 1st 50 - 0 Over 50 - $4.75/KW Energy Charge 1st 400 - 13.47¢ Next 600 - 10.67¢ Next 4000 - 8.42¢ Next 45,000 - 5.33¢ Over 50,000 - 4.63¢	(a) The demand charge for contract capacity or (b) $1.00 per KVA of installed transfer capacity or (c) Member's highest monthly demand charge within past 12 months.			
HAINES LIGHT & POWER	Residential 1st 100 - 16.4¢ Next 625 - 8.6¢ Over 725 - 6.9¢	$14.25	U-79-52(1) (7/19/79)	3.11¢*	Haines

*These surcharges have not been approved by the Commission as of 9/1/79.

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
HAINES LIGHT & POWER (continued)	Large Power Demand Charge $2.00/KW per month for KW over 25 Energy Charge 1st 500 - 38.4¢ Next 54,500 - 7.9¢ Over 55,000 - 4.6¢	$33.35			Haines
	Commercial 1st 100 - 21.9¢ Next 3400 - 7.8¢ Over 3500 - 6.4¢	$19.00			
HOMER ELECTRIC	Farm & Residential 1st 50 - 9¢ Next 50 - 7¢ Next 200 - 5¢ Next 800 - 3.5¢ Over 1100 - 1.7¢	$7.50	Second Revision (11/10/77)	0	Homer
	Commercial, Large Power & Public Bldgs. Demand Charge 1st 25 - 0 Over 25 - $2.75/KW Energy Charge 1st 50 - 9¢ Next 50 - 7¢ Next 1200 - 5¢ Next 6200 - 4¢ Next 42,500 - 3¢ Next 50,000 - 2¢ Over 100,000 - 1.7¢	$7.50	Original Rates (4/1/70)		

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
HOMER ELECTRIC (continued)	Farm & Residential 1st 50 - 15¢ Next 50 - 8¢ Next 200 - 6¢ Over 300 - 5¢	$7.50	First Revision (11/1/74)	0	Seldovia
	Town & Village 1st 50 - 15¢ Next 50 - 8¢ Next 200 - 6¢ Over 300 - 5¢	$5.00			
	Commercial L&P Demand Charge 1st 10 - 0 Over 10 - $3.00/KW Energy Charge 1st 50 - 15¢ Next 50 - 8¢ Next 2900 - 6¢ Next 7000 - 5¢ Over 10,000 - 4¢	$7.50			
	Residential 1st 50 - 15¢ Next 50 - 8¢ Over 100 - 6¢	$5.00	First Revision (11/10/77)	0	Port Graham
	Commercial L&P Demand Charge 1st 10 - 0 Over 10 - $3.00/KW Energy Charge 1st 50 - 15¢ Next 50 - 8¢ Next 2900 - 6¢ Next 3000 - 5¢	$7.50	Original Rates (9/27/72)	0	

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
HOMER ELECTRIC (continued)	City Light Residential 1st 50 - 10¢ Next 50 - 5¢ Next 100 - 4¢	$5.00	First Revision (11/10/77)		City of Kenai
	Small Commercial Public Buildings 1st 50 - 10¢ Next 50 - 5.5¢ Over 200 - 4.5¢	$5.00			
KODIAK ELECTRIC	Farm & Home 1st 100 - 13.00¢ Next 300 - 12.00¢ Next 300 - 10.00¢ Over 700 - 9.00¢	$13.00	U-78-81(2) (7/13/79)	2.07¢	Kodiak
	Commercial 1st 200 - 13.00¢ Next 800 - 11.00¢ Next 4000 - 10.00¢ Over 5000 - 8.50¢	$26.00			
	Farm & Home 1st 100 - 25.00¢ Next 100 - 23.00¢ Over 200 - 20.00¢	$13.00	U-78-81(2) (7/13/79)	2.02¢	Port Lions
	Commercial 1st 100 - 25.00¢ Next 100 - 23.00¢ Over 200 - 17.00¢	$26.00			

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
KOTZEBUE ELECTRIC	Residential & Small Commercial 1st 50 - 26¢ Next 50 - 22¢ Next 9900 - 13.5¢ Over 10,000 - 12.5¢	$14.00	U-76-46(3) (12/3/76)	3.436¢*	Kotzebue
MANLEY UTILITY CO., INC.	Residential 1st 100 - 30¢ Over 100 - 25¢	$5.00	Original Tariff (7/14/78)	0	Manley Hot Springs
	Commercial 1st 100 - 30¢ Next 900 - 25¢ Over 1000 - 20¢	$5.00	Same as above	0	
MATANUSKA ELECTRIC	Residential 1st 100 - 11.6¢ Next 150 - 7.7¢ Next 250 - 5.8¢ Next 700 - 3.2¢ Over 1200 - 2.6¢	$9.00	U-78-75(5) (7/12/79)	0	Palmer Chugiak Eagle River Talkeetna Wasilla
	Commercial & Small Power 1st 100 - 14.2¢ Next 400 - 9.0¢ Next 1500 - 5.2¢ Over 2000 - 3.2¢	$9.00			
	Residential 1st 50 - 38.65¢ Next 50 - 19.32¢ Over 100 - 14.49¢	$10.00	U-76-67(4)(5) (3/21/77)	1.3¢	Unalakleet

*This surcharge has not been approved by the Commission as of 9/1/79.

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
MATANUSKA ELECTRIC (continued)	Commercial & Small Power 1st 50 - 38.65¢ Next 50 - 25.77¢ Next 200 - 19.32¢ Over 300 - 15.30¢	$10.00	U-76-67(4)(5) (3/21/77)	1.3¢	Unalakleet
McGRATH LIGHT & POWER	Residential 1st 50 - 13.5¢ Next 150 - 11.5¢ Next 300 - 11.0¢ Next 4500 - 10.0¢ Over 5000 - 8.5¢	$5.00	Original Tariff (6/6/77)	6.2¢	McGrath
	Commercial 1st 50 - 13.5¢ Next 450 - 10.5¢ Next 2500 - 10.0¢ Next 22,000 - 9.0¢ Over 25,000 - contract rate	$5.00			
NAKNEK ELECTRIC	Farm & Home 1st 50 - 27¢ Next 50 - 21.6¢ Next 100 - 16.2¢ Next 300 - 13.5¢ Over 500 - 12.2¢	$13.50	U-78-84(1) (10/1/78)	0	Naknek
	Other Demand Charge 1st 10 - 0 Over 10 - $4.05/KW Energy Charge 1st 50 - 27¢ Next 50 - 21.6¢ Next 2,900 - 15.5¢ Next 7,000 - 12.8¢ Over 10,000 - 10.8¢	$13.50			

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
NAKNEK ELECTRIC (continued)	Farm & Home 1st 50 - 32.4¢ Next 50 - 39.7¢ Over 100 - 21.6¢	$16.20	U-78-84(1) (10/1/78)	0	Egegik
	Other Demand Charge 1st 10 - 0 Over 10 - $4.05/KW Energy Charge 1st 50 - 32.4¢ Next 50 - 39.7¢ Over 100 - 21.6¢	$12.00			
NORTHERN POWER & ENGINEERING	Residential 1st 50 - 16.6¢ Next 650 - 13.3¢ Over 700 - 11.6¢	$10.00	U-77-83(2) (5/1/78)	.968¢	Cold Bay
	General Service 1st 1000 - 12.5¢ Next 4000 - 11.6¢ Next 5000 - 10.8¢ Over 10,000 - 9.1¢	$32.00			
NORTHWAY POWER & LIGHT	Residential & Small Commercial 1st 100 - 13¢ Next 100 - 12¢ Next 100 - 11¢ Over 300 - 9.5¢	$10.00	First Revision (2/21/74)	5.77¢*	Northway

*This surcharge has not been approved by the Commission as of 9/1/79.

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
NUSHAGAK ELECTRIC	Farm & Home 1st 50 - 22¢ Next 50 - 15¢ Next 400 - 11.5¢ Over 500 - 10.5¢	$11.00	U-76-50(4) (11/30/76)	2.615¢*	Dillingham
	Commercial & Industrial 1st 50 - 22¢ Next 50 - 15¢ Next 2900 - 12¢ Over 3000 - 10.5¢	$11.00		2.615¢*	
PELICAN UTILITIES	7.25¢ per KWH	$5.00	U-76-23(3) (8/1/76)	0	Pelican
TANANA POWER	Residential 1st 200 - 24¢ Next 200 - 22¢ Over 400 - 20¢	$14.40	U-78-63 (2/9/79)	0	Tanana
	Commercial 1st 10,000 - 18.5¢ Next 10,000 - 17.6¢ Over 20,000 - 16.2¢	$50.00			
TLINGIT-HAIDA REGIONAL ELECTRICAL AUTHORITY	Residential 1st 300 - 27¢ Over 300 - 23¢	$16.50	Pending Tariff	0	Angoon Hoonah Kake Klawock
	Small Commercial 1st 300 - 27¢ OVer 300 - 23¢	$27.00	Pending Tariff		

*This surcharge has not been approved by the Commission as of 9/1/79.

Utility	Rates per KWH	Monthly Minimum Bill	Latest Revision	Amount of Surcharge	Areas Served
YAKUTAT POWER	Residential 1st 100 - 12¢ Next 200 - 10¢ Next 700 - 8.5¢ Next 1000 - 8¢	$12.00	U-76-82 (1/1/78)	2.796¢*	Yakutat
	Commercial 1st 300 - 10¢ Next 700 - 8.5¢ Next 4,000 - 8¢ Over 5,000 - 7.5¢	$30.00		2.796¢*	
	Large Commercial 1st 2,000 - 9¢ Next 18,000 - 7.5¢ Over 20,000 - 6.5¢	$180.00		2.796¢*	

*This surcharge has not been approved by the Commission as of 9/1/79.

A PERFORMANCE REVIEW
OF THE
ALASKA PUBLIC UTILITIES COMMISSION

August 1, 1979

Commissioner of the Department of Commerce and Economic Development	Charles Webber
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Alaska Public Utilities Commission

Chairman	Gordon J. Zerbetz
Commissioner	Marvin R. Weatherly
Commissioner	Carolyn S. Guess
Commissioner	Susan M. Knowles
Commissioner	Stuart C. Hall

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING -

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

August 10, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
ALASKA PUBLIC UTILITIES COMMISSION

August 1, 1979

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

31-Q1LH

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PURPOSE AND SCOPE OF REVIEW

Purpose

In accordance with the provisions of Alaska Statutes 24.20 .271(1) and 44.66.050 (sunset legislation), a review of the Alaska Public Utilities Commission (hereinafter referred to as APUC or the Commission) was conducted to determine whether there is a demonstrated need to continue utility regulation in its present form. To determine that need, we reviewed Commission activities to see if the Commission has been operating in an efficient and effective manner.

AS 44.66.010(4) specifies that the Alaska Public Utilities Commission will terminate on June 30, 1980 but will continue until June 30 of the following year for the purpose of concluding its affairs. This report shall be considered during the legislative oversight function in determining whether the Commission should be allowed to terminate, be reestablished in its present form or be reestablished in a modified form.

Scope

The functions reviewed included commissioner activity, administrative, financial/tariff analysis, engineering, consumer complaints and information, and records/docketing. Our review consisted of analyzing and evaluating the following:

1. Applicable statutes and regulations;
2. interviews with, and a questionnaire to, the Commissioners;
3. interviews with staff members;
4. questionnaires sent to other states' utility regulatory agencies;
5. questionnaires sent to APUC regulated electric and telephone nonprofit cooperative corporations;
6. questionnaires sent to attorneys who practice before the Commission;
7. observation of Commission meetings and several types of hearings held before the APUC;
8. interviews with Assistant Attorney Generals assigned to APUC;

9. interviews with general managers of several large utilities;

10. interviews with representatives of the Rural Electrification Administration;

11. interviews with representatives of the Federal Communications Commission;

12. interview with the president of the Alaska Rural Electric Cooperatives Assosication;

13. tests of APUC records and documents;

14. tests of records and documents of the Office of the Governor on appointments to the APUC;

15. correspondence with the Commissioners of the Alaska Transportation Commission and the Alaska Pipeline Commission; and

16. a review of studies and major Alaska Superior and Supreme Court decisions affecting the Commission, and complaints filed with the Ombudsman's Office.

ORGANIZATION AND FUNCTION

Prior to the creation of the Alaska Public Utilities Commission in 1970, utilities were regulated by the Alaska Public Service Commission (PSC). The PSC was established in 1959 as a part-time three-member commission responsible for all fixed utility regulation including generation, transmission or distribution of electric power, heat, water, natural or manufactured gas, oil or other petroleum products (except by pipeline); and the furnishing of telephone or telegraph communications, and community sewer services.

In 1960, the PSC gained responsibility for regulating transportation utilities with the passage of the Alaska Motor Freight Carriers Act and the Alaska Air Commerce Act. The transportation regulation duties were transferred to the Alaska Transportation Commission upon its creation in 1966. The 1960 legislation eliminated the PSC and created the APUC as a full-time three-member commission. That legislation also changed the definition of public utility to include those furnishing the following types of services for compensation: electrical; telecommunications; water, steam or sewer; transmission or distribution of natural or manufactured gas; and petroleum or petroleum products when no competition exists. A 1973 amendment added collection and disposal service of garbage, refuse, trash or other waste to the definition.

AS 42.05.040 requires one member to be a law school graduate, one to be a university graduate with a major in engineering, and one to be a university graduate with a major in finance, accounting or business administation. Two additional positions were added to the Commission in 1975 for which no special qualifications have been established. All members are appointed for six-year terms by the Governor and confirmed by the Legislature. The Commission may hire an executive director, who may be a member of the Commission.

Under AS 42.05, the Alaska Public Utilities Commission Act, the APUC is charged with the responsibility to assure the furnishing of adequate service to all public utility patrons, without discrimination, and at the lowest reasonable rates consistent with the interests both of the public and the utility. Statutory provisions direct the Commission, after determining an applicant is fit, willing and able to provide utility service, to issue that applicant a Certificate of Public Convenience and Necessity (CPCN). After issuance of a CPCN the Commission then regulates the rates, classifications, rules, regulations, practices, services and facilties of a public utility. The Commission has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

The staff of the APUC, in addition to the support staff of the Commissioners, is divided into five major functions: administration, engineering, communications carriers, consumer protection and information and financial/tariff analysis. A brief description of the services provided by those functions follows:

Administration. An Executive Director, hired by the Commission, is responsible for directing all staff functions and acts as liason between staff and Commissioners. He is assisted by a Deputy Director who has responsibility for records/document management. They are assisted in these duties by an administrative assistant, document processing personnel and other clerical support staff.

Engineering. The Engineering Section consists of a section chief, four utilities engineers, a draftsman and a clerical support person. This section is responsible for investigation of utility procedures and practices affecting quality of service; review of legal descriptions for service areas, plans for plant expansion, and plant-in-service and depreciation schedules. This section presents its evaluations in proceedings before the Commission.

Communications Carriers. This section was established by 1976 legislation to develop, recommend and administer policies and programs with respect to the regulation of rates, services, accounting and facilities of communications common carriers within the State involving the use of wire, cables, radio and space satellites. There is one position in this section and it is currently vacant.

Consumer Protection and Information. This function is carried out by a section chief and an information officer. The major responsibilities are investigation and resolution of consumer complaints, and public relations/information functions.

Financial/Tariff Analysis. Activities carried out by this section include: examination, analysis and evaluation of financial statements submitted with tariff filings; audits of financial records of utilities; examination of financial information comprising historical operating year and proforma adjustments; and presentation of these analyses at proceedings before the Commission. In addition to the section chief, there are five utility financial analysts and two research analysts authorized for this section.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Commission practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of the policy changes can be evaluated.

Report Conclusion

In our opinion, the Alaska Public Utilities Commission should continue to regulate public utilities. We believe that the public interest is being served by requiring public utilities to be certifiated by the APUC. This process stabilizes demand for the utility service by eliminating competition and thereby allowing economies of scale (declining unit costs with increased outputs) to operate. Economic regulation by the Commission, in place of that competition, ensures that the utilities provide adquate service at the lowest reasonable rates.

However, certain changes need to be implemented for the Commission to more effectively execute its mandated responsibilities. A number of factors have caused an increase in workload at the APUC which have diluted its ability to effectively regulate all utilities within its jurisdiction. Those factors include, but are not limited to, increases in the number of applications for certificates for which there are competing applicants, and more frequent rate increase requests due to spiraling costs, particularly for fuel.

We therefore evaluated the workload of the Commission for areas of regulation which could be eliminated or limited with the least public impact, and would allow the APUC to devote its limited time and resources on areas of greater import. This Division has now completed performance reviews under AS 44.66.050 of two of the three regulatory commissions in Alaska. We also evaluated them from an overview position, the entire utility regulatory scheme in Alaska.

In keeping with the intent of the Sunset Law which attributed public disenchantment with State government to a proliferation of that government, we recommend the Alaska Public Utilities Commission, the Alaska Transportation Commission and the Alaska Pipeline Commission be combined into a single regulatory commission. This recommendation stems from a comparison of

Alaska with the other forty-nine states in which we learned that Alaska is one of only three states utilizing three utility regulatory commissions and employs the second largest number of commissioners to staff those agencies (see Recommendation No. 1).

Areas of regulation which we recommend be eliminated from APUC's jurisdiction are cable television and garbage collection. Cable television service is an entertainment service, not a monopoly or a necessity, and deregulation of this service would not be detrimental to the public interest (see Recommendation No. 2). Services providing collection and disposal of garbage are not fixed, capital intensive utilities for which competition should be eliminated, as is necessary in the other utilities regulated by APUC. This industry should be regulated at the local level as a transportation utility (see Recommendation No. 3).

Areas of APUC regulation which we recommend be limited involve nonprofit telephone and electric cooperative corporations and utilties with gross annual revenues of less the $100,000. AS 42.05 should be amended to allow the membership of the cooperatives, by vote of a majority of the members, to be given an opportunity on a utility by utility basis, to determine whether their cooperative should remain economically regulated by the APUC. This action would allow members of cooperatives who feel their board of directors is sufficiently responsive to the membership to withdraw from regulation, while those who feel their board is not responsive may appeal to the APUC (see Recommendation No. 4).

AS 42.05 should also be amended to exempt all certificated utilities with gross annual revenues of less than $100,000 from economic regulation. This exemption would delete a minimum of 26 utilities or 20 percent of the current number of certificated economically regulated utilities under APUC. This action would not be contrary to the Commission's responsibility to protect the public interest because the cost of regulation as a percentage of operating costs for small utilites may outweigh the benefits of regulation, and because Commission time could be devoted to larger utilities serving a larger number of customers (see Recommendation No. 5).

The ability of the Commission to effectively regulate utilities has been hampered by omissions and inconsistencies in the Statutes and regulations. To allow for more effective case management and to avoid court appeals of Commission decisions, the APUC should promulgate regulations to accomplish the following: (1) to clarify the reporting and accounting requirements of utilities desiring to include rate case expense in their rate base; and (2) to prescribe industry performance standards to allow the Commisssion to effectively

monitor and enforce the quality of service being provided by utilities. A statutory amendment is needed to clarify whether transfer of certificates of public convenience and necessity from one utility to another through transfer of the controlling interest in the corporate stock is subject to APUC approval (see Recommendation No. 6).

The Commission's effectiveness has also been hampered by difficulties in recruiting and retaining employees for the Utility Financial Analysis Section and Utilities Engineering Section. Increasing compensation levels for those positions to a competitive level with employers in the Anchorage area and similar positions in the State government should allow recruitment and encourage retention of qualified experienced staff (see Recommendation No. 7).

Improvement in the efficiency of Commission operations would result from: (1) development of a topical cross-reference system for Commission orders (see Recommendation No. 9); (2) implementation of a time-management system to assist the Commission in prioritizing, planning and scheduling future workloads, and monitoring work in progress (see Recommendation No. 8); (3) establishment of separate collocation codes for budgeting and recording expenses of each function of the Commission (see Recommendation No. 11); and (4) restriction of Commissioner involvement in the administrative function of the Commission (see Recommendation No. 10).

A review of Commission appointment activity performed by the Office of the Governor showed that the chairmanship term of the present APUC chairman expired November 30, 1977 and, to date, a period of 20 months, no new appointment or reappointment to this position has been made. The Office of the Governor should make appointments in a timely manner.

Subsequent Event

The present Chairman of the APUC was reappointed to the chairmanship on July 31, 1979. That term will expire November 30, 1981.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Alaska Public Utilities Commission, the Alaska Transportation Commission and the Alaska Pipeline Commission should be combined into a single regulatory commission.

During our review process we compared the utility regulatory scheme utilized in Alaska with the schemes utilized in the other forty-nine states. This analysis revealed that Alaska is one of only three states utilizing three utility regulatory commissions and employs the second largest number of commissioners as shown below:

Regulatory Scheme	States Used By No.	%	Commissioners No. On Comm.	No. Of States	%	Employees Range Hi	Lo	Avg.
One Regulatory Commission	42	84%	1	1	2%	976	11	164
			3	29	69%			
			5	10	24%			
			7	2	5%			
				42	100%			
Two Regulatory Commissions	5	10%	6	5	100%	726	87	242
Three Regulatory Commissions	3	6%	8	1	33%	762	71*	419
			11*	1*	33%			
			12	1	33%			
				3	100%			

*Alaska

From: The 1977 Annual Report on Utility and Carrier Regulation of the National Association of Regulatory Utility Commissioners.

A brief history of the development of Alaska's three regulatory commissions follows. The Alaska Public Service Commission (PSC) was established in 1959 as a part-time three-member commission responsible for all fixed utility regulation. In 1960 the PSC gained responsibility for regulating transportation utilities with the passage of the Alaska Motor Freight Carrier Act and the Alaska Air Commerce Act. The transportation regulation duties were transferred to the full-time three-member Alaska Transportation Commission (ATC) at its creation in 1966, and 1970 legislation eliminated the PSC and created the Alaska Public Utilities Commission (APUC) with jurisdiction over fixed utilities. That legislation established the APUC

as a full-time three-member commission, but the composition was increased to five members in 1975. In 1972 the Alaska Pipeline Commission came into existence as a separate, full-time three-member commission.

The advantages of a single regulatory agency over separate agencies are numerous and include: (1) reduction in number of commissioners needed to preside at hearings; (2) a combined professional staff which would allow for more flexible staffing (i.e. temporary reassignments between regulatory disciplines to handle fluctuating workloads on a more timely basis); (3) joint hearing facility; (4) joint copying/ reproduction facility; (5) joint publications library; and (6) possible reduction in word processing equipment and personnel.

In a survey questionnaire distributed to utility regulatory commissions in other states (Appendix B) we found that:

(a) Twenty-six of the responding thirty-two states (81%) felt the advantages of a single regulatory agency outweigh the cost of maintaining two or three separate agencies. Some of the advantages noted were: centralization of expertise; cost savings due to economies of scale and elimination of unnecessary duplication; in general a more efficient use of resources.

(b) Twenty-eight of the responding states (87%) felt commissioners can realistically develop the expertise to render decisions in fixed, transportation and/or pipeline utility cases.

In keeping with the legislative intent of the Sunset law which found "...that the substantial increase in the number of State agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of State government..." (Ch 149 SLA 1977), it is appropriate to consider the merits of a single commission mode of regulating utilities.

This recommendation should, however, only be considered in concert with a plan for deregulation of some of the industries currently regulated by the three commissions. Combining the commissions without decreasing the present workload would cause serious processing time delays. Recommendation No. 2 through No. 5 of this report indicate areas of APUC regulations which could be curtailed or limited without harmful impact on the public. We further recommend that the internal structure and staffing levels be set only after deregulation decisions have been made so that a realistic analysis of responsiblities and workload can be made.

Recommendation No. 2

AS 42.05 should be amended to allow the Alaska Public Utilities Commission to cease all certification and regulation of cable television.

The Alaska Public Utilities Commission Act, AS 42.05, mandates the APUC to regulate all public utilities including those furnishing telecommunications service to the public for compensation. Telecommunications is defined in AS 42.05.701(8) as "... the transmission and reception of messages, impressions, pictures and signals by means of electricity, electromagnetic waves and any other kind of energy, force variations or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points." The APUC has interpreted this Statute to include cable television (CATV) and has been issuing Certificates of Public Convenience and Necessity (CPCNs) and has been providing economic regulation since 1970.

Regulation of cable television has varied widely among states. Ten states do not consider CATV within their definition of a public utility, while eight others, including Alaska, regulate franchising and regular subscriber rates. The remaining states fall somewhere in the middle by regulating utility pole attachment rates and settling disputes between cable companies and utilities.

There are currently no federal requirements for rate regulation of CATV. There are in fact prohibitions imposed on states by the FCC against certain types of rate regulation. The delineation of rate regulation responsibility began with the following FCC pronouncement issued in 1974.

> In Section 76.31(a)(4)(of 47 C.F.R.) we require that cable systems, in order to receive a Certificate of Compliance, must have a franchise providing for franchisor approval of initial charges for installation and regular subscriber service. We have intentionally limited rate regulation responsibilities to the area of regular subscriber service, and we will continue to do so. We have defined "regular subscriber service" as that service regularly provided to all subscribers. This would include all broadcast signal carriage and all our required access channels including origination programming. It does not include specialized programming for which a per-program or a per-channel charge is made. The purpose of this rule was to clearly focus the regulatory responsibility for regular subscriber rates. It was not meant to promote rate regulation of any kind.

The FCC deleted the requirement of franchisor approval of rates for subscriber service effective September 1976, thereby removing all requirements of the franchisor for rate regulation. From a report of the Connecticut Cable Television Association we learned that "...as soon as the notice of the FCC action was publicized, many communities throughout the country dropped their own rate setting requirements." We feel that Alaska should also restrict its activity in this area.

A commonly accepted definition among economists of what distinguishes public utilites from other sectors of business is that public utilities are natural monopolies (operating with government approval as such), and supply a service which is indispensable to modern living. Cable television is an entertainment service, not a monopoly or a necessity. If subscribers are charged more than they feel services are worth they may disconnect and seek an alternative form of entertainment such as radio, movies, newspapers or books.

Deregulation of CATV in Alaska could possibly result in increased development of cable television in rural Alaska. The 1974 FCC pronouncement quoted earlier also stated:

> After considerable study of the emerging cable industry and its prospects for introducing new and innovative communications services, we have concluded that, at this time, there should be no regulation of rates for such services at all by any governmental level. Attempting to impose rate regulation on specialized services that have not yet developed would not only be premature but would in all likelihood have a chilling effect on the anticipated development.

It does not appear that deregulation of this industry would have a detrimental impact on the Alaskan public and could, in fact, provide an incentive for development in rural Alaska and allow the Alaska Public Utilities Commission to devote its limited time and resources towards more important issues.

Recommendation No. 3

AS 42.05 should be amended to allow the Public Utilties Commission to cease certification and regulation of those utilities furnishing collection and disposal service of garbage, refuse, trash and other waste material.

Responsibility for certificating and regulating utilities furnishing collection and disposal service of garbage, refuse, trash and other waste material was added to the Alaska Public Utilities Commission Act by a 1973 amendment. Prior to that time those utilities fell under the jurisdiction of the Alaska Transportation Commission. There are currently 29 private refuse utilities certificated and regulated by the APUC and one municipal system certificated but not regulated.

Considering the Public Utilities Commission's heavy workload and limited resources, the public interest would be best served by allowing the Commission to cease certification and regulation of this industry. The economic justification for this action is twofold.

(1) The refuse industry is not capital intensive as are the fixed utilities regulated by the APUC. The largest capital expense is in the vehicles and this expense is lessened since, as staff of the APUC has indicated, a majority of refuse utilities lease, rather than purchase, those vehicles. Sanitary landfills (dumps) are not allowed into the rate base, and therefore are not considered part of the capital investment of the utility.

(2) Competition in this industry would not be as detrimental to the public's interest as competition among more capital intensive industries. Refuse collection and disposal is a transportation utility not a fixed utility. The economic theory and practice of transportation regulation originally was to restrict competition to encourage capital investment in a growing industry and provide a healthy utility to serve the public's needs not to eliminate competition entirely as is the theory in the fixed utility regulation by the APUC.

The results of a review of refuse collection and disposal service regulation in other states also support this recommendation. From our questionnaire to regulatory commissions in the other forty-nine states and the District of Columbia we learned the following:

Number of states responding:	32
Number of states not regulating refuse utilities:	29
Percentage of respondents not regulating:	91%

We were unable to determine in how many states this service is regulated at the local government level but are aware that it is in some states. AS 29.48.033 provides municipalities in Alaska the authority to regulate at the local level but this authority is superseded by the APUC.

Local governments in Alaska already exercise a great deal of control over the level and quality of service and rates charged by the private utilities through special contracts with those utilities. Therefore, the impact of deregulation would be felt primarily by those consumers residing outside municipal boundaries, a small percentage of the total number of consumers currently receiving these services.

Recommendation No. 4

AS 42.05 should be amended to allow non-profit telephone and electric cooperatives to petition for withdrawal from APUC economic regulation.

The APUC currently certificates and regulates eleven electric utilities and six telephone utilities in Alaska organized under AS 10.25, the Electric and Telephone Cooperative Act. Statutory requirements of the cooperatives under that act include: each consumer of the cooperative is a member and members elect the board of directors; they must hold an annual meeting of the membership at which a quorum (as established by the bylaws) must be in attendance to conduct business; the meeting must be adequately noticed to the public; and, most importantly:

> A cooperative shall be operated on a nonprofit basis for the mutual benefit of its members and patrons. The bylaws of a cooperative or its contracts with members and patrons shall contain such provisions relating to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its nonprofit and cooperative character (AS 10.25.380).

In the first session of the Eleventh Legislature a bill was considered which, as originally introduced, would have exempted cooperatives organized under AS 10.25 from economic regulation (regulation as to rates, regulations, and quality of service) but retained the certification requirements. An amendment to this bill limited the exemption to electric cooperatives.

A review of all revenue requirement requests by nonprofit cooperatives in the past three years, of which there were nine, reflected the following. Of those nine, six received exactly what they requested, two had immaterial variances and one was granted approximately two percent less than it requested. It appears that the integrity of the boards of directors of the cooperatives in keeping revenue requirement requests minimal has been demonstrated and provides an adequate control over this facet of utility rate setting.

However, the large number of consumer complaints received by the APUC against cooperatives indicates there are problems in the boards' responsiveness to their members, particularly in the areas of billing practices, rates and charges, quality of service and line extension or service availability. It appears, therefore, that even though a theoretical mechanism exists for ensuring adequate service at reasonable rates there is sufficient reason to doubt its reliability in some cases. We therefore recommend that the membership of the

cooperatives, by vote of a majority of the members, be given an opportunity on a utility by utility basis to determine whether their cooperative should remain under APUC regulation. A statutory provision should be made to allow cooperatives to come back under regulation, again by vote of a majority of the members, should they so desire.

Recommendation No. 5

SB 61

AS 42.05 should be amended to exempt from economic regulation all utilities with annual gross revenues not exceeding $10,000. $500,000 APUC prefers $200,000

Pursuant to AS 42.05.711(e), effective since 1970, electric and telephone utilities with annual gross revenues not exceeding $25,000 are exempt from regulation by the APUC. The exemption should be increased to $100,000 and extended to all utilities. This exemption is from economic regulation only. All utilities regardless of size should be certificated by the APUC. Critical staffing problems and an increasing case backlog require the APUC be divested of the responsibility for the smaller utilities in order to effectively manage the larger utilities which have a greater impact on the public.

Legislation was introduced in the 1979 Session to increase the exemption. The final amended version provided for total deregulation of all utilities with annual gross revenues less than $50,000 as well as providing for economic deregulation as to rates, rate design and quality of sevice of those utilities with annual gross revenues less than $500,000. In the latter case, the Commission would only involve itself in the certification process, determining whether a utility is fit, willing and able to provide utility service. The effect of this legislation and various other exemption levels have been measured, utilizing gross revenue data from either the 1977 or 1978 utility's annual report, whichever was most current.

Table I provides a list of utility groups and their regulatory status as of December 31, 1978:

Table I

Utility Group	Certified	Regulated	Unregulated
Electricity	48	30	18
Telephone	25	22	3
Cable TV	18	17	1
Water	54	22	32
Sewer	31	6	25
Gas	5	4	1
Steam	1	0	1
Garbage	28	28	0
	210	129	81

There were 39 regulated utilities for which annual reports were not obtainable with the majority, 28, coming from the garbage utilities which are not required to file, leaving 90 utility annual reports available for testing. Of those 90 utilities we were able to determine annual gross revenues for, 53 (58.9%) would be exempted from economic regulation by the proposed legislation. This number appears excessive when added to the 28 garbage utilities and the cable television company also recommended for deregulation, with revenues in excess of $500,000.

Table II shows the minimum number of utilities which would be exempted from economic regulation a varying thresholds:

Table II

Annual Gross Revenue	Minimum* No. Exempted	% (Total Regulated = 129)
$500,000	53	41.1%
$250,000	41	31.8%
$100,000	26	20.2%
$ 50,000	17	13.2%

* Minimum because we were only able to determine annual gross revenues for 90 of the 129 regulated utilities.

Table III is a distribution of this data over the individual utility groups.

Table III

	Under $50,000	$50,000 to $100,000	$100,001 to $250,000	$250,001 to $500,000	Over $500,000	Unknown	Total
Electric	0	1	7	3	18	1	30
Telephone	2	3	4	3	10	0	22
Cable TV	2	2	3	4	1	5	17
Water	11	3	0	1	3	4	22
Sewer	2	0	1	0	2	1	6
Gas	0	0	0	1	3	0	4
Garbage	0	0	0	0	0	28	28
	17	9	15	12	37	39	129
Within Groups	13.2%	7.0%	11.6%	9.3%	28.7%	30.2%	
Cumulative	13.2%	20.2%	31.8%	41.1%	69.8%	100.0%	

Given present staffing levels, and the associated shortcomings, we believe the elimination of an additional 26 small utilities at the $100,000 level would not be contrary to the Commission's responsibility to protect the public interest. Additional time could be devoted to larger utilities serving a larger number of customers. In addition, the cost of regulation on a percentage basis to a small utility may outweigh the potential benefits. This action, along with the deregulation of garbage utilities (28 total) and cable television utilities (17 total) would reduce the number of economically regulated utilities to 62, a 52% decrease.

Recommendation No. 6

The statutes and regulations governing the Alaska Public Utilities Commission should be revised.

We determined through interviews, questionnaires, and review of records on file at the APUC Offices that sections of the statutes and regulations governing the APUC are conflicting, vague, obsolete and inadequate to carry out the Commissions mandated responsibilities. Several examples received from the Commissioners, staff, and attorneys who practice before the Commission are described in detail below:

1. Regulations should be promulgated clarifying the reporting and accounting requirements of utilities desiring to include rate case expense in their rate base. The Commission has had at least one decision appealed to Superior Court for departing from precedents set in previous decisions rendered on treatment of rate case expense. The Commission acknowledged the need for such regulations in the final order on docket U76-66 issued in May of 1977 where they stated "...the Commission plans to promulgate regulations which will clearly delineate the reporting and accounting requirements that utilities will have to satisfy in order to secure all rate case expenses, derived from both in-house personnel and independent consultants or counsel." To date, however, no action has been taken. Such regulations could be used to promote the Commission favored policy of encouraging utilities to develop rate cases in-house rather than rely exclusively on costly consultants, a procedure which could result in savings for utility rate payers.

2. Regulations should be promulgated establishing industry performance standards for all regulated industries. AS 42.05.291 requires public utilities to "...furnish and maintain adequate, efficient and safe service and facilities" and gives the

APUC the authority to"... prescribe adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage, or other conditions pertaining to the supply of the service of public utilities." To date, however, the only standards prescribed are telephone service standards. The development of those standards were prompted by a utility challenge in court of APUC's right to enforce "acceptable industry performance" standards when none existed. The court decision favored the utility. Promulgation of regulations on performance standards would avoid the occurrence of such a court challenge in the future and allow the Commission to effectively monitor and enforce the quality of service being provided by utilities.

3. A statutory amendment is needed to clarify whether transfer of Certificates of Public Convenience and Necessity from one utility to another through transfer of the controlling interest in the corporate stock is subject to APUC approval. The Commission has construed existing sections of the Alaska Public Utilities Commission Act as providing statutory authority for such action, but a definitive statement of jurisdiction is needed. The Commission requested such action in 1978 but the legislation did not pass.

4. Discrepancies between statutes and regulations should be eliminated. AS 42.05.421 allows the Commission to suspend the operation of a tariff filing for an initial period not longer than six months beyond the time it would otherwise go into effect. 3 AAC 48.300(b)(4) states they may suspend the filing for a maximum period not longer than six months beyond the date it would otherwise become effective. The Commission has in practice suspended for multiple six-month periods which is within their statutory right but clearly contrary to the regulation which was promulgated in 1973.

   AS 42.05.411(a) states that a utility may not put new or revised rates, charges, rules or regulations into effect except after 45 days notice to the Commission. The 45-day period was increased from a previously required 30-day period by a 1975 amendment. However, many sections of the regulations including 3 AAC 48.060(i), 3 AAC 48.070(b), 3 AAC 48.300 and 3 AAC 48.310 still refer to the 30-day period and should be changed to reflect the statutory amendment.

Recommendation No. 7

The APUC should seek upgrading of salary levels for professional support staff.

The Alaska Public Utilities Commission has been hindered for the past nine years by difficulties in recruiting and retaining employees for the Utility Financial Analysis Section and Utilities Engineering Section. The average length of time vacancies exist before Utility Financial Analyst (UFA) positions can be filled is nine months and Utilities Engineer (UE) positions can be filled is eleven months. One UFA III position was created in July of 1975 and has not been filled to date. Discussions with Commission personnel indicated that qualified applicants for the UFA III position have been discouraged by the salary range and have been able to obtain employment with utility companies for higher salaries.

The difficulty in recruiting highly qualified personnel for positions such as the UFA III led the Commission to reclassify several higher level positions to entry level positions. This action was taken to allow the Commission to provide in-house training for less experienced individuals for advancement into the more demanding positions. The Commission's experience, however, has been that persons receiving the in-house training remain an average of only one year. We were again told by Commission personnel that these individuals, having received APUC training, are then qualified for positions with utility companies offering higher salaries.

In recognition of the recruitment and retention problems at APUC, Arthur Young & Co., investigated the compensation levels as part of their 1978 Management Audit of the Commission. They reviewed the January 1978 study on salary levels done by the Division of Personnel which concluded that salary adjustments were not justified at that time. Arthur Young & Co. found that study incomplete in that it compared APUC salary levels with similarly titled positions in other states and with a Fairbanks utility, but did not include a survey of positions in the Anchorage area.

Arthur Young & Co. did conduct a survey in Anchorage and, although they couldn't determine the true prevailing wage rates for the area because of the limited response rate, they were able to identify material pay differences. "... with four major employers within the Anchorage area which, historically, have consistently competed with the APUC in recruiting for and retaining individuals in professional positions in the Commission (specifically, Utility Engineers and Utility Financial Analysts)." The percentage difference between the weighted average of the responses and the state salary range midpoint revealed a deficiency in the state range from 25.5% to 43.5%.

As part of our investigation into this problem we compared job descriptions for the UFA III position at APUC and the Tariff Specialist position at the Alaska Transportation Commission. Even though the description of duties for these two positions are very similar, there is a difference of three salary ranges or a deficiency of 25%.

In addition to the creation of a work backlog, the staffing problem has resulted in recruitment and reliance on less experienced personnel or contracts with expensive consultants. UFA I and UFA II personnel have been required to perform the job requirements of UFA III's including testifying at formal Commission proceedings. During those proceedings attorneys representing utilities have, on occasion, reduced the credibility of Commission employees as expert witnesses during cross examination by reviewing their credentials on the record. If the public interest is to be effectively protected by the Alaska Public Utilities Commission, compensation levels should be established which will allow recruitment and encourage retention of qualified, experienced staff.

Recommendation No. 8

The APUC should implement a time management system.

As part of their 1978 Management Audit of APUC, Arthur Young & Co. developed a time management system to assist the Commission in prioritizing, planning, and scheduling work, monitoring work in process and work accomplished; and establishing functional and position objectives. Our discussions with Commissioners and staff and a review of processing time for Commission actions demonstrate a continuing need for implementation of such a system.

An effective time management system could alleviate delays in processing tariff filings. Our tests showed that the review process, from receipt of application to final order by the Commission, averages 13 months. This has resulted in an increasing need to suspend tariffs for more than a single six month period. Long range planning of Commissioner and staff time and resources would allow for more effective and efficient use of time and resources and the rendering of Commision decisions in a more timely fashion. This is particularly important in a time of spiraling costs when delays in Commission decisions have a confiscatory effect on utilities.

Recommendation No. 9

The APUC should develop a cross-reference system for Commission orders and decisions by the courts.

The APUC currently files Commission orders by docket number and in a chronological order file and maintains reference cards by utility name, but does not maintain a topical

cross-reference system. Decisions from the courts on appeals of Commission decisions are filed with the related docket by docket number.

Currently the best catalog of prior Commission decision is in the memories of individual Commissioners and staff members. Access to this unwritten catalog is not always possible, at best time consuming for all parties, and becomes less reliable with the passage of time. A cross-reference system of orders and decisions by major issues involved and/or precedents set would provide efficient access to past decisions to allow analysis by staff and decisions by Commissioners to be made consistently from case to case and in accordance with relevant court decisions. It could also reduce application processing and hearing time by allowing any applicant's attorney to review prior decisions and cases which are similar to his/her client's case.

Recommendation No. 10

The Commissioners of the APUC Should restrict their involvement in the administrative function of the agency.

Arthur Young & Co., in their management audit of September 1978, delineated the responsibilities of the Commissioners and Executive Director in the following way: the Commissioners, through the Chairman, should prescribe the limitations of authority of the Executive Director regarding policies, expenditures, and personnel actions; the Executive Director should provide central leadership, direction, administration and control over the Commission's operational and administrative functions within the limits as set out by the Commissioners. We recommend the Commissioners restrict their involvement in administrative matters to setting policy, and delegate to the Executive Director authority for carrying out the necessary actions to employ that policy.

The Commissioners became involved in administrative matters several years ago to carry on the management responsiblities of an Executive Director who was absent for extended periods of time due to illness. There have been several vacancies since that time due to resignations or dismissal of individuals in the Executive Director position, and during the majority of those vacancies, a Commissioner acted as Executive Director. Through discussions with staff and personal observation we learned that the involvement of the Commissioners in administrative functions has extended to times when the Executive Director position was filled. This duplication of authority has confused reporting relationships within the agency and consumed the Commissioners' time unnecessarily.

In addition to being an inefficient use of time, the direct involvement of Commissioners in the daily management of agency operations is inappropriate. Because the staff of

the APUC is a party to most of the formal proceedings heard before the Commission, the Commissioners are prohibited from ex parte communications (discussion of a proceeding without all parties to that proceeding being present). Supervision of staff activities by any Commissioner could, therefore compromise the independence of the staff/Commissioner relationship.

Recommendation No. 11

The APUC should seek to establish separate collocation codes for each section of the Commission.

Allocations and expenditures for all operating costs of the APUC are channelled through a single collocation code. Establishment of separate collocation codes would provide the Commission with an effective management tool for efficient use of funds.

There are competing needs for funds in all object groups and no method of assuring all needs are treated adequately. There are such competing needs, for example, in the travel category. The Commissioners require travel funds for holding public hearings and formal proceedings outside of Anchorage to provide easier access by the affected consumers. They also require funds to participate in meetings held outside Alaska which provide education in utility regulatory processes and information on trends in national policy. Staff financial analysts and engineers require travel funds to perform field audits on utilities seeking certification or a tariff change from the Commission. Commission administration requires travel funds to provide employee training and development. All these needs are of sufficient merit to necessitate budgeting by section to assure no one use depletes funds needed for other uses.

Recommendation No. 12

The Office of the Governor should keep the appointment of Chairman of the Alaska Public Utilities Commission current.

AS 42.05.020(b) states "The governor shall designate one member of the commission as chairman of the commission. This member shall serve as chairman for a term of four years, but may be appointed for successive terms." The term of the present chairman of the APUC expired November 30, 1977 and, to date, a period of 20 months, no new appointment or reappointment to this position has been made.

We recommend that the Office of the Governor appoint a new chairman or reappoint the existing chairman of the APUC as soon as possible and in the future make such appointments in a timely manner.

Subsequent Event

The present chairman of the APUC was reappointed to the chairmanship on July 31, 1979. That term will expire November 30, 1981.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of Commission activities relate to the public need factors defined in AS 44.66.050. These analyses are not intended to be all inclusive, but address those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

The Commission has performed in a dedicated, conscientious manner to ensure that utilities are fit, willing and able to provide utility services, and to regulate them in such a manner as to provide adequate service to Alaskan consumers at the lowest reasonable rates. However, the Commission's effectiveness and efficiency in performing mandated responsibilities have been limited by a burgeoning workload and internal management problems (see Recommendation No. 2 through No. 5, No. 7 through No. 11).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The operation of the Alaska Public Utilities Commission has been impeded by current statutes and regulations. The definition of public utility is too broad and should be limited to allow the Commission to devote its limited time and resources to regulation of utilities of sufficient import. There is also a need for statutory and regulatory amendments to allow for more effective case management and to avoid court appeals of Commission decisions (see Recommendation No. 2 through No. 6).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

The Commission has recommended few statutory changes in the past five years. They have not actively sought any changes which would limit the number or type of utilities which are currently regulated even though aware such an action would improve their effectiveness while still serving the public interest (see Recommendation No. 2 through No. 6).

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

All formal proceedings are properly and timely noticed and open to the public. The Commission has held public hearings and formal proceedings within the service areas of the utilities before them to facilitate public attendance and participation.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

As stated under criteria IV, proceedings are properly and timely noticed and open to the public. Additionally, any interested person or party may intervene in a formal Commission proceeding if their intervention will be conducive to the ends of justice and will not unduly delay the conduct of such a proceeding.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

The Commission adopted regulations in 1973 for informal and formal complaint procedures. Procedures for informal complaints, include a requirement that the complaint be made first with the utility before being filed with the Commission. If the complaint cannot be resolved informally, formal complaint procedures may be used including, if good cause is shown, a formal investigation. The Consumer Protection Section Chief of the APUC estimates that of the approximately 1,500 informal complaints received annually, 2-6 end up as formal complaints. The Office of the Ombudsman received approximately 12 complaints and all were pending action or satisfactorly resolved by the APUC.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

The Commission, prior to granting a Certificate of Public Convenience and Necessity to a public utility, is required to determine that the applicant is fit, willing and able to provide the utility services applied for. APUC employs Utility Financial Analysts and Utilities Engineers to perform the necessary analyses to make this determination. However, recruitment and retention problems with those positions have impeded the Commission's ability to perform those duties (see Recommendation No. 7).

VII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

We found no evidence of hiring practices or Commission appointments that are contrary to the State personnel practices.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

ALASKA PUBLIC UTILITIES COMMISSION REVENUES COMPARED TO EXPENDITURES
Fiscal Year 1978

UNAUDITED[1]

Revenue Collected	$40,174.63
Expenditures	($1,751,317.29)
Excess of Expenditures Over Revenues	($1,712,142.66)

SCHEDULE 1
COLLECTED REVENUES

Revenue Type	Amount	Collection Time
Injunction and Monetary Sanction	$1,000/violation day up to $200,000	When assessed
Civil Penalties	Up to $100/violation	When Assessed
Application Fee	$50.00	Upon Application
Expenses of Hearing	As provided in AS 42.05.651	When assessed
Sale of Public Documents	Varies by type of document	When assessed

Note 1

The records were not audited by us and accordingly we do not express an opinion on them. The source of the revenues was the Prior Year (FY '78) Unrestricted Receipt Balances. The source of the expenditures was the Prior Year (FY'78) Authorization Balances.

APPENDIX B

QUESTIONNAIRE SENT TO OTHER STATES' UTILITY REGULATORY AGENCIES

1. Does your agency regulate:

   a. fixed utilities only? *12%*

   b. fixed and transportation utilities only? *22%*

   c. fixed and pipeline utilities only? *12%*

   d. fixed, transportation and pipeline utilities? *54%*

2. What are the advantages and disadvantages of an agency regulating more than one group of utilities?

   advantages: *centralization of expertise; cost savings; economics of scale; flexibility of staff; less duplication of personnel and functions; none.*

   disadvantages: *hard to employ sufficient staff to cover all utilities, some utilities may be ignored, lack of coordination, none.*

3. Do you feel that the advantages outweigh the cost of maintaining two or three separate agencies?

   Yes *81%* No *9%* No Opinion *9%*

   Comments: *Overall operating cost is considerably less for one agency than for several agencies; favor separate agency to regulate transportation; key is in adequate staff; one agency would expedite and save duplications.*

4. Can a commissioner/board member or administrative officer realistically develop the expertise to render decisions in fixed, transporation and/or pipeline utility cases?

   Yes *88%* No *6%* No Opinion *6%*

   Comments: *If technically trained and experienced staff is available to provide him with the proper background and assistance it will require time and dedication as well as integrity.*

5. If your agency is administered by a Board or Commission:

   a. How many commissioners/board members serve? *3 (60%)*
   5 (31%)
   7 (9%)

   b. How long are their terms? *6 yr. (67%), 4 yr. (21%), 3 yr. (3%), 5 yr. (3%), 8 yr. (3%), 10 yr. (3%)*

   c. Is there a limit to the number of consecutive terms they may serve? *no (97%) yes (3%)*

   (If yes, please state what the limit is.) *12 years*

6. How many full-time staff members are employed by your agency? *average 206*

7. What was your final fiscal year 1978 budget? *avg. $5,480,148*

8. How many of the following types of fixed utilities does your agency regulate? Note: If none, please indicate why (i.e. a. no such utility operates in the state; b. that type of utility is regulated by another state agency; or c. utility is exempt from state regulation).

utility	number	if none, why
electric	*avg. (32 states)=33*	
gas	*avg. (31 states)=20, none: 1 state*	*b (1 state)*
telecommunication	*avg. (32 states)=49*	
sewer	*avg. (30 states)=60, none: 11 states*	*c (11 states)*
water	*avg. (30 states)=167, none: 2 states*	*c (2 states)*
CATV	*avg. (3 states)=36, none: 29 states*	*a (1 state), unspec. (1 state) b (5 states), c (22 states)*
garbage	*avg. (3 states)=526, none: 29 states*	*a (1 state), unspec. (1 state c (27 states)*

9. Are all utilities regulated for the following?

   a. authority to operate — Yes *91%* No *6%* No response *3%*

   b. fair and reasonable rates — Yes *91%* No *9%*

   c. rate design — Yes *94%* No *6%*

   d. service area — Yes *97%* No *3%*

   e. quality of service — Yes *100%* No ____

If no, please explain which utilities are exempt, and from what facet of regulation.

Practices of municipal utilities not subject to our jurisdiction, municipal utilities exempt from rate regulation, mutual and cooperative telephone companies with less than 2000 main stations, gas and electric by franchises, elect coops and municipals, municipal water utilities.

10. Are the following types of utilities regulated for fair and reasonable rates?

a. utilities owned and operated by a political subdivision of the state? Yes *25%* No *75%*

b. nonprofit cooperative corpora tions?

Yes *38%* No *56%** No Response *3%* N/A *3%*

11. If a utility is exempt from economic regulation what mechanism is used to ensure adequate service at reasonable rates?

*The market mechanism, political process, municipal authorities for municipal utilities, REA board members ensure reasonable rates for cooperatives, public pressure on elected officials, city governing body for municipal utilities, local units of government, local board for coops, courts. *members of cooperatives may petition for regulation*

12. Have small utilities been exempted from regulation through adoption of a threshold of gross revenue or output capacity? If yes, please state the amount of threshold.

utility	no	yes	N/A	threshold
electric	*100%*	*0*	*0*	
gas	*94%*	*3%*	*3%*	*10 customers (3)**
telecommunications	*100%*	*0*	*0*	
sewer	*60%*	*9%*	*31%*	*10 customers (3)** *100 customers (2)**
water	*81%*	*16%*	*3%*	*50 customers (5)** *9 customers (4) ** *10 customers (3)** *50 customers (5)** *100 customers (2)**
CATV	*31%*	*0*	*69%*	
garbage	*34%*	*0*	*66%*	
other	*Public Movers 1 response* *Air Conditioning 1 response*			**See question 13 for explanation.*

13. Are there any conditions under which a utility under the threshold for regulation might still be regulated?

(1) upon petition of ratepayers or by legislative action, (2) no, (3) by request of company, (4) if they request regulation or if the Legislature mandates it, (5) if majority of customers petition, upon petition, regulation shall be for one year or so long as the Commission or a majority of customers desire.

14. Is your agency or state legislature currently considering deregulation of any category of public utilities?

yes: 31% no: 69%
transporation, air carriers, charter party carriers, sightseeing and tour buses, warehousemen, water and sewer, household goods, water coops carriers, new PBX systems, radiotelephone utilities, some classes of motor carriers, water carriers and certain types of motor buses; cooperative telephone companies; sand & gravel trucks; public movers & refuse companies.

15. Is there a program used to spotcheck the performance and/ or rates of the utilities through unannounced inspections or audits?

yes: 65% no: 44%
all rate applications, random audits of telecommunications regarding quality of service, financial audits at least once every 2 years, management audits, unannounced safety and service inspections, testing of meters; announced inspections only.

If yes:

(a) How often are such checks made?

Random; varies widely; each months fuel cost is checked; other items are done periodically; annual announced audit of major companies; annually, service and safety more frequently:

(b) What percentage of the regulated utilities are checked each year?

10-20%; 35-40%; majority; between 75-100%; 30-40%; 50-80%; 80% larger utilities 100%, smaller utilities varies; all utilities once yearly.

16. In evaluating a rate application:

(a) What factors does the agency consider in determining a rate base?

Orginal costs, reconstruction costs, depreciation, advances in aid of construction, contributions in aid of construction, limited CWIP, income tax deferrals, materials and supplies, inventory, prepaid items, special deposits and cash working capital; average plant in service, land & property held for future use must meet test of reasonableness and are determined on a case by case basis;

(b) What factors does it exclude from consideration?

Number of responses in ( )

None: (3), customer deposits, advances: (3), plant held for future use: (1) CWIP: (8), contributed property: (2), compensating bank balances: (1), not used or useful: (4), contributions in aid of construction: (3), depreciation reserve: (2), deferred investment tax credit: (2), advances in aid of construction: (2), preliminary land & survey transaction: (1), advertising: (1)

17. For each of the fixed utilities, what does the agency consider to be a fair rate of return on investment:

Utility	rate of return (range)	average
electric	*5.0-10.0 (coops), 8.5-14.5*	*10.87*
gas	*8.5-14.5*	*10.93*
telecommunications	*8.0-14.5*	*10.24*
sewer	*5.0-16.0*	*9.75*
water	*5.0-16.0*	*10.52*
CATV	*13.5-15.0*	*14.06*
garbage	*11.8*	

18. Do you require audited financial statements from all utilities?

Yes *56%** No *41%* No Response *3%*

If yes, how often? *annually: 56%, every rate case: 6%, monthly: 6%*

* *several noted that annual financial statements were required but need not be audited.*

19. Does your staff perform a thorough analysis of rate packages or rate design?

yes: 97%
cometimes: 3%
no: -0-

Note 1

Number of questionnaires sent to other state regulatory agencies	*50*
Number of state regulatory agencies who responded	*32*
Response Rate	*64%*

APPENDIX C

QUESTIONNAIRE SENT TO APUC REGULATED ELECTRIC AND TELEPHONE NONPROFIT COOPERATIVE CORPORATIONS

(1) Are you aware of Senate Bill 133 (attachment 1), and the proposed substitute to that bill (attachment 2) introduced during the current legislative session, which would have exempted nonprofit cooperative corporations from economic regulation by the Alaska Public Utilities Commission?

Yes *100%* No *-0-*

(2) Did you support the passage of:

(a) SB 133 as originally introduced:

Yes *88%* No *12%*

(b) The proposed substitute for SB 133?

Yes *63%* No *25%* No answer *12%*

(3) What do you feel would be the advantages to the utility and its membership of the passage of such a bill ?

Number of responses in ( )
reduction of regulatory cost (7),
reduce time lag, able to adjust rates on more timely basis (5),
cut unnecessary red tape (1),
reduce workload (1),
more realistic revenue estimates (1),

(4) What do you feel would be the disadvantages to the utility and its membership of the passage of such a bill?

added local responsibility, more "heat" on board and management (2)
APUC requires utility to be fair to all consumer classes (1)
lack of ability to establish certified service areas (1)
APUC provides advice on operational & financial problems (1)
none (2)

(5) If you do not support SB 133 or its proposed substitute, are there any changes to the existing statutes or regulations of the APUC you feel should be made?

Yes *25%* No *-0-* No Response *75%*

Number of responses in ( )

(5) Please explain:

APUC should be required to file statement of estimated cost to consumers of any proposed rules: (1)
Change reporting requirements to conform with REA reporting requirements: (1)

(6) If your utility is exempted from economic regulation by the APUC, what mechanism would be used to ensure that your consumers receive adequate service at reasonable rates?

Board of Directors: (5), REA: (5), Members: (5), Management: (3), independent auditor: (1), employment of competent rate consultants: (1), constant computer review of rate of return: (1), National Rural Utilities Cooperative Finance Corporation: (1)

(7) Does this mechanism exist now or would it need to be implemented?

Already exists: (4)
Beginning stages of implementation: (1)

(8) How many members currently belong to your cooperative?

avg. 4576

(9) Please indicate when your last three general membership meetings were held and indicate whether a quorum was constituted for each meeting.

Meeting Date	Quorum					
varied	Yes	*88%*	No	*12%*		
	Yes	*76%*	No	*12%*	No. Ans.	*12%*
	Yes	*76%*	No	*12%*	No. Ans.	*12%*

(10) Please indicate when your last three board of directors meetings were held and indicate whether a quorum was constituted for each meeting.

Meeting Date	Quorum	
varied	Yes *100%*	No *-0-*
	Yes *100%*	No *-0-*
	Yes *100%*	No *-0-*

(11) What has been the cost of APUC regulation for your utility for each of the years listed below:

Year	Actual	Allowed by APUC
1978	*varied*	*same or pending*
1979	*varied*	*same or pending*

(12) What is your current procedure for handling consumer complaints?

investigated by staff, if unresolved referred to general manager, if unresolved referred to board of directors: (6)
investigated by staff, investigated by management if serious, directed to board if general or political in nature: (1)
investigated by general manager, if unresolved referred to board: (1)

(13) How many consumer complaints were received:

(a) Three years ago? *avg. of 6* responses=102*

(b) Two years ago? *avg. of 6* responses=37*

(c) last year? *avg. of 6* responses=60*

* *there were 8 responses, however, 2 stated they do not maintain records of this information*

(14) What is the average length of time from when a complaint is received until it is resolved?

if resolved by employees 0-5 days, by board 30-60 days: (1)
2 days: (1)
0-2 days: (1)
2-3 hours: (1)
usually 2 days, sometimes 1-2 weeks: (1)

(15) Do you believe that the Alaska Public Utilities Commission has operated in the publics best interests?

Yes *37%* No *25%* No Response *38%*

Comments: *APUC does not have proper staff: (1), burden consumers with unnecessary regulatory costs: (1), delaying rate increase requests for maximum allowable time causes serious depletion in member-owners equity and placed coops in precarious financial straits: (2), consumer complaints officer has been helpful: (1)*

(16) Do you have any complaints concerning the service provided by the Commissioners or the staff of the APUC?

Yes *76%* No *12%* No Response *12%*

Please explain: *require excess amount of data: (1), provided misdirection of requirements: (1), takes forever to get anything done: (1), Commission's news releases are often an insult to the integrity and professionalism of the utility: (1), full-time legal council should be retained.*

(17) Additional Comments?

gotten hide bound with rigid regulation: (1); some Commissioners and staff are very dedicated: (1), poorly managed: (1), revolving door employee turnover compromises APUL competence: (1), Management Audit of Commission was waste of money; (1), REA coops are very responsive to their memberships demands: (1)

Note 1

Number of Questionnaires sent to APUC regulated Electric and Telephone Nonprofit Cooperative Corporations	*17*
Number of Responses Received	*8*
Response Rate	*47%*

APPENDIX D

QUESTIONNAIRE SENT TO ATTORNEYS WHO PRACTICE BEFORE THE ALASKA PUBLIC UTILITIES COMMISSION

1. Are there any statutes or regulations that you believe to be obsolete, vague, conflicting, unduly restrictive, and/or inadequate to allow the Commission to effectively and efficiently regulate public utilities in Alaska?

	Number of Responses
no, not that I have come across	2
none, but I believe APUC should regulate municipalities	1
3AAC 48.170-3AAC 48.080(c) are not consistent with laws of Alaska	1
yes, AS 42.05.421 should be amended to strike the word "initial" and require decisions within 6 month period.	1
AS 42.05.030 should be 5-year term	1
AS 42.05.035 probably unconstitutional breach of separation of powers	1
AS 42.05.050 commission members should not provide the expertise	1
other	9

2. Do you believe the Commission's procedures for processing applications, hearings, and issuing final orders are adequate? Inadequate? Please explain.

adequate, however informal conferences could save time	1
adequate, concerns of communities have been handled expeditiously	1
yes	2
3AAC 48.080(c) does not provide due process	1
APUC should be faulted for not requiring pre-hearing conferences in complicated cases	1

wholly inadequate, utilized to serve the convenience of the Commission without re to the interests of the public or the utility	*1*
rate filings based on a cost-of-living, inflation or consumer price index, or reflective of such, should require only administrative review for approval	*1*
where growth is rapid and constant, a year-end test year for determination of rates makes more sense than a 13-month test year	*1*
other	*3*

3. Are complaints against public utilities resolved in a judicious and expeditious manner, and are those utilities found in violation of APUC's laws, rules and regulations disciplined by the Commission?

	Number of Responses
yes	*2*
yes to first part, don't know to second part	*1*
judicious, more time needed whereby minor adjustments could be approved quickly and economically	*1*
cannot comment	*2*

4. Are regulated utilities and/or the general public given;

   a. adequate notice of impending Commission activity?

      Yes *71%* No *29%*

   b. adequate opportunity for input into Commission decisions?

      Yes *86%* No *14%*

5. What evidence exists demonstrating that the absence of regulation and/or the Alaska Public Utilities Commission would be detrimental to the public's best interests?

No reasonable excuse exists for regulating a small, isolated utility to the same extent as one of comparable size in an expanding area. 1

Unregulated monoplies will charge what they can to maximize profits at the expense of the customer 3

Must have separate service areas to avoid duplication of services 2

RCA 1

Commission has saved Alaskans millions of dollars and kept service to a high level 1

6. Are there any types of public utilities which could be deregulated with respect to certification (designation of geographically described service area) and/or economic regulation (regulation of rates, quality of service, and management practices) without affording the public less protection?

Yes *43%* No *43%* No Response *14%*

If yes, please name the type of utility, the type of deregulation (certification and/or economic), and the consequences, both harmful and beneficial.

Utility	Type of Deregulation	Consequences	Number of Responses
small utilities with annual gross revenues less than $500,000	*paperwork*	*less cost to utility less cost to consumers less work for Commission*	*1*
garbage collectors	*100%*	*Beneficial*	*2*
CATV	*all except provisions for safety of public as to installation*	*regulation by contract beneficial, regulation by consumer advocate*	*2*

7. Other comments.

	Number of Responses
The APUC is the best run administrative agency in Alaska, it should be retained in its present form.	*1*
The present Commissions philosophy does not allow any reward or incentive for outstanding efficiency, service, or control.	*1*
The Commission should be commended for its prompt response to utility emergencies in small towns on short notice.	*1*

Note 1

Number of Questionnaires sent to attorneys practicing before the APUC	36
Number of Responses Received	7
Response Rate	19%

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED
OCT 5 1979
LEGISLATIVE AUDIT

October 5, 1979

Mr. Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska

Dear Mr. Wilkerson:

We have reviewed the Alaska Public Utilities Commission's response to your preliminary audit report of the Commission as of August 1, 1979.

We are forwarding the Commission's response for your information. The Executive Branch of Alaska Government; however, reserves the right to make additional reviews and analyses concerning the advisability of combining the Alaska Public Utilities Commission, the Alaska Transportation Commission, and the Alaska Pipeline Commission into a single regulatory commission. Additionally, the Office of the Governor has noted your Recommendation No 12 - to keep the appointment of Chairman of the APUC current.

Sincerely,

Richard A. Smith
State Internal Auditor

RAS/PJA/mjc
Enclosure

JAY S. HAMMOND, Governor

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Phone (907) 276-6222

RECEIVED
OCT 5 1979
LEGISLATIVE AUDIT

October 5, 1979

Mr. Gerald L. Wilkerson
Legislative Auditor
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following is the response of the Alaska Public Utilities Commission to the Performance Review of the Alaska Public Utilities Commission by the Division of Legislative Audit.

Recommendation No. 1

The Alaska Public Utilities Commission, the Alaska Transportation Commission and the Alaska Pipeline Commission should be combined into a single regulatory commission.

The Alaska Public Utilities Commission (referred to hereinafter as APUC or Commission) believes it is appropriate to re-evaluate the merits of a single commission mode of regulating utilities. At this time, however, the APUC cannot unequivocably state that the three regulatory commissions should be combined into a single agency because no documentation that would support that conclusion has been made available to the Commission. The Commission believes it is misleading to make a recommendation of this significance solely on the basis of a comparison of "schemes" used by other states. Certainly the dominant regulatory framework in other states lends credence to the proposition that it is timely to reassess the value to the Alaska public to continue three separate regulatory agencies.

A tabular comparison of various regulatory frameworks is presented to support this recommendation. While informative, the Commission does not believe this analysis is sufficient

documentation on which to base this substantive recommendation. As the analysis indicates, the number of Commissioners has a direct relationship to the number and type of professional Staff. This, in turn, is influenced by its methods of operation, the scope of a Commission's statutory responsibilities, and the number of utilities subject to regulation.

The Commission offers the following comments regarding the advantages postulated by the auditors of a single regulatory agency.

(1) The Commission concurs that a single regulatory agency could result in a reduction in the number of regulatory Commissioners. However, someone must preside at hearings; and, therefore, the establishment of hearing officer positions would be required to offset the diminution in Commissioners. There are jurisdictions that utilize hearing officers to conduct public hearings and to draft proposed decisions for Commissioners' review and determination. The APUC Commissioners hear cases and write substantive orders without the benefit of such Staff* assistance.

(2) Because of the specialization required of the Commission's professional Staff, i.e., expertise in telecommunications, electric, gas, sewer and water utilities, the Commission questions the degree of flexibility that would exist with a combined Staff. The Commission believes that the interchangeability of staff could be limited in practice to emergency-type situations. An analysis of the regulatory responsibilities of the Alaska Pipeline Commission and the Alaska Transportation Commission should provide more factual information in this regard. The Commission does agree that a combined clerical support Staff could provide more flexibility and create a more efficient flow of paperwork.

(3)(4)(5) The Commission believes that joint hearing and reproduction facilities and a shared publications library would provide for more efficient services, not only for a consolidated regulatory body but also for the existing regulatory Commissions. To this end, the Commission has recommended in its last two budgets that the three Commissions be physically co-relocated to a facility that would permit realization of these economies.

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*The average regulatory commission in the United States has approximately 200 Staff members as contrasted with 32 Staff assigned to the APUC.

(6) The Commission does not have enough firsthand experience with sophisticated word-processing equipment to comment on this possible reduction.

The APUC strongly supports the concept that adequate human resources, whether in the form of commissioners, hearing officers or other staff, must be provided if the regulatory duties and responsibilities delegated by the Legislature are to be performed in an efficient and effective manner. Moreover, sufficient resources to perform the job are as important under the existing regulatory configuration as they would be in a prospective consolidation into one agency.

Reliance on outside regulatory formulae to support a merger should also be tempered by recognition of circumstances which make regulation unique in Alaska. For example, the APUC is still actively involved in the certification of utilities, in marked contrast to most jurisdictions in the "Lower 48" which have been fully carved up into utility service areas. This is especially pertinent not only to rural Alaska which is in a developmental stage in the utility arena but also extends to the State's largest metropolitan areas where telecommunications utilities have been the subject of recent certification proceedings. While not commanding the newspaper headlines generated by rate increases, the certification process is critical to the public protection function of regulation because it establishes the foundation for a utility's future service and rates.

The APUC believes that concurrent with the sunset review of the Alaska Pipeline Commission, the Division of Legislative Audit or an independent consulting firm should perform a cost-benefit analysis of combining the three regulatory commissions into one. The study should examine both the existing and alternative regulatory frameworks to identify the potential operational and financial gains and losses to be realized under a single consolidated agency.

If the desirability of implementing this recommendation is affirmed by such an in-depth analysis, the Commission strongly believes that the Legislature should assess the scope of the existing responsibilities of the three regulatory commissions before the decision to merge is made. Should the Alaska Transportation Commission continue to regulate dumptrucks and helicopters? Should the APUC continue to regulate

garbage and cable television utilities? What will be the magnitude of the workload of the Pipeline Commission after the TAPS case is completed? Resolution of these and other policy issues would facilitate the Legislature's efforts to define the appropriate regulatory framework for Alaska inasmuch as a determination of whether one commission would better serve the public interest than the existing three do is, in part, dependent on what responsibilities would reside with the single successor agency.

It may be difficult to divorce the mechanics of a merger from any assessment of its practicality and desirability. In this regard affirmative action to consolidate the existing regulatory agencies should include a detailed implementation plan with a realistic timetable which acknowledges that preservation of pending, current, and past decisions of each Commission is critical to the successful transition to one regulatory agency.

The fundamental purpose of the Alaska Public Utilities Commission is to protect the public by awarding certificates of public convenience and necessity to qualified providers of utility services and to ensure that certificated utilities, except where exempted by statute, provide adequate, efficient, and safe services and facilities to the public at just and reasonable rates, terms, and conditions. These two major functions are broadly defined as certification and economic regulation. It should be noted that the consumer protection function of the Commission falls within the broad definition of economic regulation.

The following four recommendations have a common theme. They propose to reduce the scope of the Commission's duties and responsibilities under AS 42.05 by deregulating certain types and sizes of public utilities. These recommendations reflect the audit team's awareness of the acute strains that the APUC's current workload places on its limited resources and ability to competently perform the responsibilities delegated by the Legislature. Additionally, it represents some of the current thinking regarding the necessity and desirability of regulation. After consideration of these

factors, the auditors identified those utilities where they perceived deregulation would have the least detrimental impact on the Alaskan public.

The Legislature faces the choice, implicit in the audit, of prioritizing the responsibilities of the APUC by deregulation of certain utilities or the allocation of adequate resources to the agency to fulfill its statutory assignments. The ultimate policy determination of which, if any, utilities should be exempt from regulation resides exclusively within the purview of the Legislature as the sole source of the Commission's authority. If the deregulation course is elected, it is the Commission's position that the audit team's priorities are generally acceptable with some specific exceptions. These exceptions and the Commission's view of the potential impact of deregulation in the recommended areas are provided to ensure that the ultimate decision is made with the experience and information of the APUC in concert with input from the private sector and the consuming public.

Recommendation No. 2

AS 42.05 should be amended to allow the Alaska Public Utilities Commission to cease all certification and regulation of cable television.

The Commission believes that the definition of telecommunications as found in AS 42.05.701(8) mandates the certification and regulation of cable television (CATV).

The Commission believes that certification should be required for CATV utilities providing service to 10 or more customers. This provides certain minimal protection to the public with respect to the fitness and ability of the serving utilities as more fully discussed in the response to Recommendation #5. More importantly, certification is necessary to assure the orderly development of basic telecommunications services throughout Alaska in light of nationwide technological developments and regulatory trends.

Current legislation before Congress and a more liberal regulation policy by the Federal Communications Commission indicate that telephone companies will shortly be in the position to offer broadband communications* which could

*Broadband communication includes the full range of communication information including, but not limited to, basic telephone, data, and television.

include facilities for television distribution. Ultimately, basic telephone and television service could become so commingled that the economic viability of regulated communication services could be affected.

In some jurisdictions, municipalities award a franchise to a CATV utility. While on the surface this appears to be an attractive alternative to state regulation, the record in recent CATV certification proceedings involving Anchorage and Fairbanks indicates that in the "Lower 48" there has been political abuse of this process and that municipalities which do not have technical and rate-making expertise are unduly burdened by the responsibility to assess which applicant best serves the public interest. In place of economic regulation, municipal bodies have in some instances substituted a shortening of the franchise period, hoping to influence the franchise holder to charge reasonable rates and provide adequate service -- a practice that could backfire and leave the consumer without any service.

The APUC has determined that the public interest is not necessarily served by economic regulation of small cable television utilities and has exempted small CATV's from regulation in a number of instances. These are Eielson Air Force Base, Metlakatla, Craig, Klawock and Thorne Bay. While independently assessing the "nonessential" quality of cable television services, the Legislature should be aware that the APUC files are replete with complaints against CATV utilities, particularly from rural parts of Alaska where there is a captive audience with no alternative form of entertainment and where the entities providing the service have their base of operations outside the State of Alaska.

Recommendation No. 3

AS 42.05 should be amended to allow the Public Utilities Commission to cease certification and regulation of those utilities furnishing collection and disposal service of garbage, refuse, trash, and other waste material.

The Commission supports the elimination of regulation of garbage utilities from its responsibilities and agrees with the economic justification articulated by the sunset auditors.

The Commission would be remiss, however, if it failed to apprise the Legislature of its concerns regarding deregulation

of this public utility service. Based on Commission experience there is a need for some governmental entity to oversee garbage, refuse and disposal operations. Garbage and refuse disposal has long been considered an essential public health and sanitation service, more frequently than not owned, operated or contracted for by municipal governments. The impact of deregulation in this area would be felt primarily by a small percentage of consumers residing outside municipal boundaries. The Commission believes it would be in the public interest to ensure that the municipalities have sufficient extraterritorial jurisdiction under AS 29.48.037 and AS 29.48.040 to oversee the entirety of these operations.

The Commission would also point out to the Legislature that the Department of Environmental Conservation (DEC) currently issues permits for sanitary landfill use and promulgates regulations governing solid waste management. In this regard, the Legislature may wish to consider the DEC as an alternative to municipal regulation of garbage and refuse. The adequacy and availability of a sanitary landfill to a garbage utility is frequently a significant problem which has been brought to the Commission's attention. Because of DEC's current responsibilities in this area, it is appropriate to consider this alternative which would provide end-to-end regulation of garbage utility services.

If a legislative determination is made that garbage utilities should come under the jurisdiction of a state regulatory commission, it may be more in keeping with transportation regulatory practices for the Transportation Commission to resume this function.

Recommendation No. 4

AS 42.05 should be amended to allow non-profit telephone and electric cooperatives to petition for withdrawal from APUC economic regulation.

The Alaska Public Utilities Commission will concur with this recommendation. However, it is the Commission's experience that consumers of electric and telephone cooperatives frequently perceive little difference between co-ops and other public utilities, even though the members own the business and elect the board of directors. The Commission believes that if AS 42.05 is amended to incorporate this recommendation, it would be desirable to promulgate regulations establishing

an orderly procedure for withdrawal from economic regulation by cooperatives.

To further expand AS 42.05.711(b) to allow cooperatives that have withdrawn from economic regulation to subsequently return to the full regulatory jurisdiction of the Commission, while a desirable safeguard of the public interest, could have a detrimental effect on the ability of the APUC to administer and finance its on-going functions. For example, relevant Commission experience is the refusal of the Rural Electrification Administration to provide additional loan monies to the Tlingit-Haida Regional Electric Authority (THREA) until it submitted to APUC jurisdiction. THREA acceded to the jurisdiction of the APUC in December, 1978, because of its financial crises. Significant concerns of the THREA ratepayers and the mayors of the respective villages in which the utility is located has required the Commission to expend dollars for consultant services that would otherwise have been available to fund other existing responsibilities of the agency. Realizing that the decision to return to economic regulation will likely occur only when the cooperative is experiencing significant difficulty, the Commission believes it would be necessary and appropriate to minimize any impact on its existing workload by promulgating regulations governing reinstatement of full regulation after such an election.

It should also be noted that an unregulated telephone cooperative could cause unnecessary expansion of toll facilities of the long lines carrier. A local telephone cooperative not only has an impact on its primary customers but on those who utilize one or two communication networks desiring access to the local exchange. For example, a small deficiency in an unregulated telephone central office switch can deny access to 10 percent of incoming toll calls. It is uneconomical to have a telephone call cross the lower 48 states and be transmitted to the satellite and an Alaska terrestrial facility only to be denied at the terminating central office.

Recommendation No. 5

AS 42.05 should be amended to exempt from economic regulation all utilities with annual gross revenues not exceeding $100,000.

The Commission concurs with this recommendation.

However, the Commmission believes it is in the public interest to continue to require certification of all utilities providing service to 10 or more customers, irrespective of annual gross revenues.

A certificate of public convenience and necessity from a qualified independent agency assures the consuming public that a utility is fit, willing and able to provide service. In addition, a certificate provides economic protection to the small business from unauthorized or potentially ruinous competition. The Commission believes that certification is particularly important to protect the public interest when a small utility will be physically tied to a larger utility network, such as the case of a local exchange telephone company interconnected to the long lines telecommunications carrier or an electric grid system connecting more than one power utility.

Based on the APUC's 1978 Annual Report, 13 utilities currently subject to economic regulation would become exempt if this amendment were approved with the $100,000 cutoff level. The majority of the 13 utilities are small water companies which historically have generated numerous consumer complaints. These complaints have required a significant commitment of time by the APUC Consumer Protection Section for its investigation and possible resolution and by Commissioners and Staff in public hearings. The Commission would be remiss if it did not point out to the Legislature that the volume of complaints received from the consumers of these relatively small utilities indicates reliance on the public protection provided by regulation for adequate service. Because water service is a necessity, some entity, be it legislative or administrative, will inherit the consumer protection function that the APUC has provided.

The comments of the APUC's Chief of Finance are germane and the Commission believes they should be drawn to the attention of the legislature:

"Water bills have a tendency to be lower than electric or telephone. Therefore, I question whether a gross revenue standard is a fair reflection of the number of people involved. I do not believe the same gross revenue cutoff should be applied to all types of utilities. I think the deregulation of electric and telephone under $100,000 gross revenues is a good recommendation. Water and sewer should have a different standard.

Some of our most difficult and demanding cases are water utilities. The filings are often poor and inaccurate and accounting records are often nonexistent or in 'shoe-boxes.' We truly protect the public in our review of these utilities. Any given case may require a great deal of time on our part, but I feel it is time well spent. Unlike garbage collection, water service is definitely a necessity."

Recommendation No. 6

The statutes and regulations governing the Alaska Public Utilities Commission should be revised.

The Commission agrees that its statutes and regulations should be revised. The following comments are offered in response to the specific examples delineated by the auditors.

(1) The two cases cited by the auditors "mix apples and oranges." In one, Docket U-75-95 a Commission decision has been upheld in Superior Court that disallowed unamortized rate case expense in a utility's rate base. At issue in the other, Docket U-76-66, was the protection of the public from duplicative utility expenses. Both of these issues are matters of regulatory policy over which the APUC needs discretion and flexibility to respond to current theories and to individual cases.

The Commission believes, however, that regulations establishing guidance for supporting documentation required to justify both internal and external rate case expense are necessary and desirable. The Commission's posture for four years has been reactive. Unfortunately, its workload, mandated by other statutory requirements, has preempted the time necessary to notice, consider and adopt regulations that would allow the regulatory process to function more efficiently.

(2) The Commission concurs that the promulgation of industry performance standards for all regulated utilities is necessary and desirable, but it is also a function of available resources to establish the standards and to enforce them. At the present time the APUC has no operational budget to enforce the existing telephone service standards.

(3) The Commission has requested clarification of its

statute regarding the transfer of certificates of public convenience and necessity. (HB675, 1978 Session.) More interest was generated in the existing statutory ambiguity as a result of PACOM's announced intentions to acquire a controlling interest in RCA ALASCOM. However, the statute remains; and, to date, affected utilities have acceded to Commission jurisdiction in this matter in accordance with the Commission's interpretation of its statute and regulations. Nonetheless, the Commission continues to support clarifying legislation.

(4) The Commission plans to eliminate the discrepancies between its statute and regulations by January 1, 1980.

Recommendation No. 7

The APUC should seek upgrading of salary levels for professional support staff.

There is no question that the most frustrating, expensive and time-consuming problem in the Commission's operation has been the vacancy factor and turnover of its professional Staff as a result of the compensation level.

A salary survey performed by the Division of Personnel in 1977 compared salaries of the Commission's professional Staff to salaries paid by regulatory commissions in other states with a cost-of-living additive. This did not and does not consider reality. The Commission loses its professional people to consulting firms and utilities operating in Alaska, not outside of Alaska. In addition, the Commission has experienced turnover because other State agencies offer a higher salary for the same qualifications and experience. Effective protection of the public interest and efficient utilization of its financial resources dictate that the APUC compensate its professional Staff at a level which attracts and retains qualified and experienced personnel.

Recommendation No. 8

The APUC should implement a time management system.

The Commission concurs that a time management system is a useful administrative tool. The Commission's experience in filling successive vacancies in the Executive Director position has not allowed institution of such a system to date. However, the Commission anticipates that the new

administrative Staff will implement such a system as rapidly as time, knowledge, and experience permit.

Recommendation No. 9

The APUC should develop a cross-reference system for Commission orders and decisions by the courts.

The cross-reference system suggested by this recommendation is desirable and necessary. With adequate funding the computer capability of the Commission could provide the foundation of a cross-reference system for current Commission actions. To recover the decisions of the first eight years of the Commission requires time and budget that is non-existent at present. The Commission plans to dedicate a portion of the time of its newly classified paralegal position to this assignment.

Recommendation No. 10

The Commissioners of the APUC should restrict their involvement in the administrative function of the agency.

The theory behind this recommendation is sound but its strict application must be tempered by reality. As one Staff section head stated in response to this recommendation, "Until we have written policies, a topical reference system and a knowledgeable, interested, hard-working executive director, I don't see how the Commissioners can be expected to restrict their involvement in the administrative function of this agency."

It is the goal of the Commissioners to be relieved of their direct involvement in the administration of the APUC. History dictates this is an evolutionary process. Reality dictates that the Commissioners are ultimately responsible for the public perception of the APUC. Their oversight responsibilities and input in administrative matters will continue as an informative tool for the Staff's managers.

It should be noted that the Commissioners have no independent professional staff and must rely on existing staff personnel for technical expertise and advice only when it does not compromise the independence of the parties in proceedings.

Recommendation No. 11

The APUC should seek to establish separate collocation codes for each section of the Commission.

It may be that the implementation of this recommendation is desirable.

The Commission does have some reservations in this regard due to the small size of its sections, ranging from one to six people. In the past the budget has been earmarked to the workload confronting the Commission. In most proceedings at least two staff sections, the Commission's legal personnel and the Commissioners are involved. Budgeting has been a matter of compromise, cooperation, and re-prioritizing to address the situation at hand.

The Commission will explore with the auditors the perceived benefits to be gained through section collocation codes.

COMMENTS ON ANALYSIS OF PUBLIC NEED

II. "There is also a need for statutory and regulatory amendments to allow for more effective case management and to avoid court appeals of Commission decisions (see Recommendation No. 2 through No. 6).".

It is overly simplistic to assume that statutory and regulatory amendments will eliminate court appeals of APUC decisions. Regulatory and administrative law are evolutionary elements in the system of common law applicable to Commission proceedings. Also, the volatility of regulatory theory and policy combined with the likelihood of a dissatisfied party is conducive to litigation in some instances. Given the nature and scope of APUC activity during recent years, there has been a relatively small number of Commission orders that have been appealed to the Superior Court.

An appeal of a Commission decision, per se, is not an undesirable result of Commission action. In certain instances it is in the public interest to have the case law and statutes clarified and amplified through the appeal process.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

The APUC has been actively involved in reacting to substantive

pieces of legislation proposed by others in the past few years. In addition, the Commission has served as a resource to both the Gcvernor's office and the legislative branch of government in the energy and telecommunications fields. And, it well may be more fruitful for deregulation recommendations to come from without rather than from within the Commission.

The Alaska Public Utilities Commission believes that the audit conducted by the Division of Legislative Audit was a constructive exercise for the Commission and commends the auditors for the performance of their responsibilities in a thoughtful and unobtrusive manner.

Respectfully submitted,

Gordon J. Zerbetz, Chairman

Marvin R. Weatherly, Commissioner

Carolyn S. Guess, Commissioner

Susan M. Knowles, Commissioner

Stuart C. Hall, Commissioner

Supreme Court
State of Alaska

CHIEF JUSTICE
ROBERT BOOCHEVER

JUSTICES
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN
EDMOND W. BURKE

POUCH U
STATE COURT AND OFFICE BUILDING
JUNEAU, ALASKA
99811
907-463-3410

April 15, 1977

The Hon. Ed Willis
Alaska Senate
Pouch V
Juneau, Alaska 99811

Re: Bell Telephone. v. A.P.U.C.
Superior Case No. 76-2838

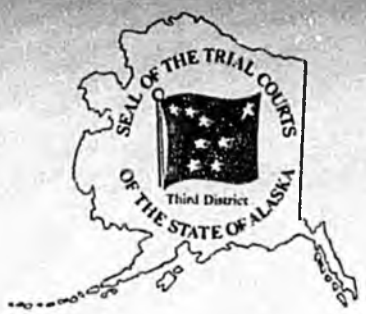
Dear Senator Willis:

I have now received a report from Presiding Judge Moody pertaining to the above-entitled case. I am enclosing the a self-explanatory copy of Judge Moody's letter and a copy of Judge Arnold's letter to Ms. Thoms. Similar inquiries to that of Ms. Thoms were received from other residents of Eagle River, and it is my understanding that each has been answered in full.

Thank you for calling this matter to my attention.

Sincerely yours,

Robert Boochever
Chief Justice



Trial Courts
State of Alaska
THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA 99501

RALPH E. MOODY
Presiding Judge

April 12, 1977

Honorable Robert Boochever
Chief Justice, Alaska Supreme Court
Pouch U, State Court & Office Building
Juneau, Alaska 99811

Re: Bell Telephone v. A.P.U.C.,
No. 76-2338--Administrative Appeal

Dear Mr. Chief Justice:

Only after considerable investigation were we able to reconstruct what has, or rather, what has not happened in this particular case.

From the attached copies, you can see that we have answered every inquiry, with the exception of Senator Willis' which was addressed to you, explaining the situation.

In addition to insuring no more unnecessary delays in this particular case, I have directed the Area Court Administrator to research every pending administrative appeal to see if others may need special attention at this time.

Although it appears that the court was, in part, responsible for this inexcusable delay, it would not have occurred if the attorneys had actively pursued an early disposition.

We are now working under the activity and pressures of over 8,000 pending civil cases in the Anchorage Trial Courts, and each day that number increases. Nevertheless, we will certainly try to prevent a reoccurrence of this type of problem.

Sincerely,

Ralph E. Moody
Presiding Judge

REM:dpd

Enclosures 7

cc:
Area Court Administrator

Trial Courts
State of Alaska
THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA 99501

JAMES E. ARNOLD
Area Court Administrator

April 7, 1977

Ruth J. Thoms
Box 236
Eagle River, AK 99577

Dear Ms. Thoms:

I will commence by apologizing for the delay in answering your letter of March 13, 1977 to Mr. Arthur Snowden, II, which was referred to me. The delay was caused by my investigating and determining just what happened in this particular case.

I have found that Bell Utilities and Development, Inc. appealed from a decision of the APUC denying it a rate increase. The notice was filed on April 13, 1976. On April 26, 1976, Judge Lewis granted Bell a preliminary injunction allowing it to collect the increased rate pending the disposition of the appeal. Bell was ordered to deposit the collected increase in a special interest-bearing account.

On April 26, 1976, Judge Lewis signed an order setting administrative appeal procedures, dealing principally with the preparation of the agency record for the Court's review. Paragraph 3 of the Order required the record to be filed with the Court within sixty (60) days of the service of the Order. This Order was served by mail on May 5, 1976.

For reasons that do not appear in the Court file, the agency record was not delivered to the Court until December 3, 1976. Bell also supplemented the record by filing additional documents on January 10, 1977.

Judge Lewis retired in February 1977, and through error and the enormous press of the business of the Court, this matter lay unnoticed and unattended until you, and other interested citizens, brought the matter to our attention.

Upon learning of the problem, I requested and obtained authority from the Chief Justice for an assignment for Judge Lewis to return and complete

this matter. The matter has been scheduled and calendared before Judge Lewis on April 12, 1977 at which time I presume he will issue an Order setting a schedule for briefing and allowing the parties to notice the matter for oral arguments, if they so desire.

The Presiding Judge and I will monitor the future progress of this matter, and will insure that there are no more unnecessary delays in a resolution of this dispute.

Please contact me if I can be of any further assistance in this or any other matter.

Sincerely,

James E. Arnold

James E. Arnold
Area Court Administrator

JEA:cm

cc: Chief Justice Boochever
Presiding Judge
Arthur H. Snowden, II
Judge Lewis

April 19, 1977

Honorable Robert Boochever
Chief Justice, Alaska Supreme Court
Pouch V, State Court & Office Building
Juneau, Alaska 99811

Dear Chief Justice Boochever:

I wish to thank you for investigating the delay in the resolution of Supreme Court Case 76-2838. I sincerely appreciate your prompt and effective response to my request; and I am sure all of the affected residents of Eagle River also appreciate your effort.

Sincerely,

Ed Willis

Ed Willis
Senator

EW/amk

STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

JAY S. HAMMOND, Governor

1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Phone (907) 276-6222

March 24, 1980

Senator W. E. "Brad" Bradley
Chairman, Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

As a follow-up to the Sunset Review of the Alaska Public Utilities Commission I am enclosing supporting documentation for additional Commission staff in order to carry out our existing responsibilities in a timely manner.

As the audit verified, the present level of staffing is inadequate to meet the responsibilities mandated to the Commission under AS 42.05. Testimony from utilities and ARECA during the public hearings of both the Senate and House Commerce Committees support this fact.

To summarize the contents of the enclosed package, 15 additional personnel would be needed if the APUC is to continue its ongoing responsibilities in a more responsive and efficient manner, i.e., the way "we would like to do the state's business". These personnel would be assigned to the following sections:

Engineering - (4)

- Engineer II - cable television
- Engineer II - energy
- Engineer I - energy
- Engineer I - telecommunications

Utility Financial Analysts - (3)

- UFA III
- UFA I
- UFA I

Tariff Analyst - (1)

TA III - (new classification)

Communications Carrier Section - (3)

Economist II

Research Analyst II

Clerk Typist III

Administrative Support for above personnel - (4)

Word Processing Supervisor

Word Processing Operator

Clerk Typist III

Clerk Typist I

The approximate salaries of these individuals is $603,000. Our current budget which is before the Finance Committees is approximately $1.6 million. This does not include an increase to raise the professional staff salaries to a comparable level; if that occurs, and the Commission is optimistic that it will, an additional $60,000 would be added to our current budget.

In order to give your committee an idea of the impact of the deregulation recommendations, the Commission provides the following observations: (all elimination of positions refer to the 15 additional positions and not existing positions)

Sunset Recommendation 2 - total deregulation of cable-television utilities: - eliminate one engineering position.

Sunset Recommendation 3 - total deregulation of garbage and refuse utilities: eliminate one financial analyst.

Sunset Recommendation 4 - deregulation of telephone and electric cooperatives: if the 12 electric cooperatives and 7 telephone cooperatives elected deregulation by September 1, 1980, eliminate 1 financial analyst and 1 Engineer II.

Sunset Recommendation 5 - economic deregulation of all small utilities grossing less than $100,000: This would not materially affect personnel requirements.

Whether or not which, if any, adminstrative support positions could be eliminated would depend on the implementation of Sunset Recommendations #2 - #5.

In summary, 4 of the 15 additional professional personnel would not be required if the legislature deregulated cable-television, and garbage, and if all REA co-ops elected deregulation by September 1, 1980.

Sincerely,

Carolyn S. Guess
Commissioner

Enclosure
CSG/rt

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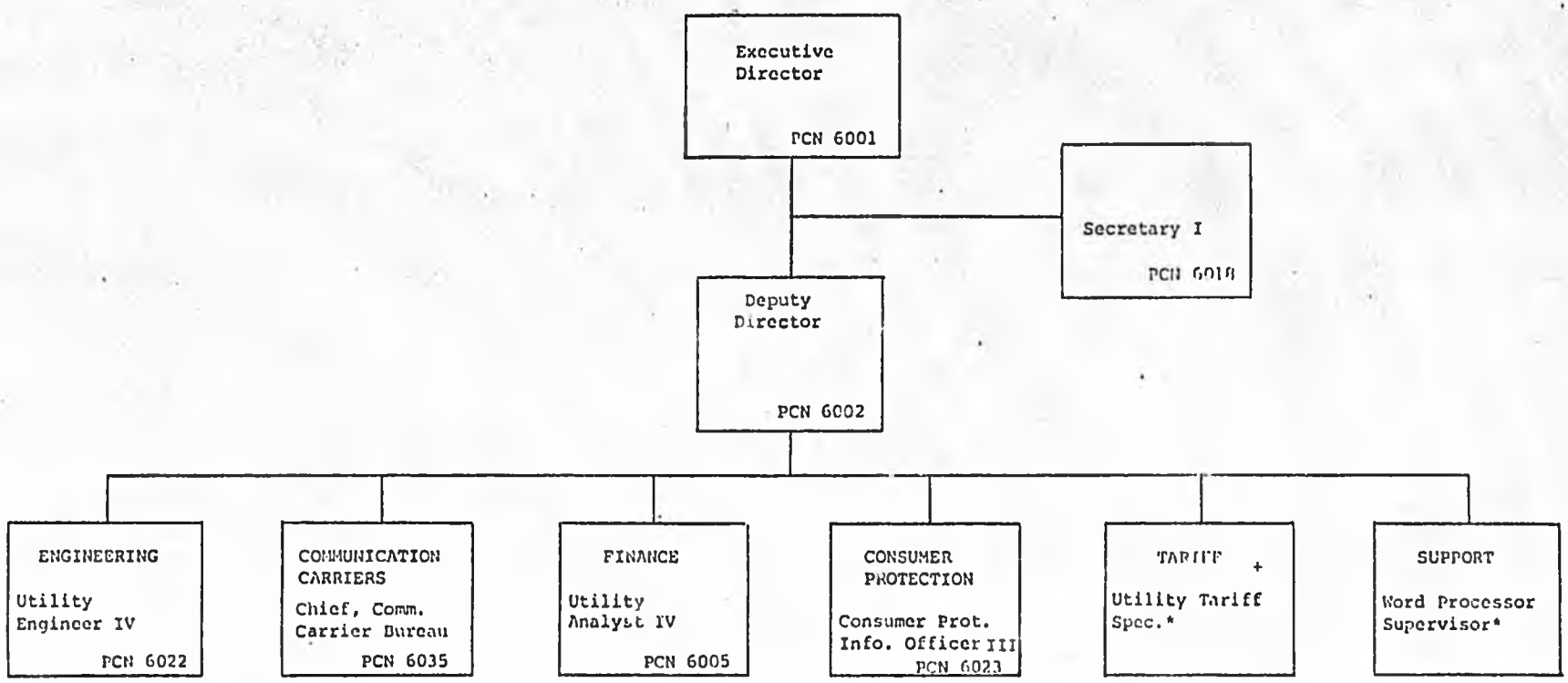
ALASKA PUBLIC UTILITIES COMMISSION

ALLOCATION OF GOVERNORS BUDGET
FY 81
(In Thousands)

		Commissioners	Administration	Engineering	Communications Carriers	Finance	Tariff	Consumer Protection	Total
100	Personal Services	$352.9	$232.7	$300.3	$46.6	$255.5	$76.7	$122.1	$1,386.8
200	Travel	15.0	2.8	16.3	6.4	16.1		1.5	58.1
300	Contractual Services	49.2	112.9	7.8	3.3	9.9	4.5	17.1	204.7
400	Commodities	2.5	3.7	1.7	1.0	1.7	1.0	3.0	14.6
500	Equipment		5.4	1.0		1.6		2.0	10.0
	Total	$419.6	$357.5	$327.1	$57.3	$284.8	$82.2	$145.7	$1,674.2

ALASKA PUBLIC UTILITIES COMMISSION

STAFF ORGANIZATION CHART

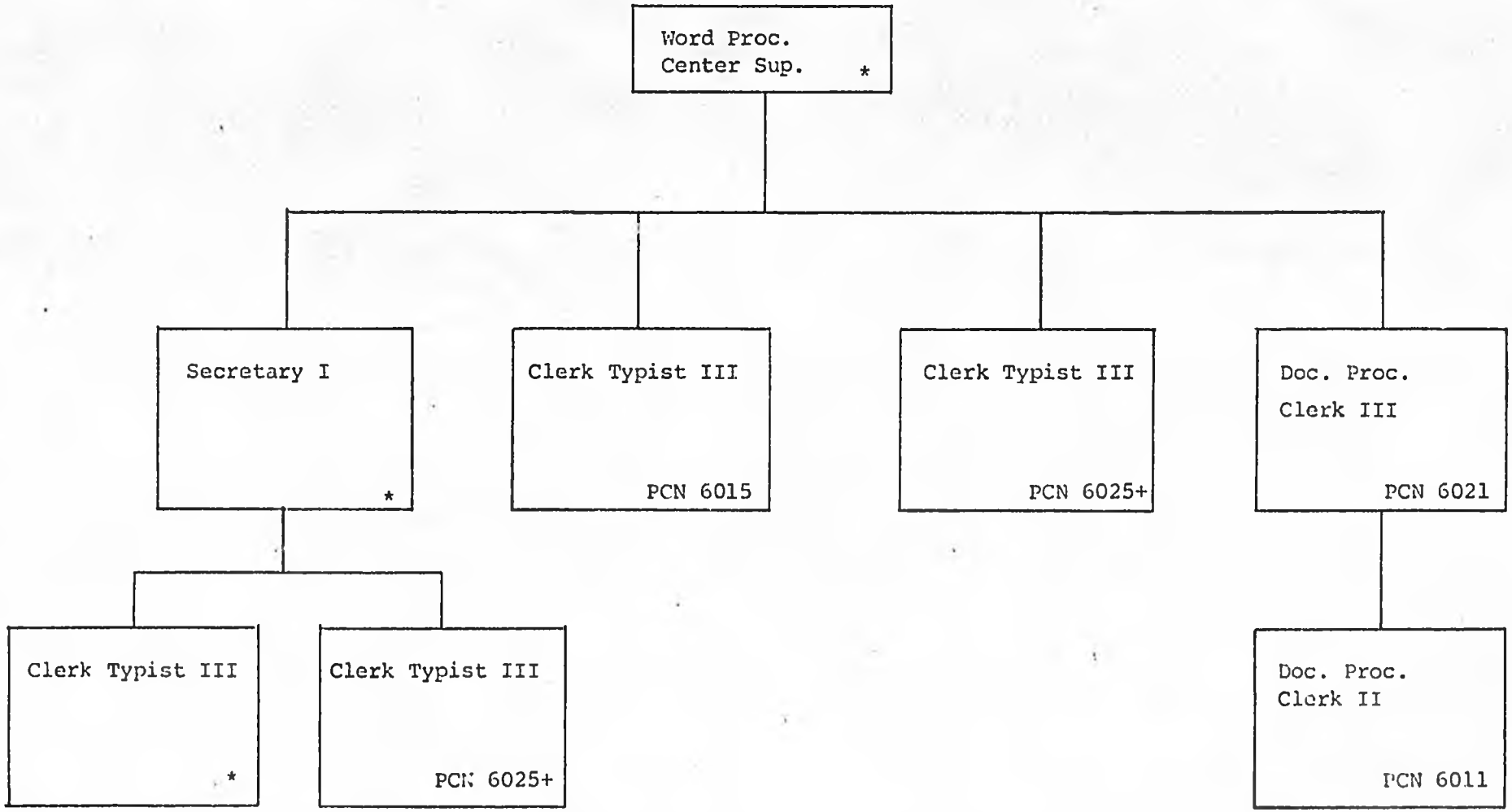


*New position

+New classification requested

ALASKA PUBLIC UTILITIES COMMISSION

SUPPORT ORGANIZATION CHART



*New position requested
+Permanent 1/2 time position

EXECUTIVE DIRECTOR
ADMINISTRATION
FY 81 BUDGET
(In Thousands)

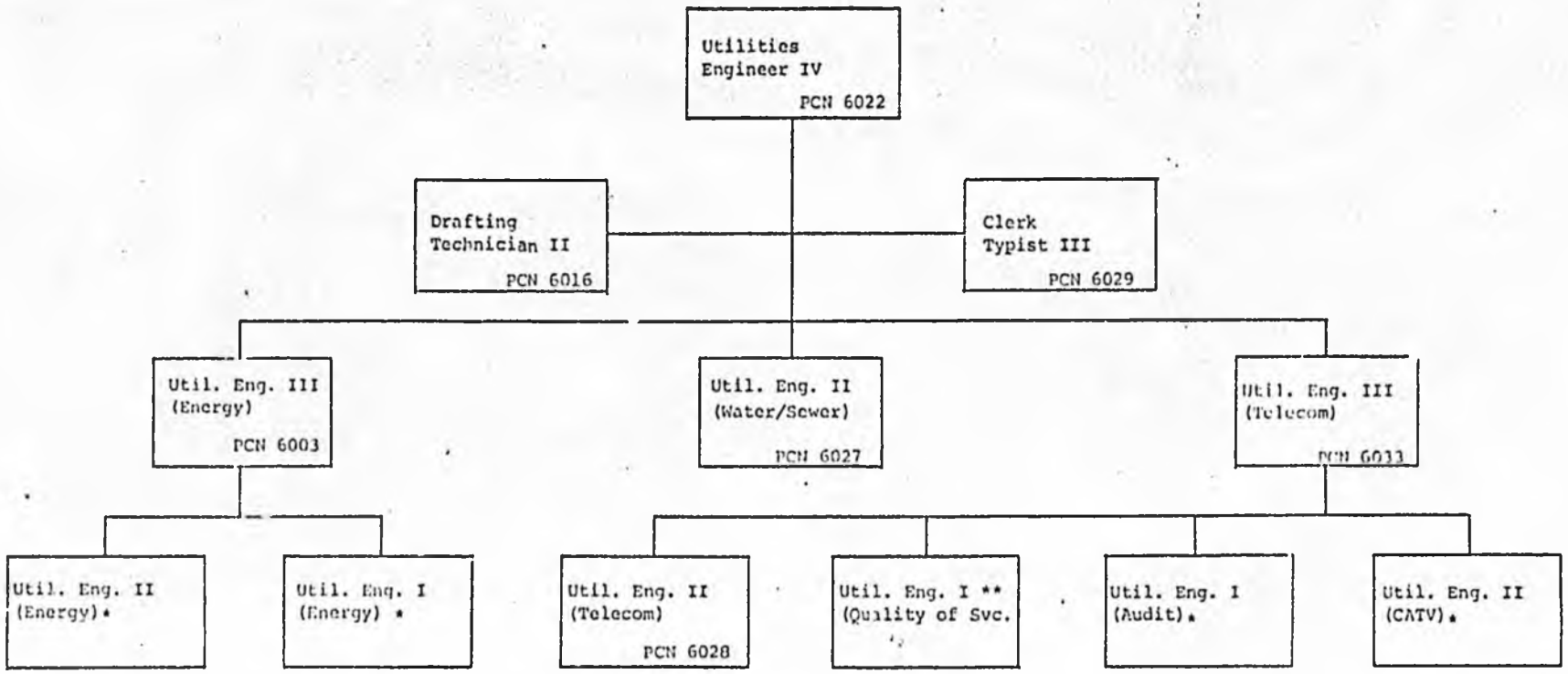
		Allocated FY 81 Budget	Comparable Salary Increment		Adequate Staff Increment	Adjusted FY 81 Budget
100	Personal Services	$232.7	$	(1)	$79.4	$312.1
200	Travel	2.8				2.8
300	Contractual Services	112.9		(2)	1.5	114.4
400	Commodities	3.7		(3)	1.5	5.2
500	Equipment	5.4		(4)	2.0	7.4
	Total	$357.5			$84.4	$441.9

(1)	Word Processing Supervisor	$25,373
	Word Processing Operator	19,883
	Clerk Typist III	18,243
	Clerk I	15,944
		$79,443
(2)	Maintenance of Equipment	$ 1,000
	Training Fees	500
(3)	Office Supplies	$ 1,500
(4)	Office Equipment	$ 2,000

B. Engineering Section

- Organization Chart
- Principal Programs
- Adjusted FY 81 Budget

ENGINEERING ORGANIZATION CHART



*New position requested
**New position requested in Governor's FY81 Budget Request

Principal Programs in Engineering

Rate Base

1. Audit Continuing Property Records and determine whether plant is used and useful.

This involves auditing on a sampling basis and requires the use of layout drawings and staking sheets to determine the actual location of the equipment. Physical testing of telephone equipment (amplifiers, etc.) may be required to assure that particular equipment is actually in use.

2. Determine if rate base is reasonable or unduly inflated due to poor decisions.

Work done on occasional basis at the Commission has revealed that some utilities do not have sufficient control over the rate base. Examples include: 1) Plans based on outdated forecasts done in the lower 48 which also ignored higher Alaskan labor rates have resulted in uneconomical additions to plant and 2) projects placed in limbo before they materialize accumulate excessive engineering labor hours before they became active.

3. Audit of Work Orders and associated accounting.

This is necessary to establish the reasonableness of material, engineering, labor, supply and overhead charges to determine the proper allocation between capital and expense costs, and to insure prompt capitalization and retirement of property.

4. Review depreciation rates and studies.

In many locations of Alaska, depreciation rates may differ from industry norm due to the unique conditions encountered.

Rate Design/Tariffs

1. Review allocation studies.

This involves detailed studies of equipment and of the effort involved to put it into service which will determine a fair and reasonable allocation of charges to the various types of services offered by utilities. In telecommunications utilities tend to assign excessive costs to noncompetitive services.

2. Review reasonableness of material, engineering and labor rates used to develop individual tariffs. Work is similar to that described in 1 above and may include the witnessing of actual installations.

3. Approve portions of tariff text that is related to equipment and engineering.

Quality of Service

1. Develop and update service standards.

To date, only telecommunications service standards have been promulgated (3 AAC 52.200-3 AAC 52.340). Standards should be developed for electric, water/sewer, and other utilities. Once developed, standards must be updated to keep current with changing conditions.

2. Field Testing

Only actual on site testing can determine the quality of service provided. It is planned to have an Engineer I "on the road" about 40% of the time who will use specialized test equipment and will audit outage logs to determine the level of service provided by utilities. The engineer will also analyze service problems and determine whether they are caused by faulty or insufficient equipment or poor management control. Emphasis will be placed in telecommunications which is particularly sensitive to service problems where localized minor problems often affect the entire network. For example, poor operator answer time, aside from irritating customers, causes needless use of long distance circuits for the sole purpose of ringing the operator. This in turn distorts usage data and leads to major expenditures for unnecessary equipment additions. Another example is the underprovision of low cost terminal equipment which causes backups in the satellite network.

3. Review of service reliability and contingency plans. Age and reliability of primary and backup equipment will be considered to determine their adequacy. It is planned to study the economic feasibility of providing equipment diversity. Commission involvement seems also necessary to encourage utilities to develop and maintain contingency plans for emergency situations.

4. Review adequacy of system design.

On site review of existing and planned additions to facilities frequently reveal bottlenecks and weak spots which require urgent correction. Beside on site review, it is planned to maintain usage trend data of principal equipment and facilities to pinpoint potential deficiencies.

5. Test accuracy of long distance billing.

Long distance billing is performed by equipment that is integral with central office switching machines. For this reason, the testing of the accuracy of this billing lies with the APUC rather than the Weights & Measures Section.

6. Investigation of Quality of Service Complaints.

This work consists in conducting special investigations related to specific customer complaints.

Management Review

1. Evaluation of Utility Construction Programs.

Construction programs will be reviewed to determine whether they are adequate to meet current and future service needs. Work will consist in ferreting out weak points and in determining whether plans are compatible between utilities. Included will be discussion with utilities whether corrective action is practical and a review regarding practical implementations of new or alternate technologies (e.g, energy sources). It is expected that economic studies will be made or reviewed where alternate courses of actions are possible. It is believed that Commission review of construction programs is especially necessary when such programs are dictated by parent companies in the lower 48 without much regard or appreciation of Alaskan needs.

2. Productivity Studies.

Labor costs and productivity will be examined for reasonableness. This will include a comparison of productivity rates between companies and include a careful review of cases where productivity rates in Alaska deviate from those in the lower 48.

3. Maintenance Programs.

Utility maintenance programs will be evaluated through examination of records and routine maintenance procedures.

4. Investigation of Management Troublespots.

Programming is now underway to establish computer auditing of utility annual reports. It is planned to have computerized ratio and trend analysis pinpoint possible management trouble spots which subsequently will be investigated (e.g., strong deviations from the mean of General & Administrative expenses per customer; excessive uncollectibles per customer, etc.).

Certification/ ransfers

Applications for, or transfers of a certificate of public convenience and necessity require an investigation in the applicant's fitness, willingness and ability to operate the contemplated utility service. Engineering applies this criterion to the review of the applicant's plans, of his management, engineering and operational strengths, and coordinates with the finance section in determining financial fitness.

Special Projects

These will primarily consist in the establishment of new methods and procedures for the engineering section.

ENGINEERING, ENVIRONMENTAL PROTECTION
AND PLANNING SECTION
FY 81 BUDGET
(In Thousands)

		Allocated FY 81 Budget	Comparable Salary Increment		Adequate Staff Increment	Adjusted FY 81 Budget
100	Personal Services	$300.3	$16.2	(1)	$139.7	$456.2
200	Travel	16.3		(2)	8.3	24.6
300	Contractual Services	7.8		(3)	20.8	28.6
400	Commodities	1.7		(4)	.2	1.9
500	Equipment	1.0		(5)	3.8	4.8
	Total	$327.1	$16.2		$172.8	$516.1

(1)	Engineer II - CATV	$ 38,592
	Engineer II - Energy	38,592
	Engineer I - Energy	31,258
	Engineer I - Telcom	31,258
		$139,700

(2)	Staff Audits	$ 2,500
	NARUC School	1,200
	NARUC Meetings	1,400
	Industry Schools	1,200
	Compliance Investigation	2,000
		$ 8,300

(3)	Postage and Telephone	$ 2,400
	Office Space	16,500
	Maintenance of Equipment	1,000
	Training Fees	900
		$ 20,800

(4)	Office Supplies	$ 200

(5)	Office Equipment	$ 3,800

C. Communication Carrier Section

- Organization Chart
- Principal Programs
- Adjusted FY 81 Budget

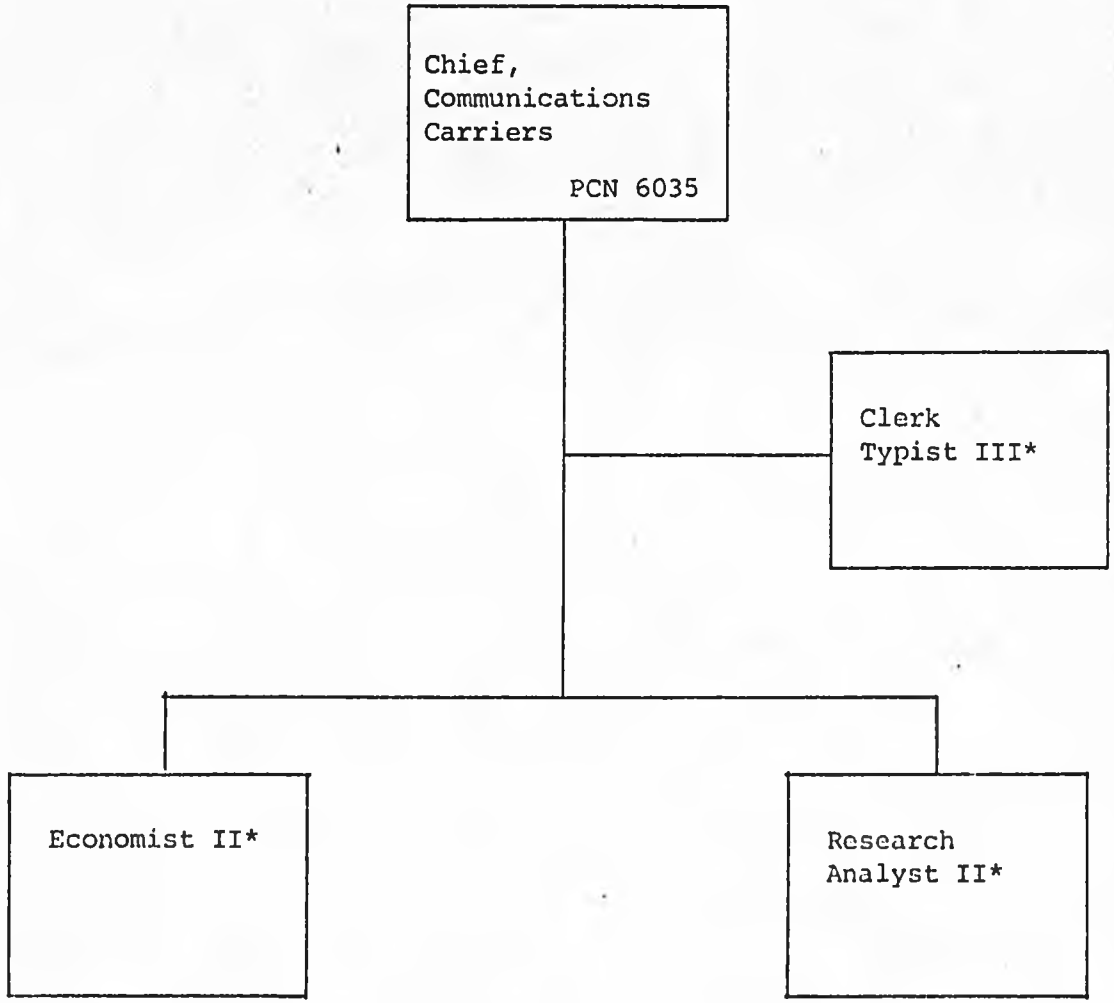
COMMUNICATIONS CARRIERS SECTION
FY 81 BUDGET
(In Thousands)

		Allocated FY 81 Budget	Comparable Salary Increment		Adequate Staff Increment	Adjusted FY 81 Budget
100	Personal Services	$ 46.6	$ 3.3	(1)	$ 86.0	$135.9
200	Travel	6.4		(2)	3.5	9.9
300	Contractual Services	3.3		(3)	8.8	12.1
400	Commodities	1.0		(4)	.4	1.4
500	Equipment			(5)	2.1	2.1
	Total	$ 57.3	$ 3.3		$100.8	$161.4

(1)	Utility Economist	$38,592
	Research Analyst II	29,164
	Clerk Typist III	18,243
		$85,999
(2)	Administrative	$ 900
	NARUC School	1,200
	NARUC Meetings	1,400
		$ 3,500
(3)	Printing	$ 1,000
	Office Space	7,800
		$ 8,800
(4)	Office Supplies	$ 400
(5)	Office Equipment	$ 2,100

ALASKA PUBLIC UTILITIES COMMISSION

COMMUNICATIONS CARRIERS ORGANIZATION CHART



*New position requested.

PRINCIPAL PROGRAMS IN COMMUNICATION CARRIERS

COMMUNICATIONS ACT REWRITE

Congress and the Administration are currently considering amending the Communications Act of 1934, the legislation that created the Federal Communications Commission. Four bills have been introduced, two in the Senate and two in the House, and the Administration is aggressively promoting its own proposal through the National Telecommunications and Information Agency.

Some of the proposals would drastically alter the arrangements under which telephone companies are interconnected. Specifically at issue is the division of toll revenue between long distance companies and local companies. One proposal is that the present system of toll settlements be replaced by a system of "access charges".

Just as the viability of telephone service in Alaska is sensitive to specific toll settlement arrangements, it would be similarly sensitive to specific access charge or other arrangements. It is essential that the APUC monitor rewrite progress and provide input as appropriate.

TOLL RATE DESIGN

In considering Alascom's request for a permanent general rate increase (Docket U-78-4) the APUC has elected to separate the issue of toll rate design and first consider the

question of an "across the board" rate increase. The first phase of the proceeding is expected to reach a conclusion in the near future and the Commission will soon begin consideration of rate design.

Rate design is the process whereby, having determined the utility's overall revenue requirement, the Commission determines specific rates for specific services. Toll rate design answers such questions as whether a call from Anchorage to Iliamna should cost more than a call from Anchorage to Juneau, considering that the distance is smaller but the cost of completing the call may be greater.

Toll rate design is a very complex matter and will require a great deal of attention by the Section as well as the services of one or more consultants.

RURAL TELEPHONE DEVELOPMENT

Although telephone service is generally available to all Alaskans, many villages are served by only a single telephone. In the past few years, few companies have applied to the APUC for certification to provide local exchange service in villages, and a small number of villages are presently receiving such service.

Local exchange operation in a village is, unfortunately, an economically marginal operation. The viability of a local exchange company is very sensitive to the toll settlements arrangements (or access charge arrangements that may be instituted by a

Communications Act rewrite) in effect. To insure continued rural telephone development, it is essential that the Commission, through this Section, monitor the progress of rural telephone developments and the economic health of the small local exchange companies.

STATE NETWORK DEVELOPMENT

As the State's telecommunications needs grow, so its telecommunications network must grow to meet those needs. The network must provide a sufficient number of circuits of adequate quality, and in addition, the circuits must be reliable.

The network will meet needs only if it is developed in accordance with good engineering practice. To insure proper network development, the Section must, with the support of the Engineering Section, monitor the process.

SENATE COMMERCE COMMITTEE - SIGN IN SHEET - PLEASE PRINT MEETING/HEARING DATE: March 11 1980

NAME OF WITNESS	ADDRESS	TELEPHONE	APUC BILL TO TESTIFY ON
David Hutchens (Did not wish to testify)	Alaska REC association, Anchorage	276-3235	
Malcolm Cheek	Matanuska Electric Assoc. PO Box 1148, Palmer AK 99645	745-3231	
Norm Wallis	P.O. BOX 599, KENAI, AK 99611	262-4127	
Roy Paschal	Box 929 JUNEAU, AK 99802	586-3630	
Carolyn S Guess	APUC	Anch. 276-6222 Juneau 465-2500	
Gordon Zerbetz	APUC	ANCH 276-6222 JUNEAU 465-2000	
R.R. "Bob" Blodgett	Mukluk Telephone, Inc. Box 645 Tuxedo, AK 99778	642-3333	
Gerald Corbus	Bethel		
Tracy Townsend	114 Pepperdine Dr., Fairbanks 99701	479-4557	
John Munson	Fairbanks		

Alaska State Legislature

TELECONFERENCE HEARINGS

SUBJECT: APUC

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 3/13/80

TIME: 1:30

SITES PARTICIPATING: ALL

CONFERENCE MODE: Audio

LOCATION: Soldotna

MODERATOR: Rhoda Eady

NOTES:

CONFIRMATION OF CONFERENCE CENTER: _____

PUBLICITY: Committee made

Invitational -

	Date	Quantity
PSAs		
News releases (local)	Clarion, Chucha, Cronicles	n papers
News releases (outlying media)	KSRM, KBBI	radio
Direct mail		
Phone contacts	✓	
Other:		

NUMBER IN ATTENDANCE 1

NUMBER TESTIFYING 0

Legislative Affairs Agency
Legislative Teleconferencing Network
State Capitol . Pouch Y . Juneau . 99811

Phone: 465-4980

Alaska State Legislature

TELECONFERENCE HEARINGS

DATE: 3/13/80
LOCATION: SOLDOTNA
SUBJECT: APUC

NAME	REPRESENTING	ADDRESS	PHONE	HERE TO OBSERVE	HERE TO TESTIFY
Norman (Wallis)	Peninsula Sanitation	Box 599, Kenai	262-4127	✓	

Alaska State Legislature

TELECONFERENCE HEARINGS

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME NORMAN WALLIS — Here to Testify ____

REPRESENTING PENINSULA SANITATION — Here to Observe ✓

MAILING ADDRESS P.O. Box 599, KENAI AK Zip 99611

TELEPHONE NUMBER 262-4127

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Norman F. Wallis
(signature)

EVALUATION: Have you participated in other legislative teleconferences? YES If so, how many? 3

How did you learn about this hearing?

Would you have participated in this hearing if the network were not available? NO

If yes, did you use the network

____ instead of travel

____ instead of phone conversations

____ instead of mailed testimony?

Are you also providing written testimony? ____

DATE 3/13/80 SUBJECT APUC LOCATION Soldotna

Legislative Affairs Agency
Legislative Teleconferencing Network
State Capitol . Pouch Y . Juneau . 99811
Phone: 465-4980

TELECONFERENCE HEARINGS

SUBJECT: ALASKA PUBLIC UTILITIES COMM.

COMMITTEE: ~~SENATE~~ Senate COMMERCE

DATE: MARCH ~~6~~ 11, 1980, + cont 3-13-80 at 3:00 p.m.

TIME: 3:00 PM

SITES PARTICIPATING:

CONFERENCE MODE: AUDIO

LOCATION: ROOM 301, S. O. B.

MODERATOR:

NOTES:

CONFIRMATION OF CONFERENCE CENTER: YES

PUBLICITY:

Invitational -

	Date	Quantity
PSAs	3/7	3
News releases (local)	Ktn Daily News KRSO KTKN	
News releases (outlying media)		
Direct mail		
Phone contacts		
Other:		

	3/11	3/13
NUMBER IN ATTENDANCE	2	1
NUMBER TESTIFYING	0	1

Legislative Affairs Agency
Legislative Teleconferencing Network
State Capitol . Pouch Y . Juneau . 99811
Phone: 465-4980

Alaska State Legislature

TELECONFERENCE HEARINGS

DATE: 3-13-80

LOCATION: Ketchikan

SUBJECT: AK Public Utilities Comm.

	REPRESENTING	ADDRESS	PHONE	HERE TO OBSERVE	HERE TO TESTIFY
A. CROWE	TONGASS SANITATION	Box 7701 KTN	225-5561		✓

Alaska State Legislature

TELECONFERENCE HEARINGS

DATE: 3-11-80

LOCATION: Ketchikan

SUBJECT: Alaska Public Utilities Comm.

NAME	REPRESENTING	ADDRESS	PHONE	HERE TO OBSERVE	HERE TO TESTIFY
J.A. CROWE	TONGASS SANITATION	BOX 7701 KTN	225-5561	✓	✓
DIANA CROWE	✓ ✓	✓ ✓	✓ ✓	✓	

Alaska State Legislature

TELECONFERENCE HEARINGS

**REVISED

TELECONFERENCE CONTACT SHEET

TAKEN BY Sioux

TOPIC: Ak. Public Utilities Comm.

COMMITTEE: Senate Commerce

DATE: 3/13/80 DAY: Thursday

TIME: 3:00 p.m. *PST SCHEDULED DURATION: 2 hrs

SITES PARTICIPATING: ALL

CONFERENCE MODE: Audio X Video ____

CONTACT Jon Mathison

PHONE 465-3748

DATE SCHEDULED ____

LOCATION ____

MODERATOR ____

PUBLICITY:

___ Invitational

___ Committee making contacts

___ PSAs ____ date ____ quantity

___ News Release ____ date ____ quantity

___ Summary to be provided

___ Text to be provided

___ Quotes to be provided

___ Direct Mail ____ date ____ quantity

___ Phone ____ date ____ quantity

___ Post at Info. Office

___ Post other local locations

PERSONS PARTICIPATING	SITE
chairman: Sen. Bradly	Juneau

SPECIAL NOTES:

JUNEAU LOCATION:

*Beltz Rm, Capitol

POST-TELECONFERENCE NOTE:

Participants 0

Observers 4

Total 4

Legislative Affairs Agency
Legislative Teleconferencing Network
State Capitol . Pouch Y . Juneau . 99811

Phone: 465-4980

Alaska State Legislature

TELECONFERENCE HEARINGS

DATE:

LOCATION:

SUBJECT:

NAME	REPRESENTING	ADDRESS	PHONE	HERE TO OBSERVE	HERE TO TESTIFY
Steve H. Dahl	MEA	Palmer	745-3231	✓	
Malcolm Cheek	MEA	Palmer	745-3231	✓	?
Sue Tirpak	Sen. Kerttula	Palmer	376-2675	✓	
Budd Goodyear	MEA	Anchorage	337-7249	✓	

TELECONFERENCE HEARINGS

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Malcolm Cheek Here to Testify ?

REPRESENTING Matanuska Electric Assoc. Here to Observe ✓

(office) P.O. Box 1148, Palmer AK 99645

MAILING ADDRESS (Home) P.O. Box 3010, Wasilla AK Zip 99687

TELEPHONE NUMBER 745-3231

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Malcolm Cheek
(signature)

EVALUATION: Have you participated in other legislative teleconferences? Yes If so, how many? One

How did you learn about this hearing?
Public Notice

Would you have participated in this hearing if the network were not available? Yes

If yes, did you use the network
✓ instead of travel
____ instead of phone conversations
____ instead of mailed testimony?

Are you also providing written testimony? Have Already

DATE 3/13/80 SUBJECT Sunset Review - ABVC LOCATION

Legislative Affairs Agency
Legislative Teleconferencing Network
Phone: 465-4980
[illegible] Capitol Room X Juneau 99811

TELECONFERENCE HEARINGS

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Henry H. Woltz — Here to Testify _____

REPRESENTING MEA — Here to Observe X

MAILING ADDRESS P.O. Box 1148 — Zip 99645

TELEPHONE NUMBER 745-3231

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

_____
(signature)

EVALUATION: Have you participated in other legislative teleconferences? _____ If so, how many? _____

How did you learn about this hearing?

_____

_____

Would you have participated in this hearing if the networ were not available? _____

If yes, did you use the network

_____ instead of travel

_____ instead of phone conversations

_____ instead of mailed testimony?

Are you also providing written testimony? _____

DATE _____ SUBJECT _____ LOCATION _____

Legislative Affairs Agency
Legislative Teleconferencing Network
State Capitol Pouch V Juneau 99811
Phone: 465-4980

147 SELDOVIA, CITY OF — not regulated — WATR
P. O. DRAWER B — 907-234-7643
SELDOVIA, AK 99663

MAYOR — JOHN N. COLBERG — -N/A-
CITY MANAGER — ELAINE M. GILES — -N/A-
ATTORNEY — HAHN, JEWELL & STANFILL — 907-279-1544

59 SEMLOH SUPPLY — not regulated — ELEC
LAKE MINCHUMINA — 907-939-0000
ALASKA 99623

PARTNER — MRS. FRANCIS HOLMES — -N/A-
ATTORNEY — GEORGE YEAGE — -N/A-

258 SETTLERS BAY PROPERTIES INC. — WATR
P . O. BOX 1080
WASILLA, AK 99687

MANAGER — RICHARD ROMER — -N/A-
ATTORNEY — MICHAEL R. SPAAN — 907-279-9403

259 SETTLERS BAY PROPERTIES INC. — SEWR
P. O. BOX 1080
WASILLA, AK 99687

MANAGER — RICHARD ROMER — -N/A-
ATTORNEY — MICHAEL R. SPAAN — 907-279-9403

108 SEWARD, CITY OF — ELEC
P. O. BOX 337 — 907-224-5214
SEWARD, AK 99664
---
not regulated
MAYOR — RAYMOND L. HUGLI — -N/A-
CITY MANAGER — CLARENCE E. JOHNSON — -N/A-
ATTORNEY — HUGHES, THORNESS, GANTZ, POWELL — 907-274-7522

109 SEWARD, CITY OF — SEWR
P. O. BOX 337 — 907-224-5214
SEWARD, AK 99664

MAYOR — RAYMOND L. HUGLI — -N/A-
CITY MANAGER — CLARENCE E. JOHNSON — -N/A-
ATTORNEY — HUGHES, THORNESS, GANTZ, POWELL — 907-274-7522

==========

110 SEWARD, CITY OF — not regulated — WATR
P. O. BOX 337 — 907-224-5214
SEWARD, AK 99664

MAYOR — RAYMOND L. HUGLI — -N/A-
CITY MANAGER — CLARENCE E. JOHNSON — -N/A-
ATTORNEY — HUGHES, THORSNESS, GANTZ, POWELL — 907-274-7522

==========

143 SITKA ALASKA TELEVISION, INC. — same as Ketchikan TV — CATV
P. O. BOX 8500 — 907-225-3875
KETCHIKAN, AK 99901

PRES & GENERAL MANAGER — R. D. JENSEN — 000-000-0000
CHIEF ENGINEER — E. WALACE CHRISTIANSEN — 000-000-0000
ATTORNEY — JULIAN L. MASON — 907-276-4331

SITKA — MICHAEL T. WHITE — 907-747-3535
P.O. BOX 439 SITKA, AK 99835

==========

199 SITKA DISPOSAL SERVICE — GARB
SEE ROBERT MARLOW & GEORGE CHAPMAN D/B/A — 907-747-8267
P. O. BOX 1373
MARCH DISPOSAL
SITKA, AK 99835

==========

25 SITKA TELEPHONE COMPANY — TELE
P. O. BOX 257 — 907-747-6667
SITKA, AK 99835 — 907-747-3309

PRESIDENT — ROBERT W. BUNKE — -N/A-
VP, OPERATIONS/GEN. MGR — R. J. CUSHING — 000-000-0000
ATTORNEY — FRED O. EASTAUGH — 907-586-3340

==========

100 SITKA, CITY AND BOROUGH OF — ELEC
BOX 79 — not regulated — 907-747-3294
SITKA, AK 99835

MAYOR — BEN F. GRUSSENDORF — -N/A-
ADMINISTRATOR — FERMIN GUTIERREZ — -N/A-
ATTORNEY — PETER S. HALLGREN — -N/A-

==========

101 SITKA, CITY AND BOROUGH OF — SEWR
BOX 79 — 907-747-3294
SITKA, AK 99835

MAYOR — BEN F. GRUSSENDORF — -N/A-
ADMINISTRATOR — FERMIN GUTIERREZ — -N/A-
ATTORNEY — PETER S. HALLGREN — -N/A-

102 SITKA, CITY AND BOROUGH OF WATR
BOX 79 907-747-3294
SITKA, AK 99835
Not required

MAYOR	BEN F. GRUSSENDORF	-N/A-
ADMINISTRATOR	FERMIN GUTIERREZ	-N/A-
ATTORNEY	PETER S. HALLGREN	-N/A-

181 SKAGWAY NETWORK TELEVISION CATV
P. O. BOX 233 907-983-2204
SKAGWAY, AK 99840

PRESIDENT	JACK W. BROWN	-N/A-

136 SKAGWAY, CITY OF SEWR
P. O. BOX 415 OFFICE 907-983-2297
SKAGWAY, AK 99840

MAYOR	ROBERT F. MESSEGEE	-N/A-
CITY MANAGER	GUILFORD D. ACKER	-N/A-
ATTORNEY	WILLIAM RUDDY	907-586-3340

137 SKAGWAY, CITY OF WATR
P. O. BOX 415 907-983-2297
SKAGWAY, AK 99840
not required

MAYOR	ROBERT F. MESSEGEE	-N/A-
CITY MANAGER	GUILFORD D. ACKER	-N/A-
ATTORNEY	WILLIAM RUDDY	907-586-3340

132 SOLDOTNA, CITY OF SEWR
P. O. BOX 409 907-262-9107
SOLDOTNA, AK 99669

MAYOR	LORRAINE KNIGHT	-N/A-
ADMIN ASSISTANT	BARBARA ERICKSON	-N/A-
ATTORNEY	THEO L. CARSON, JR.	-N/A-

133 SOLDOTNA, CITY OF WATR
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92 TANANA POWER COMPANY ELEC
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TANANA, AK 99777
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ATTORNEY HENRY CAMAROT 907-279-9574

95 THOMAS R. BREWER AND ROBERT T. GRIFFIN WATR
SUNNY SLOPES WATER SYSTEM OFFICE 907-694-9229
P. O. BOX 995
EAGLE RIVER, AK 99577
bankrupt

GENERAL MANAGER THOMAS R. BREWER -N/A-

250 THORNE BAY COMMUNITY T.V. INC. CATV
P O. BOX 105
THORNE BAY, AK 99950
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TREASURE ALLEN D. STRAHLE 000-000-0000
SECRETARY LYNDA M. BLUBAUM 000-000-0000
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240 TLINGIT-HAIDA REGIONAL ELECTRIC AUTHORITY ELEC
811 WEST 12TH STREET OFFICE 907-586-6966
JUNEAU, AK 99801

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106 UNALASKA, CITY OF ELEC
P. O. BOX 89 907-581-1251
UNALASKA, AK 99685

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249	UNITED UTILITIES, INC.		TELE
	P.O. BOX 4-2730	OFFICE	907-277-9653
	ANCHORAGE, AK 99509		

	PRESIDENT	VINOD BATRA	000-000-0000
	ATTORNEY	B. RICHARD EDWARDS	907-276-5552
202	VALDEZ ALASKA TERMINALS, INC.		GARB
	3201 C ST. SUITE 600	little contact	907-835-4747
	ANCHORAGE, AK 99503		

	PRESIDENT	NEIL G. BERGT	-N/A-
	VICE PRESIDENT	ROBERT D. HEATH	-N/A-
	ATTORNEY	CHARLES E. COLE	-N/A-
130	VALDEZ, CITY OF		SEWR
	P. O. BOX 307		907-835-4313
	VALDEZ, AK 99686		
	---	not required	
	MAYOR	LYNN CHRYSTAL	-N/A-
	CITY MANAGER	GEORGE W. FELSCH	-N/A-
	ATTORNEY	HUGHES, THORSNESS, GANTZ/POWELL	907-274-7522
131	VALDEZ, CITY OF		WATR
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	VALDEZ, AK 99686		

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	CITY MANAGER	GEORGE W. FELSCH	-N/A-
	ATTORNEY	HUGHES, THORSNESS, GANTZ/POWELL	907-274-7522
241	VALLEY WATER UTILITY, INC.		WATR
	P.O. BOX 7-3450		907-488-6181
	FAIRBANKS, AK 99707	AFT HRS	907-488-2086

	PRESIDENT	VERN STILL	-N/A-
	VICE PRESIDENT	WANDA STILL	-N/A-
	ATTORNEY	RON NOEL	000-000-0000
201	WALLACE A. CROW D/B/A		GARB
	TONGASS SANITATION		907-225-5561
	P. O. BOX 7701		
	KETCHIKAN, AK 99901		

	OWNER	WALLACE A. CROWE	-N/A-

	ATTORNEY	PAUL CROWE	907-349-4727
		SRA BOX 4262 ANCHORAGE, AK 99502	

71	WEISNER TRADING CO.		ELEC
	RAMPART		
	ALASKA 99767		

	ATTORNEY	CHARLES E. COLE	-N/A-
54	WHITTIER TELEPHONE COMPANY		TELE
	3028 EAST TUDOR ROAD		907-277-3614
	ANCHORAGE, AK 99507		

	OFF MGR/OWNER	BERNICE H. PALMER	-N/A-
	PLANT MGR	LAWRENCE PALMER	-N/A-
238	WHITTIER, CITY OF		WATR
	CITY HALL		907-472-2337
	WHITTIER, AK 99502		

	MAYOR	CECIL F. ZEIGLER	-N/A-
	ATTORNEY	BEN ESCH	907-276-2272
239	WHITTIER, CITY OF		SEWR
	CITY HALL		907-472-2337
	WHITTIER, AK 99502		

	MAYOR	CECIL F. ZEIGLER	-N/A-
	ATTORNEY	BEN ESCH	907-276-2272
222	WILLIAM H. & RICHARD K. BULEN D/B/A		GARB
	KODIAK SANITATION		907-486-5308
	P. O. BOX 442		
	KODIAK, AK 99615		

	PARTNERS	WILLIAM H. & RICHARD K. BULEN	-N/A-
	ATTORNEYS	FRANCIS NOSEKBEN HANCOCK	907-274-2606
251	WIRE COMMUNICATIONS, INC. D/B/A GREATLAND TELEPHONE		TELE
	P.O. BOX 3566	OFFICE	907-356-1000
	FT. WAINWRIGHT, AK 99703		

	PRESIDENT	HUGH Z. SMITH	000-000-0000
	GENERAL MANAGER	WILLIAM H. ROMPA	000-000-0000
	TELEPHONE MANAGER	JOHN WETHERINGTON	000-000-0000
	ATTORNEY	B.RICHARD EDWARDS	907-276-5552

158 WPTV, INC. CATV
2150 NORTH 107TH, SUITE 100 206-362-2286
SEATTLE, WA 98133
same as KOTV

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VICE PRESIDENT THOMAS R. DAVIS -N/A-
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BOX 510, WRANGELL, AK 99929
ST MGR-PETERSBURG MS. BETTY PHILBIN 907-772-3292
BOX 510, PETERSBURG, AK 99833

111 WRANGELL, CITY OF ELEC
P. O. BOX 531 907-874-2381
WRANGELL, AK 99929

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CITY MANAGER JAMES R. EIDE -N/A-
ATTORNEY EDWARD A. STAHLA -N/A-

112 WRANGELL, CITY OF WATR
P. O. BOX 531 907-874-2381
WRANGELL, AK 99929
not required

MAYOR SAMUEL R. PRIVETT -N/A-
CITY MANAGER JAMES R. EIDE -N/A-
ATTORNEY EDWARD A. STAHLA -N/A-

229 WRANGELL, CITY OF SEWR
P. O. BOX 531 907-874-2381
WRANGELL, AK 99929

MAYOR SAMUEL R. PRIVETT -N/A-
CITY MANAGER JAMES R. EIDE -N/A-
ATTORNEY EDWARD A. STAHLA -N/A-

53 YAKUTAT POWER, INC. ELEC
P. O. BOX 257 907-784-3248
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PRESIDENT FREDERICK U. MILLER -N/A-
ATTORNEY NORMAN C. BANFIELD 907-586-2210

180 YAKUTAT, CITY OF WATR
P. O. BOX 6 907-784-3323
YAKUTAT, AK 99689
not regulated

MAYOR LARRY POWELL -N/A-
WATR/SEWR MAINT MAN ROBERT ANDERSON 907-784-3323

180 YAKUTAT, CITY OF

CON'T

ATTORNEY HUGH FLEISCHER 907-279-5528

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264 TELE

MANLEY UTILITY COMPANY, INC. 907 672-3112

MANLEY HOT SPRINGS

AK 99756

~~PRESIDENT~~ JERRY L. HOOK

OWNER JERRY L. HOOK

ASCE strongly supports efforts to assure the public health, safety, and welfare through the competent practice of engineering, but we do not recommend mandatory additional requirements for relicensing at this time. We believe that such a requirements at this time would not result in overall strengthening of the system of engineering licensing and could be counterproductive.

There is no record proving that the present licensing procedures are not providing adequate protection for the public.

Our licensing requirements successfully measure the qualification of registrants to offer services to the public in accordance with the Model Law and Model Rules. However, the competence of the applicant depends on how he or she uses those qualifications. This is much more difficult to evaluate. We rely on:

a. the registrants' integrity and ethics not to accept those assisgnments for which the engineer is not competent; and
b. on the profession to monitor the engineer's performance, and
c. on the registrantion boards to consider license revocations for unethical and unprofessional work.

This is as it should be and these processes are serving the public's best interest.

Re-examining the engineer in fundamentals will not establish competence. Also, keeping a record of the number of hours devoted to professional development will not establish competence. Adequate procedures for determining the registrant's competence and use of sound judgment are very complex. To administer such complex procedures would be extremely difficult, if not actually impossible.

Although ASCE does not favor additional requirements for renewal of licenses at this time, we currently support licensing of engineers and insuring their competence in the following ways:

a. Nearly 90 percent of ASCE members in the United States are licensed as Professional Engineers or Engineers-in-Training.

b. Licensure is a requirement for admission to membership in ASCE at the grade of Fellow.

c. A four-year degree in engineering is a requirement for advancement to higher grades of membership in ASCE.

an important hallmark of a profession is acceptance by the members of that profession of responsibility for the education and training of those people preparing to enter its practice, as well as for their continuing professional development.

In view of this responsibility and the special requirements of civil engineering practice, the American Society of Civil Engineers acknowledges the need to devote a substantial portion of its energy and resources to civil engineering education. In addition, as members of the American Society of Civil Engineers, it is the responsibility of individual practitioners to participate directly in both on-campus and off-campus educational activities and to provide substantial economic and other support for professional education and training.

e. ASCE designs and conducts Continuing Education courses for engineers and issues Continuing Education Units of credit to those who complete the courses.

f. ASCE sponsors and conducts innumerable educational conferences for engineers annually.

g. ASCE publishes 15,000 journal pages of new civil engineering literature annually for the continuing education of engineers.

We are convinced that the membership of ASCE would experience no difficulty in meeting requirements which might be established for demonstrating continuing competence as a criteria for relicensure. This matter does not give us reason for concern. However, we are concerned with the fact that only about one-third of the total engineering population hold valid professional licensure. And while about 65 percent of the civil engineering population are licensed, only about 28 percent of the remaining engineering population are licensed. We believe it is in the public interest that all practicing engineers be licensed and that priorities in improving registration laws be given to:

1. modifying the Model Law so that persons who are responsible for performing professional engineering work in industry and public and private institutions and agencies are required to be registered in the state of their residence;

2. increasing efforts to license all practicing engineers; and

3. increasing efforts toward the enforcement of Engineering Practice Acts as they now exist.

We believe that increasing the percentage of engineers who are licensed is more important to the public welfare than adding more requirements for those currently licensed. As the above steps are effected, the demonstration of continuing proficiency for relicensing should be considered as a refinement to engineering registration laws.

d. Responsible charge of engineering work is a requirement for advancement to higher grades of membership in ASCE.

e. ASCE designs and conducts Continuing Education courses for engineers and issues Continuing Education Units of credit to those who complete the courses.

f. ASCE sponsors and conducts innumerable educational conferences for engineers annually.

g. ASCE publishes 15,000 journal pages of new civil engineering literature annually for the continuing education of engineers.

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3. increasing efforts toward the enforcement of Engineering Practice Acts as they now exist.

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IV SUNSET LAWS

1. History and Current Status

"Probably no single act has had a more profound influence on the present status of engineering and land surveying Boards than the enactment during the past two years of the Sunset Laws." These were the words used in a report of the Public Information Committee of the National Council of Engineering Examiners (NCEE) to express their concern over legislation which has been enacted in 30 states, as of July 1978.

A Sunset Law is a state statute specifically aimed at improving the accountability of state agencies through mandatory periodic review. Should an agency (which would include entities such as departments, divisions, bureaus, commissions, councils, and boards) fail to justify its continued existence, its programs would automatically terminate unless recreated by legislative action.

Proliferation of the Sunset Laws has been a response to the public's disillusionment with the continued existence of defunct agencies with their attendant costs. The positive results anticipated by these laws are: 1. forcing a legislature to perform its often-neglected oversight responsibility; 2. shifting the burden of proof to an agency to show that it is truly performing a public service; 3. requiring public hearings on extending agencies so that citizen and consumer groups may have a voice; 4. providing for the automatic termination of those agencies which don't measure up.

Engineering is but one of the many professions, trades, and commissions affected by the Sunset Laws. While their enactment and proper implementation are admirable there is a latent concern over whether some deleterious effects may be experienced by the engineering community. NCEE's Public Information Committees also has this to say:

"It is clear that with the advent of Sunset Legislation, it will be incumbent upon regulatory agencies to justify their existence. While it is not anticipated that engineering registration boards will encounter difficulty in convincing legislators of the need for their continuance, there is much concern about inadvertent lapses, abolishment of old laws and their replacement by new ones, and the impact on 'grandfather' clauses and comity among the states."

ENGINEERS MAY BE AFFECTED

Of greatest interest and concern to engineers is that the regulation of engineering may be swept along with the current legislative tides and that engineers will become increasingly embroiled with:

(a) The definition of professional engineering as defined in the NCEE "Model Law",

(b) The need of proof of continued competence as a requirement for license renewal,

(c) Zero-based budgeting for the State Boards of Examiners,

(d) Federal licensing as a possible answer to comity.

At this time of Sunset Law generation and application in certain stages, it is imperative for engineering managers and the practicing engineer to be aware of the potential effects these laws may have on the technical operations of both the corporate and private practice of engineering. Some aspects of the implications of these laws follow.

A BROADER DEFINTION

A typical Sunset Law is a state statute which has as its fundamental concept the improvement in accountability of the various agencies and entities through which state government is conducted. The laws generally provide for a periodic review and performance audit of the group with automatic termination unless there is re-authorization by the State Legislature.

The format of these laws is generally similar: purpose of the statute, identification of the agencies to be audited, dates of automatic termination, nature of the audit and time between audits, e.g. life-span of the agency. Many statutes cite the authorizing statute for the agency, which automatically terminates at the time the agency ceases to exist.

HISTORY OF SUNSET LEGISLATION

April 22, 1976, was the date of the first Sunset Law. This was passed in the 50th General Assembly of the State of Colorado. Other states followed in quick order: Florida, June 17, 1976; Louisiana, July 30, 1976; Alabama, August 24, 1976. The movement proliferated to the extent that as of June, 1978, a total of 30 states had enacted similar laws.

In drafting the Sunset Statutes some states grasped the opportunity to apply zero-based budgeting to their agency operations. In effect, the budgets should not automatically be continued, but should be built from scratch each year with every item justified. Additionally, legislation was directed in some states toward a requirement of continuing education courses as proof of competency for license renewal. (Note: Iowa already has such a requirement in its statute regulating the practice of professional engineering. Iowa Senate Bill 312, New Laws 1977, page 217.

A wide range of agencies and occupations is covered under the various Sunset Laws. Colorado, for example, put 39 agencies under its Sunset Law including those responsible for chiropractors, cosmetologists, collection agencies, and short-hand reporters. Other states have fewer agencies covered, many have more. Indiana includes 395 under its law! With professional engineering being but a tiny part of the whole that occupies the attention of the legislator, the need for close monitoring of these laws is apparent.

COMMON ELEMENTS IN THE LAWS

While the 30 state statutes have differing language, most have common elements such as the following:

1. The Automatic Termination of the Agency. Usually the terminal dates are staggered by groups of agencies.

2. The Performance Audit. The audit is usually performed by various means; by a House-Senate committee, or by an oversight or standing committee. The burden of proof rests with the board or agency which must justify its existence to show that it is performing a vital public service.

3. Public Hearings. Testimony is received from (a) the public; (b) a department responsible for regulating the agencies; (c) the agency itself. The key words in most legislation read to this effect: "(the agency) shall have the burden of demonstrating a public need for its continued existence and extent to which a change in type or transfer may increase the efficiency of administration or operation of the agency."

4. Legislative Action. The legislature is forced to join in the procedure to perform its often previously neglected oversight responsibilities.

5. Fixed Agency Life. Provisions are made for the maximum life of the entity between reviews - typically 6 years.

Note should be made that most states provide for orderly shutdown and disposal of the assets of those agencies which are not reinstated.

A SAMPLE OF AN AUDIT

Criteria for the performance audit vary significantly from state to state, but Florida's statute has often been used as a good example:

Section 5. In determining whether to reestablish a program or function, the Legislature shall consider the following criteria:

(1) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(2) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety, and welfare?

(3) Is there another less restrictive method of regulation available which could adequately protect the public?

(4) Does the regulation have the effect of directly or indirectly increasing the costs of goods or services involved, and if so, to what degree?

(5) Is the increase in cost more harmful to the public than harm which could result from the absence of regulation?

(6) Are all facets of the regulatory process designed solely for the purpose of, and having as their primary effect, the protection of the public?

Other measures that are mentioned are:

(7) What is the efficiency of the formal complaint action?

(8) What is the extent to which changes are necessary in the existing laws to adequately comply with the above factors?

There is the political consideration in any administration of these laws. Specifically, there are fees of various sorts related to the licensing procedure and since these are income-producing entities, that in itself will no doubt have a bearing on decisions.

Sunset Laws represent a new legislative concept, and it is too early to predict with any degree of certainty the effect they may have on existing engineering registration boards. In Colorado, which had the first Sunset Law, engineering has not been audited. Two agencies in the state were abolished; two were combined; two transferred; two reactivated; and five extended for one year. Both the Courts and the Governor became involved in some of the decisions leading to the foregoing. In Nevada, meanwhile, the Legislature failed to reinstate the engineering law and enacted a new law in lieu thereof. The old board was consequently abolished and the Governor subsequently appointed a new Nevada board.

A review by a Montana state legislative committe in late 1978 concluded that engineering and land surveying registration functions should be continued, pro tem.

Perhaps a better idea of what may be expected may be seen in the words of the Sunset Research Director, Department of Regulatory Agencies, State of Colorado: "Probably the major useful effect of Sunset is the agencies' anticipation of the potentially critical reports the process can produce. Files suddenly become better organized, records better kept; meetings are longer and more oriented to the public interest. The threat of termination is not very real. We think that the Sunset process is an effective way of improving legislation, but it seems to be happening more internally on agency and executive branch initiative than through major legislative changes."

IMPLICATIONS FOR THE PRACTICE OF ENGINEERING

The impact that these laws may have on the profession of engineering were touched upon by J.G. Johnstone in addressing the February, 1978, NSPE Intersociety Meeting on Registration in Chicago. He stated, "The problem with Sunset review is the same problem that has been faced by other inadeuqately comprehended 'systems' with a catchy name. The essence of Sunset review is evaluation - program evaluation and organizational and administrative evaluation of an agency in an holistic context. The real risk is that governments will adopt the name Sunset but leave out its essence, and thereby discredit the name as other systems have been discredited.

"There is no doubt that consumer-advocate and government reform-oriented organizations such as Common Cause and the United States Chamber of Commerce will continue to press unrelentingly for Sunset Legislation. It is imperative, therefore, that the State Engineering Registration Boards be prepared to submit to state reviewing authorities a comprehensive report justifying and supporting their continued existence. Failure to do so may result in the deregulation of the professional practice of engineering and land surveying, which course of action may operate to the detriment of the public."

It appears that four key areas will play a part in determining whether examining boards are re-established:

- Zero-based Budgeting
- Continuing Education
- Adoption of NCEE "Model Law"
- Federal Licensing in Answer to Comity

Zero-based budgeting was a cornerstone promise of the present Federal Administration and was endorsed by Governor after Governor. Involved here is a delicate balance of income vs. service to the public and political considerations will play an important role.

Continuing education is being considered as proof of continued professional competence. The concept of such a proof as a prerequisite to renewal of licensing has been argued for years. The NCEE Public Information Committee report emphasizes the point that continuing pressures will force consideration of proof of competence into the Sunset Law audits. The State of Iowa has taken steps in this direction. In 1977 it adopted a continuing education law which mandates continuing education as a requirement for license renewal for all state licensing boards. A "blueprint" for implementing this legal requirement has been prepared and was reported upon by John M. Littschwager in the Annual Conference Proceedings - 1978, American Society for Engineering Education.

The major problems in the mandatory continuing education approach fall into two areas.

- The difficult attempt to express continuing education requirements in terms of widely-recognized and uniform measurement units.
- The need to establish guidelines, including guidelines for the monitoring of licensee participation, and for the approval of programs that qualify under the continuing education requirements proscribed.

The approach to a solution has been to conceive the "Professional Development Hour" (PDH). This unit is then defined in recognized educational units such as university credit, Continuing Education Units (CEU), professional practice, etc. Record keeping, multiple branch registration, and many other variables are covered. There are several implications in the continuing education approach:

Implication for Industry - This plan could be adopted by many states and spread like wildfire. Industry would be forced to allocate resources - dollars and time - to meet such an engineering competence requirement.

Implication for technical societies - They would have to get aboard the bandwagon by getting their continuing education programs legally sanctioned.

Implication for the practing engineer - He would have to allocate time and effort to satisfy the legal requirements.

Adoption of NCEE "Model Law" - The definition of professional engineering under the "Model Law" includes the work done on consumer products. Adoption of such a defintion would negate the so-called "manufacturers, exemptions" in the state statutes that have such exemption and/or would be tantamount to mandatory registration by those professional engineers in industry and education who would fall within the defintion.

Only one state - Montana - has such a statute at the present time and enforcement has been minimal since its administration is so complex. Industry - in general - is opposed to the adoption of the Model Law Definition. The appeal at the time of a Sunset Audit may be on the side of mandatory registration or licensing of professional engineers.

Federal Licensing in Answer to Comity - Uniformity among the state board requirements for licensing is practically non-existent since the wording of the statutes varies so much. Uniform examinations are almost "universal" but other requirements show no such uniformity. While this may be only a distant threat, the Sunset Law Audits will focus upon and amplify these differences so that the "Appeal" of Federal regulation (licensing) will become more acceptable to those concerned with comity and multiple licensing. The problems a corporation has in moving engineering personnel from state-to-state would be eliminated with Federal licensing.

TRACKING THE FUTURE WITH EPIC

The Sunset Laws are the result of legislative pressures and actions - largely consumer-oriented. The laws vary and action is not static. Being aware of these is a first order of business and a tabulation has been maintained by EJC to provide a ready reference. Meanwhile, miscellaneous bills are still in various legislative hoppers. The EJC Engineering Practices Information Center will continue to track the status and action on Sunset Laws and related education.

NOTE: The information in Section 1, above is quoted from the EJC Engineering Practices Information Center Bulletin #1, August 1978, with the addition of information concerning review results in Montana. The following tabulation, supplementing this report, is also taken from this source.

Sunset Laws

	LAW CITATION	EFFECTIVE DATE	TERMINATION DATE Engr.	Number Boards Affected	Life after Death Mos.	Total Life Yrs.	Lead Times Mos.
ALABAMA	Chapt. 512-S-128	8/24/76	10/1/78	104	6	4	4
ALASKA	H-1-1977-P.287	5/30/78	6/30/80	22	12	4	4
ARIZONA	S 1001-Chapt. 210 Laws 1978	6/14/78	7/1/81	71	6	6	17
ARKANSAS	Act 100-1977-H-5	2/3/77	6/30/81	257	12	N.A.	3
CALIFORNIA	None—In Session						
CANAL ZONE	————————						
COLORADO (1)	H-1088-1976-P.51	4/22/76	7/1/82	39	12	6	12
CONNECTICUT (2)	PA-77614-S357	1/1/79	7/1/82	94	12	5	6
DELAWARE	None •						
DISTRICT OF COLUMBIA	None •						
FLORIDA (3)	Chapt. 76-168	6/17/76	7/1/78	90	60	6	12
GEORGIA (4)	Act. 613-1977-S-44	3/24/77	7/1/79	43	12	6	6
GUAM	————————						
HAWAII (5)	Act. 70-1977-S-460	5/10/77	12/31/82	39	N.A.	6	12
IDAHO	None—Adjourned •						
ILLINOIS	None •						
INDIANA (6)	S-43-Laws 1978	3/10/78	6/30/81	395	Orderly	N.A.	15
IOWA	None—Recessed						
KANSAS (7)	H-2976 Laws 1978	5/10/78	7/1/81	37	12	6	12
KENTUCKY	None (2 bills failed to pass in 1978) •						
LOUISIANA (8)	Act 277-1976-S-28	7/30/76	7/1/80	Note	0	4	24
MAINE (9)	MRSA Sect. 505-H-2229 C.683	3/29/78	6/30/80	122	12	5	6
MARYLAND	Chapt. 808-1978-S.405 P.2035	5/29/78	7/1/82	62	12	6	12
MASSACHUSETTS	None •						
MICHIGAN	SCR-471-1976-P.267	7/1/76	Special—Provides for Committee to Study methods of evaluation.				
MINNESOTA	None—Adjourned •						
MISSISSIPPI	None—Adjourned •						
MISSOURI	None •						

• Verified

	LAW CITATION	EFFECTIVE DATE	TERMINATION DATE Engr.	Number Boards Affected	Life after Death Mos.	Total Life Yrs.	Lead Times Mos.
MONTANA	S6-162 Sec. 82-4601 Chap. 562	5/12/77	7/1/79	46	12	6	22
NEBRASKA	LB-257-1977	5/16/77	7/1/83	46	12	6	9
NEVADA	NV-ACR-50 Not in Session '78	4/15/77	Directs Legislative Comm. to Study				
NEW HAMPSHIRE	Chapt. 436-1977 Also H 45X	7/5/77	Last date 7/1/85	N.A.	9	N.A.	N.A.
NEW JERSEY	None—Recessed						
NEW MEXICO (10)	Chapt. 259-1977-H-133	See Note	7/1/78	44	9	6	N.A.
NEW YORK	None—In Session						
NORTH CAROLINA	Chapt. 712-1977-S-334	7/1/77	7/1/79	102	12	N.A.	6
NORTH DAKOTA	None—Not in session '78*						
OHIO	None—Recessed						
OKLAHOMA (11)	S-138-1977 Page 13	3/10/77	7/1/80	111	12	6	12
OREGON	H-2323-1977 Chapt. 842	7/27/77	July 1982	44	0	8	18
PENNSYLVANIA	None						
PUERTO RICO	————————						
RHODE ISLAND (12)	S-1069-1977 Chapt. 260	5/13/77	Not Cov.	29	12	5	12
SOUTH CAROLINA	None						
SOUTH DAKOTA (13)	SB-48-1978 Page 481	2/17/78	Pilot Study	5	6	N.A.	N.A.
TENNESSEE	Chapt. 452-1977-HB-937	5/26/77	6/30/80	208	12	6	N.A.
TEXAS	S-54-1977 Page 2507	8/15/77	9/1/81	177	12	12	14
UTAH	S-63-1977 Chapt. 240	3/22/77	7/1/79	All	12	6	12
VERMONT	Act 183-H-3751-1978	4/5/78	7/83	30	N.A.	5	21
VIRGINIA (14)	Chapt. 388-1978-S24	3/30/78	NOTE	28	N.A.	N.A.	N.A.
VIRGIN ISLANDS	————————						
WASHINGTON	None—Not in Session '78*						
WEST VIRGINIA	None—S-63 Vetoed						
WISCONSIN	None						
WYOMING	None						

*Verified

ABBREVIATIONS

1. Comm.—Committee or Commission
2. H. & S.—House and Senate
3. H.B.—House Bill
4. Leg.—Legislative
5. N.A.—Not available
6. Perf.—Performance
7. P.L.—Public Law(s)
8. Std.—Standing

NOTES

(1) **Colorado**—See also S-34 New Law 1978 & Sec. 24-34-104 CRS

(2) **Connecticut**—Section 572-584

(3) **Florida**—Chapt. 77-457-1977-S-1238 changes termination to 7/1/79

(4) **Georgia**– Dates Revised by Act 1407-S458-1978

(5) **Hawaii**—Impact statement required

(6) **Indiana**—Governor may delay the date on which any agency program is abolished for one year.

(7) **Kansas**—Very complex law

(8) **Louisiana**—Termination noted since Engineering Board is under Dept. of Transportation & Development. Zero base budget.

(9) **Maine**—Chapt. 683 P.L. 1978 House Bill 2229 repeals MRSA Sec. 505 enacted by P.L. 1977 Chapt. 554, Sec. 1.

(10) **New Mexico**—Chapt. 189-Laws 1978-H.B. 237, P. 621—Renews State Board of Registration for Professional Engineers for a period of 6 years beginning July 1, 1978. Approved March 6, 1978. *Continuing education* considered as a requirement. The Board could not agree on procedures.

(11) **Oklahoma**—Adds 20 Agencies to be reviewed with Legislature at time of new term for Governor.

(12) **Rhode Island**—Hearings must be 3 months prior.

(13) **South Dakota**—House Bill 1355-New Laws 1978-Page 339 applies "Sunset" principles to rules and regulations.

(14) **Virginia**—Very complex requirements. Final Termination 7/1/87.

DEFINITIONS

1. **Agency**—shall mean to include all departments, divisions, bureaus, commissions, councils and boards, or like governmental units or subunits regulatory in nature or otherwise.
2. **Comity**—kindly courteous behavior; the informal and nonmandatory courtesy sometimes referred to as a set of rules to which the courts of one sovereignty often defer in determing questions (as of jurisdiction or applicable precedent) where the laws or interests of another sovereignty are involved.
3. **Lead time**—Time at which review or audit shall begin prior to next meeting of legislature or termination date of the agency.
4. **Performance audit**—shall mean the same as operational audit.
5. **Termination**—shall mean the end, abolishment or annulment of any agency or the act of causing the existence to cease.

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2. Justification for State Registration Laws

A Position Paper Proposed by the Committee on Registration of Engineers. Adopted by the Board of Direction October 15, 1978.

Since Wyoming adopted a law in 1907 to register professional engineers, all states have enacted similar legislation to establish a relatively uniform registration process. The Board of Direction of the American Society of Civil Engineers, on October 27, 1973, approved a policy by which it, "endorses, supports, and promotes the registration of Professional Engineers, as being in the best interest of the public." The Society agrees that the purpose of registration laws is the protection of public health, safety, and welfare; that this purpose is best served by requiring a demonstration of education, special knowledge and skill, and experience as the necessary qualifications for the practice of engineering and land surveying. Since the public does not ordinarly have the ability to judge the competence of engineers and land surveyors, it has elected to delegate this responsibility to the individual State Boards of Registration.

A growing number of State Legislatures have enacted laws, called Sunset Laws, which have the general purpose of abolishing outmoded and unneeded governmental agencies and programs. Boards of Registration for Engineers and Land Surveyors, by inclusion in this group of agencies and programs, must justify their existence.

The ASCE supports, in principle, the process of periodic review of government agencies and programs including Boards of Registration of Professional Engineers and Land Surveyors. The Society is confident that the engineering profession, together with the individual State Boards, will demonstrate to State Legislatures that registration is in the best interest of the public; in fact, that it is essential to the protection of the public health, safety and welfare in matters pertaining to engineered works and systems.

Therefore, the Society encourages all its members to actively assist and support Boards of Registration in their efforts to demonstrate the value to the public of the Registration Laws. The intent of the laws is not to protect the profession but to identify those who possess the necessary qualifications to practice Engineering and Land Surveying. While it is essential for the states to exercise their authority through the legislatures and the courts, and to view the consequences of their laws, they are not in a position to set standards of technical competence, or control the various levels of practice, nor is the general public able to exercise

this responsibility. It is incumbent upon the members of the Engineering Profession to demonstrate that they are qualified to set standards of education and experience for registration, that they can impose rules of professional conduct and that they are in the best position to maintain a continuing watch over the technical competence of practicing engineers and land surveyors, in the best interest of the public.

Therefore, it is the position of The American Society of Civil Engineers that:

1. Professional registration is for the sole purpose of protecting the public safety, health and welfare;

2. Benefits do accure to the public from registration laws and consumer protection is provided by maintenance of standards of competence and rules for professional conduct;

3. Registration laws promote efficiency in the regulation of engineering and land surveying practice;

4. Direct use of the courts or membership in engineering societies do not provide comparable coverage and effectiveness as do registration laws;

5. The costs of regulation by State Boards of Registration are more than offset by the fees, and, therefore, the Society reaffirms its policy of October 27, 1973 on Registration of Engineers, and urges all its members to assist State Boards of Registration in demonstrating to their Legislatures the value and necessity of continuing the individual state registration laws in the public interest.

V. Selected References

1. Model Laws for Engineering Registration and for Land Surveying. National Council of Engineering Examiners.

2. Registration of Professional Engineers and Land Surveyors in the United States. (A compendium of General Information). NCEE.

3. Digest of Court Decisions on the Registration of Professional Engineers and Land Surveyors. NCEE.

4. Synopsis of State Engineering Registration Laws, Policies and Procedures of State Boards. NCEE.

5. Synopsis of State Land Surveying Registration Laws, Procedures Under Which State Boards Operate. NCEE.

6. NSPE Committee Report on Sunset Laws, Justification for Continuation of State Registration Boards. National Society of Professional Engineers.

7. "Issues Related to Licensing of Architects, Engineers and Land Surveyors": a report prepared by R.E. Fadum, Dean Emeritus, North Carolina State University at Raleigh for the North Carolina Governmental Evaluation Commission, January 1979. (Copy attached).

DAB/ny
1-9-79

Issues Related to Licensing of Architects, Engineers and Land Surveyors

Ralph E. Fadum
Dean Emeritus
North Carolina State University
at Raleigh

January 1979

1. Should there be legal requirements to regulate the practice of architecture, engineering and land surveying?

Recognizing that any law that regulates one's right to work abridges a fundamental freedom, we understand that there must be compelling reasons to establish boards of registration the purposes of which are to discriminate between those judged to be competent and those not to be so, and thus, to regulate one's right to practice. Foremost among such reasons is the objective to protect the safety, health and welfare of the general public by excluding from among those who represent themselves to be practitioners, those who are competent and those who are not so.

The lay public does not in general have the capability of determining whether or not a person who represents himself to be a practitioner in these fields is, indeed, qualified and competent to render the required service. The consequences of retaining an incompetent practitioner can result in the impairment of the health, safety and welfare of the client. Because of improper design a structure may collapse, because of faulty surveys properties may not be properly recorded, and because of improper planning aesthetic values of the environment may be lost. Thus, there is a need to maintain boards of registration to regulate the practice of architects, engineers and land surveyors.

Our investigation has assured us that there is strong support for the continuance of the N.C. State Board of Registration for Professional Engineers and Land Surveyors and for the N.C. State Board of Registration for Architects. This support comes from those affected by the authority of these agencies in North Carolina as well as throughout our fifty states and five territories in each one of which a similar board exists, and with many of which we have reciprocal and comity agreements. Indeed, North Carolina would be greatly disadvantaged in securing competent professional services from practitioners from other states and territories and practitioners from North Carolina would find it much more difficult to practice outside our state borders if it unilaterally abolished our licensing boards in these fields.

Therefore, we strongly recommend that the Board of Registration for Professional Engineers and Land Surveyors and the Board of Registration for Registered Architects be continued.

2. Should there be a legal requirement for determining professional competence for relicensure?

In addressing this issue, it appears desirable first to distinguish between registration or licensure and certification, both of which are used in the credentialing process. It is our understanding that licensure is a process by which a state certifies those persons who may practice, the purpose being to protect the public from unqualified practitioners. Certification on the other hand is a process by which professional societies identify practitioners of the specialties served by those societies. Certification has no legal basis while licensure has. Here, we are concerned only with licensure and, in particular, relicensure.

For entry into a profession as a licensed practitioner, the candidate submits to examinations primarily designed to determine whether or not he is qualified by knowledge and experience to meet minimum requirements to practice. These examinations cannot determine his competence. The very best formal education does not guarantee competence. Competence depends on how one uses his qualifications and this is very difficult to measure objectively.

There is no debate concerning the need for a professional to maintain his competence. The issue is whether or not there should be a legal requirement with respect to insuring this. An examination of the issues concerning legal requirements to seek to insure that a licensed practitioner has maintained his competence and entailing some form of testing or record keeping leads us to conclude the following.

Competence is a very subjective matter and it is very difficult to measure. It is difficult if not impossible to legislate learning. The amount of formal education, the number of short courses attended, and the number of books read give no assurance of the benefits gained by these activities. Thus, a record of these activities would not be very useful as a measure of one's competence.

To establish a legal requirement for relicensure would discriminate against the licensed practitioner who represents a relatively small percentage of all practitioners. Thus, it might deter some who are not registered from registering. This would be counterproductive in our effort to increase the percentage of practitioners who are licensed. We believe that increasing the percentage of practitioners who are licensed is more important to the public welfare than adding more requirements for those currently licensed.

There is no evidence to demonstrate that there is a need to establish legal requirements for relicensuring. A practitioner knows

that it is in his own self-interest, not only to maintain his competence, but also to improve on it. His livelihood depends on it. He therefore, has a great deal of incentive voluntarily to maintain and improve his competence.

We believe the public interest is best served when the practitioner accepts as he does now responsibility for his own professional development. Our educational institutions and professional societies have a good record of providing opportunities for practitioners to maintain and update their competence. Practitioners on the whole have made good use of these opportunities for professional growth. If the extent of the voluntary effort that is being made by practitioners to keep abreast of developments were known, it is most likely that one would conclude that there is no justifiable need for establishing legal requirements for relicensure.

Administering mandatory standards to insure professional competence would be most difficult because of the great variety of specialties in which these professions are engaged. For example, it has been estimated that there are over one hundred different engineering degree programs offered by U.S. engineering colleges alone. Here it should be noted that it is only because there are many common bodies of knowledge required for entrance into these professions that the initial examinations are valid. As time goes on, however, the degree of commonality diminishes and the point is reached when examinations become meaningless.

It should be noted that state licensing statutes give boards extensive disciplinary control through the exercise of the police powers of the state. We are persuaded that the present disciplinary provisions provided by the statutes as well as those prescribed by professional organizations serve to protect the public to the maximum extent practical and affordable.

In consideration of these observations, it is our recommendation that legal requirements for relicensure not be enacted. We believe that the public interest is best served when the architectural, engineering and land surveying professions accept, as they do now, responsibility for their own professional development.

3. Should exceptions be made to allow certain categories of practice to be exempt from compliance with licensure requirements?

The current law provides that "any person who shall practice or offer to practice engineering, land surveying or architecture in North Carolina without first being registered in accordance with the provisions of the law shall be guilty of a misdemeanor." After having established this requirement, however, the statutes provide for the following exceptions by stating that nothing in the statute shall be construed to prevent or affect a number of categories of practice. These categories include practice by members of the armed forces or employees of the government of the United States while engaged in practice solely

for the government on government owned works and projects, engaging in practice under the responsible charge of a professional or registered engineers, the practice of so called internal engineering by a person, firm, or corporation engaged in manufacturing, processing, or producing a product including the activities of public service corporations, public utility companies and authorities, state agencies, railroads or membership cooperatives, etc. Because of exclusions such as these, we find nationwide, in engineering that approximately 30% of engineers are licensed. Twenty percent voluntarily obtain licenses, whereas ten percent obtain licenses in order to comply with legal requirements relating to their practices. Thus, it can be seen that because of exceptions that are made only a relatively small number of engineers are required to be licensed in order practice their profession.

We believe that the principle that unqualified persons should be prevented from practicing is sound and in the public interest. Establishment of an effective licensing program is a means toward that end. Accordingly, we recommend that registration be required of all individuals performing architectural, engineering and land surveying functions or using titles that represent them to be architects, engineers or land surveyors. In substance, it is recommended that all exemptions be removed so that those who are responsible for performing professional architecture, engineering or land surveying in industry and public and private institutions and agencies be required to be registered in the state of their residence.

4. What, if any, division or spheres of responsibility should be delineated for the architect and engineer?

Engineering involves a great variety of specialty fields including for example, electrical engineering; civil engineering including sanitary engineering, transportation engineering, structural engineering, soil mechanics and foundation engineering; nuclear engineering; industrial engineering; and, mechanical and aerospace engineering. Indeed, some two dozen specialty fields of engineering are commonly recognized. Furthermore, within each of these fields, engineers perform a great variety of functions, including planning, design, production or construction, operations, maintenance and technical sales. Architecture, likewise, includes not only different specialty fields but functions, such as planning, design, supervision of construction, etc.

Some of the specialty fields in which architects and engineers are engaged do overlap. Others fall clearly within the responsibility of one or the other group. Similarly, some of the functions performed by the architect and engineer are common. Others are unique to each profession. In those fields and functions that involve joint participation by the architect and engineer, a decision needs to be made as to who should have prime responsibility. In such instances, we recommend that any legal provisions be made flexible and that it be left to the professionals involved to determine which of the professions should have prime responsibility.

With respect to licensing procedures, clearly the architectural profession should be responsible for establishing requirements for registration for architects just as engineers should be required to establish qualifications for registration for engineers.

R.E. Fadum
17 January 1979

REF/ny

Abstracts of Reference Materials Related to Issues Concerned with Relicensing of Professional Engineers for the N.C. Governmental Evaluation Commission

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1. Memorandum from Charles Willis, P.E., Secretary Consulting Engineer Council of North Carolina (an affiliate of the American Consulting Engineers Council) to Paul Vick, Chairman, N.C. Governmental Evaluation Commission dated October 18, 1978.

   As related to continuing education for relicensure the emphasis should be placed on continuing professional competence rather than on "continuing education." Education in itself is not sufficient to insure competence, and it is unrealistic to lead the public to believe that their interests are protected by requiring continuing education.

2. Memorandum from B.A. Harrell, Counsel for PENC to PENC Officers, undated.

   Continuing Education courses should not be a pre-requisite to renewal of licenses.

3. Paper entitled "Continuing Education - A Requirement for Recertification," by Monroe W. Kriegel, P.E., Oklahoma State University (prepared for a Southern Zone Meeting of N.C.E.E.) dated April 7, 1978.

   Registration or licensure is a process by which individual states identify persons for inclusions in their registers of professional engineers and certify that they may practice engineering. The purpose is to protect the public from unqualified practitioners. Certification is a relatively new process by which some technical societies identify individuals as practitioners of the specialties served by those societies. Registration has a well defined educational base as an entry point into the profession. Certification, on the other hand, is a process to define specializations of practice and to identify for the public and employers qualified practitioners of that specialty. Recertification is a service of the society and serves as an additional credential of the individual. The motivation for recertification is peer recognition. Certification and recertification have no legal basis while licensure and relicensure have. Thirteen engineering related societies operate certification and recertification programs. The admission requirements are almost always below those of the minimum educational requirements for entering the registration process. (None of the founder societies such as ASCE, ASME, IEEE, etc. have

certification programs, but several have this matter under consideration.)

The big question is how to establish a basis for measuring continued professional competence as a justification for relicensure. The real issue is whether or not the registrant has remained professionally competent. Continuing formal education is the first but only one aspect of maintaining continued competence. The problem with continuing education is the lack of an acceptable unit of measurement. (A CEU equals ten contact hours of participation in an organized continuing educational activity under responsible sponsorship, capable direction and qualified instruction.) The second basis for relicensure would involve furnishing a set of credentials. This would be difficult to quantify. A third method for relicensure would be to simply accept the requirements for recertification as established by the professional engineering societies as a basis for relicensure. The examination and recordkeeping would be difficult and expensive. It could be recalled, however, that only a very few societies have these certification programs.

There is one certification program that has been long established. This is the specialty certification in environmental engineering offered by the American Academy of Environmental Engineers. The basis requirements for certification are:

1. Engineering degree or equivalent

2. Engineering license

3. Eight years of environmental engineering experience following graduation

4. Written examination

5. Oral tests

A fourth method, which Kriegel feels has great merit, is the one under study by the American Institute of Architects. A person must be a registered professional architect in order to be qualified for membership in the American Institute of Architects. Thus, he has essentially satisfied the licensure and basic certification requirements when he enters the Institute. AIA is working hard on the development of a recertification program providing a mechanism for permitting an architect to remain a member of AIA but not being a requirement for a renewal of his license. Although continuing education is a large part of the requirement, there are other aspects involving self-studies, meeting attendance and demonstrated knowledge of recent "tools of the trade" in each person's particular area of specialty. What will finally come out is a jointly developed program in which certain interested educational institutions will be involved in providing facilities for retraining but actual teaching will be done by a combination of practitioners and

faculty. It is Kriegel's feeling that engineering needs to follow somewhat the same pattern but probably on an individual state basis rather than on a national basis. The leadership should be taken by the practicing professional engineers because they are the ones that have the most at stake.

In concluding his statement, Kriegel advises that NCEE should continue to resist pressures to legalize relicensure requirements. He points out that it can be well documented that professional engineering societies including all of the Founder Societies have large and rapidly growing continuing education programs that help members maintain professional competence. Universities also provide opportunities for professional growth. All of these programs reach both registered and non-registered engineers.

4. N.C.E.E. Preliminary Position Paper on "Continuing Professional Competence," dated August 1978.

Competence in the present context is referred to as being attained through basic ability and education, and then being developed by experience and continuing training and education, either formal or informal. The central questions are to what extent, if any, would mandatory CPC benefit the public, what would this cost the public, and if the public knew the true facts, would they vote to pay the cost? We should make clear at the outset that N.C.E.E. completely supports continued education and professional development and other aspects of CPC. It is our considered opinion, however, that no significant numbers of incompetent practitioners will be eliminated by mandatory CPC.

A great majority of professionals must continually develop their competence to survive in the market place.

There is no doubt that all professions need continuous upgrading. However, we believe that most engineers are doing this on a large and highly successful scale under the present voluntary system. If the magnitude of the voluntary effort were fully realized, it is likely that the public might well conclude that there is no justifiable need to increase their costs by creating new laws and regulations which would be required if we were to attempt to mandate and legally enforce CPC under the law. Indeed, it might have a negative effect due to the resentment and large scale dropping of licensing.

Another problem with mandating CPC is that engineering is such a diverse profession. Administering mandatory standards would be almost impossible. There are well over 100 different engineering degree programs offered by U.S. engineering colleges alone. Engineering is a vastly more fragmented profession than others, such as medicine, law, teaching, etc.

Another separate but inextricable related issue is the potential discrimination against licensed engineers. Of the approximately one

million engineers in the United States only 300,000 are registered by the state regulatory agencies. This low percentage is due to the exemption clauses written into the state statutes. The present system is a political fact of life. It represents the best current political solution which the public and legislatures have been able to develop. It would therefore seem discriminatory to apply further strictures on the approximately 30% of engineers who already take the trouble to become licensed, 20% voluntarily and 10% for private practice while imposing none of the 70% who remained unlicensed. To prevent such discrimination would require imposing CPC mandates on all engineers not just those who are licensed. Since the public at this point has not even seen fit to require licensing of all engineers, it is doubtful given all the facts they would want to spend the money to enforce additional mandatory CPC requirements on all engineers. This becomes even more doubtful if the public were truly informed on the probable cost of extending such a philosophy to cover all other licensed vocations and professions.

It should be noted that state licensing statutes give boards entensive disciplinary control through the exercise of the police powers of the state. We are persuaded that the present disciplinary provisions serve to protect the public to a maximum extent practical and affordable. A currently popular statement goes "if it ain't broke, don't fix it." Based on the foregoing discussion the following recommendations are offered:

1. Engineering societies should mandate for themselves a strong and intensive research and public relations program on CPC. A vigorous effort should then be launched on both the state and national level to disseminate the information to the public, to the consumers and to the state legislatures.

2. The societies should investigate and analyze the potential of programs under which one on a voluntary basis can obtain Continuing Educational Units through their journals.

3. The ECPD is the most logical entity to develop and implement an evaluation and monitoring system for the CEU value of CPC programs because of their long experience and status in this field.

This position paper will be sent to presidents of all engineering societies with a request that they place the topic on the agenda for their respective next board of director's meeting and give N.C.E.E, the benefit of their current thinking on the subject.

5. PENC Talking Paper on "Should Continuing Education be a Requirement for Renewal of Registration as a Professional Engineer or Land Surveyor?" dated September 26, 1978.

No system has yet been developed through which the requirement under the law will guarantee that the professional engineer or land surveyor

has done enough study to maintain specified degree of progress in his field. Systems under discussion have generally been considered impractical for several reasons. They are difficult and costly to implement. They rely on either self-evaluation or on an elaborate structure for assigning values to a multitude of educational programs and monitoring and recording progress and they still do not appear to guarantee competence. It is only because there are many common denominators in the initial process leading up to entrance into the profession that the early examinations are applicable. At later stages in the professional's career the differences in kinds of competence become greater. As time goes on the degree of commonality diminishes and the point is reached at which any examination becomes meaningless. We believe that the public interest is best served when the engineer accepts as he does now responsibility for his own professional development. The evidence that this is working well lies in the multitude of seminars, workshops and short courses that are sponsored by professional and technical societies, universities, community colleges, commercial organizations and attended by design professionals.

6. Paper entitled "The Mandatory Continuing Education Bandwagon - Should Professional Engineers Climb Aboard?" by Dr. Benjamin Shimberg, Associate Director, Center for Occupational and Professional Assessment, Educational Testing Services, publication not identified.

I think most professions would prefer to rely on the professional's own sense of responsibility for designing his own areas of competence. If one looks at what it would cost to mount and really carry out a comprehensive program of reassessment, the cost would certainly be staggering and perhaps prohibitive. The most incompetent, the least ethical, the most unprofessional practitioner would have no real difficulty staying in business because it is easy for him to meet mandatory continuing education requirements, and once he has done so, the law says he is competent. I would like to say that if you do not already have a mandatory continuing education law in your state, do not accept such a law as inevitable. Ask yourself: Do we need a mandatory continuing education law, and if such legislation is proposed, should we as a board work for its passage? A great deal of needless pain and suffering can be spared by seeking to discourage mandatory continuing education until the existence of a serious problem has been documented, and it has been determined that an education solution offers the best way of dealing with that problem. It is difficult if not impossible to legislate learning and its subsequent application.

7. Article entitled "Perils of Credentialism," by John Alden, New Engineer, October/November 1978.

Movements are building within engineering to promote various forms of credentialism. Most commonly advocated are specialty certification and changes in professional registration including eliminating the industrial exemption, permitting registration in specialties not now specifically covered by state laws, and requiring periodic re-

examination and registration on the basis of demonstrated continuing education or professional development.

Registration or licensing is the process by which governmental bodies at the state level in the United States qualify individuals to practice certain occupations and professions including engineering. The groups to be qualified are determined on the basis of their relationship to the health, safety or general welfare of the public.

Certification is somewhat similar to registration except that it is carried out by private professional organizations rather than by states.

Underlying credentialism in all of its forms, however, is the desire to protect the interest of the credentialed group by reserving certain kinds of work to it alone - and controling the entry of outsiders.

I am convinced that credentialist efforts to monopolize the kinds of work we now know as engineering are restricting those jobs to registered professional engineers and they will lead ultimately to the designation of a small number of positions legally reserved for professional engineers and the elimination of many jobs now carrying the engineering title.

Another way in which I can see credentialism backfiring is in the increased vulnerability of individual engineers to liability suits. Today, except in cases of gross negligence, it is the corporation that is liable and individual engineers are protected by industrial exemption.

The profession should also recognize the financial burden both registration and certification will have on the individual engineers. Requirements to participate regularly in formal continuing education would add appreciably to the engineer's cost in time and money.

8. Paper entitled "Continuing Education: Boon or Boondoggle," by Roy L. Baber, Jr., Executive Director, PENC, The Professional Engineer, November/December 1978.

Continuing education is a must for any professional but the need to require it for licensing is questionable.

Until we have evidence that the public is not being served well by the present system or until the authorities who are trying to develop a satisfactory and well accepted control system for continuing education succeed, it would seem best that we do not attempt to mandate continuing education standards as a condition for license renewal.

We should determine in precise terms how the present system fails to protect the public, what additional protection is needed, feasible and cost effective, and whether mandatory continuing education can provide that protection, and if so, the details of the plan that should be enacted by the legislature.

9. Letter from C.E. Vick, President, Kimley-Horn and Associates to Paul Vick, Chairman, N.C. Governmental Evaluation Commission, dated December 4, 1978.

I endorse the concept that the protection of the health, safety and welfare of the public requires that professional engineers and land surveyors maintain their competence. To my knowledge this is happening under the present system. If there is a problem (real or perceived), we need to identify the specifics and design a course of action to specifically meet the identified problem. If this evaluation commission feels strongly about continuing education, I would suggest that the legislature establish a study commission made up of members of the legislature, the board of registration, the professional at large, and the public. This study commission would have a specific charge to identify the problem or potential problems of the existing system and recommend specific changes to GS 89 C to correct the problem areas. Continuing education is an extremely complicated matter and should be treated with great care.

10. Letter, dated November 7, 1978 from Eugene Zwoyer, Executive Director, ASCE, in response to a letter from R. E. Fadum dated October 25, 1978.

ASCE has not developed positions on specialty fields versus broad, general P.E. registration, inclusion of public members on boards or combined versus separate boards of the various design disciplines. I believe that we would find widely diversified opinions within the membership on these subjects.

ASCE advocated professional registration as a requirement for all individuals performing engineering functions or using engineering titles regardless of employment in the private sector or private industry or public service.

11. Paper entitled, "Remarks to N.C.E.E. on the Occasion of Their 57th Annual Meeting," by Eugene Zwoyer, Executive Director, ASCE, August 6-9, 1978.

ASCE strongly supports efforts to assure the public health, safety and welfare through the competent practice of engineering, but we do not recommend mandatory additional requirements for licensing at this time. We believe that such requirements at this time would not result in overall strengthening of engineering licensing and it could be counterproductive.

There is no record proving that the present licensing procedures are not providing adequate protection for the public.

Our licensing requirements successfully measure the qualification of registrants to offer services to the public in accordance with the model law and model rules. However, the competence of the applicant depends on how he uses these qualifications. This is much more difficult to evaluate. We rely on the registrant's integrity and ethics not to

accept those assignments for which the engineer is not competent and on the profession to monitor the engineer's performance and on the registration boards to consider license revocations of unethical and unprofessional work. Re-examining the engineer in fundamentals will not establish his competence. Also, keeping a record of the number of hours he devotes to professional development will not establish his competence. Adequate procedures for determining the registrant's competence and use of sound judgment are very complex. To administer such a complex procedure would be extremely difficult if not actually impossible.

We believe that increasing the percentage of engineers who are licensed is more important to the public welfare than adding more requirements to those currently licensed.

We urge modification of the model law to remove all exemptions so that persons who are responsible for performing professional engineering work in industry and public and private institutions and agencies are required to be registered in the state of their residence.

12. Letter dated December 7, 1978 from Donald G. Weinert, P.E., Executive Director, NSPE, in response to a letter from R. E. Fadum dated October 25, 1978.

We are all anxiously awaiting the experience which will emerge from the Iowa approach, but it will probably be a year or more before that procedure can be evaluated. Iowa is the only state to date to have enacted a mandatory recertification continuing education procedure. NSPE concurs that it is a must for engineers to keep up-to-date in their fields of practice in order to serve and protect the public interest. However, our current policy is that this responsibility should be met on a voluntary basis with input from the professional and technical societies to assist the members in meeting this requirement. I enclose NSPE Policy No. 122-A to reflect our position. The practical administration problems in a mandatory program are enormous and costly.

13. NSPE Professional Policy Statement Number 122-A, Continuing Professional Development.

NSPE Professional Policy Statement 122-A on continuing professional development includes the statement "NSPE favors personal acceptance of responsibility by the engineer for professional development and is opposed to legislation that would require a licensed professional engineer to pass a written examination or to submit evidence of continuing education activities as a condition for a license renewal. Such legal requirements are not necessary to protect the public, are impractical, difficult and costly to implement and ineffective as a means of assuring competence to practice engineering."

14. Paper entitled, "Continuing Education - Boon or Boondoggle," by Milton F. Lunch, General Counsel, NSPE, Consulting Engineer, June 1978.

The theory behind the mandatory education program for lawyers, doctors, and now proposed for engineers is philosophically sound, but the author implies that there are practical matters that need to be considered. For example, what course content is acceptable, who would decide and how whether an engineer who attended a seminar learned from it or dozed the time away. A mandatory continuing education law cannot take into account the most important single methods whereby professionals obtain their competence - their day to day work. Is the cost of administering, controlling and enforcing a mandatory continuing education program worth the cost? In spite of all these questions and doubts, however, the basic theory that the professions have an obligation to prevent unqualified persons from practicing is still sound. There is a far simpler and more effective way to reach that goal. To do it, the state boards need the moral support of the profession and the financial means to support an effective enforcement program through a team of trained investigators.

15. Michigan Society of Professional Engineers Policy with respect to Continuing Education, unpublished.

MSPE encourages all professional engineers to maintain their competency through active practice and continuing education activities, including professional meetings and self-education efforts. MSPE believes that a mandatory continuing education program as a condition of re-licensing, is not cost effective nor in the public interest and will seriously divert resources from needed enforcement activities and to meaningless bureaucratic data gathering efforts.

16. Paper entitled, "Qualifications for Continued Practice," by Francis E. Holland, P.E., member, Iowa State Board of Engineering Examiners, contained in a compilation entitled "Trends in Engineering Education," NSPE - Intersociety Conference on Engineering Registration, Chicago, February 7-8, 1978 and published by NSPE.

In 1977, the Iowa legislature enacted the first mandatory continuing education law for all state licensing boards. The law directs that each board including the Iowa State Board of Engineering Examiners develop a plan and program to implement the requirements which become effective on January 1, 1980.

In general, requirements are expressed in terms of Professional Development Hours (PDH). One hour of acceptable professional development equals one professional development hour. It goes on to equate 400 hours of practice to 10 PDHs; one semester of university credit to 45 PDHs, etc. It then stipulates that 80 professional development hours are required each year, etc.

17. Letter dated January 2, 1979 to Ralph E. Fadum, P.E. from Morton S. Fine, P.E., L.S., Executive Director, N.C.E.E., in response to an earlier letter requesting comments concerning various issues related to the "Sunset Law."

With respect to recertification, the official position is reflected in the enclosed statement. This position paper (reference no. 4) has recently been circulated to all engineering societies who are members of ECPD, EJC, and ACE for their comments. Few responses have been received to date, but when all responses have been received and evaluated the N.C.E.E. Board of Directors will probably issue a revised or final paper on this matter which I am sure you will see in due course.

18. "The Registration of Professional Engineers and Land Surveyors in the United States," N.C.E.E., 1978.

This is a very good compilation of matters related to registration in general. Included is the following statement concerning continuing professional development.

At the present time, state boards and engineering societies are discussing continuing education/professional development as a requirement for registration renewal. Discussions in this area have centered on whether basic requirements should be established for continued practice and whether, if established, the requirements should be mandatory or voluntary. Also, under discussion is the determination of a uniform method of measuring, evaluating, and reporting continuing professional development activities.

Iowa is the only state which has enacted legislation requiring the state board to implement continuing education/professional development requirements for licensure. The Iowa Board is currently studying methods for implementing this legislation. N.C.E.E. has offered to assist state boards in establishing uniform guidelines for continuing education/professional development criteria in the interest of maintaining uniform procedures among the state boards.

Quoting further from this document, there is a statement "It may be said that engineers and land surveyors have the finest professional registration system in the world." N.C.E.E. will continue to serve its member boards in the engineering profession by providing an organization through which state boards may "act and council together to better discharge their responsibilities in regulating the practice of engineering and land surveying for the protection of the public welfare and safeguarding life, health and property."

19. "Engineering Registration and the Law - A Review of Engineering Registration in 1977 - How the System Operates, What State Laws Require a Look into the Future," Morton S. Fine, P.E., L.S., IEEE Spectrum, October 1977.

Mandatory requirements for license renewal had been discussed for three or four years before the first mandatory statute was enacted in Iowa in July 1977. The statute mandates the state board to set up rules and regulations to implement the statute within a given time frame. N.C.E.E. hopes to coordinate with the Iowa Board so that guidelines can

be set up for the permissive use of all member boards of N.C.E.E. thereby retaining all the benefits of reciprocity/comity gained after so many years. It is anticipated that the passage of additional state statutes may accelerate in the future.

Finally, the adoption of mandatory degree requirement for licensure has moved slowly into the statutes but appears to be accelerating. Six states, Illinois, Kentucky, Michigan, Ohio, South Carolina, and Missouri, either have already implemented such requirements or have set dates for so doing.

REF/ny

R.E. Fadum
January 12, 1979

Reference Materials

1. Memorandum from Charles Willis, P.E., Secretary, Consulting Engineer Council of North Carolina (an affiliate of the American Consulting Engineers Council) to Paul Vick, Chairman, N.C. Governmental Evaluation Commission dated October 18, 1978.

2. Memorandum from B.A. Harrell, Counsel for PENC to PENC officers, undated.

3. Paper entitled "Continuing Education - A Requirement for Recertification" by Monroe W. Kriegel, P.E., Oklahoma State University (prepared for a Southern Zone Meeting of N.C.E.E.) dated April 7, 1978.

4. N.C.E.E. Preliminary Position Paper on "Continuing Professional Competence" dated August 1978.

5. PENC - Talking Paper on "Should Continuing Education be a Requirement for Renewal of Registration as a Professional Engineer or Land Surveyor?" dated September 26, 1978.

6. Paper entitled "The Mandatory Continuing Education Bandwagon - Should Professional Engineers Climb Aboard?" by Dr. Benjamin Shimberg, Associate Director, Center for Occupational and Professional Assessment, Educational Testing Services, publication not identified.

7. Article - "Perils of Credentialism" by John Alden, New Engineer, October/November 1978.

8. Paper - "Continuing Education: Boon or Boondoggle," by Roy L. Baber, Jr., Executive Director, PENC, The Professional Engineer, November/December 1978.

9. Letter from C.E. Vick, President, Kimley-Horn and Associates to Paul Vick, Chairman, N.C. Governmental Evaluation Commission, dated December 4, 1978.

10. Letter, dated November 7, 1978 from Eugene Zwoyer, Executive Director, ASCE, in response to a letter from R. E. Fadum dated October 25, 1978.

11. Paper entitled: "Remarks to N.C.E.E. on the occasion of their 57th Annual Meeting," by Eugene Zwoyer, Executive Director, ASCE, August 6-9, 1978.

12. Letter dated December 7, 1978 from Donald G. Weinert, P.E., Executive Director, NSPE, in response to a letter from R.E. Fadum dated October 25, 1978.

13. NSPE Professional Policy Statement 122-A Continuing Professional Development.

14. Paper entitled: "Continuing Education - Boon or Boondoggle," by Milton F. Lunch, General Counsel, NSPE, Consulting Engineer, June 1978.

15. Michigan Society of Professional Engineers Policy with respect to Continuing Education, unpublished.

16. Paper entitled: "Qualifications for Continued Practice," by Francis E. Holland, P.E., member, Iowa State Board of Engineering Examiners, contained in a compilation entitled "Trends in Engineering Education," NSPE - Intersociety Conference on Engineering Registration, Chicago, February 7-8, 1978 and published by NSPE.

17. Letter dated January 2, 1979 to Ralph E. Fadum, P.E. from Morton S. Fine, P.E., L.S., Executive Director, NCEE, in response to an earlier letter requesting comments concerning various issues related to the "Sunset Law."

18. "The Registration of Professional Engineers and Land Surveyors in the United States," NCEE, 1978.

19. "Engineering Registration and the Law - A Review of Engineering Registration in 1977 - How the System Operates, What State Laws Require and a Look into the Future," Morton S. Fine, P.E., L.S., IEEE Spectrum, October, 1977.

STATE OF ALASKA

A PERFORMANCE REVIEW OF THE BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS

May 11, 1979

A PERFORMANCE REVIEW OF THE BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS

May 11, 1979

Commissioner of the Department of Commerce and Economic Development	Charles Webber
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the Board of Registration for Architects, Engineers and Land Surveyors

President	Wallace I. DeBoff
Member	Jim Bridges
Member	Donald J. Cook
Member	Wayne K. Jensen
Member	James M. Lake
Member	Loren Lounsbury
Member	Paul Stutzman
Member	Gordon Unwin
Member	Wallace Wellenstein

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

May 11, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
BOARD OF REGISTRATION FOR
ARCHITECTS, ENGINEERS
AND LAND SURVEYORS

May 11, 1979

Gerald L Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20 .271(1) and 44.66.050 (sunset legislation), a review of the Board of Registration for Architects, Engineers and Land Surveyors was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board will be reestablished. The law currently specifies that this Board will terminate on June 30, 1980, but will continue until June 30, 1981 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) discussions with the Board and questionnaires sent to Board members;

(3) tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development, for the years 1976-1978;

(4) interviews with OL employees;

(5) complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency and the Human Rights Commission during the period 1976 - 1978;

(6) questionnaires sent to State registered architects, engineers and land surveyors; and

(7) questionnaires sent to individuals whose applications were not approved.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090 and AS 08.48.071.

(2) OL has not adequately collected, recorded and maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out its administative responsibilities.

ORGANIZATION AND FUNCTION

Architects, engineers and land surveyors have been licensed in Alaska since 1939, when the Territorial Board of Engineers and Architects Examiners was established. The structure and statutes that relate to today's Board date from Ch 179 SLA 1972, in which the Alaska State Board of Registration for Architects, Engineers and Land Surveyors was created.

As stipulated in AS 08.48, the Board has nine members consisting of two civil engineers, one land surveyor, one mining engineer, two engineers from other branches of the engineering profession and three architects. Members are appointed by the governor and serve staggered six-year terms. Board meetings are held at least four times a year.

The responsibilities of the Board include:

a. The adoption of regulations enabling it to carry out the purposes of AS 08.48;

b. the publication of a code of ehtics;

c. the formulation and administation of examinations;

d. the review of applications; and

e. enforcing the provisions of AS 08.48, through disciplinary actions or other procedures deemed necessary and in accordance with the Administrative Procedures Act (AS 44.62).

Except for specific exemptions provided for in AS 08.48.331, the practice of architecture, engineering or land surveying within Alaska is prohibited unless the practitioner is currently registered with the State. Although the statutes do not distinguish between the various branches of engineering, the Board has interpreted "professional engineering" to include chemical, civil, electrical, mechanical, mining and petroleum engineering. Accordingly, engineers are registered in the specific field for which they apply and are approved. In addition, corporate authorizations are required for corporations practicing architecture, engineering or land surveying within Alaska.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these issues, the legislative oversight committees should consider the findings and alternatives presented in this report in reaching their decisions.

Report Conclusion

In our opinion, the Board of Registration for Architects, Engineers and Land Surveyors should be continued. For the following reasons, we believe the regulation and licensing of architects, engineers and land surveyors is desirable to protect the public's health, safety and welfare:

A. These professions involve structures and activities that could result in severe physical and financial harm if practiced by incompetent persons. Potential harmful results include collapsed structures, fires, pollution and extensive litigation, as well as large economic loss.

B. The general public as well as the individual consumer is often directly affected by the professional's work. For example, the users of public buildings have as vital an interest in the structural integrity of a building as the owner does. Also, neighbors and subsequent land owners are impacted by inaccurate surveys or poorly designed structures or communities.

C. Registered architects and engineers are involved not only with the construction but with the original design of structures, facilities and processes. Their seals on blue prints and building plans certify their approval of those plans, and accordingly assign them a good deal of professional and legal responsibility.

D. In order to protect the public without unduly restricting individual rights, AS 08.48.331 exempts a wide variety of persons, activities and structures from requiring the services of a registered architect, engineer or land surveyor.

While the reasons above indicate that the Board should continue to license and regulate architects, engineers and land surveyors, certain changes need to be implemented in order for the Board to more effectively serve the public.

The make-up of the Board should be reviewed to provide better representation of the regulated professions and the general public. At least two lay members should serve on the Board (see Recommendation No. 1).

The procedures for the preparation and grading of the Alaska portion of the land surveying examination should be revised (see Recommendation No. 2).

The Board should continue its efforts to make the statutes and regulations more relevant and workable (see Recommendation No. 3).

Legislation should be introduced which will require continuing education for architects, engineers and land surveyors. Continuing education will assist in avoiding professional obsolescence and keep practitioners aware of changes taking place in the field (see Recommendation No. 4).

The Board should prepare annual reports of its objectives and activities, and OL should incorporate this information into its budget documents. This will better enable the Governor's Office, Legislature and other interested parties to evaluate the Board's performance (see Recommendation No. 5).

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 5 are addressed to the Board of Registration for Architects, Engineers and Land Surveyors. Findings and Recommendations No. 6 and No. 7 are addressed to the Division of Occupational Licensing (OL), and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978".

Recommendation No. 1

In order to ensure that the Board adequately represents the regulated professions and the general public, the qualifications and conditions of Board membership should be reviewed and amended.

AS 08.48.011-.031 creates the State Board of Registration for Architects, Engineers and Land Surveyors, specifies the qualifications and professions of the nine Board members and establishes the members' terms of office. In order that the Board better represent the regulated professions and general public, these statutory provisions should be reevaluated. Some specific areas are addressed below:

A. Of the 23 boards established under AS 08, fifteen have at least one member who has no direct financial interests in the profession(s) regulated by that particular board. The State Board of Registration for Architects, Engineers and Land Surveyors is one the eight boards without lay representation.

   In general, lay members can and should contribute to policy formulation and enforcement decisions. Their expanded roles, particularly in technical evaluations and discussions, will have to be defined for this particular board. However, it should be recognized that the public is the ultimate interest group. We recommend that at least two lay members be included on or added to the Board.

B. The following table shows the relative percentages of professions registered through the Board and the statutory representation afforded each profession.

Profession	As % of All Registrants		Statutory Board Representation
Architects	12%		3
Electrical Engineers	8%		A
Mechanical Engineers	9%		A
Civil Engineers	43%		2
Mining Engineers	2%		1
Chemical Engineers	1%		A
Land Surveyors	21%		1
Petroleum Engineers	1%		A
Corporate Authorizations	3%		-
	100%		7
Representatives from other branches of engineering		A	+ 2
			9

The table illustrates some interesting comparisons: A) Mining engineers, who make up only 2% of all registrants, are guaranteed Board representation. Electrical and mechanical engineers are not, although together they make up 17% of all registrants. B) Architects, who represent 12% of the registrant population, are granted three Board memberships. Land surveyors, representing 21% of all registrants, are only granted one.

Although in actual fact the current Board does have an electrical engineer, a mechanical engineer and the civil engineer members are also registered land surveyors, the law allows for a much less representative membership. We recommend that the professional make-up of the Board, as required by AS 08.48.011, be reevaluated to more accurately reflect the regulated professions and the public.

In addition, the Board is relatively large and the feasibility of a smaller membership should be considered. We recognize, however, that three professions are being regulated and that considerable time is already demanded of Board members.

Recommendation No. 2

The Board should revise its procedures for the Alaska portion of the land surveying exam.

For several years the four-hour land surveying exam on Alaska law and practice has been prepared and graded by a single individual. It is not the auditor's intent to in any way discredit this individual and the Board is rightfully very appreciative of his competence and efforts. However, no one person should have so much input to the determination of whether an applicant is to become a registered land surveyor.

We recognize that the Board has taken preliminary steps to develop alternative procedures for the Alaska portion of the land surveying exam, and recommend that it continue and formalize its efforts. Until such time as the new methods for preparation of the exam are effected, basic control procedures - e.g., ensuring the anonymity of the examinee to the grader - should be followed.

Recommendation No. 3

The Board should continue its efforts to make the statutes and regulations more relevant and workable.

In September, 1978 the Board adopted major revisions to its administrative regulations, 12 AAC 36. These revisions were the culmination of several years' efforts and significantly improve the clarity and applicability of the regulations.

AS 08.48, through which the Board is created and empowered to regulate the professions of architecture, engineering and land surveying, should also be subjected to a review and revision process. In addition, some areas of 12 AAC 36 still need improvement. Some specific areas warranting review are listed below (this list is not intended to be inclusive):

A. AS 08.48.011-.021. As discussed in Recommendation No. 1, Board make-up should be reevaluated.

B. AS 08.48.091. Written exams are required to be held at least twice a year. In the case of the Architecture-Qualifying and the Architecture-Professional exams, which are national tests each of which is offered once a year, this is not possible. The statute should be reworded accordingly.

C. AS 08.48.11. One cause for reprimand is a "crime involving moral turpitude." This is vague and should be eliminated or more precisely defined.

D. 12 AAC 36.010. One of the public need criteria for the continued existence of a board is the extent to which State personnel practices, including affirmative action requirements, have been complied with by the board. 12 AAC 36.010 requires that applicants submit photographs with their applications. We found no evidence of discrimination based on photographs, but the potential for discrimination or charges of discrimination exists. Therefore, we recommend that photographs be used for identification purposes only and that they not be affixed to the application at the time it is reviewed for acceptance.

Recommendation No. 4

Legislation should be introduced requiring continuing education for architects, engineers and land surveyors.

Architects, engineers and land surveyors must demonstrate a high degree of educational and practical competence before they can become registered in Alaska. However, renewal of certificates is not dependent upon evidence of a professional's continued competence.

In our questionnaire to registered professionals, 93% of the architects, 78% of the engineers and 64% of the land surveyors responding reported that they had attended courses and/or seminars in the last two years. Most were concerned, however, that continuing education requirements would be too narrowly defined or too difficult to satisfy. To address these concerns, there must be active involvement by individuals and professional societies in the development of continuing education standards.

Architects, engineers and land surveyors are acutely aware of the public's trust that they maintain their professional competency. Required continuing education is one means of fulfilling that trust. In addition, a program of continuing education will assist in avoiding professional obsolescence and keep practitioners aware of changes taking place in the profession.

Recommendation No. 5

The Board should develop reports and procedures that will enable the legislative and executive branches to evaluate its performance.

A. Under sunset legislation each licensing board will have the burden of demonstrating a public need for its continued existence. As part of this process a board will be expected to establish formal

objectives with, so far as is practicable, quantifiable measures. Without identifiable and measurable objectives, neither the Legislature, the Executive Branch nor the board itself can effectively evaluate performance.

The Division of Occupational Licensing submits annual budget documents in which it establishes its own objectives and evaluates the previous year's performance. Similar reports should be prepared for each board and OL should include these in its annual budget package (see the OL Performance Audit Report).

B. Although required to by AS 08.48.071, the Board has not prepared annual reports to the Governor's Office. As discussed in part A above, there must be some mechanism for evaluating the Board's performance. Furthermore, many registered professionals have expressed an interest in receiving Board reports or newsletters.

We recommend that the Board's annual report include, at a minimum, the following information:

1. Board's purpose, goals and measures;

2. receipts and disbursements related to the Board's operations;

3. Board member participation;

4. new regulations and statutes; and

5. significant developments or concerns of the Board.

Recommendation No. 6

The Division of Occupational Licensing should collect, record and maintain for five-year periods files and statistics of licensing and testing applicants and related workload of the licensing examiner.

The Division needs relevant facts and statistics for evaluating the performance of its personnel and the Board. Many past records have not been maintained or compiled in a usable form, such as:

1. Number of architects, engineers and land surveyors newly registered or renewed in past years;

2. statistics on the pass/fail rates for examinations;

3. number of applicants for examinations or registration as well as number of applicants not approved;

4. breakdown of receipts by fee types; and

5. correspondence workload of licensing examiner.

6. Files for at least 27 registered architects, engineers or land surveyors have either been misplaced or sent to Archives without the necessary cross-reference documents being maintained by OL.

It is to the advantage of the Division to keep these records in order to support its budget request, evaluate its personnel and keep the Board informed as to its progress. Also, feedback from the Board and the public should be encouraged to determine whether staff performance is adequate (see the OL Performance Audit Report).

Recommendation No. 7

The Division of Occupational Licensing should handle investigations in a more comprehensive and timely manner.

As discussed in Legislative Audit's OL Performance Audit Report, OL's investigative performance was not sufficient to provide adequate public protection from abuse by regulated occupations.

In our review of OL complaint files relating to architects, engineers and land surveyors, we also noted the following exeptions:

1. 20% of the cases opened since January, 1975 and subsequently closed were not satisfactorily resolved but were closed due to age.

2. 78% of the cases open as of December, 1978 had not been investigated in a thorough or timely manner. In fact, 64% of the cases had been open for at least six months but had not yet been investigated.

In our October, 1978 audit of OL, we recommended that the Division's investigative unit be transferred to Public Safety. The 1979 legislature did not elect this option, but did approve an additional investigator position (there are currently three OL investigators). The Director of OL has indicated, however, that due to budget restraints the new position will not be filled until October, 1979.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of Board activities relates to the public need factors defined in the "Sunset" law. This analysis is not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. The Board has adopted revisions to the Code of Ethics which clarify and strengthen the professional's responsibility to the public.

2. During the last four years the Board has initiated or referred approximately 30 investigations to OL.

3. In our testing and observations we found the Board to be conscientious in its review of applications and performance of other administrative duties.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. The Division of Occupational Licensing (OL) has not maintained updated statistics for Board use (see Recommendation No. 6 and OL Performance Audit Report).

2. OL has not handled investigations of complaints in a timely and effective manner (see Recommendation No. 7 and OL Performance Audit Report).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. Although the statutes and regulations governing Board activities should be subjected to further review, the Board recently adopted major revisions to its administrative regulations, 12 AAC 36, that significantly improve their clarity and applicabilitity (see Recommendation No. 3).

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. Individuals who contact Board members or the licensing examiner and wish to present information, ask questions or register complaints are encouraged to attend Board meetings.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. Board meetings are held at least five times a year and are advertised in Juneau, Ketchikan, Fairbanks and Anchorage. However, neither meetings nor examinations have been advertised in a timely manner (see the OL Performance Audit Report).

2. During the process of revising its regulations, and in accordance with the Alaska Administrative Procedures Act, the Board invited interested persons and groups to offer written or oral testimony.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. During the past three years, four complaints concerning the Board's activities were filed with the Ombudsman's Office. The cases involved the Board's evaluation of applicants' experience, the assessment of registration fees and the Board's failure to investigate. All cases were resolved to the Ombudsman's satisfaction.

2. OL has only one complaint file relating to the Board's activities. This was prompted by a letter written to the Governor and forwarded to OL, and concerned a Board member's outspoken criticism of a landscape architecture exhibit. No formal complaint was filed, and the matter was satisfactorily resolved.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. Complaints against registered architects, engineers and land surveyors are indications of the quality of practice in the State. During the last four years, only about a dozen complaints were filed with OL charging registered professionals with unethical or unprofessional conduct.

2. Architects, engineers and land surveyors are not required to demonstrate their continued competence through a continuing education or retesting program (see Recommendation No. 4).

3. During the last three years, approximately 100 architects, 500 engineers and 100 land surveyors were accepted for initial registration. OL has not developed summary data by which we could readily determine the number of renewals processed during this same period.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. Photographs are required to be submitted with applications for examinations and/or professional registrations. This requirement does not comply with affirmative action standards (see Recommendation No. 3).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

BOARD OF REGISTRATION FOR ARCHITECTS,
ENGINEERS AND LAND SURVEYORS
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Average Revenue (See Schedule 1, Notes 1 and 2)	$70,964
Expenditures (See Note 3)	58,786
Excess of Revenues over Expenditures	$12,178

Schedule 1
Types of Revenues (See Note 2)

Revenues	Amount	Collection Time
Individual Application Fee	$50	With Application
Corporate Authorization Application Fee	$100	With Application
Reexamination Fee	$50	With taking of examination
Individual Registration Fee	$15/year	Renewals paid biennially; new registrants pay $15/year for balance of biennial period.
Corporate Authorization Registration Fee	$50/year	Renewals paid biennially; new registrants pay $50/year for balance of biennial period.
Amendment to Corporate Authorization	$20	With amendment
Delinquent Renewal Fee	$30	With reinstatement
Late Fee Fine	$10	With late payment

Note 1

Renewal registration fees are collected once every two years and cause revenues inone year to be significantly greater than revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected

in Fiscal Year 1977 and 1978 in order to obtain an accurate representation of collected revenues.

Note 2

12AAC 36.170, which outlines fee types and amounts, was revised in October 1978. Application fees were raised and fees for registration certificates were eliminated. The fees in Schedule 1 reflect the current fee structure.

Note 3

Expenditures include those made by Board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board and OL.

APPENDIX B

ADMINISTRATIVE STATISTICS

Registered Architects, Engineers and Land Surveyors	As of January 1, 1979 Number	As % of Total
Architects	339	12%
Engineers (Note 1)	1,848	64%
Land Surveyors	624	21%
Corporate Authorizations	99	03%
	2,910	100%

Board Meetings in Calendar Years 1975-1978

Average number of meetings per calendar year (excluding telephone conferences)	5 meetings
Average number of days per meeting	2 days

Examinations	Dates Given Each Year
Engineer-In-Training	November, April
Professional Engineering	November, April
Land Surveying	November, April
Architecture-Qualifying	June
Architecture-Professional	December

Note 1

Engineers are registered in the separate fields of civil, chemical, electrical, petroleum, mechanical and mining engineering. The numbers of engineers registered in each field as of January 1, 1978 has not been determined. However, the percentage break-downs calculated using July, 1978 figures and illustrated in Recommendation No. 1 should be relatively unchanged.

APPENDIX C

QUESTIONNAIRE SENT TO BOARD MEMBERS

1. What do you believe to be the goals and objectives of the Board of Registration for Architects, Engineers and Land Surveyors?

Description	*Number of Board Members' Responses (See Notes 1 and 2)*
To ensure only persons who have demonstrated their ability may practice.	*1*
To ensure minimum level of competency among practitioners.	*3*
To monitor professions as prescribed in AS 08.48.	*1*
To protect health, safety and welfare of consumers as well as general public who use structures.	*3*
To ensure minimum standards of conduct.	*2*

2. Do you believe that the Board is achieving its goals as you perceive them in question number 1? Please show how the goals and objectives are or are not being achieved.

Description	*Number of Board Members' Responses*
In most cases, but problems with enforcement.	*2*
Successful in ensuring that registered professionals meet minimum standards.	*2*
No, because:	
a) Complaints not followed up by OL;	*3*
b) Board losing credibility because of (a);	*1*
c) municipal and State agencies not requiring compliance with statutes and regulations;	*1*
d) legal opinions vary from one administration to another;	*1*
e) budget restricts necessary travel and frequency of meetings.	*1*

3. Is the staff from the Department of Commerce and Economic Development and/or other departments adequate to perform all the administrative and enforcement duties necessary for the operation of the Board? What staff support services are provided adequately/inadequately?

Description	*Number of Board Members' Responses*
No, Because:	
a) Board needs an executive secretary;	*2*
b) quarterly newsletter should be sent to registered professionals;	*1*
c) OL investigation procedures not adequate or timely;	*6*
d) administrative duties of licensing examiner handled well but insufficient to fill Board needs.	*4*

4. Do you think that the absence of regulations for architects, engineers and/or land surveyors would be detrimental to the public's best interests?

Description	*Number of Board Members' Responses*
Yes, because:	
a) Alaska's hostile environment requires special knowledge for safe construction;	*2*
b) absence of statutes would encourage growth of incompetence;	*2*
c) energy conservation is very important and requires specialized training;	*1*
d) poorly designed communities and structures might develop, hurting both consumers and the general public.	*3*

5. Are there any statutes that you believe to be obsolete, vague, unduly restrictive and/or inadequate to provide the Board with the responsibility and power to properly meet its objectives? Please list and explain.

Description	Number of Board Members' Responses
Board has worked diligently to revise and improve regulations.	*1*
Statutes generally adequate; but difficult to enforce or to operate effectively within budget.	*3*
State employees should not be exempted from registration requirements (AS 08.48.331(4)).	*1*
Other exemptions are vague and subject to several interpretations (AS 08.48.331).	*1*

6. Do you think that continuing education requirements should be adopted for architects, engineers and/or land surveyors?

Description	Number of Board Members' Responses
Not yet because of cost and administrative time required.	*1*
Desirable but difficult to regulate - progressive individuals will do on their own and competition will eliminate those who don't.	*2*
Yes, but standards should first be established on national basis.	*2*
No - so far only one state requires it.	*1*
Yes - need to ensure continued competence.	*1*

7. Do you believe that the residency, experience or professional requirements for Board membership are valid and/or adequate?

Description	Number of Board Members' Responses
Yes - adequate as minimum requirements. Experience requirement needed for member to evaluate applicants, and residency requirement needed for member to fully appreciate Alaska's unique problems.	6

8. What changes could be made to the Board which would improve its service to the public?

Description	Number of Board Members' Responses
Employ an executive secretary.	2
Publish a quarterly or semi-annual newsletter to keep public, State and registrants informed of Board activities.	1
Need more direct authority to enforce statutes and regulations.	4
Assign an investigator to the Board.	1
Provide adequate funding so that meetings could be held as needed and so members could attend necessary national and/or regional meetings.	1
Provide adequate investigative support to process complaints within a month of receipt.	1
No changes needed to Board itself.	1

9. Please add any other comments or suggestions that you believe would enable us to better evaluate the public need for the Board.

Description	*Number of Board Members' Responses*
Revenues generated by Board would cover cost of executive secretary as well as Board's share of State service costs.	*2*
Need to keep registration so that Alaska's standards are comparable to other states and to ensure interstate flow of professionals.	*2*
Survey needed of building officials, municipal and State agencies, etc., to determine their awareness of and compliance with statutes.	*1*
Public has the right to know that structures and facilities are safe.	*1*
An area that should be looked into is the development of professional intern programs.	*1*

Note 1

Number of Board Members	9
Number of Board Members Responses	6
Response Rate	67%

Note 2

Each Board member responded to each question with several answers. Therefore, total responses to a question may exceed the number of Board members.

QUESTIONNAIRE SENT TO REGISTERED ARCHITECTS ENGINEERS AND LAND SURVEYORS

The following questionnaire was sent to registered architects, engineers and land surveyors (see Note 1). For each question on the questionnaire we have noted the percentage of yes and no responses. We have also shown the most typical written comments for each question as compiled from the questionnaire (see Note 2).

	% of Responses (See Note 1)								
	Architects			Engineers			Land Surveyors		
	Yes	No	No Opinion	Yes	No	No Opinion	Yes	No	No Opinion
1. Have you ever had any contact with the Board of Registration for Architects, Engineers and Land Surveyors?	61%	39%	0%	49%	51%	0%	57%	43%	0%
If so, was it concerning:									
A. New regulations?	22%			18%			29%		
B. Board policy?	43%			21%			36%		
C. New legislation?	22%			12%			25%		
D. Investigations?	18%			12%			11%		
E. Other? (please specify)	18%			27%			25%		

Registration; preparing, proctoring or grading exams; enforcement; availability of courses; proposed registration of landscape architects.

2. Alaska statutes require Board membership to consist of two civil engineers, one land surveyor, one mining engineer, two engineers from other branches, and three architects.									
A. Do you think the Board is: too large?	11%			10%			07%		
too small?	04%			11%			0%		
OK?	71%			55%			61%		
No opinion?	14%			24%			32%		
B. Do you think all professions are adequately represented?	82%	11%	07%	55%	29%	16%	54%	29%	07%

Comments:

No - Each profession should have its own board.
No - All fields of engineering should be represented.
No - Landscape architects should be registered.

	% of Responses (see Note 1)								
	Architects			Engineers			Land Surveyors		
	Yes	No	No Opinion	Yes	No	No Opinion	Yes	No	No Opinion
C. Are any professions over represented?	07%	68%	25%	38%	45%	17%	43%	46%	11%
Comments:									
Yes - Too many architects (30% of engineers and land surveyors responding added this comment);									
- too many civil engineers.									
D. Should the public (non-professionals) be represented on the Board?	18%	75%	07%	14%	78%	08%	07%	86%	07%
Comments:									
No - Unable to understand technical issues; Board members already represent public.									
Yes - But not as voting member; should be one or two representatives from industry or government.									
3. Do you believe that it is necessary to register architects, engineers and/or land surveyors in order to protect the public's health, safety and welfare?	89%	07%	04%	97%	03%	0%	100%	0%	0%
Comments:									
Yes - To establish minimum standards which consumer cannot assess;									
- particularly with Alaska's harsh environment and land issues;									
- however, if regulations not enforced it is better to have no regulations at all.									
4. If so, do you think Alaska's certification requirements are necessary and/or adequate?	75%	14%	11%	90%	07%	03%	89%	07%	04%
Comments:									
Yes - Comparable to national standards.									
No - Should require more experience;									
- should require college degree;									
- should not exempt government employees.									
Is the requirement that architects and engineers demonstrate knowledge of construction under sub-arctic conditions a valid and/or reasonable requisite to professional practice in Alaska?	89%	11%	0%	82%	15%	03%	N/A	N/A	N/A

	Architects			Engineers			Land Surveyors		
	Yes	No	No Opinion	Yes	No	No Opinion	Yes	No	No Opinion
4 (Cont'd.)									

Comments:

No - No more valid than requiring knowledge of other climate types;
- very little work is done under Arctic conditions.
Yes - Should also demonstrate knowledge of earthquakes and energy conservation;
- but Board should define topic requirements better.
- Architects' thesis requirements should not be stiffer than engineers.
- Arctic Engineering courses aimed at Engineers not Architects.

Do you feel that the examination required for registration is a fair and reasonable test of professional knowledge and ability?	68%	25%	07%	69%	12%	19%	68%	11%	21%

Comments:

No - Exams do not adequately test legal knowledge, design skills, reasoning ability or professionalism;
- there should be more emphasis on a professional interim program.

5. In the last two years, have you attended any classes or seminars directly relating to your professional skills?	93%	07%	0%	78%	21%	01%	64%	36%	0%

If so, how many hours of classes have you had?

No meaningful average available because responses were in terms of seminars, credit hours, contact hours, etc.

6. Do you believe continuing education should be required for renewal of certificates?	50%	46%	04%	38%	54%	08%	46%	50%	04%

Comments:

No - Active practice sufficient to stay current;
- course offerings too limited in Alaska;
- no national standards have been established;
- continuing education is a gimmick by educators to create classes.

Board should encourage independent continuing education and should help organize seminars and classes.

	% of Responses (see Note 1)								
	Architects			Engineers			Land Surveyors		
	Yes	No	No Opinion	Yes	No	No Opinion	Yes	No	No Opinion
7. Do you think that the State should issue temporary certificates?	04%	86%	10%	14%	77%	09%	14%	82%	04%

If so, under what conditions should they be issued?

Only if - Shortage of registered professionals;
- Required to post bonds or Board reviews individual cases for public's best interests.
No - State would be inundated with carpet baggers and consumer would have not redress after temporary licensees left State.
Yes - To juniors or apprentices;
- to persons from states with comparable requirements.

8. In your opinion, has the Board of Registration for Architects, Engineers and Land Surveyors operated in the public's best interests?	68%	14%	18%	82%	04%	14%	68%	04%	28%

Comments:

Board has not policed the profession.
Meetings should be held more often.
Yes - By revising regulations;
Yes - but Board is under-funded.

9. Do you think that any of the statutes under which architects, engineers and land surevyors are regulated are obsolete, vague, unduly restrictive and/or inadequate?	29%	29%	42%	16%	46%	38%	18%	39%	43%

If so, please list and explain:

Yes - State employees and other exemptions should be reviewed (AS 08.48.331);
- statutes should better define incompetence, negligence and distinctions among the professionals;
- there should be a land surveyor-in-training exam;
- the Board has little real authority.

10. Have you any complaints concerning the support services provided by the staff of the Division of Occupational Licensing, Department of Commerce and Economic Development?	21%	61%	18%	16%	75%	09%	25%	64%	11%

	Architects			Engineers			Land Surveyors		
	Yes	No	No Opinion	Yes	No	No Opinion	Yes	No	No Opinion
10. (Cont'd.)									
If so, please specify:									
Yes - Board is inadequately funded and cost of services too high for services rendered. Inadequate services evidenced by no executive secretary, no yearly rosters, no newsletters, difficulty in obtaining renewal information, delays in registration process, and insufficient investigative support.									
11. Are you aware of any discriminatory practices involving the registration and certification of any particular individual or minority groups?	04%	92%	04%	03%	95%	02%	0%	96%	04%

Comments:

Yes, in Board's interpretation of requirements that experience must be under registered professional.
In general, persons without college degree are discriminated against through stiffer experience requirements.

12. Please add comments or suggestions you feel are relevant.

Many persons, particulary government employees, are unable to get breadth of experience; Board should consider breaking CE into several disciplines;
Board should encourage Bureau of Land Management to give mineral surveyors test more often.
Comity applicants should not have to furnish references and college transcripts.
Persons with active applications on file should be notified of regulation changes that affect them.
Board should be allowed to hire an executive secretary and hire direct legal services.
Board should utilize the services and expertise of other State agencies, such as the Division of Lands.

Note 1

	Architects	Engineers	Land Surveyors
Number of questionnaires sent to registered professionals	51	165	61
Number of responses	31	115	35
Response Rate	61%	70%	57%

Note 2

Comments were all reviewed and considered in the performance of our audit, and are briefly summarized in this appendix.

STATE OF ALASKA
DIVISION OF LEGISLATIVE AUDIT

APPENDIX E

QUESTIONNAIRE SENT TO APPLICANTS NOT ACCEPTED FOR EXAMINATION OR COMITY

Questionnaires were sent to some of the individuals whose applications to take examinations or to become registered by comity were turned down by the Board:

	Applicants for Examination	Applicants for Registration by Comity
Number of Questionnaires Sent	16	11
Number of Responses	8	8
Response Rate	50%	73%

Questionnaires are not reproduced in this report but all responses were reviewed and considered in the performance of our audit.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811

June 18, 1979

Mr. Gerald Wilkerson, CPA
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Board of Registration for Architects, Engineers and Land Surveyors, as submitted by the Division of Legislative Audit.

Recommendation No. 1: We agree that statutory provisions for board membership should be reevaluated. The requirement for one mining engineer appears unwarranted, while one land surveyor may be insufficient. At this time the board is representative of all fields and, in our opinion, is performing in an excellent manner. We would support inclusion of public members on the board while not increasing its overall size. The subjects of board composition and public membership have been under discussion by the board and it is expected that the board will support this recommendation.

Recommendation No. 2: Agreed. The board has been discussing this matter for some time and is currently investigating alternatives which will maintain examination integrity and quality.

Recommendation No. 3: Agreed. The board, in conjunction with the division, is addressing statutory and regulatory clarification.

Recommendation No. 4: Agreed. The board has discussed this subject and is generally in support of mandatory continuing education. However, care should be taken as to approval of courses to meet such requirements and with respect to possible exemptions.

Recomendation No. 5: Agreed. All boards have been contacted for input into the division's budget for FY '81. This information will address board goals and objectives as well as its financial needs. All boards have also been contacted regarding the requirement for performance reporting. The board is currently preparing its annual report for 1978.

08-H2LH

Recommendation No. 6: Agreed. The division has implemented record maintenance for all boards and commissions under its jurisdiction.

Recommendation No. 7: Agreed. Complaints received against all regulated professions should be handled on a timely basis. Budgetary restraints have mandated priortization of investigations.

I appreciate the time and efforts expended by your staff and the opportunity to provide these comments.

Sincerely,

Charles R. Webber
Commissioner

CRW/sa2/5

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

June 25, 1979

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Re: Comments on the Sunset Review Preliminary Legislative Audit Report.

Board members have reviewed the preliminary audit report that you submitted by letter dated June 6, 1979 and have several comments to the recommendations presented by the report. Several of the board members have submitted their comments as individuals because your cover letter was not clear regarding the method in which responses should be submitted; however, as per our telephone conversation, I will attempt to combine all board members' comments in this one letter.

First, I would like to state that the intent of the Sunset legislation, as I understand it from reading "Sunset Legislation in the United States" by Dan R. Price, is to evaluate present bureaucratic effectiveness and efficiency and to deter unnecessary bureaucratic growth. The same publication also states that evaluation and not termination is the primary purpose of Sunset. From this, I would conclude that the Legislature's intent is to improve the relationship between the board and the public by making changes to our statutes and regulations when or if such legislation is necessary to meet that end. I can assure you that such legislative action would be welcomed by all members of this board and, although the following comments may be contrary to the recommendation in the preliminary audit report submitted by your office, the board feels that through these comments it also will obtain the Sunset intent.

Following is the board's response to the recommendations contained in the performance review of the Board of Registration for Architects, Engineers, and Land Surveyors prepared by the Division of Legislative Audit.

-H8LH

Recommendation No. 1

In order to ensure that the board adequately represents the regulated professions and the general public, the qualifications and conditions of board membership should be reviewed and amended.

A. Addition of Lay Members to the Board

Reply a. Addition of Lay Members to the Board. I disagree with the recommendation to add two lay members to the Board. The tasks performed by the Board, in almost all instances, require technical knowledge of the professions regulated. A lay member, by definition, would not have the necessary background to intelligently act on the technical matters. Secondly, there is no evidence that the Board has failed to act in the best interests of the public and consequently I see no demonstrated need to further increase the size of the Board and to thus increase the costs of Board operations.

(Seven Members Agree with this Statement)

Reply b. It has become more apparent that lay members are being appointed to public regulation boards throughout the country. I would be in favor of adding two lay members to the board providing that the number of professional members, currently nine, is not reduced.

(Two Members Agree with this Statement)

B. Re-evaluation of Professional Make-up of the Board

The table showing relative percentages of professions registered is misleading. I call to your attention, Section 08.48.011 of the Alaska Statutes which states, "There is created the State Board of Registration for Architects, Engineers and Land Surveyors." It further states that the Board consists of two civil engineers, and one land surveyor, one mining engineer and two engineers from other branches of the profession of engineering. A further investigation of the statute will identify that we register Professional Engineers, Professional Architects and Professional Land Surveyors, reference to Section 08.48.221. The identification of a specific expertise within the Professional Engineering registration is specifically for the health protection and welfare of the public.

With reference to these three professions, the Board of Registration for Architects, Engineers and Land Surveyors does, in fact, have lay members on the Board, as each separate profession is a lay member relative to the other two.

Of the fifty-five boards registering professionals throughout the nation, thirty-nine of these boards are made up of only architects, and represent only the architectural profession. Of the sixteen boards representing combined professions each of the boards was chaired by a registered professional architect prior to recent officer elections on these boards.

Of the fifty-five boards nationally thirty-eight of these boards have Executive Secretaries or Executive Directors. These individuals are not members of the board and do not represent a professional registration.

On some boards serving the combined professions all members are registered professional architects. I would call to the committee's attention the fact that most projects to be constructed, which affect the health, safety and welfare of the public, have a single prime professional responsibility to the client. For virtually all commercial construction projects involving buildings housing the public or serving the public, the architect is the prime consultant identified by contract. Mechanical, electrical, civil and other engineering services are subcontracted to the architect for coordination and management. This of course does not apply to pure engineering projects such as roadways, bridges and utility services. Perhaps representatives of the audit committee should review State contracts through the Department of Transportation and Public Facilities, to determine how many contracts are awarded to engineers and how many contracts are awarded to architects. It is specifically through this contractual relationship between consultant and owner that the prime responsibility for the protection of the public's health and welfare is established.

If representation is desired for each separate branch of the professional engineering registration and for additional branches recognized in the future, I would offer the suggestion that the State of Alaska consider separate boards of registration for architects and engineers, as thirty-nine other states and districts have done in the past.

Such a separation of boards would respond to the review comment that the board is relatively large and the feasibility of a small membership should be considered.

(Nine Members Agree with this Statement)

Recommendation No. 2

The Board should revise its procedures for the Alaska portion of the land surveying exam.

I agree with the recommendation of the audit that procedures must be undertaken to develop alternative procedures for the Alaska portion of the land surveying exam. At the last board meeting we met with the individual who has been making up and grading the land surveying exam and we are in the process of revising those procedures to insure security of the exam and the anonymity of the individual, or individuals, involved in preparing that examination.

(Nine Members Agree to this Statement.)

Recommendation No 3.

The Board should continue its efforts to make statutes and regulations more relevant and workable.

A. Board make-up. Discussed in Recommendation No. 1.
B. Architectural Exams. I concur.
C. Definition of moral turpitude. I agree.
D. Photographs. No comment other than to question the desirability of increasing the cost and effort involved in identifying applicants for no valid reason.

(Nine Members Agree with this Statement.)

Recommendation No. 4

Legislation should be introduced requiring continuing education for architects, engineers and land surveyors.

In my judgement, mandatory continuing education is not appropriate at this time. The National Council of Engineering Examiners and the National Council of Architectural Registration Boards is addressing this matter and it would appear prudent to delay any action on mandatory continuing education until the Council has completed its study and come up with a recommended system that can uniformly be adopted by State Registration Boards. The problems in uniformity of evaluating continuing education units, accreditation of institutions offering continuing education opportunities, record keeping and comity registration requirements are extensive. Solutions to these problems can best be obtained through the application of uniform requirements developed through the National Councils.

(Nine Board Members Agree with this Statement.)

Recommendation No. 5

The Board should develop reports and procedures that will enable the legislative and executive branches to evaluate its performance.

I concur with the recommendations to develop reports and establish procedures and to enable the legislative and executive branches to evaluate the board's performance. During recent years, however, we have been advised that funding is limited and to limit expenditures where possible. This includes the additional days of meetings required to prepare reports.

We have been advised in the past that the preparation of budgets is not necessary as we are a portion of a larger budget and will receive a pre-established share of funding from the Division of Occupational Licensing, regardless of predefined goals and objectives or the amount of revenue generated by the professional registrants represented by collected.

(Nine Members Agree with this Statement.)

Recommendation No. 6.

> The Division of Occupational Licensing should collect, record and maintain for five-year periods files and statistics of licensing and testing applicants and related workload of the licensing examiner

I am in agreement with Recommendation No. 6 and as a Board we have been trying to have this information and statistical data made available. We have found it virtually impossible to even obtain an alphabetical listing of the registrants, or the ability to have a listing of registrants numerically. If our data storage system cannot provide this type of information, it appears that we are going to have a great deal of difficulty providing the types of information recommended in Recommendation No. 6. This information is not difficult to compile, it's a matter of having the clerical support and the computer program to provide it.

(Nine Members Agree with this Statement.)

I would like to thank you on behalf of the nine members that make up the Board of Architects, Engineers and Land Surveyors for the opportunity to make comments to your preliminary report. If you have any questions concerning these comments, please feel free to contact me at my work number (364-3280) or at my home (789-7814).

Very truly yours,

Wallace I. Deboff, P.E.

HEWITT V. LOUNSBURY & ASSOCIATES
ENGINEERS PLANNERS SURVEYORS . 723 W. 6th. Avenue, Anchorage, Ak. 99501 Tel. (907) 272-5451

June 20, 1979

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Alaska Office Building
Juneau, AK 99811

Reference: Preliminary Audit Report on a Performance Review of the Board of Registration for Architects, Engineers and Land Surveyors, May 11, 1979

Dear Mr. Wilkerson:

I have reviewed the above report and offer the following comments:

Recommendation No. 1:

A. It has become more apparent that lay members are being appointed to public regulation boards throughout the country. I would be in favor of adding two lay members to the board providing that the number of professional members, currently nine, is not reduced.

B. Even through your table illustrates that there is a disparity in the representation of the board members to the various categories of professions, it is my recommendation that if there is to be a change in the required make-up of the board, that the architects continue to be represented by three members. Even though they represent only 12% of the total registrants, their requirements for registration and their educational backgrounds are somewhat different than those for engineers and land surveyors; therefore, it requires knowledgeable professionals to evauate and pass on candidates for registration as architects. However, the mix of electrical, mechanical, civil, mining, chemical and petroleum engineers is really not that critical inasmuch as our educational background and the requirements for registration are the same. I would have no problem in the law being revised to reflect that at least three of the six engineers serving on the board must also be also registered as land surveyors, or that at least one individual registered solely as a land surveyor must be on the make-up of the board.

I do not agree that a smaller board is feasible. There are a large number of applicants to screen at most of our meetings; it takes a great deal of time to thoroughly analyze the applicants; and we require that at least three board members review each applicant. I think the additional cost in per diem and travel is well worth having a nine-member professional board.

Recommendation No. 2:

I agree with the recommendation of the audit that procedures must be undertaken to develop alternative procedures for the Alaska portion of the land surveying exam. At the last Board meeting we met with the individual who has been making up and grading the land surveying exam and we are in the process of revising those procedures to insure security of the exam and the anonymity of the individual, or individuals, involved in preparing that examination.

Recommendation No. 3:

I agree with Recommendation No. 3 as it pertains to Items A, B, C and D. As the report points out, we are in continual discussions each meeting on revisions to the regulations. Because of the statutory requirements pertaining to regulations and the time involved in making changes, we have normally waited until there were a number of changes to be made before initiating the process of public hearings, etc. Our current position is to wait until we have determined what specific portions of the current statute and regulations need to be revised as a result of Sunset Legislation before starting the revision procedure. We certainly recognize changes to both the statute and regulations are in order.

Recommendation No. 4:

I am in agreement with the philosophy of continuing competence. The problem that Alaska is faced with, as well as the other boards throughout the United States, is a means by which to monitor continuing education requirements that will meet the needs of all of the states while allowing individuals registered and practicing in more than one state to meet the same requirements in each state with minimal effort. The current thinking is to provide a means through the National Council of Engineering Examiners to provide for continuing competence on a national basis. This will be one of the topics discussed at the National Convention of NCEE in August. I am sure the Alaska Board would endorse a national program of continuing competence that is endorsed by all 50 states and maintained by a national central depository. Until this is accomplished monitoring and administering a program on a state level would be prohibitive.

Recommendation No. 5:

I am in complete agreement with Paragraphs A and B. One of the problems that the board members have indicated to the audit group is the lack of clerical support by the Division of Occupational Licensing. It is virtually impossible for the board, as such, to prepare this information on a timely basis without the assistance of a qualified individual such as an executive director. It is virtually impossible to comply with this recommendation without help that has expertise in engineering, land surveying and architecture. The secretary to the board, while totally dedicated and willing, has never been more than a secretary or stenographer, totally untrained in the professional areas that we regulate.

Recommendation No. 6:

I am in agreement with Recommendation No. 6 and as a Board we have been trying to have this information and statistical data made available. We have found it virtually impossible to even obtain an alphabetical listing of the registrants, or the ability to have a listing of registrants numerically. If our data storage system cannot provide this type of information, it appears that we are going to have a great deal of difficulty providing the types of information recommended in Recommendation No. 6. This information is not difficult to compile, it's a matter of having the clerical support and the computer program to provide it.

Recommendation No. 7:

This area is probably the most important and most difficult area to control. As the response to your questionnaire indicates, this is the one area that is most visible to the public. If there is one particular area that the Board is criticized for, it is the lack of enforcement of the regulations and statute. In addition, it is probably the most frustrating to the Board members. All of the Board members would like the authority, that we have been denied by various Assistant Attorney General's Opinions, to informally investigate and, if necessary, reprimand individuals in violation of our statutes and regulations. A vast majority of complaints could be delt with and eliminated in this manner. The more flagrant and serious complaints and violations could be handled in accordance with the more formal procedures. However, in order for even formal complaints and violations to be effective, they must be investigated and handled in a timely manner. This has not been the case inasmuch as our Board has received a much lower priority on complaints than those in the health sciences. Because of the lack of investigators and the direction they have been given, our complaints have either gone unheeded or are so low in priority that they are usually

dismissed or forgotten before any investigative effort is started. I feel a staff consisting of an executive director, secretary, and investigator would not only increase the ability of the Board to perform their duties, but would allow the complaint procedure to be handled in a timely and proper fashion.

I am pleased for the opportunity to respond to the audit and feel that the information it contains has been fairly presented.

Yours truly,

Loren H. Lounsbury, P.E.

LHL/sw

June 20, 1979

Mr. Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch "W" - Alaska Office Bldg.
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following statements are in response to your letter of June 6, 1979 and the preliminary review of the Board of Registration for Architects, Engineers and Land Surveyors.

My comments respond to the numbered recommendations of the Findings and Recommendations of your report.

Recommendation #1 (A) Lay Members

This evaluation compares boards within this State and does not respond to National statistics. This may not be a concern, but I provide the following statistics for the fifty-five boards registering architects, engineers and land surveyors throughout the nation.

Eleven, of the fifty-five registration boards nationally, have lay members. The average public representation on those boards is 26%. Of these eleven boards six have only one member, four have two members and California has five members.

I believe that selected lay members could provide advantages in the interest of the public. I do not believe however, that adding lay members simply to have lay members on boards will provide for the health protection and welfare of the public.

Lay members can and should contribute to policy formulation and enforcement except where those decisions require an understanding of the professions. As our board is a board representing special training and experience I see the lay members limited in their ability to perform truly serviceable functions to the public.

Recommendation #1 (B)

The table showing relative percentages of professions registered is misleading. I call to your attention, Section 08.48.011 of the Alaska statutes which states, "There is created the State Board of Registration for Architects, Engineers and Land Surveyors". It further states that the board consists of two civil engineers, one land surveyor, one mining engineer and two engineers from other branches of the profession of

engineering. A further investigation of the statute will identify that we register Professional Engineers, Professional Architects and Professional Land Surveyors, reference to Section 08.48.221. The identification of a specific expertise within the Professional Engineering registration, is specifically for the health protection and welfare of the public.

With reference to these three professions, the Board of Registration for Architects, Engineers and Land Surveyors does in fact have lay members on the board, as each separate profession is a lay member relative to the other two.

Of the fifty-five boards registering professionals throughout the nation, thirty-nine of these boards are made up of only architects, and represent only the architectural profession. Of the sixteen boards representing combined professions each of the boards was chaired by a registared professional architect prior to recent officer elections on these boards.

Of the fifty-five boards nationally thirty-eight of these boards have Executive Secretaries or Executive Directors. These individuals are not members of the board and do not represent a professional registration.

On some boards serving the combined professions all members are registered professional architects. I would call to the committees attention the fact that most projects to be constructed, which affect the health safety and welfare of the public, have a single prime professional responsibility to the client. For virtually all comercial construction projects involving buildings housing the public or serving the public, the architect is the prime consultant identified by contract. Mechanical, electrical, civil and other engineering services are subcontracted to the architect for coordination and management. This of course does not apply to pure engineering projects such as roadways, bridges and utility services. Perhaps representatives of the audit committee should review State contracts through the Department of Transportation and Public Facilities, to determine how many contracts are awarded to engineers and how many contracts are awarded to architects. It is specifically through this contractual relationship between consultant and owner that the prime responsibility for the protection of the public's health and welfare is established.

If representation is desired for each separate branch of the professional engineering registration and for additional branches recognized in the future, I would offer the suggestion that the State of Alaska consider separate boards of registration for architects and engineers, as thirty-nine other States and Districts have done in the past.

Such a separation of boards would respond to the review comment that the board is relativly large and the feasibility of a smaller membership should be considered.

Recommendation #2

No comment.

Recommendation #3

I concure with the suggestion that continued efforts should be made to make the statutes and regulations more relevant and workable. This is especially important in specific definations relating to the differences between architecture and engineering. Until these differences are fully interpreted for the use by governmental agencies to determine improper professional practices and the public will continue to suffer from individuals who are not qualified to provide specific services, but whose work is accepted by the reviewing agencies issuing approvals and building permits.

Recommendation #4

I concure with the recommendation for continuing education requirements. If these requirements are required I believe it is the responsibility of the State of Alaska to fund such seminars and special education classes as required to establish the availability of services to meet the requirements.

Registered professionals who are principals of a firm or who practice as a sole proprietorship have the opportunity and finances generally to attend seminars and special education clsses relating to the professions. Employees, however, may not be able to afford the hundreds of dollars required for a week of travel to other parts of the nation, to fulfill continuing education requirements. If this requirement is to truly serve the public we must have access to the educational services which were available to the bulk of the nation.

The committee might consider discusing the daily routines of the architect, engineer and land surveyor to establish the quality of continuing education which exists through the hundreds of items received and reviewed by the professional each month.

Organizations providing a continuous flow of new and revised material include the Sweets Catalog System, the Construction Specifications Institute, the American Institute of Architects, the Council for Educational Facility Planners International, Educational Facilities Lab, the Wood Institute, the Door and Hardware Institute, the National Fire Protection Association, the International Conference of Building Officials, and a mulititude of professional and technical magazines and associations. The individual professionals representing the various

disciplines of architecture, land surveying and the branches of engineering, also provide a continuous flow of new technical information to professionals.

These are but a few sources of continuing education and apply primaraly to my own professional registration, architecture. Within the field of architecture, the American Institute of Architects and the National Council of Architects Registration Boards is pursuing the concept of continuing education and preparing for this inevitable and logical requirement for registered professionals. I would suggest that the Committee consider seeking response from the various national professional associations represented by the architectural, engineering and land surveying registrants of this State.

I would call to the attention of the Committee that the board members seeking to better prepare themselves to serve the public through the board of registration should be attending regional and national workshops, seminars and conventions dealing specifically with Sunset Legislation and all of its ramifications. To date we are denied the necessary travel expenses to fully participate on a regional and national level.

Speaking from personal experience, I recently declined to participate on a regional committee of the National Council of Architectural Registration Boards, because the State of Alaska could not fund my attendance. This situation developed at a meeting in November 1978, in Portland, where I attended an WCARB Executive Committee meeting, to discuss, among other things, the Sunset Legislation, continuing education, national exams and the grading system for examining these. My attendance to that particular conference was paid for by the Western Council of Architectural Registration Boards, a region of NCARB.

Recommendation #5

I concure with the recommendations to develop reports and establish procedures and to enable the legislative and executive branches to evaluate the boards performance. During recent years, however, we have been advised that funding is limited and to limit expenditures where possible. This includes the additional days of meetings required to prepare budgets, develop goals and objectives and prepare reports.

We have been advised in the past that the preparation of budgets is not necessary as we are a portion of a larger budget and will receive a pre-established share of funding from the Department of Occupational Licensing, regardless of predefined goals and objectives or the amount of revenue generated by the professional registrants represented by collected.

Recommendation #6

The performance of services suggested will require additional staff services for our board. It is my personal opinion that if the Legislative Audit Committee desires a more indepth review and management

procedure from the Board of Registration for Architects, Engineers and Land Surveyors, serious consideration be given to the following possibilities.

1. Provide a full time executive director for the A/E & LS board.

2. Provide a second full time license examiner or administrative secretary to assist in the administrative management of board functions.

3. Provide a full time investigator to generate rapid responses to complaints and concerns of the public. If we are unable to respond in a timely manner, the public will not be served.

4. As an alternative to the growth of the board I suggest that the separation of Architects from the Engineers and Land Surveyors be considered, and that each of the boards be expanded by lay members. The work load is thus separated and the management difficulties of a large board are reduced.

Recommendation #7

The State does not provide a sufficient staff of investigators to serve the public interests. Thus, complaints are not reviewed in a timely manner and the professionals become reluctant to participate in the policing of the industry. In the past, when I have personally discussed this at meetings of the American Institute of Architects and at meetings of engineering societies, the most common response is "why should we file complaints on violations we know are happening when we also know that nothing will be done about these complaints by the division of occupational licensing or the attorney generals office."

It is my opinion that this attitude must be altered and that it can only be improved by greater support from the legislature, the attorney generals office, the governors office, the division of occupational licensing, the board of registration and especially by the state and municipal reviewing agencies who have the authority and responsibility to approve or reject projects for construction.

The reviews of documents for the issuance of building permits by municipal building officials and the review of State projects by the various State approving agencies do not always include a requirement for compliance with the States statutes as a part of the review process. This should become State and Municipal policy.

It is my opinion that the State of Alaska, through its waiver of requirements for registered personnel within the Department of Transportation and Public Facilities were job descriptions require registration, is misuse of governmental privilege. It is my opinion, that

those job descriptions requiring registered professionals are being changed, a process in the works at this time, the elimination of the States requirements for registered professionals in positions of authority dealing with professional services to the public is a misuse of government authority.

If the State denies its own obligation for registered professionals in State positions or avoids this by reducing the job description, how can the health, welfare and protection of the public be provided. It is my personal opinion that the Department of Transportation and Public Facilities, as the State agency in charge of the development of professional contracts for services involving the public, should be the leader in demanding compliance with the State statutes. It, in fact, is not and policies are being established to further reduce the requirement for registered professionals in positions of authority with the Department of Transportation and Public Facilities.

The comments presented are my personal opinions and are not intended to reflect official board policy. I would be pleased to meet with the Legislative Audit Committee or its representatives at any time to discuss my comments or provide additional information for the committee.

Very truly yours,

Jim L. Bridges
Architect, AIA

JLB/clw

SB
572
(HB 1005)

COMMITTEE REPORT

SENATE

FURTHER: None

4/22/80

Date: May 8, 1980

Mr. President:

The Committee on COMMERCE has had SB 572 continuing the existence of the State Board of Registration for Architects, Engineers and Land Surveyors

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for SB 572 [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Tim Kelly

Tony J. Stimson

Brad Bradley

[illegible]

MEMBERS HAVING OTHER RECOMMENDATIONS:

Brad Bradley
CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: REPRESENTATIVE FRED BROWN
CHAIRMAN, HOUSE COMMERCE COMMITTEE
ATTENTION: BOB AARON
ADMINISTRATIVE ASSISTANT

FROM: CHRISTIAN BASLER
ADMINISTRATIVE ASSISTANT
SENATE COMMERCE COMMITTEE
SENATOR BRAD BRADLEY, CHAIRMAN

RE: STATE BOARD OF REGISTRATION OF ARCHITECTS, ENGINEERS AND LAND SURVEYORS

DATE: MAY 6, 1980

SB 572 and HB 1005 are identical bills. At the last Senate Commerce Committee hearing it was felt that a CS for SB 572 should be introduced.

The only change is in Section 2, AS 08.48.091 (page 3, lines 20 and 21). Attached is a copy of CSSB 572 indicating the above-mentioned change.

3/4/80

CS FOR SENATE BILL 572

BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS

MR. PRESIDENT, I MOVE THE ADOPTION OF THE CS FOR SB 572, WHICH IS IDENTICAL AT THIS POINT, TO THE HOUSE BILL FOR THE SAME BOARD. WE HAVE WORKED JOINTLY TO TRY TO PREVENT AN UNNECESSARY AND OFTEN TIME-CONSUMING FREE CONFERENCE COMMITTEE. NOT TOO MANY CHANGES WERE MADE TO THIS BOARD BECAUSE IT HAS BEEN OPERATING BETTER THAN MOST.

(SEC. 08.48.071)
P. 2, LS. 5/25

SECTION 1, SUBSECTION (c) PERTAINING TO RECORDS AND REPORTS, IS AMENDED SO THAT THE REPORT WHICH THE BOARD IS REQUIRED TO SUBMIT TO THE GOVERNOR ANNUALLY WILL ALSO BE SUBMITTED TO THE LEGISLATURE. THIS REPORT MUST INCLUDE THE FOLLOWING ADDITIONAL ITEMS:

(1) DATA AS TO THE ATTENDANCE OF MEMBERS OF THE BOARD AT MEETINGS;

(2) A LIST OF REGULATIONS ADOPTED, AMENDED, OR REPEALED;

(3) THE CURRENT PURPOSES AND GOALS OF THE BOARD;

(4) AND SIGNIFICANT DEVELOPMENTS IN THE FIELD OF ARCHITECTURE, ENGINEERING, AND LAND SURVEYING OF CONCERN TO THE BOARD.

THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT IS REQUIRED TO PRESERVE RECORDS OF THE BOARD'S PROCEEDINGS FOR FIVE YEARS AND MUST ASSEMBLE STATISTICS RELATING TO THE PERFORMANCE OF ITS STAFF AND THAT OF THE BOARD INCLUDING

(1) THE NUMBER OF ARCHITECTS, ENGINEERS AND LAND SURVEYORS REGISTERED OVER A FIVE-YEAR PERIOD.

(2) THE RATE OF PASSAGE OF EXAMINATIONS.

(3) THE NUMBER OF PERSONS APPLYING FOR REGISTRATION.

(4) AN ACCOUNT OF REGISTRATION FEES COLLECTED, AND

(5) A MEASURE OF THE CORRESPONDENCE WORK-LOAD OF THE LICENSING EXAMINER.

(SEC. 08.48.091)
P. 3, LS. 14/20

SECTION 2 IS AMENDED BY ALLOWING AN EXAMINATION TO BE GIVEN ONCE EACH YEAR, IF IT IS A NATIONAL EXAMINATION WHICH IS ONLY PREPARED ONCE EACH YEAR. THE WRITTEN EXAMINATION IS CURRENTLY HELD AT LEAST TWICE EACH YEAR. FURTHERMORE THE EXAMINATION FEE FOR APPLICANTS SHALL BE ESTABLISHED BY THE BOARD AND THE AMOUNT NOT ESTABLISHED BY LAW.

(SEC. 08.48.111)
P. 3, L. 23

SECTION 3 STATES THAT THE BOARD MAY NO LONGER TAKE DISCIPLINARY ACTION AGAINST A PERSON OR CORPORATION WHO IS FOUND GUILTY OF A CRIME INVOLVING MORAL TURPITUDE, SINCE THIS IS AN EXTREMELY VAGUE STANDARD.

(SEC. 08.48.171)
P. 4, L. 16

SECTION 4 LIMITS THE BOARD'S DISCRETION TO REQUIRE EVIDENCE OF MORE THAN EIGHT YEARS OF ANY COMBINATION OF EDUCATION, EXPERIENCE OR TRAINING FROM AN APPLICANT FOR REGISTRATION AS A LAND SURVEYOR.

(SEC. 08.48.221)
P. 4, L. 26

SECTION 5 REQUIRES THE BOARD TO ADOPT REGULATIONS GOVERNING THE USE OF SEALS BY A REGISTRANT UNDER THIS CHAPTER.

(SEC. 08.03.010(c))
P. 5, L. 8

SECTION 6 ESTABLISHES JUNE 30, 1984, AS THE TERMINATION DATE FOR THE BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS.

(SEC. 08.03.010 (B)(6))
P. 5, L. 11

SECTION 7 REPEALS THE JUNE 30, 1980 SUNSET PROVISIONS FOR THE BOARD.

P. 5, L. 12

SECTION 8 PROVIDES THAT THIS ACT TO TAKE EFFECT JULY 1, 1980, ONE DAY AFTER THE BOARD IS SCHEDULED TO TERMINATE UNDER EXISTING LAW.

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 13, 1980

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Your Senate Commerce Committee has had under consideration for "Sunset" review the Board of Registration for Architects, Engineers and Land Surveyors pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, at which written and oral testimony was received. Members of the board testified in person or by teleconference. The Committee considered the proposed budget of the board for FY 1981 and particularly examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

Guided, in part, by the report prepared by the Legislative Audit Division the Committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings: The Commerce Committee concurs in part in the findings made by the Division of Legislative Audit in considering the factors required for consideration under AS 44.66.050(c), as they appear on pages 9 through 14 of the Performance Review of the Board of Registration for Architects, Engineers and Land Surveyors prepared by the Division of Legislative Audit, dated May 11, 1979, which is hereby incorporated by reference as though fully set out herein.

In brief, we do not concur in recommendation number one that the board have lay representation. We feel the public is adequately represented by having three separate professions

on the board, although some adjustment of membership allocation may be necessary.

We concur in recommendation number two that the board should revise its procedures for the Alaska portion of the land surveying examination, and concur in recommendation number three that the board should continue its efforts to make the statutes and regulations more relevant and workable.

We do not concur in recommendation number four requiring continuing education for architects, engineers and land surveyors, although the board should take such action as it can to encourage voluntary continuing education. With so many different professions included under this board, it would be too unwieldy for the board to promulgate specific regulations as to continuing education for each profession, particularly considering the current workload of the board. The marketplace will also assure professionalism in this area: in these highly technical and ever-changing fields, ongoing education is necessary for the economic survival of the architect, engineer or land surveyor.

We concur in recommendation number five that the board should develop reports and procedures that will enable the legislative and executive branches to evaluate its performance.

We concur in recommendation number six that the Division of Occupational Licensing should collect, record and maintain for five-year periods files and statistics of licensing and testing applicants and related workload of the licensing examiner.

We concur in recommendation number seven that the Division of Occupational Licensing should handle investigations in a more comprehensive and timely manner. We feel very strongly about this and have received testimony that the lack of speedy investigations has hampered all of the boards which we have had under "Sunset" review.

Therefore, pursuant to AS 44.66.050(d) the Committee on Commerce of the Alaska State Senate offers the following summary and recommendations:

The Board of Registration for Architects, Engineers and

Land Surveyors addresses a real need in protecting public safety and property rights. The nature of the professions involved is highly advanced and complex, and members of the lay public cannot easily judge basic competence in these fields. Therefore, we do not think it appropriate to eliminate this board.

We have found that this board has engaged to some degree in "turf protecting," that is limiting the entrance of applicants into at least one of these fields. Specifically, we believe the experience (as an equivalent to formal education and experience) required to take the land surveyor's examination, set by the board at 12 years, is too long. We believe there should be a statutory requirement of eight years' experience with three years experience in charge of the work, and that other similar and related requirements should be addressed by statute, not regulation. We believe the net effect of limiting entry into the surveying field will increase costs and slow down the transfer of public lands into private ownership, at a time when the Legislature has specifically provided for transfer of land interests for various private uses.

We further find that the requirement for inclusion of a photograph with the application for licensure is unnecessary and could be used to discriminate against certain persons because of race, sex, etc. The board should remove this requirement.

Furthermore, it is the belief of this committee that a separate Alaska examination is not necessary for surveyors licensed in another state which has licensing requirements equivalent to those of the State of Alaska, and which has a "public lands" history similar to Alaska's. We feel these surveyors should be licensed by simple endorsement. In the engineering field, we believe that more specialties should be recognized. For instance, Alaska has a particular interest in the licensing of competent and professional petroleum engineers.

Statutory changes are needed to provide for licensing by endorsement for those engineering specialties for which the State of Alaska has no exams.

Therefore, the Committee feels that it has adequately addressed the recommendations and categories required under

AS 44.66.050(d), and offers several further recommendations.

The Commerce Committee recommends that with the changes stated in this report the Board of Registration for Architects, Engineers and Land Surveyors continue for another four years, that is, that the repealer with regard to the activities of that board be amended to read 1984.

A bill will be introduced by the Commerce Committee facilitating the changes and recommendations in this report.

Respectfully submitted,

Senator Brad Bradley
Chairman
Senate Commerce Committee

BB:jss

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 30, 1980

SUBJECT: Section-by-section analysis of HB 1005 continuing the Board of Registration for Architects, Engineers, and Surveyors. (Work Order Number 8533)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have requested a section-by-section analysis of Senate Bill 572 entitled: "An Act continuing the existence of the State Board of Registration for Architects, Engineers and Land Surveyors and amending the statutes relating to its powers and responsibilities; and providing for an effective date."

Section 1. Subsection (c) is amended so that the report which the board is required to submit to the governor annually will also be submitted to the legislature. This report must include the following additional items: data as to the attendance of members of the board at meetings; a list of regulations adopted, amended, or repealed; the current purposes and goals of the board; and significant developments in the field of architecture, engineering, and land surveying. The Department of Commerce and Economic Development is required to preserve records of the board's proceedings for five years and must assemble statistics relating to the performance of its staff and that of the board covering such things as the number of architects, engineers and land surveyors registered over a five year period, the rate of passage of examinations, the number of persons applying for registration, an account of fees collected and data concerning the correspondence work load of the licensing examiner.

Section 2. The existing law provides that the examination shall be given twice a year. The amendment allows an examination to be given once each year, if it is a national examination which is only prepared once each year.

Section 3. This section deals with the power of the board to take disciplinary action in certain circumstances. It is amended so that the board may no longer take disciplinary action against a person or corporation who is found guilty of a crime involving moral turpitude, since this is an extremely vague standard.

Section 4. The existing law requires an applicant to be of good character and reputation, and submit evidence of education, training and experience. The amendment limits the board's discretion to require evidence of more than 8 years of any combination of education, experience or training from an applicant for registration as a land surveyor.

Section 5. The board is required to adopt regulations governing the use of seals by a person registered under this chapter. Existing law provides that final drawings, specifications, surveys, plats, plates, reports and similar documents must be stamped with a seal.

Section 6. June 30, 1984 is the new termination date for the State Board of Registration for Architects, Engineers, and Land Surveyors.

Section 7. The provision which terminates the board as of June 30, 1980 is repealed.

Section 8. The effective date of this act is July 1, 1980, one day after the board is scheduled to terminate under existing law.

If you have any further questions, please contact me.

TBC:ljb

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

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If you have any further questions, please contact me.

TBC:ljb

Alaska Society of Professional Land Surveyors

P.O. BOX 2106
ANCHORAGE, ALASKA 99501

March 19, 1980

Brad Bradley, Chairman
Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Bradley:

The purpose of this letter is to inform you of the wishes and desires of the Alaska Society of Professional Land Surveyors as they relate to professional registration being sought by the Alaskan Chapter of the American Society of Landscape Architects. In order that this letter might, in fact, reflect a consensus of those individuals currently registered as professional land surveyors, within the State of Alaska, a poll was undertaken. The results of this poll, to be further herein enumerated, overwhelmingly indicate a desire that landscape architects not be granted professional status by inclusion as an additional discipline within the registration act governing architects, engineers, and land surveyors.

Four hundred sixty copies of the polling questionnaire were sent to professional land surveyors registered to practice within the State of Alaska and seventy-four responses were received, indicating a response of 16.1%. Following are those questions contained in the questionnaire and the responses elicited:

1) Have you read the proposed registration act for landscape architects, herewith, enclosed?

   Yes, 98.6% No, 1.4%

2) Do you feel registration of landscape architects would compliment your endeavors?

   Yes, 7.1% No, 88.6% Undecided, 4.3%

   Indicating that those with a definite opinion were:

   Yes, 7.5% No, 92.5%

3) Do you feel registration of landscape architects would compromise your endeavors?

Yes, 57.1% No, 32.9% Undecided, 10.0%

Indicating that those with a definite opinion stated:

Yes, 63.5% No, 36.5%

4) Would you favor registration of landscape architects if a "grandfather" clause was included pertaining to land surveyors acquiring registration as landscape architects, at least as pertains to subdivision design?

Yes, 17.1% No, 75.7% Undecided, 7.2%

Indicating that those with a definite opinion were:

Yes, 18.5% No, 81.5%

5) If landscape architects do acquire registration, do you favor their representation on the Board of Registration for architects, engineers, and land surveyors?

Yes, 32.9% No, 65.7% Undecided, 1.4%

Indicating that those with a definite opinion were:

Yes, 33.3% No, 66.7%

6) Would you favor landscape architects registration if any work done by them on subdivision design were required to be done in concert with a land surveyor?

Yes, 14.3% No, 80.0% Undecided, 5.7%

Indicating that those with a definite opinion were:

Yes, 15.2% No, 84.8%

7) Do you feel the responsibility therein should be established by the affixing of their seal to the subsequent subdivision plat?

Yes, 22.9% No, 68.6% Undecided, 8.5%

Indicating that those with a definite opinion were:

Yes, 25.0% No, 75.0%

8) Do you now favor registration of landscape architects?

Yes, 10.0% No, 84.3% Undecided, 5.7%

Indicating that those with a definite opinion were:

Yes, 10.6% No, 89.4%

9) Are you adamantly opposed to the registration of landscape architects?

Yes, 71.4% No, 25.7% Undecided, 2.9%

Indicating that those with a definite opinion were:

Yes, 73.5% No, 26.5%

10) Would you favor registration of landscape architects if same could be accomplished without compromising your present position as a land surveyor, particularly as relates to the design of subdivisions?

Yes, 27.1% No, 65.7% Undecided, 7.2%

Indicating that those with a definite opinion were:

Yes, 29.2% No, 70.8%

In addition, the questionnaire contained question number eleven; Under what conditions or changes in the registration act would you favor registration of landscape architects? The overwhelming response to this particular question was, "none", indicating that no changes would be desirable nor would registration of landscape architects be desirable.

In addition, question number twelve asked; If the foregoing questions do not clearly describe your feelings on this subject, please respond in essay following. The overwhelming consensus of those responding in essay indicated that present statutes cover those areas in which landscape architects purport to be concerned, further, that registration of landscape architects would result in further cross discipline jurisdictional disputes, and would result in unnecessary additional expense to the general public and may, in fact, create a situation wherein the public welfare might be compromised rather than reinforced.

In summation, it is the feeling of the Alaska Society of Professional Land Surveyors that registration of landscape architects is neither necessary nor desirable.

Respectfully yours,

W. Ray Niemi
Chairman
ASPLS Committee on
Landscape Architects
Registration

WRN/jlh

ackley
jensen
architects inc.

October 23, 1979

Senator W. E. Bradley, Chairman
Senate Commerce Committee
1016 West Sixth Avenue, Suite 201
Anchorage, Alaska 99501

Dear Senator Bradley:

Thank you for the opportunity to testify on behalf of the Board of Registration for Architects, Engineers and Land Surveyors. I feel that it is very important that this Board be continued, as the regulation of the professions under the purview of this Board helps to protect the people of the state of Alaska in two primary ways. First, it protects the consumers of services rendered by architects, engineers and land surveyors to insure that they are not victimized by incompetent or dishonest professionals. Secondly, regulation protects the public at large. The primary responsibility of architects, engineers and land surveyors is to design facilities or projects that are safe, durable and meet reasonable environmental standards. In other words, the results of faulty design may be injurious not only to the person who engages the professional, but also to third parties. Specifically, regulation of these professions helps protect life, health, safety, and economic well being of the residents and visitors of the state.

In Alaska, applicants for registration must demonstrate not only an understanding of the fundamentals of the profession, but must demonstrate a minimum understanding of specific Alaska conditions, such as arctic and sub-arctic construction and seismic forces.

A recommendation of the legislative auditors was to reconsider the Board composition and size. They felt that the total number of members, the current professional representation and the absence of public members should be investigated. I would like to point out that this Board is actually three boards regulating three separate professions, combined into one entity for greater efficiency. I see no reason to separate the Board into three individual agencies since I do not feel that this type of move would result in either improved efficiency or effectiveness.

p.o. box 310, juneau, alaska 99802 (907) 586-1070

In the audit report a comparison was drawn to create a statistical relationship between the number of registrants in each profession and the number of Board members from each profession. I think that this relationship is meaningless and what should be considered instead is the number of professions regulated and the minimum number of Board members required to act on matters relating to each profession. Consideration must also be given to the similarities and differences in regulating the various branches of each profession. In particular, with the profession of architecture, the education, examination and training requirements are completely different from engineers or land surveyors. Whereas among various branches of engineering, many of these criteria are identical or very similar. My point is that for the regulations of architecture to be undertaken democratically, a minimum of three members from the profession must serve on the Board.

The auditors also recommend that public members be added to the Board; I have no objection to this recommendation. I am, however, concerned that the addition of public members not result in the decrease in the number of professionals on the Board for the same reasons I previously stated. I believe public members could be very effective in formulating policy and in the enforcement function of the Board, but that they would be less effective and often unqualified in reviewing applications, arctic and sub-arctic treatises, or examinations. In summary, I would like to see one public member added to the Board, but I feel that it is very important that this public member not be an advocate for special interests or have an inherent conflict of interest due to his profession or avocation, for instance a building contractor or supplier.

Since these professions are traditionally involved in interstate commerce and since members of the profession tend to move from state to state, it is very important that regulation of these professions be consistent with other states' regulations. Speaking primarily for the profession of architecture, in the past individual states had reciprocity agreements to allow architects registered in one state to be able to be registered in other states. With the increasing number of jurisdictions and the impossible task of each state board having to review the requirements and examinations of every other state, this process became unwieldy and impractical. Today the Alaska Board is a member of the National Council of Architectural Registration Boards (NCARB) which is a national clearing house for registration activities. The member boards, as a group working through the NCARB, study and recommend standards for training, education, and examination, which when adopted by the member boards individually, become the standards for registration. All states use the national examinations developed by NCARB and all states recognize the NCARB

certificate as evidence of an applicant's qualifications to practice. This process makes comity registration much more equitable. As you can see, with this Board's relationship to the national organization, we cannot operate on a strictly statewide basis. Approximately 60% of all architects who are holding current registration in the state, reside in other states, and all of the professionals received their formal education in institutions outside the state. Therefore, in order for Alaska to have any appreciable input into the standards governing registration, education, examination and training, we must participate actively in the national organizations at committee meetings, regional conferences and national meetings. Our ability to do this in recent years has been severely curtailed by lack of funding support to enable Board members to attend these important events. According to the legislative audit report, the AELS Board is one of the few boards operating in the "black." We therefore do not feel that increasing our budget only slightly to cover these travel expenses is an unreasonable request. The Board has always sought to relieve the state of any financial burdens for regulating these professions by keeping fees in line with operating expenses. We think that a closer relationship between the Board's budget and Board's revenue would help to provide better regulation of these professions. Again, I feel that it is imperative that the Alaska Board continue to be involved with the national registration organizations since our Board has adopted these national standards and is a member of these organizations. If I can make an analogy, restricting this Board's participation by not allowing direct participation at the regional and national level is similar to a legislator being elected to represent his district, but not being allowed to attend the legislative session in the Capitol.

Again, I appreciate this opportunity and look upon the sunset review process as a means of improving our Board's effectiveness.

Sincerely,

Wayne Jensen
AELS Board Member
WJ:do

October 22, 1979

Honorable Brad Bradley, Chairman
Senate Commerce Committee

Dear Senator Bradley:

I have previously replied to the Division of Legislative Audit performance review of the Board of Registration for Architects, Engineers and Land Surveyors and have found that there is a question concerning the Board's reply to the audit report recommendation No. 1. I wish at this time to make it clear that the Board absolutely does not wish to form three boards from the three discipline boards we now have. The reference to three boards in my reply to the audit report was to suggest an alternative solution to the equitable board representation of all licensed branches. This alternative is not an economical solution and therefore would not be satisfactory to any of the Board members. The Board has found that the present board make-up works very well and has drawn no complaints from the public sector or from the professional sector whom we register. The present board is made up of nine members: because of dual registration four of these members represent land surveyors, three of these four also represent civil engineers and one represents mining engineers, the other five members with single registration consist of one mechanical engineer, one electrical engineer and three architects. The Board has found that this arrangement performs very satisfactorily and also provides us with members who would be lay persons to the other two professions on the Board.

I appreciate the opportunity to participate in the Senate Commerce Committee sunset hearing and will answer any questions that I can concerning the Board's activity.

Very truly yours,

W. I. DeBoff
President
Board of Architects,
Engineers and Land Surveyors

ALASKA PROFESSIONAL DESIGN COUNCIL, INC.
POST OFFICE BOX 3115 D.T.
ANCHORAGE, ALASKA 99510
907-276-2834

October 23, 1979

Senator W. E. Bradley, Chairman
Senate Commerce Committee
1016 West 6th Avenue, Suite 201
Anchorage, Alaska 99501

Subj: Sunset Review of Board of Registration for Architects, Engineers and Land Surveyors

Dear Mr. Bradley:

The following is a recap of the presentation given by Michael E. Plunkett, AIA, President of the Alaska Professional Design Council:

The APDC represents six Professional Design Societies consisting of: Architects, Engineers, Land Surveyors, 1/3 are in private practice, 1/3 work in government, and 1/3 work in construction and other related fields.

The membership comprises some 1,200 individuals. This represents a vast majority of the 1,531 registered Alaska resident architects, engineers and land surveyors.

Each society received a copy of the Performance Review of May 11, 1979, and was asked to respond to the important points which more or less follow the key recommendations made in the report.

The APDC recommends continuance of the Board.

Regarding the recommendations, the APDC has the following comments:

Recommendation 1: A. There was no objection to one additional lay member on the Board.

B. Five of the six societies feel the present composition of the Board regarding architects, engineers and land surveyors should not change.

C. The sixth society wanted a slight change, that being that the Land Surveyer position would not be a dual registrant.

D. Definitely not a smaller board because there are three different professions being regulated.

Recommendation 2: Agree as written.

Recommendation 3: Agree as written.

Recommendation 4: Continuing education as a requirement. There was a unanimous agreement that statuatory requirement for continuing education should not be introduced. The importance of continuing education is well known and recognized. It is felt the professional societies present ongoing continuing education programs at National, Regional, and the Alaskan levels to provide an adequate dissemination of professional knowledge to all registered and intern professionals.

Pragmatically, until complaints of existing requirements are properly investigated and resolved, it seems pointless to add another echelon of regulations which at present would be unenforcable.

Practitioners have a better understanding of changes taking place in professions.

Recommendation discussed public trust versus public health and welfare. Questioned whether continuing education is necessary for the public health and welfare to maintain an acceptable level of professional competence. It is, however, certainly very important to public interest. The need for an additional law is questioned.

Recommendation 5: Regarding reports and procedures, no objection was raised. APDC is unanimous in supporting increase in AELS Budget to more or less be equal to income received from registrants. There is presently quite a disparity between income received and the amount budgeted to AELS.

Such an increase (and fee increase if necessary) would allow for a part-time or full-time executive director who could fulfill the reporting requirements of this recommendation.

Recommendation 6: No objection to this recommendation. The executive director could assist with this record maintenance.

Recommendation 7: Investigations should be accomplished in a more comprehensive and timely manner. Unamimous agreement that this process must be accelerated and revamped.

The executive director suggested above could handle a great deal of preliminary investigative work on complaints and allegations and could probably dispose of a great many of the complaints. They could then be handled with dispatch.

The present Ombudsmen's organization is one example of a workable and exigent method of dealing with complaints.

Finally, the fifth point solicited concerns a current practice that may be allowed by Statute but for which certain Statuatory revisions may be required.

Current Statute allows State agencies' personnel holding professional positions not to require registration unless job description specifically requires registration. Waivers are possible.

State DOTPF is currently changing job descriptions to eliminate requirement for registration.

As a result, design accomplished by State agencies are not stamped by disciplines as required by professionals in private or Municipal sector.

One example is the new Juneau Douglas Bridge which according to our understanding has no professional seals attached. Were this structure designed by a consulting team, at least five different seals would appear on the documents and as many as seven might appear depending on the elements included as a part of the design.

In short, State agencies should be required to have professional registration and stamped documents just as others.

This concludes the APDC's testimony.

Sincerely,

Michael E. Plunkett, AIA
President

Alaska Society of Professional Land Surveyors

P.O. BOX 2106
ANCHORAGE, ALASKA 99501

October 22, 1979

Members of the Senate Commerce Committee
University of Alaska Consortium Library
3211 Providence Drive
Anchorage, Alaska

Subject: Performance Review of the Board of Registration for Architects, Engineers and Land Surveyors

Gentlemen:

The Alaska Society of Professional Land Surveyors has reviewed the report of the Division of Legislative Audit entitled "A PERFORMANCE REVIEW OF THE BOARD OF REGISTRATION FOR ARCHITECTS ENGINEERS AND LAND SURVEYORS" dated May 11, 1979. We have the following comments concerning the auditor's findings and recommendations as set forth in the report:

A. Recommendation No. 1

A.S.P.L.S. supports the auditor's recommendations concerning the makeup of the Board of Registration for Architects, Engineers and Land Surveyors subject to the following provisions:

1. No additional professions will be included within the Board's jurisdiction.

2. The present number of licensed Board members will not be reduced.

3. At least one licensed land surveyor who does not hold dual registration will be included on the Board.

4. Not more than two lay members may be added to the Board.

5. Functions of lay members of the Board shall be restricted to matters of policy. They shall not participate as voting members in technical activities.

B. Recommendation No. 2

A.S.P.L.S. supports the auditor's recommen- concerning revision of the land surveying examination procedures. Further, the society is willing to provide a committee to develop examination questions, to assist in grading and to otherwise support the Board with respect to the land surveying examination.

Recommendation No. 3

A.S.P.L.S. supports the auditor's recommendation concerning efforts to make the statutes and regulations more relevant and workable.

D. Recommendation No. 4

A.S.P.L.S. supports the concept of continuing education to be carried out under existing regulatory authority but objects to introduction of legislation establishing statutory requirements.

E. Recommendation No. 5

A.S.P.L.S. does not oppose the auditor's recommendations concerning development of reports and procedures for evaluation of the Board's performance.

F. Recommendation No. 6

A.S.P.L.S. does not oppose the auditor's recommendations concerning retention of records of the Board.

G. Recommendation No. 7

A.S.P.L.S. supports the auditor's recommendations concerning the handling of investigations by the Division of Occupational Licensing.

The Alaska Society of Professional Land Surveyors believes that the Board of Registration for Architects, Engineers and Land Surveyors performs a very essential service in protecting the health, welfare and safety of the public and in regulating the professions. We further believe that the Board should be strengthened through authorization, by statute, of an Executive Director to assist in day-to-day Board activities as well as to make it more effective in the enforcement of the licensing statute and regulations. We commend the Board for its past activities and strongly urge the Legislature to assure its continuing existence.

Very truly yours,

Alaska Society of Professional
Land Surveyors

Joseph C. Burch

Joseph C. Burch, Member
Board of Directors

6611 E. 12th Street
Anchorage, Alaska
February 12, 1980

Senator Brad Bradley
Pouch V
Juneau, Alaska

Dear Senator Bradley:

I would like to thank you for your support on the current issue concerning Alaska's Board of Examiners for Architects, Engineers and Land Surveyors.

As the House Commerce Committee reviews the actions of the professional boards, the delegated authority of this particular board must be closely examined.

As you are aware, the requirements set forth by the Board necessary to engage in the practice of Land Surveying are overly stringent and unjustified. All but three states in the U.S. define the Professional Examination requirements in their State Statutes, rather than delegating the power to the Board to arbitrarily regulate as they see fit.

The recent changes in experience requirements, coupled with necessary scholastic achievements, have affected many Alaskans who are or should be in a position to apply for professional status.

We have brought to light our concerns via recent tele-conferences, letters and personal representation in Juneau and feel your endorsement in our behalf will play a vital role in correcting the misuse of authority reflected in these proceedings.

Yours truly,

Robert Palmer

Robert Palmer

Land Surveyor

Feb. 28, 1980

The Honorable W.E."Brad[illegible]
Chairman, House Commerc[illegible]e
Pouch V
Juneau, Ak. 99811

Dear Senator Bradley,

I would urge you to support the Bill coming out of the House Commerce Committee limiting the power of the Board of Architects, Engineers and Land Surveyors to set minimum educational and experience requirements; and to revise the experience only qualifications from twelve years to six years which is close to the national average.

Sincerely,

Morris L. Wendte
3500 E.42nd Ave.
Anchorage, Ak. 99504

Mike Colletta
Joyce Munson
Fred Brown

AMENDMENT

Mr. Pres.: I move the adoption of the ~~Senate Substitute~~ amendment

By: Senate Commerce

OFFERED IN THE SENATE:

To: _____ SENATE BILL No. _____

HOUSE BILL No. 1005

PAGE: 3 LINE: 20 and 21

Delete the words after board, "in an amount not to exceed $50"

REASON: This was a drafting error. It was not intended that the board (be required to) (the commission) would limit fees to $50.

MIKE:

This amendment and bill is identical to the (Senate) one [redacted]

[redacted]

Architects

AMENDMENT #1

OFFERED IN THE SENATE: BY: Senate Commerce

To: _____ SENATE BILL No. _____

HOUSE BILL No. 1005

PAGE: 3 LINE: 20 and 21

Delete the words after board, "in an amount not to exceed $50"

~~[illegible]~~ ~~HOUSE~~ BILL ~~[illegible]~~ 1005

BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS

MR. PRESIDENT, I MOVE THE ADOPTION OF THE ~~[illegible]~~ amendment. ~~[illegible]~~ ~~AT THIS POINT, TO THE HOUSE BILL FOR THE SAME BOARD. WE HAVE WORKED JOINTLY TO TRY TO PREVENT AN UNNECESSARY AND OFTEN TIME-CONSUMING FREE CONFERENCE COMMITTEE.~~ NOT TOO MANY CHANGES WERE MADE TO THIS BOARD BECAUSE IT HAS BEEN OPERATING BETTER THAN MOST. ~~DONE ITS JOB. NOT RECOMMENDED BY AUDIT DIV. TO BE TERMINATED.~~

(SEC. 08.48.071)
P. 2, LS. 5/25

SECTION 1. SUBSECTION (c) OF SECTION 1, PERTAINING TO RECORDS AND REPORTS, IS changed ~~AMENDED~~ SO THAT THE REPORT WHICH THE BOARD IS REQUIRED TO SUBMIT TO THE GOVERNOR ANNUALLY WILL ALSO BE SUBMITTED TO THE LEGISLATURE, ~~THIS~~ and that the REPORT MUST INCLUDE THE FOLLOWING ADDITIONAL ITEMS:

(1) DATA AS TO THE ATTENDANCE OF MEMBERS OF THE BOARD AT MEETINGS;

(2) A LIST OF REGULATIONS ADOPTED, AMENDED, OR REPEALED;

(3) THE CURRENT PURPOSES AND GOALS OF THE BOARD; and

(4) ~~AND~~ SIGNIFICANT DEVELOPMENTS IN THE FIELD OF ARCHITECTURE, ENGINEERING, AND LAND SURVEYING OF CONCERN TO THE BOARD.

THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT IS REQUIRED TO PRESERVE RECORDS OF THE BOARD'S PROCEEDINGS FOR FIVE YEARS AND MUST ASSEMBLE STATISTICS RELATING TO THE PERFORMANCE OF ITS STAFF AND THAT OF THE BOARD INCLUDING

(1) THE NUMBER OF ARCHITECTS, ENGINEERS AND LAND SURVEYORS REGISTERED OVER A FIVE-YEAR PERIOD.

(2) THE RATE OF PASSAGE OF EXAMINATIONS.

(3) THE NUMBER OF PERSONS APPLYING FOR REGISTRATION.

(4) AN ACCOUNT OF REGISTRATION FEES COLLECTED, AND

(5) A MEASURE OF THE CORRESPONDENCE WORKLOAD OF THE LICENSING EXAMINER.

(SEC. 08.48.091) P. 3, Ls. 14/20

SECTION 2 IS AMENDED BY ALLOWING AN EXAMINATION TO BE GIVEN ONCE EACH YEAR, IF IT IS A NATIONAL EXAMINATION WHICH IS ONLY PREPARED ONCE EACH YEAR. THE Current State WRITTEN EXAMINATION IS CURRENTLY HELD AT LEAST TWICE EACH YEAR. FURTHERMORE, THE EXAMINATION FEE FOR APPLICANTS SHALL BE ESTABLISHED BY THE BOARD AND THE AMOUNT NOT ESTABLISHED BY LAW. (This is a result of the C.S.)

(SEC. 08.48.111) P. 3, L. 23

SECTION 3 STATES THAT THE BOARD MAY NO LONGER TAKE DISCIPLINARY ACTION AGAINST A PERSON OR CORPORATION WHO IS FOUND GUILTY OF A CRIME INVOLVING MORAL TURPITUDE, SINCE THIS IS AN EXTREMELY VAGUE STANDARD. (The BOARD CODE OF ETHICS COVERS MORAL CHARACTER WELL ENOUGH).

(SEC. 08.48.171) P. 4, L. 16

SECTION 4 LIMITS THE BOARD'S DISCRETION TO REQUIRE EVIDENCE OF MORE THAN EIGHT YEARS OF ANY COMBINATION OF EDUCATION, EXPERIENCE OR TRAINING FROM AN APPLICANT FOR REGISTRATION AS A LAND SURVEYOR.

(SEC. 08.48.221)
P. 4, L. 26

SECTION 5 REQUIRES THE BOARD TO ADOPT REGULATIONS GOVERNING THE USE OF SEALS BY A REGISTRANT UNDER THIS CHAPTER.

(SEC. 08.03.010(c))
P. 5, L. 8

SECTION 6 ESTABLISHES JUNE 30, 1984, AS THE TERMINATION DATE FOR THE BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS.

(SEC. 08.03.010 (B)(6))
P. 5, L. 11

SECTION 7 REPEALS THE JUNE 30, 1980 SUNSET PROVISIONS FOR THE BOARD.

P. 5, L. 12

SECTION 8 PROVIDES THAT THIS ACT TO TAKE EFFECT JULY 1, 1980, ONE DAY AFTER THE BOARD IS SCHEDULED TO TERMINATE UNDER EXISTING LAW.

Mr. Pres., I urge the passage of this bill.

Bradley

STATE OF ALASKA

BOARD OF ARCHITECTS, ENGINEERS AND LAND SURVEYORS

CENTRALIZED LICENSING STATUTE AS 08.01

ARCHITECTS, ENGINEERS AND LAND SURVEYORS STATUTE AS 08.48

ARCHITECTS, ENGINEERS AND LAND SURVEYORS REGULATIONS 12 AAC 36

Printed: November 1978

Recd. Aug. 28 1978
LEB.

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

BOARD OF ARCHITECTS, ENGINEERS & LAND SURVEYORS

August 24, 1978

Mr. L. E. Breeding
1343 H Street
Anchorage, Alaska 99501

Dear Mr. Breeding:

Your letter of July 12, 1978 to Mr. Douglas Ackley was given to me since Mr. Ackley is no longer a member of the Board of Architects, Engineers and Land Surveyors.

Your complaint against Mr. Charles E. Overton was turned over to the investigator and I'm sorry to say we are as much in the dark as you are. We have requested a status review of your complaint from the investigation and you will be informed as soon as we hear from them.

Sincerely,

Wallace DeBoff

Wallace DeBoff
President

WB/kkk4/7

08-H8LH

Recd. Oct. 4, 1978.

The Alaska Society of Professional Engineers

Address Reply To:

September 29, 1978

H. Phillip Hubbard, Commissioner
Department of Commerce and
Economic Development
State of Alaska
Pouch D
Juneau, Alaska 99811

Dear Commissioner Hubbard:

Further reference is made to a complaint by Mr. James P. Sheldon to the Division of Occupational Licensing against Mr. Charles Overton. The Alaska Society of Professional Engineers has been requested by one of its members to inquire as to the status of action on Mr. Sheldon's complaint against Mr. Overton. Enclosed for your further reference is the following:

1. Copy of the complaint, undated.

2. Copy of a letter from Mr. L.E. Breeding dating December 27, 1977 to the Board of Architects, Engineers and Land Surveyors.

3. A copy of a letter from Mr. L.E. Breeding dated July 12, 1978 to the Board of Architects, Engineers and Land Surveyors.

4. A copy of a letter from Mr. Wallce Debaugh, President, Board of Architects, Engineers and Land Surveyors, dated August 24, 1978 to Mr. L.E. Breeding.

Feeling little satisfaction from his previous efforts, Mr. Breeding has requested the ASPE to lend its assistance in determining what action is being taken on this complaint. ASPE feels obligated to both professional engineers practicing in the State of Alaska and to the general public to provide assistance in legitimate complaints regarding the practice of engineering. It is to this end I am writing this letter.

Mr. Breeding has been unable to determine if any action is being taken to resolve this complaint. I advised the Board of Architects, Engineers and Land Surveyors of ASPE's concern in this matter at their meeting in Anchorage on September 21st. I was advised by the board of the large number of complaints in the Attorney General's Office submitted by several of the Boards within Occupational Licensing some of which, I understand, have been pending for quite some time. The board was unable to shed any additional light on the disposition of this particular complaint.

Because we feel that it is so vitally important that the design profession take an active concern in such matters I would very much appreciate any information you can provide me regarding this complaint. I appreciate your interest and concern in this matter.

Very truly yours,

Kenneth B. Walch

Kenneth B. Walch
President, ASPE

KBW/bjw
cc: Mr. Wallace Debaugh, President
Board of Architects, Engineers and Land Surveyors.
Mr. L.E. Breeding
Enclosures

VERNON AKIN AND ASSOCIATES
CONSULTING ENGINEERS
P. O. BOX 1081
JUNEAU, ALASKA 99802
PHONE (907) 586-6622

October 18, 1979

To: Sunset Laws Hearing Committees

The Sunset Law legislation appears to be an attempt to take a step in the right direction to cut expenses in governmental bureaucracy. The thought is commendable. But the mechanism instigated in this legislation can wreak havoc on the welfare of the general public if good judgment is not used by the legislature in evaluating the benefits of the existence of these boards of registration. These boards came into existence originally in an attempt to protect the general public. Some method was required to prevent the unqualified person from misrepresenting his abilities and thus "ripping off" the general public. The State set up certain requirements and tests that attempted to ascertain that the individual that fulfilled these requirements set down by the State was, in the eyes of the State, qualified to sell their services in the particular field of endeavor. It also put a responsibility on the licensed individual to perform his services satisfactorily or be subject to the withdrawal of his license to practice. This responsibility and duty placed upon the licensee is the factor that attempts to guarantee the welfare of the general public.

To best illustrate the benefits of the existence of boards of registration, let us take the negative approach and assume that all boards were abolished. What would be the results? Think of a society in which no registration was required for medical doctors, and anyone who wished could practice as a doctor or a surgeon, with no guarantee of any required qualifications. Think of the effect of this on the welfare of the general public and the havoc that would result. If the pseudo doctor made a mistake, he could bury it, and go on practicing on other patients. This example with the medical profession is probably the most extreme example of proficiency required, and all of us would agree that the medical profession should require licensing. But all of the various boards in the professional fields perform some benefits in protecting the welfare of the general public. Otherwise it is doubtful that they would have been organized originally. If they furnish any benefit to protecting the public against fraud and misrepresentation, then they are beneficial and should be retained. Most of the boards support themselves with fees from licensing. In fact, there should be more boards or licensing required of trades and professions to try to guarantee that the general public will not get exploited by unqualified personnel misrepresenting their proficiency. It would be a happy day if the public could with confidence hire a trade or profession and know that the work would be satisfactory and first quality. The threat of

the possibility of loss of licensing and thus the loss of the right to practice the profession does much to insure that satisfactory work will be done.

My particular field is engineering. It is unthinkable to me to imagine what would be the results if the board of Architects, Engineers, and Land Surveyors were abolished. Anyone could then design a public building, with no qualifications required. If the building fell down or burned down or was detrimental to the occupants health because of inadequate design, where would the responsibility lie? How many banks or lending agencies would loan monies for construction on a design done by unqualified personnel? What would the insurance companies charge for premiums when there was question as to the adequacy of the design? Right! They would back off. The stamp on the construction documents is a guarantee of a level of proficiency, and this level is accepted by lending agencies, insurance companies, and plan review agencies. The owners and the occupants of the buildings would be the loosers if registration were not a requirement for design of public buildings.

Better enforcement of the existing laws and regulations is required. Infractions of the existing regulations go unpunished because of lack of adequate enforcement personnel. Therefore the benefits to the general public exhibited by this board are not as great as they should be. They could be much better with better enforcement. The codes and laws were made and enacted by the State of Alaska for all to follow. Enforcement agencies have been set up by the State to see that all work is done according to the current codes, such as the building code, fire code, plumbing code, electrical code, mechanical code, etc. Yet the State of Alaska agencies are one of the worst offenders of their own codes. Excuses such as "not enough monies available" or "not enough time" are not accepted by the State for the private sector, but are used by the State in their own construction forces. So the work is installed not in compliance with current codes which the public sector must follow. This is double standards, and should be stopped. The State of Alaska should be the example of compliance with their own codes. The present laws require that all design for public structures and buildings be done by a person registered in the State and qualified in the particular field, and that the drawings bear his stamp and be signed by him. Yet the State of Alaska does design work, done by some unregistered personnel, and it does not bear the registration stamp. A typical example is the new Juneau-Douglas bridge design done by the State of Alaska. Again this is an example of double standards. This board needs some method of getting better enforcement of our existing statutes. Without adequate enforcement, the statutes are worthless. We have been hampered for many years with this lack, and cannot perform our function to the general public as we should. If the State cannot furnish adequate enforcement, then give us the power to do our own enforcement. Many complaints of infractions of the statutes have been entered for this board in the past, but they die of old age in someone's HOLD basket.

In summary, if there is any doubt as to the benefit of a board of registration to the general public welfare, leave it. The boards usually pay their own way from fees from licensing, so they are no large drain on the budget. If they do not pay their own way, then the licensing could be increased. Secondly, increase the enforcement of the existing statutes. Public confidence is destroyed by exhibits of double standards and partial enforcement. Let the individual board do its own enforcement. They are the experts in that field, and know what is required.

Cordially,

Vernon Akin

Vernon Akin, PE

PEPP

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

- Alaska Chapter -

October 23, 197)

Senator Bradley, Chairman
and Members
Senate Commerce Committee

Re: Sunset Hearing - Board of Registration for
Architects, Engineers and Land Surveyors

Gentlemen:

The points and opinions being offered in this testimony are from PEPP, Professional Engineers in Private Practice, and are supported and endorsed by the members of the Alaska Section. At its last regular meeting, October 10, 1979, a motion was passed endorsing the testimony stated herein via committee concurrence as representative of the general view of the members.

I believe it is essential to state at the outset that a Board of Registration for Architects, Engineers and Land Surveyors must not only be maintained, but strengthened. It is timely that the committee sit and consider the relevancy of this board at a time when its importance to the public welfare could not have greater impact.

The professionals this board has regulated in the past and must continue to monitor in the future have all been charged with the responsibility to protect the safety, health, property and welfare of the public in the discharge of their professional duties. This responsibility correlates directly with existing Board regulations.

As we all are aware, times are forever changing and technology has advanced to the degree that the lay person, the public in this case, is being overwhelmed by the technological changes around him. In the hands of the proper professional, the public's well being will be considered, enhanced and preserved. On the contrary, a misapplication of this technology by those not fully understanding the tools in their hands, would leave an unsuspecting and vulnerable public at the mercy of the incompetent. Alaska shares many potential problems with the South '48, but has many more of its own due to the uniqueness of this State and its environment.

A Practice Section of the Alaska Society of Professional Engineers
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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Coupled with our own set of problems that require specific understanding and experience, we add energy shortages, increased awareness of life safety and a multitude of changing regulations, codes, statutes and agencies. The net result is that our basic life styles are being complicated by advances and change.

The changes require the competent to handle, understand and safely apply; the professional who now, and more so in the future will have to call on his training, experience and judgment to deal with those items that affect the public's safety, health, property and welfare. It will be the Board's responsibility to monitor the professional during these increasingly difficult periods. To do so, the Board will need greater strength and operational flexibility than it has had in the past.

There has been a tendency to dilute the power of the Board in the past few years while the need has actually been the opposite. Certainly the public welfare demands a Board that is operationally strong, filled with competent members.

In our perspective, the future Board of Registration Law should be patterned after the general objectives of the present one with some strengthening to keep in tune with the future problems it will have to face. We recommend the following items be considered:

1. The authorization by statute of an Executive Director to assist in the day-to-day Board activities and to make it more effective in the enforcement of the licensing statute and regulations.

2. The budget of the Board should be markedly increased, both to accommodate (1) above and to provide funds for enforcement and prosecution.

3. That the Attorney General of the State may be consulted as a legal advisor; but that the Board be authorized to retain other counsel in lieu of the Attorney General in the pursuit of Board policies and objectives.

4. The present Law in Sec. 08.48.261 makes certain statements about the head of each principal department of the State with positions necessitating the use of registered personnel. Due to the increased demands on professionalism in the future, it is incumbent that the statute be retained or strengthened. The State departments must adhere to this regulation. It is contradictory to the times and needs to relax the qualifications of State employees. Persons of equal responsibility and presumed professionalism, both inside and outside government agencies or departments must comply with the same standard of qualifications.

The items above are key points for consideration. There are many others. However, if the major objectives are met, the key supporting phrases and regulations will become obvious in most instances.

In summary, we must emphasize the necessity for a Board of Registration for Architects, Engineers and Land Surveyors and then the importance of strengthening the Board so that it has the means to deal with the harsh problems of the future.

Just about everything of material substance that surrounds us, this building, the roads we drive on, the airport we land at, the hotel we stay in, the pipelines that carry our oil, gas and fuel, have been designed in whole or part by the persons this Board must regulate. We cannot relax the necessity for professional competency; we, therefore, must have a strong Board of Registration.

Thank you for your consideration.

Sincerely,

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE (PEPP)

Walter E. Steige, P.E.,
Chairman

WES:tms

REVIEW OF BOARD OF ENGINEERS, ARCHITECTS, AND LAND SURVEYORS BOARD OF REGISTRATION

OUTLINE OF TESTIMONY

I. Introduction

John Horan, Land Surveyor (not registered) from Wasilla. Representing myself specifically, and several hundred potential registered land surveyors in effect.

II. Purpose and Scope of Testimony

A. To bring to the attention of the committee issues relevant generally to the "public interest" question of the Board's functioning

b. To bring to the attention of the committee possible legal questions as to the Boards' statutory authority and abuse thereof, and the possible improper delegation of authority to the Board by the legislature

C. To propose revisions in the statutory authority of the Board

d.. To propose realistic and fair regulations based on the national standard

III. Public Interest

A. In 1978 the Board held public hearings, etc., and approved a revision of AS 12AAC36. I would suggest that the committee review the public testimony in the following areas:

1. Board answers to reason for regulatory change, Attorney General's request for clarification of vagueness, ambiguities, etc.
2. Negative testimony (majority) to the regulations generally and to 12 years specifically
3. Consumer pressure to increase the "professional standard" when in fact absolutely nothing was done to that effect, the converse is more true.

    a. APIRG testmony to that effect
    b. "Turf protection" not in consumer interest
    c. 12 year effect of limiting number of land surveyors
    d. Legislative Audit's recommendations of continuing education to "upgrade professional standards".

Discussion: If the board sincerely wishes to upgrade professional services why haven't they:

1. Elimintated the incompetents, reference Legislative Audit
2. Provided for re-examination and or upgrading education
3. Required errors and ommission insurance or bonding
4. Required tougher examinations

Prospective registered land surveyors are required to take an extremely difficult 16 hour set of exams, have 3 years responsible charge and be recommended by 3 registered land surveyors therefore, what is the purpose of the remaining 9 years except to create a monopolistic self serving system.

I submit that the Board has been guilty of a gross misuse of their delegated authority, has not acted in the public interest but only for those in their special interest group.

IV. Legal Questions (Request that committee obtain opinion of legislative legal staff on these questions).

1. Abuse of statutory authority to set specific time limits without legislative approval. In most states the legislature sets minimum time standards and does not delegate that power.

2. Legal question of 12 years being excessive, oppressive, discriminatory, and arbitrary.

a. 6 year national average, 5.93 public land domain states
b. Educational situation where accepted standard everywhere (all states are maximum 1 year education for 1 year experience). Under current regulations it ranges from 1 year education for 2 or 3 years experience

3. Further Alaskans access to vocational training of the type required is the poorest in the nation, giving rise to the situation that the state with the greatest emphasis on educational requirements has the least available is a further restriction unfairly imposed.

V. Proposals

1. The Legislature, in its bill providing for continuation of the Board:

a. Require compliance with legislative audit recommendations
b. in addition withdraw the power to set minimum standards
c. set minimum standards as follows;

experience only	6 yrs.	(3 yrs. responsible charge)
education and experience	6 yrs.	
survey education, yr. for yr.,	up to 4 yrs.	(2 yrs. responsible charge)
applied or theoretical sciences	up to 3 yrs.	(3 yrs. responsible charge)

Please forward favorable comments to:

Representative Fred Brown
Chairman, Sunset Review Committee
Pouch V
Juneau, AK 99811

Senator Brad Bradley
Chairman, Sunset Review Committee
Pouch V
Juneau, AK 99811

BARBER EXAM.

SENATE COMMERCE COMMITTEE

HEARING MINUTES

OCTOBER 22, 1979

The meeting was called to order by Chairman Senator Brad Bradley at 9:00 a.m. The meeting was held in Room 262, Consortium Library, University of Alaska, Anchorage, 3211 Providence Drive, Anchorage, Alaska. Other committee members present were Senator Arliss Sturgulewski; Senator Tim Kelly; and Licia Piceno, Administrative Assistant to Senator Stimson. Representative Terry Martin was also in attendance and participated in the proceedings. Committee staff members in attendance were Christian Basler and Janet Seitz.

Attached is a transcript of the hearing taken from a taped recording. Also attached are copies of written testimony presented and witnesses that testified.

BOARD OF BARBER EXAMINERS

Written Testimony Submitted by Following:

Judy Dixson
6300 West Dimond
Anchorage, AK 99502

Marse Kueber
#21 Wedgewood Manor
Fairbanks, AK 99701

Witnesses Testifying in Addition to Those Submitting Written Testimony:

James Newman, Local 56, Barbers, Beauticians and Allied Industries, Anchorage
5207 Shore Crest Drive
Anchorage, AK 99502

Maurie J. "Bub" Smith
7721 Ascot Drive
Anchorage, AK 99502

Donald Morris
1010 Beech Lane
ANCHORAGE, Alaska

Bill Keyse
1433 Aspent Street
Fairbanks, Alaska

Alberta Grant
547 Second Avenue
Fairbanks, Alaska

Rick Thornton
2611 Minnesota Drive
Anchorage, AK 99503

George Mohr
4824 Queens Court
Anchorage, Alaska

Dick Evans
(NO ADDRESS INFORMATION GIVEN)

Yvonne DeVatos
(NO ADDRESS INFORMATION GIVEN)
Juneau, Alaska

BRADLEY: The Commerce Committee will come to order. First I would like to introduce the Commitee members and the people that are representing members. I'll start with the Vice-Chairman, Senator Arliss Sturgulewski, on my right; Senator Tim Kelly; and Licia Piceno, who represents Senator Terry Stimson. On my left is Representative Terry Martin, who is with us today and he is in Commerce on the House Side. I see we have six people testifying today. Have any others come in that haven't signed in? I guess not. Judy, how many people do we have testifying from Fairbanks? Three? Juneau, one? Does anybody in here disagree with having the teleconference individuals testify first or is someone in a big hurry? If someone is in a hurry to go someplace else, we'll take them first. All right. We'll take the teleconference individuals at the various locations, Fairbanks and Juneau first, if there is no disagreement with that. Judy, could we have -- which one is available first, Fairbanks or Juneau? All right. Does any member of the Committee disagree with going ahead and getting all of the teleconference invidiuals that are to testify, including the hairdressers although that was scheduled for this afternoon. I think we can probably change. Okay, we'll go ahead with all the teleconference. Maybe you can do other things, too, Judy. We may have to continue after lunch. So we'll start with either Fairbanks or Juneau? Fairbanks, go ahead please with the first one to testify. This is for the Board of Barber Examiners. Over.

FAIRBANKS MODERATOR: Our first witness is Bill Keyse.

KEYSE: My name is William Keyse. I'm a resident of Fairbanks and I've been a barber in Alaska for 24 years. I will be brief but I would like to say that for the most part this audit report seems to more than imply that the Barber Board does little more -- looking over a memorandum, which I have here, to the Legislature (SOUND OUT)

(SOUND OUT FROM KEYSE'S TESTIMONY FROM FAIRBANKS THROUGH RICK THORNTON'S TESTIMONY FROM FAIRBANKS. WRITTEN TESTIMONY HAS BEEN REQUESTED FROM WITNESSES KEYSE, GRANT, BRANSON, KEUBER AND THORNTON.)

THORNTON: I just have one question for the Board. That is, if the Barber Board was omitted, what happens to the licensing? Who is going to be in charge of licensing?

BRADLEY: Mr. Thornton, it could be done by the Department of Commerce, more specifically, the Division of Occupational Licensing. They could issue the license or they could given an examination, some standard examination and issue the license. There are some alternatives. Not that that is what we will approve but there's some alternatives. Any further questions, over?

THORNTON: Yes. I would just like to say one thing for the Barber Board. That is if the Committee would keep in mind that if the licensing is omitted that you are going to be putting products in the hands of non-professional people and I think that this is more dangerous to the consumer and I think that the Board should look at this very seriously.

BRADLEY: That's a quite valid comment, Mr. Thornton, and I'd like for everybody listening in to understand that just because the Audit Division recommended that this Board be terminated doesn't mean that it will be. That's just their opinion. Over.

THORNTON: Okay. Well again, I thank you for your time and, again, if the Board will just keep in mind that by putting professional products in the hands of those that are not qualified to use them I think that the public is more in danger than the Barber Board itself.

BRADLEY: Thank you very much, Mr. Thornton. Any other witnesses?

FAIRBANKS MODERATOR: We have no further witnesses for the Board of Barbers; however, we do have several for the Board of Hairdressers. Would you like us to wait with those?

BRADLEY: Juneau, do you have any witnesses to testify concerning the Barber Examiners Board? Over.

JUNEAU MODERATOR: Yes, Mr. Chairman. We have one lady here who would like to speak on behalf of the Barbers. Her name is Yvonne DeVatos and she is ready to speak now.

BRADLEY: Go ahead, Yvonne.

DEVATOS: My name is Yvonne DeVatos and (UNDISCERNABLE) Barber Board (UN - DISCERNABLE). I agree with many of the recommendations of the Legislative Audit and would like to enunciate on certain areas of it. There is a need for professionalism in our business of haircutting. That could come from various areas. Such as in the schooling or through organized ways of testing people, such as apprenticeship program or in case of having the Barbering Board in effect at this point, that is a way of testing them also. I do feel that after a person has gone through nine months of schooling, they should, if they can pass all the schooling, be ready to be in business, either working with somebody or opening up their own business. If there is a need for licensing, it can happen in various departments and not necessarily only in the Barber Board department. If there is a testing, I think that the testing needs to be updated. A lot of new concepts have come into action in haircutting but people are not being testing for it at the time of the Barber Board testing. I don't know that the testing as it is now is an accurate means of seeing whether that person is able to go out and practice but if there is a need for testing then let's upgrade it and let's do what is needed for today. I have to think a minute of what else to say. I guess I will stop at that. Thank you.

BRADLEY: Thank you, Yvonne. The Chairman of Commerce Committee and members need a haircut real bad. We miss your haircuts up here. You think you might could arrange a trip up to Anchorage?

DEVATOS: Well, we could see about. I don't know, I would have to look at my schedule.

BRADLEY: And those massages, too. They're worth a lot. That's sort of a fringe benefit. Any questions by members of the Committee? Thank you, Yvonne. They're no questions. We know what you can do.

JUNEAU MODERATOR: Mr. Chairman, this is Juneau. We have no further witnesses here for the Barbers.

FAIRBANKS MODERATOR: Mr. Chairman, this is Fairbanks. I'd like to ask you a question. We have several people that wish to testify for

the Board of Hairdressing. They are not here at the moment. They will be called when you are ready. Are you going to be ready for them within the next half hour or so?

BRADLEY: You just read my mind. I was getting ready to say that since we had scheduled the Hairdreesers for this afternoon, contrary to what I said earlier, it might be better to hold most of the hairdressers this afternoon unless this one hairdresser in Juneau, I believe, is in some big hurry. Most of them will probably be available in the afternoon. That's the way they were notified. The one hairdresser in Juneau, course there will probably be more, we'll hold your testimony until we finish the Barbers. We've had quite a few people to come in after we convened and I think probably some of these people will be expected to be back on their job in the afternoon. So we'd best take care of these now.

JUNEAU MODERATOR: Mr. Chairman, this is Juneau.

BRADLEY: Yes, Juneau. Over.

JUNEAU MODERATOR: We have at least five people who wish to speak on behalf of the hairdressers at this point, but we will stand by.

BRADLEY: Since we notified the hairdressers that it would be in the afternoon, I think that, in all due respect to the people that are the barbers to testify that are here this morning and I'm sure they expect maybe not to be here this afternoon, we'd better proceed with the barber testimony and then upon finishing it, we'll take up the hairdressers whether it is afternoon or morning, if they are available. Over.

JUNEAU MODERATOR: We have people here who are listening to you, Mr. Chairman, and they will be standing by.

BRADLEY: Thank you very much. Fairbanks, do you have any more barbers that wish to testify that may have come in later?

FAIRBANKS MODERATOR: No, we don't.

BRADLEY: And Juneau?

JUNEAU MODERATOR: No, we do not, Mr. Chairman.

BRADLEY: Thank you very much. We'll proceed with those that we have in the room before us from Anchorage.

ANCHORAGE MODERATOR: Stand by, please.

BRADLEY: First one we will have to testify is Judy Dixson.

ANCHORAGE MODERATOR: For your information, Ms. Dixson is passing out some information and will be presenting her testimony in a moment.

BRADLEY: Go ahead with your testimony, Judy. Judy Dixson.

DIXSON: My name is Judy Dixson and I'm speaking as one of a member of a large body of Anchorage barbers who are very concerned about maintaining the standards of our profession. And. Barber laws have been on the Alaska books since Statehood and this should be an indication as to the concern, public as well as professional, regarding the guarantee of a safe and sanitary service when the public goes into a barber shop. We barbers agree that many changes must be made in the Board of Barber Examiners and we've addressed some of these in the report that we made and there are more changes that we would like to see made given more time. We haven't had as much notice as we'd like. We've evaluated the performance review and found valid recommendations and we also came up with our recommendations that you have before you (SEE WRITTEN DOCUMENTS SUBMITTED). The one thing that the majority did agree on was that there must be State licensing of barbers and the most qualified individuals to oversee this licensing are Board of Barber Examiners comprised of experienced and professional peers. Over the years, barber styling has progressed into a huge industry that reaches almost everyone on a personal level and because of the standards established by examination and State licensing, we can all pretty much rest assured that we will get the quality of service that we want when we go to a barber styling establishment. Without the peer review of the Barber Board and without a practical examination to weed out incompetents, all the professional standards we have worked so hard to establish would be shattered. Due to the overall high quality of basic barbering training that is required in just about every state, the spread of contagious skin and scalp diseases, such as ringworm, have been virtually eradicated. If there were little or no requirements involved in becoming a barber, there would be must less impetus to seek out and receive the necessary training, which includes those basics of sanitation and bacteriology that have contributed to the control of these contagious diseases. I'ms sure that none of us present today would relish the sight of an untrained practitioner determining our appearance without the knowledge of the correct processes involved. This is too personal a service to leave to chance. As professionals, we see this sunset review as yet another way to upgrade our standards, but we also have come to the conclusion that this can only be done by continuing to make the Board of Examiners a cornerstone in our foundation. If you'd like, I could go over this report that we have. Maybe give you just a few of the highlights that we found. This is strictly on the Legislative Audit Review and after speaking with the House Commerce Committee the other day a lot, I found out some thing that, you know, have opened new areas that need to be covered now, but apparently we will have some more time to work on these things. Along with these recommendations, one of the most important things that we'd like to see done between now and the time that action is taken on our particular board is have a comprehensive set of barber laws included in any legislation that might be going through because our laws need to be upgraded; they do need to be broadened because they are very limited right now and there are a lot of areas that need to be covered and the laws are very old and we have tried several times in the past to get laws passed and to get things straightened out and it's been very difficult. So we see this as an excellent opportunity to work with our legislators to help us get some action in this area. Okay? I don't know. Let's see, I think you all have copies of the performance review. I believe the, just the recommendations begin on page 9, I believe, and, okay. Rather than read off the questions and the statements made and the recommendations,

I'll just address them. If you have any questions at any time, please feel free to ask them. Okay, the report states that the examination unnecessarily restricts entry of qualified personnel into the profession. The questions we are dealing with here, the two parts in review, are reciprocity with other states and that students are issues permits if from Alaska when the Outsiders must produce a license from their state. Okay -- reciprocity. Due to widely varying standards of education in different states, reciprocity is not possible at this time. States requiring 2,000 hours do not accept an Alaska license as we only require 1,500 hours, and that's not even on the books at this point. We don't even have that, although that is the minimum requirement that we have here in our schools. And Alaska can't accept an Outside license, they shouldn't, that requires only 1,200 hours. Until there are federal standards that cover barbering in all states and all the requirements are the same and who knows how long it will be before that happens, if it ever does, or if it should, the only way the reciprocity is going to be possible is through private agreements between individual states. And this could be possible for Alaska only if our Barber Board was allocated the funds to attend the National Association of Barber Examiners convention where these problems can be discussed with outher professionals. If we have no means of communication with the other states then, yes sir?

BRADLEY: Representative Martin?

MARTIN: Miss Dixson, why is it necessary for a private organization or private individuals like yourself to depend on the government to give you funds to upgrade yourself by going to national meetings or even regional meetings? There are many professional groups that do it on their own.

DIXSON: At this point, we don't have a strong enough group in Alaska to allow for these funds and since the Board is a State -- you know, they are appointed by the State. They are not private individuals, you know, doing this on their own. They are appointed by the State and since they are part of a State agency at this point, then we'd like to see those funds allocated. We're one of the, probably one of the cheapest boards you have. Our total cost is right around $11,000 and I think over $6,000 of that is strictly costs to Division of Occupational Licensing that they've broken down over all the boards. The actual cost of our board is about $3,200 for the per diem and for the travel expenses of all of our members and to ask for a very small amount of additional funds for one or maybe two Board members to go would be definitely worth the public wile and probably one of the cheapest investments for a good return that they could make.

MARTIN: Miss Dixson, do you have a state association, professional association outside the Board, and does the state have meetings periodically?

DIXSON: We do have a barbers' union that is active in Anchorage. Mr. Newman is going to be speaking on behalf of the union. He could give you more information than I could. It's small membership at this time and that is, as far as I am aware, the only professional organization that we do have although we are very strongly talking about -- we'd like to see a good strong professional organization that will be coming up in the future, too, we hope, and that won't be dependent upon any sort of state aid or state funds. Okay, as far as the second recommendation

of test materials. The group of concerned barbers in Anchorage have come up with a slightly different format than one that is implemented now although the one that is implemented now has been no problem up until now but since they recommended a different format, we thought that this would be something that would be very fair and that would be just totally -- a person would have to try really hard to fail this one. And the way the points are distributed and it would be just a very, very equal test for all applicants and the breakdown is there. Seventy-five out of 100 points and that includes all the practical and written. So a person would only need 75 overall. Something that was brought up as far as when a person goes in to get their work permit before they take their exam, apparently it has not been made clear, or they feel it hasn't been made clear, what is going to be on the test. That's one of the big complaints that we've tested on. And something that we've suggested that would be a very important thing would be to include some kind of a guideline sheet with the test application packet that would include the text books from which the test will be taken and subjects that will most likely be covered and requirements that you must bring your own tools and that there will be time limits and so they will know all the information that is pertinent. That's something we'd like to see done and the Board could be responsible for. As far as limiting the term of Board members, this would probably be a good idea except that they are appointed and that as the administration change, appointments do change. So it would be rather difficult to make a very standard set up unless the appointments were changed. The public member on the Board should be appointed. That's a very good idea and we'd like to see that done and we'd be more than happy to accept that idea. And as far as recommendation number 5, the Board inspection of health. As far as that goes, the health inspections are the province of the Health Department and we don't see where the Board would need to be inspecting for health purposes. The only inspection that we'd like to see is the inspection of new schools to insure that the facilities and equipment were adequate for the proper teaching of barbering and also to insure that the curriculum is adequate and that standard textbooks are used and that a certain amount of classroom time is allocated so that the students receive the preparation for their written exam that they need. That's all that I have to say on this at this time. And if you'd like to look at that in more depth at your own leisure, I'd certainly appreciate it. Any more questions?

STURGULEWSKI: Mr. Chairman?

BRADLEY: Senator Sturgulewski.

STURGULEWSKI: Judy, I know you have done a lot of talking to a lot of people and a lot of thinking about this. I guess this kind of comes under a philosophical question and I think in a sense that that is almost the kind of a decision that we are going to have to make. There's a great deal of, throughout the country, trend toward regulation as being inhibiting business and keeping people from getting jobs and making profits and all of the rest. And yet we have here from profession after profession as we've reviewed the boards under sunset really a great push for the profession itself saying that there is a need for professionalism that it's in the public interest. And I'd really like you to speak to is it in the public interest or is it in the best interest of the, of your profession and for those members within it to be regulated. I really think I'd like some comment on how is the public served by the continuation of the professional licensing and so on. I think it's important to note

that there are obviously several ways that you could go. You could continue as it is with certain changes; it could be taken over, all of the functions, by Occupational Licensing; or, as basically has been suggested, not to do any regulation at all. So, if you could speak kind of on that philosophical point, I'd appreciate it.

DIXSON: There's been a lot of other people who have testified this morning that have brought up valid points that are part of that. Some of the things that I've brought up myself. Once again, okay, the spread of contagious diseases. If you've never been to school and never learned to recognize these things, and I saw them in school and I learned to recognize them and I know that all of the fellow barbers I went to school with have all seen that. If you've never seen it and you don't understand it and you have no knowledge of it, then there is no way that you can know what to do when you do see it and you won't be able to recognize it and deal with it appropriately and I'm sure that this training could be had -- you know, you could take the textbook home and try to figure it out for yourself and you could try just cutting people's hair and just see what happens but I think the public would probably suffer from that. First of all, by looking awful and personal appearances -- you know, would any of you here just decide to cut each other's hair and take that chance. I wouldn't let any of you cut my hair, afraid not. So that's -- it seems, it may not be a big matter of safety although we do use some tools. You know, the straight razor is nothing to be laughed at. I've cut myself very well a few times in the process of learning how to use it and if you're not aware of how to use it on somebody's face or somebody's hair properly then you can really get yourself into trouble because you're working around ears and eyes and it's not an easy thing to learn. It took me a good six months before I felt comfortable using it and that was every day in school. I suppose, I'm not saying it's impossible
(END TAPE 1, SIDE A)
(BEGIN TAPE 1, SIDE B)
and everyone of those hours was necessary and I don't feel that if a person did not go to school and did not have the experience and training and somebody watching over them, teaching them the proper methods of cutting the hair and sanitation and sterilization, they would be doing the public a great disservice by cutting on them. Also a point that Mr. Thornton brought out about barbers as well as beauticians using chemicals -- perms, dyes, things like that -- that can be very harmful to somebody's hair and scalp and can be just down right damaging. Those are things that a person needs training for before they're allowed to use on the public and I think that's very important.

STURGULEWSKI: Mr. Chairman, if I could continue? It's interesting to me that with the barbers there is no professional organization apart from the Board. We've seen some criticisms in the reports that have come that have been on the action of (1) on the part of the Board, some deficiencies with Occupational Licensing and with the ability to handle complaints and so on. I think again we have seen this as we have reviewed, as you know, ten of the major health boards last year and we have another series of which this is one for the coming year. But, what responsibility do you see, as a professional, to see (1) that the Board is doing its job, to address some of these questions, to address the regulations, to address needed statute changes, to do some action as far as getting OL on its, on the stick. It seems to me that there has been until this came along perhaps not enough interest to see that some of these questions were addressed. What responsibility do you feel toward some of the things that have been brought out here? As a member of this profession, do you

think that if the Board were to be continued that we would see any difference? Would we be back in another three year situation with the same complaints before us and perhaps, you know, the same thing coming out in an audit report? What do you think should happen out of this and what would the responsibility be of those members of the profession that are not on the Barber Board?

DIXSON: Oh, I think you'd see a lot of changes, a lot of changes for the good. All the recommendations that we've made just off of the performance review, I don't know about a lot of the other people, but I know there are several of us that are very interested and would really be quite interested to make sure that these things were, were done. And I know I've spoken to the Board members and they are also very concerned and very interested in seeing changes made. There are a lot of changes that they would like to have seen made because it has been impossible because there hasn't been enough attention paid, you know, who cares, so you're just the Barber Board. This is a real good opportunity -- out of this, like I said, we could get some laws passed that we need quite badly and I assume that you would find that as a positive movement and that is just very important to us. And I think the Board could stand quite a bit more organization. It's done very well with what it has had on the very limited amount of money and limited amount of time. They only meet for two days twice a year and there is only so much work you can get done in that time. But, they have, they do have problems being as they are scattered all over the State with some of the organization that could definitely stand to be improved but if they could formulate a good statement of goals and objectives and formulate a good procedure to follow instead of leaving so much of it to chance and well, what do you think we should do now, then I think that would make it a lot more efficient and if some of the testing is maybe a little more standardized and improved, I see nothing but improvements. As far as the alternatives, I haven't really -- I've heard a lot of different possibilities to the Board. I think more than the Board itself I think peer review is the important part here. Now whether it is done by a group titled "Board of Barber Examiners" or a group of barbers hired by the Occupational Licensing to do it, it doen'st make sense to me to throw out one group of peers to pick out another group of peers and go through all the paperwork and problems involved to do that. If there was no licensing whatsoever, is that a possibility from what I've understood? No licensing at all? I can't see how that would even be dreamed of as far as opening up competition, etc., etc. Of everybody that I know that is a barber, I don't know anybody that wants to be a barber that isn't working as one. Anybody who hasn't had the small amount of get-up-and-go that is required to go to school and get your license. Just like any other professiona, it takes training and its takes time. I see nothing but improvement coming from this. And enough of the barbers I have spoken to are concerned that I think it would happen if it happened fairly fast.

STURGULEWSKI: Thank you.

BRADLEY: Representative Martin?

MARTIN: Thank you, Senator Bradley. I have a battery of questions thought up and I'd like to add to Senator Sturgulewski -- what she said. Last (UNDISCERNABLE)

FAIRBANKS MODERATOR: Mr. Chairman, this is Fairbanks. We can't hear the speaker.

MARTIN: Last year I was quite concerned with some of the professional groups that were abolished as a board but at the same time they had professional groups, like the veterinarians and the chiropractors and physcial therapists and these people were having classes throughout the year, they were attending professional meetings on their own not because (UNDISCERNABLE) They paid it on their own. Yet they were blackmarked, so to speak, because they didn't accept the State monies. So, you know, it seems like our review board is going to get you one way or the other, but that's their problem. The thing is, I'm a little surprised right now to find out that the barber group is not really a professional group. What is to assure the public today, you say if we continue this we are going to have everything right in the future, and I'm somewhat surprised that we don't have it now. For instance in your report and the report from Juneau, they heavily stress the medical aspect and the health aspect and the reason why disorders of the human bodies and handling and recognizing contagious disease. Well, I doubt if any of you know what a (UNDISCERANBLE) disease is. Of course, dermatologists don't know that. How much medical schooling do you have and if you do have medical schooling, why is it determined on a board that is sanctioned from the State? Why doesn't the profession itself continue your own schooling, if you have any schooling at all? Is there a continuation? You have a minimum here of 1500 hours. Is there any continuation?

DIXSON: That's up to the individual. Like I said, barbering is a very big industry in this country and there are a lot of professional -- there's a lot of professional training available once you've gotten your license and gotten your basic barbering out of the way. As far as any of the medical training we get -- it's limited. It certainly doesn't qualify you to treat any diseases but, like I said, it at least qualifies you to recognize them and in the 1500 hours, which is one of the laws we'd like to see passed. At this point, we have no hour requirement. Most states do require a certain number of hours. Anywhere from 1200 to 2000 hours of school and a certain portion of that is classroom training as well as practical. We have a lot of private companies that, oh, say companies that we by our products from, that offer franchisees and that offer continual training all through the states. The barbers, as individuals, attend these training sessions at their own discretion. Now it is up to the individual; there are no requirements. But if you want to be a good barber and you want to be an established professional, you do attend these trainings. I, myself, have paid my own way, not affiliated with any state organization, to go down to the states and receive training. And just about every barber that I know of has done so repeatedly and invested thousands and thousands of dollars in furthering our knowledge of our profession. And this was with no backing from any state association or any state agency. We just have done it on our own. And as far as the state association, like I said we do have the union. Many of us have chosen not to join this particular union. We may form an additional group. We may join the union. At this time, I can't speak for the other barbers. I know that enough people have been concerned over this and have gotten together over this that we're enough of a unified body that we can at least work towards something that we feel is this important. What we are concerned about -- like I said before, we want to see the Board continued because we feel that this is the best way to move our licensing procedure economically and swiftly. But what we want, we want to keep our licensing. We want to keep basic requirements and if the Board if the best method of doing this and, you know, we

feel it is and, you know, like I said the cost is minimal for what we get. We feel that we get a lot for the small amount of money..

BRADLEY: Senator Sturgulewski?

STURGULEWSKI: Judy, one further question. There is a present exemption in the law as to the more rural parts of Alaska. What kind, if any, interchange have you had there? How reasonable is it to expect some of the very rural communities to be able to say handle this question of coming to a center to receive their training. Have you addressed this problem at all?

DIXSON: At our school here in Anchorage, we've had several people from the Bush that have come in and they've received state aid and private help from Native -- and, you know, aid from their Native corporations, municipal funds and there are student loans available for schooling also since we are licensed by the State -- the school is -- and there's been. There's one person who has completed the course and graduated and is a practicing licensed barber in Juneau at this time. And there is another fellow who is also in school right now and is doing extremely well and will be graduating soon. And these people have not found it any problem to get the necessary financial aid from the various avaiable sources and it has been quite easy for them to do that. Now, a person could always open a barber school some place in the Bush if that was a good idea. But that once again, the barber schools are private. They're not public. So it is up to the owner's discretion as to where they want to put a school. Anybody who has wanted to from the Bush hasn't had any problem up until now as far as we know we people have done it and been successful.

BRADLEY: Any other questions from members of the Committee? If not, Judy, I have one. Are you in private practice or are you a teacher at the Barber College?

DIXSON: I'm in private practice right now. I just received my instructor's license (UNDISCERNABLE)

BRADLEY: Appreciate your testimony. You've done a lot of homework. You know we did our best to have combined meetings between the House and the Senate Commerce Committees to save people a lot of inconvenience in having to testify twice but we couldnt' get with the House and suddenly they throw theirs in before ours and we had our scheduled before and we did most of the coordinating with them. So, we were a little distrubed about that. Suddenly they throw in theirs on Saturday. Do you think it is beneficial that you have one and then the other? Maybe you learn a little something from one that you can benefit by in your testimony, by testifying the second time? Just as a matter of interest?

DIXSON: Well, personally, I did. But I'm not saying that I would have enjoyed being able to spend all day Saturday at work instead of having to take time out to go there. I think that the questions, the questions that were asked by the Representatives on the Commerce Committee were pertinent and would probably have been brought up today also. So, either way was fine.

BRADLEY: It doesn't make all the difference in the world. But I think it would be much better to have them both together. Do it once rather than twice. Okay, you know we've had some bills concernied the barber profession. We had one during not the last session but the previously legislature. And it

wasn't pushed and it had in their moral character and so forth. Many of our professional boards have this requirement -- moral character. I know it is a personal interpretation. How important do you think that is? Your personal interpretation.

DIXSON: Well, as a member of the barbers' group that we formed and legislative committee of that group, we agreed in the recommendations that it was too subject to personal interpretation and should be deleted. My personal feelings on this are a little bit different but I'm speaking more or less for the group so I'll just leave it at that. It is too difficult to judge that. What we were trying to do is to keep (UNDISCERNABLE) people working while they were intoxicated and that is a common problem and if the Board if is aware of a person who is intoxicated and who is practicing then this clause would allow them to say "Hey, you'd better go home and sober up before you start taking your shears to people's heads." But once again everybody's standards are a little bit different and some people's vary quite widely and it's really difficult to say you have goo moral character and you don't so therefore it should probably be deleted. I knew where to point.

BRADLEY: I guess maybe I'd better leave that question. But I think it probably rather than just have it as a requirement, good moral character, I think you'd need some explanation in that many people are probably are very good barbers but maybe their off-duty moral character may not be just so but it has nothing to do with their efficiency as a barber. But anything as obvious as intoxication or an alcoholic, I think maybe we need, in my opinion, it needs to be included but explained. Incidentally, anybody prefers any coffee, we made sure we had enough for everybody. I don't like to drink coffee with everybody else not drinking coffee and I haven't got up to get mine but I will soon. So feel free to get up and get a cup of coffee whenever you like, members included. Thank you very much for your well-prepared testimony, Judy. I think I learned a little something.

FAIRBANKS MODERATOR: Mr. Chairman, this is Fairbanks.

ANCHORAGE MODERATOR: Go ahead, Nancy.

FAIRBANKS MODERATOR: Do I understand that we will for sure be waiting until 1:30 p.m. Anchorage time for the testimony from the hairdressers.

ANCHORAGE MODERATOR: Nancy, my understanding is that when the testimony of the barbers is completed if we're still in the morning hours, we'll start taking testimony from the hairdressers. What is your witness situation there now as far count?

FAIRBANKS MODERATOR: We have two witensses and then somebody who is waiting to call others who will be here when we know what the time the meeting, they'll be taking testimony.

ANCHORAGE MODERATOR: The Committee definitely will be taking testimony from the hairdressers at 1:00 p.m.

FAIRBANKS MODERATOR: One o'clock Anchorage time?

ANCHORAGE MODERATOR: That's correct. Juneau?

JUNEAU MODERATOR: Juneau has four witnesses with one possible for the Board of Hairdressing.

ANCHORAGE MODERATOR: Fairbanks. Do you have any additional witnesses on the Barber Board?

FAIRBANKS MODERATOR: No, we don't.

ANCHORAGE MODERATOR: And Juneau, have you?

JUNEAU MODERATOR: We have no further witnesses on the Barber Board.

ANCHORAGE MODERATOR: Okay. And Debbie, how many did you say you had on the Hairdressers?

JUNEAU MODERATOR: We have four definite and one possible.

ANCHORAGE MODERATOR: Okay. Fine. Thank you.

BRADLEY: Very well. Thank you for that check, Judy. Do we have anybody that wishes to testify that hasn't signed the sheet? Okay, the next one is Mr. James Newman. In case it's not verified to everyone, as soon as we are finished with all the barber testimony, we'll take the hairdressers. Go ahead, James.

NEWMAN: Thank you, Mr. Chairman. James Newman representing Local 56 of the Barbers, Beauticians and Allied Industries, the Anchorage affiliate. I have in front of me a report presented by the Legislative Affairs Agency and there are a great number of factors in here that need to be brought to the attention of the Committee. One of them, which we just talking about, was moral character. There is a very good definition in the back as to moral character. Conviction of a felony. Gross malpractice or incompetence. Continual practice while knowingly carrying a communicable disease. Habitual drunkedness or addiction to the use of narcotics or other habit forming drugs. Those are the type of things that within our professional could be considered immoral character. Because of those factors, the immoral character clause should be left in but should be very definitely defined. The State of Alaska had renewal of 209 licenses in 1978. We have approximately 200,000 male members of our population. That gives us approximately 1,000 male customers per barber. Now that is a good ratio. That enables the customers to receive adequate service at the same time allowing the professional to earn an adequate living. Many states have a far lower average. This is years ago, this report that I have here is based on a great number of years ago. Going through this, you'll find that some states have as low as 600, even as low as 500 potential customers per barber. This is fantastic for the waiting line to get in to get your hair cut; however, it is not indictive to a good healthy practice. I have taken a great deal of my education in the State of California twenty years ago. At that time we were cutting hair at a price that was almost impossible to make a living. The State of California induced a minimum price law. The minimum price law was based on the amount of time an individual would need to practice per customer in order to maintain sanitary benefits. As far as the question of having a licensing law in the State of Alaska and as to whether the potential benefits equal the deficit to the general public, are rather easily understood in the fact that 48 of the 50 states now require licensing, including the State of Alaska. If no license was required or it was not important that we have a license, why have all the 48 of the 50 states said "License the barber." If education was not

important, why is the average number of hours required throughout the United States 1,438 hours? That is an average throughout the United States. If an apprentice law was not required, why is it that only two states do not have apprentice laws? If apprenticeship was not important to the general public, why is the average number of months spent in apprenticeship throughout the United States 18.4 months? If edcuation, minimum education, is not important, why is the average throughout the United States requirement of 9.5 years primary education? Eighty-six percent of the states do not require a residency requirement in order to be eligible to take the state test. Of those that do require it, the average is six months. The State of Alaska does have a temporary permit situation. It is applicable in our State due to the fact that our Board meets but twice a year for the purpose of examing. Many incidents, my own included -- I arrived approximately thirty days after the Board in the year that I arrived in 1972. Had it not been for the permit situation, I would have been unable to make a living for five months. But because of the permit situation, I was allowed to go to work. Now there are two ways to deal with that. Eliminate the permit and increase the frequency of the Board examinations and in so doing increase the costs of maintaining a Board. Continue to issue the permits, maintain the number of Board meetings that we have now and maintain very low costs. According to the summary report, the expenditure above and beyond per diem, transportation costs for our Board is approximately $6,000 -- between $6,000 and $7,000. I would like to be able to buy the kind of insurance for the public at any insurance company in the world for $6,000. That's what our Board, our education requirements are. They are a very inexpensive but a very important part of an insurance policy for the public and the State of Alaska. The last page of the consumer's report consisted of a letter written by Local 56, page 51(d), and it brings out that due to the action, due to the repeated efforts of barber boards throughout the United States certain diseases have been virtually eliminated. Impentigo is one of them. Ringworm is something that is almost of the past. Many of us who are older remember ringworn all too well. Many of us came in contact with impentigo all too well. But because of the requirements in our education which, who can better determine that than a Board of Barber Examiners? Those diseases have been almost wiped out and with continued perservance will be totally eliminated from this society. This is something to look forward to.

BRADLEY: Thank you, Jim.

STURGULEWSKI: Mr. Chairman?

BRADLEY: Senator Sturgulewski.

STURGULEWSKI: Mr. Newman, not only you yourself but others have spoken to the issue of the training that you have in various kinds of scalp disease and have indicated that there has been a reduction in that. Okay. So I come in and I've got a problem. What do you do about it? What do others do about it?

NEWMAN: In answer to that, my training in medical field is nothing more than diagnostic work. We are taught to recognize diseases of the hair, of the scalp and of the skin. In most states, however unfortunately our laws do not cover it though we have tried many, many years to upgrade our laws, I have copies that go clear back into the 60s. By most state laws, I am prohibited to work on a customer that has a communicable disease unless that customer is under the direct care of a physician. So the way

it is dealt with is that upon recognizing or suspecting a communicable disease that customer is advised to attend a physician and return.

BRADLEY: Any other questions from members of the Committee? Representative Martin.

MARTIN: Thank you, Mr.Chairman. Sir, once again on the education aspect. Perhaps I misunderstood you, but you said there is an average eighteen month apprenticeship required and you alluded to nine years of education requirement but I didn't know what you meant by that because one report here that Ms. Dixson presented showed that in Alaska we need 1500 hours, which is approximately forty work weeks, and in some places they have 2000 hours, which is approximately fifty-two work weeks. Could you explain the big difference there?

NEWMAN: Okay. What I was referred to there is the average primary education or gradeschool/high school requirement to be eligible to enter into barber college is and then the average numbers of -- the eighteen months is the average apprenticeship program which is recommended in most of the states or 48 out of the 50. I will leave this report with the Board to give them an opportunity to go over it and possibly if they can find it within their scope, include this, recognition of this, for the apprenticeship program within the laws of the State of Alaska. I do, and for this I apologize, I did neglect to extend the last page of this which covers exemptions. And I think that this might shed a lot of light on our situation. Exempt persons from licensing that are allowed to do barber work in most states are persons authorized by law to practice medicine, surgery; commissioned medical and surgical officers in the United States Army, Navy, and Public Health Services; undertakers, embalmers and morticians. Those are the people that are exempt in most states from having a barber license and those are people that have already been educated in the possible spread of diseases. Those are the only exemptions in most states requiring the barber law.

BRADLEY: Senator Sturgulewski? Mr. Martin has another question.

MARTIN: Thank you, Senator. Just two other questions, Senator. You were talkingabout moral character and you mentioned that you would probably uphold a standard that you read off there and encourage the continuation (UNDISCERNABLE). We are talking about a felony. I do believe in rehabilitation but felonies come in different characters and in different qualities and in different crimes. If a person has been rehabilitated, so to speak, in our society, what would be wrong with allowing him to become a barber later? Also, you were talking about communicable diseases. There are a number of diseases that people can have and are taking treatment for it but still are carriers of it and why should we condemn them. For instance, tuberculosis which used to be very prevalent in the state. A person can have it and it can be active but yet they can be taking medication for it and it would not be contagious to the other person. (UNDISCERNABLE)

NEWMAN: In answer to that. When they have taken -- when a person is under medication even though they are a carrier of tuberculosis or of another disease, the statement is carrying a communicable disease. Now if they are under treatment, they cannot give that disease to an individual so that takes it out of the category of being communicable. In this report that I am going to be leaving with you, it states that those persons convicted of felonies and take training while in a correctional

would not be eliminated because of the felony record. It also recommends the hours for work that they do while in the correctional institution be credited toward hours required for receiving, being eligible to take the license. As far as convicted -- being convicted of a felony, being a controlling factor on that, I think that would depend on the particular felony. Surely in to heaven you could not consider a person who had possibly gone to sleep because he had driven too many miles that day, many hours that night, and dozed off for a moment and while he was in a dozed status clipped somebody, a pedistrian, not realizing it, but was convicted for a felony hit and run. You could not necessarily include that individual as being an immoral character. But for a person that had gone out and had gotten totally wiped out on alcohol or drugs and hit a pedistrian and knowingly drove off, that would be an immoral character. So there would have to be -- that would have to be defined by the members of the Board as to include in there that they would have grounds to refuse, suspend or revoke licenses. I think all of us know what is moral and immoral when it comes to a felony situation. Gross malpractice, that is easy enough to handle. You end up somebody paying out a half a million dollars on a malpractice lawsuit, that's pretty well gross malpractice. Incompetency, again, if we have testing to determine whether or not people that will serve the public are competent professionals, we have very little worry about incompetency.

BRADLEY: Senator Sturgulewski?

JUNEAU MODERATOR: Mr. Chairman, Juneau is having difficulty in hearing the witness.

ANCHORAGE MODERATOR: We've asked our witnesses to speak more closely to the microphone.

STURGULEWSKI: Mr. Chairman. Mr. Newman. Judy Dixson in her paper addresses a question of reciprocity. One of the things, as sort of a personal statement, I think we should do whatever we can to make people coming from other areas to be able to fit into the job market. I don't believe in exclusionary practices. I guess this is one of the reasons I'm surprised that there has not been a professional organization working toward a standardization of requirements throughout the country. I'm wondering, is your union, does that across the country more or less take the place of professional societies in barbers or are there generally barbers associations, professional associations, apart from the union? Hows does that work just as a matter of your particular trade?

NEWMAN: Okay. There are basically two organizations within the profession of barbering. There is the International Union of Barbers, Beauticians & Allied Industries. There is another organization known as the AMBBA -- that's the American Barbers and Beauticians, the American Master Barbers and Beauticans. Yes, we are pretty well throughout the United States. Currently have approximately 27,000 members. We are a small union. As to why we do not have a more standard or have a tighter knit between state to state on reciprocity, unfortunately, we as barbers do not make the laws. The laws are made by congressional groups of each state. In order to have a reciprocity situation within our state with other states, we would also have to have a standardized system of laws between each of the states and again this goes right back in to your own laps of the law-making body. As far as reciprocity is concerned, with the current system where permits are given, reciprocity is not in reality a necessity. But

let's take that one step further. As we probably all noticed this morning on the way in, there was a slight nip in the air. Now if I had a California license and knew that I could go down there and go to work, I might well be packing my things up to head south just like the birds do. And many others would be doing the same thing. So come winter time we end up in a situation where it is almost impossible to find a barber. Come spring time and the fish start running, we all know what that means. Every barber in the Lower 48 would want to be coming up here fishing which would result in a starvation situation for the barbers. Let's extend that one step further because I know how good I am and I know how good the people within this room are. They're all good; they're all going to make a living. So the people would be coming up, say now wait a minute. These people have got an established clientele; how am I going to take that away from them. They start cutting the prices -- reducing the prices to an extreme low. This is fine for the consumer excepting that in order to do so that barber would eliminate washing his hands, not worry about cleaning his chair between customers; as a result, create a gross negligence in sanitation and health to the public. So this is the way that I would answer whether or not reciprocity should or should not be included. On the recommendation of Local 56, it is definitely "No."

BRADLEY: Any further questions from members of the Committee? If not, Jim, I have one. And that is in regard to what you were just discussing concerning migration of barbers up during the summer and migration the other direction during the winter, and that's true in many type of jobs and professions in this State, do you think we should have a residency requirement for licensing? And do you prefer more frequent examinations or the permit law?

NEWMAN: Is that personally or as a representative of Local 56?

BRADLEY: Both..

NEWMAN: Okay. I had to clarify that because the answer on both clauses are identical. This way I can get to speak for both myself and Local 56 so I get to speak twice. We prefer the system as is with the permit system and the frequency of the test every six months. Looking at the reports as to how many were tested, in '77, '78, '79, you're averaging out fifteen to sixteen and this is twice a year. There is no way that I or anyone else could justify increasing the frequency of the meetings. The best alternate is to use the permit system because at least the State and the Board have some idea of who other than those licensed are practicing within the State of Alaska.

BRADLEY: Question -- how many barbers have been suspended for not living up to the standards required on malpractice, say in the last year and then in the last five years?

NEWMAN: To my knowledge, none. However, that is not information that is readily available to the practitioner in the field. This is something that the Board could probably answer a little bit better. Due to the fact that we do have a Board at large, unless there is a complaint filed by an individual within the profession, the Board has no way of knowing about any incorrect behavior of a barber or member of the profession because being barbers at large they do not and cannot afford to take time away from their chair to go out and spend one week a month doing the type of inspection that we are talking about. This is the main reason that even

though at one time the Board had the authority to do health inspections, they deemed it more applicable to turn that over to the Department of Health and where it has remained ever since.

BRADLEY: Senator Kelly.

KELLY: Yeah. Getting back to this permit thing. I don't quite understand how the permit system operates up here. Secondly, does your union as a national union have any kind of regulations or rules pertaining to inter travel between states?

NEWMAN: Okay. The way the permit system works currently. I will take my own incident and make it maybe a little easier for you to understand. I arrived in November '72. Presented to, at that time, a member of the Board, a copy of my California license. Acquired the required sized photograph; obtained a money order payable to the State of Alaska for the amount of $25.00, which is the cost of being tested; presented them to the Board member; he immediately had me mail those to the Department of Commerce and wrote me a permit which was good until the next Board meeting. This is the normal way that a permit is issued or upon showing a diploma or completion of the required number of hours in a school, again due to the fact that the Board meets twice a year and a person could graduate from school with the required number of hours shortly after a Board has met, like within the next week. They would have five months to wait before they would be eligible for a Board. As far as inter travel within the union system, to my knowledge and I haven't done any extensive research on this, the union does not recommend reciprocity one state to another; they do not abide a guideline for reciprocity; however, they do offer something that I also neglected before the Board reflecting back to questions that was asked of Ms. Dixson about continuing education. Currently, residing here or waiting here in the State of Alaska to visit our barber college and to visit some of the shops is an international guest artists, the 1979 Hairstylist of the Year, whose transportation to the State of Alaska was paid for by the international union. He is an educator so there is an ongoing system of education through the international union.

(TAPE 2, SIDE A)

MARTIN: Sometimes when I go to different cities and even with in Anchorage at the time I'm in a hurry to get a hair cut and some shops I look at them from the outside and then I'll go to another shop that looks pretty good from the outside and then go in. Has there been any talks with the union and/or perhaps a professional group developing some kind of shield that would teel the consumer "Hey, this is quality here." Regardless of whether you have a piece of paper that says "I, barber, in the State" or not. This is what I am getting to in helping your own professional to recognize its peer group and to help the customer say "Hey look this is a professional group shield. I know I can get quality there."

NEWMAN: Yes, there's been a great deal of thought about that but then you run in to one particular situation. I personally drive a Ford because to me that's the best vehicle there is. I've got a friend that drives a Cadillac because he thinks that is the best vehicle there is. I've got another friend that drives a Chevy. Now, who sets the standards in your mind as to what is the best. I know some people that swear one particular barber is the best barber in the entire city of Anchorage and I know other people who have gone to that same barber and have said "Boy, I wouldn't

let him cut my dog's hair." Because the individual requirement of the customer differs so much that it would be virtually impossible to establish a criteria as to what would be the requirements for having a shield of performance and so on and so forth. And as far as to the exterior of the building, whether you say that is going to be a good shop or that is going to be bad shop, that is usually left up to the landlord to control the exterior of it and only to the shop owner as far as the interior.

BRADLEY: Any other questions from members of the Committee? If not, I have some real quick ones. Are you in private practice, Jim, or are you an instructor at the barber college or both?

NEWMAN: I am in private practice. I do have an instructor's license which I am not using at this time.

BRADLEY: In regard to barbers not making laws, you're right but also wrong in that people do influence the making of laws and those that put out an effort and lobby and write the most letters and make the most noise usually get the most laws passed. So that's one reason that the bill that I had, you know, some time back in the committee, last legislature, didn't go anywhere. And it didn't say very much either. It didn't do much good, I think, even if we would have passed that one. So, if you think there are some things that you do need, there are ways of getting it but you've got to sort of get organized. Nobody ever got anything without getting organized. Now, from your experience, what do you -- do you think that the Department of Health inspections are adequate? I've sat around a lot of barber shops. I've got my barber expert friend here so I know he's the best and that shop but, as you say, you like a Ford and I like a Chevrolet and so on. So I've seen some things, like a barber would shave or cut hair from one to another and never sterlize any instruments. The Department of Health can't be there all the time. So, just your comments in that regard.

NEWMAN: The Department of Health does as well as they possibly can, unfortunately there is no system that is totally adequate in inspection. From what I understand, we have only one hospital in the State of Alaska that is certified as being totally sanitary. You know, we have a great number of hospitals in the State. The best way to insure the sanitation that is required in the shop again goes back to education because the one most susceptible to the disease is the one that spends eight or nine hours a day in that environment. So the education of the practitioner would be the best way to maintain a sanitary condition.

BRADLEY: Any other questions? Thank you very much, Jim. Thanks immensely. Very good testimony.

ANCHORAGE MODERATOR: Stand by just a moment please.

BRADLEY: I'd like to notify the teleconference network that we currently have only six people to testify concerning

BRADLEY: I'd like to notify the teleconference network that we currently have only six people to testify concerning the barbers, the Barber Examiners Board. Just so you know maybe how long you will have to wait. Go ahead, Bud.

SMITH: My name is Maurice Smith and I am the newest member elected to the Barber Board as of March of 1979. Does the Board have any questions at this time to ask me?

BRADLEY: We'll proceed with questions unless you prefer to give your testimony

and then answer questions. Would you like to answer questions immediately, Bud?

SMITH: Well, I would like to go over some of the testimony that has been given so far. It's really be covered quite clearly, I think.

BRADLEY: Why don't you go ahead and do that, Bud, and that may stimulate some questions.

SMITH: Just a second while I run over these notes, please.

BRADLEY: While Mr. Smith is going over his notes, does any member of the Committee have any questions they would like to ask? Mr. Martin.

MARTIN: Thank you, Senator. Mr. Smith, I was told some time ago and I was waiting for this committee to have hearings to ask this question of one of the members that there is a considerable turf protection in the sense that isn't their one barber college in town that is owned by an individual that is on the Board that somehow individuals that need licenses or accreditation need to go to his facility and is that the only outlet? This is just one complaint from one barber and it is strictly going to you as I heard it so could you enlighten me as to what is available for a person that must be licensed?

SMITH: Yes, there is one college at the time in this State and it is here in Anchorage and it is owned by Manual Norat, who is a Board member. I don't know if Mr. Norat is going to speak today but he has informed us, the other members of the Board, that he will be dropping soon from the Board. He has other engagements (UNDISCERNABLE) very tightly that way and there will be another set open on that Board. But I'd like to clarify something. I've worked as a Board member on the, I've set in on the last two testings, last April and this October. The procedure, I feel, that Mr. Norat's way is very good as far as if we have a student coming from his college, he automatically disqualifies himself and will not grade that person. I think this is a very fair way of doing it and I also had two people that took the last test that are working among my shops and I disqualified myself from grading them also. So we're trying to cut down any discrepancies whatsoever there. I think that's a very good system.

MARTIN: Thank you, sir. How do people from Fairbanks, sir, and Juneau or other sections of our state get qualified if they cannot go to a or at least get the education? Is it possible for a person in the northern part of our state to meet the minimum requirements without having to come to Anchorage to the barber college?

SMITH: No, sir. At the present time to enter this profession one must go to an accredited barber college. I feel that that is the way it should be in any state. The instructors at that college are very well qualified. I have examined the college myself and am very impressed with their procedures. I have lived in six states in all and I have licenses in four and the procedures in this college are actually above most other colleges that I have participated in.

STURGULEWSKI: Mr. Chairman?

BRADLEY: Senator Sturgulewski.

STURGULEWSKI: Bud, you've heard not only at this meeting but at others the need for practic act or statute and regulatory change. How do you, as a Board member, see your responsibility to bringing those? Do you just see you responding to the bureaucracy or the Legislature or do you see your Board moving ahead to address some of these issues that have been raised? Okay, if you're continued in other words, what's your responsibility, what's your role?

SMITH: Well, as a Board member, I am acutally open to all comments in all directions. As far as other barbers, I want them to come forward and I've stated that way since I was elected to the Board at different meetings and things that I'm open at all times to any suggestions from my profession. As far as goals, I'll be sending in a report of what I'd like to do this coming year and what I'd like to accomplish and it's going to be quite lengthy. Like I said, I've just been appointed to the Board and it takes time really to get these things done. You can't do it over night. We've got a tremendous amount of changes in legislation coming up and I hope legislators go over these legislation and do it very closely and help us in this respect.

STURGULEWSKI: Mr. Chairman. Just to continue a bit but do you see that as your direct responsibility to see that those changes are developed and put into legislation. I mean are you waiting for somebody to come with something so you react or do you see you taking a positive action to develop those needed changes. I think I'm looking for accountability. Whose responsibility is it to address a number of the concerns that have been raised?

SMITH: Yes, ma'm. Personally, I'm going to monitor this right up until these bills are served. This is one of my goals. We have set up a legislative committee, the barbers here in this town, and they've come up with a tremendous amount of changes on our laws to date and I think you're going to find that all these changes are needed for many years. You're going to find (UNDISCERNABLE)

STURGULEWSKI: Thank you.

BRADLEY: Anyone else on the Committee have a question? If not, Bud, I know you are relatively knew and you may have heard, are you aware of any license being suspended or being revoke as a result of malpractice or not living up to the standards of the Board?

SMITH: Not at the moment, Sir, I'm not.

BRADLEY: You know, one of the criticisms by the audit which was alluded to and implied in the report and then by some of those who testified that conducted the audit during the Budget & Audit Committee meeting that they weren't doing anything. If they weren't doing anything, we don't need them. There are two ways to go, I think, there. Either terminate or appoint new members that do something. So that's just a comment. Normally I refrain from giving personal opinions during these testimonies but I think it's admirable of Manuel Norat to drop from the Board because I've got the same complaint from numerous people, too, but everybody who has done anything has got a conflict of interest. If you haven't done anything, you don't have a conflict of interest. So you have to depend on the integrity of some people. But that might be a good thing to do. Having a barber shop and then the barber college and then being on the Board does subject

him to criticism so I think it's admirable of him to consider that. Your comments regarding that particular thing are most appropriate, too, and they might be good to keep in mind but it has been a common complaint from people who have called and written letter.

SMITH: Yes. I find that very true, sir, going over the minutes of the last few years.

BRADLEY: Any other questions? If not, Bud, thank you very much.

ANCHORAGE MODERATOR: Stand by just a moment please.

(UNDISCERNABLE - TESTIMONY FROM DONALD MORRIS, ANCHORAGE)

MORRIS: There is a definite need in my belief find the paramont duties of the barbers to prevent the spread of disease and to give a good commodity to the public, general public. The duty, as I see it, of the Board of Barbers is to see that they have the proper facilities, proper education, the proper testing, examing, licensing, so that we are assured that the barbers in the profession have been trained thoroughly, have been examined and are capable of rendering this service in protecting the general welfare. Otherwise, I am in complete agreement with what Judy said. We worked on the same committee. I am in agreement with what the gentlemen before Jim said with its reciprocity permits. We are the only state that allows people to work with a permit until the Board convenes again so that they can be examined. There is no other state. If you do not have their license, you do not work in their State until you have been examined and, therefore, I think this permit is very fair to someone from the Outside coming in. Really, that's all I have to say except to answer some questions.

BRADLEY: Then what do you recommend -- that we keep the permit situation as it is although no other state has such?

MORRIS: Well, with the Board only convening unless they want to change and have the Board convene more often, the permit situation seems to be the only solution. Now, Judy, we have recommended, this committee that I'm working with, that students coming out of school only be allowed to work in a shop, be issued a permit only working under the direct supervisions of a master barber, who is already a master barber in the state, until the time that the Board convenes so that they can be exempt.

BRADLEY: What about somebody coming from the Outside? Does anybody investigate? How do you know he didn't just leave barber school down there?

MORRIS: I don't know the workings of the State Barber Board right now but if they have a license, they are given a permit but as far as coming out of school, I don't know. I personally, myself, don't believe that they should be given a permit until they have been tested.

BRADLEY: Well, the reason I mentioned that is (UNDISCERNABLE)

ANCHORAGE MODERATOR: Stand by, please.

BRADLEY: If anybody has any comments to make although you're not on these sheet, maybe as a result of some of the testimony stimulated, might want to make two or three comments.

MOHR: My name is George Mohr, spelled M-o-h-r. I live 4824 Queens Court, Anchorage. Yes, I will fill this in. I would like to ask the members of this hearing, if I am, I'm fairly familiar with the provisions that a sunset law involves when it goes into effect. Doesn't it mean for the consumer, and I am a consumer -- I'm a customer; I'm not a barber and I know nothing about unions and permitting procedures. Doesn't it mean that there would be no qualification tests or procedures at all if the sunset law takes effect? In other words, if the current supervision over the qualification of people who cut my hair is abandoned is then there no more standard for performing the art properly available in the State of Alaska? Is that a correct assumption?

BRADLEY: It need not necessarily be that way. You know like some states give an examation and you pass it or you don't pass it. You go to school or

MOHR: Do we have that now?

BRADLEY: We have the school right now. We have one of these that was grandfathered in. And how it will be if we decide to terminate this Board, we don't know right. Maybe they'll just issue a license. Maybe they'll have to take some standard examination before it will be issued?

MOHR: So there will be some assurance. I'm asking for this reason, I've been here 28 years and when I came to the Territory, the availability of proper barber services was very limited on a hit or miss basis you had to find out who was good, which, of course, is okay in many things in the open market places. You find out who is good and who can serve you and if not you don't, you don't patronize them. Excuse me. With the development to which Anchorage and the rest of the State is coming now, this is a shocking experience that it happens to you that you get a very bad treatment and then what you do to remedy the situation? At least for the next four weeks. If you have an important engagement here. That is the deal and if this is a real obstacle and hazard. I mention this because it happened to me and I wasn't very pleased when I knew that the barbers were eventually allowed to practice in the metropolitan area here are well qualified and I have not had a bad experience. But I did have my bad experience before this went into effect. So that's my concern is that something should be there. I have no technical understanding of the medical hazards that might arise if any qualification procedures are dropped but I'm, and of course I hope they are maintained. I'm concerned with the state of the art. Okay?

BRADLEY: Thank you very much, George. I'm glad we got a consumer here. We put the advertisements in the paper and what not but sometimes you just get the professionals and not the consumers. Judy, when two people are pressing the button at the same time, only one talking, is it okay? Same time? Do you have any further comments to make?

MOHR: No, not at all. As I say, I only hope that whatever I'm able to enjoy here as far as barbering (UNDISCERNABLE) something or another how a Board or any other commission is run. I've got to rely on some

BRADLEY: Regulation but not overregulation?

MOHR: Okay, it is exactly that.

BRADLEY: We'll have some protection. Okay. Thank you very much. Is there anyone else wishes to make some comments. Yes, Dick?

EVANS: I'm Dick Evans. I'd like to comment about the law. I view it like the driver's license. All the drivers aren't too good but if we didn't have a law, they'd be a whole lot worse. I hate to see Manual quit the Board. He cares and we need people who care. That's it.

BRADLEY: Okay, Dick, thanks. Any questions? I agree. I think it's going to be a loss, too, and I think a lot of people complain because, you know, they find an excuse to complain. You know, I've put in a few bills, too, that I've got criticized for because I had a conflict of interest. Well, I've done away with my conflict of interest. By golly, if you've done anything, you've got a conflict of interest. It's going to be a loss. I agree. Had enough initiative and get up and go and drive to start a barber college, to set some standards, to protect me -- I've got scalped quite a few times -- kind of like the barber asking you "how do you want it?" It's better to take off too little than too much. Can't put it back on. And good barbers do that. But that is a common complaint and for the good of the profession I think it's admirable for Norat to -- he can still do the same thing he's doing. Probably even influence the Board because a lot of people have respect for him. Yes, Bud? Bud Smith. If you speak loudly will it pick up, Judy? Okay, I'll repeat it. Please, please come back. This will be Mr. Maurice "Bud" Smith making additional comments for his initial testimony. Just, we're all home folks here.

SMITH: In summing up, I would like to say a few points here that at the present time, I am trying to get a state barbers' association started in this state and my goal is January 1980 to get this underway. Another respect, I'd like to see a limit to the Barber Board members. What I would like to see is two three-year terms at the most and have them rotating so that we'd have a new member coming on the Board as one goes off. Another respect I'd like to run over here is our products. Now we've been told by our insurance companies -- most all of us carry malpractice insurance -- and if there's no examining Board to qualify licensed barbers, all these insurance companies are going to drop our malpractice.

BRADLEY: Bud, can I interupt just a minute. Is there anyone here that is from the hairdressers that wishes to testify? It looks like we are going to be through with the barbers' testifying soon so we could probably start with some of those if you like. I just thought I would make that comment. Go ahead.

SMITH: Another thing I would like to clarify too as being on the Board -- procedure of permits. This is quite an issue, I can see by listening to the testimony. The way it is set up right now, anybody coming in from another state wishing to obtain a license in our state, we, as Board members, examine their credentials, we have to see a copy or the diploma from an accredited barber college or a license for barbering in another state. Upon this we can write a permit for them to go to work until the test is given. Now, once the test is given, we pick up that permit and it is no longer good. It is up to this individual to have done his homework and pass this test. While we are on the testing, I would like to bring up the point that if you

review our results in this past test in October, you will find it quite good. What we did there is we went through a new procedure that has never been done before to my knowledge. What we did, our chairman of the examining board, Mr. Jim Rossi, gave us, the Barber Board members, certain areas in one particular book that we are using only in the State -- this will be on the law coming up also with the name of the book. I, myself, was assigned to an in bacteriology and sterilization and sanitation. I made up questions from this area. I sent in my questions to Occupational Licensing. All Board members were assigned different categories in this book and we sent in all to Occupational Licensing and it was up to them to sit down and pick out a hundred questions out of what we sent in. The examination, we were handed these questions and we served them. I, myself, have been a great believer in doing away with 100% essay questions. I feel that this is not fair to people no matter what profession you are in because of the hard grading system on an essay question. I made recommendations prior to this test to other Board members that we should keep it very simple -- either fill-ins, true or false, and multiple choice. I, myself, prefer multiple choice. We had 75 questions of multiple choice. Twenty-five were essay questions which were quite easy, I must say. I don't have right with me at the present moment the percentage that passed the test and did not but I am sure that it was quite high that passed the test. Another thing I'd like to bring to your attention is that chairman Jim Rossi has moved from Soldotna to Anchorage. Now we've had problems in the past working with Jim Rossi. It would either have to be telephone at our expense or letters because no teleconference there from Soldotna. I find myself having Mr. Rossi still the chairman of this Board and located in our town here, I find myself that we are going to be able to work much closer and upgrade the Board in that respect. I, myself, hope to have Mr. Rossi over to my house many evenings that way and go over different aspects of what we are talking about here today and different laws and other Board members if they possibly can make it. Another thing I would like to try, I don't think it's ever been tried in this State before, on my own, I would like to put a newspaper ad in the local paper to see what the public feelings are on our profession. We ask people daily different criteria that way behind the chair but nevertheless I want something in writing. I want to be able to show you legislators what the feelings are of the people on the street. Another thing I would like to do as a Board member, I would like to try to set up a national law criteria with other states. This has never been accomplished before and I don't believe that it has ever been tried. Two weeks ago I spent two days, approximately 23 hours, reading material from other states and I find tremendous difference in laws and I find that there is too much difference. I, myself, would like to go to the national board meeting next year, even if I have to pay my own expense, I would like to do it and I think I will. While we are on that point, I think there are areas where we might be able to come up with our own financing that way and myself, speaking as myself and not a Board member at the present moment, I don't think it is up to the State, personally, to send us anywhere in the United States. I think it is up to us Board members to come up with the money anyway we possibly can.

BRADLEY: As a result of association dues? As in many professions.

SMITH: I think that pretty well sums up what I have to say here. Listening to testimony this morning it really covered an awful lot of material and I don't want to duplicate it and take your time but I can reassure you as a new

Board member that there are a tremendous amount of changes coming up in laws and whatever in our profession and I would like to have you judge us on more or less that merit -- the changes that we are hoping to do and not phase us out.

STURGULEWSKI: Mr. Chairman?

BRADLEY: Senator Sturgulewski.

STURGULEWSKI: A comment. I think it is one of the helpful things on the whole sunset review even if we don't eliminate a good number of the boards is for people to get their act together and if we've got barriers either through staffing problems in the state or the individual board members not doing their job, I think that is the time that we start to address some of those things and there is a responsibility of the people in the profession not just the Board. I would like to have later for the record, obviously we are not going to take any action until the Legislature is in session, we can't, but you made a comment regarding malpractice insurance. If at all possible, I wish you would get some firm to make some statements regarding just what the procedure is for handling malpractice as far as this profession goes. What are the kind of rates? What kind of problems do we get into and, in fact, how would they look at it if there were no standards? What kind of liability are we talking about? In other words, I'm not informed about that. I think your point is interesting and I'd like to see some information on it. If you could supply that to me, I'd certainly welcome the information.

SMITH: Yes, ma'm. I certainly will.

BRADLEY: Any other questions? Well, Bud, I personally, and I think I can speak for the Board, appreciate your interest and attitude as a Board member. I think that is what the Board needs. I think we'd better check with the teleconference network and see if any latecomers have come in from Fairbanks or Juneau. Fairbanks, do you have any people that might have come in later that would prefer to testify concerning the Barber Examiners Board? Over.

FAIRBANKS MODERATOR: No, we don't have any.

BRADLEY: Juneau? Over.

JUNEAU MODERATOR: No, not at this time, Mr. Chairman.

BRADLEY: Thank both Fairbanks and Juneau for your cooperation for the testimony concerning the Barber Examiners Board. And, at this time we will take a two or three minute stretch break and decide what we will do from this point on. I suppose we will take, the Committee will agree to take those hairdressers that are available now up to lunch and the remainder of them after lunch. All right Judy, make your network check.

ANCHORAGE MODERATOR: Fairbanks, how many hairdressers or

FAIRBANKS: Others will be returning in awhile and they do all wish to speak later.

ANCHORAGE MODERATOR: Would you judge sort of informally that the people who are there in the room waiting to testify now will probably want to hear all of the testimony and might prefer to wait until one o'clock to present theirs?

Please Print

(6) Benefit of those on the teleconference network.

NAME OF WITNESS	ADDRESS	TELEPHONE	BILL TO TESTIFY ON
Robert (Whitmarsh	5341 Little Tree Anchorage	349-2063	
✓ Judi Dixon	6340 W. Dimond - Anch. 99502	243-7875	
✓ James Newman	5207 Shore Crest Dr. Anch 99502	243 5574	
✓ Maurice J Smith (Bud)	7721 Orient Dr. Anch 99502	277-0823	
X Lily Espinoza	1921 Dolly Varden	244-4765	Observer
Ann Griggs	Route D - Juneau -	465-2534	Barbers
N.D. Marie A. Bray	3609 Richmond Ave Anchorage 9950	277-9219	
N.D. Letha Bray Ashcraft	3609 Richmond Ave. Anchorage 99504	279-5851	Observer
✓ Howard Lewis	1010 Beach Loop Ave	276-2887	Barbers
George Mohr	4824 Queens Court	333-4601	

SCHEDUAL FOR OCTOBER 22/23 SENATE COMMERCE COMMITTEE HEARINGS ON SUNSET LEGISLATION.

OCTOBER 22/ 1979

Anchorage --- Room 262
University of Alaska
Consortium Library
3211 Providence Drive, Anchorage Ak.

(Judy Mengel 263-1832)

Time (9:00 am to 5:00 pm) ANC time

Juneau --- Butrovich Room #207
Capitol Building
Juneau, Alaska

(Dave Hammick) 586-1201
(Sue Plumer)

Time (11;00 am to end) JNU Time

Fairbanks --- Legislative Affairs
101 College Road, Building F., Room #250
Fairbanks, Alaska

(Maxine 452-4449)

Time (9;00 am to 5:00 pm) FBX Time

Board of Barber Examiners
Board of Hairderssing & Beauty Culture Examiners

AUDIT REPORTS ---

AM A PREFORMANCE REVIEW OF THE BOARD OF BARBER EXAMINERS
March 31, 1979

PM A PREFORMANCE REVIEW OF THE BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS
June 11, 1979

Division of Legislative Audit, Att: Gerald L. Wilkerson
State Office Building
Pouch W, State Capitol Juneau, Alaska 99811 (465-3830)

SCHEDUAL FOR OCTOBER 22/23 SENATE COMMERCE COMMITTEE HEARINGS ON SUNSET LEGISLATION.

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Time (9;00 am to 5:00 pm) FBX Time

Board of Registration for Architects, Engineers and Land Surveyors

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AUDIT REPORTS ---

A PREFORMANCE REVIEW OF THE BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS
May 11, 1979

Divison of Legislative Audit, Att: Gerald L. Wilkerson
State Office Building
Pouch W, State Capitol, Juneau, Alaska 99811 (465-3830

PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581; 278-1582

September 25, 1979.

Maria Dunham
Board of Hairdressing and Beauty Culture Examiners
Shawnee's Beauty Salon
530 Seventh Avenue
Fairbanks, AK 99701

Dear Ms. Dunham:

The Senate Commerce Committee will convene at 9:00 a.m. on October 22, 1979, for the purpose of holding a public "Sunset" hearing on the Board of Hairdressing and Beauty Culture Examiners. The hearing will be held in Room 262 of the Consortium Library, University of Alaska, 3211 Providence Drive, Anchorage, Alaska, and will be teleconferenced to Juneau and Fairbanks.

The Juneau teleconference will begin at 11:00 a.m. (Juneau time) in the Butrovich Room (Room 207), Capitol Building, Juneau, Alaska.

The Fairbanks teleconference will begin at 9:00 a.m. (Fairbanks time) in Room 250, Building F, Legislative Information Office, 101 College Road, Fairbanks, Alaska.

The following Audit Report is available at the local Legislative Information Offices:

> A Performance Review of the Board of Hairdressing and Beauty Culture Examiners. July 11, 1979.

If you have any questions, contact Christian Basler at 278-1581.

Sincerely,

Brad Bradley
Chairman
Senate Commerce Committee

Attached letter sent to following:

Maria Dunham
Board of Hairdressing and Beauty Culture Examiners
Shawnee's Beauty Salon
530 Seventh Avenue
Fairbanks, AK 99701

Mrs. Ione Lambert
Board of Hairdressing and Beauty Culture Examiners
PO Box 441
Douglas, AK 99824

Mr. Dennis Milhouse
Board of Hairdressing and Beauty Culture Examiners
407 East Northern Lights
Anchorage, AK 99503

Ms. Judith R. Maness
Board of Hairdressing and Beauty Culture Examiners
2807 Turnagain Blvd.
Anchorage, AK 99503

Hair Today
Attention: Yvonne
191 South Franklin
Juneau, AK 99801

Elaine Garrett
Division of Occupational Licensing
Department of Commerce & Economic Development
Pouch D, Mail Stop 0800
Juneau, AK 99811

PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581; 278-1582

September 25, 1979

The Honorable Arliss Sturgulewski
Senate Commerce Committee
2957 Sheldon Jackson Drive
Anchorage, AK 99504

Dear Senator Sturgulewski:

The Senate Commerce Committee will convene at 9:00 a.m. on October 22, 1979, for the purpose of holding public "Sunset" hearings on the Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners. The hearings will be held in Room 262 of the Consortium Library, University of Alaska, 3211 Providence Drive, Anchorage, Alaska, and will be teleconferenced to Juneau and Fairbanks.

The Juneau teleconference will begin at 11:00 a.m. (Juneau time) in the Butrovich Room (Room 207), Capitol Building, Juneau, Alaska.

The Fairbanks teleconference will begin at 9:00 a.m. (Fairbanks time) in Room 250, Building F, Legislative Information Office, 101 College Road, Fairbanks, Alaska.

The Senate Commerce Committee will also hold a public "Sunset" hearing on the Board of Registration for Architects, Engineers, and Land Surveyors on October 23, 1979. The time, places and teleconferencing will be the same as for the October 22, 1979, hearings.

The following Audit Reports are available at the local Legislative Information Offices:

A Performance Review of the Board of Registration for Architects, Engineers, and Land Surveyors. May 11, 1979.

A Performance Review of the Board of Hairdressing and Beauty Culture

Examiners. July 11, 1979.

A Performance Review of the Board of Barber Examiners. March 31, 1979.

If you have any questions, contact Christian Basler at 278-1581.

Sincerely,

Brad Bradley
Chairman
Senate Commerce Committee

Attached letter mailed to following:

The Honorable Arliss Sturgulewski
Senate Commerce Committee
2957 Sheldon Jackson Drive
Anchorage, AK 99504

The Honorable Tim Kelly
Senate Commerce Committee
Box 1004
Eagle River, AK 99577

The Honorable Frank Ferguson
Senate Commerce Committee
Box 131
Kotzebue, AK 99752

The Honorable Terry Stimson
Senate Commerce Committee
1610 "E" Street
Anchorage, AK 99501

The Honorable Fred Brown, Chairman
House Commerce Committee
Box 1718
Fairbanks, AK 99707

The Honorable Joyce Munson
House Commerce Committee
935 East 79th Avenue
Anchorage, AK 99502

The Honorable Hugh Malone
House Commerce Committee
Box 9
Kenai, AK 99611

The Honorable Alvin Osterback
House Commerce Committee
Box 71
Sand Point, AK 99661

The Honorable Robert Bettisworth
House Commerce Committee
Box 80288
College, AK 99708

The Honorable Richard Halford
House Commerce Committee
Box 66
Chugiak, AK 99567

The Honorable Richard Randolph
House Commerce Committee
Box 123
Fairbanks, AK 99707

Elaine Garrett
Division of Occupational Licensing
Department of Commerce & Economic
Development
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Juneau, AK 99811

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Legislative Teleconference Network
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The Honorable Terry Gardiner
Speaker of Alaska House of Representatives
Box 6092
Ketchikan, AK 99901

The Honorable Clem Tillion
President of Alaska State Senate
Box 373
Homer, AK 99603

The Honorable Nels A. Anderson, Jr.
Majority Leader, Alaska House of Representati
Box 234
Dillingham, AK 99576

The Honorable Mike Colletta
Majority Leader, Alaska Senate
1016 West Sixth Avenue, Suite 435
Anchorage, AK 99501

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Legislative Information Office, Fairbanks
Attention: Maxine
101 College Road, Building F
Room 252
Fairbanks, AK 99701

Pam Derrer,
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Juneau, AK 99801

~~Karen Baker~~
Rep. Terry Martin
3960 Reka
Anchorage, Ak. 99504

Judy Mengel
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University of Alaska, Anchorage
3211 Providence Drive
Anchorage, AK 99503

Paul Harris (276-1443)
Legislative Audit Division
PO Box 1231
Anchorage, AK 99510

Karen Baker (272-5514)
% Jay. Baxter & Co.
207 East Northern Lights Blvd.
Anchoragem Alaska 99503

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business
PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581; 278-1582

September 25, 1979

Mr. Dan A. Noll
Board of Barber Examiners
604 Second Street
Fairbanks, AK 99701

Dear Mr. Noll:

The Senate Commerce Committee will convene at 9:00 a.m. on October 22, 1979, for the purpose of holding a public "Sunset" hearing on the Board of Barber Examiners. The hearing will be held in Room 262 of the Consortium Library, University of Alaska, 3211 Providence Drive, Anchorage, Alaska, and will be teleconferenced to Juneau and Fairbanks.

The Juneau teleconference will begin at 11:00 a.m. (Juneau time) in the Butrovich Room (Room 207), Capitol Building, Juneau, Alaska.

The Fairbanks teleconference will begin at 9:00 a.m. (Fairbanks time) in Room 250, Building F, Legislative Information Office, 101 College Road, Fairbanks, Alaska.

The following Audit Report is available at the local Legislative Information Offices:

> A Performance Review of the Board of Barber Examiners. March 31, 1979.

If you have any questions, contact Christian Basler at 278-1581.

Sincerely,

Brad Bradley
Chairman
Senate Commerce Committee

Attached letter sent to following:

Mr. Dan A. Noll
Board of Barber Examiners
604 Second Street
Fairbanks, AK 99701

Mr. Manuel Norat
Board of Barber Examiners
PO Box 238
Anchorage, AK 99510

Mr. James Russi, Chairman
Board of Barber Examiners
PO Box 1122
Soldotna, AK 99669

Mr. Maurice "Bud" Smith
Board of Barber Examiners
Anchorage Sportsman's Barber Shop
1650 W. Northern Lights
Anchorage, AK 99503

Mr. Elmo Kienbaum
Board of Barber Examiners
2337 Second Avenue
Ketchikan, AK 99901

Mr. Manuel Norat
c/o Anchorage Barber College
3519 Mt. View Drive
Anchorage, AK 99504

Hair Today
Attention: Yvonne
191 South Franklin
Juneau, AK 99801

Elaine Garrett
Division of Occupational Licensing
Department of Commerce & Economic Development
Pouch D, Mail Stop 0800
Juneau, AK 99811

PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581; 278-1582

September 25, 1979

Mr. Wayne K. Jenson
Board of Registration for Architects,
Engineers, and Land Surveyors
PO Box 190
Douglas, AK 99824

Dear Mr. Jenson:

The Senate Commerce Committee will convene at 9:00 a.m. on October 23, 1979, for the purpose of holding a public "Sunset" hearing on the Board of Registration for Architects, Engineers, and Land Surveyors. The hearing will be held in Room 262 of the Consortium Library, University of Alaska, 3211 Providence Drive, Anchorage, Alaska, and will be teleconferenced to Juneau and Fairbanks.

The Juneau teleconference will begin at 11:00 a.m. (Juneau time) in the Butrovich Room (Room 207), Capitol Building, Juneau, Alaska.

The Fairbanks teleconference will begin at 9:00 a.m. (Fairbanks time) in Room 250, Building F, Legislative Information Office, 101 College Road, Fairbanks, Alaska.

The following Audit Report is available at the local Legislative Information Offices:

> A Performance Review of the Board of Registration for Architects, Engineers, and Land Surveyors. May 11, 1979.

If you have any questions, contact Christian Basler at 278-1581.

Sincerely,

Brad Bradley
Chairman
Senate Commerce Committee

Attached letter sent to following:

Mr. Wayne K. Jenson
State Board of Registration for Architects, Engineers & Land Surveyors
PO Box 190
Douglas, AK 99824

Mr. Jim Bridges
State Board of Registration for Architects, Engineers & Land Surveyors
4789 Business Park Boulevard
Anchorage, AK 99503

Mr. Donald J. Cook
State Board of Registration for Architects, Engineers & Land Surveyors
Box 80093
College, AK 99701

Mr. Wallace Deboff, Chairman
Board of Registration for Architects, Engineers & Land Surveyors
RR5, Box 5521
Juneau, AK 99803

Mr. James M. Lake
Board of Registration for Architects, Engineers & Land Surveyors
206 Nerland Building, Room 206
Fairbanks, AK 99701

Mr. Loren Lounsbury
Board of Registration for Architects, Engineers & Land Surveyors
723 West Sixth Avenue
Anchorage, AK 99501

Mr. Paul E. Stutzmann
Board of Registration for Architects, Engineers & Land Surveyors
PO Box 1429
Fairbanks, AK 99707

Mr. Gordon R. Unwin
Board of Registration for Architects, Engineers & Land Surveyors
103 East 26th Avenue
Anchorage, AK 99503

Mr. Wallace Wellenstein
Board of Registration for Architects, Engineers & Land Surveyors
325 Barrow
Anchorage, AK 99501

Elaine Garrett
Division of Occupational Licensing
Department of Commerce & Economic Development
Pouch D, Mail Stop 0800
Juneau, AK 99811

William M. Smith
430 W. 7th Suite #210
Anchorage, Ak 99501
274-8231

Ken Walch
DOWL Engineering
4040 B Street
Anchorage, AK 99503

S T A T E O F A L A S K A

BOARD OF BARBER EXAMINERS

CENTRALIZED LICENSING STATUTE, AS 08.01.

BARBER ACT, AS 08.12.

****

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH "D"

JUNEAU, ALASKA 99811

S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 11, 1980

Honorable W.E. "Brad" Bradley
Chairman
Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

Re: Regulation of Barbers and Beauticians

Enclosed are this committee's recommendations concerning the Boards of Barber Examiners and Hairdressing and Beauty Culture Examiners. We realize these recommendations are coming to the committee at a late stage of the "Sunset" review process, however, we offer them for your consideration.

Sincerely,

Committee on Regulatory Reform
Bob Palmer, Special Projects Coordinator
Charles R. Webber, Commissioner Commerce & Economic Development
Ernst W. Mueller, Commissioner Environmental Conservation

Enclosures

Pursuant to the objectives and function of this committee, we have reviewed the functions of the above referenced boards and the licensing of the above referenced occupations. During the review, we have kept in mind the Governor's policy theme which stated the need and desire "to improve the ability of the private market system to provide needed goods and services," "encourage private sector competition," "to reduce unnecessary governmental intervention," "reduce restrictions on new business formation," and "to provide government services in an efficient manner."

Accordingly, the following is recommended:

1. The Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners; Cosmetologists, should be combined into a single five-member board consisting of four members from the profession and one member from the general public who is not involved in the profession.

2. Those that practice in these occupations that offer only the services of cutting or trimming hair and/or beards and/or mustaches and/or washing or shampooing the hair with water and prepared commercial shampoos should not be required to be licensed to practice such occupation.

3. Those who give facial and scalp massages or treatments with oil, creams, lotions or other preparations either by hand or mechanical devices or singe, dress, dye, bleach, color, or wave the hair utilizing cosmetic preparations, anitseptics, tonics, lotions or creams with the hands or with a mechanical or electrical apparatus shall be licensed and regulated by the State.

4. The requirement for "good moral character" should be deleted.

5. Examination should be waived for those who hold either a bona fide license issued by another territory, state or country, or a diploma from an accredited barber college or beauty school.

6. Any requirement for a high school diploma should be deleted.

7. Delete manicurist from any regulation.

April 9, 1980

Senator Brad Bradley,

This letter offers comments on HB 978. Passage of HB 978 would deal a serious blow at cosmetologists as the word is used in the beauty culture field and by legislatures elsewhere, which includes hairdressers, as opposed to barbers. We believe that it would also be of real concern to the customers who would have no way of knowing whether an operator (licensee) is a person trained in one area or the other.

The bill appears to be a great one for barbers, but a sad one for hairdressers. There are several areas that need to be taken under great consideration:

1. The definition of cosmetology used (A.S. 08.13.220 (3)) does not follow the meaning of the word generally adopted throughout the nation or by the writer in the subject.

2. "Hairdressing" is not defined.

3. No legislative guideline or standard is given for schools other than requiring regulations as to "curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsibility of the owner." (A.S. 08.13.110). Nothing is provided regulating or establishing standards for teachers, or student-teacher ratio, minimum equipment required, supplies, reports, required filings, or standards for approval, disapproval suspension, or revocation.

4. No standards are provided for shops.

5. No inspection of shops or schools is provided, except for health and sanitation enforcement by Health and Social Services who has had a dismal performance of the same authority in the past.

6. This bill lumps barbers and cosmetologists together so that the board may be totally controlled by one profession, the barbers.

7. Grandfather rights are provided for barbers by A.S. 08.13.150, but none are provided for cosmetologists.

In conclusion, the bill, as written, appears to be in need of considerable revision.

Very truly yours, Alice Woma

from Anch

Rose & Breeze
Attorneys at Law - a Professional Corporation
526 I Street - Anchorage, Alaska 99501

Assel A. Rose
Robert A. Breeze

Telephone
(907) 277-1533

April 2, 1980

Alaska State Legislature
Senate Commerce Committee
Pouch V
Juneau, AK 99811

Attn: The Honorable Senator Bradley, Chairman

Dear Senator Bradley:

This letter offers comments on HB 978. On behalf of the Alaska Hiardressers and Cosmetologists Association, it is submitted that the bill does not meet the desires of the thousands of consumers who have submitted statements to your committee, or the substance of the testimony at hearings held by your committee. The consolidation of the two existing boards, Barbers and Hairdressing and Beauty Culture, does not require the combining of the professions or the domination of the new agency by barbers, as the new bill proposes.

Passage of HB 978 would deal a serious blow at cosmetologists as the word is used in the beauty culture field and by legislatures elsewhere, which includes hairdressers, as opposed to barbers. We believe that it would also be of real concern to the customers who would have no way of knowing whether an operator (licensee) is a person trained in one area or the other.

While other states such as California have expanded the role of boards of cosmetology as reflected by the bill proposed by the Association, and require continuing professional eduction as a condition of renewal of licenses for the protection of the using public, HB 978 appears to be a step backwards from consumer protection and a lowering of professional requirements.

The bill appears to be a great one for barbers, but a sad one for hairdressers.

1. The definition of cosmetology used (A.S. 08.13.220(3)) does not follow the meaning of the word generally adopted throughout the nation or by the writers in the subject.

2. "Hairdressing" is not defined.

3. "Hairdresser" is not defined.

4. No legislative guideline or standard is given for schools other than requiring regulations as to "curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsibility of the owner." (A.S. 08.13.110). Nothing is provided regulating or establishing standards for teachers, or student-teacher ratio, minimum equipment required, supplies, reports, required filings, or standards for approval, disapproval suspension, or revocation.

5. No standards are provided for shops.

6. No inspection of shops or schools is provided, except for health and sanitation enforcement by Health and Social Services who has had a dismal performance of the same authority in the past. California has resorted to inspectors under Board of Cosmetology supervision for the purpose, the same here would combine health, sanitation and compliance with other standards such as display of licenses, equipment used, checking personnel, professional supervision, etc. As licensees are required to demonstrate knowledge in these areas, they should be well qualified, and inspector qualifications can be higher.

7. Historically, as far back as ancient history, barbers and cosmetologists have been separate professions. They have separate associations. But this bill lumps them together so that the board may be totally controlled by one profession. As set out by Section 6, the five members of the existing Board of Barbers are to be voting ex-office members, thus assuring control of the new Board by Barbers to the exclusion of cosmetologists. Even without it, three "Hairdressers" may be all barbers! Only one cosmetologist is assured.

8. Grandfather rights are provided for barbers by A.S. 08.13.150, but none are provided for cosmetologists.

9. A "barber" license is provided by A.S. 08.13.150 and 010(b)(1) no definition is offered as to what is a barber, except by reference to A.S. 08.12 and regulations thereunder, but that statute is repealed by Section 5, and all regulations thereunder are repealed by implication, as they rely upon A.S. 08.12 for their validity. Thus, once A.S. 08.12 is repealed, any interested person would have to search statutes and regulations

no longer published to attempt to find the meaning of the new statute. That is both unfair, unjust and unduly expensive and time consuming.

10. The only licenses contemplated by A.S. 08.13.070 are (1) for hairdressing or cosmetology, and (2) to organize, open or conduct a school. None appears to be provided for "barbers" or for teachers.

11. Qualifications under A.S. 08.13.080 require successful completion of all courses required to be taught by a school of hair design, but does not include any mention of a school of cosmetology. Furthermore, these provisions appear contrary to A.S. 08.13.090 which contemplates examination "within the field of practice for which the applicant is seeking a license", and to A.S. 08.13.100(b) which provides that "A license shall state the areas of practice the practitioner is qualified to perform." Again, that section provides for a designation as "barber", "hairdresser" or both, but neither is defined by the bill. Surely, if one is to be licensed in a limited area of practice, then one should not be required to successfully complete all courses offered.

12. It appears that A.S. 08.13.120 permits practice "outside of a place of business", but provides no criteria for such itenerant practice, particularly in the area of sanitation, and would appear to make it virtually impossible to subject such itenerant practitioner to any form of inspection, thus negating the intent.

13. If licensing and regulation of hairdressers and cosmetologists is deemed desirable for the protection of the consumers of the service, there appears to exist no logical reason for excluding from that protection communities of less than 1,000 people as provided by A.S. 08.13.150(b). The further question arises as to the status of an unlicensed practitioner in such a community who, after a period of some years of such practice, moves to a more populated area, or the area in which such person practices increases in populaiton from 999 to 1,000. Would such a practitioner be suddenly illegal, or would he or she be somehow "grandfathered in"? There appears to be no reason why such a practitioner should not be required to be examined and licensed initially. The subsection should be eliminated.

14. While A.S. 08.13.150(b) appears to create an exemption, the misdemeanor provisions of A.S. 08.13.180 contain no exception. Clarification would be helpful.

15. Page 8, line 10, "affect" is apparently intended to be "effect".

16. The loose definition of "cosmetology" in A.S. 08.13.220 may, conceivably, include manicurists, cosmeticians, and electrologists, but appears to be intended to cover only cosmeticians, although the phrase, "similar work" is subject to widely varying interpretations, and what is intended by "the human body" is likewise vague. For example, it could include pedicure, or even the occupation engaged in by massage parlors, erotic or otherwise. On may also wonder whether the head and the limbs are intended to be included in "the human body", or whether the phrase includes only the torso.

17. Although the minimum requirements of A.S. 08.13.082 [one year under (a), and six months under (b)] are understandable, the maximum requirements are not. If the language is changed to "not more than" instead of "not less than", the meaning is clearer, but the result would appear highly inequitable if the apprentice had to interrupt education for a period of time, such as for illness, resulting is going over the limitation. If A.S. 08.13.170 is intended to cure the problem such is not indicated by 082.

18. A number of states are requiring continuing professional education as a condition of license renewal. The bill proposed by the Alaska Hairdressers and Cosmetologists Association contained such a provision because customers should be entitled to know that new procedures, products, styles and safety provisions are known to the practitioner. This bill has no such provision, but it should.

19. The administrative disciplinary powers conferred upon the Board include only suspension and revocation of licenses. The harshness of the provisions often result in their failure of enforcement, or undue litigation efforts and expense on the part of the threatened licensee who needs to protect his right to earn a livelihood. Again, the bill proposed by the Association provided for the assessment of civil penalties or fines, which can often accomplish the desired result much more equitably,

efficiently, and economically for the state as well as for the licensee. A specific power to issue orders to show cause might well speed up and facilitate the Board's administration of its disciplinary authority.

The attached draft statement for use by the various state chapters of the National Hairdressers and Cosmetologists Association discusses the wide differences between the professions which are not addressed by HB 978.

In conclusion, the bill, as written, appears to be in need of considerable revision if it is to accomplish the desired purposes equitably, with clarity, in the interest of the public, and without undue discrimination against cosmetologists who are considerably more numerous than barbers.

Very truly yours,

ROSE & BREEZE, P. C.

By: _____
Nissel A. Rose

cc: All members of Committee
Mr. Christian Basler
Alaska Hairdressers & Cosmetologists Association

NAR:lw

500.

STATEMENT BY THE

[STATE] HAIRDRESSERS AND COSMETOLOGISTS ASSOCIATION

CONCERNING THE MERGER OF THE

[STATE] BOARDS OF COSMETOLOGY AND BARBERING

For the past [number] years, the [State] Hairdressers and Cosmetologists Association has represented the concerns of the now more than [number] licensed cosmetologists in [state] and has been committed to ensuring high standards of professionalism among the practitioners of beauty culture. To this end, the [State] Hairdressers and Cosmetologists Association has sought to expand and intensify the curriculum of beauty schools and has supported an active role for the [state] board of cosmetology. However, because of such activities and because the officers of the [State] Hairdressers and Cosmetologists Association are themselves practicing cosmetologists, the [State] Hairdressers and Cosmetologists Association is vitally aware of the uniqueness of this profession and particularly the specialized skills required to service the patrons of beauty salons.

It is because of the distinctiveness of this profession that the [State] Hairdressers and Cosmetologists Association opposes the merger of the [state] boards of cosmetology and barbering. The qualifications and characteristics of these two professions are so diverse as to make it infeasible and therefore inappropriate for cosmetologists to serve on a board

which examines the qualifications of graduates of barber schools and conversely for barbers to evaluate the competency of graduates of beauty schools. It would be equally difficult for cosmetologists to fairly evaluate whether a barber's license should be suspended or revoked as it would be similarly infeasible to expect a barber to be able to judge the performance of a licensed cosmetologist. Therefore, the merger of these traditionally separate boards would do a disservice to both professions and would hinder the respective board members' ability to effectively fulfill their statutory obligations.

Moreover, there are limitations on a legislature's power to classify or merge various occupations with respect to licensure. In order to be lawful, the classification of occupations must be reasonable; accordingly, different classes must be regulated by different administrative bodies. Although the differences among the established classes must be "substantial" to warrant separate administration, it is clear that they do not have to be "great" to require individual licensing.

The disparity between the cosmetology profession and the barbering profession clearly requires separate and distinct licensing requirements and separate and distinct regulatory boards. The disparity is most noticeably reflected in the diversity of the services each renders to its particular clientele. Since the cosmetologist primarily serves female patrons, fashion is a critical factor in the performance of the art of hairdressing. It

is not enough to know how to cleanse and cut hair. A licensed cosmetologist must be an expert in hairstyling and be able to cut, set and comb out a patron's hair so that it not only reflects the latest trends in hair fashion but also suits the personality and physiognomy of the customer.

Since women can wear their hair short or long, straight or curly, twisted into French knots or corn rows, plain or adorned with ribbons, hairpieces, combs or barretts, it is obvious that the hairdresser requires different skills than the barber who remains essentially immune from the vagaries of hair fashion. In order to achieve certain effects, the hairdresser must be trained in finger-waving, wigology, curling, singeing, thinning, tinting, streaking, bleaching, rinsing, permanent waving, hair straightening, pin and roller curling as well as iron curling. Many of these skills would be of little service in a barber shop.

In addition, because the salon owners service a female clientele, the licensed cosmetologist must be skilled in the application of cosmetics. Not only do hairdressers need to understand the use and advantages of such cosmetics as eyeshadow, rouge and nail polish, but they must also be able to arch and tint eyebrows as well as remove facial hair by the use of tweezers, wax, depilatories and electricity or camouflage such superfluous hair by bleaching, again employing techniques not required by barbers who service their clients more appropriately by shaving off facial hairs.

Because cosmetologists and barbers provide different services to their patrons, they generally rely on different instruments and tools. It is the rare occasion at most that a barber would be called on to use hair pins, bobby pins, clips, curlers, rollers, hair nets, curling irons, hair dryers or eyebrow tweezers. It would be equally unusual for a cosmetologist to wield a straight razor during the course of a traditional day's practice.

Such diversity in the services performed and the implements used are reflected in the differences in the curriculum provided and often required by statute in schools that train future cosmetologists and barbers. The very fact that there are beauty schools which are separate and distinct in ownership and operation from barber schools underscores the separateness of the two professions. A perusal of the subjects offered in beauty schools indicates that cosmetologists emphasize clinical instruction and receive extensive training in hair styling, permanent waving (a service which barbers are prohibited by law from offering in California and several other states), cosmetics, hair coloring and lightening as well as the care and styling of wigs.

In addition, a survey of the hours of training required for cosmetologists and barbers reveals that cosmetologists in 29 states were required by law to have considerably more instruction than student barbers. In another 13 states, both professions have an equal number of training

hours, leaving only 8 states where cosmetologists receive less instruction than barbers. In fact, cosmetologists generally receive 1,000 to 2,500 hours of training in contrast to barbers who receive from 0 to 2,000 hours. Further, not only are cosmetologists' apprenticeship training periods generally longer than in the barber apprenticeship programs, but the minimum educational qualifications for admission to beauty schools are higher than the requirements for acceptance in barber schools.

Finally, the existence of two separate and distinct professions is confirmed by the fact that there are now and traditionally have been two separate trade associations, the National Hairdressers and Cosmetologists Association, Inc., which represents the concerns of the licensed cosmetologist and the Associated Master Barbers and Beauticians Association which represents the practicing barber. Each explores the interests and deals with the problems unique to its membership. Although there is informational exchange between the two groups, each association works to service the particular needs and express the views of their individual members.

Thus, it is imperative that the [state] board of cosmetology and the [state] board of barbering continue to function as two separate entities. The cosmetologist and the barber serve different clients, perform different services, use different implements, study different courses and have different interests as reflected in the existence of their separate

trade associations. The [State] Hairdressers and Cosmetologists Association therefore cpposes the merger of these two distinctive licensing boards so that applicants and practitioners alike can be evaluated by those best suited to judge their capabilities and their performance.

Combine w/ Hardisse

BOARD OF BARBER EXAMINERS SUNSET

KEY TO REFERENCES:

(Y) - (yellow cover) - State of Alaska Sunset Review, 1979, Prepared by The Division of Occupational Licensing.
(B) - (blue cover) - Division of Legislative Audit Performance Review.
(W) - (white cover) - Senate Commerce Committee Public Hearing testimony, October 22, 1979.

1. The Barber Examiners Board should not be continued.
   (Y) - p. 1, par. 2.
   (B) - p. 8, par. 4.

If The Board of Barber Examiners is to be continued then the following changes/recommendations are suggested:

A. The Board should review its examination procedures and develop a valid, consistent examination and grading standard.
   (Y) - p. 5, par 1; p. 6, par 3; p. 7, par 2; p. 9, par 3; p. 12, par 5; p. 13, par 5.
   (W) - p. 2, p. 6, p. 8.
   (B) - p. 10, recommendation #2.

B. There should be an inclusion of two public members on the board without increasing its overall size. (5)
   (Y) - p. 11, par. 3; p. 13.
   (W) - p. 6, par. 1.
   (B) - p. 11, recommendation #4; p. 12, last par.

C. The five (5) year Alaska License restriction for Board members should be deleted. (08.12.020)
   (Y) - p. 9, par. 5; p. 13. par. 4.
   (B) - p. 12, par. 3 (definition of the statute in question)

D. Board Membership should be limited to two consecutive terms.
   (Y) - p. 13, par. 4.
   (W) - p. 23.
   (B) - p. 11, last par.; p. 12, par. 5 & last par.

E. Statutory authority for reciprocity should exist for obtaining a license. Presently, licensure is by examination only.
   (Y) - p. 9, par. 4; p. 13, par. 4.
   (B) - p. 7, par. 4; p. 9, par. 4; p. 10, par. 1.

F. Section 08.12.270 should be repealed. (applies to a person engaged in barbering in a community having more than 1,000 persons, etc.)

BOARD OF BARBER EXAMINERS

(Y) - p. 9, par. 4; p. 10, par. 3; p. 13, par. 4.

G. Section 08.12.180 should be repealed. (Licensing of person barbering before 1957 without examination.)
(Y) - p. 13, par. 3. (this is now obsolete. If a person in this category does not have a license by now he never will. Formality.)

H. Change Fees - Board recommendation
Section 08.12.080. [EXAMINATION] FEES. An applicant [FOR EXAMINATION] shall submit with his application a [AN EXAMINATION] fee as follows:

(1) examination for apprentice barber registration [LICENSE]..... $25

(2) annual apprentice registration fee [EXAMINATION FOR BARBER TEACHER LICENSE].... $10 [$75]

(3) annual barber license fee.... $15

(4) annual barber teacher license fee.... $50

(5) annual barber school or college license fee.. .. $150

(6) examination for barber teacher license.... $75

GENERAL COMMENTS:

The Board of Barber Examiners should establish formal goals, objectives, and quantifiable measures which should be included in the Division of Occupational Licensing's budget document.

THE BOARD DOES NOT HAVE A STATEMENT OF GOALS AND OBJECTIVES TO DATE ACCORDING TO THE O. L. REPORT (Y). (B) - p. 14, recommendation #7.

The testimony of the Barber Examiners hearing on October 22, 1979 said very little regarding significant changes and recommendations.

Info From Phone call 9/5/79 By Christian

Board of Barber Examiners
Audit Report Page 21

Expenditures	$11,243
Personal Services (Allocated Expense)	6,358 *
Travel Expense and Per diem	2,231
Contractual & Office Supplies	2,654 **

** Indicates that the amount above is an estimate due to the total expense of the Division of Occupational Liscense being diveded up among all the various boards.

**Also an estimated cost. This is 2% of the total Division of Occ. Liscense expenses for personal services.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811

October 19, 1979

Alaska State Legislature:

Transmitted herewith, pursuant to AS 44.66.050, are the reports of the Alaska State Board of Barber Examiners and Board of Hairdressing and Beauty Culture Examiners.

This evaluation, supplemental to the Department's testimony before the Legislature, serves to focus attention upon the questions of whether or not the boards are best serving the interests of the public. Data as provided by the Division of Occupational Licensing, the board members, licensees and members of the public has been received, reviewed and evaluated.

Yours truly,

Charles R. Webber
Commissioner

CRW/kkk3/15

STATE OF ALASKA
Board of Barber Examiners
July, 1979

Findings

The Board of Barber Examiners was created in 1957. Members of this profession, and the Board, are regulated under AS 08.12; control over health and sanitation of facilities is with the Department of Health and Social Services (AS 08.12.030(2) and AS 18.05.040(9)).

Alternatives to the present operation of the Board and to State regulation of the barbering profession are discussed in this review; however, we believe that the review indicates termination of the Board and licensing.

I. General Information

A. Regulated Parties

1. Barbers

B. Definitions

"Barbering includes the following practices when performed for hire or reward:

(1) shaving or trimming the beard or cutting the hair;

(2) giving facial and scalp massages or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances;

(3) singeing, shampooing, dressing or dyeing the hair or applying hair tonics." (AS 08.12.280)

C. Nature and Composition of Board

1. Board members and terms:

(No specified length of term and no restrictions regarding consecutive terms or numbers of terms.)

Don A. Noll
Manual Norat
James Russi
Elmo Kienbaum
Maurice Smith

2. Representation:

Profession = 5 (by statute)
Public = 0

3. Qualifications:

Four members shall be from separate major senatorial districts and the fifth from the district having the largest number of practicing licensed barbers. Each member shall be a practicing barber who has engaged in barbering the State for at least five years prior to his appointment.

D. Licensing Data

Currently licensed:

in-State	=	204	
out-of-State	=	40	
	Total	244	(July, 1979)

E. Fees

1.	barber license exam	$25.00
2.	teacher license exam	75.00
3.	annual relicensure	10.00
4.	annual teaching relicensure	50.00
5.	annual school/college fee	150.00
6.	temporary permit	25.00

F. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	$4,087.00	$5,005.54	$4,410.18	$4,369.00
-Refunds	-	35.00	10.00	95.00
Total	4,087.00	4,970.54	4,400.18	$4,274.00
Expenditures				
Per Diem	1,152.50	1,714.50	1,297.75	1,227.50
Transportation	586.93	583.61	723.22	1,647.25
Phone	20.75	74.20	84.30	464.86
Printing, Adver. & Postage	558.61	425.96	228.49	272.78
Fees & Services	170.40	115.00	300.00	35.00
Rents, Leases & Other	-	-	300.00	725.65
Total	$2,489.19	$2,913.27	$2,933.76	$1,498.29
Surplus	$1,597.81	$2,057.27	$1,466.42	$2,775.71
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

Eight of the twelve complaints filed with the administrative agency from January, 1976 through June, 1979 were complaints against the Board regarding its examination procedures. The remaining four cases consisted of complaints that individuals were practicing barbering without a license. Although these were filed in 1976 and 1977, only one has been closed. All complaints against the Board (filed in 1978) remain open.

H. Professional Qualifications

None. Most states require barber training or schooling as a prerequisite to licensure.

II. Analysis

A. To what extent has the Board of Barber Examiners operated in the public interest?

The Board is statutorily required to issue licenses and permits to qualified individuals or schools, to examine applicants for a barber teacher license, and to regulate conduct and standards of teaching facilities. The Board also has general powers which it may exercise: (1) adoption of examinations in accordance with nationally recognized standards; (2) adoption of reasonable rules and regulations relative to sanitation - ultimate control over health and sanitary conditions is expressly cited as being with the Department of Health and Social Services; (3) suspension of licenses for failure to maintain sanitary standards; (4) inspection of shops; (5) adoption of rules concerning Board operations; (6) delegation of examination, inspection and enforcement powers; and (7) other acts and things necessary to carry out the purposes of AS 08.12.

The Board of Barber Examiners has experienced several problems with its past examinations and procedures. Eight of twelve complaints filed with the administrative agency from January, 1976, through June, 1979, were complaints against the Board regarding its examination.

All applicants for licensure must take an examination. No statutory authority exists by which the Board may license through endorsement or reciprocity. In addition to the written portion of the examination, a practical portion is given consisting of four parts: haircut, shampoo, shave and massage. A passing grade of 75% must be attained on the written portion and on all parts of the practical portion. If any part of the practical is failed, the applicant must retake all four parts.

The written examination given by the Board in the past has contained a variety of types of questions (i.e., multiple choice, short essay, fill-in-the-blank). No key was utlized by the Board in grading which appears to have resulted in some inconsistencies. The test utilized in April, 1979, was provided by the National Board of Barber Examiners of America. Two out of twelve applicants passed that examination and complaints were received regarding the relevancy of some questions. The Board is currently developing a pool of test questions, with answers, from which the Division of Occupational Licensing can formulate future examinations. In this way standard procedures will be established yet each exam will be different in content.

Administration of the practical examination has also met with considerable criticism. In August of 1978 a meeting was held with the Board, representatives of the Department of Law and Division of Occupational Licensing and a representative from the Office of the Governor. The purpose of the meeting was to review allegations of impropriety on the part of the Board and to develop guidelines to assist the Board in its future operations. One Board member, who owns a barber school in the State, was advised to refrain from grading students of his facility.

The member has complied with this advice, however, he has participated in grading of other applicants. Because scores are averaged, such a procedure could work to the disadvantage of "nonstudents." A review of files of applicants who have been licensed since mid-1974 (and are still active) indicate that a significant percentage (84%) were given exactly the same passing grade (75) on all parts of the practical examination by one member of the Board. In a few of these instances the proportionate points given did not total 75 and in one case proper addition would have failed the applicant.

Past Board procedure has been to review the examinations the day after they are given. Scores on some examination papers have been changed either at the time of scoring or during the Board review process. The Board has been made aware of the potential problems this procedure could generate and has been advised to discontinue this practice. The Board has also been advised to establish standard grading criteria for its own benefit as well as that of the applicants.

The Board has adopted regulations for the conduct of the practice of barbering in accordance with reasonable standards of sanitation. However, it does not inspect facilities or ensure that the regulations are being adhered to. Standards for barber schools and colleges also have been established by regulations as have application procedures and some examination information. AS 08.12.030(2) specifically provides that the Department of Health and Social Services have "ultimate control over health and sanitary conditions for all licensees under this chapter..." At its April, 1979, meeting the Board resolved not to involve itself in inspection activities but rather to leave this to other agencies.

The Board may suspend licenses for failure to maintain sanitation standards. There is no record of such an instance having come before the Board in recent years.

Applicants for licensure must submit evidence of good moral character (certified attestation by two parties), a health certificate, and "other information required" by regulation. There is no requirement that an applicant have attended barber school or training, or that (s)he have barbering experience. The Board has proposed statutory amendments which would establish an apprentice program and which would require either 1,500 hours or two years of schooling and/or training.

Statutory exemptions from licensure are licensed cosmetologists, persons engaged in barbering within a military reservation and persons barbering in a community of less than 1,000 persons, or more than 25 miles from such a community. (In analyzing the need for regulation of this profession, one may note that the public in small isolated communities apparently does not need protection.) The Board has also requested a statutory amendment which would delete the latter exception from licensure.

Temporary permits "shall" be issued by the Board to persons entering the State or transferrring from exempt status who have either a barber college diploma or a license issued by another jurisdiction. While new graduates from another state may be issued a temporary permit, none is provided for in-State graduates. The Board has, however, been issuing permits to these individuals. Permits are valid until the next examination and are nonrenewable (except that those failing the April, 1979 examination were reissued permits).

We believe that termination of the Board of Barber Examiners and cessation of State regulation of this profession would not have any significant impact on public well-being. No complaints have been received from the public or regarding any threat to public safety. Barbers do not utilize strong chemical agents. Monetary costs of services to the consumer are relatively minor. A bill was introduced during the 1979

Legislative session, SB 215, which would abolish the Board and relevant statutes (See Appendix A). This bill is now in the Senate Commerce Committee.

B. To what extent has the operation of the Board of Barber Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

The greatest impediment to efficient Board operation has been its examination procedures. As previously noted, this has been discussed with the Board and suggestions were made to correct past deficiencies. The fact that the Board can license only by examination has created problems when individuals have demanded licensure by endorsement or reciprocity.

The Board has indicated that it feels the statutory exemption for barbers in small outlying communities is inappropriate. It has also requested that barber schooling or training be made a statutory requirement for licensure.

There is no term of membership provided for board members. The restriction on Board membership for only persons who have been licensed in the State for five years should be reexamined.

The Board of Barber Examiners has experienced some difficulty with respect to personnel and budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs; however, past employee turnover has impeded continuity and follow-up on Board requests. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct Board revenues and expenses may be determined.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY'78 two investigator positions were vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

C. To what extent has the Board of Barber Examiners recommended statutory changes which are generally of benefit to the public interest?

No amendments of consequence have been made to AS 08.12 since 1960.

If regulation of the profession is determined to be of benefit to the public interest, the following amendments requested by the Board would further those interests: (1) provisions for apprenticeship programs; (2) requirements for schooling or training as licensure qualifications; and (3) deletion of exemption for persons barbering in a community having less than 1,000 persons, or more than 25 miles from such a community.

D. To what extent has the Board of Barber Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

Notices of pending meetings and new or amended regulations are published in newspapers in the State by the administrative agency. Board regulations have not been amended since 1964. Meeting minutes for the past three years indicate no interest or participation by other than persons seeking examination privileges from the Board.

Public interests would be furthered by the presence of public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interest of the public would be represented in decision-making."[1] The State of California, which provides for a one-third public membership on health care boards and a public majority on others has indicated that its experience with public members has been highly rewarding.

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[1] Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Kentucky, March, 1978, p. 20.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Barber Examiners processed and resolved?

Twelve compliants were filed with the administrative agency from January, 1976, through June, 1979; eight were from applicants regarding Board examination procedures, and four involving unlicensed activity were initiated by the agency. One of these cases had been closed (in September of 1978) as of June 30, 1979.

The administrative agency has been addressing investigative procedures and the need for timely disposition of complaints.

F. To what extent does the Board of Barber examiners present qualified appicants to serve the public?

The only method the Board has of assuring qualification is the examination procedure. Applicants are not required to have schooling, training or experience and the Board is unable to accept verification of licensure in another jurisdiction for licensure without examination in Alaska. Past examination procedures, however, have not proved satisfactory as measurements of ability either. The administrative agency and the Board will continue to work toward valid examination and grading standards.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Barber Examiners in its own activities, and in its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible for

four other regulated professions) who is hired through the State Personnel System and is subject to affirmative action requirements.

Affirmative action requirements are not applicable to statutory criteria for licensure.

H. To what extent are statutory, budgetary or other changes necessary to enable the Board of Barber Examiners to better serve the interests of the public?

If the board is reestablished, the following statutory amendments are suggested: (1) deletion of the requirement that Board members come from separate senatorial districts and the five year Alaska license restriction, length of terms should be established and number of consecutive terms limited, § 010; (2) inclusion of public members on the Board while not increasing overall size, § 020; (3) requirements for schooling or training as a condition of licensure, § 070; (4) biennial rather than annual license fees, §§ 090, 100 and 110; (5) requirement of health certification as a condition of renewal; (6) provisions for issuance of temporary permits to in-State graduates pending examination, § 160; (7) endorsement of applicants licensed in another jurisdiction with similar qualifications; (8) repeal of § 180; (9) repeal of exemption for persons barbering in a community with less than 1,000 persons, or more than 25 miles from such a community, § 270; and (10) provisions for apprentice programs.

The Board should establish examination and grading standards. It should work to solicit the interest and participation of those it regulates. Temporary permits should be issued only in accordance with statutory authority until and unless an amendment is made.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing overhead such as staff salaries and investigative services.

Introduced: 2/13/79
Referred: Commerce

IN THE SENATE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

SENATE BILL NO. 215

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act abolishing the Board of Barber Examiners."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.01.010(2), AS 08.03.010(b)(2), AS 08.12, and AS 44.-62.330(a)(1) are repealed.

Chapter 12. Barbers

Article
1. Board of Barber Examiners (§§ 08 12.010-08.12.050)
2. Examination and Licensing (§§ 08.12.060-08.12.190)
3. Barber Schools and Colleges (§§ 08.12.200-08.12.240)
4. Unlawful Acts and Penalties (§§ 08.12.250-08.12.260)
5. General Provisions (§§ 08.12.270-08.12.280)

Article 1. Board of Barber Examiners.

Section
10. Creation and membership of board
20. Qualifications of board members
30. General powers of board
40. Meetings and examinations
50. Board expenses

Sec. 08.12.010. Creation and membership of board. There is created the Board of Barber Examiners, referred to in this chapter as the board, composed of five members appointed by the governor. Four members of the board shall be from separate major senatorial districts. The fifth member shall be appointed from the district having the largest number of practicing licensed barbers. The members serve at the pleasure of the governor. (§ 1 art II ch 68 SLA 1957; am § 1 ch 168 SLA 1960)

Sec. 08.12.020. Qualifications of board members. Each member of the board shall be a practicing barber who has engaged in barbering in the state for at least five years prior to his appointment. Engaging in the practicing of barbering within a military reservation is not qualifying experience. (§ 2 art II ch 68 SLA 1957)

Sec. 08.12.030. General powers of board. The board may

(1) adopt examinations in accordance with standards provided by any nationally recognized manual of barber science and examine applicants for licenses to engage in the practice of barbering;

(2) adopt rules and regulations for the conduct of the practice of barbering in accordance with reasonable standards of sanitation which do not derogate from the ultimate control over health and sanitary conditions for all licensees under this chapter which is in the Department of Health and Social Services;

(3) suspend licenses for failure to maintain standards of sanitation prescribed by the board;

(4) conduct inspections of barber shops to insure that standards of sanitation are being maintained, except that the board may not

conduct a second inspection of the same shop within 90 days after the first inspection;

(5) adopt rules of procedure for its own organization and conduct of its meetings, examinations, and inspections;

(6) delegate its powers of examination, inspection, and enforcement to a member of the board to be exercised in the judical district in which he resides;

(7) do such other acts and things necessary to carry out this chapter. (§ 3 art II ch 68 SLA 1957; am § 2 ch 168 SLA 1960; am § 6 ch 104 SLA 1971)

Sec. 08.12.040. Meetings and examinations. The board shall meet as often as necessary to conduct its business but shall hold at least one examination in each year in which applications for a license have been filed. (§ 4 art II ch 68 SLA 1957)

Sec. 08.12.050. Board expenses. Members of the board receive no salary, but are entitled to per diem and expenses authorized by law. (§ 5 art II ch 68 SLA 1957)

Article 2. Examination and Licensing.

Section
60. License required
70. Application
80. Examination fees
90. License fee for barbers
100. License fee for barber teachers
110. License fee for barber schools
120. Licenses
130. Display of licenses
140. [Repealed]
150. Reinstatement of lapsed license
160. Temporary permit
170. Issuance of temporary permit
180. License for certain resident barbers
190. Deposit of receipts

Sec. 08.12.060. License required. No person may engage in the practice of, or attempt to practice, barbering without a license or permit issued by the board. (§ 1 art III ch 68 SLA 1957)

Sec. 08.12.070. Application. A person wishing to practice barbering shall apply to the board by submitting

(1) evidence of his good moral character;

(2) a certificate of health from a physician; and

(3) other information required under regulations adopted by the board. (§ 2 art III ch 68 SLA 1957)

Sec. 08.12.080. Examination fees. An applicant for examination shall submit with his application an exmaination fee as follows:

(1) examination for barber license.....$25

(2) examination for barber teacher license.....$75
(§ 3 art III ch 68 SLA 1957; am § 3 ch 168 SLA 1960)

Sec. 08.12.090. License fee for barbers. The annual fee for a license to engage in barbering is $10. (§ 5 art III ch 68 SLA 1957; am § 6 ch 168 SLA 1960; § 3A art III ch 68 SLA 1957; added by § 4 ch 168 SLA 1960)

Sec. 08.12.100. License fee for barber teachers. The annual fee for a license to engage in the teaching of barbering is $50. (§ 3A art III ch 68 SLA 1957; added by § 4 ch 168 SLA 1960)

Sec. 08.12.110. License fee for barber schools. The annual fee for a license to conduct a barber school or college is $150. (§ 2 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960; § 3A art III ch 68 SLA 1957; added by § 4 ch 168 SLA 1960)

Sec. 08.12.120. Licenses. Licenses shall be issued by the board to any applicant who passes the examination and who possesses the other necessary qualifications. Each license and temporary permit shall have a photograph of the licensee attached. (§ 4 art III ch 68 SLA 1957; am § 5 ch 168 SLA 1960)

Sec. 08.12.130. Display of licenses. Every licensee or permittee shall display his license or permit in a conspicuous place in his place of business. Owners, operators, and managers of shops and schools are responsible for the display of all licenses held by their employees. (§ 4 art III ch 68 SLA 1957; am § 5 ch 168 SLA 1960)

Sec. 08.12.140. Duplicate license or permit. Repealed by § 7 ch 94 SLA 1968.

Sec. 08.12.150. Reinstatement of lapsed license. A lapsed license may be reinstated if it has not remained lapsed for more than five years. (§ 5 art III ch 68 SLA 1957; am § 6 ch 168 SLA 1960; am § 4 ch 94 SLA 1968)

Sec. 08.12.160. Temporary permit. Any person entering the state or transferring from a practice exempt under the provisions of § 270 of this chapter, and who desires to engage in barbering who has (1) a diploma from a barber college accredited by the board or (2) a bona fide license issued by another territory or state, shall be issued a temporary permit, valid until the next examination given by the board. (§ 6 art III ch 68 SLA 1957)

Sec. 08.12.170. Issuance of temporary permit. A temporary permit may be issued by any member of the board upon application under terms and conditions established by regulations of the board, and upon the receipt of an application fee of $25. The fee shall be credited to the temporary permittee, who shall be permitted to take an examination for a regular license without any additional fee. Upon taking the examination, the holder shall surrender the temporary permit to the board or the committee conducting the examination. (§ 7 art III ch 68 SLA 1957)

Sec. 08.12.180. License for certain resident barbers. The board shall issue a license without examination to a person who was engaged in the practice of barbering in the state, before March 18, 1957. Application for a license shall be accompanied by payment of a fee of $25, an affidavit that the applicant qualifies for a license under this section, and a certificate of health from a physician that the applicant has no contagious or infectious disease. (§ 8 art III ch 68 SLA 1957)

Sec. 08.12.190. Deposit of receipts. All money received by the board shall be paid into the general fund of the state. (§ 9 art III ch 68 SLA 1957)

Article 3. Barber Schools and Colleges

Section
200. Regulation by board
210. License required
220. Application
230. Examination
240. School license

Sec. 08.12.200. Regulation by board. The board shall provide for the conduct and supervision of barber schools and colleges in the state. The board shall adopt regulations establishing standards of sanitation and skill for barber schools and colleges and the teachers and instructors. (§ 1 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Sec. 08.12.210. License required. No person may operate a barber school or college, or teach in a barber school or college, without a barber teacher license issued by the board. (§ 2 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Sec. 08.12.220. Application. A person wishing to operate a barber school or college or teach in a barber school or college shall apply for examination and licensing to the board and submit

(1) evidence of his good moral character satisfactory to the board;

(2) a certificate of health from a physician;

(3) a diploma from a nationally accredited barber school or college offering a course in barber science evidencing the applicant's qualifications as a barber teacher;

(4) such other information as may be required by regulations adopted by the board. (§ 3 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Sec. 08.12.230. Examination. Each applicant for a barber teacher license shall demonstrate to the board by passing an examination in theory and practice that he has the ability to instruct barber students in subjects necessary to qualify them as competent barbers. (§ 4 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Sec. 08.12.240. School license. No person may operate a barber school or college without a license issued by the board. The board shall issue a license if it finds that the school or college is properly staffed with licensed barbers and the premises and equipment are sufficient, sanitary, and proper. (§ 5 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

Article 4. Unlawful Acts and Penalties.

Section
250. Failure to possess license
260. Suspension of license

Sec. 08.12.250. Failure to possess license. A person who practices, or attempts to practice barbering or operates a barber school or college or teaches in a barber school or college without a license is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500, or by imprisonment for a period of not more than 30 days, or by both. (§ 1 art IV ch 68 SLA 1957; am § 7 ch 168 SLA 1960)

Sec. 08.12.260. Suspension of license. The board may suspend the license or permit of a person who violates any provision of this chapter. The board shall suspend the license of a person who, by his acts, gives evidence that he is not of good moral character, or who uses narcotics or overindulges in the use of alcoholic beverages while practicing his profession, until it is satisfied that he will conduct his profession in a proper manner. (§ 2 art IV ch 68 SLA 1957)

Article 5. General Provisions.

Section
270. Application of chapter
280. Barbering defined

Sec. 08.12.270. Application of chapter. This chapter applies to a person engaged in barbering in a community in the state having a population of more than 1,000 persons, or within 25 miles of such a community. Persons engaged in barbering entirely within a military reservation and licensed cosmetologists are excepted from this chapter. (§ 2 art I ch 68 SLA 1957)

Sec. 08.12.280. Barbering defined. Barbering includes the following practices when performed for hire or reward:

(1) shaving or trimming the beard or cutting the hair;

(2) giving facial and scalp massages or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances;

(3) singeing, shampooing, dressing or dyeing the hair or applying hair tonics. (§ 1 art I ch 68 SLA 1957)

STATE OF ALASKA

BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS

June, 1979

Findings

This Board was created in 1957 and, until the past year, has met annually to conduct its affairs. Members of this profession are regulated by AS 08.28; control over health and sanitation is with the Department of Health and Social Services (AS 18.05.040). Alternatives to the present operation of the Board and to regulation of this profession are discussed in this review.

I. General Information

A. Regulated Parties

1. Schools
2. School owners
3. Instructors
4. Operators
5. Shop owners
6. Shop managers
7. Demonstrators
8. Consultants
9. Apprentices
10. Manicurists

B. Definitions

"(10)" 'practice of hairdressing and beauty culture' is engaging, for compensation or other reward, in any of the following practices: (A) arranging, dressing, curling, waving, cleansing, singeing, bleaching, coloring, or similar work on a wig or hair piece of artificial or human hair, or upon the hair of a living person by any means; (B) trimming hair, as a part of hairdressing; (C) utilizing cosmetic preparations, antiseptics, tonics, lotions, or creams, with the hands or with a mechanical or electrical apparatus, in massaging, cleansing, stimulating, manipulating, exercising, or beautifying the scalp, face, neck, arms, hands, bust, or upper part of the body of a person, for the purpose of beautification;" (08.28.320)

C. Nature and Composition of Board

1. Board members and terms:

Three-year term (no restrictions regarding consecutive terms or number of terms).

Hester Pumphrey,	Ends June 15, 1978
Ione Lambert, Chairman	Ends June 15, 1979
Maria Dunham	Ends June 15, 1980
Dennis Milhouse	Ends June 15, 1981

2. Representation:

Profession	=	5	(by statute)
Public	=	0	

3. Qualifications:

Board members must be adults, United States citizens and Alaska residents. Four members must have at least five years' experience as an operator, manager-operator, or owner-operator, and one member must have at least three years' experience as the owner, manager, or instructor of a licensed beauty school. All members must remain active and shall take an oath of office. (AS 08.28.030)

D. Licensing Data

Current Licenses

in-State	=	1,466	
out-of-State	=	328	
TOTAL	=	1,794	(through May, 1979)

E. Fees

1.	schools	
	registration and initial license fee	$500.00
	biennial Renewal	200.00
2.	school owner	
	registration and initial license fee	40.00
	biennial renewal	30.00
3.	instructor-operator:	
	registration and initial license fee	40.00
	biennial renewal	30.00
4.	owner-operator:	
	registration and initial license fee	25.00
	biennial renewal	20.00
5.	owner only, beauty shop:	
	registration and initial license fee	25.00
	biennial renewal	20.00

6.	manager-operator:	
	registration and initial license fee	25.00
	biennial renewal	20.00
7.	demonstrator or consultant:	
	registration and initial license fee	40.00
	biennial renewal	30.00
8.	operator:	
	registration and initial license fee	15.00
	biennial renewal	10.00
9.	apprentice or student:	
	registration and initial license fee	5.00
	annual renewal	3.00
10.	manicurist:	
	registration and initial license fee	15.00
	biennial renewal	10.00
11.	examination fee	15.00
12.	investigation fee	25.00

F. Board Revenues and Expenditures

	FY '76	FY '77	FY '78	FY '79
Receipts	$23,245.00	$22,248.00	$22,237.00	$27,568.00
- refunds	170.00	285.00	416.00	598.00
TOTAL	$23,075.00	$21,963.00	$21,821.00	$26,970.00
Expenditures				
Transportation	1,063.01	1,752.03	1,086.96	1,892.83
Per Diem	2,678.75	2,700.00	2,133.41	2,211.25
Phone	83.85	61.73	127.75	518.45
Printing, Adver. & Postage	902.44	818.79	405.70	288.52
Fees & Services	368.50	486.50	347.50	483.00
Rents, Leases & Other		125.00	411.00	507.88
Total	~~$ 5,096.55~~	~~$ 5,944.05~~	~~$ 4,512.32~~	~~$ 5,901.93~~
Surplus	$17,978.45	$16,018.95	$17,308.68	$21,068.07
Deficit	-	-	-	-

(EXCLUDES DIVISION OF OCCUPATIONAL LICENSING ADMINISTRATIVE OVERHEAD)

G. Complaints

As of June 1, 1979, five complaints remain open in agency files and six are pending closure on Board approval. Sixty-seven were purged in 1978 and are pending closure due to lack of jurisdiction or age of the complaint. One of the open cases has been on-going since

1972 with continual infractions and complaints from a number of sources. Another case alleges physical injury to a member of the public (received a year after the alleged incident).

H. Professional Qualifications

All states require vocational training as a prerequisite to licensure.

II. Analysis

A. To what extent has the Board of Hairdressing and Beauty Culture Examiners operated in the public interest?

Statutory powers and duties of the Board include examining applicants and issuing licenses. The written portion of the examination is a national test, composed and graded by the national organization. The Board is considering inclusion of a jurisprudence portion into this examination. A six-to-seven hour practical examination is also administered to newly graduated students. Monitoring and grading is done by the Board. Applicants must achieve a score of 75% in all portions of the examination and must retest in only the area(s) failed. The examination process is designed to demonstrate competency in a profession and helps to ensure that individuals are qualified to practice.

The Board also has responsibility for regulating and licensing schools of hairdressing and beauty culture. Four such schools exist in the State, one in Fairbanks, and three in Anchorage. The Board reviews and approves school layout, its curriculum, student-teacher ratios, necessary equipment, and other matters pertaining to training of students. Inspections of schools are conducted by the Board and by the State Department of Health and Social Services. 7 AAC 22.390 outlines the criteria by which the Department of Health and Social Services deter-

mines the sanitary status of establishments. The Board routinely inspects schools in Anchorage during the period in which it holds a scheduled meeting. It has not conducted inspections in Fairbanks; however, a board member was assigned this responsibility at the May, 1979, Board meeting. It should be noted also that the Board has consistently found infractions in one particular school which has been the subject of numerous complaints from a variety of sources since 1972. Although the school has been admonished regarding its practices, no definitive action has been taken. The Board has the authority to suspend or revoke a license for good cause.

The Board may promulgate rules and regulations necessary to carry out the purposes of AS 08.28. It is now in the process of revising and updating current regulations and adding provisions concerning application procedures, qualifications, requirements for schools, and examination and grading procedures. Members of the profession have exhibited interest in the regulation making activity.

Most licenses are issued without examination to applicants who are already licensed in another jurisdiction. This practice facilitates entry into the profession as does that of issuing temporary licenses pending examination. A review of applicant files indicates that out-of-state applicants are usually licensed about 4-5 weeks from the date of application. The Board has been relying on its examiner from the Division of Occupational Licensing to verify qualifications and issue licenses. The Board has formally authorized this procedure at its May, 1979, meeting and will review and ratify licensures during a regularly scheduled meeting.

Applicants for licensure must be at least 17 years of age, of good moral character, have completed two years of high school or its equivalent, and have the required training or work experience. These items are addressed on application forms but are not verified. No school transcripts are required; although applicants are required to list three

character references, in no case has this information been checked or used for any purpose. Also included on the application are questions regarding such matters as length of residency in Alaska and future job prospects. The Board should review its applications and procedures for licensing.

Schools are required to submit quarterly reports to the Board on student or apprentice achievement and to notify the Board of enrollments and terminations. These records are maintained by the administrative agency as are all Board and licentiate files. The agency is in the process of implementing improved file and data maintenance procedures for all boards.

Barbers are excluded from the provisions of AS 08.28.

The Board has been discussing the advantages and disadvantages of continuing education requirements but has not yet formulated a position other than to agree that members of the profession should take every opportunity to upgrade their skills. The Board has recognized additional fields of beauty culture (i.e., shampooists, facialists, manicurists) and has expressed a desire to address these specifically through applicable guidelines and procedures. While it was stated as past policy that apprenticeships would not be allowed in towns where schools are located, the Board reversed this position at its May, 1979, meeting. It also rescinded a previous action which required the Division to release student examination scores to schools.

The Board and regulation of the beauty culture profession could be allowed to terminate on June 30, 1980, as provided by law, probably without significant adverse impact on the consuming public. Another alternative would be termination of the Board and assumption of the licensure functions by the administrative agency. Or practitioners could simply be registered by the administrative agency.

The Board could also be reestablished for another four years or less. If it is reestablished and/or regulation of this profession continues, consideration should be given to the suggestions for efficient operation noted in this review.

B. To what extent has the operation of the Board of Hairdressing and Beauty Culture Examiners been impeded or enhanced by existing statutes, procedures and practices which it has adopted, or any other matter, including budgetary, resource and personnel matters?

Practices and policies which utilize standard examinations, standard endorsement procedures and the issuance of temporary permits are felt to facilitate entry of qualified applicants into the profession and to promote availability of services. Student and apprenticeship programs also function to provide career opportunities and services in the State.

The Board of Hairdressing and Beauty Culture Examiners has experienced some difficulty with respect to personnel and budgetary restrictions. Support staff is provided by the Division of Occupational Licensing and is presently adequate to serve Board needs; however, past employee turnover has impeded continuity and follow-up on Board requests. Fees and revenues for all boards and commissions under the jurisdiction of the Division of Occupational Licensing are collected through the Division and are deposited into a general fund. Monies deposited and withdrawn are identified by codes so that direct board revenues and expenses may be determined.

The Board has encountered the same difficulties as have all other boards and commissions with respect to investigative services provided by the administrative agency. During FY '78 two investigator positions were

vacant; as a result, one position was abolished by the Legislature. At the present time, two investigators are located in Anchorage with a Chief Investigator located in Juneau. An additional investigator position was approved in the FY '80 budget but will probably not be filled immediately due to vacancy factors incorporated into the personal service category of the budget. Procedural constraints of the administrative adjudication article of the Administrative Procedure Act (AS 44.62.330-.630), while necessary, restrict timely disposition of litigation. Prioritization based on time, staffing and nature of alleged offense results in pursuit of only the most flagrant and potentially injurious licensing complaints. The administrative agency will continue to address the need for initial assessment and follow through on complaints with emphasis on magnitude of offense as it relates to public safety.

Regulations concerning applications for licensure and examination procedures are being promulgated. A review of Board statutes indicates that changes should be considered either by the Board or by the Legislature.

The term "good moral character" should be either defined or deleted from the statutes.

AS 08.28.030 requires that all Board members also be members of the profession. Public members should be allowed on this Board, although an increase in total membership is not advocated. Members have not taken an oath of office as required.

In reference to § 090, the Board has not promulgated regulations specifically for apprentices, however, this is not mandatory. Formal procedures have been established.

The Board has requested draft legislation which would repeal § 150, admission of shop owner without examination. This statute allows a shop

owner to practice hairdressing or beauty culture without a license as long as he employs a licensed manager-operator. §§ 240, 250 and 260, all grandfather clauses, are recommended to be repealed.

C. To what extent has the Board of Hairdressing and Beauty Culture Examiners recommended statutory changes which are generally of benefit to the public interest?

1976 amendments added to the powers and duties of the Board and included general items of a "housekeeping" nature.

Board minutes from 1976 reflect the Board's recommendation for legislation for shampooists, facialists and manicurists. There is no record of any recommendations by the Board for statutory changes that would be of specific benefit to the public.

D. To what extent has the Board of Hairdressing and Beauty Culture Examiners encouraged interested persons to participate in and report to it concerning the making and effect of its regulations and decisions, or to report to it concerning the effectiveness, economy, and availability of service which it has provided?

The bulk of participation at Board meetings and hearings has come from the profession. Substantial professional interest is generated by promulgation of regulations, by enforcement activities, and by quality of training facilities. Very little general "public" concern with Board functions has been demonstrated. Notices of pending meetings and new or

amended regulations are published in major newspapers in the State. Positive steps could be taken by the Board and the Division to heighten public awareness, such as public service radio announcements or utilization of other media.

Public interests would be furthered by the presence of public members on the Board. "In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decision-making."[1] The State of California, which provides for a one-third public membership on health care boards and a public majority on others, has indicated that its experience with public members has been highly rewarding.

E. How efficiently are public inquiries or complaints regarding the activities of the Board of Hairdressing and Beauty Culture Examiners processed and resolved?

Five open complaints regarding this profession were on file with the administrative agency as of June, 1979. One of these alleged physical injury to a consumer; however, it is worth noting that the complaint was referred by another division and had been received by them a year after the alleged incident occurred. Six additional cases are pending Board approval for closure and sixty-seven were purged in 1978 due to age and/or lack of jurisdiction (also pending closure). The administrative agency has been addressing the need for investigative procedures and for timely disposition of complaints.

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[1]Shimberg, B. and Roederer, D., Occupational Licensing: Questions a Legislator Should Ask, The Council of State Governments, Lexington, Ketucky, March, 1978, p. 20.

One complaint against the Board is on file but Board records indicate this issue has been resolved.

F. To what extent does the Board of Hairdressing and Beauty Culture Examiners present qualified applicants to serve the public?

Individuals wishing to practice must submit fees and application to the administrative agency with relevant information regarding qualifications. 12 AAC 24.020 provides that examinations for licensure be given on a quarterly basis. Applicants who are statutorily qualified and who demonstrate the required level of knowledge and proficiency are issued a license.

Current Board practices which allow for licensure by endorsement and the issuance of temporary work permits are conducive to entry into the profession by qualified persons.

G. To what extent have State personnel practices, including affirmative action requirements, been complied with by the Board of Hairdressing and Beauty Culture Examiners in its own activities, and in its area of activity or interest?

Board staff consists of the support services of a licensing examiner employed by the Division of Occupational Licensing (also responsible to four other regulated professions), who is hired through the State Personnel System and is subject to affirmative action requirements.

Licenses in this profession are issued on the basis of specific statutory criteria. Affirmative action requirements are not applicable to licensure qualifications.

H. To what extent are statutory, budgetary, or other changes necessary to enable the Board of Hairdressing and Beauty Culture Examiners to better serve the interests of the public?

Public members should be included on the Board. Statutory amendments should be introduced which would repeal §§ 150, 240, 250 and 260.

The Board should explore methods of informing the general public of its existence and functions. It also should assume a more active roll in regulation and inspection of schools. The administrative agency will continue to address the need for assessment and follow through on complaints as well as record keeping procedures.

The Board should review and revise its application forms and procedures.

Board and administrative expenses outweigh revenues collected through regulation of this profession. Fees collected are not adequate to cover transportation and per diem for meetings and examinations, and Division of Occupational Licensing administrative overhead such as staff salaries, examination expenses, and investigative services.

Chapter 28. Cosmetologists and Hairdressers.

Article
1. Board of Hairdressing and Beauty Culture Examiners (§§ 08.28.010-08.28.090)
2. Licenses (§§ 08.28.100-08.28.260)
3. Miscellaneous Provisions (§§ 08.28.270-08.28.290)
4. General Provisions (§§ 08.28.300-08.28.320)

Article 1. Board of Hairdressing and Beauty Culture Examiners.

10. Creation and membership of Board of Hairdressing and Beauty Culture Examiners
20. Term of office and removal
30. Qualifications of board members
40. Powers and duties of the board
50. Meetings of the board
60 -70. [Repealed]
80. Standards for regulations
90. Special regulations

Sec. 08.28.010. Creation and membership of Board of Hairdressing and Beauty Culture Examiners. There is created a Board of Hairdressing and Beauty Culture Examiners, referred to in this chapter as the board. The board consists of five members appointed by the governor. (§ 3(1) ch 52 SLA 1957)

Sec. 08.28.020. Term of office and removal. Members serve a term of three years and at the pleasure of the governor. (§ 3(1) ch 52 SLA 1957)

Sec. 08.28.030. Qualifications of board members. (a) To qualify for membership on the board, a member must be an adult, a citizen of the United States, and a resident of the state.

(b) The governor shall appoint persons so that four members have at least five years' experience as an operator, manager-operator, or owner-operator, and one member has at least three years' experience as the owner, manager, or instructor of a beauty school licensed under this chapter. To remain on the board, a member must remain active in an activity that would qualify him for appointment under this subsection.

(c) Each member shall take the oath provided by law for public officers. (§ 3(1) ch 52 SLA 1957; am § 1 ch 101 SLA 1963)

Sec. 08.28.040. Powers and duties of the board. The board shall exercise general control over the vocations of hairdressing and beauty culture within the state. The board

(1) shall examine applicants and issue licenses;

(2) shall issue licenses for schools of hairdressing or beauty culture;

(3) may suspend or revoke a license;

(4) may promulgate rules and regulations relating to hairdressing or beauty culture, and hairdressing or beauty culture schools, necessary to effectuate the purposes of this chapter;

(5) except as provided in § 280 of this chapter, may inspect schools and shops in order to enforce the provisions of this chapter;

(6) may, on its own motion, and shall, upon receipt of a written complaint, investigate the practices of a person, shop, or school licensed under this chapter. (§ 3(2) ch 52 SLA 1957; am § 1 ch 104 SLA 1976)

Sec. 08.28.050. Meetings of the board. The board shall meet at least once each year for the conduct of its business. The annual meeting shall be held at the place designated by the majority of the board members.

The board shall, at its annual meeting, elect a president, vice-president and secretary-treasurer from its members. Board members serve without pay. However, each member is entitled to transportation and per diem allowances authorized by law. (§ 3(3) ch 52 SLA 1957)

Sec. 08.28.060. Duties of secretary-treasurer. Repealed by § 3 ch 59 SLA 1966.

Sec. 08.28.070. Salary of secretary-treasurer. Repealed by § 3 ch 59 SLA 1966.

Sec. 08.28.080. Standards for regulations. The board shall adhere as closely as possible to the rules, regulations, and standards prescribed and recommended by the "Allied Cosmetology Council of State Board, Schools, and Shops." (§ 13 ch 52 SLA 1957)

Sec. 08.28.090. Special regulations. The board may prescribe special rules and regulations for apprentices whose job training is supervised by the Department of Education under a vocational rehabilitation program. However, these apprentices, to become licensed, shall pass the standard licensing examination given by the board. (§ 14 ch 52 SLA 1957)

Article 2. Licenses

Section
100. License required
110. Qualifications of applicants
120. Examination and other requirements
130. Temporary license
140. Out-of-state licenses
150. Admission of shop owner without examination
160. [Repealed]
170. Fees
180. School license
190. Display of license
200 - 210. [Repealed]
220. Lapsed license
230. Grounds for revocation or suspension of license
240. Application of license provisions to existing operators
250. Application of license provisions to beauty schools
260. Credit to students for prior study

Sec. 08.28.100. License required. No person may engage in the practice of hairdressing or beauty culture or organize, open, or conduct a school of hairdressing and beauty culture without a license. (§ 2 ch 52 SLA 1957)

Sec. 08.28.110. Qualifications of applicants. An applicant for a license as an operator, manager-operator, demonstrator or consultant, owner-operator, or instructor-operator shall

(1) be at least 17 years of age;

(2) be of good moral character;

(3) have completed two years of high school or its equivalent;

(4) have training at least 2,000 hours, extending over a school term of not less than 50 weeks in a school of hairdressing or beauty culture approved by the board, or service as an apprentice under a licensed operator in a shop approved by the board or completed training and working experience as a hairdresser in another state or country which the board finds to meet the minimum requirements of this state. (§ 4(1) ch 52 SLA 1957; am § 2 ch 112 SLA 1959; am § 2 ch 104 SLA 1976)

Sec. 08.28.120. Examination and other requirements. An applicant shall pass an examination given by the board. The examination shall cover subjects designated by the board. The board shall fix the time and place for examination and shall give at least one examination each year. The board may delegate the power of examination to a committee of the board or a board member. The board may prescribe additional requirements for a license. (§ 4(2) ch 52 SLA 1957)

Sec. 08.28.130. Temporary license. The board may issue a temporary license or working permit to a graduate of an approved school of hairdressing or beauty culture or to an apprentice who has received on-the-job training which complies with the rules and regulations of the board. A temporary license or working permit is valid until the results of the examination given to the student or apprentice are announced. (§ 4(3) ch 52 SLA 1957)

Sec. 08.28.140. Out-of-state licenses. A person holding a current valid license from a board of cosmetology and hairdressing in another state or country is entitled to a license under this chapter without examination if he applies, accompanying his application with

(1) proof of a foreign license;

(2) proof that he has completed at least 2,000 hours of training in a hairdressing and beauty culture school or service as an apprentice under a licensed hairdresser in a shop approved by the board or completed training and working experience as a hairdresser which the board finds to meet the minimum requirements of the state;

(3) payment of an investigation fee. (§ 4(4) ch 52 SLA 1957; am § 3 ch 112 SLA 1959; am § 2 ch 101 SLA 1963; am § 1 ch 2 SLA 1965; am § 1 ch 46 SLA 1968; am § 3 ch 104 SLA 1976)

Sec. 08.28.150. Admission of shop owner without examination. A shop owner may be licensed without examination but, unless licensed as an operator, he shall not engage in the practice of hairdressing or beauty culture without employing a licensed manager-operator. (§ 4(4) ch 52 SLA 1957; am § 3 ch 112 SLA 1959)

Sec. 08.28.160. Examination fee. Repealed by § 3 ch 46 SLA 1968.

Sec. 08.28.170. Fees. The following fees shall be imposed under this chapter when applicable

(1) schools:

registration and initial license fee.....	$500
biennial renewal.....	200

(2) school owner:

registration and initial license fee.....	40
biennial renewal.....	30

(3) instructor-operator:

registration and initial license fee.....	40
biennial renewal.....	30

(4) owner-operator:

registration and initial license fee.....	25
biennial renewal.....	20

(5) owner only, beauty shop:

registration and initial license fee.....	25
biennial renewal.....	20

(6) manager-operator:

registration and initial license fee.....	25
biennial renewal.....	20

(7) demonstrator or consultant:

registration and initial license fee.....	40
biennial renewal.....	30

(8) operator:

registration and initial license fee.....	15
biennial renewal.....	10

(9) apprentice or student:

registration and one-year permit fee.....	5
annual renewal.....	3

(10) manicurist:

registration and initial license fee.....	15
biennial renewal.....	10

(11)	examination fee.....	15
(12)	investigation fee.....	25

(§ 4(5) ch 52 SLA 1957; am § 4 ch 112 SLA 1959; am § 2 ch 46 SLA 1968; am §§ 4, 5 ch 104 SLA 1976)

Sec. 08.28.180. School license. The board shall prescribe rules and regulations for the licensing of schools of hairdressing and beauty culture. The rules and regulations shall include the financial respon-

sibility of the owner, details of the curriculum, minimum hours of instruction, and physical condition of the school premises and facilities. (§ 5 ch 52 SLA 1957)

Sec. 08.28.190. Display of license. Every licensee shall display his license in a conspicuous place in his place of business or in his working booth. Each shop owner or manager is responsible for the display of licenses held by employees in their shops. (§ 6(1) ch 52 SLA 1957)

Sec. 08.28.200. License year. Repealed by § 3 ch 59 SLA 1966.

Sec. 08.28.210. Duplicate licenses. Repealed by § 3 ch 46 SLA 1968; § 7 ch 94 SLA 1968.

Sec. 08.28.220. Lapsed license. A lapsed license may be reinstated, if the license has not been lapsed for a period of more than five years, and all renewal and delinquent fees for the period during which the license has been lapsed are paid. (§ 6(4) ch 52 SLA 1957)

Sec. 08.28.230. Grounds for revocation or suspension of license. The board may suspend or revoke a license for failure to comply with this chapter, or a rule, regulation, or order of the board. (§ 8 ch 52 SLA 1957)

Sec. 08.28.240. Application of license provisions to existing operators. A person holding a valid license as an operator issued before March 16, 1957, is not required to obtain a new license, but shall nevertheless comply with all other provisions of this chapter. (§ 12 ch 52 SLA 1957)

Sec. 08.28.250. Application of license provisions to beauty schools. Hairdressing and beauty culture schools shall comply with the licensing provisions of this chapter and with rules and regulations issued under it. Upon application and payment of the fee by a beauty school which has been in operation and teaching a course of not less than 2,000 hours for one year before January 1, 1957, the board shall issue a license for its operation. (§ 12 ch 52 SLA 1957)

Sec. 08.28.260. Credit to students for prior study. A student of a hairdressing and beauty culture school shall receive credit for hours of instruction completed before March 16, 1957, if the school substantially met the minimum standards for curricula, the qualification of instructors, and other rules and regulations established by the board under this chapter. If the school met the prescribed minimum standards for a period of six months or more preceding March 16, 1957, all students who have satisfactorily completed the course of instruction shall receive credit for the entire period of instruction. (§ 12 ch 52 SLA 1957)

Article 3. Miscellaneous Provisions.

Section
270. Record of achievement
275. Advertising
280. Control of health and sanitary conditions
290. Applicability of Administrative Procedure Act

Sec. 08.28.270. Record of achievement. Each licensee who supervises a student or apprentice shall submit quarterly to the board a record of achievement of the student or apprentice. (§ 3 ch 52 SLA 1957)

Sec. 08.28.275. Advertising. No person, shop, or school engaged in the practice of hairdressing or beauty culture may knowingly use false or deceptive statements in advertising its services. A hairdressing or beauty culture school representing itself to be approved or accredited shall indicate the organization or agency issuing the approval or accreditation. (§ 6 ch 104 SLA 1976)

Sec. 08.28.280. Control of health and sanitary conditions. Control over health and sanitary conditions in shops and schools licensed under this chapter is in the Department of Health and Welfare. (§ 7 ch 52 SLA 1957)

Sec. 08.28.290. Applicability of Administrative Procedure Act. Procedures and rules and regulations adopted under this chapter shall comply with the Administrative Procedure Act (AS 44.62). (§ 10 ch 52 SLA 1957; am § 5 ch 112 SLA 1959)

Article 4. General Provisions.

Section
300. Barbers excluded
310. Penalties
320. Definitions

Sec. 08.28.300. Barbers excluded. This chapter does not apply to barbers exclusively engaged in the occupation of barbering. (§ 11 ch 52 SLA 1957)

Sec. 08.28.310. Penalties. A person who engages in the practice of hairdressing or beauty culture without obtaining a license, or any person who organizes, opens or conducts a school of hairdressing or beauty culture, without obtaining a license, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for a period of not more than 90 days, or by a fine of not more than $300, or by both. (§ 9 ch 52 SLA 1957)

Sec. 08.28.320. Definitions. As used in this chapter, unless the context otherwise requires,

(1) "apprentice" is a person at least 17 years of age who has completed two years of high school or equivalent education, who receives on-the-job training on licensed premises and who does not receive a wage or commission, and for whose work no charge is made until the apprentice has received at least 350 hours of training;

(2) "demonstrator" or "consultant" is a person who practices hairdressing and beauty culture upon a person acting as a subject or model when the demonstration is performed before students, operators, manager-operators, instructors or individuals, shop owners, school owners, or any other public gathering;

(3) "instructor-operator" is a person who gives instruction in the practice of hairdressing or beauty culture in a school, who has passed the qualifications of an owner-operator or manager-operator, and who has passed an examination and holds an instructor-operator license;

(4) "manager-operator" is a person of legal age who operates or manages a hairdressing or beauty culture shop or school;

(5) "manicurist" is a person who practices beauty culture by treating the hands and nails;

(6) "operator" is a person who engages in any practice defined in (10) of this section;

(7) "owner" is a person owning a hairdressing or beauty culture shop;

(8) "owner-operator" is a person who owns a hairdressing or beauty culture shop or school who is qualified under this chapter to practice the art of hairdressing and beauty culture or who is a licensed cosmetologist;

(9) "person" includes a corporation, copartnership, or unincorporated association;

(10) "practice of hairdressing and beauty culture" is engaging for compensation or other reward, in any of the following practices:

(A) arranging, dressing, curling, waving, cleansing, singeing, bleaching, coloring, or similar work on a wig or hair piece of artificial or human hair, or upon the hair of a living person by any means;

(B) trimming hair, as a part of hairdressing;

(C) utilizing cosmetic preparations, antiseptics, tonics, lotions, or creams, with the hands or with a mechanical or electrical apparatus, in massaging, cleansing, stimulating, manipulating,

exercising, or beautifying the scalp, face, neck, arms, hands, bust, or upper part of the body of a person, for the purpose of beautification;

(11) "school of hairdressing" or "school of beauty culture" is a place where a person operates and maintains a class to teach hairdressing or beauty culture;

(12) "shop" is a building or structure, or part of a building or structure, other than a school, where the practice of hairdressing or beauty culture is conducted;

(13) "student" is a person at least 16 years of age who has completed two years of high school or equivalent education, attends a licensed beauty school and does not receive a wage or comission, and for whose work no charge is made until the student has received at least 350 hours of training;

(14) "board" means the Board of Hairdressing and Beauty Culture Examiners;

(15) "department" means the Department of Commerce and Economic Development. (§ 1 ch 52 SLA 1957; am § 1 ch 112 SLA 1959; am § 1 ch 17 SLA 1966; am §§ 60, 61 ch 127 SLA 1974; am §§ 7, 8 ch 104 SLA 1976)

PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581; 278-1582

September 25, 1979

The Honorable Arliss Sturgulewski
Senate Commerce Committee
2957 Sheldon Jackson Drive
Anchorage, AK 99504

Dear Senator Sturgulewski:

The Senate Commerce Committee will convene at 9:00 a.m. on October 22, 1979, for the purpose of holding public "Sunset" hearings on the Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners. The hearings will be held in Room 262 of the Consortium Library, University of Alaska, 3211 Providence Drive, Anchorage, Alaska, and will be teleconferenced to Juneau and Fairbanks.

The Juneau teleconference will begin at 11:00 a.m. (Juneau time) in the Butrovich Room (Room 207), Capitol Building, Juneau, Alaska.

The Fairbanks teleconference will begin at 9:00 a.m. (Fairbanks time) in Room 250, Building F, Legislative Information Office, 101 College Road, Fairbanks, Alaska.

The Senate Commerce Committee will also hold a public "Sunset" hearing on the Board of Registration for Architects, Engineers, and Land Surveyors on October 23, 1979. The time, places and teleconferencing will be the same as for the October 22, 1979, hearings.

The following Audit Reports are available at the local Legislative Information Offices:

A Performance Review of the Board of Registration for Architects, Engineers, and Land Surveyors. May 11, 1979.

A Performance Review of the Board of Hairdressing and Beauty Culture

Examiners. July 11, 1979.

A Performance Review of the Board of Barber Examiners. March 31, 1979.

If you have any questions, contact Christian Basler at 278-1581.

Sincerely,

Brad Bradley
Chairman
Senate Commerce Committee

Attached letter mailed to following:

The Honorable Arliss Sturgulewski
Senate Commerce Committee
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Anchorage, AK 99504

The Honorable Tim Kelly
Senate Commerce Committee
Box 1004
Eagle River, AK 99577

The Honorable Frank Ferguson
Senate Commerce Committee
Box 131
Kotzebue, AK 99752

The Honorable Terry Stimson
Senate Commerce Committee
1610 "E" Street
Anchorage, AK 99501

The Honorable Fred Brown, Chairman
House Commerce Committee
Box 1718
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The Honorable Joyce Munson
House Commerce Committee
935 East 79th Avenue
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The Honorable Hugh Malone
House Commerce Committee
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The Honorable Alvin Osterback
House Commerce Committee
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Sand Point, AK 99661

The Honorable Robert Bettisworth
House Commerce Committee
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The Honorable Richard Halford
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The Honorable Terry Gardiner
Speaker of Alaska House of Representatives
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Ketchikan, AK 99901

The Honorable Clem Tillion
President of Alaska State Senate
Box 373
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The Honorable Nels A. Anderson, Jr.
Majority Leader, Alaska House of Representativ
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The Honorable Mike Colletta
Majority Leader, Alaska Senate
1016 West Sixth Avenue, Suite 435
Anchorage, AK 99501

Gerald L. Wilkerson
Legislative Audit Division
State Office Building
Pouch W
Juneau, AK 99811

Alan Blume
Administrative Assistant
House Commerce Committee
PO Box 1370
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1024 West Sixth Avenue
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Debi Smith
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Legislative Information Office, Fairbanks
Attention: Maxine
101 College Road, Building F
Room 252
Fairbanks, AK 99701

Pam Derrer,
ARCO
134 North Franklin
Juneau, AK 99801

~~Karen Baker~~
Rep. Terry Martin
3960 Reka
Anchorage, Ak. 99504

Judy Mengel
Media Services Department
University of Alaska, Anchorage
3211 Providence Drive
Anchorage, AK 99503

Paul Harris (276-1443)
Legislative Audit Division
PO Box 1231
Anchorage, AK 99510

Karen Baker (272-5514)
% Jay. Baxter & Co.
207 East Northern Lights Blvd.
Anchoragem Alaska 99503

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business
PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581; 278-1582

September 25, 1979

Mr. Dan A. Noll
Board of Barber Examiners
604 Second Street
Fairbanks, AK 99701

Dear Mr. Noll:

The Senate Commerce Committee will convene at 9:00 a.m. on October 22, 1979, for the purpose of holding a public "Sunset" hearing on the Board of Barber Examiners. The hearing will be held in Room 262 of the Consortium Library, University of Alaska, 3211 Providence Drive, Anchorage, Alaska, and will be teleconferenced to Juneau and Fairbanks.

The Juneau teleconference will begin at 11:00 a.m. (Juneau time) in the Butrovich Room (Room 207), Capitol Building, Juneau, Alaska.

The Fairbanks teleconference will begin at 9:00 a.m. (Fairbanks time) in Room 250, Building F, Legislative Information Office, 101 College Road, Fairbanks, Alaska.

The following Audit Report is available at the local Legislative Information Offices:

> A Performance Review of the Board of Barber Examiners. March 31, 1979.

If you have any questions, contact Christian Basler at 278-1581.

Sincerely,

Brad Bradley
Chairman
Senate Commerce Committee

Attached letter sent to following:

Mr. Dan A. Noll
Board of Barber Examiners
604 Second Street
Fairbanks, AK 99701

Mr. Manuel Norat
Board of Barber Examiners
PO Box 238
Anchorage, AK 99510

Mr. James Russi, Chairman
Board of Barber Examiners
PO Box 1122
Soldotna, AK 99669

Mr. Maurice "Bud" Smith
Board of Barber Examiners
Anchorage Sportsman's Barber Shop
1650 W. Northern Lights
Anchorage, AK 99503

Mr. Elmo Kienbaum
Board of Barber Examiners
2337 Second Avenue
Ketchikan, AK 99901

Mr. Manuel Norat
c/o Anchorage Barber College
3519 Mt. View Drive
Anchorage, AK 99504

Hair Today
Attention: Yvonne
191 South Franklin
Juneau, AK 99801

Elaine Garrett
Division of Occupational Licensing
Department of Commerce & Economic Development
Pouch D, Mail Stop 0800
Juneau, AK 99811

January 15, 1980

State of Alaska
Department of Commerce
Division of Occupational Licensing
Juneau, Alaska 99811

Gentlemen: Re: My goals in 1980 as Barber Examiner

At the present time, we have sat down and updated our barber laws, and I will be introducing a lot of legislation this year which I hope the legislators will help me with. I think our past laws are very outdated, and there are areas in which we need new legislation, not available before. Reviewing other States and their laws, I found many areas that would help us out tremendously; also, I would like to work out a system with Occupational Licensing that we can fill you in on our business as we conduct it. I am proposing that we adopt as Barber Examiners, two workshops a year beyond what we now have. I find that half a day, after the test, is not sufficient time to conduct the business that is needed. I will ask for two days for each workshop, in which we will, with other committees, discuss the aspects of the barber profession.

Also, as a new Board member, I find we need to work out a better system wherein you could give us a little more time to reply to any material and reports sent out by you. I have found in the past, that quite often the material you sent to us is deadlined within a day or two, and this is too short a notice. I think this can be overcome very easily. Any re-reports sent out by you that are deadlined by a certain date to be turned in, it would be best that we Board members send it by registered mail.

Sincerely,

Bud Smith

January 15, 1980

Legislature of the State
of Alaska
Capitol Building
Juneau, Alaska 99811

Gentlemen:

As Barber Board Examiner, these are my goals for 1980. At the present time, I am working on a system to upgrade our testing material: both written exam and practical exam, of which I hope the other Board members will adopt.

Second, I would like to make several changes in our laws. I find by going over our laws in the past there is a lot of material that is extremely outdated. I would like to be able to introduce some new legislation which I think would benefit our profession greatly.

I would also like to see our Board members join the National Board of Barber Examiners. On a national level, I think we could do a much better job for our own State. Also, I would like to see our Board adopt workshop periods; for instance, two shop periods per year when we could sit down and go over material more thoroughly, and stay updated. I find in this manner we would be able to correspond with other States, and unify our laws more closely. A better system should be worked out with occupational licensing to keep up to date with what exactly, barber examiners are doing. One problem we have at the present time with occupational licensing is that we were sent reports that needed to be filled out and returned within only one or two days. I don't know if the problem lies in Juneau, or if it lies within the mail service on this end. But, nevertheless, we need to work out a better system than we have now.

In 1979, I was sent a report to make out and send back into the Division of Audit. I sent my report in and even called the person in charge of the department, and told them my report was in the mail, but yet, looking at the performance record in the legislative audit, they did not receive nor record my reports. I am unaware of what ever became of this report, but nevertheless I did send it, and as stated above, called to advise the report was in the mail. By looking at

the Division of Legislative Audit, a questionnaire was sent out last year for comments, I am not too satisfied with their system. I definitely think that everyone in this profession should have been sent these questionnaire forms, so we could get a true, accurate report. As the system has been in the past we Board members meet twice a year. I find this is not sufficient enough time to get all of our business taken care of to update our material at that time. I feel, with the population increasing, and the change necessary to keep up to date, we need at least two workshops beyond the two regular meetings that we now have. I think these workshops would be extremely beneficial to barbers and the public.

In closing, I would like to say that the sunset law review has opened our eyes tremendously in this profession, and has brought to our attention that we must stay up to date at all times. All of us in this profession have expressed the need for a Barber Examining Board, and I, as a Barber Examiner, newly elected would definitely like to see this Board continue. Most States that have gone through the sunset review have reinstated their Barber Boards. I have put a new State program together which will be called the Master Barber Association. All barbers I have contacted in Anchorage are deeply concerned in a State association. Also, people in Fairbanks have beencontacted and other areas who are more than willing to help me get this association off the ground and going. This has never been done before, and we would be affiliated with our national barber associations.

At this time I am asking you legislators to please reinstate this Board of Barber Examiners for at least two years so we can prove how efficient our new committees can be in helping our barber laws to become updated. I would like to thank you all at this time.

Sincerely,

Bud Smith

Sunset Review (Barbers) Feb. 7, 1980

Mr Chairmen:

Thank you for granting this time to me to testify on behalf of the Barber Board.

There are many areas I would like to cover but I will keep my testimony to being as brief as possible

1st I would like to draw to your attention the great strides we have made since our Sun Set Review. I and many others have spent a great deal of time reviewing other State Barbering Laws to try and bring our state laws up to the highest of standards. I think you will see we have made a substantial difference from what we have had in the pass to what we have propose for the future. I know I have spent enormous amount of weekends and nights working on this review and I hope in the long run I have done some good for both my profession and the Public.

2nd In the pass we have had enormous problems with OL which I am sure we can work-out in time to come with our new programs.

3rd We have adopted new advisory committees that will help us substantially and at the present time, I am in the misses of setting up other committees from Fairbanks and Southeast Alaska. I think this will be a exceptional advantage over what we have had in the pass.

II

Sunset Review (Barbers) Feb 7, 1980

4. I am working with mr. Vern Hurlbert on a apprenticeship program which I hope to have all the bugs worked out soon. this program is taken a bit longer then I had hope for but I am sure we will have it real soon.

5. On our last written test, we revised a great deal of material and made the exam more understandable. I hope this coming test in April we will have Total True & false and multiple choice questions only, doing away with all short essay questions (All written exam's must be cleanified fully)

6. I would like to bring it to your attention one of the biggest problems the board has had in the pass is a board member owned the only barber college in the State, this person is no longer a board member. I am sure this will bring less problems to the board and state in future.

7. at this Time I would like to take just a moment and go over some of our new purposals with you.

8. I think now by going over these purposals you can clearly see the major difference from our old programs and our new programs. I myself, is very confident of the outcome of our future if we work together.

— in conclusion —

Without our Barber Board, there would be no professional standards. I am sure you and the public would see diseases spread enormously and a lot of persons would also be affected by harm conflicted by poor barbering work.

III

Sun Set Review (Bankers) Feb 7, 1980

This just can not be aroud Laddies and gentlemen. We must keep our standards as high as possible Please don't set our profession back so far in Time by Taken away this Banker Board. It is greatly needed in any and every State. I am Sure you can clearly see this.

Thank you vary much for your Time.

Bud Smith

ARTicle 3 Barber School and Colleges

sec 08.12.220 Application

A person wishing to operate a barber school or college or Teach in a barber school or College shall apply for examination and licensing to the board and submit

(1) a certificate of health from a physician;

(2) a diploma from a nationally accredited barber school or college offering a course in barber science evidencing the applicant's qualifications as a barber teacher;

(3) such other information as may be required by regulations adopted by the board.

(sec 3 art. V ch 68 SLA 1957; am sec 8 ch 168 SLA 1960)

By the Board

Amend

ARTICLE 1

Sec 08.12.030 General Powers of board.

The board may

(1) adopt examinations in accordance with standards provided by any nationally recognized manual of barber science and examine applicants for licenses to engage in the practice of barbering;

(2) adopt rules and regulations for conduct of the practice of barbering in accordance with reasonable standards of sanitation which do not derogate from the ultimate control over health and sanitary conditions for all licenses under this chapter which is in the Department of health and Welfare;

(3) suspend licenses for failure to maintain standards of sanitation prescribed by the board;

(4) adopt rules of procedure for its own organization and conduct of its meetings, examinations, and inspections;

By the Board

Amend

X

ARTicle 5 General Provisions

Sec. 08.12.280. Barber defined

Barbering includes the following practices when performed for hire or reward:

(1) shaving or trimming the beard or cutting the hair;

(2) giving facial and scalp messages or treatments with oils, creams, lotions or other preparations either by and or mechanical appliance;

(3) singeing, shampooing, dressing or dyeing the hair or applying hair tonics.

(4) arranging, setting and styling the hair

(5) giving beams if applicate can show evidence to the Board of passing course conducting beams.

By Bud Smith

New Law

X

ARticle 2

Sec 08.12.171 Barber Technicians

Every Barber technician, in order to avail himself of this Chapter, shall, before entering employment as a barber technician, file with the Division of Occupational Licensing, on forms which shall be provided by the board, the name and place of business of the employer, the date on which employment will be commenced and the barber technician's full name and age. That age shall not be less than 16 years. The forms shall be accompanied by a registration fee of $10.00. Any barber technician who shall change his place of employment shall promptly notify the Division of Occupational Licensing and furnish it with the name and place of business of the new employer and the date of the change.

The Division of Occupational Licensing shall furnish to each barber technician a certificate of registration, certifying that the holder is a barber technician. It shall be the duty of the holder of such a certificate of registration to post it in a conspicuous place where it may readily be seen by all persons, on or before the first day of January in each year. The fee for such a certificate shall be $10.00 in the first instance and $20.00 for each biennial renewal thereof.

(OVER)

No barber technician may independently practice barbering but may, as a barber technician, do only the following acts constituting the practice of barbering: Shampooing and drying of hair, and manicuring.

A barber technician shall not be considered an apprentice nor shall any time which he has been registered and been employed as a barber technician count toward training for eligibility to obtain a certificate of registration as a barber.

By Bud Smith

X

ARTicle 2

Sec 08.12.172 Student Temporary permit

All students upon completion of 1500 hours must pass a practical examination before one receives a permit to work. If student fales a practical examination, the student must continue additional school at no extra cost to student until he or she will complete 160 hrs additional Training at Ak Barber College seems convenient to take new examination.

Two board members and one public member need only to be present to administer examination. If student passes the practical examination they shall be accredited with this portion of state master barber test and will need only to pass the written test to receive there master barber License

No money will be collected at this time for this portion of test but will be collected while applying for written examination to receive a master barber License

Note - Must be OK by Manual Worst

By Bud Smith

Article 1 Board of Barber Examiners

Sec 08.12.015 National Board Convention

Moneys from the ~~general~~ barber Fund will be appropriated each year to send one board member to the national barber board examiners convention. A copy of the minutes or summary of business conducted will be sent To Occupational License.

By the Board

ARTicle 2

Sec 08.12.100 License fee for barber Teachers

The annual fee for a license To engage in the Teaching of barbering is $150 provided the board of barbers exist. If board is abollished then such Teaching fees will resort back to $50 per year

By Bud Smith

New Barber Laws

Article 1 Barber Board Examiners

"amend"

Sec. 08.12.010

Creation and membership of board. There is created the Board of Barber Examiners, referred to in this chapter as the board, composed of five members which are recommended by Licensed barbers in there own areas and approved and appointed by the governor. One member on the board will not be a barber but will be a public member which will also be approved and appointed by the governor. Each board member may serve a three year term and may be re-elected to serve a second three year term if approved by the existing board members. Three members of the board shall be from separate major senatorial districts. the South member shall be appointed from the district having the largest number of practicing licensed barbers. One public member shall be appointed from the district having the largest number of population.

By the Board

Annex 4

X

ARTicle 2

sec. 08.12.090 License Fee for barbers

The annual fee for a License to engage in barbering is $25 provided the board of barbers exist. If board is abolished then such fees will resort back to $10 per year

By Board

New Law

X

ARTicle 2 Examination and Licensing

Sec 08.12.172 Reciprocity with other states

The Board may waive the examination and grant registration to any applicant who shall present proof of current registration or licensure in another state, other jurisdiction of the United States or another country which grants similar privileges to persons registered under this chapter or to any state that gives reciprocity to Alaska with the same amount of Time requirements and conditions as Alaska state Laws. Such an applicant shall pay the same fee as provided under Article 2.

By Bud Smith

Amend

X

ARticle 2 Examination and Licensing

Sec 08.12.170 Issuance of Temporary permit

A Temporary permit may be issued by any member of the board upon application under Terms and conditions established by regulations of the board, and upon the receipt of an application fee of $25. The fee shall be credited to the Temporary permittee who shall be permitted to take an examination for a regular license without any additional fee. Upon taking the examination, the holder shall surrender the Temporary permit to the board or the committee conducting the examination. If the applicant fails the first examination following qualification, the applicant may renew his permit to practice barbering under supervision of a person registered to practice barbering until the results of the next consecutive examination have been given, at which time the permit expires and shall not be renewable. The applicant shall not be considered an apprentice. the applicant shall pay to the Division of Occupational Licensing a fee of $25.

By Bud Smith

Judy Dixon

BARBERS LEGISLATIVE COMMITTEE REVIEW ON FINDINGS AND RECOMMENDATIONS OF LEGISLATIVE AUDIT

RECOMMENDATION I.

The report states that examination unnecessarily restricts entry of qualified personnel into the profession. The questions we are dealing with here are: (1) reciprocity with other states, and (2) students are issued permits if from Alaska when outsiders must produce a license from their state.

1. Reciprocity--Due to widely varying standards of education in different states, blanket reciprocity is not possible. States requiring 2,000 hours do not accept an Alaska license as we only require 1,500 hours, and Alaska cannot accept an outside license that requires only 1,200 hours. Until there are federal standards that cover barbering in all states, reciprocity will only be available through private agreements between individual states. This could be possible for Alaska only if our barber board was allocated funds to attend National Association of Barber Examiners conventions where these problems can be discussed in depth with other professionals.

One other consideration is that if reciprocity were established, there could well be a seasonal shortage or overabundance situation, particularly for Alaska. With reciprocity, Alaskan barbers and others from cold states would head south each winter, causing a shortage here and overabundance in the warmer areas. Come summer, the northern areas would overflow and the south could be short of barbers.

2. A valid point has been brought up in the fact that outside barbers must produce a license while students graduated from Alaskan schools can obtain a permit upon completion of their hours.

A viable solution would be to allow students to apply for a work permit upon completing 1,500 hours only if it can be guaranteed that they will work under direct supervision of a licensed barber. This can be done through a process of sponsorship where the licensed barber will be obligated to supervise the student's work until the next examination comes up and the student passes it. (The fine points of this program can be worked out and put into a comprehensive barber law.) As for outside applicants producing a license this is the only way that we can verify that individuals have indeed received basic barber training and at least meet minimal standards, as all states require some schooling and an exam before issuing a state license. This minimal standard in order to be issued a permit will insure that unfit practitioners will not be turned on the public between examinations. Issuing a permit (or license) on testimony of past experience is not reasonable--this would be the equivalent of issuing permits and licenses on hearsay, and has no validation to back it up.

RECOMMENDATION II.

1. Test Material--We are in agreement that written examinations should be upgraded. Less emphasis should be put on anatomy and physiology, although some basics should still be included. Sanitation, sterilization, and a basic knowledge about and recognition of contagious deseases should continue to be stressed. Open-ended questions are subject to personal interpretation and should be deleted. The written examination should be multiple choice--true/false in format to allow for specific grading criteria.

Suggested grading format for entire exam:

20 points written
25 points haircut
10 points oral
10 points shave
10 points sanitation
5 points application (use of tools)
5 points scalp massage
5 points facial
5 points time
5 points shampoo
100 points/75 passing

2. Administration of Examination

a. Grading criteria should be clarified for practical examination. There will always be some personal interpretation possible on grading work, but with five experienced board members an agreement can be made if guidelines are made and followed. Guidelines for board grading could be compiled by the board and distributed with packet for examination application, so that all applicants know what is expected of them. Guideline sheet with pertinent information should be compliled by the board and distributed to applicants with the examination application packet.

b. Time limits are at present set. We agree that they must be either followed more closely or adjusted accordingly.

c. This information on two authorized textbooks on which the test is based is available through school and through board members when applications for exams are turned in. This information should be available on a guideline sheet included in application for exam packet.

d. Guideline sheet should state that applicant should be responsible for own tools, as it would be too costly to keep adequate supply of extras on hand for all applicants.

e. Agreed--Admittance to exam area should be limited to those required to be there.

RECOMMENDATION III.

Agree that owners only need not be licensed; instructors must be licensed. School facilities and curriculum should be examined by the board to insure that appropriate and adequate education was being provided by each school.

RECOMMENDATION IV.

1. Limiting term of board members:
 a. Agreed that a length of term should be established and members should be limited to two consecutive terms.
 b. One public member on the board should be appointed and would serve as a watchdog.

RECOMMENDATION V.

Board inspection legislation should be repealed to reduce duplication of effort. Health inspections are the province of the Health Dept. The only inspection necessary would be board inspection of new schools to insure adequate facilities, along with review of curriculum to insure appropriate education of student barbers.

RECOMMENDATION VI.

"Good Moral Character" is too subject to personal interpretation as written, and should be deleted.

RECOMMENDATION VII.

This must be done primarily by board members as they know better than anyone what the goals of the board should be.

RECOMMENDATION VIII.

Agreed that board members should improve minutes.

Christian Basler
Administrative Assistant
Senate Commerce Committee

Thank you for informing me of the mechanical problems involving the testimony on the "Board of Barber Examiners". I will address my reply to "Findings & Recommendations of the Division of Legislative Audit Page 9

Rec # I

A Grant reciprocity to the holder of a Master Barber License from another state if the person has earned his or her livlihood by Barbering, prior to coming to Alaska.

B. I do not agree with the Attorney General ruling of 1976 (See P 49A - reply by Don Hall) A Diploma from a school only means that School hours have been completed, Many people fail the PRATICAL test at this point

C I personally have tried to get three people into the Barber school in Anchorage. they all qualified for the G.I Bill, but could not

use those Educational Benefits, because the school is not G.I accredited and the Instructer their informed me it was quote " to much hassle and paper work"

I feel this is important to get Alaskan people into school, Barbers from Outside dont have a history of staying long.

Rec. # 2

1. test Material.
   A Should not contain Essay type questions
   B Multiple Choice or True or False questions only

the Division of Legislative Audit is either uninformed or somewhat perverse, in their recommendation on upgrading of written Test Material (See also ETS Reply Page 46-47)

All Barber Science text books are almost Identical in their Content. having gone thru four different Books, I found One disagreement in one book as compared to the other three.

To comply with findings of ETS would mean writing a new

text Book.

I would suggest, the Board and the Instructor of the school make an attempt to comply with the provisions of C&S by emphasizing those chapters of the text books that are more pertinent, (Sanitation Diseases, etc) and so inform all prospective examinee, s

Rec. #3 The present school puts enough Barbers into the field, I would suggest a study be done to find out, how many of the Anchorage Barber school graduates, remain in the industry. And why many of the Rehabilitation students do not remain.

I would further suggest that any Instructor in any vocational school have Teacher Certification

Rec. #4 Four Barber Board members should be, ~~One each from~~ one from each of the four largest population Areas of the State, to be voted on by the Board of Barbers in that Area, One lay person from any of the four Areas

qualifications

A Board member should be a practicing Barber for a period of five years and resided in and practiced within the State for the immediate past three years.

Should not have any interest in any Barber school.

Lay person should be a resident for three years

Rec # 5. agreed.

the Board should upgrade the form for inspection of Barber Shops by Public Health

Public Health Inspections, do not protect the public from spread of disease, the Barber must have Sanitation knowledge to accomplish this.

Rec. # 6 agreed

Rec. # 7 Objections of the Barber Board should simply be to fulfill obligations that the State Statutes dictate

Rec. # 8

Agreed
Would only add that each Board member should have on file minutes of Board meetings, and make these available to Barbers upon request

Other Suggested Changes

Professional and Vocational Regulations
Chapter 08 Board of Barber Examiners

Article I

12 AAC 060

A. leave as is

B. Practical Exam

75% on Taper (or Regular Short Haircut) above ears

75% Shave

75% Shampoo

75% Hair Style (Longer Hair) longer than Top of Ear

Article II

operation of Shops and Schools

12 AAC 08 110 all Barber Shops should be licensed as to Location. A Shop license would be needed for any location where Barbering is engaged in.

12 AAC 140 Delete Completely

12 AAC 08. 210 Health Artificate

Health Artificate should be issued by Public Health and should not be on display. the license itself accomplishes this

~~12 AAC~~ Alaska Statutes

Article 5 General provisions

Sec. 08. 12. 380 Barbering Defined

1. Shaving or trimming Beard, or cutting Hair
2 Giving facial or scalp massage
3 ~~Applying~~ Applying oil treatments or any cream, lotion tonic or any preparation permanent type Chemical

Please forgive my longhand, and again thank you

Marie Kuber
225 N Apt #21
Wedgewood Rd.
Fairbanks Ak
99701

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

November 15, 1979

PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581/278-1582

Marse Kueber
#21 Wedgewood Manor
Fairbanks, AK 99701

Dear Mr. Kueber:

Thank you for your testimony regarding the Board of Barber Examiners, which you gave before the Senate Commerce Committee on October 22, 1979.

Due to mechanical problems with the recording system, we were unable to record your testimony for the Committee's records. This defect was not discovered until recently when transcription work was begun on this hearing. The system was operating and had been checked out prior to the hearing; however, it blanked out most of the Fairbanks testimony.

If possible, therefore, the Committee would appreciate it if you could submit either a copy of your testimony, if you were speaking from prepared text, or a summation of your views regarding this matter in order that your feelings might be made a part of the Committee's record.

We apologize for any inconvenience and we look forward to receiving your written testimony and/or exhibits concerning the Board of Barber Examiners. We would like to receive this testimony as soon as possible and should we be able to assist you, please do not hesitate to contact our offices.

Sincerely,

Christian Basler

Christian Basler
Administrative Assistant
Senate Commerce Committee

SB 215

February 28, 1979

The Honorable Brad Bradley
Alaska State Senator
Pouch "V"
Juneau, Alaska 99811

Dear Senator Bradley:

I am writing in response to your letter regarding abolishing the Board of Barber Examiners. There are several reasons I feel it is imperative to have a Board of Barber Examiners.

1. This Board helps maintain and improve the quality of the existing profession.

2. It insures adequate quality control of influx of barbers from out of state, making sure they have the necessary skills.

3. It protects the existing profession from unskilled, untrained barbers.

4. It helps keep inadequately trained persons out of the profession. Training is necessitated for disease recognition and control, sanitation and other indirectly related facets.

5. It protects the citizen from unskilled barbering practices. Barbering laws are set up to protect the consumer.

The high barbering standards taken for granted in this state are a direct result of action by the Barber Board. With the resources at hand, I am not aware of any state without an active Barber Board. Some states are reorganizing their Boards (Washington, Oregon, Idaho) to include hairstyling since their professions so closely overlap. In these states the Barber Board gives separate exams to barbers and hairstylists and sets regulations for each. Contacts that can be made in Washington State are Mr. Al Pehl and Mr. Leland, both of Spokane.

I wish to thank you for your interest and hope you will support action to help us continue to upgrade our profession. Many barber laws are obsolete and need to be revised, but abolishing the Board would be a grave mistake in my opinion.

Sincerely,

Elmo O. Kienbaum /lt

Elmo O. Kienbaum
Barber Board

Ketchikan
2206 Tongass Avenue
Ketchikan, Ak
99901

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

SUBJECT: Apprentice Programs for Barbers (W.O. 3179)

TO: Senator

FROM: Alexander Hoke, AH
Research Analyst

In response to your request for a summary of legislation in other states regarding apprentice programs for barbers, two research reports published by the National Association of Barber Schools, Inc., are attached to supplement our recommendations for legislative measures necessary to establish a quality apprentice program for barbers in this state. For the purposes of this analysis, the statutes of the following states, believed to constitute a representative sample of 50 states, were scrutinized for all details of barbering apprenticeship programs: Oregon, California, New York, Michigan, North Carolina, Connecticut, New Mexico and Ohio.

The two research reports assembled by the National Association of Barber Schools, Inc., were published in July, 1972. It is our belief that the critically relevent information (statistics of state barber laws) is essentially an accurate picture of the present law in a national perspective. All data, checked against present statutes, have been verified to have remained essentially unaltered since the 1972 compilation.

Two parenthetical remarks might be made concerning research report No. 6A, Barber School, Barber Students and Barber Statistics. First, only one school of barbering is in operation in Alaska (Anchorage, Alaska School of Barbering). A catalog of procedures and operations is enclosed. Second, it is a significant fact that Alaska has, by far, the highest ratio of population per barber - 1,087, while the mean ratio of the 50 states is 713 persons per barber.

From the research report No. 3A, State Barber Laws, you will quickly notice that only Alaska and Alabama have no apprentice law (in fact, Alabama has no state barber law whatsoever). Furthermore, reading from the column at the left, Alaska compares with the remainder of the United States in the following ways (by category):

(1) While Alaska requires 1,500 hours of study at an approved barber school or college prior to making application for practice as a barber, the mean number of hours required

in the other states is 1,438 hours.

(2) With 78% of the states (including Washington, D. C.) requiring some minimum education level for prospective barber students, the mean grade level of education requisite in the states is 9.5 years (or 9th grade level plus 1/2 years). Alaska has no education requirement.

(3) 89.8% of the states (including Alaska) require students in barbering colleges and schools to pass a satisfactory examination in order to receive a diploma.

(4) With 75% of the states collecting a fee for apprentice examination, the average of the fees collected is $16.71. Alaska has no apprentice law.

(5) With 86% of the states collecting a fee for apprentice licensing, the average of the fees collected is $7.28.

(6) Only Alaska and Alabama required no apprenticeship period; the average number of months required by the remaining states is 18.4.

(7) 88% of the states require that an apprentice pass a satisfactory examination after completing his/her apprenticeship practice. Alaska has no apprentice law.

(8) While only Alabama and Tennessee do not require an examination fee for the privilege of taking the barber examination, the average fee collected is $23.08. Alaska collects $25.

(9) Of the states which collect a renewal fee for barber certification (only Alabama collects no fee) the average renewal fee is $9.72 annually. Alaska collects $10 annually.

(10) With 84% of the states defining a specific time limit for the restoration of an expired barber license, the average restoration period is 3.03 years. Alaska restoration period is five years.

(11) The average restoration fee collected by the states is $16.29. Alaska collects $10 plus lapsed fees.

The remainder of the statistics apply to out-of-state applicants:

(12) To qualify for application to practice as a registered barber, 86% of the states do not require a period of residency in the state. Of those that do require a period

of residency, six months is the most common period. Alaska has no residency requirement.

(13) In 26 states, students from out-of-state barber shcools are eligible to take the apprentice examination; in 17 states these students are not eligible; in 7 states there is no exam.

(14) 31 states give credit for out-of-state apprentice experience; 18 do not give credit.

(15) 12 states (including Alaska) offer a temporary permit to out-of-state barbers who are waiting for the examination to be scheduled by the board; 38 states do not offer temporary permits.

In our view, legislation on both the barber school and the registration aspects of our state law would be required in order to construct an effective and comprehensive apprenticeship program. If you wish to pursue the initiation of an apprenticeship program, we would suggest focusing on the following areas:

I. Qualifications: students, apprentices, barbers
II. Credit for training in state correctional institutions
III. Out-of-State applicants
IV. License fees
V. Exemptions and General Provisions

It should be noted that some of these categories (exemptions for example) are not universally adopted by all the state statutes examined. Their inclusion is aimed at exploring all areas of thought relative to legislation of the barbering profession. Underlined numbers indicate quantitative values believed to be commensurate with the standards observed in other state statutes.

I. Qualifications: students, apprentices, barbers

A. In most states, qualifications applicable to students of barbering take the form of qualifications imposed on schools and colleges of barbering seeking state approval under the Barber Act. The statutes, of the states examined, require that approved colleges accept students with a minimum 10th grade education or an equivalent education as determined by the state board of barber examiners (hereinafter referred to as the board). Additionally, approved barber schools must require for graduation, a minimum of 1,500 hours of instruction to be completed within 18 months, at the rate of not more than eight hours in any one working day. A student may, however, complete a service in process, with time credit, but not

to exceed 30 additional consecutive minutes per day, with the total hours per week not to exceed 42-1/2 hours, including accumulated service in process completion time.

Many states define the fundamentals of a proper course of instruction for those schools and colleges seeking approval of the board. A copy of California's barber college instruction essentials is attached for your perusal.

B. The statutes of the states examined in this study defined a person qualified to receive a certificate of registration as a registered apprentice as one who:

1. Has a 10th grade education or the equivalent to be determined by the board.

2. Is at least 17-1/2 years of age.

3. Is of good moral character and temperate habits.

4. Is a graduate of a school or college of barbering approved by the state board of barber examiners.

5. Has passed a satisfactory examination conducted by the board to determine his fitness to practice as a registered apprentice.

6. Produces a certificate from a physician licensed by the state that he is free of contagious or infectious disease.

There exist many variations of procedures to be followed in the event that an applicant fails the examination of his fitness to be registered as an apprentice. The most common procedures permit the applicant to take a second examination within 90 days of his first examination. Upon a second failure, or lapse of the 90-day period, an additional 350 hours of study, at an approved school or college of barbering is required before the applicant is again eligible for examination. Again, time constraints are placed on the period of additional study. Usually, the additional 350 hours must be completed within three months with no more than eight hours in any working day, except for the above allowance for completion of service in process. The total hours of study per week is limited to 48 hours.

Further statutorial restrictions include a limitation of three years for the maximum length of time any person may practice as a registered apprentice. Moreover, no one shall work as an apprentice more than six months after completion of the working requirements of apprenticeship, without applying for and taking the examination for a certificate to practice as a registered barber.

C. In most states, a person is qualified to receive a certificate to practice as a registered barber if he:

1. Is qualified under the provisions for a registered apprentice.

2. Is at least 18 years of age.

3. Is of good moral character and temperate habits.

4. Has practiced as a registered apprentice for at least 18 months.

5. Has passed a satisfactory examination to determine his fitness to practice as a registered barber.

6. Produces a certificate of health from a physician licensed by the state that he is free of contagious or infectious disease.

An applicant who has failed the barber examination may, within 30 days of the expiration of his apprentice license, renew his license for 90 days and apply to take the next scheduled examination. A registered apprentice may apply for and take the examination of fitness to practice as a registered barber no more than three times.

II. Credit for Training in State Correctional Institutions

The statutes of all states studied grant credit for instruction received in state correctional institutions to applicants of certificates to practice as registered apprentices or registered barbers. A qualified applicant must have successfully completed a course of training which complies with the standards established for approved barber colleges or schools and:

A. He must meet the minimum age and grade school education requirements.

B. He must pass a satisfactory examination to determine his fitness to practice as an apprentice or barber (depending upon the certificate for which he is applying).

C. He must produce a certificate from a licensed physician that he is free of contagious and infectious disease.

D. He must have demonstrated good moral character and temperate habits subsequent to the granting of his parole or discharge from the correctional institution.

III. Out-of-State Applicants

A certification of an out-of-state applicant to practice as a registered apprentice in most states is granted if all qualifications for a registered apprentice have been met and either:

A. He produces a valid certificate of registration as an apprentice in another state or country which has substantially the same requirements for registration, or

B. He produces at least two affidavits that he has practiced as an apprentice in another state or country for at least six months within the preceeding two years.

Upon passing the examination, a certificate to practice as a registered apprentice is granted and the time spent as an apprentice in the other state or country is credited to his requirements to qualify for application to take the barber examination.

A person who practiced legally as a barber out-of-state may receive a license to practice as a barber in this state if he:

A. Has practiced as a registered apprentice or registered barber or both for at least five years and furnishes two affidavits in proof.

B. Is presently a qualified barber in the state or country in which experience is claimed.

C. Passes a satisfactory examination to determine his fitness to practice as a registered barber.

D. Meets the requirements for a registered barber in this state.

IV. Fees

License Fees:

Apprentice	$10.00
Barber	10.00

Renewal Fees:

Apprentice	$10.00
Barber	10.00

Restoration Fees:

Apprentice	$10.00 plus lapsed fees
Barber	10.00 plus lapsed fees

Examination Fees:

Apprentice	$20.00
Barber	25.00

V. Exemptions and General Provisions

A. In most states, the following general provisions apply:

Persons are explicitly forbidden to serve or attempt to serve as an apprentice to a registered barber without a certificate of registration as a registered apprentice issued by the board of barber examiners.

Moreover, no registered apprentice may practice barbering independently, but he may perform all the functions of barbering under the direct supervision of a registered barber, except that as much as 1.5 hours may be unsupervised in any working day.

In any barber shop, no more than one apprentice may be employed for each registered barber practicing in the shop.

No registered apprentice may practice barbering for more than three years on an apprentice license, except that extensions may be granted by the board for good cause, i.e., illness, accident, service in the Armed Forces of the United States.

Examinations for prospective barber students, apprentices and registered barbers shall be conducted at least four times each year and is to be scheduled and announced to applicants at least 30 days in advance. The examinations shall consist of practical demonstrations and written and oral tests which embrace the subjects usually taught in approved barber schools and colleges.

Renewals of certificates for every registered barber, registered barber teachers and registered apprentice who continues in active practice or service shall, annually, on or before July 1 of each year, renew his certificate of registration and pay the required fee. The board may vary the dates of registration renewal by giving the applicant written notice of the renewal date and by making prorated adjustments in the renewal fee. Every certificate of registration which has not been renewed within 30 days of expiration may be renewed by paying the required restoration fee.

Grounds for refusal, suspension or revocation of registration include:

1. Conviction of a felony.

2. Gross malpractice or incompetency.

3. Continual practice while knowingly carrying a communicable disease.

4. Advertising by deceptive statements.

5. Habitual drunkenness or addiction to the use of narcotics or other habit forming drugs.

6. Immoral or unprofessional conduct.

7. Where the applicant has received any part of his course of instruction in barbering at a state correctional institution, the requirements of 1, 5 and 6 (above) shall be determined solely upon the conduct of the applicant after the granting of his parole or discharge from the institution.

B. Exemptions in many states include the following persons while in the proper discharge of their professional duties:

1. Persons authorized by law to practice medicine and surgery in this state.

2. Commissioned medical and surgical officers of the United States Army, Navy or Public Health Service.

3. Registered Nurses.

4. Persons authorized by the law of this state to practice cosmetic therapy.

5. Undertakers, embalmers and morticians.

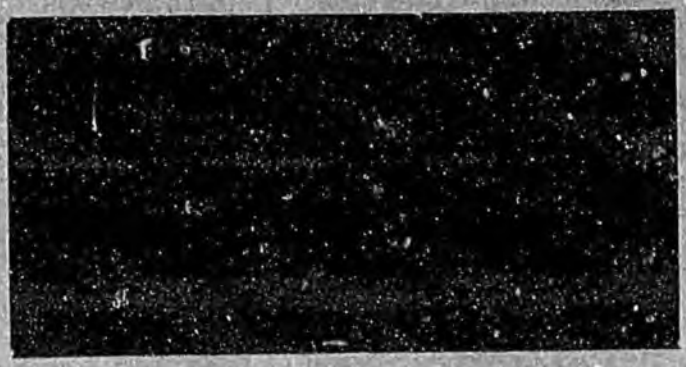
C. The provisions of this apprenticeship proposal would not be applicable to:

1. Persons engaged in the acts of barbering for a member of his immediate family.

2. Persons licensed as registered barbers in this state at the time this act becomes effective.

Senator Brad Hoody

STATE OF ALASKA



DIVISION OF LEGISLATIVE AUDIT

Juneau, Alaska

STATE OF ALASKA

A PERFORMANCE REVIEW OF THE BOARD OF BARBER EXAMINERS

March 31, 1979

A PERFORMANCE REVIEW
OF THE
BOARD OF BARBER EXAMINERS

March 31, 1979

Commissioner of the Department of Commerce and Economic Development	Charles R. Webber
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Board of Barber Examiners

Chairman	James Russi
Member	Don A. Noll
Member	Manuel Norat
Member	Elmo Kienbaum
Member	Maurice Smith

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

March 31, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
BOARD OF BARBER EXAMINERS

March 31, 1979

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271 (1) and 44.66.050 (sunset legislation), an audit of the Board of Barber Examiners was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Barber Examiners should be reestablished. The law currently specifies that this Board will terminate on June 30, 1980, but will continue until June 30, 1981, for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) interviews with Board members and questionnaires sent to the Board;

(3) interviews with health agencies and professional associations;

(4) tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) interviews with OL employees;

(6) complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency, and the Equal Employment Opportunity Office;

(7) questionnaires sent to 119 State licensed barbers; and

(8) questionnaires sent to 28 applicants who have failed the Barber Examination, 1976 - 1978.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information required by AS 37.07.090.

(2) OL has not adequately collected, recorded and maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

The Board of Barber Examiners was established by the 1957 Session Laws of Alaska. The Board consists of five licensed barbers appointed by the Governor. Board members serve until they resign or are removed by the Governor.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). OL provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquiries and provides other administrative help to the Board.

The function of the Board is primarily regulatory, mandated by AS 08.12. Accordingly, the Board has the authority to examine and issue licenses to qualified applicants, establish or amend rules and regulations necessary and desirable to enforce statutes, and to hold hearings to suspend or deny the license of a person violating the barber statutes and regulations.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these issues, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusion

The primary purpose of a board is to protect the public through regulation of licensure.

Licensure is necessary when:

1. The unlicensed practice of an occupation poses a serious risk to consumers' life, health and safety, or economic well-being;

2. potential users of the occupational service cannot be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services; and

3. benefits to the public clearly outweigh any potential harmful effects such as a decrease in availability of practitioners, higher costs of goods and services.

In order to find out whether or not the regulation of the practice of barbering satisfies these criteria, we reviewed the Board's activity in the areas of licensing, examination, inspection, administration and complaints. Our conclusions as to the Board's effectiveness follow:

1. Licensing: The Board does not grant licensure by endorsement or reciprocal agreement. Thus applicants who are otherwise qualified must wait to take the Alaska Board examination before they can obtain a license.

2. Examination: The examinations developed by the Board contain questions which are not job related and contain questions, the answers to which are subject to interpretation. The Board has not established sufficient procedures or consistently applied existing procedures for administration of

examinations. We found that most Board related complaints were concerning either the examination or the methods the Board used to administer the examination.

3. Inspection: The Board does not perform inspections. The Department of Health and Social Services is authorized under AS 18.05.040(9) to perform health and sanitation inspections. Therefore, it would be a duplication of effort for the Board to conduct similar inspections. There is no record that the Board ever conducted a compliance inspection of Alaska's only Barber School in accordance with 12 AAC 08.310.

4. Administration and Board Proceedings: The Board has not developed and reported program plans and performance information required by AS 37.07; the Board has no public members, and statutes, rules and regulations need to be reviewed and updated.

5. Complaints: Of 24 complaints reviewed, two were consumer related and minor in nature. The majority of complaints were made by applicants against the Board.

The practice of barbering does not meet the regulatory criteria described above. The Board of Barber Examiners should be allowed to terminate on June 30, 1980.

However, if the Board is not terminated and/or licensing of barbers is continued, then the following recommendations should be considered.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Barber Examiners should revise regulations to encourage entry of all qualified individuals as barbers.

The Board currently allows applicants to be licensed by examination only and allows applicants to practice in the interim in accordance with Sec. 08.12.160 of the Alaska Statutes which states:

> Sec. 08.12.160. Temporary permit. Any person entering the state or transferring from a practice exempt under the provisions of § 270 of this chapter, and who desires to engage in barbering who has (1) a diploma from a barber college accredited by the board or (2) a bona fide license issued by another territory or state, shall be issued a temporary permit, valid until the next examination given by the board. (§ 6 art III ch 68 SLA 1957)

Consequently, applicants who are otherwise qualified would be denied licensure as they have not passed the Alaska Board examination; for example:

> An applicant who has been licensed and practiced as a barber in another state for a period of years would be required to take the Alaska Board examination.

The effect of granting licensure by examination only unnecessarily restricts entry of qualified individuals into the profession.

In addition, applicants who have not demonstrated that they have met the minimum qualifications are allowed to practice in the interim; for example:

> Applicants who seek licensure as a result of receiving a diploma from an accredited barber college are allowed to practice in the interim without first being tested for minimum competency. Consequently, there is a potential for unqualified applicants being allowed to serve the public.

The Board should revise regulations:

To allow licensure by endorsement and reciprocal agreement, whereby, an applicant can demonstrate that:

A. His work has been accepted by the public through a history of work experience; and

B. the requirements of the state in which the barber was previously licensed are generally in accordance with those requirements established by the Board.

Recommendation No. 2

The Board of Barber Examiners should improve procedures for: 1) Selection of test material to be included in the Barber written and practical examination; and 2) administration of the Barber written and practical examination.

Test Material

We requested through the Division of Occupational Licensing that copies of recent exams and answers given by the Board be sent to the Educational Testing Service (ETS) for evaluation. The results of the evaluation are included as Appendix G. We are in basic agreement with ETS and would encourage the Board to update the examination material accordingly.

The Board currently administers a State constructed examination.

Administration of the Examination

There have been a number of complaints concerning the methods the Board uses to administer the examinations. Most of the complaints result from inconsistent application or the absence of formal Board procedures in dealing with individual applicants. The following are areas where the Board could improve to reduce the number of complaints in the future:

1. Grading criteria should be clarified and given to applicants before the examination. For example, applicants should know if more weight is given to certain test areas.

2. Time limits for the examinations should be announced before the examination and should be adhered to.

3. Applicants should be informed that the barber regulations specifically authorized two barber textbooks for their use.

4. The Board should have a limited number of tools to lend applicants who have forgotten some of their tools. We realize that this may be contrary to the regulation that requires each applicant to furnish his own tools. Tools have been lent in the past and if it is Board policy to lend tools, then it should be done so consistently and understood by all applicants.

5. Admittance to the examination should be limited to those who are required to be there.

Recommendation No. 3

The Board of Barber Examiners should introduce legislation to amend AS 08.12.210 to encourage entry of barber schools to help provide an adequate supply of qualified barbers to serve the public.

Alaska Statute Section 08.12.210 states:

> Sec. 08.12.210. License required. No person may operate a barber school or college, or teach in a barber school or college, without a barber teacher license issued by the board. (§ 2 art V ch 68 SLA 1957; am § 8 ch 168 SLA 1960)

According to a Board member and the personnel at the Division of Occupational Licensing, the term "to operate" includes ownership and/or management of a barber school.

Ownership and/or management of a barber school does not require that the owner and/or manager is required to teach. The requirement to be licensed as a barber teacher should apply only to those who are to instruct students.

AS 08.12.210 limits entry of those who are otherwise qualified to operate a barber school.

Increasing the number of barber schools in Alaska should be encouraged to increase the source of qualified barbers to serve the public.

Recommendation No. 4

The Board of Barber Examiners should submit legislation to: 1) Establish a term and to limit the length of service for Board members to two consecutive terms; and 2) require public members on the Board of Barber Examiners.

Alaska Statute Section 08.12.010-020 concerning creation, membership, and qualifications of Board members states:

> Sec. 08.12.010. Creation and membership of board. There is created the Board of Barber Examiners, referred to in this chapter as the board, composed of five members appointed by the governor. Four members of the board shall be from separate major senatorial districts. The fifth member shall be appointed from the district having the largest number of practicing licensed barbers. The members serve at the pleasure of the governor. (sec 1 art II ch 68 SLA 1957; am sec 1 ch 168 SLA 1960)
>
> Sec. 08.12.020. Qualifications of board members. Each member of the board shall be a practicing barber who has engaged in barbering in the state for at least five years prior to his appointment. Engaging in the practicing of barbering within a military reservation is not qualifying experience. (sec 2 art II ch 68 SLA 1957)

Currently AS 08.12.010 which creates the Board does not define the term and the number of terms a Board member may serve.

Limiting appointments to two consecutive terms would, over the years, permit a broader spectrum of professional background combined with increased opportunities for new members and ideas. This should make the Board more responsive to public needs and less subject to criticism.

AS 08.12.020 which establishes qualifications for the Board requires all five members of the Board to be representatives of the regulated profession.

The public, which is the group that the barber licensure laws were to protect, does not have representation on the Board.

In recent years, criticism of regulatory boards that only have representatives of the regulated profession as board members has increased. The public has lost confidence in these boards because they feel the profession's interest may be placed before that of the public's.

The Board should submit legislation to:

1. Establish a term and to limit the length of service for Board members to two consecutive terms.

2. Require public members on the Board.

Recommendation No. 5

The Board of Barber Examiners should introduce legislation to repeal Board inspection regulations to reduce duplication of effort.

The Board does not conduct health and sanitation inspections as authorized by Section 08.12.030(2) and (4) which states:

> Sec. 08.12.030. General powers of board. The board may
>
> (2) adopt rules and regulations for the conduct of the practice of barbering in accordance with reasonable standards of sanitation which do not derogate from the ultimate control over health and sanitary conditions for all licensees under this chapter which is in the Department of Health and Social Services;
>
> (4) conduct inspections of barber shops to insure that standards of sanitation are being maintained, except that the board may not conduct a second inspection of the same shop within 90 days after the first inspection;

Health and sanitation inspections are performed by the Alaska Department of Health and Social Services which has ultimate control over health and sanitary conditions for barbers in accordance with AS 18.05.040(9).

Health and sanitation inspections are performed to protect the public from contagious diseases.

Regulations for the Board to make inspections are unnecessary and if carried out would be a duplication of effort.

Regulations authorizing the Board to make inspections should be repealed.

Recommendation No. 6

The Board of Barber Examiners should introduce legislation deleting "good moral character" as a requirement for licensure.

The Barber Law currently requires evidence of "good moral character" for licensure. AS 08.12.070(1) and AS 08.12.220(1) state:

> Sec. 08.12.070. Application. A person wishing to practice barbering shall apply to the board by submitting
>
> (1) evidence of his good moral character;

Sec. 08.12.220. Application. A person wishing to operate a barber school or college or teach in a barber school or college shall apply for examination and licensing to the board and submit

(1) evidence of his good moral character satisfactory to the board;

The Board has not defined the requirement "good moral character". Without definition this requirement cannot be interpreted and enforced in a consistent manner.

The Board should either define what "good moral character" is or introduce legislation to delete it as a requirement for licensure.

Recommendation No. 7

The Board of Barber Examiners should establish formal goals, objectives and quantifiable measures which should be included in the Division of Occupational Licensing's budget document.

The Board does not have a statement of goals and objectives.

Objectives describe what an agency or board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

The Division of Occupational Licensing established its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured, neither the Governor's Office nor the Legislature can evaluate the Board's performance (see the Division of Occupational Licensing Performance Audit Report).

Recommendation No. 8

The Board of Barber Examiners should improve formal Board minutes.

Board minutes are not complete and in enough detail to recreate what happened at the Board meetings.

Board minutes are the official public record of all proceedings of a board meeting and the only means a board has to formally state its actions. Therefore, it is essential that all minutes be detailed, accurate, and complete.

To improve the quality of all Board minutes, we recommend that the Board establish procedures that include the following requirements.

1. All Board proceedings, except for executive sessions, should be tape recorded to allow for a more accurate and detailed transcription;

2. tapes should be retained for a reasonable period of time following transcription;

3. minutes should include Board member attendance, absence and public attendance;

4. minutes should reflect more detail of discussions during the meeting and identification of the person speaking;

5. minutes should include an accurate quote of all motions and resolutions whether carried or not and an accurate breakdown of the membership's voting;

6. attachments to Board minutes should include any documents adopted, lists of applicants approved and denied for licensure or examination; and

7. minutes should be properly approved, signed and ratified in a timely manner.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative attainments as Board activities relate to the public need factors defined in the "Sunset" law. These analyses are not intended to be comprehensive in nature, but address those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. The Board provides a State constructed examination twice a year in Anchorage.

2. The Board holds at least two meetings a year in Anchorage.

3. The Board is reviewing regulations written by the Attorney General's Office for adoption.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. The Division of Occupational Licensing (OL) has not maintained updated records and statistics for Board use (see the OL Performance Audit Report).

2. The OL investigative section has not provided adequate investigative support necessary for the enforcement of the law (see the OL Performance Audit Report).

3. Appointments to the Board have not been made in a timely manner. The Board had been operating for more than nine months with only four members.

4. Statutory requirements for operating a barber school are unnecessarily restrictive by requiring a barber teacher license.

5. The Board does not have a statement of goals and objectives.

6. The Board issues temporary permits in an inconsistent manner.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

We found no evidence to indicate that the Board has recommended statutory changes.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. No documentation was available to us to determine the extent of the Board's solicitation of interested party input to its regulatory effects.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

As required by statute, the Board has published notices of its meetings in Anchorage, Fairbanks, Juneau and Ketchikan. However, such notices have not been published in a consistent and timely manner.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board, or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. The OL investigative section has not provided adequate investigative support necessary for the enforcement of the law (see the OL Performance Audit Report).

2. Six complaints were filed with the Office of the Ombudsman. One complaint has been closed. Three complaints are going into hearing, and two complaints are being investigated.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. The Board has issued 15 temporary permits and 62 barber licenses in the last 3 years.

2. There are 14 complaints against the Board on file with OL for denial of licensure.

3. All barber examinations are given in Anchorage. This places an unnecessary hardship on barber applicants from other areas of the State.

4. The Board has initiated regulations in the following areas:

   a. A barber must be a resident of the State to become licensed.

   b. At this time an applicant does not need to go to school for licensure. However, proposed new regulations require 1,500 hours of school for licensure.

   c. At examinations, Board members shall not communicate with applicants except to the extent necessary to implement the examination itself.

   d. No Board member may pass upon an applicant for licensure if there is a conflict of interest.

5. The Board has the statutory authority to grant reciprocity, but has not established any reciprocal agreements with other states (see Recommendation No. 1).

VIII. <u>The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.</u>

We did not note any discriminatory practices performed by the Board. One complaint filed with the Human Rights Commission concerning discrimination due to sex was found to be unsupported. However, barber license applications require unnecessary information such as date and location of birth, social security number, and a photograph of the applicant. These application requirements - if not justifiable by the Board - may be in violation of Equal Employment Opportunity requirements (see the OL Performance Audit Report).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations for detail on recommended changes to enable the Board to better serve the public interest.

APPENDIXES

APPENDIX A

BOARD OF BARBER EXAMINERS
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Average Revenue (see Note 1 and Schedule 1)	$ 4,686
Expenditures (see Note 2)	11,243
Excess of Expenditures over Average Revenues	$(6,557)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Examination Fees		
Barber	$ 25	With Application
Barber Teacher	75	With Application
Temporary Permit (see Note 3)	25	With Application
Annual Licensure Fees		
Barber	10	Biennial
Barber Teacher	50	Biennial
Barber School	150	Biennial

Note 1

A significant portion of revenues are composed of license renewal fees. The renewal date is June 30 of the odd numbered year which causes revenues to be unequal from year to year. Therefore, we took an average of the revenues collected in Fiscal Year 1977 and 1978 in order to obtain a representative amount of collected revenues.

Note 2

Expenditures include those made by Board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board and OL.

Note 3

The temporary permit fee is used as a credit toward the $25 fee for the barber examination

APPENDIX B

EXAMINATION STATISTICS

Examination Date	Administered (Note 1)	Failed (Note 1)	Passed (Note 1)	Percentage Pass Rate
April, 1976	17	4	13	76.5
October, 1976	8	2	6	75.0
April, 1977	18	3	15	83.3
October, 1977	15	5	10	66.7
April, 1978	15	8	7	46.7
October, 1978	15	7	8	53.3
Total	88	29	59	67.0
Pass rate for 3 year period				67.0%

Note 1

Statistics from Division of Occupational Licensing.

APPENDIX C

ADMINISTRATIVE STATISTICS

Barber Licensing Statistics (Note 1)	1978	1977	1976
Applied for Licensure	61	63	60
Temporary Permits Issued	17	7	16
Barber Licenses Issued	15	23	24
Barber Renewals (Note 2)	209	25	241

Board Meetings

The Board of Barber Examiners held three meetings in 1976, two meetings in 1977 and three meetings in 1978 through October 16, 1978.

Note 1

Barber licensing statistics from Division of Occupational Licensing.

Note 2

Division of Occupational Licensing started to renew licenses biennially in 1968.

APPENDIX D

QUESTIONNAIRE FOR MEMBERS OF THE BOARD OF BARBER EXAMINERS

1. What do you believe to be the goals and objectives of the Board of Barber Examiners?

Upgrade barber laws.

Develop a hairstylist examination.

Develop methods of inspection for shops.

Upgrade sanitation laws in barbering.

Develop an apprenticeship law of 1-2 years.

To revise, update and upgrade barbering in our State.

2. Should the number of years a Board member may serve on the Board be limited? If so, how many?

No. The more experience a member has the better job he/she does.

Depending on individual performance of each and every Board member.

3. How does the Board measure its progress in meeting its goals and objectives?

By going over progress and problems at each Board meeting and discussing how well current examinees are developing whenever possible.

4. Is the staff from the Department of Commerce and/or other departments adequate to perform and enforce all laws and regulations relating to the Board of Barber Examiners? What staff support services are provided adequately? Inadequately?

They need to be checking outlying areas for health certificates and licenses since Board members cannot do this.

It is helpful having your representative at each Board meeting as you currently do to take minutes, etc.

At most, yes. Depending on the interest of the office holder at the time.

5. Are the barber procedures used in the practical examination pertinent and relevant to the barber profession being regulated? Are the questions on the written examination pertinent and relevant? Please mention any studies and/or other support backing your opinion.

I feel both examinations are adequate. The barbers who pass the examination are helping build the profession.

Yes, except excessive anatomy and physiology.

6. What evidence exists demonstrating that the absence of barber regulations and/or the Board would be detrimental to the public's best interest?

Without a Board there would be no professional standards. Skin diseases, etc. would be spread. It would set barbering back hundreds of years. We need to continually upgrade barbering as a profession and establish higher standards.

Shops in the State at present. Board needs more authority in supervision of shops, sanitation and sterilization.

7. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restrictive, and/or inadequate to provide the Board with the responsibility and power to properly govern the purpose and activities of the Board? Please list and explain.

I believe the Board should be allowed to inspect all barber shops to see that they use proper sanitation, that they are clean and do not use excessive alcohol and/or drugs while working.

They should be revised.

8. What changes could be made to the Board which would improve its service to the public?

Update obsolete barber laws. Give the Board the responsibility of checking to see that barbers in our respective areas have current licenses, current health certificates and proper sanitation.

The Board at present is too easily incriminated by anyone's feelings, like causing trouble over any emotion they may have can and without profit. One should have to prove cause by evidence proving their statements beyond reasonable doubt before any other action is taken.

9. What is the difference between a hairdresser and a barber.

A hairdresser has advanced training in styling, hair straightening, coloring, etc.

Methods and atmosphere in establishments.

10. Any additional comments.

Need for more and closer supervision in shops. More emphasis on sanitation and sterilization and less on anatomy. Also more participation of Board members for inspection of licenses.

The Board of Barber Examiners for the State of Alaska requires 1,500 hours in a barber school before taking the examination. The beauticians have their own examination.

Neither should be able to cross into the other's field without the basic schooling such as beauticians taking the Barber Board with only the requirements filled for beauty school or vice versa.

These two boards are definitely different in application and technique and should be kept so.

Note 1

Number of Board members sent questionnaires	4
Number of responses	2
Percent responses	50%

Note 2

Some Board members responded to each question with several answers. Therefore, total responses for each question may exceed the number of Board members who responded.

APPENDIX E

QUESTIONNAIRE SENT TO BARBERS
(See Notes 1 and 2)

		Yes	No
1.	Do you feel that it should be necessary for the following to be licensed by the State:		
	A. Barber?	*41*	*0*
	B. Barber Teacher?	*39*	*2*
	C. Barber School?	*40*	*2*
2.	Do you believe Alaska's requirements for permanent licensure as a barber are beneficial for the:		
	A. Profession?	*33*	*2*
	B. Public interest?	*34*	*3*
3.	Do you feel that temporary permits are in the best interests of the public?	*25*	*16*

Comments	*Times Encountered*
1. Applicants should be allowed to have a temporary permit more than once.	*1*
2. The Board should not issue temporary permits.	*1*
3. The Board should only be used in schools.	*1*
4. Applicants should have a current license for temporary permits.	*1*
5. There are too many bad barbers in Alaska.	*1*

4. What contact have you had with the Board of Barber Examiners?

Comments	Times Encountered
1. None (by mail, very little, etc.).	6
2. Examination.	21
3. Know or worked for Board member.	7
4. Board member.	2
5. Meetings.	2

	Yes	No
5. Do you believe the Board has operated in the public's best interest?	34	6

Comments	Times Encountered
1. The Board restricts competition	1
2. Depends on how bad they need barbers.	1

	Yes	No
6. Would the absence of the Board be detrimental to the public's best interest?	36	4

Comments	Times Encountered
1. The Board plays a vital role.	1
2. The Board needs to tighten regulations.	1

	Yes	No
7. Are there any statutes or regulations for the Board that you consider to be obsolete, vague, unduly restricitve?	6	27

Comments	Times Encountered
1. The Board is not fair.	1
2. Give more pay and authority to the Board.	1

7. *Comments (Cont'd.)*

		Times Encountered
3.	*The Board should make inspections.*	*1*
4.	*Upgrade to modern times.*	*1*
5.	*No blood test is needed for licensure.*	*1*
6.	*Board appointments.*	*1*
7.	*Apprentice program is needed.*	*1*
8.	*Shaving is an important part of the examination.*	*1*

	Yes	No
8. Do you believe that the examination given by the Board is a fair and reasonable test of a barber's professional knowledge and ability?	*38*	*4*

Comments

		Times Encountered
1.	*Needs upgrading.*	*1*
2.	*Parts untested.*	*3*
3.	*Board not qualified.*	*1*
4.	*If Board members are fair.*	*2*
5.	*Picks men from boys.*	*1*
6.	*Not relevant.*	*3*
7.	*Examination is fair.*	*2*
8.	*Examination is not fair.*	*1*

9. Do you think the Board of Barber Examiners should be made up of:

		Number	*Percentage*
A.	A majority of barbers?	*35*	*83.3*
B.	An equal number of barbers and public members?	*6*	*14.3*

9. (Cont'd.)

	Number	Percentage
C. A majority of public members?	1	2.4

Please circle one.

Comments	*Times Encountered*
1. *Board discriminates.*	1
2. *Barbers are needed to test barbers.*	1

	Yes	No
10. Are you aware of any discriminatory practices involving licensing or investigations of the Board?	7	32

Comments	*Times Encountered*
1. *Conflict of interest.*	1
2. *Temporary permits.*	1
3. *Board discriminates.*	2
4. *Difficult test is in the public's interest.*	1

	Yes	No
11. Do you believe that consumer complaints should be handled by the Board of Barber Examiners?	30	10

Comments	*Times Encountered*
1. *Barber is own worst enemy.*	1
2. *Bad barbers will starve out.*	2
3. *Board should get more money.*	3
4. *Barber should handle complaints.*	4
5. *By investigation unit at OL.*	2
6. *Use Consumer Protection.*	2

	Yes	No
12. Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce and Economic Development?	4	36

Comments	*Times Encountered*
1. *Good job.*	3
2. *Quick, organized service.*	1
3. *Should be controlled by Board.*	1
4. *Issued license before approved.*	1
5. *Staff needs better understanding of laws and regulations.*	1

	Yes	No
13. Do you believe continuing education should be required for your profession?	24	18

Comments	*Times Encountered*
1. *For new styles and techniques.*	7
2. *On barbers own.*	8
3. *Mandatory.*	8
4. *Not necessary.*	3
5. *Patron will weed out.*	2

	Yes	No
14. Would you favor combining the Board of Barbers with the Board of Hairdressing and Beauty Culture Examiners?	8	32

Comments	Times Encountered
1. Barber and hairstyling, but not hairdressing.	1
2. Barbers work on men.	1
3. Done in Oregon, not good.	1
4. Separate professions.	11
5. At a later date.	2
6. Same thing.	6
7. Need to be examined.	1

	Yes	No
15. Do you hold a current Alaska license?	42	0

	Yes	No
16. Do you recommend any changes to the Board to improve services to the public?, the profession?	19	20

Comments	Times Encountered
1. Board could work on legislation.	2
2. Make them full-time.	1
3. More education.	1
4. Apprentice program.	2
5. Board elected by barbers.	2
6. Inspect shops.	1
7. No professional on Board.	1
8. Too much politics.	1
9. Relax equipment standards.	1

	Yes	No
17. Should the number of years a Board member may serve on the Board be limited? If so, how many?	27	15

Comments	Times Encountered
1. *Three year limit.*	4
2. *Stagger expirations.*	1
3. *Five year limit.*	1
4. *Two year limit.*	6
5. *Six year limit.*	1
6. *Four year limit.*	12
7. *One term.*	2
8. *Two terms.*	1
9. *No limit.*	1

18. Any other comments? (This is your chance to air your gripes or compliments!)

Comments	Times Encountered
1. *Shops should be inspected by Board.*	1
2. *Too many X-rays for health cards.*	1
3. *Platitudes for the Board.*	3
4. *Fairbanks out of touch.*	1
5. *No apprentice law.*	1
6. *Board not up to public expectations.*	1
7. *Examinations should be given every 3 months.*	1
8. *Fines and jail for violators.*	1
9. *No temporary permits after failing the examination.*	1

18. Cont'd

Comments	*Times Encountered*
10. Conflict of interest.	*1*
11. Residency before licensure.	*1*
12. Board is pro union.	*1*
13. Don't issue temporary permits.	*1*
14. Board membership on merit.	*1*
15. Alaskans should take care of Alaskans.	*1*

Note 1

Number of questionnaires sent	119
Number of responses	42
Percent response	35.3%

Note 2

Some barbers responded to each question with several answers. Therefore, total responses for each question may exceed the number of barbers who responded.

APPENDIX F

QUESTIONNAIRE SENT TO APPLICANTS WHO FAILED THE BARBER EXAMINATION, 1976-1978
(See Notes 1 and 2)

		Yes	No
1.	Do you feel that it should be necessary for the following to be licensed by the State:		
	A. Barber?	9	0
	B. Barber Teacher?	9	0
	C. Barber School?	9	0
2.	Do you believe Alaska's requirements for permanent licensure as a barber are beneficial for the:		
	A. Profession?	7	1
	B. Public interest?	5	3

Comments	*Times Encountered*
1. Requirements must meet professional standards.	*1*
2. The basic idea in relation to the public is sanitation requirements.	*1*

		Yes	No
3.	Do you feel that temporary permits are in the best interests of the public?	7	2

Comments	*Times Encountered*
1. Also the applicant for barber license.	*1*
2. Only if requirements are met.	*1*
3. Permits should be issued by non-board members.	*1*

4. What contact have you had with the Board of Barber Examiners?

Comments	*Times Encountered*
1. Examination.	*7*
2. Met Board or Board members.	*1*
3. For temporary permits.	*4*
4. Complaint.	*1*
5. Work for Board member.	*2*
6. Licensure.	*1*
7. None.	*1*

	Yes	No
5. Do you believe the Board has operated in the public's best interest?	*2*	*6*

Comments	*Times Encountered*
1. The Board is not involved with the shops.	*1*
2. Sanitation should be main concern.	*1*
3. Board only tests applicants.	*1*

	Yes	No
6. Would the absence of the Board be detrimental to the public's best interest?	*7*	*3*

Comments	*Times Encountered*
1. Board must be interested in individual members of the profession.	*1*
2. Board must not be merely interested in self-interest.	*1*

	Yes	No
7. Are there any statutes or regulations for the Board that you consider to be obsolete, vague, unduly restrictive?	5	2

Comments	*Times Encountered*
1. Practical exam is purely personal opinion, no guidelines on test and grading.	*2*
2. Laws vague.	*2*
3. Instructors should not be allowed to judge.	*1*
4. Out-of-State barbers must retest.	*1*
5. Practical exam out-of-date.	*2*
6. Written exam unbelievable.	*1*

	Yes	No
8. Do you believe that the examination given by the Board is a fair and reasonable test of a barber's professional knowledge and ability?	2	7

Comments	*Times Encountered*
1. Written exam given to out-of-State applicants at different time than residents.	*1*
2. Alaska exam has many unimportant questions.	*2*
3. Obtain from tape.	*1*
4. Practical exam material out-of-date.	*2*
5. Board members use up exam time.	*2*
6. Board grades without actual knowledge.	*1*
7. Board gives special treatment to some applicants.	*1*

8. Cont'd

Comments		*Times Encountered*
8.	*Some parts of the exam are vague, giving the Board the opportunity to discriminate.*	*1*
9.	*For what they teach in school, the Board is fair.*	*1*
10.	*Exam should be true-false and multiple choice, not essay.*	*1*

9. Do you think the Board of Barber Examiners should be made up of:

		Number
A.	A majority of barbers?	*4*
B.	An equal number of barbers and public members?	*4*
C.	A majority of public members?	*0*

Please circle one.

	Yes	No
10. Are you aware of any discriminatory practices involving licensing or investigations of the Board?	*6*	*1*

Comments		*Times Encountered*
1.	*Board regulates competition.*	*1*
2.	*Board not interested in professional achievements.*	*1*
3.	*Yes.*	*1*
4.	*Out-of-State applicants checked more closely and harshly.*	*2*
5.	*See conversation.*	*1*

	Yes	No
11. Do you believe that consumer complaints should be handled by the Board of Barber Examiners.	1	8

Comments	Times Encountered
1. Board gets uptight over complaints.	1
2. Professional investigator should handle complaints.	2
3. Conflict of interest (members are shopowners).	2
4. This gives the Board power to be discriminatory.	2
5. No help from OL.	1
6. Should only complain about professional conduct or if someone was hurt.	1
7. Shop owners should handle complaints.	1

	Yes	No
12. Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce and Economic Development?	2	6

Comments	Times Encountered
1. Information not reliable.	1
2. Some students given exam questions.	1
3. Didn't do anything.	1
4. Most helpful.	1

	Yes	No
13. Do you believe continuing education should be required for your profession?	7	2

Comments	Times Encountered
1. *Allows person to improve oneself.*	2
2. *Without continuing education barbering would not exist as a profession.*	1
3. *Standardize profession in relation to exam.*	2
4. *Only if more than basic barbering.*	2
5. *Optional.*	2
6. *Training before licensure.*	1
7. *Minimum education (12th Grade).*	1

	Yes	No
14. Would you favor combining the Board of Barbers with the Board of Hairdressing and Beauty Culture Examiners?	1	8

Comments	Times Encountered
1. *Look at Oregon.*	1
2. *Fine for beautician but not barber.*	1
3. *If they teach both in school they should be able to work at both.*	1
4. *Two different professions.*	5
5. *Ok for Board members but not for licensees.*	1
6. *Why learn some profession you don't plan on using.*	2
7. *Only if barbers upgrade to level of hairdresser.*	1
8. *Barbers losing out to better organized beauticians.*	1

		Yes	No
15.	Do you hold a current Alaska license?	2	7
16.	Do you recommend any changes to the Board to improve services to the public? The profession?	7	1

Comments	*Times Encountered*
1. Board members must show competency.	*1*
2. Board needs better relationship with licensees.	*1*
3. Conflict of interest.	*1*
4. Change Board members.	*1*
5. Update laws.	*1*

		Yes	No
17.	Should the number of years a Board member may serve on the board be limited? If so, how many?	8	2

18. What do you believe to be the reason or reasons you failed the Barber Examination?

Comments	*Times Encountered*
1. You get more for your school money Outside.	*1*
2. Refer to my transcript at OL.	*2*
3. What text will exam material be from?	*2*
4. Did not study.	*1*
5. Listen to tape.	*1*
6. Hard to find model who wears that out dated style.	*1*
7. Instructor present.	*1*
8. Special consideration for some.	*1*

18. Cont'd

Comments		Times Encountered
9.	*Student who works on base - fails.*	1
10.	*Discriminated because she is hairdresser.*	1
11.	*Told she would never pass.*	1
12.	*Six hairdressers took exam, and failed.*	1
13.	*Go to work for a Board member and pass.*	1

19. Any other comments? (This is your chance to air your gripes or compliments!)

Comments		Times Encountered
1.	*Public needs better service.*	1
2.	*Need Board and test.*	1
3.	*Why retest out-of-State barbers?*	1
4.	*Test time puts on pressure.*	1
5.	*Board takes too long to check work.*	1
6.	*Listen to tape.*	1
7.	*Inspect all shops.*	1
8.	*Send me the book from which they will ask questions.*	1
9.	*Feel free to contact again if you have more questions.*	1
10.	*Attorney General should just interpret laws.*	1

Note 1

Number of Questionnaires sent	28
Number of Responses	9
Percent Response	32.1%

Note 2

Some applicants responded to each question with several answers. Therefore, total responses for each question may exceed the number of applicants who responded.

APPENDIX G

EDUCATIONAL TESTING SERVICE PRINCETON, N.J. 08541

(609) 921-9000
CABLE: EDUCTESTSVC

CENTER FOR OCCUPATIONAL
AND PROFESSIONAL ASSESSMENT

January 29, 1979

Mr. Don Hostak
State of Alaska
Department of Commerce &
Economic Development
Division of Occupational Licensing
Pouch D
Juneau, AK 99811

Dear Mr. Hostak:

A test development specialist and I have quickly reviewed the written tests you sent last week. We are of the opinion that they are similar in content, style and quality to other state barbering tests which we have reviewed in detail and found to be neither job related or developed using currently acceptable measurement techniques.

While we will not make comments about specific test questions, we generally do not agree with some of the answers provided for many of the questions. Our work in the barbering field indicates that only those items dealing with the health, safety and protection of the public are important from a licensing and testing standpoint. Memorization of medical terminology or even a casual acquaintance with details of the nervous, skeletal, digestive or muscular systems do not meet the licensing criteria.

We do not encourage the use of open-ended questions on licensing examinations. Open-ended questions allow a great variety of responses, many of which could have several meanings. As a result, this type of question is difficult to grade. We recommend multiple-choice type questions which require only one answer that is not subject to interpretation by the person grading the test.

We note that the board requires a minimum of 75 out of 100 questions answered correctly for licensure and it is impossible to determine the validity of this cutscore in the absence of supporting data.

Our review indicates that an extensive effort by subject-matter experts, licensing officials and measurement specialists should be considered. Job analysis is needed to identify critical/important tasks of barbers and tests should be built to reflect the findings of the job analysis.

Thank you for thinking of ETS for your measurement needs. I am enclosing several publications which you may find useful. If I can provide further assistance please do not hesitate to call.

Sincerely,

C. J. Teryck
Program Director

enclosures

cc: Victor May

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

July 30, 1979

RECEIVED
AUG 1 1979
LEGISLATIVE AUDIT

Mr. Gerald Wilkerson, CPA
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Board of Barber Examiners, as submitted by the Division of Legislative Audit.

The Department of Commerce and Economic Development concurs with the Division of Legislative Audit's suggestion that the Board of Barber Examiners be allowed to terminate on June 30, 1980. Existence of the Board and regulation of the profession does not appear to meet the criteria by which public need or protection is determined.

Thank you for the opportunity to respond to this report and for the time and effort expended by you and your staff.

Sincerely,

Charles R. Webber
Commissioner

08-H8LH

RECEIVED
AUG 2 1979
LEGISLATIVE
AUDIT

July 27, 1979
604 2ND Graehl
Fairbanks, Alaska 99701

Division Of Legislative Audit
Pouch W-Alaska Office Building
Juneau, Alaska 99811

Dear Sirs:

I have read your Performance Review of the Board of Barber Examiners, and have prepared the following response.

Recommendation No. 1

I agree that Sec. 08.12.160 leaves alot to be desired, and it is a fact that the Board did not issue permits to people with diplomas from out of state barber colleges until August, 1976. At that time I had denied a permit to Veda Vaughn. She wrote to the Attorney General's Office and I later received a letter from the Attorney General stating that in his opinion I could be held personally responsible for denying Mrs. Vaughn the right to work. A permit was then issued.

The Committee recommendation to allow licensure by reciprical agreement is not a valid one. A large number of people who have been licensed find they have not developed the skill necessary to compete in the trade. These people move on to other endeavors, keep their license current and try again under different circumstances, only to find that they have lost some of the dexterity they did have.

Allowing licensure by endorsement is a farce as it would be no problem for a person to get a recommendation from someone in another state.

Allowing applicants who have not demonstrated minimum qualifications to practice barbering seems to be the only weakness of Sec. 08.12.160. It does not deny qualified barbers the right to work as they may practice barbering with a permit until the next examination date. A remedy to this situation would be for the Division Of Occupational Licensing to allow for more frequent examinations.

Recommendation No. 2

Work is presently in progress to revise and update test material. This work will be completed before the next scheduled examination.

All test questions are weighted equally and a State set requirement of 75% is needed to pass the exam, which all applicants are made aware of.

A time limit is announced to all applicants at the time of the exam, however all applicants are allowed more time if needed.

All applicants are informed of the two barber text books authorized by barber regulations.

In the 14 years I have served on the Board of Examiners, I am sure that no applicant has been denied the use of a tool he or she may have forgotten.

Admittance to the examination IS limited to those who are required to be there.

Recommendation No. 3

I am in strong disagreement with the Committee's recommendation regarding AS 08.12.210. Presently the school in Anchorage is providing more than an adequate number of qualified barbers. There is no reason to train more people than the industry can absorb.

Another aspect to consider as far as licensing a school, owner, or instructor is this. A student pays tuition to the school and receives no compensation for work done while training. This gives an unscrupulous person the opportunity to operate a cut-rate barber shop without paying any wages. This has happened on many occasions throughout the country and on one occasion in Alaska. Thus by requiring the licensure of operators the Board is able to prevent this from happening. (I am sure the Committee did not do its homework on this one.)

Recommendation No. 4

I am in agreement that sufficient service of Board member would be two four year terms. Further I would recommend that appointments be made at staggered two year intervals.

I fail to see the value of a public member on the Board of Examiners. It is my experience that the Board acts primarily in the public interest for the public is from whom the industry derives its livelyhood. Furthermore, that is why we have the Budget and Audit Committee to look into these things.

Recommendation No. 5

I am in agreement with the committee that Sec. 08.12.030 (2) and (4) should be repealed. However I would like to point out that in regards to the barber school in Anchorage, that all examinations take place there and that any substandard conditions would be noted and orders to correct the situation would be given immediatly.

Recommendation No. 6

Agreed

Recommendation No. 7

I agree with the Committee's recommendation that the Board prepare a statement of goals and objectives. However, here again we run into the problem of time. The Board is allowed four days a year to conduct its business. Usually the Board takes two days each in April and Oct-

ober. At each meeting we hold examinations, both written and practical for an average of 15 applicants. We typically finish late on the second day. This leaves no time to hash out formal goals and objectives.

Besides more frequent meetings, funding should also be provided to allow the Chairman of the Board to attend the National Association Of Barbers Examiners Convention each year. I think it would be agreeable to a majority of the barbers in the state to raise license and renewal fees to cover this cost.

Recommendation No. 8

Agreed

Conclusion

It is my opinion that there is a need for the licensing function of the Board of Barber Examiners. It performs a much needed service to both the industry and the public. Both consumers and employers should be able to expect that a barber is fully qualified for his job.

The Board has submitted recommendations of change for both regulations and statutes. We feel there should be a minumum of 2000 hours required for training in barber school as well as a two year apprenticeship program. It is unreasonable to expect that a person can attain a journeyman's level of competence with only 1500 hours of training. We have suggested allowing more time for the Board to conduct its business. This would help alleviate our biggest shortcomings. However to accomplish these things we need the support of the Division of Occupational Licensing.

It is not for lack of knowledge of the trade, nor lack of conscientious effort toward bettering the trade for both the industry and the public that we do not appear to meet "regulatory criteria". It is the lack of resources made available to us to perform our jobs.

Thank you for the opportunity to clarify my stand on the issue.

Very Truly Yours,

Don Noll

Don Noll
Board of Barber Examiners

RECEIVED

JUL 31 1979

LEGISLATIVE
AUDIT

July - 24, 1979
Box. 238
Anchorage Alaska
99510
Manuel Norat

State of Alaska
The Legislature Budget and Audit Comm
Mr. Gerald L. Wilkerson, C P A
Legislative Auditor
Division of Legislative Audit

Dear Sir

Enclose please find my response to your letter of 7-10-79!

If I can be of any help please feel free to call me.

907 - 274 3204
= 277 3205
= 274 0732

Manuel Norat.

Reply to Findings and Recommendati[illegible] as request by Division of Legislative Audit.

Reply to Recommendations No. 1 - to No. 8

No. 1. No. 1.

Add to Sec. 08.12.160 State Law to read.

Recuprocity = For any applicant who has practiced as a Barber in another state for a period of 24 months within the past 36 months and has a Reg. current Barber licence from another state or county and provading that state or county has Recuprocity with the state of Alaska and he or she pays the required licence fee. Shall be issued a licence to practice in this state.

No. 2 Recomend that the Examinations be combine as listed here in.

To combine the writing and practical exams.

Written Exam. to consist of 50 questions for a total score of 35 points to be completed in 45 minutes.

The Practical examination to consist of a

Hair cut, Scalp Massage, Shampoo shave and facial.

Consisting of 1 Hour 15 minutes
for a total of 65 points
for a combine total of 100 point with 75 points needed to pass the test

For any applicant consuming any additional time he or she shall lose 2 points for every additional 5 minutes consumed. from their total score.

Every applicant should received a notice from the division office of the date, time, ~~place~~ and place of the examination. The letter should also include the following information & sequence of the test =

Writing test of 50 questions
time = allowed 45 minutes
Points that can be granted if all are correct 35

Practical test consisting of -
(1) Hair cut
(2) scalp massage
(3) shampoo
(4) shave
(5) Facial

To be given as listed & be completed in 1 Hour 15 minutes For a total of 65 points

For a combined total of 100 points

Writing Test 35 points
Practical Test 65 points

Needed to pass the Test 75 point or Better

Also state the Text books used Practice and Science of Standard Barbering, ~~Publishers~~ published by Milady Publishing Corp. Bronx N.Y.

I suguest that all text and medels be the responsibility of the applicants.

M.3.

Add to Sec. 13.12-210 a

Any person may own or manage a Barber School or Barber College providing that a licensed teacher on Barbering is in attendance and supervising at all times

Also the Falling conditions must be meet

A certificate to operate a Barber school or College should be granted to any qualified applicant provide the location of the school or college shall

a population of 115 thousand people in the City, Brough or municipality and 50 thousand population for every additional school or college.

Every prospective owner of a Barber School or college shall submit to the Boards and pertinent agencies a Blue print of the propose school or college as to the, sq. ~~ft~~ footage, size of class room, size of work area, copy of lease and location, all equipment to be used in the school or College.

Also the prospective owner shall submit proof of his or hers finances to found said school or college for a period of 1 year. Eran. Rent, salary adv. utilities ect.

No. 4 Limiting the terms of Board members would be undesirable, because experience is needed for adequate performance.

Add to Sec. 08.12.010
A Public member shall be appointed by the Governor.

a Public member would be desirable and beneficial.

No. 5. Barber Board members should be required to inspect all new Shops and school or colleges before said shops or schools are licenced by the State or municipality. To ensure proper requirements for sanitation

No 6. Deleting moral character would be in my opinion opening the door for undesirable in the barber profession. Example

Excess use of Alcohol
using and selling of Drugs
sex molestors, ~~&~~ Habitual Criminals
ect. ect.

By the retention of this wording good moral Character, we can only help to discourage undesirable in the Barber profession and Shops or schools

No. 7 The Board

The goals of the Barber Board have been limited due to the lack of budget with proper budgeting a statement of goals and objectives could be established

No. 8 Approval of as stated in your report

Would request that the Lic. Examiner furnish tape recorder and tapes and paraphanelia needed as recommended.

Very truly yours
Manuel Norat

RECE

LEGISLATIVE
AUDIT

July 25, 1979

Gerald Wilkerson, CPA
Legislative Auditor
Pouch WF - State Capitol
Juneau, Alaska 99811

Dear Mr. Wilkerson:

I am writing in response to the Performance Review of the Board of Barbers Examiners dated March 31, 1979.

FINDINGS & RECOMMENDATIONS

Recommendation No. 1 (Page 9)

Many barber schools (as in many vocational schools) do not meet satisfactory standards. In order to maintain a high level of skills in Alaska, we feel each applicant should be tested. Applicants need to prove their competency. There is really no other way to assure the State of Alaska of "qualified individuals".

Recommendation No 2 (Page 10)

Currently being done. (1) Potential barbers should be well versed in all phases of barbering even though it may not appear on the test. Naturally, if told they will be tested on specific areas - the remainder of important material will be left unlearned even though it is essential for high standards. (2) As for time limits, these are set and adhered to, but if extra time is needed students are always allowed this because the board realizes the amount of stress the applicants are experiencing during the exam. (3) (Page 11) This is currently being done. (4) This shows irresponsibility and would mean board members would have to travel with all their own tools. This, we feel, is the applicant's responsibility.

Recommendation No. 3 (Page 11)

Currently being done

Recommendation No. 4 (Page 11)

(1) Many barbers are not interested in serving, and those who do serve as board members should have several years of experience before being appointed. Young, inexperienced barbers are not qualified. Board members should also be well versed in Alaska laws and therefore should have lived in Alaska for a number of years to qualify. (2) How can a consumer grade an applicant on his/her haircut, shave or shampoo?

Recommendation No. 5 (Page 13)
If Health & Social Services would perform regular inspections, this would be satisfactory

Recommendation No. 6 (Page 13)
What happens if a dope addict, alcoholic or prostitute applies? This has happened and these people in no way should be allowed to serve the public. It is impossible to screen out every individual, but by suppling character witnesses, at least we can handle some of the problem areas.

Recommendation No 7 (Page 14)
At one of our recent meetings goals were discussed and set. (See Appendix D, Page 25) Also see Page 18 of Analysis No. 4a

Recommendation No. 8 (Page 14)
Minutes are taken by the secretary of the Department of Licensure. Possibly these need to be taped.

ANALYSIS OF PUBLIC NEED

II. 3. Page 16 Appointments to the Board have always been made by the Governor. In Southeast Alaska we were without a board member (although I had written to the Governor's office on several occasions and had had several prominent citizens write to the Governor regarding appointment) for several years. And at one time had a member on the board who found it difficult to attend meetings and therefore were not represented much of the time.

III. Because of limited budget for travel, etc. we have been unable to meet with legislative body. This would be extremely helpful in making statutory changes.

V. Only when there is an applicant in that area is the notice published. This was recommended by the Department of Commerce as a cost effective measure.

VII 3. This is done because of cost since most applicants and most examiners are in the Anchorage area.

VII 4. These were some goals that have been made and instituted.

VII 5. Refer to Recommendation 4 on Page 11.

VIII This does need revision

In summary, In Appendices D, E and F you will note that the majority of barbers, board members and applicants (even though these are ones who failed the exam) feel we DO need a board of barber examiners; they feel there are changes to be made but that this is a vital board to the welfare of the State of Alaska and the welfare of the public and the profession of barbering.

I am appalled at the lack of response you had to your questionnaires and feel, as in most professions, the majority of barbers don't realize the importance of getting involved but if anything doesn't go their way will be the first to complain.

I am enclosing a copy of a letter to the editor in the Anchorage paper recently. This letter does represent the viewpoint of many barbers but does include more than those who are in the union.

I do encourage you, as you study your reports, to pay particular notice to what barbers throughout the state are saying through the answers they have given in their questionnaires. I have tried to make my response as brief as possible, answering only those areas that I felt most important and skipping a few points that probably should have been dealt with a bit more completely.

If I can be of any further help to you or your committee, please do not hesitate to contact me.

Sincerely,

Elmo O. Kienbaum

Elmo O. Kienbaum
2206 Tongass Avenue
Ketchikan, Alaska 99901

(907) 225-5447 or (907) 225-2218

Printed in Anch Tim
Letters to the Editor

Dear Editor

On April 1 1979 a barbers test was given for the state licensing of barbers here in Anchorage.

A gross injustice was done by the Department of Commerce who took it upon themselves to override the board and bring in their own written examination in which more than half was nonconforming and totaly irrelevant to barbering.

In our opinion this is just one example of more injustices that will come if Juneau and our Commerce Dept. has their way in eliminating the boards of not only the barbers but of the other professions such as Doctors, Dentists, Attorneys, Chiropracters and many others whos function directly protect the public.

We of the Barbers Union Local 56 are abhorred with the dictatorial attitude of our Dept. of Commerce which has been going on for years in regard to the professions.

The Alaskan people need these boards to insure that persons in these professions are equipped to protect the public in the areas of health, safety and sanitation.

Would you go to a doctor that had taken an electritions test or hire an electition that had taken a doctors exam , or a dentist that had been given a welders exam or a barber given an exam totaly unrelated to his or her field we dought it.

If not then it is apparent that the public must get involved in regard to this so called Sunset Act which would eliminate the boards whos purpose is to protect the public.

These tests will be put togather by people totaly lacking knowledge in the field for which theyo are testing and further all practical examinations could be eliminated if these boards are discontinued.

Because of the boards,contagious disease of the face and head, such as ringworm and impentigo have been virtually eliminated , Would you want these and many others contagious diseases returned to our society ? We Wouldn't.

Journeyman Barbers International
Assoc. Local 56
1530 Garbell
Anch Alaska 99501

Rose & Breeze
Attorneys at Law - a Professional Corporation
526 I Street - Anchorage, Alaska 99501

Nissel A. Rose
Robert A. Breeze

Telephone
(907) 277-0533

March 17 ,1980

The Honorable W. "Brad" Bradley
Chairman, Senate Commerce Committee
Pouch V
Juneau, AK 99811

Dear Senator Bradley:

The enclosed proposed bill was intended to have reached you sooner, but was inadvertently sidetracked. It has been basically patterned after the California Statute, with some adjustments from Florida and from Alaska law which, we believe, fit the local situtation better. As indicated by its title, the bill proposes to terminate the existence of the Board of Hairdressing and Beauty Culture Examiners, and replacing it with the Board of Cosmetology. Its contents are the result of the work product of the Alaska Hairdressers and Cosmetologists Association. On the behalf of the Association, I respectively urge you to recommend the passage of the proposed bill, or one as closely patterned after it as possible. It it considerably more comprehensive than what has been provided by statute in Alaska in the past, and covers such fields as electrology and cosmeticians which were heretofore ommitted.

If I can be of any assitance in answering questions on the proposed bill, or obtaining answers to questions for your committee, please feel free to call upon me at the above address or phone number.

Very truly yours,

ROSE & BREEZE, P. C.

By: Nissel A. Rose

Enclosure
Nar:pj

A BILL FOR AN ACT

Relating to occupational licensing; creating new provisions; amending ORS 293.110, 345.010 and 431.130; repealing ORS chapters 690 (1973 Replacement Part) and 691 (1975 Replacement Part); appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 26 of this Act:

(1) "Board" means the State Board of Barbers and Hairdressers.

(2) "Certificate" means a certificate of registration, issued in accordance with this Act, authorizing the holder to practice hair design, cosmetology or manicure in accordance with the provisions of this Act.

(3) "Cosmetology" means the use of the hands, mechanical or electrical apparatus or appliances, cosmetic preparations, antiseptics, tonics, lotions or creams in massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work performed on the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment either directly or indirectly for the public generally.

(4) "Hair design" means, when done upon the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment either directly or indirectly for the public generally, any one or more of the following practices:

(a) Shaving, trimming or cutting of the beard.

(b) Arranging, styling, dressing, curling, temporary waving, permanent waving, relaxing, cutting, singeing, bleaching, coloring, dyeing, cleansing, shampooing, conditioning, applying hair tonics or similar work upon the hair of an individual.

(5) "License" means a license to operate a shop issued under the provisions of this Act.

(6) "Manicure" means cutting, trimming, polishing, coloring, tinting, cleansing, or otherwise treating the nails of the hand or massaging, cleansing, treating or beautifying the hands performed for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment either directly or indirectly for the public generally.

(7) "Practitioner" means a person certified and registered to practice hair design, cosmetology or manicure under the provisions of this Act.

(8) "School of hair design" means an establishment operated for the purpose of teaching hair design and licensed under ORS chapter 345.

(9) "Shop" means an establishment operated for the purpose of engaging in the practice of hair design, cosmetology or manicure and licensed under the provisions of this Act.

SECTION 2. This Act does not apply to:

(1) Services performed without compensation in case of emergency or in domestic administration.

(2) The following persons while in the proper discharge of their professional duties:

(a) Persons authorized by the law of this state to practice medicine, osteopathy, surgery or dentistry.

(b) Registered nurses.

(c) Persons licensed by the State Board of Pharmacy, merchants or other individuals when demonstrating apparatus or supplies for purposes of sale.

(d) Commissioned medical and surgical officers of the United States Army, Navy or Marine Hospital Service.

(3) A student attending a school licensed to teach hair design, cosmetology or manicure under ORS chapter 345 nor is such person required to obtain a license under this Act to perform within the scope of his training.

SECTION 3. No person shall:

(1) Practice or attempt to practice hair design, cosmetology or manicure without a certificate as a practitioner issued pursuant to this Act.

(2) Operate a shop unless it is at all times under the direct supervision and management of a practitioner.

(3) Display a sign or in any way advertise or hold himself out as a practitioner, barber or hairdresser or as being engaged in the practice or business of hair design, cosmetology or manicure without first obtaining a certificate or license as provided in this Act.

(4) Knowingly make a false statement on an application for a license, certificate or permit or for the renewal of a license, certificate or permit issued under the provisions of this Act.

(5) Permit any person in his employ or under his supervision or control to practice hair design, cosmetology or manicure without a certificate as required by this Act.

(6) Obtain or attempt to obtain a certificate, license or permit by fraudulent means.

(7) Permit the fraudulent use of his certificate by another person.

SECTION 4. A person desiring to obtain a license or certificate shall apply in writing to the board on a form provided by the board. Each application shall be

accompanied by evidence under oath or affirmation and satisfactory to the board that the applicant possesses the necessary qualifications.

SECTION 5. (1) To be issued a certificate as a practitioner, each applicant shall:

(a) Pass the certification examination given by the board pursuant to section 7 of this Act;

(b) Pay the examination fee and application fee determined by the board; and

(c) If the applicant is applying for a certificate to practice hair design have successfully completed all courses a school of hair design is required to teach to be licensed under ORS chapter 345; or

(d) If the applicant is applying for a certificate to practice cosmetology or manicure, have successfully completed all courses a school permitted to teach cosmetology or manicure is required to teach to be licensed under ORS chapter 345.

(2) An applicant who holds a currently valid license or certificate to perform hair design, cosmetology or manicure issued by a licensing agency of another state or territory of the United States shall not be required to comply with paragraph (c) or (d) of subsection (1) of this section.

(3) An applicant shall not be required to comply with paragraph (c) or (d) of subsection (1) of this section if the applicant is the graduate of a hair design, cosmetology or manicure school in another state or territory or in a state correctional institution and the requirements for successful completion of training at the school are determined by the Superintendent of Public Instruction to meet the minimum requirements for licensing a school of hair design or a school permitted to teach cosmetology or manicure under ORS chapter 345.

(4) The board shall issue to each qualified applicant a certificate. A certificate shall be valid for one year. The certificate shall be prima facie evidence of the right of the holder to practice in the field of practice for which the holder has qualified and to represent himself as a practitioner.

(5) At the request of any applicant who has qualified to perform hair design under this section, the board shall issue a certificate designating its holder as either a "barber" or "hairdresser," or both, as the applicant requests.

(6) A certificate shall state the areas of practice the practitioner may perform.

SECTION 6. (1) To be issued a license for a shop, each applicant shall:

(a) Be 18 years of age.

(b) Comply with the rules of the board concerning health, safety and sanitation.

(c) Comply with the applicable health and safety laws and rules of the Health Division and any other state agencies.

(d) Pay the application fee determined by the board.

(2) The board shall issue to each qualified applicant a license. A license shall be valid for one year. The license shall be prima facie evidence of the right of the owner of the shop to operate a shop and to advertise as offering the services for which the shop is licensed.

(3) A shop issued a license under the provisions of this Act must at all times be under the direct supervision and management of a practitioner. If hair design is practiced in the shop, the practitioner who supervises the shop must have a certificate to practice hair design.

SECTION 7. (1) Examinations shall be given at such times and places as the board may determine, but in no instance less often than once every month.

(2) Examinations shall be written or oral tests and shall test the applicant's knowledge of sanitary practices and safety for all procedures permitted and in the use of all instruments, equipment or chemicals permitted within the scope of a license and certificate in the field of practice for which the applicant is seeking certification.

SECTION 8. The board may refuse to issue or may suspend or revoke any certificate or license for any one or more of the following causes:

(1) Continued performance of hair design, cosmetology or manicure by a person knowingly having an infectious or communicable disease.

(2) Violation of ORS 646.608 in the conduct of a hair design, cosmetology or manicure business.

(3) Violation of any of the provisions of this Act.

SECTION 9. (1) Except as otherwise provided by this Act, all certificates and licenses issued under sections 1 to 26 of this Act shall expire one year after the date of issue, unless renewed within 30 days of the expiration date by payment of the required renewal fee and compliance with other requirements for renewal. The board, however, may vary the date of certificate and license renewal by giving to the applicant written notice of the renewal date being assigned and by making prorated adjustments in the renewal fee.

(2) Any license or certificate not renewed before it expires may be renewed within one year by payment of the required renewal fee, compliance with other requirements for renewal and payment of a late renewal fee set by the board.

(3) A certificate that has not been renewed for more than one year, and less than five years, after the date of expiration may be renewed and restored upon payment of one year's renewal fee.

(4) A certificate that has not been renewed for a period of five years after date of expiration may be renewed and restored if the applicant:

(a) Satisfactorily passes the examination required by section 7 of this Act.

(b) Pays one year's license fee in advance.

SECTION 10. (1) Every holder of a certificate shall display it in a conspicuous place adjacent to or near his work chair. If he has no work chair, the certificate shall be displayed in a conspicuous place within the shop.

(2) Every holder of a license shall display it in a conspicuous place within the shop.

SECTION 11. (1) A person not certified under this Act who wishes to practice, demonstrate and teach hair design, cosmetology or manicure, or perform any one or more of such functions, temporarily and primarily for educational purposes and is otherwise qualified as determined by the board shall first obtain a permit from the board.

(2) The permit shall specify:

(a) The purpose for which it is granted.

(b) The period during which the person is permitted to practice, demonstrate and teach, which period shall not exceed 10 days.

(c) The time and place of exercising the privilege granted by the permit.

(3) A person may be granted a permit under subsection (1) of this section if he:

(a) Makes application to the board for the permit.

(b) Is currently licensed or certified to practice or teach hair design, cosmetology or manicure in another state and presents satisfactory evidence of that fact to the board, or is otherwise qualified as determined by the board.

(c) Describes the purpose for which the permit is sought.

(d) Pays the required permit fee.

SECTION 12. (1) A person who wishes to temporarily operate any premises for teaching hair design, cosmetology or manicure shall first obtain a temporary premises license from the board.

(2) A person may be granted a license under subsection (1) of this section if he:

(a) Makes application to the board.

(b) Describes the purpose for which the license is sought.

(c) Identifies the location of the premises to be licensed.

(d) States the time and dates for which the license will be issued.

(e) Pays the required license fee.

(3) The license shall specify:

(a) The times, dates and location.

(b) The purpose for which the license is granted.

(c) The person to whom the license is issued. The person specified shall be responsible for the adherence to board rules governing health and sanitation.

(4) The period during which the premises shall be licensed shall not exceed five days.

(5) A temporary premises license is not required and shall not be issued if the educational activity is conducted in a licensed school of hair design, cosmetology or manicure.

SECTION 13. (1) A practitioner who practices outside of or away from a place of business shall carry with him a certificate of identification which must be shown to a person upon whom the work is being performed. The certificate shall contain the signature of the practitioner, his post-office address, the number and date of his certificate.

(2) The board shall, without charge, issue such certificates upon demand by any practitioner who practices away from his place of business on persons who are physically unable to visit a licensed shop.

SECTION 14. (1) There is created within the Department of Commerce a State Board of Barbers and Hairdressers consisting of seven members appointed by the Director of Commerce. Each member of the board shall serve for a term of three years and until his successor is appointed and qualified. At all times the membership of the board shall be so constituted that:

(a) Six members of the board shall be practitioners licensed under the provisions of this Act.

(b) One member shall be a public member not licensed under this Act.

(2) A person is not eligible for appointment as a member of the board if:

(a) He is associated, directly or indirectly, in the manufacture of cosmetic or barber appliances or supplies or their rental, sale or distribution to licensees.

(b) He has previously served two terms.

(3) A member of the board serves at the pleasure of the Director of Commerce. Vacancies shall be filled by the Director of Commerce, by appointment for the unexpired term.

SECTION 15. (1) Notwithstanding the qualifications of members of the board specified in section 14 of this Act, the first practitioner members appointed to the board shall be:

(a) Three persons currently licensed to practice as barbers under ORS chapter 690.

(b) Three persons currently licensed to practice as hairdressers under ORS chapter 691.

(2) Notwithstanding the terms of office specified in section 14 of this Act, of the members first appointed to the board:

(a) Three shall serve for terms ending June 30, 1978.

(b) Two shall serve for terms ending June 30, 1979.

(c) Two shall serve for terms ending June 30, 1980.

SECTION 16. The board shall elect a chairperson. The board shall prescribe rules to govern the proceedings of the board. The board shall hold meetings at such times and places as it determines. A majority of the members of the board shall constitute a quorum.

SECTION 17. Each member of the board is entitled to compensation and expenses as provided in ORS 292.495.

SECTION 18. (1) The Director of Commerce shall fix the qualifications of and appoint an administrator for the board who shall not be a member of the board. Subject to the applicable provisions of the State Merit System Law, the director shall fix the compensation of the administrator, who shall be in the unclassified service.

(2) The Director of Commerce shall provide the board with such services and employes as the board requires to carry out its duties under the provisions of this Act.

SECTION 19. The board shall keep a record of its proceedings relating to the issuance, refusal, suspension and revocation of certificates. This record shall also contain the name, place of business and the date of each certificate and license issued by the board. The records of the board shall at all reasonable times be open to inspection by the public.

SECTION 20. (1) The board has authority to make reasonable rules for the administration of the provisions of this Act and prescribe sanitary and safety requirements for shops. Sanitary requirements for shops shall be subject to the approval of the Health Division. A copy of the rules adopted by the board shall be furnished by the board to the owner or manager of each shop.

(2) Notwithstanding subsection (1) of this section, the board may not prohibit the use of the shop for domestic purposes if the part devoted to domestic purposes is in a

completely separate room not used by customers, with walls extending from floor to ceiling and with any connecting doors kept closed while the shop is in actual operation.

SECTION 21. In addition to the powers otherwise granted by this Act, the board shall have the power:

(1) To determine whether applicants to practice hair design, cosmetology or manicure meet the qualifications under section 5 or 6 of this Act, to conduct examinations, and to grant certificates and licenses to qualified applicants upon compliance with this Act and the rules of the board.

(2) To establish sanitary and safety standards for the practice of hair design, cosmetology or manicure, and to enforce the standards.

(3) To prescribe and furnish forms for applications for examinations, certificates, licenses and permits.

(4) To do any act necessary or proper to effect and carry out the duties required of the board by this Act.

SECTION 22. (1) Where the board proposes to revoke or suspend or refuse to issue or renew a certificate, permit or license, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) Any rules adopted by the board shall be adopted in accordance with the procedures set forth in ORS chapter 183.

SECTION 23. Fees required to be paid shall be paid in amounts determined by the board and approved by the Director of Commerce, except that no fee shall exceed the following:

(1) The filing of an application for an original certificate as a practitioner, $15.

(2) An annual renewal of a certificate as a practitioner, $15.

(3) Each examination for a certificate as a practitioner, $15.

(4) A temporary permit issued under section 11 of this Act, $5.

(5) A shop license, $50.

(6) An annual renewal for a shop license, $25.

(7) A temporary premises license, $25.

(8) A duplicate or replacement of any certificate, license or permit, $5.

(9) A late renewal fee, $5.

SECTION 24. All fees and other funds received by the Department of Commerce under this Act shall be paid into the Commerce Administration Account. The payments shall be credited to a separate subaccount, and are continuously appropriated for the purpose of administering sections 1 to 26 of this Act.

SECTION 25. Violation of section 3 of this Act is a Class B misdemeanor.

SECTION 26. (1) In addition to any other duties prescribed by law, the Director of Commerce shall establish within the Department of Commerce a program to provide for the inspection of shops licensed under sections 1 to 26 of this Act and of schools licensed to teach hair design, cosmetology or manicure under ORS chapter 345.

(2) Inspections conducted under this section shall determine whether the shops comply with the sanitary and safety requirements under sections 1 to 26 of this Act and rules adopted thereunder and whether the schools comply with the sanitary and safety requirements under ORS chapter 345 and rules adopted thereunder. Upon completion of each school inspection the Director of Commerce shall cause a report of the results of the inspection to be submitted to the Superintendent of Public Instruction.

Section 27. ORS 345.010 is amended to read:

345.010. As used in ORS 345.010 to 345.370, subsection (1) of 345.990 and ORS 345.992 to 345.997:

(1) "Agent" means any person owning an interest in, employed by or representing for remuneration a vocational school within or outside this state who, by solicitation in any form in this state enrolls or seeks to enroll for remuneration a resident of this state for instruction or training offered by the vocational school, or offers to award educational credentials on behalf of the vocational school, or who holds himself out to residents of this state as representing a vocational school for any purpose stated in this subsection.

(2) "Board" means the State Board of Education.

(3) "Cosmetology" has the meaning given in section 1 of this 1977 Act.

(4) "Hair design" has the meaning given in section 1 of this 1977 Act.

(5) "Manicure" has the meaning given in section 1 of this 1977 Act.

[(3)] **(6)** "Superintendent" means Superintendent of Public Instruction.

[(4)] **(7)** "Vocational school" means any private proprietary vocational, technical, home study, correspondence, business, professional or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any vocation or profession.

SECTION 28. Sections 29 to 35 of this Act are added to and made a part of ORS 345.010 to 345.370.

SECTION 29. In addition to the other requirements of this chapter, rules adopted by the board to regulate schools teaching hair design, cosmetology or manicure:

(1) Shall be set out separately from other rules adopted by the board.

(2) Shall, if the rules concern cleanliness, sanitary practices or use of instruments in the school, be adopted only after the board consults with the Health Division to assure that such rules are consistent with the requirements of the Health Division.

(3) May include any rule the board considers necessary to protect the economic or physical health and safety of the public or of the students attending the school.

(4) Shall include rules that set standards for teachers teaching in schools licensed to teach hair design, cosmetology or manicure pursuant to this chapter.

SECTION 30. In addition to the requirements for issuance of a license under ORS 345.040, for schools seeking a license to teach hair design, cosmetology or manicure, the board shall, by rule, require the schools to teach, and require for graduation from the school, courses that meet minimum standards set by the board on sanitary practices and safety for all procedures permitted and in the use of all instruments, equipment or chemicals permitted within the respective field of practice.

SECTION 31. (1) For the purposes set forth in subsection (2) of ORS 345.330, the superintendent shall appoint an advisory committee for vocational schools teaching hair design.

(2) The membership of the advisory committee shall be so constituted that:

(a) Four members shall be owners of schools licensed under this chapter to teach skills required for hair design.

(b) Two members shall be practitioners, certified under sections 1 to 26 of this 1977 Act, who are graduates of schools licensed under this chapter to teach hair design and who have graduated within one year of the time appointed.

(c) Two members shall be practitioners licensed under sections 1 to 26 of this 1977 Act who have practiced for more than one year preceding appointment.

(d) Two members shall be owners of shops licensed under sections 1 to 26 of this 1977 Act.

(e) One member shall be from the general public.

(3) Each member of the advisory committee shall serve for a term of four years ending June 30.

(4) The members of the advisory committee shall be entitled to compensation as provided in subsection (3) of ORS 345.330.

SECTION 32. (1) Notwithstanding the qualifications of members of the advisory committee specified in section 31 of this 1977 Act, the members of the committee first appointed need not be licensed under ORS chapter 345, graduates of a school licensed

under ORS chapter 345 or certified under sections 1 to 26 of this 1977 Act but may be persons currently holding a valid license or certificate under ORS chapter 690 or 691. Of the practitioner members first appointed to the advisory committee:

(a) Two shall be barbers currently licensed to practice under ORS chapter 690.

(b) Two shall be cosmeticians currently licensed in the class of cosmetic therapy of hairdresser under ORS chapter 691.

(2) Notwithstanding the terms of office specified in section 31 of this 1977 Act, of the members first appointed to the advisory committee:

(a) Three shall serve for terms ending June 30, 1978.

(b) Three shall serve for terms ending June 30, 1979.

(c) Three shall serve for terms ending June 30, 1980.

(d) Two shall serve for terms ending June 30, 1981.

SECTION 33. In addition to the other duties of the Superintendent of Public Instruction prescribed by law, the superintendent shall, at the request of the State Board of Barbers and Hairdressers, determine whether a school teaching hair design, cosmetology or manicure that is not licensed under the provisions of this chapter meets the minimum requirements set by the board for licensing of a similar school under this chapter.

SECTION 34. Sanitary and safety inspections performed in schools licensed under this chapter to teach hair design, cosmetology or manicure shall be conducted by the Department of Commerce.

SECTION 35. (1) In addition to the fees required by ORS 345.080, before issuing any license under this chapter to a school teaching hair design, cosmetology or manicure, the superintendent shall collect a nonrefundable annual inspection fee of $100.

(2) The inspection fee collected under subsection (1) of this section shall be transferred to the Department of Commerce for inspections performed under section 34 of this 1977 Act.

Section 36. ORS 293.110 is amended to read:

293.110. (1) All payments of money into the State Treasury by virtue of any statute providing for, creating, authorizing or continuing any of the funds enumerated in subsection (2) of this section shall be paid into and become a part of the General Fund.

(2) The following funds shall be a part of the General Fund:

[*(a) Board of Barber Examiners' Fund.*]

[*(b)*] (a) Board of Dental Examiners' Fund.

[*(c)*] (b) Forest Patrol Fund.

[*(d)*] (c) Motor Vehicle Fund.

[*(e)*] (d) Oregon State Veterinary Medical Fund.

[*(f)*] (e) State Banking Fund.

[*(g)*] (f) State Institutional Betterment Fund.

[*(h)*] (g) State Library Contingent Fund.

[*(i)*] (h) State Library School Library Fund.

[*(j)*] (i) Tumalo Maintenance Fund.

[*(k)*] (j) All other funds created by law which are not trust funds.

Section 37. ORS 431.130 is amended to read:

431.130. (1) The Health Division shall, in accordance with the provisions of ORS chapter 183, make such rules and regulations as, in its judgment, are necessary for carrying out subsection (2) of ORS 276.990, ORS 418.405 to 418.455, 418.505, 418.515 to 418.530, 418.855, 431.010 to 431.040, 431.060, 431.110 to 431.150, 431.160 to 431.18[illegible], 431.310, 431.330 to 431.350, 431.410, 431.420 to 431.460, 433.005, 433.010, 433.106 to 433.155, 433.205, 433.216, 433.220, 433.230, 433.255 to 433.270, 433.340 to 433.390, 433.705, 433.715, subsection (6) of 433.990, ORS 434.260, 434.270, 437.010, subsection (2) of 437.040, ORS 437.140, 437.410 to 437.500, 448.215 to 448.250[,] and 482.141 [*and 690.200*], including rules and regulations concerning the control of venereal diseases and the care, treatment and quarantine of persons infected therewith.

(2) The Health Division may enforce the rules and regulations for the control of any of the communicable diseases by quarantining or by the adoption of such other reasonable measures as seem best for limiting the spread of communicable diseases and for the preservation of the public health.

SECTION 37a. If Senate Bill 83 (1977) becomes law, then section 37 of this Act is repealed.

SECTION 38. (1) Any valid license, certificate or permit to practice as a barber or hairdresser or to practice cosmetology or manicure or to operate a shop that has been issued by the State Board of Cosmetic Therapy or the Board of Barber Examiners under ORS chapter 690 or 691 shall remain valid as issued and subject to the provisions of ORS chapter 690 or 691 and rules adopted thereunder as effective on the effective date of this Act and as enforced by the State Board of Barbers and Hairdressers and the Department of Commerce. When the license, certificate or permit expires and is subject to renewal, the State Board of Barbers and Hairdressers shall renew the license,

certificate or permit in accordance with the provisions for the renewal of licenses and certificates under sections 1 to 26 of this Act.

(2) Any student enrolled in a school regulated by ORS chapter 690 or 691 on the effective date of this Act may, at the election of the student and upon the completion of the training at the school, apply for a certificate as provided in sections 1 to 26 of this Act or may qualify for a certificate by complying with the provisions of ORS chapter 690 or 691 and rules adopted thereunder as the statutes and rules exist on the effective date of this Act.

(3) Any person serving as an apprentice under ORS chapter 690 on the effective date of this Act shall be issued, without charge, a certificate as a practitioner as provided in sections 1 to 26 of this Act.

(4) For purposes of this section, the State Board of Barbers and Hairdressers shall apply the appropriate provisions of ORS chapters 690 and 691 and rules adopted thereunder, as the statutes and rules exist on the effective date of this Act, as necessary.

SECTION 38a. (1) Notwithstanding any other provision of this Act, any school licensed to teach barbering under the provisions of ORS chapter 690 on the effective date of this Act may continue, at the election of the school, to operate under the provisions of ORS chapter 690 and any rules adopted thereunder as effective on the effective date of this Act and as administered by the Superintendent of Public Instruction. If a school elects to become subject to the provisions of this section all aspects of the operation of the school shall become subject to regulation under this section, including, but not limited to, the course of study, admission requirements, teacher requirements and qualifications, teacher licensing and license renewal, requisites for graduation, work station requirements, curriculum and all other requirements for the school.

(2) If a school elects to be regulated according to the provisions of this section, it is not subject to regulation pursuant to any other provision of this Act. Any student attending a school regulated according to the provisions of this section and any teacher teaching in the school are subject to the requirements of ORS chapter 690 and any rules adopted thereunder only while attending or teaching in the school.

(3) No school shall be regulated according to the provisions of this section unless the school so elects before the effective date of the rules adopted by the State Board of Education pursuant to section 39 of this Act. Any school electing to operate according to

this section may at any later time elect to withdraw from the provisions of this section and become regulated as otherwise provided by this Act.

(4) Any license or certificate to teach barbering issued by the Board of Barber Examiners pursuant to ORS chapter 690 before the effective date of this Act shall remain valid and may be renewed according to the provisions of ORS chapter 690 and rules adopted thereunder as effective on the effective date of this Act so long as the holder teaches at a school regulated according to this section.

(5) The Superintendent of Public Instruction shall administer the provisions of this section.

SECTION 39. (1) The State Board of Education shall adopt rules for the regulation and licensing of schools teaching hair design, cosmetology or manicure. The rules shall become effective not later than July 1, 1978.

(2) Until the effective date of rules adopted pursuant to subsection (1) of this section, the Superintendent of Public Instruction shall regulate schools holding valid licenses to teach under ORS chapter 690 or 691 in accordance with the provisions of the statutes and rules in effect on the effective date of this Act.

(3) Students graduating from schools regulated by the Superintendent of Public Instruction under the provisions of this section shall be considered to have graduated from a licensed school for purposes of sections 1 to 26 of this Act.

SECTION 40. (1) Nothing in this Act relieves a person of an obligation to pay a fee or charge or any other liability, duty or obligation owed to the State Board of Cosmetic Therapy or the Board of Barber Examiners. The State Board of Barbers and Hairdressers may undertake the collection or enforcement of such fee, charge, liability, duty or obligation.

(2) The rights and obligations of the State Board of Cosmetic Therapy and the Board of Barber Examiners legally incurred under contracts, leases and business transactions, executed, entered into or begun before the effective date of this Act, are transferred to the State Board of Barbers and Hairdressers. For the purpose of succession to these rights and obligations, the State Board of Barbers and Hairdressers is considered to be a continuation of the State Board of Cosmetic Therapy and the Board of Barber Examiners and not a new authority, and the State Board of Barbers and Hairdressers shall exercise those rights and fulfill those obligations as if they had not been transferred.

SECTION 41. (1) The unexpended balances of amounts authorized to be expended by the State Board of Cosmetic Therapy and the Board of Barber Examiners, from

revenues dedicated, continuously appropriated, appropriated, collected or otherwise available for the purpose of administering and enforcing duties, functions and powers, are appropriated and transferred to the Commerce Administration Account and are available for expenditure by the Department of Commerce.

(2) The Department of Commerce may expend moneys received under subsection (1) of this section for the purpose of administering and enforcing its duties, functions and powers and for the payment of expenses lawfully incurred by the State Board of Cosmetic Therapy and the Board of Barber Examiners to the extent that the money is unexpended on the effective date of this Act.

(3) The Department of Commerce shall assume and pay all outstanding obligations the State Board of Cosmetic Therapy and the Board of Barber Examiners lawfully incurred before the effective date of this Act to the extent that the obligations are properly charged against amounts authorized by this section to be expended by the Department of Commerce.

SECTION 42. ORS chapters 690 (1973 Replacement Part) and 691 (1975 Replacement Part) are repealed.

SECTION 43. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1977.

(1)

C-Engrossed

House Bill 3167

Ordered by the Senate June 24
(Including Amendments by House April 22 and by Senate June 1 and June 24)

Sponsored by COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies provisions on registration and licensing of barbers, cosmetologists and barber and beauty shops and schools. Requires persons engaging in hair design, cosmetology or manicure for payment to obtain certificate or license from board upon written application, payment of fee, completion of school of hair courses design if applicant seeks certificate to practice hair design and successful completion of certification examination. Requires applicant for shop license to be 18 years of age, pay fee and comply with health, safety and sanitation rules and laws. Authorizes issuing temporary permits for persons wishing to demonstrate hair design for educational purposes. Defines "cosmetology", [*and*] "manicure" and "hair design".

Abolishes State Board of Barber Examiners and State Board of Cosmetic Therapy, replacing with seven-member State Board of Barbers and Hairdressers appointed by Director of Commerce.

Requires licensee to annually renew license and pay fee. Requires licensees who retire for more than five years to take regular examination and pay one year's license fee in advance. Requires displaying certificate of registration near barber's or cosmetologist's work chair.

(Continued on next page)

* 7 members State Board of Barbers & Hairdressers

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

Requires hair design, cosmetology and manicure schools to post sign indicating work is done by students. Requires barber schools to be licensed and meet minimum sanitary and safety practices established by State Board of Education. Requires Director of Commerce to establish inspection program for hair design, cosmetology and manicure shops and schools to insure that they comply with sanitary and safety laws and rules. Requires State Board of Education to consult with Health Division in adopting rules regarding sanitary regulations of hair design, cosmetology and manicure schools. Authorizes Superintendent of Public Instruction to collect annual inspection fee of $100 and requires transfer of these funds to Department of Commerce. Requires superintendent to appoint advisory committee for vocational schools teaching hair design, cosmetology and manicure. Establishes barber , hairdresser, cosmetology and manicure practitioner, shop and school license fees. **Authorizes use of shop for domestic purposes conducted in separate room. Authorizes barber schools to elect continued regulation under ORS chapter 690 rather than this Act.**

Punishes by Class B misdemeanor operating hair design shop or practicing hair design, cosmetology or manicure without license.

Declares emergency. Effective July 1, 1977.

Amended to resolve conflicts.

A BILL FOR AN ACT

Relating to occupational licensing; creating new provisions; amending ORS 293.110, 345.010 and 431.130; repealing ORS chapters 690 (1973 Replacement Part) and 691 (1975 Replacement Part); appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 26 of this Act:

(1) "Board" means the State Board of Barbers and Hairdressers.

(2) "Certificate" means a certificate of registration, issued in accordance with this Act, authorizing the holder to practice hair design, cosmetology or manicure in accordance with the provisions of this Act.

(3) "Cosmetology" means the use of the hands, mechanical or electrical apparatus or appliances, cosmetic preparations, antiseptics, tonics, lotions or creams in massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work performed on the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment either directly or indirectly for the public generally.

(4) "Hair design" means, when done upon the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment either directly or indirectly for the public generally, any one or more of the following practices:

(a) Shaving, trimming or cutting of the beard.

(b) Arranging, styling, dressing, curling, temporary waving, permanent waving, relaxing, cutting, singeing, bleaching, coloring, dyeing, cleansing, shampooing, conditioning, applying hair tonics or similar work upon the hair of an individual.

(5) "License" means a license to operate a shop issued under the provisions of this Act.

(6) "Manicure" means cutting, trimming, polishing, coloring, tinting, cleansing, or otherwise treating the nails of the hand or massaging, cleansing, treating or beautifying the hands performed for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment either directly or indirectly for the public generally.

(7) "Practitioner" means a person certified and registered to practice hair design, cosmetology or manicure under the provisions of this Act.

(8) "School of hair design" means an establishment operated for the purpose of teaching hair design and licensed under ORS chapter 345.

(9) "Shop" means an establishment operated for the purpose of engaging in the practice of hair design, cosmetology or manicure and licensed under the provisions of this Act.

SECTION 2. This Act does not apply to:

(1) Services performed without compensation in case of emergency or in domestic administration.

(2) The following persons while in the proper discharge of their professional duties:

(a) Persons authorized by the law of this state to practice medicine, osteopathy, surgery or dentistry.

(b) Registered nurses.

(c) Persons licensed by the State Board of Pharmacy, merchants or other individuals when demonstrating apparatus or supplies for purposes of sale.

(d) Commissioned medical and surgical officers of the United States Army, Navy or Marine Hospital Service.

(3) A student attending a school licensed to teach hair design, cosmetology or manicure under ORS chapter 345 nor is such person required to obtain a license under this Act to perform within the scope of his training.

SECTION 3. No person shall:

(1) Practice or attempt to practice hair design, cosmetology or manicure without a certificate as a practitioner issued pursuant to this Act.

(2) Operate a shop unless it is at all times under the direct supervision and management of a practitioner.

(3) Display a sign or in any way advertise or hold himself out as a practitioner, barber or hairdresser or as being engaged in the practice or business of hair design, cosmetology or manicure without first obtaining a certificate or license as provided in this Act.

(4) Knowingly make a false statement on an application for a license, certificate or permit or for the renewal of a license, certificate or permit issued under the provisions of this Act.

(5) Permit any person in his employ or under his supervision or control to practice hair design, cosmetology or manicure without a certificate as required by this Act.

(6) Obtain or attempt to obtain a certificate, license or permit by fraudulent means.

(7) Permit the fraudulent use of his certificate by another person.

SECTION 4. A person desiring to obtain a license or certificate shall apply in writing to the board on a form provided by the board. Each application shall be

accompanied by evidence under oath or affirmation and satisfactory to the board that the applicant possesses the necessary qualifications.

SECTION 5. (1) To be issued a certificate as a practitioner, each applicant shall:

(a) Pass the certification examination given by the board pursuant to section 7 of this Act;

(b) Pay the examination fee and application fee determined by the board; and

(c) If the applicant is applying for a certificate to practice hair design have successfully completed all courses a school of hair design is required to teach to be licensed under ORS chapter 345; or

(d) If the applicant is applying for a certificate to practice cosmetology or manicure, have successfully completed all courses a school permitted to teach cosmetology or manicure is required to teach to be licensed under ORS chapter 345.

(2) An applicant who holds a currently valid license or certificate to perform hair design, cosmetology or manicure issued by a licensing agency of another state or territory of the United States shall not be required to comply with paragraph (c) or (d) of subsection (1) of this section.

(3) An applicant shall not be required to comply with paragraph (c) or (d) of subsection (1) of this section if the applicant is the graduate of a hair design, cosmetology or manicure school in another state or territory or in a state correctional institution and the requirements for successful completion of training at the school are determined by the Superintendent of Public Instruction to meet the minimum requirements for licensing a school of hair design or a school permitted to teach cosmetology or manicure under ORS chapter 345.

(4) The board shall issue to each qualified applicant a certificate. A certificate shall be valid for one year. The certificate shall be prima facie evidence of the right of the holder to practice in the field of practice for which the holder has qualified and to represent himself as a practitioner.

(5) At the request of any applicant who has qualified to perform hair design under this section, the board shall issue a certificate designating its holder as either a "barber" or "hairdresser," or both, as the applicant requests.

(6) A certificate shall state the areas of practice the practitioner may perform.

SECTION 6. (1) To be issued a license for a shop, each applicant shall:

(a) Be 18 years of age.

(b) Comply with the rules of the board concerning health, safety and sanitation.

(c) Comply with the applicable health and safety laws and rules of the Health Division and any other state agencies.

(d) Pay the application fee determined by the board.

(2) The board shall issue to each qualified applicant a license. A license shall be valid for one year. The license shall be prima facie evidence of the right of the owner of the shop to operate a shop and to advertise as offering the services for which the shop is licensed.

(3) A shop issued a license under the provisions of this Act must at all times be under the direct supervision and management of a practitioner. If hair design is practiced in the shop, the practitioner who supervises the shop must have a certificate to practice hair design.

SECTION 7. (1) Examinations shall be given at such times and places as the board may determine, but in no instance less often than once every month.

(2) Examinations shall be written or oral tests and shall test the applicant's knowledge of sanitary practices and safety for all procedures permitted and in the use of all instruments, equipment or chemicals permitted within the scope of a license and certificate in the field of practice for which the applicant is seeking certification.

SECTION 8. The board may refuse to issue or may suspend or revoke any certificate or license for any one or more of the following causes:

(1) Continued performance of hair design, cosmetology or manicure by a person knowingly having an infectious or communicable disease.

(2) Violation of ORS 646.608 in the conduct of a hair design, cosmetology or manicure business.

(3) Violation of any of the provisions of this Act.

SECTION 9. (1) Except as otherwise provided by this Act, all certificates and licenses issued under sections 1 to 26 of this Act shall expire one year after the date of issue, unless renewed within 30 days of the expiration date by payment of the required renewal fee and compliance with other requirements for renewal. The board, however, may vary the date of certificate and license renewal by giving to the applicant written notice of the renewal date being assigned and by making prorated adjustments in the renewal fee.

(2) Any license or certificate not renewed before it expires may be renewed within one year by payment of the required renewal fee, compliance with other requirements for renewal and payment of a late renewal fee set by the board.

(3) A certificate that has not been renewed for more than one year, and less than five years, after the date of expiration may be renewed and restored upon payment of one year's renewal fee.

(4) A certificate that has not been renewed for a period of five years after date of expiration may be renewed and restored if the applicant:

(a) Satisfactorily passes the examination required by section 7 of this Act.

(b) Pays one year's license fee in advance.

SECTION 10. (1) Every holder of a certificate shall display it in a conspicuous place adjacent to or near his work chair. If he has no work chair, the certificate shall be displayed in a conspicuous place within the shop.

(2) Every holder of a license shall display it in a conspicuous place within the shop.

SECTION 11. (1) A person not certified under this Act who wishes to practice, demonstrate and teach hair design, cosmetology or manicure, or perform any one or more of such functions, temporarily and primarily for educational purposes and is otherwise qualified as determined by the board shall first obtain a permit from the board.

(2) The permit shall specify:

(a) The purpose for which it is granted.

(b) The period during which the person is permitted to practice, demonstrate and teach, which period shall not exceed 10 days.

(c) The time and place of exercising the privilege granted by the permit.

(3) A person may be granted a permit under subsection (1) of this section if he:

(a) Makes application to the board for the permit.

(b) Is currently licensed or certified to practice or teach hair design, cosmetology or manicure in another state and presents satisfactory evidence of that fact to the board, or is otherwise qualified as determined by the board.

(c) Describes the purpose for which the permit is sought.

(d) Pays the required permit fee.

SECTION 12. (1) A person who wishes to temporarily operate any premises for teaching hair design, cosmetology or manicure shall first obtain a temporary premises license from the board.

(2) A person may be granted a license under subsection (1) of this section if he:

(a) Makes application to the board.

(b) Describes the purpose for which the license is sought.

(c) Identifies the location of the premises to be licensed.

(d) States the time and dates for which the license will be issued.

(e) Pays the required license fee.

(3) The license shall specify:

(a) The times, dates and location.

(b) The purpose for which the license is granted.

(c) The person to whom the license is issued. The person specified shall be responsible for the adherence to board rules governing health and sanitation.

(4) The period during which the premises shall be licensed shall not exceed five days.

(5) A temporary premises license is not required and shall not be issued if the educational activity is conducted in a licensed school of hair design, cosmetology or manicure.

SECTION 13. (1) A practitioner who practices outside of or away from a place of business shall carry with him a certificate of identification which must be shown to a person upon whom the work is being performed. The certificate shall contain the signature of the practitioner, his post-office address, the number and date of his certificate.

(2) The board shall, without charge, issue such certificates upon demand by any practitioner who practices away from his place of business on persons who are physically unable to visit a licensed shop.

SECTION 14. (1) There is created within the Department of Commerce a State Board of Barbers and Hairdressers consisting of seven members appointed by the Director of Commerce. Each member of the board shall serve for a term of three years and until his successor is appointed and qualified. At all times the membership of the board shall be so constituted that:

(a) Six members of the board shall be practitioners licensed under the provisions of this Act.

(b) One member shall be a public member not licensed under this Act.

(2) A person is not eligible for appointment as a member of the board if:

(a) He is associated, directly or indirectly, in the manufacture of cosmetic or barber appliances or supplies or their rental, sale or distribution to licensees.

(b) He has previously served two terms.

(3) A member of the board serves at the pleasure of the Director of Commerce. Vacancies shall be filled by the Director of Commerce, by appointment for the unexpired term.

SECTION 15. (1) Notwithstanding the qualifications of members of the board specified in section 14 of this Act, the first practitioner members appointed to the board shall be:

(a) Three persons currently licensed to practice as barbers under ORS chapter 690.

(b) Three persons currently licensed to practice as hairdressers under ORS chapter 691.

(2) Notwithstanding the terms of office specified in section 14 of this Act, of the members first appointed to the board:

(a) Three shall serve for terms ending June 30, 1978.

(b) Two shall serve for terms ending June 30, 1979.

(c) Two shall serve for terms ending June 30, 1980.

SECTION 16. The board shall elect a chairperson. The board shall prescribe rules to govern the proceedings of the board. The board shall hold meetings at such times and places as it determines. A majority of the members of the board shall constitute a quorum.

SECTION 17. Each member of the board is entitled to compensation and expenses as provided in ORS 292.495.

SECTION 18. (1) The Director of Commerce shall fix the qualifications of and appoint an administrator for the board who shall not be a member of the board. Subject to the applicable provisions of the State Merit System Law, the director shall fix the compensation of the administrator, who shall be in the unclassified service.

(2) The Director of Commerce shall provide the board with such services and employes as the board requires to carry out its duties under the provisions of this Act.

SECTION 19. The board shall keep a record of its proceedings relating to the issuance, refusal, suspension and revocation of certificates. This record shall also contain the name, place of business and the date of each certificate and license issued by the board. The records of the board shall at all reasonable times be open to inspection by the public.

SECTION 20. (1) The board has authority to make reasonable rules for the administration of the provisions of this Act and prescribe sanitary and safety requirements for shops. Sanitary requirements for shops shall be subject to the approval of the Health Division. A copy of the rules adopted by the board shall be furnished by the board to the owner or manager of each shop.

(2) Notwithstanding subsection (1) of this section, the board may not prohibit the use of the shop for domestic purposes if the part devoted to domestic purposes is in a

completely separate room not used by customers, with walls extending from floor to ceiling and with any connecting doors kept closed while the shop is in actual operation.

SECTION 21. In addition to the powers otherwise granted by this Act, the board shall have the power:

(1) To determine whether applicants to practice hair design, cosmetology or manicure meet the qualifications under section 5 or 6 of this Act, to conduct examinations, and to grant certificates and licenses to qualified applicants upon compliance with this Act and the rules of the board.

(2) To establish sanitary and safety standards for the practice of hair design, cosmetology or manicure, and to enforce the standards.

(3) To prescribe and furnish forms for applications for examinations, certificates, licenses and permits.

(4) To do any act necessary or proper to effect and carry out the duties required of the board by this Act.

SECTION 22. (1) Where the board proposes to revoke or suspend or refuse to issue or renew a certificate, permit or license, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) Any rules adopted by the board shall be adopted in accordance with the procedures set forth in ORS chapter 183.

SECTION 23. Fees required to be paid shall be paid in amounts determined by the board and approved by the Director of Commerce, except that no fee shall exceed the following:

(1) The filing of an application for an original certificate as a practitioner, $15.

(2) An annual renewal of a certificate as a practitioner, $15.

(3) Each examination for a certificate as a practitioner, $15.

(4) A temporary permit issued under section 11 of this Act, $5.

(5) A shop license, $50.

(6) An annual renewal for a shop license, $25.

(7) A temporary premises license, $25.

(8) A duplicate or replacement of any certificate, license or permit, $5.

(9) A late renewal fee, $5.

SECTION 24. All fees and other funds received by the Department of Commerce under this Act shall be paid into the Commerce Administration Account. The payments shall be credited to a separate subaccount, and are continuously appropriated for the purpose of administering sections 1 to 26 of this Act.

SECTION 25. Violation of section 3 of this Act is a Class B misdemeanor.

SECTION 26. (1) In addition to any other duties prescribed by law, the Director of Commerce shall establish within the Department of Commerce a program to provide for the inspection of shops licensed under sections 1 to 26 of this Act and of schools licensed to teach hair design, cosmetology or manicure under ORS chapter 345.

(2) Inspections conducted under this section shall determine whether the shops comply with the sanitary and safety requirements under sections 1 to 26 of this Act and rules adopted thereunder and whether the schools comply with the sanitary and safety requirements under ORS chapter 345 and rules adopted thereunder. Upon completion of each school inspection the Director of Commerce shall cause a report of the results of the inspection to be submitted to the Superintendent of Public Instruction.

Section 27. ORS 345.010 is amended to read:

345.010. As used in ORS 345.010 to 345.370, subsection (1) of 345.990 and ORS 345.992 to 345.997:

(1) "Agent" means any person owning an interest in, employed by or representing for remuneration a vocational school within or outside this state who, by solicitation in any form in this state enrolls or seeks to enroll for remuneration a resident of this state for instruction or training offered by the vocational school, or offers to award educational credentials on behalf of the vocational school, or who holds himself out to residents of this state as representing a vocational school for any purpose stated in this subsection.

(2) "Board" means the State Board of Education.

(3) "Cosmetology" has the meaning given in section 1 of this 1977 Act.

(4) "Hair design" has the meaning given in section 1 of this 1977 Act.

(5) "Manicure" has the meaning given in section 1 of this 1977 Act.

[*(3)*] **(6)** "Superintendent" means Superintendent of Public Instruction.

[*(4)*] **(7)** "Vocational school" means any private proprietary vocational, technical, home study, correspondence, business, professional or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any vocation or profession.

SECTION 28. Sections 29 to 35 of this Act are added to and made a part of ORS 345.010 to 345.370.

SECTION 29. In addition to the other requirements of this chapter, rules adopted by the board to regulate schools teaching hair design, cosmetology or manicure:

(1) Shall be set out separately from other rules adopted by the board.

(2) Shall, if the rules concern cleanliness, sanitary practices or use of instruments in the school, be adopted only after the board consults with the Health Division to assure that such rules are consistent with the requirements of the Health Division.

(3) May include any rule the board considers necessary to protect the economic or physical health and safety of the public or of the students attending the school.

(4) Shall include rules that set standards for teachers teaching in schools licensed to teach hair design, cosmetology or manicure pursuant to this chapter.

SECTION 30. In addition to the requirements for issuance of a license under ORS 345.040, for schools seeking a license to teach hair design, cosmetology or manicure, the board shall, by rule, require the schools to teach, and require for graduation from the school, courses that meet minimum standards set by the board on sanitary practices and safety for all procedures permitted and in the use of all instruments, equipment or chemicals permitted within the respective field of practice.

SECTION 31. (1) For the purposes set forth in subsection (2) of ORS 345.330, the superintendent shall appoint an advisory committee for vocational schools teaching hair design.

(2) The membership of the advisory committee shall be so constituted that:

(a) Four members shall be owners of schools licensed under this chapter to teach skills required for hair design.

(b) Two members shall be practitioners, certified under sections 1 to 26 of this 1977 Act, who are graduates of schools licensed under this chapter to teach hair design and who have graduated within one year of the time appointed.

(c) Two members shall be practitioners licensed under sections 1 to 26 of this 1977 Act who have practiced for more than one year preceding appointment.

(d) Two members shall be owners of shops licensed under sections 1 to 26 of this 1977 Act.

(e) One member shall be from the general public.

(3) Each member of the advisory committee shall serve for a term of four years ending June 30.

(4) The members of the advisory committee shall be entitled to compensation as provided in subsection (3) of ORS 345.330.

SECTION 32. (1) Notwithstanding the qualifications of members of the advisory committee specified in section 31 of this 1977 Act, the members of the committee first appointed need not be licensed under ORS chapter 345, graduates of a school licensed

under ORS chapter 345 or certified under sections 1 to 26 of this 1977 Act but may be persons currently holding a valid license or certificate under ORS chapter 690 or 691. Of the practitioner members first appointed to the advisory committee:

(a) Two shall be barbers currently licensed to practice under ORS chapter 690.

(b) Two shall be cosmeticians currently licensed in the class of cosmetic therapy of hairdresser under ORS chapter 691.

(2) Notwithstanding the terms of office specified in section 31 of this 1977 Act, of the members first appointed to the advisory committee:

(a) Three shall serve for terms ending June 30, 1978.

(b) Three shall serve for terms ending June 30, 1979.

(c) Three shall serve for terms ending June 30, 1980.

(d) Two shall serve for terms ending June 30, 1981.

SECTION 33. In addition to the other duties of the Superintendent of Public Instruction prescribed by law, the superintendent shall, at the request of the State Board of Barbers and Hairdressers, determine whether a school teaching hair design, cosmetology or manicure that is not licensed under the provisions of this chapter meets the minimum requirements set by the board for licensing of a similar school under this chapter.

SECTION 34. Sanitary and safety inspections performed in schools licensed under this chapter to teach hair design, cosmetology or manicure shall be conducted by the Department of Commerce.

SECTION 35. (1) In addition to the fees required by ORS 345.080, before issuing any license under this chapter to a school teaching hair design, cosmetology or manicure, the superintendent shall collect a nonrefundable annual inspection fee of $100.

(2) The inspection fee collected under subsection (1) of this section shall be transferred to the Department of Commerce for inspections performed under section 34 of this 1977 Act.

Section 36. ORS 293.110 is amended to read:

293.110. (1) All payments of money into the State Treasury by virtue of any statute providing for, creating, authorizing or continuing any of the funds enumerated in subsection (2) of this section shall be paid into and become a part of the General Fund.

(2) The following funds shall be a part of the General Fund:

[*(a) Board of Barber Examiners' Fund.*]

[*(b)*] (a) Board of Dental Examiners' Fund.

[*(c)*] (b) Forest Patrol Fund.

[*(d)*] (c) Motor Vehicle Fund.

[*(e)*] (d) Oregon State Veterinary Medical Fund.

[*(f)*] (e) State Banking Fund.

[*(g)*] (f) State Institutional Betterment Fund.

[*(h)*] (g) State Library Contingent Fund.

[*(i)*] (h) State Library School Library Fund.

[*(j)*] (i) Tumalo Maintenance Fund.

[*(k)*] (j) All other funds created by law which are not trust funds.

Section 37. ORS 431.130 is amended to read:

431.130. (1) The Health Division shall, in accordance with the provisions of ORS chapter 183, make such rules and regulations as, in its judgment, are necessary for carrying out subsection (2) of ORS 276.990, ORS 418.405 to 418.455, 418.505, 418.515 to 418.530, 418.855, 431.010 to 431.040, 431.060, 431.110 to 431.150, 431.160 to 431.180, 431.310, 431.330 to 431.350, 431.410, 431.420 to 431.460, 433.005, 433.010, 433.106 to 433.155, 433.205, 433.216, 433.220, 433.230, 433.255 to 433.270, 433.340 to 433.390, 433.705, 433.715, subsection (6) of 433.990, ORS 434.260, 434.270, 437.010, subsection (2) of 437.040, ORS 437.140, 437.410 to 437.500, 448.215 to 448.250[,] and 482.141 [*and 690.200*], including rules and regulations concerning the control of venereal diseases and the care, treatment and quarantine of persons infected therewith.

(2) The Health Division may enforce the rules and regulations for the control of any of the communicable diseases by quarantining or by the adoption of such other reasonable measures as seem best for limiting the spread of communicable diseases and for the preservation of the public health.

SECTION 37a. If Senate Bill 83 (1977) becomes law, then section 37 of this Act is repealed.

SECTION 38. (1) Any valid license, certificate or permit to practice as a barber or hairdresser or to practice cosmetology or manicure or to operate a shop that has been issued by the State Board of Cosmetic Therapy or the Board of Barber Examiners under ORS chapter 690 or 691 shall remain valid as issued and subject to the provisions of ORS chapter 690 or 691 and rules adopted thereunder as effective on the effective date of this Act and as enforced by the State Board of Barbers and Hairdressers and the Department of Commerce. When the license, certificate or permit expires and is subject to renewal, the State Board of Barbers and Hairdressers shall renew the license,

certificate or permit in accordance with the provisions for the renewal of licenses and certificates under sections 1 to 26 of this Act.

(2) Any student enrolled in a school regulated by ORS chapter 690 or 691 on the effective date of this Act may, at the election of the student and upon the completion of the training at the school, apply for a certificate as provided in sections 1 to 26 of this Act or may qualify for a certificate by complying with the provisions of ORS chapter 690 or 691 and rules adopted thereunder as the statutes and rules exist on the effective date of this Act.

(3) Any person serving as an apprentice under ORS chapter 690 on the effective date of this Act shall be issued, without charge, a certificate as a practitioner as provided in sections 1 to 26 of this Act.

(4) For purposes of this section, the State Board of Barbers and Hairdressers shall apply the appropriate provisions of ORS chapters 690 and 691 and rules adopted thereunder, as the statutes and rules exist on the effective date of this Act, as necessary.

SECTION 38a. (1) Notwithstanding any other provision of this Act, any school licensed to teach barbering under the provisions of ORS chapter 690 on the effective date of this Act may continue, at the election of the school, to operate under the provisions of ORS chapter 690 and any rules adopted thereunder as effective on the effective date of this Act and as administered by the Superintendent of Public Instruction. If a school elects to become subject to the provisions of this section all aspects of the operation of the school shall become subject to regulation under this section, including, but not limited to, the course of study, admission requirements, teacher requirements and qualifications, teacher licensing and license renewal, requisites for graduation, work station requirements, curriculum and all other requirements for the school.

(2) If a school elects to be regulated according to the provisions of this section, it is not subject to regulation pursuant to any other provision of this Act. Any student attending a school regulated according to the provisions of this section and any teacher teaching in the school are subject to the requirements of ORS chapter 690 and any rules adopted thereunder only while attending or teaching in the school.

(3) No school shall be regulated according to the provisions of this section unless the school so elects before the effective date of the rules adopted by the State Board of Education pursuant to section 39 of this Act. Any school electing to operate according to

this section may at any later time elect to withdraw from the provisions of this section and become regulated as otherwise provided by this Act.

(4) Any license or certificate to teach barbering issued by the Board of Barber Examiners pursuant to ORS chapter 690 before the effective date of this Act shall remain valid and may be renewed according to the provisions of ORS chapter 690 and rules adopted thereunder as effective on the effective date of this Act so long as the holder teaches at a school regulated according to this section.

(5) The Superintendent of Public Instruction shall administer the provisions of this section.

SECTION 39. (1) The State Board of Education shall adopt rules for the regulation and licensing of schools teaching hair design, cosmetology or manicure. The rules shall become effective not later than July 1, 1978.

(2) Until the effective date of rules adopted pursuant to subsection (1) of this section, the Superintendent of Public Instruction shall regulate schools holding valid licenses to teach under ORS chapter 690 or 691 in accordance with the provisions of the statutes and rules in effect on the effective date of this Act.

(3) Students graduating from schools regulated by the Superintendent of Public Instruction under the provisions of this section shall be considered to have graduated from a licensed school for purposes of sections 1 to 26 of this Act.

SECTION 40. (1) Nothing in this Act relieves a person of an obligation to pay a fee or charge or any other liability, duty or obligation owed to the State Board of Cosmetic Therapy or the Board of Barber Examiners. The State Board of Barbers and Hairdressers may undertake the collection or enforcement of such fee, charge, liability, duty or obligation.

(2) The rights and obligations of the State Board of Cosmetic Therapy and the Board of Barber Examiners legally incurred under contracts, leases and business transactions, executed, entered into or begun before the effective date of this Act, are transferred to the State Board of Barbers and Hairdressers. For the purpose of succession to these rights and obligations, the State Board of Barbers and Hairdressers is considered to be a continuation of the State Board of Cosmetic Therapy and the Board of Barber Examiners and not a new authority, and the State Board of Barbers and Hairdressers shall exercise those rights and fulfill those obligations as if they had not been transferred.

SECTION 41. (1) The unexpended balances of amounts authorized to be expended by the State Board of Cosmetic Therapy and the Board of Barber Examiners, from

revenues dedicated, continuously appropriated, appropriated, collected or otherwise available for the purpose of administering and enforcing duties, functions and powers, are appropriated and transferred to the Commerce Administration Account and are available for expenditure by the Department of Commerce.

(2) The Department of Commerce may expend moneys received under subsection (1) of this section for the purpose of administering and enforcing its duties, functions and powers and for the payment of expenses lawfully incurred by the State Board of Cosmetic Therapy and the Board of Barber Examiners to the extent that the money is unexpended on the effective date of this Act.

(3) The Department of Commerce shall assume and pay all outstanding obligations the State Board of Cosmetic Therapy and the Board of Barber Examiners lawfully incurred before the effective date of this Act to the extent that the obligations are properly charged against amounts authorized by this section to be expended by the Department of Commerce.

SECTION 42. ORS chapters 690 (1973 Replacement Part) and 691 (1975 Replacement Part) are repealed.

SECTION 43. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1977.

Rose & Breeze
Attorneys at Law - a Professional Corporation
526 I Street - Anchorage, Alaska 99501

Russel A. Rose
Robert A. Breeze

Telephone
(907) 277-0533

April 8, 1980

Mr. Robert Aaron
c/o House Commerce Committee
Pouch V
Juneau, AK 99811

Dear Bob,

I appreciated your courtesy and interest in calling me on Sunday, March 31, 1980, to alert me about HB 978. Unfortunately, it seems that I caught you at a bad time when I called on April 4, 1980 after meeting with John Mathison.

Bob, I was called on short notice to attend a meeting of beauty shop owners on April 2, 1980. Without any exaggeratio., I have never met with a group of people as unhappy and frustrated over a bill. A number of them expressed the thought that it would be better to have no bill than HB 978. No one expressed any dissent from that view. It is their feeling that if that were to occur, they would have the opportunity for a better bill to be prepared between now and next January; have the opportunity to speak to the candidates and legislators during the same time; have the bill pre-filed for the next legislature; and, hopefully have it passed during the 1981 session.

Since talking to you, I have received the Oregon statute and regulations, and the comments of the President of the Association, Oregon chapter. It is true that they are satisfied with their law and regulations, but it is obvious that the Oregon statute is considerably better than HB 978.

Under the Oregon law, the board is totally different from that in HB 978. The only itenerant practitioner is one who practices on persons physically unable to visit a licensed shop, and for that, the practitioner receives a special certificate of identification.

The Oregon law empowers the Board to control and enforce safety and health standards, to inspect, etc. the bill does not.

The Oregon law is clear on school attendance and certification, the bill is not.

The Oregon law provides for an administrator, the bill does not.

The Oregon law requires certification of manicurists, the bill does not.

The Oregon law has no exemption for communities less than 1,000 people, the bill does.

The Oregon law does not have the abolished barber board members as voting, ex-officio members of the new board; the bill does.

The Oregon law provides standards for shops and schools; the bill does not.

The Oregon law provides grandfather rights for all licensees, the bill does not.

The Oregon law sets up an advisory committee for the regulation of schools by the Superintendent of Schools; the bill does not.

Basically, the Oregon law permits barbers to continue as such, and otherwise abolishes the profession prospectively. It abolished the old barber apprentice provisions, and made all new licensees, in effect, hairdressers. Thus, the higher standards of the hairdressers and cosmetologists were met, school standards were raised, and apprenticeship disappeared. Under the bill, on the other hand, exceptions are created, apprenticeship has no standards for teachers or instructors, and all the substantive aspects of shop and schools are left to regulation, subject to challenge as to statutory authority or sufficiency of guidelines.

It appears to me that the hairdressers and cosmeticians of Alaska would be satisfied with the Oregon law, although it will probably be subsequently further clarified by amendment, except that the Alaska Association would prefer to add a requirement for continuing professional education as a condition of renewal of licenses.

The addition to the board of the power and authority to assess civil penalties (fines) in addition to suspension and revocation would be a further improvement, along with a provision for orders to show cause.

Electrology is a growing field, and could well be included also, as it, too, involves health, sanitation and safety.

It is sincerely hoped that you accept these comments as constructive criticism, and not as picky argument.

Very truly yours,

ROSE & BREEZE, P. C.

By: _____
Nissel A. Rose

cc: Senate Commerce Commitee, Attn: John Mathison
Alaska Hairdressers & Cosmetologists Assn.

NAR:lw

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 16, 1980

SUBJECT: Analysis of objection to HB 978 submitted by Nissel A. Rose (Work Order Number 8453)

TO: House Commerce Committee
Attn: Bob Aaron, A.A.

FROM: Tamara Brandt Cook
Legislative Counsel

You have asked for an analysis of the issues presented in a letter dated April 2, 1980 to the House Commerce Committee by Nissel A. Rose. This memo will address each objection to the bill in the order in which it appears in the letter, and will identify the issue raised according to its number in the letter.

1. Mr. Rose objects to the definition of cosmetology as it appears in HB 978. This definition, although somewhat shorter, is substantially the same as the definition used in the Oregon statute provided to me as a model. I have no basis on which to judge Mr. Rose's assertion that the definition does not follow the meaning of the word generally adopted throughout the nation.

2. Mr. Rose objects to the fact that "hairdressing" is not defined in the bill. "Hairdressing" is not defined in the Oregon bill upon which HB 978 was modeled. However, AS 08.-13.100(b) provides that a person who is qualified to perform hair design may be designated as a "hairdresser" on his license. Therefore, it seems clear that "hairdressing" involves the practice of "hair design." "Hair design" is defined in this bill. However, for the sake of clarity, I would recommend that the word "hairdressing" which appears only once in this bill, in section 08.13.030(c)(2) be replaced by the words "hair design."

3. Mr. Rose suggests that "hairdresser" should be defined. I believe that section 08.13.100(b) which provides that a person licensed to perform hair design may be designated as a "hairdresser" on his license is an adequate definition of the term.

4. Mr. Rose objects to the fact that no standards are set for schools, for teachers, or for curricula. HB 978 provides that the board may set by regulation, standards for curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsibility of the owner. Mr. Rose is correct that the board is given complete discretion in this matter and not provided with any legislative guidelines. The Oregon bill also leaves these matters to the discretion of the occupational board but it also provides that the board must consult with the Health Division and an advisory committee on vocational training exists in Oregon to offer suggestions for standards to the board. Since this bill requires that health and sanitary conditions in schools are to be supervised by the Department of Health and Social Services, I see no need to require the board to consult with that department in adopting regulations for standards applicable to schools. A policy decision must be made as to whether the board should continue to have the discretion to regulate standards for schools and for teaching. If the legislature wishes to impose particular standards, these can be included within this bill.

5. Mr. Rose objects also to the fact that no legislative standards have been provided for the licensing and operation of shops. AS 08.13.070(3) requires that a shop be under the direct supervision of a licensed practitioner. AS 08.13.200 provides that health and sanitary conditions in shops shall be supervised by the Department of Health and Social Services. The Oregon statute provides for licensing of shops but imposes, essentially, only these two standards also. It would seem that requiring a shop to be under the direct supervision of a licensed practitioner would be adequate to protect the public; however, this bill could be changed to incorporate additional standards for shops and to require the licensing of shops.

6. Mr. Rose suggests that the bill is deficient because no inspection of shops or schools is provided for except through the Department of Health and Social Services. The

board currently has no staff to conduct inspections. The Department of Commerce and Economic Development is authorized to conduct investigations for all occupational boards upon its own motion. If the legislature feels that this is not adequate protection for the public, an investigator could be assigned to the Board of Barbers and Hairdressers.

7. Mr. Rose raises questions concerning the composition of the Board of Barbers and Hairdressers. This is essentially a policy issue not a legal issue to be considered by the legislature.

8. Mr. Rose objects to the fact that grandfather rights are provided for barbers but not for cosmetologists. He is correct in this observation, and grandfather rights could also be provided for cosmetologists. This is a matter of policy. However, it is my understanding that cosmetologists were specifically excluded from the clause dealing with grandfather rights because current licensure requirements for cosmetologists substantially meet those set out in HB 978 and, therefore, cosmetologists would presumably have no difficulty in meeting the licensure requirements of this act.

9. Mr. Rose objects to the fact that there is no definition set out for the term "barber" and that barbers licensed originally under AS 08.12 would continue to be subject to that chapter even after it is repealed, which Mr. Rose considers to be unfair. HB 978 contains no definition of "barber" but AS 08.13.100(b) provides that a person licensed under this bill to perform "hair design" may be designated as a "barber" on his license if he chooses. The Oregon statute also provides that a person may choose whether to be designated as "barber", "hairdresser" or as both. Under this act a person who is licensed as a "barber" under the grandfather section is limited to performing those procedures he was licensed to perform under the original requirements, whereas the "barber" licensed under this act is allowed to perform any of the procedures which a "hairdresser" may perform because he has met that more stringent licensure requirement. If the legislature feels that the public needs to be informed of the different standards applied to "barbers", it could simply require that all persons licensed under this act be designated as "hairdressers" on their licenses.

10. Mr. Rose objects to the fact that there is no licensing provided for "barbers" or for teachers. "Barbers" are licensed according to the provisions applied to "hairdressers" under this act. There is no requirement that teachers obtain any special teachers' license, but 08.13.180 requires that a person have a license, temporary permit, or student permit in order to teach. If this does not adequately protect the public, an additional licensing requirement can be imposed on teachers.

11. Mr. Rose feels that AS 08.13.080 is ambiguous. I agree and would recommend the section be changed to read:

> (1) have successfully completed all courses that a school of hair design is required to teach to be licensed under AS 08.13.110, <u>if applying for a license to practice hair design</u>; or
>
> (2) <u>have successfully completed all courses that a school of cosmetology is required to teach in order to be licensed under AS 08.13.110, if applying for a license to practice cosmetology</u>;

12. Mr. Rose objects to allowing licensed practitioners to work outside a place of business or shop with no criteria for these facilities. He points out that it would be virtually impossible to inspect this type of operation. It occurs to me that requiring that people who practice outside of a shop be licensed at least provides the board with a chance to take action upon the receipt of consumer complaints. If this is not considered adequate protection for the public, this provision could be eliminated.

13. Mr. Rose objects to excluding practitioners in communities having less than 1,000 people from the requirements of licensure. This is strictly a policy decision. I feel that there is no question that a person who is practicing without a license under this section who moves to a more populated area would be required to obtain a license in order to continue practicing. Likewise, if the population of the area increased over time so that it was no longer a community of less than 1,000 people, persons who have been practicing without a license would be required to obtain a license.

14. Mr. Rose suggests that 08.13.180 be clarified to reflect the fact that certain persons may practice without a license under the terms of this bill. This could be done by wording the section to read

> A person who practices hair design or cosmetology or operates a school of hair design or cosmetology, or teaches in a school of hair design or cosmetology, without a license, temporary permit, or student permit required under AS 08.13 is guilty of a class B misdemeanor.

15. Mr. Rose points out that the word "affect" at page 8, line 10 should be "effect." This should be changed.

16. Mr. Rose again appears to be objecting to the definition of "cosmetology". This problem has been addressed in item 1.

17. Mr. Rose objects to the requirement which establishes a maximum period of time within which an apprentice may acquire the necessary training. This is a policy question, rather than a legal question; but as I understand it, the statute was specifically designed to preclude people from dabbling over an indefinite period of time and to require a serious commitment towards obtaining a license.

18. Mr. Rose suggests that the bill contain a provision requiring continuing professional education. This is a policy rather than a legal issue, and the bill can be changed to incorporate this suggestion.

19. Mr. Rose objects to the fact that only suspension or revocation of licenses is specifically mentioned as disciplinary powers of the board. AS 08.13.030(c)(3) provides that the board may "do any act necessary to carry out the provisions of this chapter." Under this section the board is given broad authority to censure or reprimand a licensee or to adopt regulations setting fines. I believe that this "catch-all" provision provides the board with an adequate range of disciplinary power; however, possible disciplinary actions open to the board could be specifically itemized. Mr. Rose particularly requests that the board be given the power to issue show cause.

Please contact me regarding any changes which you would like to have made to HB 978.

TBC:ljb

HOUSE RESEARCH AGENCY
Pouch Y - State Capitol
Juneau, Alaska 99811
465-3991

MEMORANDUM March 4, 1980

TO: Representative Fred Brown

FROM: Elaine Mitchell, Research Analyst

RE: Oregon's Combined Board of Hairdressers and Barbers
Research Request No. 89

Background

In 1977, the Oregon Legislature, under sunset provisions, was considering the activities of various boards and commissions. At that time, there were separate boards of examiners for barbers and for hairdressers. There had been for a number of years, according to one contact, fighting between the two associations over "turf" i.e., which profession would prevail over what services of the industry. There was also a belief among some of the industry that if they didn't come up with a viable proposal, the legislature would "do it for them."

Opposition to the combination of the two boards was voiced strongly by organized barbers. Through the barbers' union, the traditional entry into the profession was via the apprentice-journeyman route. The barbers were opposed to any change in the system and mounted a labor-intensive campaign in an attempt to defeat the legislation to combine the boards.

An organization was formed for the specific purpose of lobbying for a combined board of examiners--to place the hairdressers and the barbers under one examining board. The organization, still in existence, is named The Professional Hair Industry, Inc.

Interview Comments

According to a spokesman for that organization, Wayne Beinert, who is head of the Executive Barbers School in Portland, the combined board is a positive move for the industry in general. It has simplified the licensing procedure by (a) providing for a "one-stop" examination and licensing procedure; (b) eliminating the practical demonstration type examination; and (c) providing for an on-going licensing procedure schedule. Exams are scheduled once a month at designated areas throughout the state; are written exams only; and cover five categories: chemistry, safety, sanitation, use of implements, and state laws.

The administrator of the combined boards, Virginia Honeywell, discussed positive results: reduced paperwork within the administration and reduced cost. The latter will result this year in reduced cost to license applicants from $50 to $30, effective July 1, 1980; examination fees will be reduced from $15 to $10.

Individual licensed shop owners were also contracted. A barber (Eddie Gustamente) was a licensed barber at the time of the combination of the two boards, and is now a licensed hairdresser and barber. He related a positive reaction to the combined boards; and stated that objections by barbers at the time of the legislative consideration were voiced "probably because they were not prepared to get into 'hairdressing.'"

A hairdresser (Ilene Copeland) was a licensed hairdresser at the time of legislative consideration of the combination of the two boards, and is a member of the above named organization which lobbied for the change. She also related a positive attitude for the change, pointing out, in addition to the above comments, that it "has made life simpler for the licensed shop owner."

If you would like additional information, please let us know.

EM/dp

SB

544

Passed Senate
17 - 0

Passed House
35 - 1.

~~2200~~

frustration plus.

League of W
CSHB 230 am
vote

NA

SJR 71

1981 Session

Tim Kelly
Arliss Sturg,
Ed Dankw.
~~Geo Hohman~~.
Pat Roday.
Terry Stimson
Brad Bradley

17/0 S
35/1 H

160 - grandfather in barbers - not doing.

or the board may

Senate to concur.

reciprocity - between states →
board s/ have decrecti
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(endorsement)

Oxford Pendaflex
STOCK No. 7531/3

08.12 Lane
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Amendment

HOUSE CS FOR CS FOR SENATE BILL 544
THE BOARD OF BARBERS AND HAIRDRESSERS

The following changes were made by the house regarding CSSB 544:

(1) P. 2, LS. 7-12 (CSSB 544) - The house deleted these lines in the Senate Bill which removes the regulation of fees by the board. The house inserted a fee schedule into statute which we can go along with. In the HCS the fee schedule is added on P. 8/9, Ls. 5/1.

(2) P. 5, LS. 7-10 (HCSCSSB 544) - The house added a section (c) which allows the board to create limited areas of professional licensing of cosmotology by regulation.
The board may not restrict or regulate the fields of manicure or pedicure. Initially the Senate didn't realize that there were only 4 (four) manicurirts in the state. All their equipment and materials can be purchased over the counter and there is no need to regualte these fields. We can go along with this change. Section (c) in the senate bill was changed to (d) in the HCS to allow for this change.

(3) P. 6. LS. 8-10 (HCSCSSB 544) - The house added a sentence requiring a person holding a student permit or temporary permit to have his permit available for inspection when engaged in practice. This goes along with the requirement for display of license of other practitioners as well.

(4) P. 7, LS. 8 - (CSSB 544) - The house deleted [a manacurist] from this section since there is no need for regulation of manacurists. (see (2) above).

(5) P. 9, LS. 9-13 - The definition of manacurist was deleted. (see (2) above)

Original sponsor: Commerce Committee

IN THE SENATE BY THE COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 544

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of the practice of barbering, hairdressing, and cosmetology; terminating the existence of the Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners; establishing the Board of Barbers and Hairdressers; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08 is amended by adding a new chapter to read:

CHAPTER 13. BARBERS AND HAIRDRESSERS.

ARTICLE 1. BOARD OF BARBERS AND HAIRDRESSERS.

Sec. 08.13.010. CREATION AND MEMBERSHIP OF BOARD. (a) There is created the Board of Barbers and Hairdressers consisting of five members appointed by the governor.

(b) The board consists of

(1) two persons licensed as barbers under this chapter;

(2) two persons licensed as hairdressers under this chapter; and

(3) one public member.

Sec. 08.13.020. TERM OF OFFICE AND REMOVAL OF MEMBERS. Members serve staggered terms of three years at the pleasure of the governor. Members of the board may be appointed to serve no more than two consecutive full terms.

Sec. 08.13.030. POWERS AND DUTIES OF THE BOARD. (a) The board shall exercise general control over the vocations of barbering, hair-

dressing, and cosmetology.

(b) The board shall

(1) examine applicants and approve the issuance of licenses and permits to practice;

(2) authorize the issuance of licenses for schools of barbering, hairdressing, and cosmetology;

(3) set fees for licensing, issuing permits, license and permit renewal, examining applicants and other charges as necessary to cover the operating expenses of the board;

(4) prepare an annual budget to be submitted to the legislature and request appropriations from the general fund, not exceeding the income generated from fees, to cover operating expenses.

(c) The board may

(1) suspend or revoke a license or permit;

(2) on its own motion or upon receipt of a written complaint, conduct hearings and request the department to investigate the practices of a person, shop, or school involved in the practice or teaching of barbering, hairdressing, or cosmetology;

(3) adopt regulations or do any act necessary to carry out the provisions of this chapter.

Sec. 08.13.040. MEETINGS AND EXAMINATIONS. The board shall meet as often as necessary to conduct its business. It shall conduct separate examinations covering each field of practice: barbering, hairdressing, and cosmetology. Examinations shall be given at least twice in every year for each field of practice for which applications for licensure are pending. An applicant may take an examination in more than one field during the same testing session.

Sec. 08.13.050. RECORDS OF THE BOARD. The board shall keep a record of its proceedings related to the issuance, refusal, suspension

and revocation of licenses and permits. The record shall contain the name, place of business, and date of each license and permit issued and shall be open to inspection by the public at all reasonable times. The board shall submit an annual report on its operations to the governor.

ARTICLE 2. EXAMINATION AND LICENSING.

Sec. 08.13.070. LICENSE REQUIRED. A person may not

(1) practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit unless exempted under AS 08.13.160(c);

(2) open or conduct a school of barbering, hairdressing, or cosmetology without a license;

(3) operate a shop in violation of AS 08.13.120;

(4) permit a person in his employ or under his supervision who is not exempted under AS 08.13.160(c) to practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit;

(5) permit the use of his license, temporary permit, or student permit by another person;

(6) obtain or attempt to obtain a license, temporary permit, or student permit by fraudulent means.

Sec. 08.13.080. QUALIFICATIONS OF APPLICANTS. An applicant for examination must

(1) have successfully completed all courses that a school with a program in barbering is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice barbering;

(2) have successfully completed all courses that a school with a program in hairdressing is required to teach to be licensed under AS 08.13.110 if applying for a license to practice hairdressing;

(3) have successfully completed all courses that a school

with a program in cosmetology is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice cosmetology; or

(4) have served an apprenticeship under AS 08.13.082.

Sec. 08.13.082. APPRENTICESHIP. (a) The period of apprenticeship required to qualify an applicant for a license to practice barbering is 1,500 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than nine months from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(b) The period of apprenticeship required to qualify an applicant for a license to practice hairdressing is 2,000 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than one year from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(c) The period of apprenticeship required to qualify an applicant for a license to practice cosmetology is 350 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than six months from the date of its commencement and must be completed in not more than one year from the date of its commencement.

Sec. 08.13.090. EXAMINATIONS AND OTHER REQUIREMENTS. (a) A written examination shall be given to each applicant for examination at a time and place determined by the board. The board may delegate the power of examination to a committee of the board or a board member.

(b) The written examination shall cover subjects designated by the board and shall test the applicant's knowledge of sanitary practices, safety of all procedures, and use of instruments, equipment and chemi-

cals permitted within the field of practice for which the applicant is seeking a license.

(c) The board may by regulation establish requirements for a practical examination for licensure.

Sec. 08.13.100. LICENSE. (a) The board shall authorize the issuance of a license to each qualified applicant who has passed an examination under AS 08.13.090. The license is valid for two years and subject to renewal.

(b) A license shall state the areas of practice (barbering, hairdressing, cosmetology, or any combination) which the practitioner is qualified to perform.

(c) A person holding a current valid license from a board of barbering, hairdressing, or cosmetology in another state or country is entitled to a license under this chapter without examination. An application shall include:

(1) proof of a valid license issued by another licensing jurisdiction;

(2) proof of completed training and working experience which the board finds to meet the minimum requirements of the state;

(3) payment of a credential investigation fee.

Sec. 08.13.110. SCHOOL LICENSE. The board shall adopt regulations for the licensing of schools of barbering, hairdressing, and cosmetology. The regulations shall include details of the curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsiblity of the owner.

Sec. 08.13.120. SHOP LICENSE. The board shall adopt regulations for the licensing of shops. A shop owner will be licensed to operate a shop without examination, but unless he is a practitioner he may not conduct business without employing a manager who is a practitioner.

This section does not apply to a shop located in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people.

Sec. 08.13.130. DISPLAY OF LICENSE. A practitioner shall display his license in a conspicuous location in his place of business. Each shop owner is responsible for the display of the licenses of employees. A practitioner who practices outside of a place of business shall carry his license with him to be shown to persons upon whom work is performed.

Sec. 08.13.140. LAPSED LICENSE. A lapsed license may be reinstated if the license has not been lapsed for a period of more than three years, and all renewal and delinquent fees for the period during which the license has been lapsed are paid.

Sec. 08.13.150. GROUNDS FOR REFUSAL, SUSPENSION OR REVOCATION OF A LICENSE OR PERMIT. The board may refuse, suspend, or revoke a license, student permit, or temporary permit for failure to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board.

Sec. 08.13.160. APPLICATION OF LICENSE REQUIREMENTS. (a) A person holding a valid license to practice barbering under AS 08.12 is licensed under this chapter, and may continue to practice barbering under the conditions imposed by AS 08.12 and the regulations issued under AS 08.12 until the license expires, at which time the provisions of this chapter apply and a license issued under AS 08.12 cannot be renewed.

(b) A person holding a valid license under AS 08.28 may continue to practice under the conditions imposed under AS 08.28 and the regulations issued under AS 08.28 until the license expires, at which time the provisions of this chapter apply and a license issued under AS 08.28 cannot be renewed.

(c) The licensing and permit provisions of this chapter do not apply to

(1) a person practicing barbering, hairdressing, or cosmetology in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people and who uses only chemicals available to the general public;

(2) a shampoo person;

(3) a manicurist.

Sec. 08.13.170. TEMPORARY PERMITS. (a) A person not licensed under this chapter who wishes to practice and teach barbering, hairdressing, or cosmetology temporarily and primarily for educational purposes who is otherwise qualified to practice barbering, hairdressing, or cosmetology as determined by the board shall first obtain a temporary permit.

(b) The temporary permit shall specify

(1) the purpose for which it is granted;

(2) the period during which the holder of the temporary permit may practice;

(3) the place or places the holder of the temporary permit may practice.

Sec. 08.13.180. STUDENT PERMITS. A person attending a licensed school of barbering, hairdressing, or cosmetology, and a person apprenticed to a practitioner in a shop approved by the board shall obtain a student permit. A student permit to practice barbering or hairdressing is valid for two years. A student permit to practice cosmetology is valid for one year. A student permit may not be renewed, but, upon application, the board may issue a new permit to the same person, or extend an expired permit to the date of the next scheduled examination. Credit earned under an expired student permit may be transferred to a new

permit as determined by the board.

Sec. 08.13.190. FAILURE TO POSSESS A LICENSE OR PERMIT. A person who practices barbering, hairdressing, or cosmetology, or operates a shop, or operates a school of barbering, hairdressing, or cosmetology, or teaches in a school of barbering, hairdressing, or cosmetology, without a license, temporary permit, or student permit and who is not exempt under AS 08.13.120 or under 08.13.160(c) is guilty of a class B misdemeanor.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 08.13.200. DEPOSIT OF RECEIPTS. Money received by the board from the payment of fees shall be paid into the general fund of the state.

Sec. 08.13.210. HEALTH AND SANITARY CONDITIONS. Health and sanitary conditions in shops and schools of barbering, hairdressing, and cosmetology shall be supervised by the Department of Health and Social Services.

Sec. 08.13.220. DEFINITIONS. As used in this chapter,

(1) "apprentice" means a person who receives on-the-job training under the direct supervision of a practitioner, who does not receive a wage or commission before he has completed 350 hours of training, and for whose work no charge is made before he has completed 350 hours of training;

(2) "barbering" means shaving, trimming, or cutting the beard or hair of a living person for a fee and for cosmetic purposes;

(3) "board" means the Board of Barbers and Hairdressers;

(4) "cosmetology" means the use of the hands, mechanical or electric apparatus or appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing, stimulating, or similar work on the human body for cosmetic purposes for a fee;

(5) "hairdressing" means performing, for a fee, the following services for cosmetic purposes:

(A) shaving, trimming, or cutting the beard of a living person; and

(B) arranging, styling, dressing, curling, temporary waving, permanent waving, cutting, singeing, bleaching, coloring, cleansing, conditioning, or similar work on the hair of a living person;

(6) "manicurist" means a person who uses the hands, mechanical or electric apparatus or appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing or similar work on the human hands or trims, shapes or polishes the nails of the human hands for cosmetic purposes for a fee;

(7) "practitioner" means a person licensed to practice barbering, hairdressing, or cosmetology under this chapter;

(8) "shampoo person" means a person who, for a fee and under the supervision of a practitioner of barbering or hairdressing, cleanses or conditions the hair of the human head with products which have no effect other than cleaning or conditioning the hair;

(9) "shop" is an establishment operated for the purpose of engaging in barbering, hairdressing, or cosmetology.

* Sec. 2. AS 08.03.010(c) is amended by adding a new paragraph to read:

(2) Board of Barbers and Hairdressers (AS 08.13.010) -- June 30, 1984.

* Sec. 3. AS 18.05.040(a)(9) is amended to read:

(9) standards of cleanliness and sanitation in connection with the construction, operation and maintenance of a camp, cannery, food handling establishment, food manufacturing plant, mattress manufacturing establishment, industrial plant, school, barber shop, <u>hairdressing</u>

or cosmetology [COSMETOLOGICAL] establishment, soft drink establishment, beer and wine dispensaries, and for other similar establishments in which insanitation may create a condition causative of disease.

* Sec. 4. AS 44.62.330(a) is amended by adding a new paragraph to read:

(47) Board of Barbers and Hairdressers (AS 08.13.010).

* Sec. 5. AS 08.03.010(b)(2) and (4); AS 08.12; AS 08.28; and AS 44.62.-330(a)(1) and (7) are repealed.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M May 2, 1980

SUBJECT: Section-by-section analysis CS for SB 544 (Work Order Number 8541)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have asked for a section-by-section analysis of CS for Senate Bill 544 entitled: "An Act relating to the regulation of the practice of barbering, hairdressing, and cosmetology; terminating the existence of Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners; establishing the Board of Barbers and Hairdressers; providing for an effective date."

Section 1. A new chapter is created in Title 8 covering the combined professions of barbering and hairdressing.

Sec. 08.13.010. The Board of Barbers and Hairdressers is composed of five persons appointed by the governor, two barbers, two hairdressers, and one public member.

Sec. 08.13.020. The board members serve staggered terms of three years and may serve no more than two consecutive terms.

Sec. 08.13.030. The board has the following duties:

(1) to exercise general control over the vocations of barbering, hairdressing, and cosmetology;

(2) to examine applicants and approve issuance of licenses and permits;

(3) to approve the issuance of licenses for schools of barbering, hairdressing, and cosmetology;

(4) to set fees as necessary to cover the operating expenses of the board;

(5) to submit a budget to the legislature and request appropriations from the general fund which may not exceed income generated from fees collected by the board.

The board has the following powers:

(1) to suspend or revoke a license or permit;

(2) to conduct hearings and request the Department of Commerce and Economic Development to investigate the practices of the occupations being regulated;

(3) to carry out the provisions of this chapter through adopting regulations or doing any required act.

Sec. 08.13.040. The board is free to meet as often as required. It shall hold examinations in the fields of barbering, hairdressing, and cosmetology at least twice each year. An applicant for licensure may choose the field of practice he wishes to enter, or may choose to be examined in more than one field of practice.

Sec. 08.13.050. The board is obligated to keep records of permits and licenses issued or revoked and to report on its operations to the governor annually.

Sec. 08.13.060. This section prohibits

(1) the practice of barbering, hairdressing or cosmetology without a license or permit unless exempted under this act;

(2) conducting a school of barbering, hairdressing, or cosmetology without a license;

(3) operating a shop without a license unless specifically exempted by statute;

(4) allowing an employee or person being supervised to practice without a license or a permit unless specifically exempted by statute;

(5) permitting the use of a license or permit by another person;

(6) obtaining a license or permit by fraudulent means.

Sec. 08.13.080. There are three separate occupational fields which an applicant may seek licensure in. To qualify for licensure an applicant must have finished the courses that a school with a program in the particular field is required to teach in order to be licensed under this chapter. It is left up to the board to establish by regulation the standards for the licensing of schools. So, the educational requirements set out in this section are not specific, but rather, shall match the requirements which the board sets for schools. In this way, if a person attends a licensed occupational school, he will be assured of meeting the state educational requirements. In addition, an applicant must pass an examination in order to be licensed in a particular field. Separate examinations shall be given for the fields of barbering, hairdressing, and cosmetology. It is also possible for an applicant to qualify for examination through serving an apprenticeship, rather than by attending a licensed occupational school.

Sec. 08.13.082. This section describes the accepted apprenticeship program, which may only be conducted in a shop approved by the board. A person wanting to become a barber is required to receive 1,500 hours of apprenticeship training. The program must last at least nine months and may not be extended past two years. A person who wishes to become a hairdresser must complete 2,000 hours of apprenticeship training in not less than one year and not over two years. A person who wishes to practice cosmetology must receive 350 hours of apprenticeship training over a period of six months but within one year.

Sec. 08.13.090. Each applicant for licensure must pass a written examination covering sanitary practices, safety of procedures used in a particular field, and the use of instruments, equipment and chemicals pertinent to the particular field. The board has discretion to require a practical examination as well through regulation.

Sec. 08.13.100. A license is valid for two years and shall state the field or fields of practice which a person is qualified to perform. A person who is licensed in another

state or country is automatically entitled to a license in this state upon payment of required fees if he has training and work experience which the board finds meets the minimum requirements of this state.

Sec. 08.13.110. Schools of barbering, hairdressing, and cosmetology shall be licensed if they meet standards set by the board. The board must adopt regulations setting standards for licensing, including curriculum requirements, hours of instruction, physical condition of school facilities, and financial responsibility of the owner. Under the broad provision of AS 08.13.030(c)(3) granting the board power to adopt regulations needed to carry out its duties, the board has the discretion to adopt regulations setting standards for school licensure.

Sec. 08.13.120. The board is required to adopt regulations for licensing barber, hairdressing, and cosmetology shops. An owner will be licensed to operate a shop without an examination, however, unless he himself is licensed to practice, he must employ a manager who is. No licensure requirement is imposed upon shops located in communities having a population of less than 1,000 people as long as there is not a community of over 1,000 people within 25 miles.

Sec. 08.13.130. A person licensed under this act is required to display his license or to keep it with him if he is going to work outside of a regular place of business. A shop owner is affirmatively obligated to display the licenses of his employees.

Sec. 08.13.140. A license which has not been renewed for three years may be reinstated after payment of any required fees.

Sec. 08.13.150. The board has discretion to refuse, suspend, or revoke a license or permit for failure to comply with this chapter, with a regulation, or with an order of the board.

Sec. 08.13.160. Persons with valid licenses under existing law are allowed to continue to practice until their licenses expire. At that time, they will be required to comply with the provisions of this chapter and to obtain new licenses. The grandfather clause applies to persons who hold licenses

to practice barbering, and to persons holding any license under AS 08.28, which includes persons involved in the practice of hairdressing and beauty culture, managers, owners, instructors, and schools. Under AS 08.28 managers manicurists were licensed; but since they are no longer required to obtain a special license, the grandfather provision has no practical effect on them. The licensing requirements of this act also do not apply shampoo persons, persons who wash hair while under the supervision of a licensed practitioner. Additionally, no license is required to practice in a community having a population of less than 1,000 people so long as it is not within 25 miles of a community which is larger.

Sec. 08.13.170. A permit is available to a person who wishes to practice on a temporary basis in the state for educational purposes, and who is otherwise qualified. The board determines whether or not an applicant is qualified and a permit must specify the purpose for which the permit is granted, the period during which the holder may practice, and the place or places which the holder may practice.

Sec. 08.13.180. A person attending a school or serving an apprenticeship must hold a student permit. A permit to practice barbering or hairdressing is valid for two years, while one to practice cosmetology is valid for one year. A student permit may not be renewed; but the board has the discretion to issue a new permit to the same person or to extend an expired permit to the date of the next scheduled examination so that a person may continue training while waiting to be tested. If a person applies for a new student permit, the board has the discretion to transfer credit earned under the expired permit.

Sec. 08.13.190. A person who practices barbering, hairdressing, or cosmetology, operates a shop, operates a school, or teaches in a school without a license or permit commits a class B misdemeanor. This criminal penalty does not apply to a person practicing in or a shop located in a community of less than 1,000 people which is not within 25 miles of a larger community.

Sec. 08.13.200. Money generated through fees imposed under this chapter shall be deposited into the general fund.

Sec. 08.13.210. The Department of Health and Social Services is responsible for supervising sanitary conditions in shops and schools.

Sec. 08.13.220. This section defines terms.

(1) "Apprentice" is a person receiving on the job training under the supervision of someone licensed under this chapter. An apprentice may not receive a wage or commission until he has completed 350 hours of training, and no charge may be made for his work until that time.

(2) "Barbering" is shaving, trimming, cutting the beard or hair of a living person for a fee. A person practices barbering only when this is done for cosmetic, rather than for medical, purposes.

(3) "Board" refers to the Board of Barbers and Hairdressers.

(4) "Cosmetology" involves work upon the human body for cosmetic purposes for a fee.

(5) "Hairdressing" differs from "barbering" in that it includes temporary waving, permanent waving, singeing, bleaching, and coloring hair as well as shaving, trimming, or cutting the beard or hair.

(6) "Manicurist" is a person who works upon hands and nails for cosmetic purposes for fee. Manicurists are exempted from licensure.

(7) "Practitioner" is broadly defined to include all persons licensed to practice under this chapter.

(8) "Shampoo person" is a person who cleans or conditions hair under the supervision of a person who is licensed. A shampoo person is exempted from licensure.

(9) "Shop" includes barbering, hairdressing, and cosmetology establishments.

Section 2. The termination date of the Board of Barbers and Hairdressers is June 30, 1984.

Section 3. In order to include hairdressing establishments this section amends a provision which requires the commissioner of the Department of Health and Social Services to adopt regulations setting standards of cleanliness.

Section 4. The Board of Barbers and Hairdressers is added to the list of boards and agencies required to following the adjudicatory procedures of the Administrative Procedure Act.

Section 5. Provisions establishing a termination date of June 30, 1980 for the Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners are repealed; the chapters dealing with those boards are repealed entirely; and those two boards are removed from the list of boards and agencies required to comply with the adjudicatory provisions of the Administrative Procedure Act.

Section 6. The act becomes immediately effective.

If you have any further questions, please contact me.

TBC:ljb

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

POUCH H-07
JUNEAU, ALASKA 99811

March 31, 1980

The Honorable Glenn Hackney
Chairman, Senate HESS Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Document # 59-80

Dear Senator Hackney:

House Bill 447 proposes terminating the existence of the Board of Nursing Home Administrators on January 1, 1981 and reassigns its responsibilities to the Department of Commerce and Economic Development.

At the time various Boards and Commissions were being considered for "sunsetting" by the Legislature in 1979, it was found that the existence of the Board of Nursing Home Administrators or some similar type of "peer review" system was, by federal law, (U.S. Code 42 Sub-Chapter XIX S. 1396 a(29)) necessary if the State of Alaska was to continue to receive federal fund participation for Medicaid nursing home services.

Federal fund participation is an essential part of the Medicaid nursing home services funding. Nursing home services comprise 70% of the total Alaska Medicaid budget (twenty-nine million dollars) and therefore, approximately fourteen million dollars (50% matching) could be lost in federal fund participation if some type of "peer review" licensing function is not provided for in Alaska Statute.

When viewed superficially, it is difficult to justify the need for, and cost of a statewide, regionally represented, five member Board of Nursing Home Administrators when only approximately 35 licenses have been issued since 1976. However, with approximately fourteen million dollars in federal fund participation dependent upon the state having "either a Board of Nursing Home Administrators or an agency of the state responsible for licensing under the Healing Arts Act of the state" the cost and need is easier rationalized.

What seems needed is a method of administrating the issuance of Nursing Home Administrators licensured through the Department of Commerce and Economic Development while at the same time providing a method of inexpensive "peer review." Some alternatives that we have considered are as follows:

I. Establish the Long Term Care Division of the Alaska State Hospital Association as the board the Department of Commerce and Economic Department must consult with regarding:

a. Promulgating of regulations.

b. Revocation of licenses.

c. Establishment of procedures to insure that licenses uphold standards.

d. Adoption of criteria for educational requirements.

The Long Term Care Division of the Alaska State Hospital Association meets at least bi-annually and at no expense to the State could provide the professional support needed to fulfill federal statute requirements. The Long Term Care Division of the Alaska State Hospital Association is composed of all the nursing home administrators in the State of Alaska.

II. Establish a Board, for federal purposes, composed of state employees who's offices are in Juneau. This type of board should meet during regular working hours and therefore, should be no added expense to the State

a. Director of Occupational Licensing.

b. Director of Public Assistance.

c. Director of Public Health.

d. Director of Nursing Board.

III. The development of a comprenensive healing arts act, which would encompass all healing professions.

IV. Reinstatement of the existing Board of Nursing Home Administrators with appropriate funding and staffing in the Division of Occupational Licensing to accomplish the tasks required.

The Division of Public Assistance opposes House Bill 447 and support the reinstatement of the Board of Nursing Home Administrators. We feel the cost of supporting the operation of such a board are justified when compared to the amount of federal fund participation involved.

Sincerely,

Rod Betit
Director

SENATE HESS COMMITTEE
ASSEMBLY BULDING, ROOM 106
JUNEAU, ALASKA

REF: ~~HOUSE BILL~~ No. 447

SENATE HACKNEY AND MEMBERS OF THE HESS COMMITTEE:

WE HAVE NO BASIC DISAGREEMENT WITH THE APPARENT INTENT OF H.B. #447. HOWEVER, THERE ARE SOME RELATIONSHIPS WITH FEDERAL REGULATIONS THAT MUST BE CONSIDERED SO AS TO PROTECT THE ABILITY OF NURSING HOMES TO SERVE THE ELDERLY AND THE ILL. THE FOLLOWING IS A BRIEF STATEMENT SETTING FORTH THE PROBLEMS AND SUGGESTING A CURE THRU MODEST CHANGES TO THE BILL,

FOUR "KEY" PHRASES DOMINATE OUR DISCUSSION RELATIVE TO ALASKA'S ELDERLY AND ILL CITIZENS:

HEALING ARTS ACT
BOARD OF NURSING HOME ADMINISTRATORS

PROGRAM COMPLIANCE CONTINUANCE
PROGRAM SUPPORT CONTINUANCE

UNDER THE TERMS OF THE FEDERAL SOCIAL SECURITY RULE NO NURSING HOME MAY OPERATE UNLESS IT IS LICENSED - A REQUIREMENT OF THE "HOME'S" LICENSE IS THAT IT BE ADMINISTERED BY A PERSON LICENSED AS A NURSING HOME ADMINISTRATOR.

ONLY TWO OPTIONS ARE AVAILABLE FOR THE LICENSING OF NURSING HOME ADMINISTRATORS:

A- LICENSED UNDER TERMS OF A HEALING ARTS ACT.
B- LICENSED BY A BOARD OF NURSING HOME ADMINISTRATORS.

ALASKA DOES NOT HAVE A "HEALING ARTS ACT". ALASKA HAS A "BOARD OF NURSING HOME ADMINISTRATORS" ABOUT TO BE SUNSETTED.

WHAT ARE SOME OF THE CONSEQUENCES OF NOT HAVING A "BOARD"?

FIRST, THE MINUTE THE "BOARD" NO LONGER EXISTS, THE LICENSES OF THE ADMINISTRATORS BECOME INVALID -- THUS THE NURSING HOMES ARE NOT IN COMPLIANCE AND THE PATIENTS MUST BE MOVED ALMOST IMMEDIATELY, RETURNED TO THEIR HOMES OR BE PLACED IN NON-EXISTING FACILITIES.

SECONDLY, MEDICAID HAS THE RIGHT AT THAT POINT TO STOP PAYMENT OF THE FIFTY (50%) PERCENT SUPPORT.

THE OBVIOUS RESULT OF ONE AND TWO IS THE REMOVAL OF MEDICAL CARE FROM APPROXIMATELY 500 ILL AND ELDERLY PATIENTS -- NONE OF WHOM HAVE A PLACE TO GO -- SOME OF WHOM ARE COMATOSE -- ALL OF WHOM ARE UNABLE TO CARE FOR THEMSELVES -- NONE OF WHOM HAVE FAMILIES ABLE TO CARE FOR THEM OR THEY SHOULD NOT BE IN NURSING HOMES -- MOST OF WHOM ARE WARM, CARING, LOVING PEOPLE DOING THEIR VERY BEST UNDER VERY TRYING STATES OF HEALTH.

WHAT CAN BE DONE TO STOP THE POTENTIAL SERIOUS DANGER TO THE PRESENT AND PROSPECTIVE RESIDENTS OF NURSING HOMES; THE AGED, AND THE ILL, BOTH YOUNG AND OLD?

RETAIN THE BOARD OF NURSING HOME ADMINISTRATORS. THE LEGISLATURE MAY WELL DESIRE TO CHANGE THE MANNER IN WHICH THE BOARD IS CONSTITUTED, AND WE WOULD APPLAUD ANY CHANGE THAT BROUGHT ABOUT COST SAVING WITHOUT DESTROYING EFFECTIVENESS. THE SIZE OF THE BOARD MAY BE AS SMALL AS THREE MEMBERS; ONE COULD WELL BE FROM THE STAFF OF HEALTH AND SOCIAL SERVICES, ONE FROM THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT AND THE OUTSIDE MEMBER COULD BE THE ADMINISTRATOR OF A JUNEAU-BASED NURSING HOME. THUS, THE ONLY COST INVOLVED WOULD BE CLERICAL AS RELATED TO THE SCHEDULED MEETINGS AND EXAMINATIONS. NO TRAVEL AND NO PER DIEM. AND THIS SYSTEM COMPLIES WITH FEDERAL REQUIREMENTS.

AS AN ASIDE, I WOULD MENTION THAT IN MY MIND THE CONSIDERATION OF DOING AWAY WITH A BOARD MUST INCLUDE DEEP AND CAREFUL THOUGHT UPON THE TOTAL RELATIONSHIPS INVOLVED AND NOT ONLY THE APPARENT COST AND PRODUCTIVITY OF A BOARD. MUCH WORK MUST BE DONE ON A NATIONAL LEVEL TO CHANGE FEDERAL RULES IF ALASKA TRULY WISHES TO LESSEN EXTERNAL CONTROLS. LET'S LET THAT BE A SEPERATE CONCERN.

FOR NOW WE SHOULD ALL WORK TOGETHER TO RETAIN ANACCEPTABLE, TO US AND TO FEDERAL AUTHORITIES, "BOARD OF NURSING HOME ADMINISTRATORS" AND RETAIN OUR ABILITY TO PROVIDE PROPER MEDICAL HELP FOR OUR ELDERLY AND OUR ILL. SECONDARILY, LET US MAINTAIN OUR ABILITY TO SHARE THE COST WITH THE FEDERAL GOVERNMENT.

REMEMBER, NO "BOARD OF NURSING HOME ADMINISTRATORS" COULD MEAN AN ALMOST IMMEDIATE CLOSURE OF THE NURSING HOMES THROUGH NON-COMPLIANCE----AND, AN ULTIMATE LOSS OF FEDERAL FUNDING.

THE COMPLIANCE WITH FEDERAL STANDARDS AND THE CURE OF THE PROBLEM ARE SIMPLE MATTERS. COMPOSE THE BOARD FROM THE REPRESENTATIVE OF APPROPRIATE STATE AGENCIES PLUS A REPRESENTATIVE OF THE NURSING HOME INDUSTRY AND CONTINUE TO OPERATE UNDER THE PRESENT RULES

SINCERELY YOURS,

JIM L. BUCK

CSSB 544

BOARD OF BARBERS AND HAIRDRESSERS

MR. PRESIDENT, I MOVE THE ADOPTION OF CSSB 544 WHICH TERMINATES THE EXISTING BOARD OF BARBER EXAMINERS AND THE EXISTING BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS, AND ESTABLISHES A NEW BOARD ENTITLED: THE BOARD OF BARBERS AND HAIRDRESSERS. THE BARBERS, HAIRDRESSERS, AND COSMETOLOGISTS ARE BROUGHT UNDER THE ONE BOARD. IT IS FELT THAT THE REGULATION OF THESE PROFESSIONS WILL OPERATE MORE EFFECTIVELY AND ECONOMICALLY UNDER THE NEW BOARD SINCE THESE PROFESSIONS ARE SIMILAR IN NATURE.

(SEC. 08)
P. 1, LS. 13-15

SEC. 1 CREATES A NEW CHAPTER IN TITLE 8 COVERING THE COMBINED PROFESSIONS OF BARBERING AND HAIRDRESSING.

(SEC. 08.13.010)
P. 1, LS. 16-23

CREATES THE BOARD OF BARBERS AND HAIRDRESSERS CONSISTING OF 5 MEMBERS APPOINTED BY THE GOVERNOR. THE BOARD CONSISTS OF 2 BARBERS, 2 HAIRDRESSERS AND 1 PUBLIC MEMBER.

(SEC. 08.13.020)
P. 1, LS. 24-27

PROVIDES FOR MEMBERS OF THE BOARD TO SERVE STAGGERED TERMS OF 3 YEARS AND MEMBERS MAY SERVE NO MORE THAN TWO CONSECUTIVE TERMS.

(SEC. 08.13.030)
P. 1/2, LS. 28/12

SPELLS OUT THE DUTIES OF THE BOARD, WHICH ARE THE FOLLOWING:

(1) THE BOARD SHALL EXERCISE GENERAL

CONTROL OVER THE VOCATIONS OF BARBERING, HAIRDRESSING AND COSMETOLOGY.

(2) THE BOARD SHALL EXAMINE APPLICANTS AND APPROVE THE ISSUANCE OF LICENSES AND PERMITS.

(3) THE BOARD SHALL APPROVE THE ISSUANCE OF LICENSES FOR SCHOOLS OF BARBERING, HAIRDRESSING AND COSMETOLOGY.

(4) THE BOARD WILL SET FEES FOR LICENSING, ISSUING PERMITS, LICENSE AND PERMIT RENEWAL, AND OTHER CHARGES AS NECESSARY TO COVER THE OPERATING EXPENSES OF THE BOARD.

(5) THE BOARD SHALL SUBMIT A BUDGET TO THE LEGISLATURE AND REQUEST APPROPRIATIONS FROM THE GENERAL FUND, NOT TO EXCEED THE INCOME GENERATED FROM FEES TO COVER OPERATING EXPENSES.

(SEC. 08.13.030)
P. 2, LS. 13-20

SPELLS OUT THE POWERS OF THE BOARD, WHICH ARE AS FOLLOWS:

(1) THE BOARD HAS THE POWER TO SUSPEND OR REVOKE A LICENSE OR PERMIT;

(2) THE BOARD HAS THE POWER TO CONDUCT HEARINGS AND REQUEST THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO INVESTIGATE THE PRACTICES OF A PERSON OR SHOP OR SCHOOL WHICH IS INVOLVED IN THE PRACTICE OF TEACHING BARBERING, HAIRDRESSING,

OR COSMETOLOGY.

(3) THE BOARD HAS THE POWER TO ADOPT REGULATIONS OR DO ANY ACT TO CARRY OUT THE PROVISIONS OF THIS CHAPTER.

(SEC. 08.13.040)
P. 2, Ls. 21-27

GIVES THE BOARD THE POWER TO MEET AS OFTEN AS NECESSARY TO CONDUCT ITS BUSINESS. THE BOARD SHALL CONDUCT SEPARATE EXAMINATIONS COVERING THE FIELDS OF BARBERING, HAIRDRESSING, AND COSMETOLOGY. THE EXAMINATIONS SHALL BE GIVEN AT LEAST TWICE IN EVERY YEAR FOR EACH FIELD OF PRACTICE FOR WHICH APPLICATIONS FOR LICENSURE ARE PENDING. AN APPLICANT MAY TAKE AN EXAMINTION IN MORE THAN ONE FIELD DURING THE SAME TESTING SESSION. HE MAY CHOOSE TO ENTER MORE THAN ONE FIELD OF PRACTICE.

(SEC. 08.13.050)
PS. 2/3, LS. 28/4

REQUIRES THE BOARD TO KEEP RECORDS OF THE ISSUANCE, REFERRAL, SUSPENSION AND REVOCATION OF LICENSES AND PERMITS. THEIR RECORDS SHALL CONTAIN THE NAME, PLACE OF BUSINESS AND DATE OF EACH LICENSE AND PERMIT ISSUED AND THEIR RECORDS ARE OPEN TO INVESTIGATION BY THE PUBLIC. THE BOARD IS ALSO REQUIRED TO SUBMIT AN ANNUAL REPORT ON ITS OPERATIONS TO THE GOVERNOR.

(SEC. 08.13.070)
P. 3, LS. 6-20

PROHIBITS:

(1) THE PRACTICE OF BARBERING, HAIRDRESSING OR COSMETOLOGY WITHOUT A LICENSE OR PERMIT UNLESS EXEMPT UNDER AS 08.13.160(c);

(2) OPENING OR CONDUCTING A SCHOOL OF BARBERING, HAIRDRESSING OR COSMETOLOGY WITHOUT A LICENSE;

(3) OPERATING A SHOP WITHOUT A LICENSE UNLESS SPECIFICALLY EXEMPTED BY STATUTE;

(4) ALLOWING AN EMPLOYEE OR PERSON BEING SUPERVISED TO PRACTICE BARBERING, HAIR-DRESSING OR COSMETOLOGY WITHOUT A LICENSE OR A PERMIT UNLESS EXEMPTED BY AS 08.13.160(c);

(5) PERMITTING THE USE OF A LICENSE OR PERMIT BY ANOTHER PERSON;

(6) OBTAINING OR ATTEMPTING TO OBTAIN A LICENSE OR PERMIT BY FRAUDULENT MEANS.

(SEC. 08.13.080)
PS. 3/4, LS. 21/4

SPELLS OUT THE QUALIFICATIONS OF APPLICANTS FOR EXAMINATION. THERE ARE THREE SEPARATE OCCUPATIONAL FIELDS WHICH AN APPLICANT MAY SEEK LICENSURE IN -- BARBERING, HAIRDRESSING, OR COSMETOLOGY. TO QUALIFY FOR LICENSURE, AN APPLICANT MUST HAVE FINISHED THE COURSES AND PASS THE EXAMINATION THAT A SCHOOL WITH A PROGRAM IN THE PARTICULAR FIELD IS REQUIRED TO TEACH. SEPARATE EXAMINATIONS SHALL

BE GIVEN FOR THE FIELDS OF BARBERING, HAIRDRESSING, AND COSMETOLOGY. IT IS ALSO POSSIBLE FOR AN APPLICANT TO QUALIFY FOR EXAMINATION THROUGH SERVING AN APPRENTICESHIP, RATHER THAN BY ATTENDING A LICENSED OCCUPATIONAL SCHOOL.

(SEC. 08.13.082)
P. 4, LS. 5-22

DESCRIBES THE ACCEPTED APPRENTICESHIP PROGRAM, WHICH MAY ONLY BE CONDUCTED IN A SHOP APPROVED BY THE BOARD. A PERSON WANTING TO BECOME A BARBER IS REQUIRED TO RECEIVE 1,500 HOURS OF APPRENTICESHIP TRAINING. THE PROGRAM MUST LAST AT LEAST NINE MONTHS AND MAY NOT BE EXTENDED PAST TWO YEARS. A PERSON WHO WISHES TO BECOME A HAIRDRESSER MUST COMPLETE 2,000 HOURS OF APPRENTICESHIP TRAINING IN NOT LESS THAN ONE YEAR AND NOT OVER TWO YEARS. A PERSON WHO WISHES TO PRACTICE COSMETOLOGY MUST RECEIVE 350 HOURS OF APPRENTICESHIP TRAINING OVER A PERIOD OF SIX MONTHS BUT WITHIN ONE YEAR.

(SEC. 08.13.090)
PS. 4/5, LS. 23/4

REQUIRES THAT EACH APPLICANT FOR LICENSURE MUST PASS A WRITTEN EXAMINATION COVERING SANITARY PRACTICES, SAFETY OF ALL

PROCEDURES USED IN A PARTICULAR FIELD, AND THE CARE OF INSTRUMENTS, EQUIPMENT AND CHEMICALS PERTINENT TO THE PARTICULAR FIELD. THE BOARD HAS THE DISCRETION TO REQUIRE A PRACTICAL EXAMINATION AS WELL THROUGH REGULATION.

(SEC. 08.13.100)
P. 5, LS. 5-20

SIMPLY STATES THAT A LICENSE IS VALID FOR 2 YEARS AND IT SHALL STATE THE FIELD OR FIELDS OF PRACTICE WHICH A PERSON IS REQUIRED TO PERFORM. A PERSON WHO IS LICENSED IN ANOTHER STATE OR COUNTRY IS AUTOMATICALLY ENTITLED TO A LICENSE IN THIS STATE WITHOUT EXAMINATION UPON PAYMENT OF THE REQUIRED FEES AND PROOF OF COMPLETED TRAINING AND WORKING EXPERIENCE WHICH THE BOARD FINDS MEETS THE MINIMUM REQUIREMENTS OF THIS STATE.

(SEC. 08.13.110)
P. 5, LS. 21-25

PROVIDES THAT SCHOOLS OF BARBERING, HAIRDRESSING, AND COSMETOLOGY SHALL BE LICENSED IF THEY MEET STANDARDS SET BY THE BOARD. THE BOARD MUST ADOPT REGULATIONS SETTING STANDARDS FOR LICENSING, INCLUDING CURRICULUM REQUIREMENTS, HOURS OF INSTRUCTION, PHYSICAL CONDITION OF SCHOOL FACILITIES, AND FINANCIAL RESPONSIBILITY OF THE OWNER.

(SEC. 08.13.120)
Ps. 5/6, Ls. 26/3

REQUIRES THE BOARD TO ADOPT REGULATIONS FOR LICENSING BARBER, HAIRDRESSING, AND COSMETOLOGY SHOPS. AN OWNER WILL BE LICENSED TO OPERATE A SHOP WITHOUT AN EXAMINATION; HOWEVER, UNLESS HE IS LICENSED TO PRACTICE, HE MUST EMPLOY A MANAGER WHO IS. NO LICENSURE REQUIREMENT IS IMPOSED UPON SHOPS LOCATED IN COMMUNITIES HAVING A POPULATION OF LESS THAN 1,000 PEOPLE AS LONG AS THERE IS NOT A COMMUNITY OF OVER 1,000 PEOPLE WITHIN 25 MILES.

(SEC. 08.13.130)
P. 6, Ls. 4-8

REQUIRES A PERSON LICENSED UNDER THIS ACT TO DISPLAY HIS LICENSE OR TO KEEP IT WITH HIM IF HE IS GOING TO WORK OUTSIDE OF A REGULAR PLACE OF BUSINESS. A SHOP OWNER IS ALSO AFFIRMATIVELY OBLIGATED TO DISPLAY THE LICENSES OF HIS EMPLOYEES.

(SEC. 08.13.140)
P. 6, Ls. 9-12

STATES THAT A LICENSE WHICH HAS NOT BEEN RENEWED FOR THREE YEARS MAY BE REINSTATED AFTER PAYMENT OF ANY REQUIRED RENEWAL AND DELINQUENT FEES.

(SEC. 08.13.150)
P. 6, Ls. 13-17

GIVES THE BOARD THE DISCRETION TO REFUSE, SUSPEND, OR REVOKE A LICENSE OR PERMIT FOR FAILURE TO COMPLY WITH THIS CHAPTER, WITH A REGULATION, OR WITH AN ORDER OF THE BOARD.

(SEC. 08.13.160)
Ps. 6/7, Ls. 18/8

IS THE GRANDFATHER CLAUSE WHICH ALLOWS A PERSON WITH VALID LICENSES UNDER EXISTING LAW TO CONTINUE TO PRACTICE UNTIL THEIR LICENSES EXPIRE. AT THAT TIME, THEY WILL BE REQUIRED TO COMPLY WITH THE PROVISIONS OF THIS CHAPTER. ADDITIONALLY, NO LICENSE IS REQUIRED TO PRACTICE IN A COMMUNITY HAVING A POPULATION OF LESS THAN 1,000 PEOPLE SO LONG AS IT IS NOT WITHIN 25 MILES OF A COMMUNITY WHICH IS LARGER.

(SEC 08.13.170)
P. 7, Ls. 9-20

THIS SECTION STATES THAT A TEMPORARY PERMIT IS AVAILABLE TO A PERSON WHO WISHES TO PRACTICE ON A TEMPORARY BASIS IN THE STATE FOR EDUCATIONAL PURPOSES, AND WHO IS OTHERWISE QUALIFIED.

(SEC. 08.13.170)
Ps. 7/8, Ls. 21/1

DEALS WITH STUDENT PERMITS AND STATES THAT A PERSON ATTENDING A SCHOOL OR SERVING AN APPRENTICESHIP MUST HOLD A STUDENT PERMIT. A PERMIT TO PRACTICE BARBERING OR HAIRDRESSING IS VALID FOR TWO YEARS, WHILE ONE TO PRACTICE COSMETOLOGY IS VALID FOR ONE YEAR. A STUDENT PERMIT MAY NOT BE RENEWED; BUT THE BOARD HAS THE DISCRETION TO ISSUE A NEW PERMIT TO THE SAME PERSON OR TO EXTEND AN EXPIRED PERMIT TO THE DATE OF THE NEXT SCHEDULED EXAMINATION SO THAT A PERSON MAY CONTINUE TRAINING WHILE WAITING TO BE TESTED. IF A PERSON APPLIES FOR A NEW STUDENT PERMIT, THE BOARD HAS THE DISCRETION

TO TRANSFER CREDIT EARNED UNDER THE EXPIRED PERMIT.

(SEC. 08.13.190) P. 8, Ls. 2-8 — SPECIFIES THAT FAILURE OF A PERSON PRACTICING TO POSSESS A LICENSE OR PERMIT WHO IS NOT EXEMPT UNDER AS 08.13.120 (COMMUNITY OF LESS THAN 1,000 PEOPLE) IS GUILTY OF A CLASS-B MISDEMEANOR.

(SEC. 08.13.200) P. 8, Ls. 11-12 — STATES THAT MONEY GENERATED THROUGH FEES IMPOSED UNDER THIS CHAPTER SHALL BE DEPOSITED INTO THE GENERAL FUND.

(SEC. 08.13.210) P. 8, Ls. 13-16 — SIMPLY STATES THAT IT IS THE RESPONSIBILITY OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES TO SUPERVISE SANITARY CONDITIONS IN SHOPS AND SCHOOLS.

(SEC. 08.13.220) Ps. 8/9, Ls. 10/21 — CONSISTS OF DEFINITIONS.

(SEC. 08.03.010(c)) P 9, Ls. 22-24 — SECTION 2 STIPULATES THE TERMINATION DATE FOR THE BOARD OF BARBER AND HAIRDRESSERS AS JUNE 30, 1984.

(SEC. 18.05.040) Ps. 9/10, Ls. 26/3 — SECTION 3 IS SIMPLY AMENDED TO INCLUDE HAIRDRESSING AND COSMETOLOGY ESTABLISHMENTS IN THE EXISTING REQUIREMENT OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES TO ADOPT REGULATIONS SETTING STANDARDS OF CLEANLINESS FOR THESE ESTABLISHMENTS.

(SEC. 44.62.330(A)) P. 10, Ls. 4-5 — SECTION 4 ADDS THE BOARD OF BARBERS AND HAIRDRESSERS TO THE EXISTING LIST OF BOARDS REQUIRED TO FOLLOW THE ADJUDICATORY PROCEDURES OF THE ADMINISTRATIVE PROCEDURES ACT.

P. 10, Ls. 6-7 — SECTION 5 REPEALS THE FOLLOWING:

AS 08.03.010(B)(2) AND (4) - REMOVES THE BOARD OF BARBER EXAMINERS AND THE BOARD OF HAIRDRESSING AND BEAUTY CULUTURE EXAMINERS FROM THE LIST OF BOARDS WHICH HAD A TERMINATION DATE OF JUNE 30, 1980.

AS 08.12 - REPEALS THE BOARD OF BARBER EXAMINERS.

AS 08.28 - REPEALS THE BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS.

AS 44.62.330(A)(1) AND (7) - REMOVES THE BOARD OF BARBER EXAMINERS AND THE BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS FROM THE LIST OF BOARDS REQUIRED TO FOLLOW THE ADJUDICATORY PROCEDURES OF THE ADMINISTRATIVE PROCEDURES ACT.

P. 10, Ls. 8-9 SECTION 6 PROVIDES THAT THIS ACT TAKES EFFECT IMMEDIATELY.

Introduced: 4/3/80
Referred: Commerce

IN THE SENATE BY THE COMMERCE COMMITTEE

SENATE BILL NO. 544

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of the practice of hair design and cosmetology; terminating the existence of the Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners; establishing the Board of Barbers and Hairdressers; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08 is amended by adding a new chapter to read:

CHAPTER 13. BARBERS AND HAIRDRESSERS.

ARTICLE 1. BOARD OF BARBERS AND HAIRDRESSERS.

Sec. 08.13.010. CREATION AND MEMBERSHIP OF BOARD. (a) There is created the Board of Barbers and Hairdressers consisting of five members appointed by the governor.

(b) The board consists of

(1) three persons licensed as barbers or hairdressers under this chapter;

(2) one person licensed to practice cosmetology under this chapter;

(3) a public member who has no direct financial interest, and has never had such an interest, in a barber, hairdresser, or beauty culture business.

Sec. 08.13.020. TERM OF OFFICE AND REMOVAL OF MEMBERS. Members serve a term of three years and at the pleasure of the governor. Members of the board may be appointed to serve no more than two full terms.

Sec. 08.13.030. POWERS AND DUTIES OF THE BOARD. (a) The board shall exercise general control over the vocations of hair design and cosmetology.

(b) The board shall

(1) examine applicants and approve the issuance of licenses and permits to practice;

(2) authorize the issuance of licenses for schools of hair design or cosmetology;

(3) set fees for licensing, issuing permits, license and permit renewal, examining applicants and other charges as necessary to cover the operating expenses of the board; fees set for licensing and renewing of licenses for barbers under AS 08.13.150 may not exceed fees charged for licensing and renewing of licenses for practitioners;

(4) prepare an annual budget to be submitted to the legislature and request appropriations from the general fund, not exceeding the income generated from fees, to cover operating expenses.

(c) The board may

(1) suspend or revoke a license or permit;

(2) on its own motion, and shall, upon receipt of a written complaint, conduct hearings and request the department to investigate the practices of a person, shop, or school involved in the practice or teaching of hairdressing or cosmetology;

(3) adopt regulations or do any act necessary to carry out the provisions of this chapter.

Sec. 08.13.040. MEETINGS AND EXAMINATIONS. The board shall meet as often as necessary to conduct its business, but shall hold at least two examinations each year if applications for a license are pending.

Sec. 08.13.050. RECORDS OF THE BOARD. The board shall keep a record of its proceedings related to the issuance, refusal, suspension

Sec. 6 – To be issued a license for a shop ~~the [illegible]~~ each applicant shall:

Add

08.13.08

and revocation of licenses and permits. The record shall contain the name, place of business, and date of each license and permit issued and shall be open to inspection by the public at all reasonable times. The board shall submit an annual report on its operations to the governor.

ARTICLE 2. EXAMINATION AND LICENSING.

Sec. 08.13.070. LICENSE REQUIRED. A person may not

(1) practice hair ~~design~~ or cosmetology without a license, temporary permit, or student permit;

(2) organize, open or conduct a school of hair design or cosmetology without a license;

(3) operate a shop unless it is at all times under the direct supervision of a practitioner;

(4) permit a person in his employ or under his supervision to practice hair design or cosmetology without a license, temporary permit, or student permit;

(5) permit the use of his license, temporary permit, or student permit by another person;

(6) obtain or attempt to obtain a license, temporary permit, or student permit by fraudulent means.

Sec. 08.13.080. QUALIFICATIONS OF APPLICANTS. An applicant for examination must

(1) have successfuly completed all courses that a school of hair ~~design~~ is required to teach in order to be licensed under AS 08.-13.110; or

(2) have served an apprenticeship under AS 08.13.082; and

(3) be at least 17 years of age.

Sec. 08.13.082. APPRENTICESHIP. (a) The period of apprenticeship required to qualify an applicant for a license to practice hair design is 2,000 hours. The apprenticeship must be served in a shop approved by

the board. The apprenticeship may not be completed in less than one year from the date of its commencement and must be completed in not less than two years from the date of its commencement.

(b) The period of apprenticeship required to qualify an applicant for a license to practice cosmetology is 1,000 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than six months from the date of its commencement and must be completed in not less than one year from the date of its commencement.

Sec. 08.13.090. EXAMINATIONS AND OTHER REQUIREMENTS. (a) A written examination shall be given to each applicant for examination at a time and place determined by the board. The board may delegate the power of examination to a committee of the board or a board member.

(b) The examination shall cover subjects designated by the board and shall test the applicant's knowledge of sanitary practices, safety of all procedures, and use of instruments, equipment and chemicals permitted within the field of practice for which the applicant is seeking a license.

(c) The board may prescribe additional requirements for a license.

Sec. 08.13.100. LICENSE. (a) The board shall authorize the issuance of a license to each qualified applicant who has passed an examination under AS 08.13.090. The license is valid for two years and subject to renewal.

(b) A license shall state the areas of practice the practitioner is qualified to perform. At the request of an applicant who has qualified to perform hair design, the board shall issue a license designating its holder as a "barber", "hairdresser", or both.

(c) A person holding a current valid license from a board of hair design or cosmetology in another state or country is entitled to a

08.13-130 lapsed

+ restored if the applicant:

(a) satisfactorily passes the examinations required in Sec 08.13.090.

(b) pays one year's license fee in advance.

- allow grandfather rights for all licenses

license under this chapter without examination. An application shall include:

(1) proof of a foreign license;

(2) proof of completed training and working experience which the board finds to meet the minimum requirements of the state;

(3) payment of an investigation fee.

Sec. 08.13.110. SCHOOL LICENSE. The board shall adopt regulations for the licensing of schools of hair design and cosmetology. The regulations shall include details of the curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsiblity of the owner.

Sec. 08.13.120. DISPLAY OF LICENSE. A practitioner shall display his license in a conspicuous location in his place of business. Each shop owner is responsible for the display of the licenses of employees. A practitioner who practices outside of a place of business shall carry his license with him to be shown to persons upon whom work is performed.

Sec. 08.13.130. LAPSED LICENSE. A lapsed license may be reinstated if the license has not been lapsed for a period of more than one year, and all renewal and delinquent fees for the period during which the license has been lapsed are paid.

Sec. 08.13.140. GROUNDS FOR REFUSAL, SUSPENSION OR REVOCATION OF A LICENSE OR TEMPORARY PERMIT. The board may refuse, suspend, or revoke a license or temporary permit for failure to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board.

Sec. 08.13.150. PREVIOUS LICENSURE. (a) A person holding a valid license to practice barbering under AS 08.12 is licensed under this chapter, and may continue to practice barbering under the conditions imposed by AS 08.12 and the regulations issued under AS 08.12 except

that the license renewal fee for a barber licensed under this section shall be the same as for a practitioner licensed under AS 08.13.

(b) The licensing and permit provisions of this chapter do not apply to

(1) a person practicing hair design or cosmetology in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people;

(2) a shampoo person.

(c) A shop owner may be licensed to operate a shop without examination, but, unless he is a practitioner or exempted from the licensing requirement under (b)(1) of this section, he may not conduct a business of hair design or cosmetology without employing a manager who is a practitioner.

Sec. 08.13.160. TEMPORARY PERMITS. (a) A person not licensed under this chapter who wishes to practice and teach hair design or cosmetology temporarily and primarily for educational purposes who is otherwise qualified to practice hair design or cosmetology as determined by the board shall first obtain a temporary permit.

(b) The temporary permit shall specify

(1) the purpose for which it is granted;

(2) the period during which the holder of the temporary permit may practice;

(3) the place or places the holder of the temporary permit may practice.

Sec. 08.13.170. STUDENT PERMITS. A person attending a licensed school of hair design or cosmetology, and a person apprenticed to a practitioner in a shop approved by the board shall obtain a student permit. A student permit to practice hair design is valid for two years. A student permit to practice cosmetology is valid for one year.

A student permit may not be renewed, but the board may issue a new student permit to the same person upon application. Credit earned under an expired student permit may be transferred to the new student permit as determined by the board.

Sec. 08.13.180. FAILURE TO POSSESS A LICENSE OR PERMIT. A person who practices hair design or cosmetology, or operates a school of hair design or cosmetology, or teaches in a school of hair design or cosmetology, without a license, temporary permit, or student permit is guilty of a class B misdemeanor.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 08.13.190. DEPOSIT OF RECEIPTS. Money received by the board from the payment of fees shall be paid into the general fund of the state.

Sec. 08.13.200. HEALTH AND SANITARY CONDITIONS. Health and sanitary conditions in shops and schools of hair design and cosmetology shall be supervised by the Department of Health and Social Services.

Sec. 08.13.220. DEFINITIONS. As used in this chapter,

(1) "apprentice" means a person at least 16 years of age who receives on-the-job training under the direct supervision of a practitioner, who does not receive a wage or commission, and for whose work no charge is made before he has received 350 hours of training;

(2) "board" means the Board of Barbers and Hairdressers;

(3) "cosmetology" means the use of the hands, mechanical or electric apparatus or appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing, stimulating, or similar work on the human body for cosmetic purposes for a fee;

(4) "hair design" means performing, for a fee, the following services for cosmetic purposes:

(A) shaving, trimming, or cutting the beard of a living person; and

(B) arranging, styling, dressing, curling, temporary waving, permanent waving, cutting, singeing, bleaching, coloring, cleansing, conditioning, or similar work on the hair of a living person;

(5) "practitioner" means a person licensed to practice hair design or cosmetology under th s chapter;

(6) "shampoo person" means a person who, for a fee, cleanses or conditions the hair with products which have no affect other than cleaning or conditioning under the supervision of a practitioner;

(7) "shop" is an establishment operated for the purpose of engaging in hair design or cosmetology.

* Sec. 2. AS 08.03.010(c) is amended by adding a new paragraph to read:

(2) Board of Barbers and Hairdressers (AS 08.13.010) -- June 30, 1984.

* Sec. 3. AS 18.05.040(a)(9) is amended to read:

(9) standards of cleanliness and sanitation in connection with the construction, operation and maintenance of a camp, cannery, food handling establishment, food manufacturing plant, mattress manufacturing establishment, industrial plant, school, <u>hair design or cosmetology</u> [BARBER SHOP, COSMETOLOGICAL] establishment, soft drink establishment, beer and wine dispensaries, and for other similar establishments in which insanitation may create a condition causative of disease.

* Sec. 4. AS 44.62.330(a) is amended by adding a new paragraph to read:

(47) Board of Barbers and Hairdressers (AS 08.13.010).

* Sec. 5. AS 08.03.010(b)(2) and (4); AS 08.12; AS 08.28; and AS 44.62.-330(a)(1) and (7) are repealed.

* Sec. 6. It is the intention of the legislature that notwithstanding

AS 08.13.010 the persons who are serving on the Board of Barber Examiners (AS 08.12.010) on June 29,1980, shall serve as voting ex officio members of the Board of Barbers and Hairdressers (AS 08.13) for the duration of the term for which they were appointed.

* Sec. 7. This Act takes effect June 30, 1980.

Original sponsor: Commerce Committee

IN THE SENATE BY THE COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 544

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of the practice of hair design and cosmetology; terminating the existence of the Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners; establishing the Board of Barbers and Hairdressers; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08 is amended by adding a new chapter to read:

CHAPTER 13. BARBERS AND HAIRDRESSERS.

ARTICLE 1. BOARD OF BARBERS AND HAIRDRESSERS.

Sec. 08.13.010. CREATION AND MEMBERSHIP OF BOARD. (a) There is created the Board of Barbers and Hairdressers consisting of five members appointed by the governor.

(b) The board consists of

(1) four persons licensed under AS 08.13; and

(2) one public member.

Sec. 08.13.020. TERM OF OFFICE AND REMOVAL OF MEMBERS. Members serve staggered terms of three years at the pleasure of the governor. Members of the board may be appointed to serve no more than two consecutive full terms.

Sec. 08.13.030. POWERS AND DUTIES OF THE BOARD. (a) The board shall exercise general control over the vocations of hair design and cosmetology.

(b) The board shall

(1) examine applicants and approve the issuance of licenses and permits to practice;

(2) authorize the issuance of licenses for schools of hair design and schools of cosmetology;

(3) set fees for licensing, issuing permits, license and permit renewal, examining applicants and other charges as necessary to cover the operating expenses of the board; fees set for licensing and renewing of licenses for barbers under AS 08.13.160(a) may not exceed fees charged for licensing and renewing of licenses for practitioners;

(4) prepare an annual budget to be submitted to the legislature and request appropriations from the general fund, not exceeding the income generated from fees, to cover operating expenses.

(c) The board may

(1) suspend or revoke a license or permit;

(2) on its own motion, and shall, upon receipt of a written complaint, conduct hearings and request the department to investigate the practices of a person, shop, or school involved in the practice or teaching of hair design or cosmetology;

(3) adopt regulations or do any act necessary to carry out the provisions of this chapter.

Sec. 08.13.040. MEETINGS AND EXAMINATIONS. The board shall meet as often as necessary to conduct its business, but shall hold at least two examinations each year covering the field of hair design and two examinations each year covering the field of cosmetology if applications for a license are pending.

Sec. 08.13.050. RECORDS OF THE BOARD. The board shall keep a record of its proceedings related to the issuance, refusal, suspension and revocation of licenses and permits. The record shall contain the name, place of business, and date of each license and permit issued and

shall be open to inspection by the public at all reasonable times. The board shall submit an annual report on its operations to the governor.

ARTICLE 2. EXAMINATION AND LICENSING.

Sec. 08.13.070. LICENSE REQUIRED. A person may not

(1) practice hair design or cosmetology without a license, temporary permit, or student permit unless exempted under AS 08.13.-160(c);

(2) organize, open or conduct a school of hair design or cosmetology without a license;

(3) operate a shop in violation of AS 08.13.120;

(4) permit a person in his employ or under his supervision who is not exempted under AS 08.13.160(c) to practice hair design or cosmetology without a license, temporary permit, or student permit;

(5) permit the use of his license, temporary permit, or student permit by another person;

(6) obtain or attempt to obtain a license, temporary permit, or student permit by fraudulent means.

Sec. 08.13.080. QUALIFICATIONS OF APPLICANTS. An applicant for examination must

(1) have successfuly completed all courses that a school of hair design is required to teach in order to be licensed under AS 08.-13.110 if applying for a license to practice hair design;

(2) have successfully completed all courses that a school of cosmetology is required to teach in order to be licensed under AS 08.13.-110 if applying for a license to practice cosmetology; or

(3) have served an apprenticeship under AS 08.13.082.

Sec. 08.13.082. APPRENTICESHIP. (a) The period of apprenticeship required to qualify an applicant for a license to practice hair design is 2,000 hours. The apprenticeship must be served in a shop approved by

the board. The apprenticeship may not be completed in less than one year from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(b) The period of apprenticeship required to qualify an applicant for a license to practice cosmetology is 350 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than six months from the date of its commencement and must be completed in not more than one year from the date of its commencement.

Sec. 08.13.090. EXAMINATIONS AND OTHER REQUIREMENTS. (a) A written examination shall be given to each applicant for examination at a time and place determined by the board. The board may delegate the power of examination to a committee of the board or a board member.

(b) The written examination shall cover subjects designated by the board and shall test the applicant's knowledge of sanitary practices, safety of all procedures, and use of instruments, equipment and chemicals permitted within the field of practice for which the applicant is seeking a license.

(c) The board may require a practical examination for licensure.

Sec. 08.13.100. LICENSE. (a) The board shall authorize the issuance of a license to each qualified applicant who has passed an examination under AS 08.13.090. The license is valid for two years and subject to renewal.

(b) A license shall state the areas of practice (hair design, cosmetology, or both) which the practitioner is qualified to perform. At the request of an applicant who has qualified to perform hair design, the board shall issue a license designating its holder as a "barber", "hairdresser", or both.

(c) A person holding a current valid license from a board of hair

design or cosmetology in another state or country is entitled to a license under this chapter without examination. An application shall include:

(1) proof of a foreign license;

(2) proof of completed training and working experience which the board finds to meet the minimum requirements of the state;

(3) payment of an investigation fee.

Sec. 08.13.110. SCHOOL LICENSE. The board shall adopt regulations for the licensing of schools of hair design and cosmetology. The regulations shall include details of the curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsiblity of the owner.

Sec. 08.13.120. SHOP LICENSE. The board shall adopt regulations for the licensing of shops. A shop owner will be licensed to operate a shop without examination, but unless he is a practitioner he may not conduct business without employing a manager who is a practitioner. This section does not apply to a shop located in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people.

Sec. 08.13.130. DISPLAY OF LICENSE. A practitioner shall display his license in a conspicuous location in his place of business. Each shop owner is responsible for the display of the licenses of employees. A practitioner who practices outside of a place of business shall carry his license with him to be shown to persons upon whom work is performed.

Sec. 08.13.140. LAPSED LICENSE. A lapsed license may be reinstated if the license has not been lapsed for a period of more than three years, and all renewal and delinquent fees for the period during which the license has been lapsed are paid.

Sec. 08.13.150. GROUNDS FOR REFUSAL, SUSPENSION OR REVOCATION OF A

"Grandfather for Barbers"

LICENSE OR TEMPORARY PERMIT. The board may refuse, suspend, or revoke a license or temporary permit for failure to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board.

Sec. 08.13.160. APPLICATION OF LICENSE REQUIREMENTS. (a) A person holding a valid license to practice barbering under AS 08.12 is licensed under this chapter, and may continue to practice barbering under the conditions imposed by AS 08.12 and the regulations issued under AS 08.12 except that the license renewal fee for a barber licensed under this section shall be the same as for a practitioner licensed under AS 08.13.

Grandfather for "Beauty"

(b) A person holding a valid license under AS 08.28 may continue to practice under the conditions imposed under AS 08.28 and the regulations issued under AS 08.28 until the license expires, at which time the provisions of this chapter apply and a license issued under AS 08.28 cannot be renewed.

(c) The licensing and permit provisions of this chapter do not apply to

(1) a person practicing hair design or cosmetology in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people and who uses only chemicals available to the general public;

(2) a shampoo person.

Sec. 08.13.170. TEMPORARY PERMITS. (a) A person not licensed under this chapter who wishes to practice and teach hair design or cosmetology temporarily and primarily for educational purposes who is otherwise qualified to practice hair design or cosmetology as determined by the board shall first obtain a temporary permit.

(b) The temporary permit shall specify

(1) the purpose for which it is granted;

(2) the period during which the holder of the temporary permit may practice;

(3) the place or places the holder of the temporary permit may practice.

Sec. 08.13.180. STUDENT PERMITS. A person attending a licensed school of hair design or cosmetology, and a person apprenticed to a practitioner in a shop approved by the board shall obtain a student permit. A student permit to practice hair design is valid for two years. A student permit to practice cosmetology is valid for one year. A student permit may not be renewed, but, upon application, the board may issue a new student permit to the same person, or extend a permit due to expire to the date of the next scheduled examination. Credit earned under an expired student permit may be transferred to a new student permit as determined by the board.

Sec. 08.13.190. FAILURE TO POSSESS A LICENSE OR PERMIT. A person who practices hair design or cosmetology, or operates a shop, or operates a school of hair design or cosmetology, or teaches in a school of hair design or cosmetology, without a license, temporary permit, or student permit and who is not exempt under AS 08.13.120 or under 08.13.160(c) is guilty of a class B misdemeanor.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 08.13.200. DEPOSIT OF RECEIPTS. Money received by the board from the payment of fees shall be paid into the general fund of the state.

Sec. 08.13.210. HEALTH AND SANITARY CONDITIONS. Health and sanitary conditions in shops and schools of hair design and cosmetology shall be supervised by the Department of Health and Social Services.

Sec. 08.13.220. DEFINITIONS. As used in this chapter,

(1) "apprentice" means a person who receives on-the-job training under the direct supervision of a practitioner, who does not receive a wage or commission before he has completed 350 hours of training, and for whose work no charge is made before he has completed 350 hours of training;

(2) "board" means the Board of Barbers and Hairdressers;

(3) "cosmetology" means the use of the hands, mechanical or electric apparatus or appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing, stimulating, or similar work on the human body for cosmetic purposes for a fee;

(4) "hair design" means performing, for a fee, the following services for cosmetic purposes:

(A) shaving, trimming, or cutting the beard of a living person; and

(B) arranging, styling, dressing, curling, temporary waving, permanent waving, cutting, singeing, bleaching, coloring, cleansing, conditioning, or similar work on the hair of a living person;

(5) "practitioner" means a person licensed to practice hair design or cosmetology under this chapter;

(6) "shampoo person" means a person who, for a fee and under the supervision of a practitioner, cleanses or conditions the hair of the human head with products which have no effect other than cleaning or conditioning the hair;

(7) "shop" is an establishment operated for the purpose of engaging in hair design or cosmetology.

* Sec. 2. AS 08.03.010(c) is amended by adding a new paragraph to read:

(2) Board of Barbers and Hairdressers (AS 08.13.010) -- June 30, 1984.

* Sec. 3. AS 18.05.040(a)(9) is amended to read:

(9) standards of cleanliness and sanitation in connection with the construction, operation and maintenance of a camp, cannery, food handling establishment, food manufacturing plant, mattress manufacturing establishment, industrial plant, school, barber shop, <u>hair design or cosmetology</u> [COSMETOLOGICAL] establishment, soft drink establishment, beer and wine dispensaries, and for other similar establishments in which insanitation may create a condition causative of disease.

* Sec. 4. AS 44.62.330(a) is amended by adding a new paragraph to read:

(47) Board of Barbers and Hairdressers (AS 08.13.010).

* Sec. 5. AS 08.03.010(b)(2) and (4); AS 08.12; AS 08.28; and AS 44.62.-330(a)(1) and (7) are repealed.

* Sec. 6. It is the invention of the legislature that notwithstanding AS 08.13.010 three persons selected by the governor who are serving on the Board of Barber Examiners (AS 08.12.010) on June 29, 1980, shall serve as voting ex officio members of the Board of Barbers and Hairdressers (AS 08.13) for the duration of the term for which they were appointed.

* Sec. 7. This Act takes effect June 30, 1980.

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Commerce & Econ. Develop.	Health, Education and Social Svcs. Committee	SB 215

DEPARTMENT POSITION

Support.

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Occupational Licensing	03-13-79		

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unknown.	Unknown.

(3) PROGRAM EFFECTS OF BILL

Abolishes the Board of Barber Examiners and regulation of the profession.

(4) FISCAL IMPACT: ☐ NONE ☒ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

The Division of Occupational Licensing supports SB 215, "An Act abolishing the Board of Barber Examiners." We believe that no public need has been demonstrated to justify a state board or state regulation of this profession. No complaints have been received involving this profession which concern potential harm to the public; most complaints have been directed against the board itself by applicants for licensure. Nine complaints were received in 1977 & 1978: 4 concerned unlicensed activity, 5 were against the Board, and none alleged or involved danger to the public.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 215

Title An act abolishing the Board of Barber Examiners

Requested by the Health, Education and Social Services Commission Date 3/14/79

II. FISCAL DETAIL

Agency Affected Commerce and Economic Development

Program Category Affected Public Protection

Budget Request Unit(s) Affected Regulation and Licensing of Professions

EXPENDITURES (Thousands of Dollars)

		FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-0-	(3.4)	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	(.8)	-0-	-0-	-0-	-0-
400	COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600	LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL	-0-	(4.2)	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	(4.2)	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The above figures represent monies for two board meetings/exams per year and one heari
Contractual costs include rental charges for the Anchorage Barber College for
the examinations and miscellaneous postage and central duplication costs.

IV. DATE 3/14/79 PREPARED BY Don Hostak

AGENCY Occupational Licensing

PHONE 465-2534

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/78)

SB

576

COMMITTEE REPORT

SENATE

FURTHER: None

4/23/80

Date: April 24, 1980

Mr. President:

The Committee on COMMERCE has had SB 576

regulation of collection agencies and continuing the existence of the Collection Agency Board

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[✓] reports it back without individual recommendations

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
Tom Kelly	Jerry Stimson Do Not Pass
Brad Bradley	Allen Sturgeon in Notes

Brad Bradley
CHAIRMAN

S 60 (Rev. 12/78)

Senator Bradley:

I want to take this opportunity to state my opposition to the sunsetting of the Collection Agency Board now before the Senate Commerce Committee.

I received a copy of the Legislative Budget and Audit Committee report by Gerald L. Wilkerson, CPA - his analysis of a performance review of the Collection Agency Board. I feel his report, generally speaking, is good - it gives exposure to some of the problems - and his view of where the Board is lacking.

I have been licensed as a collection agency in the State of Alaska for 18-19 years. This is the first time I have had exposure to the accomplishments, finances or shortcomings of the Board. I disagree the strongest with Mr. Wilkerson's conclusions. I can appreciate Mr. Wilkerson's desire to have numbers to evaluate; however, a well-written regulation needs time and exposure to really judge it's value.

Prior to the formation of the Collection Agency Board as I recall, licensing consisted of a State of Alaska business license. The license charge was minimal. Recognizing the need for regulation and a qualification standard for both operators and agencies, the current regulations were promulgated and adopted as I recall by a combined effort of members of the collection industry in Alaska and the Alaska state government. It was my understanding the fees for operators and agencies were set at their current level then to furnish funding for the anticipated expenditures of the Board.

This report is the first attempt, from my experience, of addressing the finances involved in the Board. There were no expenses for the Board bwtween October 1971 and March 1977, omitted by the

report - therefore a financial plus for that period. Appendix A indicates an average yearly revenue of $7,500 with expenditures over $15,000 with a net deficit of $7,800. This appears to be considerably out of balance with the response to this report on page 31(b) by James L. Engwall, chairman of the Board, in which he states...."the Board's entire budget for 1979-1980 to be $3,200." If the cost of continuing the Collection Agency Board is a factor, there has been no attempt to separate the expenses relevant to the Board only, excluding those relating to DOL functions.

I am in disagreement with some important conclusions offered in this report: "In our opinion, no public need for the Collection Agency Board has been demonstrated and continuation of the Board is not necessary to protect the public's health, safety and welfare.... However, licensing of collection agencies and operators and enforcement of existing statutes and newly developed regulations governing the licensees is necessary and essential for the public's health, safety and welfare. The Division of Occupational Licensing (OL) within the Department of Commerce and Economic Development, which already has the statutory authority to do so, can perform these functions." The OL has several noticeable shortcomings, as indicated in Recommendations No. 2,3 & 4, page 8 & 9; also page 12, item II. Also, licensing has never been a function of the Board anyway.

I attended the Board meeting in Anchorage March 14, 1978 at which time the revised agency and operator regulations were adopted. We were assured by OL that finalized copies would be mailed to all agencies. To date that copy has not arrived.

Mr. Wilkerson indicates on page six, collection agency accounting

and other records are not being inspected by the Board, DOL, or authorized agent. Regarding this, he states on page 32 of the report, "DOL procedures require all Board members to forward complaints, without delay, to the Division's chief investigator for appropriate action." I don't believe the Board should undertake personally the investigation of complaints. A better function of the Board might be the screening of complaints to dismiss those having little or no basis and passing on to the DOL chief investigator for appropriate action those complaints which are deemed to need investigation.

I am very strongly opposed to delegation of the Collection Agency Board's responsibilities and functions to the Consumer Protection Agency of the Department of Law, because I feel they are biased, in some respects unqualified and to a degree possess a conflict of interest to the responsible operation of the industry in Alaska. The public sector can best be served by responsible, objective regulation of the business community, the collection industry being only one small part of that community but it serves a very definite need.

The concensus of everyone contributing to this report seems to be that increased financing will be necessary to do the investigative work recommended that is not now being funded. This appears to be true with or without the Board. A financial statement is needed showing past expenses of this Board along with a budget proposal showing proposed expenses for the future with and without the Board.

I am in agreement with the Collection Agency Board's responses

with particular emphasis on Appendix B, Schedule 1, page 31(d); also on 31(e) which states: "It is the collective opinion of members of the Collection Agency Board that the Board can accomplish the State's policymaking, investigative and advisory roles to the extent intended by the Legislature in a more efficient and cost-effective manner than the Division of Occupational Licensing acting alone."

In view of this and the vague alternatives, I strongly urge the continuation of the Collection Agency Board.

Merritt C. Long

Merritt C. Long, Owner
MATANUSKA VALLEY COLLECTION SERVICE
P. O. Box 773
Palmer, Alaska 99645

21 March 1980

cc - Senator Jalmar Kerttula
Representative Pat Carney

A PERFORMANCE REVIEW OF THE COLLECTION AGENCY BOARD

March 22, 1979

Commissioner of the Department of Commerce and Economic Development	Charles Webber
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the Collection Agency Board

Chairman	James L. Engwall
Member	Don Hostak
Member	Allan D. Shepard
Member	Donald Leach
Member	Judy E. Warwick

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

May 24, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
COLLECTION AGENCY BOARD

March 22, 1979

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

31-Q1LH

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271 (1) and 44.66.050 (sunset legislation), an audit of the Collection Agency Board was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Collection Agency Board should be reestablished. The law currently specifies that this Board will terminate on June 30, 1980 but will continue until June 30, 1981 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and proposed Board regulations;

(2) Interviews with Board members and questionnaires sent to the Board;

(3) Correspondence with professional associations;

(4) Tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) Interviews with OL employees;

(6) Complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency, and the Equal Employment Opportunity Office;

(7) Questionnaires sent to 22 State licensed Collection Agency Operators.

Scope Constraint

This review was hampered by the Board not having established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information required by AS 37.07.090.

ORGANIZATION AND FUNCTION

The Collection Agency Board was established by the 1968 Session Laws of Alaska and exists under the provisions of Title 8, Chapter 24 of the Alaska Statutes. The Board consists of five members, four of whom are appointed by the governor. Two of the appointees are public members while two are licensees engaged in the collection agency business within the State. The fifth member is designated by the Commissioner of Commerce and Economic Development from his staff and has historically been the Director of the Division of Occupational Licensing. Board members serve staggered terms of three years.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). OL provides licensing, administrative, budgetary and investigative services to the Board. The licensing section processes applications, collects fees, issues licenses, maintains license files, answers inquiries and provides other administrative help to the Board.

The function of the Board is primarily regulatory, mandated by AS 08.24. Accordingly, the Board has the authority to adopt rules and regulations necessary to enforce the statutes, make a complete investigation of applicants for licensure as a collection agency or operator and inspect the records of collection agencies operating in the State.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these issues, the legislative oversight committees should consider the findings and alternatives presented in this report in reaching their decision.

Report Conclusion

In our opinion, no public need for the Collection Agency Board has been demonstrated and continuation of the Board is not necessary to protect the public's health,safety and welfare (see Recommendation No. 1). However, licensing of collection agencies and operators and enforcement of existing statutes and newly developed regulations governing the licensees is necessary and essential for the public's health, safety and welfare. The Division of Occupational Licensing (OL) within the Department of Commerce and Economic Development, which already has the statutory authority to do so, can perform these functions.

In the event it is determined that the Collection Agency Board will be reestablished, the following recommendations need Board attention. If the Board is not reinstated, OL should implement the procedures where applicable to solve the problems addressed.

Investigation of complaints concerning collection agencies and operators has been unsatisfactory (see Recommendation No. 2).

We found that collection agency accounting and other records are not being inspected by the Board, OL or their authorized agent (see Recommendation No. 3).

The advertising of Board meetings has not always been sufficiently timely to encourage public participation in the meetings (see Recommendation No. 4).

The Collection Agency Board has not established formal goals, objectives and quantifiable measures (see Recommendation No. 5).

We noted that the statutes, applications and newly developed regulations relating to collection agencies and operators contained items which we considered vague, obsolete or possibly discriminatory (see Recommendation No. 6).

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1, 3, 5, and 6 are addressed to the Collection Agency Board. Findings and Recommendations No. 2 and 4 are addressed to the Division of Occupational Licensing (OL) and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978".

Recommendation No. 1

The Collection Agency Board should be allowed to terminate on June 30, 1980. However, the licensing function and the enforcement of statutes and regulations should be continued.

During our review of the Collection Agency Board, we have determined that collection agencies and operators should be licensed because the practice of this profession can significantly affect the public's health, safety and welfare. Licensing not only allows the State to maintain a list of all agencies and operators working in Alaska, but also to require that these agencies and operators meet certain conditions before being allowed to practice the profession in the State. The requirement that these conditions be met, such as the filing with the Department of Commerce and Economic Development of a $5,000 bond or cash in lieu of bond, helps ensure the public's welfare is being protected.

However, the Board is not doing anything that could not be done by the Division of Occupational Licensing (OL). For example, the Commissioner of the Department, rather than the Board, has the authority to issue, suspend or revoke collection agency and operator licenses or apply other penalties such as fines.

The Collection Agency Board did not hold any meetings between October 13, 1971 and March 14, 1977. The licensing function did not suffer during this dormant period as the Department issued 40 operators' licenses and 28 agency licenses.

The Board does have the authority to adopt rules and regulations necessary to effectuate the purposes of Alaska Statute Title 8 Chapter 24. The Board did exercise this authority by formulating regulations regarding licensing, licensee accounting requirements, rules of professional conduct, and general provisions, which are currently in the process of being finalized. However, the Board has not formulated regulations for repossession of collateral security such as is practiced by towing companies when they repossess vehicles.

The Board also has the authority, along with the Department or their authorized agent, to inspect the records of collection agencies. This authority, however, is not being exercised in that collection agency records are not being inspected by the Board or the Department.

In summary, there is a public need for the licensing and regulating of collection agencies and operators in Alaska, but there is no public need for the Collection Agency Board.

An alternative to the recommendation made here (i.e. terminate the Board but retain the licensing and enforcement functions) is to terminate both the Board and the licensing function. In this event, the Consumer Protection Section of the Department of Law, as well as their enabling statutes and regulations pertaining to collection agencies and operators, would have to be strengthened. However, by retaining the licensing function, the fees and penalties can help offset the cost of enforcing the statutes and regulations. Furthermore, the requirements for licensure, such as the submission of the applicant's fingerprints to the FBI during the background check, serve as a deterrent to potentially unscrupulous persons entering the collection industry in Alaska.

In the event the Board is not terminated, and/or licensing is continued, then the following recommendations should be considered.

Recommendation No. 2

The Investigation Section of the Division of Occupational Licensing (OL) should investigate complaints concerning collection agencies and/or operators on a timely basis. Procedures should be established to keep the public informed of complaint activities such as the type of complaint and the penalty applied.

OL received 25 complaints about collection activities between July 1, 1975 and March 12, 1979. Of the eighteen cases closed, eight were never resolved. For seven of the eight not resolved, there was no evidence of any investigation. The cases were closed because they were relatively minor and too much time had passed to make them worth pursuing.

We also found that there are no procedures established to keep the public informed of complaint activities and the disposition of complaints.

Enforcement of the regulating statutes is essential for public protection. Violations of laws and regulations by licensees should be investigated and prosecuted. Penalties, such as fines, revocation of license or suspension of license should be applied when appropriate. When penalties are

applied, they should be publicized to let the public and other licensees know that complaints will be investigated, laws and regulations will be enforced, and penalties will be applied when appropriate.

Recommendation No. 3

The Division of Occupational Licensing should inspect collection agency accounting and other records on a random basis.

Alaska Statute 08.24.280 requires collection agencies to keep specific records for all collections and disbursements. The records are required to be open for inspection by the Department, the Board, or their authorized agent at all reasonable times. Currently, collection agency records are not being inspected at all.

Without periodic inspections of the collection agencies' records, it is impossible to determine if they are being kept and are accurate. Inaccurate records can result in financial losses to both debtors and creditors, and in inaccurate credit reports. Whether or not the Collection Agency Board remains in existence, violations of laws and regulations by licensees should be investigated and prosecuted. Inspections of each collection agency's records are one way of determining compliance with statutory requirements.

Recommendation No. 4

Collection Agency Board meetings should be sufficiently advertised - in a timely manner - so as to encourage public participation.

Advertisement orders for Board meetings were placed on a one time only basis. Six advertisement orders were placed but no affadavit of publication was obtained to indicate the ad was published. One Board meeting advertisement was published on the day of the meeting in one paper and only two days before the meeting in another paper.

Alaska Statute 44.62.310(e) states, in part, that "reasonable public notice shall be given for all meetings..." Alaska Statute 44.62.312(a)(5) states, in part, that "the people's right to remain informed shall be protected so that they may retain control over the instruments they have created".

In our opinion, the advertising of meetings in the examples mentioned above were not sufficiently timely to encourage public participation in the meetings.

Recommendation No. 5

The Board should establish formal goals, objectives and quantifiable measures which should be included in the Division of Occupational Licensing's (OL's) budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL establishes its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured, neither the Governor's Office nor the Legislature can evaluate the Board's performance.

Recommendation No. 6

The Collection Agency Board, in conjunction with the Division of Occupational Licensing, should review the statutes and regulations relating to collection agencies and operators and clarify or delete those parts which are vague, obsolete or discriminatory.

We found several statutes and regulations which we considered vague, obsolete or possibly discriminatory. For example:

A. AS 08.24.100(b) is vague and should be clarified. It mentions an annual operator's license renewable every second year with a biennial fee.

B. AS 08.24.110(a) (5) and 12AAC 20.020(c) are considered to be vague because they do not state what a crime involving moral turpitude is.

C. AS 08.24.110(b) is vague because it does not define what constitutes "good cause shown" for the purpose of waiving or modifying statutory requirements for licensure.

D. AS 08.24.180(a) and (b) is obsolete because it refers to the licensing of people actively engaged in the collection agency business on May 1, 1968.

E. The following statutes and proposed regulations could encourage discrimination because of race, color, national origin, age or sex:

AS 08.24.120(a) (2) requires a photograph of the applicant;

12AAC 20.010(a) (1) birth date;

12AAC 20.010(a) (6) credit reports;

12AAC 20.020(a) (2) birthdate and birthplace;

12AAC 20.020(a) (7) credit report.

The Board and/or Division of Occupational Licensing should consult with the State Equal Employment Opportunity Office or the Human Rights Commission on the make-up of the requirements and applications for licensure. Any discriminatory - type items should be analyzed to determine if a real need for the information exists. If not, the items should be deleted.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of Board activities relates to the public need factors defined in the "sunset" law. This analysis is not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

In the event it is determined that the Collection Agency Board will be continued, the following recommendations need Board attention. If the Board is not reinstated, OL should implement the procedures where applicable to solve the problems addressed.

I. The extent to which the board, commission or program has operated in the public interest.

1. In our opinion, no public need for the Board has been demonstrated. The Board did not hold any meetings between October 13, 1971 and March 14, 1977. During this dormant period the Department, which has the statutory authority to do so, issued 40 operators licenses and 28 agency licenses (see Recommendation No. 1).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. The OL investigative section has not provided adequate investigative support necessary for the enforcement of the law (see the OL Performance Audit Report and Recommendation No. 2).

2. Because of high turnover within the Division of Occupational Licensing, the Collection Agency Board has had a number of different licensing examiners. This has caused a lack of continuity in licensing requirements.

3. By not holding any meetings between October 13, 1971 and March 14, 1977, the Board was seriously hampered in developing regulations to govern the industry.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. The Board has made one recommendation for a statutory change. This will eliminate the one year residency requirement for a person to qualify for an operator's license.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. The public is invited to attend Board meetings and to give their input about the workings of the Board. Notices of meetings are advertised generally one time only in each of three newspapers throughout the State. We found that the time between the publishing of the notice and the meeting is not always sufficient to allow persons wishing to attend a meeting time to prepare for it. The publishing of the advertisements is handled by the Division of Occupational Licensing (see Recommendation No. 4 and the OL Performance Audit Report).

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. As stated under criteria IV, the public is invited, by published notices in newspapers, to attend Board meetings to give their input about Board regulations.

2. Public hearings were held in Fairbanks on March 2, 1978 and in Anchorage on March 3, 1978 for the purpose of allowing the public to testify on proposed regulations. Several people gave testimony at each of the hearings.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. One complaint has been filed with the Ombudsman's Office concerning an agency reportedly failing to pay the complainant monies collected in his behalf. The complaint was found to be justified and was rectified.

2. One complaint concerning a collection agency which was filed with the Consumer Protection Section of the Attorney General's office is currently before the State Supreme Court.

3. Of the thirteen cases which are currently open and are on file in the Division of Occupational Licensing, one was opened in 1972 and one was opened in 1973.

4. Of the thirty-two cases on file in OL which were closed between 1976 and March 1979, fourteen were not complaints but just routine background checks. Eight of the remaining cases were closed without being satisfactorily resolved. Of these eight, seven did not show any investigative effort by OL (see Recommendation No. 2 and the OL Performance Audit Report).

VII. <u>The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public</u>.

1. The Collection Agency Board does not have the statutory authority to pass upon the qualifications of applicants for agency and/or operator licenses. They also do not have the authority to issue licenses.

2. The Director of OL, who is also a member of the Board, has been submitting applications to the Board for the purpose of obtaining their recommendation on whether to issue a license or not. Between March 1977 and March 1979, nine operator and six agency licenses were issued.

3. The Board did not hold any meetings between October 13, 1971 and March 14, 1977. During this dormant period the Department, which has the statutory authority to do so, issued forty operators licenses and twenty-eight agency licenses (see Recommendation No. 1).

4. As of February 1979, there are twenty-two collection agencies and twenty-five operators licensed in the State.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. The statutes, applications and/or regulations pertaining to collection agencies and operators require information such as birthdate, birthplace, marital status, number of dependents and a picture of the applicant. These requirements may be violations of the Equal Employment Opportunity requirements. However, some of this information may be necessary to confirm an applicant's qualifications. We have recommended that the requirements be analyzed to determine if a real need for the information exists (see Recommendation No. 6 and the OL Performance Audit Report).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

1. If the Collection Agency Board is reinstated, it should be added to the list of boards, commissions and/or agencies which come under the Administrative Procedures Act. This is a technicality since the Board is covered by the act.

2. Please refer also to the Findings and Recomendations section of this report and the OL Performance Audit Report.

APPENDIXES

APPENDIX A

COLLECTION AGENCY BOARD
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Average Revenue (Schedule 1 and Note 1)	$ 7,507
Expenditures (Note 2)	15,289
Excess of Expenditures over Average Revenues	$(7,782)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Collection Agency License		
Application Fee	$100	With application
Renewal Fee	$200	Biennially
Late Renewal Penalty	$50	If 15 days after renewal date
Non Resident Application Fee	$200	With application
Non Resident Renewal Fee	$400	Biennially
Collection Agency Operator License		
Application Fee	$40	With application
Renewal Fee	$100	Biennially
Late Renewal Penalty	$50	If 15 days after renewal date
Non Resident Application Fee	$100	With application
Non Resident Renewal Fee	$200	Biennially

Note 1

Most of the collection agency revenues are composed of renewal registration fees. These fees are collected once every two years and cause revenues in one year to be much

greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in fiscal years 1977 and 1978 in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures include those made by Board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board and OL.

APPENDIX B

INVESTIGATION STATISTICS

Schedule 1

Cases opened between July 1, 1975 and March 22, 1979

Case Description	Fiscal Year Case Opened 1979	1978	1977	1976	Total Opened	Total Closed
Complaints:						
Practicing Without licenses	1	1	2	9	13	11
Licensee Violating Statutes	1	2	1	4	8	5
Non-licensee Violating Statutes	-0-	-0-	-0-	1	1	1
Alleged embezzlement or fraud by licensee	2	-0-	-0-	-0-	2	-0-
Licensee using another licensee's business name	-0-	-0-	1	-0-	1	1
Total Complaints (Note 1)	4	3	4	14	25	18
Routine Background Checks - Not Complaints (Note 2)	2	2	9	3	16	14
Total Cases Opened (Note 3)	6	5	13	17	41	
Cases closed by March 22, 1979	-0-	4	12	16		32

Note 1

Of the twenty-five complaint cases opened, eighteen have been closed. Of these eighteen, eight were closed without being satisfactorily resolved. Seven of these 8 cases did not show any investigative effort by OL (see Recommendation No. 2).

Note 2

AS 08.24 authorizes the Department of Commerce and Economic Development and the Collection Agency Board to conduct a

complete investigation of applicants for an operator's license, including inquiry of police agencies as to the applicant's record of arrest or conviction of a crime. The "Routine Background Checks" referred to in the schedule are a result of this authorization. They consist of the following:

a) The applicant's fingerprints, which are required along with the application, are sent to the Alaska State Troopers and to the Federal Bureau of Investigation (FBI) for file checks for any crimes the applicant may have committed;

b) Depending on the information received from these two agencies, the results are either filed or further investigation is conducted;

c) The applicant's personal and employee references are contacted for their input as to the applicant's character and status in the community.

Note 3

In addition to the 41 cases contained in Schedule 1, 4 cases which were opened between 1972 and 1975 are still considered open as of March 12, 1979.

APPENDIX C

ADMINISTRATIVE STATISTICS

	As of March 22, 1979
Currently Licensed Collection Agencies	22
Currently Licensed Collection Agency Operators	25

Board Meetings:

A meeting was held on October 13, 1971. The next meeting was held on March 14, 1977 in Anchorage. From that date to the present (March 1979), the following meetings have been held:

August 5, 1977	in Juneau
November 18, 1977	in Anchorage
January 5, 1978	in Anchorage
August 28, 1978	in Anchorage
November 17, 1978	in Anchorage
February 23, 1979	in Anchorage

APPENDIX D

COLLECTION AGENCY BOARD
QUESTIONNAIRE SENT TO BOARD MEMBERS

1. What do you believe to be the goals and objectives of the Collection Agency Board?

	Description	Number of Board Member Response (Notes 1 and 2)
A.	*To adopt rules and regulations to implement Title 8 Chapter 24 of the Alaska Statutes.*	2
B.	*Hear the merits of complaints after investigation by the Division of Occupational Licensing.*	1
C.	*Confirm major administrative decisions, such as agency and operator licensing and revocation*	1
D.	*Help prevent collection agency business failures, which might result in loss of customer funds, by conducting extensive backgrouna checks on new applicants for licensure.*	1
E.	*Represent the industry when National and State legislation affecting collection agencies and operators is being proposed.*	1

2. How does the Board measure its progress in meeting its goals and objectives?

	Description	Number of Board Member Response
A.	*Regulations have been developed and are currently (March, 1979) being reviewed by the Attorney General's Office before being finalized.*	2
B.	*The Board is lobbying for more investigative funds for the Division of Occupational Licensing to permit more investigating of licensee activity including spot audits of agency operations.*	1
C.	*The Board's method of judging its progress must be a purely subjective one. Community interest and the interest of the credit/collection industry has increased tremendously.*	1

3. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restrictive, and/or inadequate to provide the Board with the responsibility and power to properly govern the purpose and activities of the Board? Please list and explain.

	Description	*Number of Board Member Response*
A.	*Eliminate the conflict over operator residency requirements in Title 8 Chapter 24.*	*1*
B.	*The bonding requirement (for fidelity of agency and employees) should be raised to become more in line with amounts held in client trust fund accounts.*	*1*
C.	*The statutes as they stand do a pretty good job of regulating the collection industry if they are followed by the State.*	*1*
D.	*The Board should have the right to, of themselves, suspend or revoke a license for cause, and to demand an immediate audit, and impound a client's trust fund when they have established in fact that clients' trust funds are not being paid, or are being used as operating funds.*	*1*

4. Has the Board recommended any statutory changes which are generally in the public's best interest? Please list and explain.

	Description	*Number of Board Member Response*
A.	*Eliminate section 08.24.110(1) which requires one year residency to qualify for an operator's license.*	*2*
B.	*Many changes, which are a part of the new regulations governing the collection agency industry in Alaska, have been recommended.*	*1*

5. Is the staff from the Department of Commerce and Economic Development and/or other departments adequate to perform and enforce all laws and regulations relating to the Collection Agency Board? What staff support services are provided adequately/inadequately?

	Description	*Number of Board Member Response*
A.	*No. The staff must be bolstered with more and better investigators and auditors.*	*2*

		Number of Board Member Response
C.	*The reasons are that one agency, which has been the subject of many past lawsuits, did not want any one in the State looking at their operations. Although the owner was a member of the Board for only one term, he effectively controlled the other members at the time.*	1

8. Do you think Collection Agencies and/or operators should be licensed by a State agency? Please explain.

	Description	Number of Board Member Response
A.	*Yes. The licensing procedure provides a means of not only registration of key data about an operator and agency, but - more importantly - a means of evaluating the eligibility and character of applicants.*	1
B.	*Yes. The licensing procedure is adequate as it is, if it is followed correctly.*	1
C.	*Yes. The business does a great deal of good, but one or two bad apples can and have done a great deal of harm. The industry should be governed, and have the opportunity through a board consisting of some representatives of the industry, to have a say in the governing and disciplining of agencies.*	1

9. Do you think a duplication of effort exists between the Collection Agency Board and the Consumer Protection Section of the Department of Law concerning the regulation of collection agencies and operators? Please explain.

	Description	Number of Board Member Response
A.	*No. The authority and functions are quite different.*	1
B.	*Yes. The Board could easily handle all the complaints against the industry. If the Board decided some legal action was necessary, then that function could be handled by the Attorney General's Office.*	2

10. In your opinion, are there any changes that could be made to the Board which would make it more effective in meeting its goals and objectives as you perceive them in question number one?

	Description	*Number of Board Member Response*
A.	*The Board desperately needs the investigative and audit support of the Division, which is at a very low level due to a lack of personnel and funding.*	1
B.	*Board members should serve for a four year term to enable them to become more familier with the industry problems.*	1
C.	*The Board needs the power to, of themselves, suspend or revoke a license for cause.*	1
D.	*The make-up of the Board (i.e. 5 members) does not need to be changed.*	1

11. Do you think the Collection Agency Board should be allowed to continue operations past the scheduled termination date of June 30, 1980? Why or why not?

	Description	*Number of Board Member Response*
A.	*The functions carried out by the Board should be continued.*	1
B.	*Yes. The continuation of the Board is necessary for the health and well beirg of the collection industry. The Board's screening of applicants prevents unscrupulous characters from entering the business.*	2

12. Any other comments? (This is your chance to air your gripes, compliments and/or opinions!)

	Description	*Number of Board Member Response*
A.	*Yes. New applications should be documented better by the State before being referred to the Board.*	1
B.	*When discussion is had in Juneau, concerning the future of this Board, I would like to present my views on the need for the Board.*	1

Note 1

The questionnaire was sent to all 5 Board members in November 1978. We received replies from 3 Board members. Therefore, the response rate is 60%.

Note 2

Some Board members responded to each question with several answers. Therefore, total responses for each question may exceed the number of Board members.

APPENDIX E

QUESTIONNAIRE SENT TO COLLECTION AGENCY OPERATORS

		Number of Responses (See Notes 1 and 2)		
		Yes	*No*	*No Opinion*
1.	Have you ever had any contact with the Collection Agency Board?	*14*	*3*	*-0-*
2.	If so, was it concerning:			
	A. Application for licensure?	*4*	*13*	*-0-*
	B. New regulations?	*7*	*10*	*-0-*
	C. Board policy?	*1*	*16*	*-0-*
	D. New legislation?	*6*	*11*	*-0-*
	E. Inspections of your records?	*-0-*	*17*	*-0-*
	F. Complaints?	*1*	*16*	*-0-*
	G. Other? Please specify: _____	*5*	*12*	*-0-*
3.	Do you believe the Board has operated in the public's best interest? If not, please specify: _____	*14*	*1*	*2*
4.	Would the absence of the Board be detrimental to the public's best interest? Please discuss: (A typical response was that there should be some control over collection agencies.)	*12*	*4*	*1*
5.	Are there any statutes or regulations that are obsolete, vague or unduly restrictive? Please specify:	*7*	*5*	*5*
6.	Are you aware of any discriminatory practices involving licensing or investigations of the Board?	*-0-*	*15*	*2*
7.	Do you believe that Alaska's licensing requirements (for agencies and operators) are adequate and effective in ensuring the the public is protected? Please specify:	*17*	*-0-*	*-0-*

	Yes	No	No Opinion
8. Are there any additional statutes, regulations or licensing requirements needed to ensure the public is adequately protected? Please specify:	1	12	4
9. Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce and Economic Development? Please specify: (A typical response was that the staff was slow in answering correspondence and not informing the public and agencies of upcoming meetings);	6	11	-0-
10. Do you believe that there is a need for licensure of all collection agency operators in the State?	13	4	-0-
11. Do you believe that there is a need for licensure of all collection agencies in the State?	17	-0-	-0-
12. Any additional comments? (This is your chance to air your gripes, compliments and/or opinions!) (A typical response was that more information is needed on Board meetings prior to the meeting.)	8	9	

Note 1

Number of questionnaires sent to State licensed collection agency operators	22
Number of collection agency operators who responded	17
Response Rate	77.3%

Note 2

One agency operator's response was not received in time to include in this report. Two Board members, who are also licensed agency operators, were sent Board members' questionnaires and not agency operators' questionnaires.

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811

June 21, 1979

RECEIVED

JUN 26 1979

LEGISLATIVE AUDIT

Mr. Gerald Wilkerson, CPA
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Collection Agency Board, as submitted by the Division of Legislative Audit.

Recommendation No. 1: We agree that this profession could affect the public's welfare, and that the division can license agencies and operators if the board were terminated. It should be noted that the board has discussed formulation of regulations for repossession of collateral security.

Recommendation No. 2: Agreed. Complaints received against all regulated professions should be handled on a timely basis. Budgetary restraints have mandated priortization of investigations.

Recommendation No. 3: Agreed. However, current staffing prohibits in-house auditing of agencies' records. Budgetary limitations also severely limit the use of outside sources. AS 08.01.087(b)(3) allows examination of books and records and for that agency to pay the reasonable costs of the examination only if it appears that a person has engaged in, or is about to engage in, an act or practice in violation of a provision of this chapter. Without sufficient funding, outside hired agents or auditors could be difficult to retain.

Recommendation No. 4: Agreed. Division policy has been to publish notice of meetings two weeks to one month prior to the date of meeting and usually for one time only in three newspapers. Payment for the ad is made upon receipt of affidavit of publication. Again, budgetary limitations at this time limit publication to one time in three different newspapers. To double the number of times printed would require approximately $9,000 additional funding for all boards.

Recommendation No. 5: Agreed. All boards have been contacted to provide this information for the division's FY '81 budget.

Recommendation No. 6: Agreed. The board, in conjunction with the division, is addressing needed statutory and regulatory updates.

I appreciate the time and efforts expended by your staff and the opportunity to provide these comments.

Sincerely,

Charles R. Webber
Commissioner

CRW/sa2/5

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

June 25, 1979

RECEIVED
JUN 29 1979
LEGISLATIVE AUDIT

Mr. Gerald Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
State of Alaska
The State Legislature
Pouch W
Juneau, AK 99811

Dear Mr. Wilkerson,

Thank you for the copy of your Preliminary Audit Report on "A Performance Review of the Collection Agency Board", dated March 22, 1979. Please accept the following response on behalf of the Collection Agency Board. This response does not preclude additional individual response from Board members.

We believe that the Collection Agency Board as it is now constituted can and does protect the public's safety and welfare. This conclusion is drawn from our review of the authority of the Board and its effectiveness in carrying out that authority, although we have undoubtedly approached that review from a different perspective than your auditor. In addition, at least three members of the Board have a considerable working knowledge of the collection industry.

In terms of its authority, the Board has three basic functions: to develop administrative regulations, to investigate and to advise the Division of Occupational Licensing. Most of the issues raised in your audit relate to your evaluation of the Board's effectiveness over the years in carrying out that authority.

Here is our specific response, each section labelled according to section names within your audit report:

"Recommendation Number 1"

1. "...the Board is not doing anything that could not be done by the Division of Occupational Licensing."

On the face of it, this seems to be a reasonable statement. And, as I pointed out in detail to a Legislative Audit staff member in my letter to him of April 27, 1979, the Division of Occupational Licensing - if properly funded - probably could conduct investigations and obtain some of the investigative tips that only those within such a unique industry would likely obtain. However, I seriously doubt that collection agency operators and others

wishing to provide confidential tips in a discreet fashion would tend to provide this information to a bureaucrat, irrespective how trustworthy.

We are talking here about human behavior patterns. Informers would be far more likely to pass investigative information on to a peer (such as a collection agency operator member of the Board] or to a person independent of both the Division and the industry (such as a public member of the Board).

Collection agencies deal daily with behavior patters of consumer members of the public. Non-payment of a legally incurred debt can be viewed as a form of larceny, assuming the non-payment is intentional. Persons purposefully engaging in this practice (the irresponsible variety and not those with sincere financial problems] border on if not overtly practice criminal behavior.

Collection agency operators deal daily with a certain number of persons from this element of society in an effort to enforce payment responsibility and protect persons who are responsible in their credit dealings. This function, moreover, makes the work and qualifications for the work of a collection agency unique and quite different from those of other disiplines licensed by the State.

It is for this reason that we feel the Board is needed to provide in a discreet and sometimes clandestine fashion information concerning suspicious operator and collection agency activities and those of unlicensed agencies and operators and applicants for agency and operator licenses.

What about the cost-effectiveness of the Board? The Board's entire Budget for fiscal 1979-1980 is $ 3,199. This can be compared to either the cost of the Division performing the same functions or savings to the public because of Board activities, or both.

There have been at least two instances during the past year in which the Board has taken action and/or made a recommendation to the Division which has clearly saved the public much more that the direct costs of operating the Board. What the same results would have cost the Division, I do not know. However, that cost would likely have exceed our $3,200 annual cost. There are also a number of other instances in which the Board's functions have generated savings to the Public, but the savings in those cases would be difficult to estimate because of its indirect nature.

2. "...The licensing function did not suffer during this dormant period as the Department issued 40 operators licenses and 28 agency licenses."

Again, on the face of it, this seems reasonable. However, quantity does not measure quality. And, unless a review was made of the extent to which operators and agencies receiving licenses during the "dormant period" measure up after a thorough background check to the statutary criteria for license eligibility, there is no way of determining that the Board would not have positively affected the quality of those who would have been licensed.

There are at least two instances during the past year in which the Board - on its own investigation - verified a history of responsibility problems with a prospective licensees and supplied this information to the Division with a recommendation that licenses not be issued.

How many such instances would have existed (or do exist) with licensees who first received their license during the "dormant period"?

3. "...the Board has not formulated regulations for repossession of collateral security".

We agree. However, Board members are now working on drafts of proposed collateral repossession regulations which will be considered in a work session prior to our next regular Board meeting.

4. "....this (investigative) authority...is not being exercised..."

At its last regular meeting (May 18, 1979), the Board authorized for cause an investigation of the accounting records of a collection agency.

5. The third paragraph of page 8 implies that the Consumer Protection Division of the Attorney General's office is capable of handling all collection agency consumer complaints. If indeed their enabling statutes were strengthened to permit that kind of activity, they could also be given investigative authority. However, doing so would not necessarily bring in investigative tips of the source and nature now received by Board members and would not be as cost-effective as the Board in performing this function.

Recommendation Number 3:

"...collection agency records are not being inspected at all..."

Please see number 4 above. Subsequent to its re-activitation, the Board has just begun to work its way into this arena as salient cases appear which require investigation.

Recommendation Number 5;

We agree. Adoption of our proposed regulations this summer will clarify four major areas of concern. We now are developing what we feel should be our investigative and advisory goals. Once developed, we will outline specific objectives designed to meet those goals.

Recommendation Number 6:

We agree with respect to your examples A, B, C, D, and E-photograph. We do not agree with respect to birth date and credit report.

1. Birth Date is needed to establish that the applicant meets the minimum age requirement of the statute.

2. Birth Date provides identifying information by which an investigating Board member or Division investigator could, for example, distinguish between two persons with the same name living in the same town.

3. Credit reports are needed to provide background information to evaluate the applicant's eligibility under several of the statutory criteria. In addition to permitting an evaluation of the individual's or firm's historical performance in carrying out its fiscal responsibilities, a credit report provides corroboration of data provided by the applicant.

"ANALYSIS OF PUBLIC NEED"
Section I

Please see my discussion of this matter under "Recommendation Number 1" above.

Section V, Number 2
"...several people gave testimony at each of the hearings"

Comment: I believe that minutes of those hearings will show that more than 40 persons testified, indicating a substantial amount of interest by the industry and public in the proposed regulations. Your quantification, "several", implies that perhaps two persons testified, which would indicate little interest.

APPENDIX B
Schedule 1

Comment: We currently are investigating at least three cases in which an agency or operator is/was alledgedly operating without a license and at least one case in which a licensee is alledgedly using another licensee's name. In addition, the Board and Division are currently notifying all known organizations or individuals in the State known to be practicing collateral repossession and who are not apparently exempt from provisions of Title 24 that they may be required to obtain an agency/operator license. This activity may result in numerous cases of non-licensee violating statutes (or regulations).

APPENDIX C
Board Meetings

Comment: This schedule does not include two Board meetings with quorums present held in March of 1978. These sessions were in part public hearings to hear comment on proposed administrative regulations affecting collection agencies and operators and affecting the public in its relationship with agencies and operators.

APPENDIX D

Comment: The index of responses to your questionaire which are tabulated in this Appendix and your "Note 1" at the end of Appendix D appear to indicate that only several members of the Board responded. My response to the questionaire was intended to be a response on behalf of the entire Board. If my questionaire does not so indicate, it is my error. In any case, the intent of the questionaire which I returned was to provide Board response on behalf of all members collectively. In intent, then, all members of the Board did respond.

In Alaska, the Collection Agency Board deals with agencies and operators who are estimated by a member of our Board to place an average of 800,000 collection telephone calls each year. That's more than 3,150 calls each working day, an indication of the scope of activity over which Division employees and investigators and the Board are responsible. For Division personnel, this activity is in addition to the numerous other disiplines under their jurisdiction.

It is the collective opinion of members of the Collection Agency Board that the Board can accomplish the State's policymaking, investigative, and advisory roles to the extent intended by the Legislature in a more efficient and cost-effective manner than the Division of Occupational Licensing acting alone.

Thank you for this opportunity to respond to your thorough review of our activities. Any member of the Board will be pleased to provide you with any further information you may desire in connection with your Sunset Review activities.

Sincerely,

James L. Engwall, Chairman
COLLECTION AGENCY BOARD

Je/

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

July 3, 1979

Members of the
Legislative Budget and Audit Committee:

We have reviewed the Collection Agency Board's response to The Performance Review of the Collection Agency Board dated March 22, 1979. Our comments follow:

Recommendation No. 1

Board Response 1 (page 31a):

The Board feels that informers are more likely to pass investigative information on to Board members than to a State agency. However, Division of Occupational Licensing (DOL) procedures require all board members to forward complaints, without delay, to the Division's Chief Investigator for appropriate action. This is based on a November 2, 1977 memo from an Assistant Attorney General which states: "It is our position that the boards should refrain from becoming actively involved in investigations....The reason for this limitation of board investigatory functions is the risk of undue bias that could violate a respondent's right to a fair and impartial hearing."

In addition, none of the 25 complaint cases opened between July 1, 1975 and March 22, 1979 were referred to the Division of Occupational Licensing by the Board.

Therefore, the Board is not needed for investigative input.

Board Response 2 (page 31b):

The Board feels that review by the board could positively affect the quality of licensees. Yet, none of the licenses issued by the Department without Board review have been revoked. However, lack of investigative effort, rather than quality, may be the reason licenses haven't been revoked (see Recommendations No. 2 and 3). Since many of the licenses issued have not been renewed, it may be the market which eliminates those who are not properly qualified.

Board Response 4 (page 31c):

At its May 18, 1979 meeting the Board authorized a Board member who owns a collection agency to investigate another agency. As noted in our comments titled "Board Response 1", investigations by Board members can result in a violation of a respondent's right to a fair and impartial hearing. The Board member doing the investigation must not participate in the Board's decision regarding this case.

There is also an additional problem. Even though the Board member may have a good working knowledge about collection agency accounting requirements, and about how fraud and embezzlement are carried out and hidden, the board member may lack knowledge of investigative techniques. Failure to properly document the investigation could result in a weakened or lost criminal case.

Board Response 5 (page 31c):

We made no comment regarding Consumer Protection's capability of handling complaints because that Division's performance has not been reviewed.

Appendix B

As noted on the schedule, the period reported on ended March 22, 1979.

Appendix C

The March, 1978 public hearings were discussed on page 13 (section V.2.) of the report.

Gerald L Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M April 25, 1980

SUBJECT: Section-by-section analysis of SB 576 relating to the Collection Agency Board (Work Order Number 8523)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have requested a section-by-section analysis of Senate Bill 576 entitled "An Act relating to the regulation of collection agencies and continuing the existence of the Collection Agency Board; and providing for an effective date."

Section 1 This section provides for sunset review of the Collection Agency Board on June 30, 1984.

Section 2 The composition of the board has been altered so that one member is a certified public accountant and only one member is engaged in the collection agency business. The existing law provides for two members who are persons engaged in the collection agency business. Otherwise, the board membership remains the same.

Section 3 This amends the section dealing with appointment and term of office of board members so that no person may serve more than two consecutive terms. Since the terms are for three years, a person who has served two terms must wait three years before he can be reappointed to the board, but this amendment does not place a limitation on the number of terms that a person may serve.

Section 4 This provides for the biennial renewal of licenses and raises the fee from $100 to $300. It also deletes the requirement that renewal take place on or before

July 1st of every other year. This change was made in order to conform with AS 08.01.100 requiring the Department of Commerce and Economic Development to set renewal dates with the approval of the respective occupational board. Since the department must provide administrative services to all occupational boards, it seems appropriate to allow the department to determine how these duties shall be organized.

Section 5 Once again, an amendment was necessary to raise license renewal fee from $100 to $300.

Section 6 Under this provision, three credit references and a credit report must be submitted along with an application for a license. Other provisions of that section continue to require that an applicant also submit a set of finger prints, an application fee, and the license fee.

Section 7 In order for a collection agency to be licensed it must provide a surety bond to the state. This amendment raises the amount of the bond from $5,000 to $10,000 and also adds the requirement that the bond contain the name of the collection agency which is seeking a license and that it be executed in trust for the state.

Section 8 This section allows a collection agency to deposit cash with the state rather than providing a bond. The amendment raises the amount required for a cash deposit from $5,000 to $10,000.

Section 9 While the Department of Commerce and Economic Development or its authorized agent continues to have access to the books of a collection agency, this section is amended so the Collection Agency Board does not have access to these records. Since one member of the board must be a person involved in the collection agency business, the amendment serves to protect the confidentiality of the records of a collection agency by denying the possibility of access to these records by a potential competitor.

Section 10 This amendment serves to raise the renewal license fee for a nonresident operator's license from $200 to $300 in order to conform to the increase imposed upon residents.

Section 11 The Collection Agency Board is added to the list of boards and agencies which must comply with the adjudicatory procedures set out in the Alaska Administrative Procedure Act.

Section 12 This section repeals those provisions which are inconsistent with this act.

AS 08.03.010(a)(3) removes the Collection Agency Board from the list of boards to be terminated June 30, 1980;

AS 08.24.110(a)(1) deletes the requirement that a person who wishes to apply for an operator's license must have been a resident of the state for at least one year prior to application;

AS 08.24.110(a)(3) deletes the requirement that a person applies for an operator's license be of good moral character;

AS 08.24.120(a)(2) deletes the requirement that a person applying for an operator's license submit a photograph of himself;

AS 08.24.160 deletes the section setting out the form for the bond which would be required of a collection agency seeking licensure in the state, which was done primarily because the form does not include the new requirement that the bond be executed in trust for the state and because eliminating the form requirement allows the Department of Commerce and Economic Development flexibility to develop forms which particularly suit its administrative routines;

AS 08.24.180 deletes an outdated grandfather clause allowing a person who had been engaged in a collection agency business on May 1, 1968 to automatically receive a license to continue in business;

AS 08.24.200(a) repeals a section requiring renewal of licenses upon July 1st every second year in order to allow the Department of Commerce and Economic Development to set the renewal date.

Section 13 This section provides that the act will take effect on June 30, 1980, the date upon which the Collection Agency Board is scheduled to terminate under existing law.

If you have any further questions, please contact me.

TBC:ljb

SENATE BILL 576

MR. PRESIDENT, THIS BILL, CONCERNING THE COLLECTION AGENCY BOARD, IS [redacted] ONE OF MANY SUNSET REVIEW BILLS, some few we have had, and several others are to come.

(SEC. 08.03.010(C))
P.1, L.10/12

SECTION 1 PROVIDES FOR SUNSET REVIEW OF THE COLLECTION AGENCY BOARD AND PROVIDES FOR A TERMINATION DATE OF JUNE 30, 1984.

(SEC. 08.24.011)
P.1, L.14/21

SECTION 2 IS AMENDED TO INCLUDE A CERTIFIED PUBLIC ACCOUNTANT (CPA) ON THE BOARD. BECAUSE OF THE NATURE OF THE COLLECTION AGENCY BUSINESS, IT [redacted] was recommended by the Div. of O.A. and other testimony that a [redacted] CPA'S KNOWLEDGE WILL PLAY A MAJOR ROLE IN THE CONTROL OF ACCOUNTS RECEIVABLE AND HELP CONTROL THE "UNDERHANDEDNESS" WHICH HAS BEEN SOMEWHAT PREVALENT IN THIS BUSINESS. THE MEMBERS ON THE BOARD INVOLVED IN THE COLLECTION AGENCY BUSINESS HAVE BEEN REDUCED FROM TWO TO ONE IN ORDER TO ADD THE NECESSARY CPA. OTHERWISE, THE BOARD MEMBERSHIP REMAINS THE SAME.

(SEC. 08.24.021)
P.1, L.29; P.2, L.1

SECTION 3 IS AMENDED SO THAT NO BOARD MEMBER MAY SERVE MORE THAN TWO CONSECUTIVE TERMS. THIS WAS DONE TO ALLOW MORE TURNOVER ON THE BOARD AND TO CREATE MORE DIVERSITY OF IDEAS AND TO BETTER SERVE THE PUBLIC INTEREST.

(SEC. 08.24.100(B))
P. 2, L.4/6

IN SECTION 4 THE WORD "ANNUAL" HAS BEEN DELETED PROVIDING FOR THE BIENNIAL RENEWAL OF LICENSES.

THIS SECTION RAISES THE FEE FROM $100 TO $300, BECAUSE THE FEE HAD NOT BEEN INCREASED SINCE 1968. (THIS SECTION ALSO DELETES THE REQUIREMENT THAT RENEWAL TAKE PLACE ON OR BEFORE JULY 1 OF EVERY OTHER YEAR. THIS CHANGE WAS MADE IN ORDER TO CONFORM WITH AS 08.01.100 REQUIRING THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO SET RENEWAL DATES WITH THE APPROVAL OF THE RESPECTIVE OCCUPATIONAL BOARD.)

(SEC. 08.24.100(A))
P.2, L.7/8

IN SECTION 5, ONCE AGAIN, AN AMENDMENT WAS NECESSARY TO INCREASE THE LICENSE RENEWAL FEE FROM $100 TO $300.

(SEC. 08.24.120(A))
P. 2, L.10/12

IN SECTION 6, IN ADDITION TO OTHER INFORMATION CURRENTLY REQUIRED OF AN APPLICANT FOR A LICENSE, THREE CREDIT REFERENCES AND A CREDIT REPORT FROM A CREDIT BUREAU IS ALSO REQUIRED BY THIS BILL. THIS HELPS UPGRADE THE PROFESSION AND PROVIDES for MORE CREDIBILITY OF [redacted] COLLECTION AGENCIES. THIS SHOULD ALSO HELP TO REDUCE THE fraud caused by some "FLY-BY-NIGHTERS."

(SEC. 08.24.150(A))
P. 2, L.13/21

SECTION 7, IN ORDER FOR A COLLECTION AGENCY TO BE LICENSED IT MUST PROVIDE A SURETY BOND TO THE STATE. THIS AMENDMENT RAISES THE AMOUNT OF THE BOND FROM $5,000 TO $10,000 AND ALSO ADDS THE REQUIREMENT THAT THE BOND CONTAIN THE NAME OF THE

COLLECTION AGENCY WHICH IS SEEKING A LICENSE AND THAT IT BE EXECUTED IN TRUST FOR THE STATE.]

(SEC. 08.24.150(B))
P.2, L.22/27

SECTION 8 ALLOWS A COLLECTION AGENCY TO DEPOSIT CASH WITH THE STATE RATHER THAN PROVIDING A BOND. THE AMENDMENT RAISES THE AMOUNT REQUIRED FOR A CASH DEPOSIT FROM $5,000 TO $10,000.

(SEC. 08.24.280(F)
P.2, L.28/29
P.3, L.1/5

SECTION 9 WHILE THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT OR ITS AUTHORIZED AGENT CONTINUES TO HAVE ACCESS TO THE BOOKS OF A COLLECTION AGENCY, THIS SECTION IS AMENDED SO THE COLLECTION AGENCY BOARD DOES NOT HAVE ACCESS TO THESE RECORDS. SINCE ONE MEMBER OF THE BOARD MUST BE A PERSON INVOLVED IN THE COLLECTION AGENCY BUSINESS, THE AMENDMENT SERVES TO PROTECT THE CONFIDENTIALITY OF THE RECORDS OF A COLLECTION AGENCY BY DENYING THE POSSIBILITY OF ACCESS TO THESE RECORDS BY A POTENTIAL COMPETITOR.

SEC. 08.24.370)
P.3, L.7/13

SECTION 10 THIS AMENDMENT SERVES TO RAISE THE RENEWAL LICENSE FEE FOR A NONRESIDENT OPERATOR'S LICENSE FROM $200 TO $300 IN ORDER TO CONFORM TO THE INCREASE IMPOSED UPON RESIDENTS.

(SEC. 44.62.330(A))
P.3, L.14/15

SECTION 11 IS AMENDED TO ADD THE COLLECTION AGENCY BOARD TO THE LIST OF BOARDS AND AGENCIES WHICH MUST COMPLY WITH THE ADJUDICATORY PROCEDURES SET OUT IN THE ALASKA ADMINISTRATIVE PROCEDURES ACT.

P.3, L.16/17

SECTION 12 REPEALS ~~AS FOLLOWS, THOSE PROVISIONS~~ seven sections WHICH ARE INCONSISTENT WITH THIS ACT. I would be glad to discuss them individually if requested, otherwise, I won't bore you.

(1.) AS 08.03.010(A)(3) REMOVES THE COLLECTION AGENCY BOARD FROM THE LIST OF BOARDS TO BE TERMINATED JUNE 30, 1980;

(2.) AS 08.24.110(A)(1) DELETES THE REQUIREMENT THAT A PERSON WHO WISHES TO APPLY FOR AN OPERATOR'S LICENSE MUST HAVE BEEN A RESIDENT OF THE STATE FOR AT LEAST ONE YEAR PRIOR TO APPLICATION; [Some national agencies are quite reputable and we saw no need for this requirement if one of them decided to establish in Alaska.]

(3.) AS 08.24.110(A)(3) DELETES THE REQUIREMENT THAT A PERSON APPLYING FOR AN OPERATOR'S LICENSE BE OF GOOD MORAL CHARACTER; [what does it mean and what does it have to do with a honest business. Being not guilty of moral turpitude is still a requirement.]

(4.) AS 08.24.120(A)(2) DELETES THE REQUIREMENT THAT A PERSON APPLYING FOR AN OPERATOR'S LICENSE SUBMIT A PHOTOGRAPH OF HIMSELF; [This was thought to be discriminatory; it would probably indicate race.]

(5.) AS 08.24.160 DELETES THE SECTION SETTING OUT THE FORM FOR THE BOND WHICH WOULD BE REQUIRED OF A COLLECTION AGENCY SEEKING LICENSURE IN THE STATE, WHICH WAS DONE PRIMARILY BECAUSE THE FORM DOES NOT INCLUDE THE NEW REQUIREMENT THAT THE BOND BE EXECUTED IN TRUST FOR THE STATE AND BECAUSE ELIMINATING THE FORM REQUIREMENT ALLOWS THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

FLEXIBILITY TO DEVELOP FORMS WHICH PARTICULARLY SUIT ITS ADMINISTRATIVE ROUTINES;

6. AS 08.24.180 DELETES AN OUTDATED GRANDFATHER CLAUSE ALLOWING A PERSON WHO HAD BEEN ENGAGED IN A COLLECTION AGENCY BUSINESS ON MAY 1, 1968, TO AUTOMATICALLY RECEIVE A LICENSE TO CONTINUE IN BUSINESS;

7. AS 08.24.200(A) REPEALS A SECTION REQUIRING RENEWAL OF LICENSES UPON JULY 1 EVERY SECOND YEAR IN ORDER TO ALLOW THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO SET THE RENEWAL DATE.

P.3, L.18 SECTION 13 THIS SECTION PROVIDES THAT THE ACT WILL TAKE EFFECT ON JUNE 30, 1980, THE DATE UPON WHICH THE COLLECTION AGENCY BOARD IS SCHEDULED TO TERMINATE UNDER EXISTING LAW.

MR. PRESIDENT, I URGE THE PASSAGE OF SENATE BILL 576.

MR. PRESIDENT, MOST OF THE LARGER COLLECTION AGENCIES HAVE RATHER GOOD REPUTATIONS, BUT A GOOD NUMBER OF SMALLER ONES HAVE BEEN GUILTY OF FRAUD, SO WE HAVE TIGHTENED UP THE REQUIRMENTS SOMEWHAT IN THIS BILL FOR THAT REASON.

COLLECTION AGENCY

STATUTES

08.03.010

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Board of Chiropractic Examiners (AS 08.20.010);
(2) Board of Dental Examiners (AS 08.36.010);
(3) State Medical Board (AS 08.64.010);
(4) Board of Nursing (AS 08.68.010);
(5) Board of Dispensing Opticians (AS 08.71.010);
(6) Board of Examiners in Optometry (AS 08.72.010);
(7) Board of Pharmacy (AS 08.80.010);
(8) Board of Veterinary Examiners (AS 08.98.010);
(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
(10) Board of Nursing Home Administrators (AS 08.70.010);
(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.010);
(2) Board of Barber Examiners (AS 08.12.010);
(3) Collection Agency Board (AS 08.24.011);
(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);
(5) Board of Electrical Examiners (AS 08.40.010);
(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
(7) Guide Licensing and Control Board (AS 08.54.010);
(8) Board of Marine Pilots (AS 08.62.010);
(9) Real Estate Commission (AS 08.88.011);
(10) Board of Welding Examiners (AS 08.99.010);
(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

08.24.011

Sec. 08.24.011. Collection Agency Board. There is created a Collection Agency Board consisting of five members, four of whom shall be appointed by the governor. The board shall consist of two persons engaged in the collection agency business within the state and licensed under this chapter. The third member shall be designated by the commissioner of commerce and economic development from his staff. Two members shall be public members in accordance with AS 08.01.025. (§ 1 ch 101 SLA 1968; am § 42 ch 218 SLA 1976; am § 7 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment substituted "commissioner of commerce and economic development" for "commissioner of commerce" in the third sentence.

The second 1976 amendment made the same change as the first 1976 amendment and, in addition, substituted "five members, four of whom" for "three members, two of whom" in the first sentence and added the fourth sentence.

COLLECTION AGENCY

STATUTES

08.24.021

Sec. 08.24.021. Appointment and term of office. The board members shall be appointed initially for terms of two and three years respectively. Thereafter, appointments to the board shall be made upon the expiration of the initial appointment and the term of office for each member so appointed shall be three years. The members shall serve at the pleasure of the governor. Vacancies caused by death, resignation or removal from office shall be filled by appointment by the governor. (§ 1 ch 101 SLA 1968)

08.24.100

Sec. 08.24.100. Licensed operator required, exceptions and fee. (a) Notwithstanding any other provision of this chapter, no licensee may engage in the collection agency business unless and until the collection agency, and each branch office of the agency is under the management and control of a licensed operator for each office. The department or the board may waive this requirement for a period not to exceed 90 days upon the death or disability of an operator, or for other good cause.

(b) The annual operator's license shall be renewable on or before July 1 of each second year beginning on July 1, 1968, and the biennial fee is $100. (§ 1 ch 101 SLA 1968)

08.24.110

Sec. 08.24.110. Qualification for operator's license. (a) To qualify for an operator's license, the applicant shall:

(1) have been a resident of this state continuously for at least one year before the time of application;

(2) be a high school graduate, or have the equivalent education of a high school graduate;

(3) be of good moral character;

(4) not have been convicted of violating this chapter, nor have any unsettled complaints under this chapter against him;

(5) not have been convicted of a felony or a crime of larceny or embezzlement or a crime involving moral turpitude;

(6) be 19 years of age or older at the time of application;

(7) not be a disbarred attorney or have filed bankruptcy;

(8) pay the biennial license fee which is fixed at $100.

(b) The commissioner may waive or modify the requirements specified in (a) (2), (4), (5) and (7) of this section for good cause shown. (§ 1 ch 101 SLA 1968)

08.24.120

Sec. 08.24.120. Application for operator's license. (a) An application for an operator's license shall be made on forms furnished by the department and shall contain the information required in § 110 of this chapter and, in addition, the following:

(1) a complete set of fingerprints;

(2) a 2" x 3" photograph showing a front view of head and shoulders;

(3) if an original application, an application fee of $10;

(4) the biennial license fee required by § 100 of this chapter.

(b) The department and the board are authorized to make a complete investigation of applicants including inquiry of police agencies as to the applicant's record of arrest or conviction of crime. (§ 1 ch 101 SLA 1968)

COLLECTION AGENCY

STATUTES

08.24.150

Sec. 08.24.150. Bond. (a) The bond provided for in § 140 of this chapter shall be in the sum of $5,000, executed by the applicant, as principal, and by a corporation which is licensed or authorized to transact business of fidelity and surety insurance within the state as surety. The department may at any time request verification of a bonding agent's authority by the main office of any company acting as surety.

(b) A licensee may, at any time, file with the department a new bond. A licensee may in lieu of a bond make a $5,000 cash deposit with the department, the deposit to be held by the department under the same terms and conditions as if bond in that amount were posted.

(c) A surety may file with the department notice of his withdrawal on the bond of a licensee. Upon filing a new bond, or upon the revocation of the collection agency license, or upon expiration of 60 days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate.

(d) The department shall immediately cancel the bond given by a surety company upon being advised its license to transact business of fidelity and surety insurance has been revoked by the state.

08.24.280

Sec. 08.24.280. Records and funds. (a) A collection agency shall keep a record of all sums collected by it, and of all disbursements made by it, and shall maintain and keep all the records and all customers' funds in a trust account with a recognized financial institution in this state. Collection agencies shall maintain accounting records of collections for and payments to customers for a period of six years from the date of the last entry. Collection agencies shall keep other records for a period of two years from the date of the last entry.

(b) Every collection agency shall maintain a permanent numerical receipt record which shall indicate as to each payment made by a debtor the following information:

(1) the name of the debtor making payment;

(2) the amount paid;

(3) the name of the creditor to whom funds are being applied;

(4) the date and form of payment;

(5) the balance remaining due on account.

(c) An agency using a computer system giving read-out debtor payment information will not have to maintain a numerical receipt record; however, if requested, a receipt will be furnished to debtor.

(d) The receipt shall be made immediately upon the receipt of funds by the collection agency in payment of a debt; the original copy to be made immediately available to the debtor who has made payment, upon request; and a copy to be made immediately available to the creditor for whom payment was received, upon request; and a copy to be maintained in the permanent receipt record.

(e) A collection agency shall maintain daily cash ledger sheets showing all funds received from debtors and all funds received as fees for services, such as credit reports and the like.

08.24.370

Sec. 08.24.370. Nonresidents. A nonresident may apply for and receive a collection agency license or an operator license or both on the same basis as a resident. The application fee for a nonresident operator license is $100, and the biennial license fee is $200. The application fee for a nonresident agency license is $200, and the biennial license fee is $400 for the principal place of business and $400 for each branch office. (§ 1 ch 101 SLA 1968)

COLLECTION AGENCY
STATUTES

44.62.330

Sec. 44.62.330. Application of §§ 330 — 630. (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under §§ 330 — 630 of this chapter. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under §§ 330 — 630 of this chapter is limited to named functions of the agency.

(47) Collection agency Board (AS 08.24.011)

08.24.180

Sec. 08.24.180. Persons presently engaged in collection business. (a) A person who is actively engaged in a collection agency business on May 1, 1968 and who wishes to continue to engage in this business shall apply for a license within 60 days after May 1, 1968.

(b) A person who applies or receives a license under (a) of this section is subject to all of the provisions of this chapter, except that in his application for a license he is not required to comply with § 120(a) (3) and (4) of this chapter. (§ 1 ch 101 SLA 1968)

08.24.200

Sec. 08.24.200. Expiration and renewal. (a) All licenses required by this chapter shall expire on June 30, 1970, and June 30 of each second year thereafter and shall be renewed as of July 1 following upon payment of required biennial fees.

(b) If a licensee under this chapter is delinquent for a period of 15 days in applying for the renewal of a license, the department shall suspend the license and notify the licensee by certified mail or by personal service. The notice shall state that the license will be revoked if application for renewal is not made within 15 days from the date on which the notice was mailed or personally served. When a licensee has been delinquent in renewing his license or certificate, the department shall charge an additional fee of $50 for the renewal of the license. (§ 1 ch 101 SLA 1968)

08.01.025

Sec. 08.01.025. Public members. No public member of a board may:

(1) be engaged in the occupation which the board regulates;

(2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or

(3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 258 SLA 1976)

COLLECTION AGENCY BOARD

The Collection Agency Board should be allowed to terminate on June 30, 1980. After that date, licensing by the Department of Commerce & Economic Development shall continue as provided in AS 08.24, including promulgation of regulations by the Department.

If the Board is to continue:

1. Delete the following in Sec. 08.24.110:

   (3) [Be of good moral character]
   The AG cannot even define this.

   (5) [or a crime involving moral turpitude]

2. Repeal Sec. 08.24.180 - grandfather clause

3. Amend Sec. 08.24.100 - Make it a biennial license with a biennial fee of $200.00 [$100] - keep it consistent.

4. Sec. 08.24.150 - Bond - Increase the amount of bond required for collection agencies from [$5000.] to $10,000. Only surety bonds or cash shall be submitted. They should include the collection agency name and In Trust for the State of Alaska - so the State can cash them. (Upgrade solidity of agencies.)

5. Sec. 08.24.021 - Board members may be appointed to serve no more than two consecutive terms. (Currently 3-year terms)

6. Repeal Sec. 08.24.120(a)(2) - requiring a photograph with the application - (discriminatory).

7. Add to Sec. 08.24.120(5) - Proof of Financial Responsibility

   a. Three credit references and a credit report from a credit bureau. (This is required on the applications, but it is not in statute.)

8. Sec. 08.24.011 - The Board should consist of three members only.

   1 - CPA
   1 - Collection Agency Operator
   1 - Public Member
   1 - Commissioner or his designee
   (The board currently consists of five members)

9. A procedure for filing against a bond should be put into regulations or statute. A step-by-step process. Evidently, according to OL, lawyers and the layman do not know how to go about this process. Statement call for regulations to be developed for step-by-step.

10. In Sec. 08.24.280(f) - delete [the board].

The reason for this is that the board is made up of two collection agency people and as the statute now stands, they can go to other collection agencies and look at their books and get customers names, etc. for their agency. The books should not be open to these board members.

11. Delete Sec. 08.24.370 - Non-Residency

It should remain [Sec. 08.24.110(1)] that in order to obtain a license, an individual must be a resident for one year. This will help control "fly-by-night" collectors.

(The board suggests deleting the residency statute and allow anyone to come up from another state and open an agency. This should not be so. There has to be at least one licensed operator in an agency and the non-resident may work in an agency when he or she comes to Alaska, but they should not be allowed to own one until they are here for at least a year.)

Optional

Sec. 08.24.370 - Amend: Non-residence fee of $200. [$100.] and biennial renewal of $300 [$200]

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

The Collection Agency Board plays a major role in controlling the "white collar" crime so prevalent in this profession. The Board has the ability to "point-out" those agencies which are "questionable" in character and has acted as a liaison between the state and consumer in controlling fraudulent crime.

For instance, Mr. James Carter was issued a new license for his collection agency by the Division of Occupational Licensing without proper investigation. Don Leach, a member of the Collection Agency Board, has been investigating Mr. Carter and found that Mr. Carter has judgments against him for close to $100,000. Such "rubber-stamping" of licenses by the Division of Occupational Licensing clearly points out the need for the Collection Agency Board. The Board can prevent licensing of those collection agency owners who continue to milk their corporations dry and use the monies for personal assets. If someone is going to collect money from me they had better have excellent credit themselves.

SB 576, "...the continuation of the existence of the Collection Agency Board..." contains many measures which help prevent the crime so prevalent in this profession; e.g., raising the bond required for a Collection Agency business from $5,000 to $10,000, etc. (See attached analysis of the bill.)

Jon Mathison
Administrative Assistant
Senate Commerce Committee

Enclosure

bm

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M April 25, 1980

SUBJECT: Section-by-section analysis of SB 576 relating to the Collection Agency Board (Work Order Number 8523)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have requested a section-by-section analysis of Senate Bill 576 entitled "An Act relating to the regulation of collection agencies and continuing the existence of the Collection Agency Board; and providing for an effective date."

Section 1 This section provides for sunset review of the Collection Agency Board on June 30, 1984.

Section 2 The composition of the board has been altered so that one member is a certified public accountant and only one member is engaged in the collection agency business. The existing law provides for two members who are persons engaged in the collection agency business. Otherwise, the board membership remains the same.

Section 3 This amends the section dealing with appointment and term of office of board members so that no person may serve more than two consecutive terms. Since the terms are for three years, a person who has served two terms must wait three years before he can be reappointed to the board, but this amendment does not place a limitation on the number of terms that a person may serve.

Section 4 This provides for the biennial renewal of licenses and raises the fee from $100 to $300. It also deletes the requirement that renewal take place on or before

July 1st of every other year. This change was made in order to conform with AS 08.01.100 requiring the Department of Commerce and Economic Development to set renewal dates with the approval of the respective occupational board. Since the department must provide administrative services to all occupational boards, it seems appropriate to allow the department to determine how these duties shall be organized.

Section 5 Once again, an amendment was necessary to raise license renewal fee from $100 to $300.

Section 6 Under this provision, three credit references and a credit report must be submitted along with an application for a license. Other provisions of that section continue to require that an applicant also submit a set of finger prints, an application fee, and the license fee.

Section 7 In order for a collection agency to be licensed it must provide a surety bond to the state. This amendment raises the amount of the bond from $5,000 to $10,000 and also adds the requirement that the bond contain the name of the collection agency which is seeking a license and that it be executed in trust for the state.

Section 8 This section allows a collection agency to deposit cash with the state rather than providing a bond. The amendment raises the amount required for a cash deposit from $5,000 to $10,000.

Section 9 While the Department of Commerce and Economic Development or its authorized agent continues to have access to the books of a collection agency, this section is amended so the Collection Agency Board does not have access to these records. Since one member of the board must be a person involved in the collection agency business, the amendment serves to protect the confidentiality of the records of a collection agency by denying the possibility of access to these records by a potential competitor.

Section 10 This amendment serves to raise the renewal license fee for a nonresident operator's license from $200 to $300 in order to conform to the increase imposed upon residents.

Section 11 The Collection Agency Board is added to the list of boards and agencies which must comply with the adjudicatory procedures set out in the Alaska Administrative Procedure Act.

Section 12 This section repeals those provisions which are inconsistent with this act.

AS 08.03.010(a)(3) removes the Collection Agency Board from the list of boards to be terminated June 30, 1980;

AS 08.24.110(a)(1) deletes the requirement that a person who wishes to apply for an operator's license must have been a resident of the state for at least one year prior to application;

AS 08.24.110(a)(3) deletes the requirement that a person applies for an operator's license be of good moral character;

AS 08.24.120(a)(2) deletes the requirement that a person applying for an operator's license submit a photograph of himself;

AS 08.24.160 deletes the section setting out the form for the bond which would be required of a collection agency seeking licensure in the state, which was done primarily because the form does not include the new requirement that the bond be executed in trust for the state and because eliminating the form requirement allows the Department of Commerce and Economic Development flexibility to develop forms which particularly suit its administrative routines;

AS 08.24.180 deletes an outdated grandfather clause allowing a person who had been engaged in a collection agency business on May 1, 1968 to automatically receive a license to continue in business;

AS 08.24.200(a) repeals a section requiring renewal of licenses upon July 1st every second year in order to allow the Department of Commerce and Economic Development to set the renewal date.

Section 13 This section provides that the act will take effect on June 30, 1980, the date upon which the Collection Agency Board is scheduled to terminate under existing law.

If you have any further questions, please contact me.

TBC:ljb

SENATE BILL 576

MR. PRESIDENT, I MOVE THE ADOPTION OF SENATE BILL 576 WHICH DEALS WITH THE CONTINUATION OF THE COLLECTION AGENCY BOARD.

(SEC. 08.03.010(c))
P.1, L.10/12

SECTION 1 IS AMENDED TO ADD A NEW PARAGRAPH WHICH CONTINUES THE EXISTENCE OF THE COLLECTION AGENCY BOARD UNTIL JUNE 30, 1984. THE COLLECTION AGENCY BOARD PLAYS A MAJOR ROLE IN CONTROLLING THE WHITE COLLAR CRIME SO PREVALENT IN THIS PROFESSION. THE BOARD HAS THE ABILITY TO "POINT OUT" THOSE AGENCIES WHICH ARE "QUESTIONABLE" IN CHARACTER AND HAS ACTED AS A LIAISON BETWEEN THE STATE AND CONSUMER IN CONTROLLING FRAUDULENT CRIME.

(SEC. 08.24.011)
P.1, L.14/21

SECTION 2 IS AMENDED TO INCLUDE A CERTIFIED PUBLIC ACCOUNTANT (CPA) ON THE BOARD. BECAUSE OF THE NATURE OF THE COLLECTION AGENCY PROFESSION IT IS FELT THAT A CPA'S KNOWLEDGE WILL PLAY A MAJOR ROLE IN THE CONTROL OF ACCOUNTS RECEIVABLE AND HELP CONTROL THE "UNDERHANDEDNESS" WHICH IS CURRENTLY IN THIS PROFESSION. THE NUMBER OF MEMBERS ON THE BOARD WHO ARE INVOLVED IN THE COLLECTION AGENCY BUSINESS HAS BEEN REDUCED FROM (TWO) TO ONE IN ORDER TO ADD THE NECESSARY CPA TO THE BOARD. HENCE THE COMPOSITION WILL BE THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT, A CPA, A PROFESSIONAL IN THE COLLECTION BUSINESS, AND TWO PUBLIC MEMBERS.

(SEC. 08.24.021)
P.1, L.29; P.2, L.1

SECTION 3 IS CHANGED TO FORBID A BOARD MEMBER FROM SERVING MORE THAN TWO CONSECUTIVE TERMS. BUT THIS DOES NOT LIMIT THE TOTAL NUMBER OF TERMS WHICH A PERSON MAY SERVE -- THIS PROVIDES GREATER TURNOVER OF THE MEMBERS ON THE BOARD. THIS WAS DONE TO ALLOW MORE TURNOVER ON THE BOARD AND TO CREATE MORE DIVERSITY.

(SEC. 08.24.100(F))
P.2, L.4/6

IN SECTION 4 THE WORD (ANNUAL) HAS BEEN DELETED PROVIDING FOR THE BIENNIAL RENEWAL OF LICENSES. THIS SECTION RAISES THE FEE FROM ($100) TO $300. IT ALSO DELETES THE REQUIREMENT THAT RENEWAL TAKE PLACE ON OR BEFORE JULY 1 OF EVERY OTHER YEAR. THIS CHANGE WAS MADE IN ORDER TO CONFORM WITH AS 08.01.100 REQUIRING THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO SET RENEWAL DATES WITH THE APPROVAL OF THE RESPECTIVE OCCUPATIONAL BOARD.

(SEC. 08.24.120(A))
P.2, L.10/12

SECTION 6 ADDS A PARAGRAPH WHICH REQUIRES THE APPLICANT FOR A LICENSE TO INCLUDE THREE CREDIT REFERENCES AND A CREDIT REPORT FROM A CREDIT BUREAU. THIS HELPS UPGRADE THE PROFESSION AND PROVIDES MORE CREDIBILITY OF THE PEOPLE WHO OPEN, WORK IN, OR OPERATE AN AGENCY. THIS WILL ALSO REDUCE THE "FLY-BY-NIGHTERS."

(SEC. 08.24.150(A))
P.2, L.13/21

SECTION 7 RAISES THE AMOUNG OF BOND REQUIRED BY THE APPLICANT AS PRINCIPAL FROM ($5000) TO $10,000

AND THE BOND SHALL CONTAIN THE NAME OF THE COLLECTION AGENCY FOR WHICH A LICENSE IS BEING APPLIED AND SHALL BE EXECUTED IN TRUST FOR THE STATE OF ALASKA. THE BOND SHALL BE EXECUTED IN TRUST FOR THE STATE OF ALASKA TO MAKE IT EASIER FOR THE STATE TO CASH THE BONDS. (PAGE 2, LINES 22-27) SECTION 8, AS 08.24.150(B) RAISES THE AMOUNT OF CASH REQUIRED BY AN APPLICANT FROM ($5000) TO $10,000 FOR THE SAME REASONS AS THE BOND.

(SEC. 08.24.280(F))
P.3, L.4/5

SECTION 9 DELETES THE WORD (BOARD). THE RECORDS SHALL AT ALL REASONABLE TIMES BE OPEN FOR INSPECTION BY THE DEPARTMENT, OR ITS AUTHORIZED AGENT. THE BOARD CURRENTLY CONTAINS TWO COLLECTION AGENCY MEMBERS AND AS THE STATUTE NOW STANDS, THEY COULD GO TO OTHER COLLECTION AGENCIES TO EXAMINE RECORDS, BOOKS AND ACQUIRE CUSTOMER'S NAMES, AMOUNTS COLLECTED, ETC., FOR THEIR OWN AGENCIES. THE BOOKS SHOULD NOT BE OPEN TO THESE BOARD MEMBERS.

(SEC. 08.24.370)
P. 3, L. 7/13

SECTION 10 IS AMENDED TO RAISE THE NONRESIDENT FEES. THIS CONFORMS WITH THE RESIDENT FEE RAISE.

(SEC. 44.62.330(A))
(P. 3, L.14/15

SECTION 11 IS AMENDED TO ADD THE COLLECTION AGENCY BOARD TO THE LIST OF BOARDS AND AGENCIES WHICH MUST COMPLY WITH THE ADJUDICATORY PROCEDURES SET OUT IN THE ALASKA ADMINISTRATIVE PROCEDURES ACT.

P.3, L.16/17 THE FOLLOWING IS REPEALED:

- SEC. 08.03.010(A)(3) - REMOVES THE COLLECTION AGENCY BOARD FROM THE LIST OF BOARDS TO BE TERMINATED JUNE 30, 1980.

- SEC. 08.24.110(A)(1) - REPEALS THE REQUIREMENT THAT TO QUALIFY FOR AN OPERATOR'S LICENSE, THE APPLICANT SHALL (HAVE BEEN A RESIDENT OF THIS STATE CONTINUOUSLY FOR AT LEAST ONE YEAR BEFORE THE TIME OF APPLICATION). WE ALLOW NONRESIDENTS TO OBTAIN A LICENSE BEFORE ONE-YEAR RESIDENCY.

- SEC. 08.24.110(A)(3) - REMOVES THIS AMBIGUOUS WORDAGE (BE OF GOOD MORAL CHARACTER) - THE ATTORNEY GENERAL'S OFFICE CANNOT DEFINE THIS TERM.

- SEC. 08.24.120(A)(2) - ELIMINATES THE REQUIREMENT FOR A PHOTOGRAPH TO BE ATTACHED TO THE APPLICATION. THIS HAS BEEN DEEMED DISCRIMINATORY.

- SEC. 08.24.160 - REPEALS THE $5000 BOND REQUIREMENT.

- SEC. 08.24.180 - DELETES AN OUTDATED GRANDFATHER CLAUSE ALLOWING A PERSON WHO HAD BEEN ENGAGED IN A COLLECTION AGENCY BUSINESS ON MAY 1, 1968 TO AUTOMATICALLY RECEIVE A LICENSE TO CONTINUE IN BUSINESS.

- SEC. 08.24.200(3) - REPEALS RENEWAL LICENSE SECTION WHICH HAS BEEN CHANGED BY THIS BILL. THE SECTION REPEALED REQUIRES RENEWAL OF LICENSES UPON JULY 1 EVERY SECOND YEAR IN ORDER TO ALLOW THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO SET THE RENEWAL DATE.

COLLECTION AGENCY

STATUTES

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

08.03.010

(1) Board of Chiropractic Examiners (AS 08.20.010);
(2) Board of Dental Examiners (AS 08.36.010);
(3) State Medical Board (AS 08.64.010);
(4) Board of Nursing (AS 08.68.010);
(5) Board of Dispensing Opticians (AS 08.71.010);
(6) Board of Examiners in Optometry (AS 08.72.010);
(7) Board of Pharmacy (AS 08.80.010);
(8) Board of Veterinary Examiners (AS 08.98.010);
(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
(10) Board of Nursing Home Administrators (AS 08.70.010);
(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.010);
(2) Board of Barber Examiners (AS 08.12.010);
(3) Collection Agency Board (AS 08.24.011);
(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);
(5) Board of Electrical Examiners (AS 08.40.010);
(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
(7) Guide Licensing and Control Board (AS 08.54.010);
(8) Board of Marine Pilots (AS 08.62.010);
(9) Real Estate Commission (AS 08.88.011);
(10) Board of Welding Examiners (AS 08.99.010);
(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

Sec. 08.24.011. Collection Agency Board. There is created a Collection Agency Board consisting of five members, four of whom shall be appointed by the governor. The board shall consist of two persons engaged in the collection agency business within the state and licensed under this chapter. The third member shall be designated by the commissioner of commerce and economic development from his staff. Two members shall be public members in accordance with AS 08.01.025. (§ 1 ch 101 SLA 1968; am § 42 ch 218 SLA 1976; am § 7 ch 258 SLA 1976)

08.24.011

Effect of amendments. — The first 1976 amendment substituted "commissioner of commerce and economic development" for "commissioner of commerce" in the third sentence.

The second 1976 amendment made the same change as the first 1976 amendment and, in addition, substituted "five members, four of whom" for "three members, two of whom" in the first sentence and added the fourth sentence.

COLLECTION AGENCY

STATUTES

08.24.021

Sec. 08.24.021. Appointment and term of office. The board members shall be appointed initially for terms of two and three years respectively. Thereafter, appointments to the board shall be made upon the expiration of the initial appointment and the term of office for each member so appointed shall be three years. The members shall serve at the pleasure of the governor. Vacancies caused by death, resignation or removal from office shall be filled by appointment by the governor. (§ 1 ch 101 SLA 1968)

08.24.100

Sec. 08.24.100. Licensed operator required, exceptions and fee. (a) Notwithstanding any other provision of this chapter, no licensee may engage in the collection agency business unless and until the collection agency, and each branch office of the agency is under the management and control of a licensed operator for each office. The department or the board may waive this requirement for a period not to exceed 90 days upon the death or disability of an operator, or for other good cause.

(b) The annual operator's license shall be renewable on or before July 1 of each second year beginning on July 1, 1968, and the biennial fee is $100. (§ 1 ch 101 SLA 1968)

08.24.110

Sec. 08.24.110. Qualification for operator's license. (a) To qualify for an operator's license, the applicant shall:

(1) have been a resident of this state continuously for at least one year before the time of application;

(2) be a high school graduate, or have the equivalent education of a high school graduate;

(3) be of good moral character;

(4) not have been convicted of violating this chapter, nor have any unsettled complaints under this chapter against him;

(5) not have been convicted of a felony or a crime of larceny or embezzlement or a crime involving moral turpitude;

(6) be 19 years of age or older at the time of application;

(7) not be a disbarred attorney or have filed bankruptcy;

(8) pay the biennial license fee which is fixed at $100.

(b) The commissioner may waive or modify the requirements specified in (a) (2), (4), (5) and (7) of this section for good cause shown. (§ 1 ch 101 SLA 1968)

08.24.120

Sec. 08.24.120. Application for operator's license. (a) An application for an operator's license shall be made on forms furnished by the department and shall contain the information required in § 110 of this chapter and, in addition, the following:

(1) a complete set of fingerprints;

(2) a 2" × 3" photograph showing a front view of head and shoulders;

(3) if an original application, an application fee of $40;

(4) the biennial license fee required by § 100 of this chapter.

(b) The department and the board are authorized to make a complete investigation of applicants including inquiry of police agencies as to the applicant's record of arrest or conviction of crime. (§ 1 ch 101 SLA 1968)

COLLECTION AGENCY
STATUTES

08.24.150

Sec. 08.24.150. Bond. (a) The bond provided for in § 140 of this chapter shall be in the sum of $5,000, executed by the applicant, as principal, and by a corporation which is licensed or authorized to transact business of fidelity and surety insurance within the state as surety. The department may at any time request verification of a bonding agent's authority by the main office of any company acting as surety.

(b) A licensee may, at any time, file with the department a new bond. A licensee may in lieu of a bond make a $5,000 cash deposit with the department, the deposit to be held by the department under the same terms and conditions as if bond in that amount were posted.

(c) A surety may file with the department notice of his withdrawal on the bond of a licensee. Upon filing a new bond, or upon the revocation of the collection agency license, or upon expiration of 60 days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate.

(d) The department shall immediately cancel the bond given by a surety company upon being advised its license to transact business of fidelity and surety insurance has been revoked by the state.

08.24.280

Sec. 08.24.280. Records and funds. (a) A collection agency shall keep a record of all sums collected by it, and of all disbursements made by it, and shall maintain and keep all the records and all customers' funds in a trust account with a recognized financial institution in this state. Collection agencies shall maintain accounting records of collections for and payments to customers for a period of six years from the date of the last entry. Collection agencies shall keep other records for a period of two years from the date of the last entry.

(b) Every collection agency shall maintain a permanent numerical receipt record which shall indicate as to each payment made by a debtor the following information:

(1) the name of the debtor making payment;

(2) the amount paid;

(3) the name of the creditor to whom funds are being applied;

(4) the date and form of payment;

(5) the balance remaining due on account.

(c) An agency using a computer system giving read-out debtor payment information will not have to maintain a numerical receipt record; however, if requested, a receipt will be furnished to debtor.

(d) The receipt shall be made immediately upon the receipt of funds by the collection agency in payment of a debt; the original copy to be made immediately available to the debtor who has made payment, upon request; and a copy to be made immediately available to the creditor for whom payment was received, upon request; and a copy to be maintained in the permanent receipt record.

(e) A collection agency shall maintain daily cash ledger sheets showing all funds received from debtors and all funds received as fees for services, such as credit reports and the like.

08.24.370

Sec. 08.24.370. Nonresidents. A nonresident may apply for and receive a collection agency license or an operator license or both on the same basis as a resident. The application fee for a nonresident operator license is $100, and the biennial license fee is $200. The application fee for a nonresident agency license is $200, and the biennial license fee is $400 for the principal place of business and $400 for each branch office. (§ 1 ch 101 SLA 1968)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No 576 - An Act relating to the regulation of collection agencies and continuing the existence of the Collection Agency Board; and providing for an effective date.

Title

Requested by Commerce Committee Date 4/29/80

II. FISCAL DETAIL

Agency Affected Commerce and Economic Development

Program Category Affected Consumer Protection

BRU, Program, or Subprogram(s) Affected Regulation and Licensing of Professions

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400	COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600	LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No fiscal impact is associated with passage of this bill.

IV. DATE 4/29/80 PREPARED BY Ann Griggs, Director

AGENCY Occupational Licensing

PHONE 465-2534

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Commerce & Economic Development	Commerce Committee	SB 576

DEPARTMENT POSITION

Oppose

DIVISION DIRECTOR	DATE	Deputy COMMISSIONER	DATE
Occupational Licensing	4/29/80	Bertram L. Wagnon	

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING) HB 940

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unknown	Unknown

(3) PROGRAM EFFECTS OF BILL

(4) FISCAL IMPACT: ☐ NONE ☒ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

The Collection Agency Board should be allowed to terminate as of June 30, 1980.

(6) COMMENTS:

The Division of Occupational Licensing opposes SB 576 and believes that the Collection Agency Board should be allowed to terminate as of June 30, 1980. However, the licensing function and the enforcement of statutes and regulations should be continued and remain within the Department of Commerce & Economic Development, DOL. The Division of Occupational Licensing is capable of performing the necessary functions to protect the public in regards to the licensing and enforcement of this profession.

Alaska State Legislature

House of Representatives

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

March 6, 1980

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

The House State Affairs Committee has had under consideration for "Sunset" review the Collection Agency Board under AS 24.20.271 and AS 44.66.050.

A public hearing was held on the review of the board, at which testimony of the Director of the Division of Occupational Licensing was received. Additional testimony was received from the public in person and by teleconference. The Committee particularly examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

The State Affairs Committee finds itself in agreement with the Legislative Audit Division and recommends that the Collection Agency Board not be reinstated. The committee further recommends that legislation be introduced to transfer the duties of the Collection Agency Board to the Division of Occupational Licensing.

Sincerely,

Representative Mike Miller
Chairman
House State Affairs

Members:

Bill Parker
Terry Martin
R. Gleason
John G. Fuller
Ray McCrate
Terry Gardiner

SB

73

Senate Com. Comitte Report on Sunst Review of Division of Occupational Licensing, Department of Commerce and Economic Development.

Statement of Problem

In accordance with the provision of Alaska Statutes 44.66.010 and 44.66.050 the Senate Commerce Comitte as the designated committe of reference has conducted the required Sunst Review of the Division of Occupational Licensing. This report fulfilles the legislative requirments for the committe of refrances' responsibility to make formal notification to the president of the senate of their findings relative to the Division of Occupational Licensing.

The Senate Commerce Committee ~~is~~ is designated as the committee of refurance by the President of the Senate. The Senate Commerce Comittee ha held one public hearing diring which testimoney was recieved from all those who requested a chance to be heard. Among those who were heard were the Director ~~of the~~ representing the Division of Occupational Licensing and the chief investigator from Occupational licensing. The remainder of those who testified were the The Deputy Commissioner of Commerce and Economic Development ~~also testified~~ and a repusentative ~~of the~~ from the Alaska Health Coalition.

Discussion

~~The Homogeneity of testimony~~

The thrust of testimony provided fell into two and catagories: (1) Administration position, (2) the Health Care Industry.

(1) The administrative position, is to follow the recomendations embodied in the Performance Review (attached as enclosure <1>). The administrative position as stated by the Department of Commerce and Economic Development included the following recomendations.

(a) That the Division of ~~[illegible]~~.

Occupational Liscensing should display better management through an 'in-house' organization program.

(b) that the Division of Occupational licensing whose primary goal, is to ensure that Alaskans are adequately protected from

unscrupulous or incompetent practitioners, streamline their investigative practices.

(2) The consciences position presented by the Health Care Coalition was that ~~the~~ money is the major problem plaguing ~~our~~ the various boards, especially money for investigative services. Lack of division funds for investigative services has stymied every board being reviewed. The Coalition also believes that that more complaints would be filed if people were better informed as to the procedures for doing so. A major concern of the coalition was the lack of communication between the

division of Occupational Licensing
~~department~~ and the boards. Reference was made that introduction of legislation directly affecting the boards ~~be introduced~~ be discussed ~~prior to~~ with the boards prior to introduction. The following Recommendations were submitted by the Health Coalition:

(a) At least 3 investigator positions be funded for the health board and that each be assigned to certain boards so they can be educated in that particular discipline to facilitate their investigation.

(b) the ~~dlp~~ division of occupational licensing be required to submit to boards all proposed legislation having a direct or indirect affect on the boards.

(c) the division of Occupational licensing play a stronger role in settling disputes between boards and other agencies and departments.

~~(d)~~

insert (a)

That the division of Occupational licensing, investigations unit be transfered to the Department of Public safety.

(d) Require the Division of Occupational licensing to actively solicit names ~~from~~ for possible appointments from the public and private sectors and that the division periodically review and update it with current information.

(e) All the statutes in chapter 08 be revised to limit the number of terms that any board member could serve to two.

(f) The Division should review the licensing fee structure and seek appropriate revisions.

(6)

Conclusion

The Senate Commerce Committee after hearing all testimony provided in the hearing has come to the following conclusions.

(1) The Division of Occupational Licensing should be continued subject to resolution of the recomendations made by the Legislative Budget and Audit Committee (~~see~~ attached enclosure <1>).

(2) Statutory amendments are needed to assure that appropriate action is taken on consumer complaints against liscened persons.

(7)

(3) It does not appear at this time that there is an alternative method of achieving the stated purposes and objectives of the Division of Occupational licensing.

(4) It does not appear on the basis of testimony recieved that the Division of Occupational Liscensing could be consolidated with any other Board or commission within the state government.

Recomendations

The Senate Commerce Comittee recomends the following actions be taken by the eleventh legislature.

(1) ~~That~~ The preformance Review of the Division of Occupational Liscensing ~~the~~ conducted by the legislative audit be approved and adopted as the required report to the president of the senate together with this report.

(2) That legislation be drafted to extend the life of the Division of Occupational Liscensing until June 30, 1980 ~~pending the recom~~.

(3) In the intreum the Senate Commerce Committee recomends that certain legislative actions be taken to correct the deficencies in the Division of Occupational Licensing as noted in the Legislative Budget and Audit Preformance Review. These would include, but not be limited to SB-73.

2/27/19 C.C. Meeting

Jana Varriati
Coordinator of Alaska Health Coalition.

Common Problems
1) Funding
2) Communications
3) Lack of funding

* for meeting and investigation.
Why — Boards were never asked to put a budget in. Under ms Hostasko this has been a little elevated.
→ Lack of division funds for investigators.
Recomendation → 3 investigators for health boards alone
→ Use investigators of the department of public safty. If this is done the boards would loose track of the records.

→
Communication Problems
Lack there of
→ Department of O.C should admit all legislation to the various Boards.
→ O.C should send out budget requests for discussion from all boards.
→ O.C should help the Boards with their problems dealing with other agencies.
→ Openess result in more efficient operation.

→ Communication Problem between Dept. and Boards.
→ Procedures followed by board members.
→ Ethics about activities of board members.

→ The Boards should be required to place notice of all public meeting. IE -- In newspaper in the same place all times. like opposit the comicks.
→ Boards should solicit public input.
→ ~~Ok~~
→ A person complaining should get a follow-up. Also the person being complained against should be informed w/r to the complaint.

Boards have no knowledge of what is going on during an investigation. This is a severe problem.

A convention once a year for all boards and the O.L. director, also the commissioner of commerce.
A phone book by O.L. of all Boards distributed ~~to~~ all Board members.

Some other state have a news letter for Communication between Boards.

Board Vacancies →

① Dept be requid to solicit names for board member.
② Review the list and updat it
③ No board membr can have no more than 2 terms.
~~④~~

No Privision fo Removing a Board Memb.
→ If you dont go to 40% of the meetings you get removed.
→ In Califonia the Gov. can remove a Board member.

get this statute

Re-licensee should have agan to take an exam to prove they are still qualified.

About Sun-Set Regulation →

Get the problems on the table and review them. Most boards are trying to do ther job but are running into beaurocratic garbage.

Mr Long - Chief Investigator for
O.L. Division

① Drug abuse by professionals.

Can a board fine! → (*)

Bert Wagnon

O.L. $1,029 million budget.

→ they should better manage. But these are in-house problems.

→

STATE OF ALASKA

A PERFORMANCE REVIEW OF THE DIVISION OF OCCUPATIONAL LICENSING DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

October 30, 1978

A PERFORMANCE REVIEW
OF THE
DIVISION OF OCCUPATIONAL LICENSING
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

October 30, 1978

Commissioner of the Department of Commerce and Economic Development	H. Phillip Hubbard
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

October 30, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
DIVISION OF OCCUPATIONAL LICENSING
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

October 30, 1978

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

01LH

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PURPOSE AND SCOPE OF THE REVIEW

In accordance with the provisions of Title 24 of the Alaska Statutes, a review was conducted to determine the efficiency and effectiveness of certain Divisional operations that have a direct effect on the performance of the 11 occupational licensing boards currently under sunset review.

The performance of the Division of Occupational Licensing's responsibilities reflect on the efficiency and effectiveness of the licensing boards. Therefore, this report should be reviewed in conjunction with the individual reports, issued under separate covers, of the following boards subject to termination under sunset legislation, AS 08.03.010(a):

(1) Board of Chiropractic Examiners (AS 08.20.010);

(2) Board of Dental Examiners (AS 08.36.010);

(3) State Medical Board (AS 08.64.010);

(4) Board of Nursing (AS 08.68.010);

(5) Board of Dispensing Opticians (AS 08.71.010);

(6) Board of Examiners in Optometry (AS 08.72.010);

(7) Board of Pharmacy (AS 08.80.010);

(8) Board of Veterinary Examiners (AS 08.98.010);

(9) Board of Psychologists and Psychological Associate Examiners (AS 08.86.010);

(10) Board of Nursing Home Administrators (AS 08.70.010); and

(11) Physical Therapy Board (AS 08.84.010).

Our review of the 11 licensing boards was hampered, in part, by the Division of Occupational Licensing. The Division has not adequately collected, recorded and maintained pertinent files and statistics relating to the boards to effectively and efficiently carry out their administrative responsibilities, nor have they established managerial controls over the investigation unit.

In 1977, the Legislature approved a fiscal note to the sunset legislation which provided for a Management Analyst I position. The intended purpose of this position was to provide staff support to each of the sunset effected agencies in order to develop, design and implement program data systems which accurately reflect the level of activity and public impact of each agency's programs. Although the

position was filled by a temporary employee for 7 1/2 months, the employee spent the majority of time assisting the past Director with budget preparation, proposed desk reclassifications and various requests. Therefore, little effort was given to preparation for sunset review.

ORGANIZATION AND FUNCTION

The Department of Commerce and Economic Development is charged with the responsibility of providing administrative, budgetary, and investigative services for 21 professional licensing boards and the administration of the Construction Contractor's Registration Act and the Mortuary Science Licensing Act.

These responsibilities are performed by the Division of Occupational Licensing whose primary goal, as stated in the FY'78 budget document, is to ensure that Alaskans are adequately protected from unscrupulous or incompetent practitioners where neither the existence of competition nor recourse to general law will provide sufficient protection or redress.

Services provided by the Division include:

1. Investigations;
2. Collection of fees;
3. Issuance and receipt of applications;
4. Publication of notices;
5. Issuance of licenses, certificates and permits as authorized by the boards;
6. Employment of support staff;
7. Maintenance of files relating to individual licensees; and
8. Performance of other services requested by the boards.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Occupational Licensing's investigation unit should be transferred to the Department of Public Safety.

During our review of the licensing boards, we found that the investigative performance was not sufficient to provide adequate public protection from abuse by regulated occupations.

The Department of Commerce and Economic Development has not established managerial controls over the investigation unit. Our review of the boards and the investigative files found:

1. A board requested the investigators not to pursue complaints against firms held by board members;

2. Potential board member improprieties exist which have received no investigative action;

3. Investigative files exist on persons for no justifiable reason, and investigations have been pursued without evidence of potential violation;

4. Investigations are conducted outside of the Division's statutory responsibility. Fifty-one percent of the investigative files are on building contractors, although it is the Department of Labor who is statutorily charged with investigations of building contractor violations.

5. The status of many investigations could not be determined. For many of the closed files, there was nothing in the files that indicated that the cases had been closed.

Satisfactory criteria for categorizing investigations has been recently established. However, past investigations have not been performed on the basis of the greatest threat to the public welfare.

1. Of the investigation cases for the State Medical Board during FY '78, 21 of the 46 open cases should be classified as posing a life threatening or a severe danger to the public. Of the 21 cases, 2 are closed, 4 were in litigation and 1 had some investigative effort. However, there were 14 cases for which no investigative action had occurred, although cases of a technical nature with little potential harm were investigated.

2. The various health boards requested 27 investigations. Of these, 15 had been investigated. For 12 cases there was no indication of any investigative effort. In addition, there was no evidence the boards had been informed as to the outcome of these investigations.

There have been complaints made by several boards that they are getting no response from the investigative unit on requests they have made for investigations. For example, one board asked for an investigation in 1975. Although the case was investigated, the board has not yet heard from the investigative unit regarding this complaint.

4 years ago!

The quality of investigations is largely the result of having qualified personnel. We were informed by the investigative unit that during FY'78 they did not have a competent investigative staff, nor did they have sufficient clerical support.

Based on our review we concur that additional clerical staff is needed. However, we were unable to determine if there are a sufficient number of investigators because the number of cases worked and the number of investigative hours per case was not available. Also the Division did not hire all investigators authorized; 20 of 43 investigative man months were vacant during FY'78.

didn't hire Q of investigators law says.

Transferring the investigation unit to the Department of Public Safety would provide continuing managerial control, proper training and supervision, and insulate the investigators from possible board influence. With joint cooperation and proper communication between Public Safety and Occupational Licensing, investigations could be efficiently and effectively conducted.

Recommendation No. 2 (Coditions agrees)

Statutory amendments are needed to assure that appropriate action is taken on consumer complaints against licensed persons.

During our review of the investigations unit within the Division of Occupational Licensing (OL), we noted that consumer complaints against licensed persons are not being adequately handled. Consumer complaints involving regulated occupations are received by two agencies: OL and the Consumer Protection agency (CP), under the Attorney General's office. We noted the following problems with the handling of consumer complaints by the two agencies:

1) Neither OL nor CP has the statutory authority to

handle the consumer complaints involving regulated occupations.

2) Because a gray area exists as to which agency should handle the consumer complaints, both agencies end up investigating some complaints.

3) Other complaints are referred from one agency to the other. We found several cases where CP referred a case to OL, and OL referred the case back to CP. As a result, the complaints either were never investigated or the investigation took months to complete.

4) Of the complaints that finally end up in OL, many are never investigated. According to OL, this is because consumer complaints are given a low priority; OL does not have time to deal with consumer complaints. Two boards have resolved that consumer complaints be turned over to local grievance committees for review.

5) The consumer is not notified of the outcome of the investigation of a complaint when the investigations are actually conducted by OL.

The consumer needs a government channel to file and pursue a complaint if the public is to have recourse against licensed persons. Even when a complaint is lodged with a board, the complainant has little or no leverage he can use against a board that is reluctant to move. A board is also placed in a difficult position when a consumer has been charged an unreasonable amount for professional services. While the boards have the power to suspend or revoke a license, they have no expressed authority to provide redress to a wronged or injured party.

In order to combat the problem of inefficient and ineffective handling of consumer complaints, we recommend the following statutory changes:

1) The current statute, AS 45.50.471, which gives Consumer Protection authority to handle consumer complaints excludes from its jurisdiction persons regulated by other State agencies or boards. This statute should be expanded to allow the CP office to handle complaints against licensed persons.

   This will allow CP to pursue redress against licensees for wronged or injured persons. In addition, licensing boards should seek CP's assistance in cases where the board believes economic redress is in order and is in the best interest of persons injured or wronged.

2) Presently business practices of an unethical or unscrupulous nature are not considered licensing violations. Boards should be allowed to define professional business practices which are not in the best interest of the

public as licensing violations. The following types of practices should be considered licensing violations by all boards:

A) A conviction of a criminal or civil act which demonstrates a threat to the public's welfare or safety.

B) Giving or receiving a rebate, kickback, or other form of compensation for services not actually rendered.

C) Advertising which is deceptive or misrepresents the practice of the licensed person and which could result in harm to the public welfare or safety.

D) Fraudulent business practices, such as willful overcharging for services, including filing false statements for collection of fees for services.

In addition to the statutory changes, the two agencies - OL and CP - should coordinate the handling of consumer complaints involving licensed persons. The coordination efforts should be geared towards two goals: 1) providing the public with efficient and effective service, and 2) using State resources in the most efficient manner. Coordinating the flow of paperwork between the two agencies would be one step towards achieving these goals.

Recommendation No. 3

The Office of the Governor should keep the appointments of members of the occupational licensing boards current.

During our review of the 11 licensing boards, we noted several unjustifiable delays in the appointment or reappointment of board members. Some examples are:

1. Twenty-eight (28) months have lapsed without appointment to a public member position created in 1976 on the Board of Examiners in Optometry;

2. Twenty-five (25) months had lapsed before appointment to a position on the Board of Nursing Home Administrators since the inception of the Board;

3. Two members of the Board of Dental Examiners served a total of 66 months after the expiration of their terms until they ultimately were reappointed as Board members.

As a result of these and other vacancies, the boards are not in compliance with the statutes that created them. In addition, the boards may be missing valuable input from the profession they represent or the public by not having a full board. For those members whose terms are not renewed, confusion is created, since the members are not clear as to whether they should continue attending meetings or not.

We recommend that the Office of the Governor review all regulatory boards and appoint new members to vacant board seats or reappoint current members when their terms expire in a timely manner.

We further recommend that the Office of the Governor consider establishing a talent pool for all board appointments. The concept of a talent pool is to have a list of persons available and desiring to serve as a board member. Many sources exist in the State to establish such a pool. Professional associations could be requested to provide a list of members who would like to serve on their profession's board or as a public member on any board. Retired citizens offer an excellent pool of potential talent for public member appointments and should be contacted for possible inclusion in the talent pool.

An established talent pool, updated at reasonable intervals, would allow for the immediate appointment of board members when terms expire or a position is vacated.

Recommendation No. 4

Legislation should be enacted limiting the length of service for all board members to two consecutive terms.

All boards' statutes define the number of years in a term of office, ranging from three to five years. However, only the Board of Nursing Statutes limit the number of terms a member may serve.

In our review of the Board of Pharmacy, we found that by the time current terms expire, three members will have served a combined total of 50 years and a previous Board member served for 25 consecutive years on the Board. This dedication to service is commendable. However, we feel that a regulatory board should have reasonable turnover.

Limiting appointments to two consecutive terms would, over the years, permit a broader spectrum of professional background combined with increased opportunities for new members and ideas. This should make the boards more responsive to public needs and less subject to criticism.

Recommendation No. 5

The Department of Commerce and Economic Development should improve the operation, security and internal control of the 3M-Linolex minicomputer system.

The Division of Occupational Licensing (OL) uses a minicomputer system to maintain the basic licensee data necessary for license issuance and ready reference of all regulated professions.

We reviewed the system to determine the use made of the minicomputer and the internal control and security established for the hardware and licensee computer files.

To improve the overall operation of the system and to protect the valuable data files, we recommend that OL should:

1. Designate a data entry person, not responsible for application review or other board related duties, to enter and update information to licensee data files. This will provide the needed separation of duties.

2. Store master file data diskettes in a locked cabinet or the available fireproof safe overnight and whenever authorized operating personnel are not present. Presently, there are no security precautions taken to protect against unintentional or intentional loss or modification of the data base.

Occupational Licensing and the Coalition agree.

3. Establish a policy for regular data file backup. With current backup information, OL would be able to quickly and positively recover data in the event master files are lost or become unusable.

4. Periodically reconcile computer data files to the original licensee folder to strengthen internal control and allow for earlier error detection.

5. Pre-number the blank licenses, strictly control access to the blank license stock and maintain a control log of all licenses issued, voided, destroyed, etc.

6. Maintain a systems utilization log to determine actual computer use and workload composition. This information would provide a good supervisory tool.

7. Prepare an Operating Procedures Manual. Step-by-step procedures would quickly and efficiently educate users as to how the system operates.

8. Install a key-lock type system on the equipment to protect against unauthorized use.

Implementation of these recommendations will improve the security and operating effectiveness of the minicomputer system.

Recommendation No. 6

The Department of Commerce and Economic Development should review the license fee structure of all boards and seek appropriate revisions.

During our review of the Division of Occupational Licensing (OL), we prepared a comparison of the costs of operations versus the revenue generated by each of the 11 boards under sunset review (see Appendix A). We found that the total costs of the 11 boards ($270,900) exceeds the revenues generated ($132,700) by $138,200. The deficits range from $3,500 for the State Medical Board to $42,100 for the Board of Nursing.

The main source of revenue for the boards is the license renewal fee collected, by the majority of the boards, on a biennial basis. Presently, license fees are set by statute. A large majority of these fees have not been revised since 1968 and 1969.

Although we do not believe that all licensing boards are capable of being self-supporting, it can be reasonably expected that the licensed professional should adequately contribute to the cost of operating his or her respective licensing board. This includes those professionals currently holding an inactive Alaska license.

Therefore, we recommend that the Department review the existing license fees and where deemed necessary, seek legislation increasing the fees. In addition, legislation should be enacted requiring an inactive license renewal fee for all boards. Presently, only State Medical Board Statutes allow for the collection of inactive license renewal fees.

An alternative to continuous legislative revision of the current single license fee structure would be to amend the license fee statutes to designate a minimum to maximum range within which the Department of Commerce and Economic Development could administratively establish license fees. However, this would necessitate a more accurate accounting by individual boards of all related Departmental expenditures in order to properly justify any fee increase.

Recommendation No. 7

The Department of Commerce and Economic Development should include the goals, objectives, and quantifiable measures of each board in the Division of Occupational Licensing's budget documents and submit performance reports for each board as required by AS 37.07.

The Executive Budget Act, AS 37.07, requires each State agency, including boards, to prepare and submit their goals and objectives to the Office of the Governor's Division of Budget and Management and the Legislative Finance Division.

Since boards are budgeted under OL, there is joint responsibility for the proper formulation and inclusion of goals, objectives, and measures in the budget documents.

Presently, OL establishes its own budget goals and objectives, but the budget documents do not include any goals or measures for individual boards. Without each board's goals and objectives being identified or measured, neither the Governor's office nor the Legislature can properly evaluate a board's performance.

The Executive Budget Act also requires each State agency to submit a performance report to the Division of Budget and Management no later than September 1, for the preceding fiscal year. The Division of Budget and Management has not requested nor has the Department prepared the required reports.

In the 1977 Session, the Legislature, in conjunction with sunset legislation, amended the performance reporting statute (AS 37.07.090) to require agencies to specifically address eight criteria. The reports, based on those criteria, would provide a useful tool for evaluating agencies that are presently or in the future may be subject to sunset review.

Recommendation No. 8

The Division of Occupational Licensing should collect, record and maintain, for five year periods, files and statistics of license and testing applicants, and related workload of the licensing examiners.

The Division needs relevant facts and statistics for evaluating the performance of their personnel and board activity. Many past records have not been collected and maintained. Some examples are:

1. Number of professionals licensed, by speciality if applicable;

2. Records of applicants denied a license or the chance to take the examination due to the lack of qualifications;

3. Records of those applicants failing the examination;

4. Number and type of complaints and criticisms about the boards and staff;

5. Number of persons requesting applications; and

6. Correspondence workload of licensing examiners.

Uniform procedures should be developed as to how records and statistics are to be gathered and maintained for all licensing boards. It is to the advantage of the Division to keep these records in order to support their budget request, evaluate their personnel and keep the boards informed as to their progress. Also, feedback from the boards and the public should be encouraged so as to determine whether staff performance is adequate.

Recommendation No. 9

The Department of Commerce and Economic Development, in conjunction with the Office of the Governor, should prepare a board member orientation booklet, including a code of conduct.

During our review of the 11 licensing boards, we noted several instances where it is questionable whether a board or a board member's actions were in the public's best interest.

The acceptance of a gubernatorial appointment as a board member should invoke a commitment to honorable behavior, even at the sacrifice of personal advantage. Although a code of conduct cannot guarantee ethical behavior, it should set forth minimum levels of acceptable conduct that are mandatory and enforceable.

A code of conduct for all board members should include the following:

1. A member should not enter into a conflict of interest relationship, a position contrary to the basic philosophy, principles and goals of the board, which might impair the integrity and objectivity necessary to properly fulfill his/her responsibilities.

2. If a member does not have an impartial attitude concerning an issue before the board that member should abstain from participating in the board action.

3. A member should not use his/her public trust to further personal or professional interests to the detriment of the health and welfare of the public.

4. A required percentage of attendance at all board related activities.

In addition, all new board appointments should be acquainted with:

1. The general duties and responsibilities of a board member and the limits of his/her authority;

2. The philosophy of a regulatory licensing board;

3. The role of a public member on a licensing board; and

4. Services provided by or available through the Division of Occupational Licensing.

Both the general acquaintance information and a code of conduct could be included in one informational booklet that would apply to all boards under the Department of Commerce ar Economic Development.

Recommendation No. 10

The 11 health-related boards, in conjunction with the Division of Occupational Licensing, should review their applications for licensure and delete any questions which could lead to discrimination against applicants.

One of the public need criteria for the continued existence of a board is the extent to which State personnel practices, including affirmative action requirements, have been complied with by the board in its area of activity.

this info. is not necessary

In reviewing the applications for licensure of the various boards, we noted that the applications contain questions which could lead to discrimination by board members against applicants. The applications request information on sex, age, height, weight, color of eyes and hair, and most of the applications require pictures. We did not find any evidence of discrimination against an applicant based on the answers to these questions. However, the potentiality for discrimination exists.

We recommend that the boards and/or Division of Occupational Licensing consult with the State Equal Employment Opportunity Office or the Human Rights Commission on the makeup of the applications for licensure. These two agencies could help the boards make a determination as to whether or not the questions asked are of a discriminatory nature. Then, any discriminatory-type questions should be analyzed to determine if a real need for the information exists. If not, the questions should be deleted.

Two alternatives to the applications currently used are as follows:

a) Include a disclaimer on the application stating that certain questions may lead to discrimination and the applicant has the option of not answering the questions. These questions should then be identified.

b) Any discriminatory-type questions, if necessary for investigation purposes, for example, may be included on a detachable page of the application. The page could then be detached before the application is seen by board members.

Already been implemented

Recommendation No. 11

The Department of Commerce and Economic Development should improve formal board minutes.

Board minutes are the official public record of all proceedings of a board meeting and the only means a board has to formally state its actions. Therefore, it is essential that all minutes be detailed, accurate, and complete.

Several boards tape record the meeting proceedings to be transcribed at a later date. This is a good method of accurately recording the boards' activities and should be encouraged. However, it was observed by auditors in attendance at a board meeting, that the tape recorder was arbitrarily turned off and on during board discussion. This practice should not be allowed.

In addition, much of the detail contained on the tape is omitted during the transcribing process.

To improve the quality of all board minutes, we recommend that the Department establish procedures that include the following requirements:

1. All board proceedings, except for executive sessions, should be tape recorded to allow for a more accurate and detailed transcription;

2. Tapes should be retained for a reasonable period of time following transcription;

3. Minutes should include board member attendance, absence and public attendance;

4. Minutes should reflect more detail of discussions during the meeting and identification of the person speaking;

5. Minutes should include an accurate quote of all motions and resolutions whether carried or not and an accurate breakdown of the membership's voting;

6. Attachments to board minutes should include any documents adopted, lists of applicants approved and denied for licensure or examination; and

7. Minutes should be properly approved, signed and ratified in a timely manner.

Recommendation No. 12

The Department of Commerce and Economic Development and all licensing boards should ensure that public notices of examinations are sufficiently and timely advertised.

The Department is required by statute to publish notices of examinations and it is each board's responsibility to notify the Department of upcoming examinations well enough in advance to permit proper advertisement.

During our review of examination advertisements, we found that many notices did not allow adequate time for individuals interested in taking the examination to submit applications within the advertised deadline. For example, on May 25, 1978, the Department advertised an upcoming Registered Nurses' examination. The notice required all completed applications to be submitted to the Department by May 26, 1978.

Advertisements should be published on dates that will allow adequate time for all interested people to submit applications before the stated deadline.

SUPPLEMENTAL INFORMATION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978

UNAUDITED[1]

	Medical	Psychology	Pharmacy	Nursing	Veterinary	Physical Therapy	Dispensing Opticians	Optometry	Nursing Home Administrators	Dental	Chiropractic	Total
Revenues[2]	$ 39,800	$ 2,100	$ 12,400	$ 56,500	$ 2,700	$ 2,300	$ 1,600	$ 1,700	$ 1,900	$ 10,200	$ 1,500	$ 132,7
Less:												
Expenditures[3]	43,300	20,000	17,500	98,600	10,000	11,700	11,900	14,000	10,000	22,000	11,900	270,9
Excess of Expenditures over Reverues	$(3,500)	$(17,900)	$(5,100)	$(42,100)	$(7,300)	$(9,400)	$(10,300)	$(12,300)	$(8,100)	$(11,800)	$(10,400)	$(138,2
Year of Last Renewal Fee Increase	1969	1970	1968	1969	1968	1969	(Note 4)	1969	(Note 4)	1968	1968	

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and accordingly we do not express an opinion on the Board Revenues Compared With Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in fiscal year 1977 and 1978 in order to obtain an accurate representation of collected revenues.

Note 3

Expenditures include those made by board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments, such as the Department of Law, assisting the boards and the Division.

Note 4

The Board of Dispensing Opticians and the Board of Nursing Home Administrators were created in 1973 and 1975 respectively and have not had a fee increase.

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED
JAN 11 AM
LEGISLATIVE
AUDIT

January 10, 1979

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We appreciate the efforts put forth in your findings and recommendations contained in your Preliminary Report entitled:

> A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978

It should be pointed out that certain recommendations in this report and others pertaining to specific Boards and Commissions are beyond the scope of authority of the Division of Occupational Licensing to resolve.

This will acknowledge Commissioner Hubbard's December 15, 1978 response to that report and provide additional comments as considered necessary.

Recommendation No, 1

The Division of Occupational Licensing's investigation unit should be transferred to the Department of Public Safety.

Response

Although your recommendation has merit, we concur with Commissioner Hubbard's position in which he disagreed with this recommendation. The examples of apparent impropriety and inadequate or lack of investigations have caused and do cause us serious concern. However, the underlying cause seems to be largely a shortage of or lack of adequately trained investigators and clerical support staff.

We have discussed this recommendation with Acting Commissioner Nix of the Department of Public Safety and he has expressed agreement that the nature and extent of licensing, professional ethics and related standards investigations would differ substantially from those performed by the Criminal Investigations Bureau and others within his department.

Despite stringent budgetary constraints we are concentrating on improved investigative reports and records within the Division of Occupational Licensing. You may be assured that current and any future investigations will be made on an impartial basis and that appropriate actions will be taken.

Recommendation No. 2

Statutory amendments are needed to assure that appropriate action is taken on consumer complaints against licensed persons.

Response

We are in agreement, and as you suggested, we are pursuing an amendment to AS 45.50.471 and its application.

Recommendation No. 3

The Office of the Governor should keep the appointments of members of the Occupational Licensing Boards current.

Response

We are presently reviewing the occupational licensing boards in an effort to make appropriate appointments and to keep them filled with qualified persons. Additionally, as you sugested, we are establishing a talent pool from which appointments can be made to the Boards as necessary. Please be assured that this office will make timely appointments in the future.

Recommendation No. 4

Legislation should be enacted limiting the length of service for all board members to two consecutive terms.

Response

We agree in concept. Recommendations will be made during Sunset review to address this situation.

We believe the remaining recommendations are appropriately addressed in Commissioner Hubbard's response with a view toward resolving any deficiencies noted. Remedial actions have already been taken pertaining to significant issues raised. For example, as shown in Commissioner Hubbard's response to your Recommendation No. 6, the Division of Occupational Licensing has heretofore introduced and re-introduced legislation authorizing the department to set fees for all boards.

Your findings and recommendations and our own studies indicate much has been accomplished by the Boards and Commissions through the administration of the Division of Occupational Licensing but that much remains to be accomplished to assure compliance and maximized public service and protection. Please be assured we are continuing to monitor and refine data to upgrade those services and protective programs.

Sincerely,

Michael Harper
Administrative Assistant
to the Governor

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

December 15, 1978

RECEIVED
JAN 11 A.M.
LEGISLATIVE AUDIT

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development submitted by the Division of Legislative Audit.

Recommendation No. 1. We disagree. Transfer of the division's investigation unit has not been demonstrated to be of potential benefit to the State or to the public. Whenever the functions of an agency are divided between two or more governmental bodies, responsibilities are fragmented and public confusion exists.

Major improvements have been made in this unit within the past few months. A complete review of investigative files has resulted in eliminating many of the concerns expressed in this audit. Transfer of appropriate files to the Department of Labor was accomplished in September 1978. Frequent turnover of clerical support has resulted in inadequate organization of investigative files in the past. We believe that other specific examples cited are isolated instances of the type that must be dealt with periodically and should not imply prevalence among boards.

As you have noted, criteria for categorizing investigations have been recently established. This includes procedures for informing boards of investigations status within Administrative Procedure guidelines. We agree with your observations regarding the need for additional clerical staff in this unit.

08-HBLH

Recommendation No. 2. We agree that statutory amendents are needed, however, we would advocate provisions that would make Consumer Protection responsible for complaints concerning nonlicensing violations. Determination of unethical business practices should be made by the agency, which has jurisdiction over consumer complaints.

Recommendation No. 3. Agreed. There are a myriad of reasons that could be cited as to this deficiency. However, I am assured by the Governor's Office that timely appointments will be made in the future.

Recommendation No. 4. Agreed. This policy would enhance participation by a broader professional base with different views and ideas, provided there are qualified professionals available and willing to serve on a particular board.

Recommendation No. 5. The general recommendation is agreed with and majority of these concerns either are in the planning process or have recently been initiated. The designation of one employee as a data entry person is not agreed with at this time. Current staff limitations prohibit this approach. The prenumbering of blank licneses is under consideration as a means of controlling license stock, however, further study will be made before determining if this is the best approach. The installation of a key lock system on the mini computer is not needed. The building is secured and the diskettes are locked in a safe. Any unauthorized use of this machine would be highly improbable and of no use to the unauthorized user.

Recommendation No. 6. Agreed. The division has re-introduced legislation which would allow and authorize the department to set fees for all boards. This request was made to the 1978 Legislature. No action was taken.

Recommendation No. 7. Agreed. Consultation with the boards was initiated for the FY 80 budget on a limited basis. The division will be contacting all boards for their goals, objectives and financial requirements for inclusion in the FY 1981 budget.

Recommendation No. 8. Agreed. The division has initiated many of these recommendations for each board. The remaining recommendations will be inititated within a eight-month period.

Recommendation No. 9. Agreed. The division, in conjunction with the Attorney General's Office, is in the process of formulating an orientation and procedure booklet which will encompass all points listed.

Recommendation No. 10. Agreed. Applications and all other forms used by the 21 boards administered by the division will be reviewed, consolidated and changed to meet affirmative action requirements and to increase the efficiency of forms processing. We expect to accomplish this task within the next eight months depending on staff availability.

Recommendation No. 11. Agreed. The majority of these items are being and have been accomplished. All meetings will be recorded and tapes preserved for two years. The typing of verbatum minutes is not felt to be needed, especially with the tapes available to provide details.

Recommendation No. 12. Agreed. Every effort is made to publish all public notices at least 30 days before each meeting, examination or application deadline.

We appreciate the time and efforts expended by your staff.

Yours truly,

H. Phillip Hubbard
Commissioner

M E M O R A N D U M

MAJORITY MEMBERS' (HOUSE COMMERCE COMMITTEE) RECOMMENDATIONS

REGARDING "SUNSET" REVIEW ON ELEVEN HEALTH REGULATORY BOARDS

The following memorandum represents the position recommended to the House Commerce Committee by its majority members on the morning of February 26, 1979, regarding retention or termination of eleven boards, which, through the Division of Occupational Licensing, regulate the practices within the various indicated professions.

This memo is not in formal form, and does not go into the explanations that would be forthcoming from a Committee Report under the "Sunset" law, and, of course, is not in the statutory form that will be required in order to implement these suggestions.

1. The Board of Medical Examiners would be continued on a probationary basis for only one year, with specific directives in the committee's letter regarding the matters of scrutiny which must be addressed by that Board. Indications are that the doctors also need to have an executive director on their board similar to the executive director for the Board of Nursing.

2. The Board of Nursing should be continued for a full four years, and the statutes should be amended to allow the Board of Nursing alone to promulgate regulations for the advanced nurse practitioners.

3. The Board of Dentistry should be continued but only for two years, in a probationary status, with statutory changes which would facilitate the entrance into the profession of more dentists, particularly dentists credentialed in other jurisdictions. At the end of two years, the dentists would be expected to demonstrate that their Board has acted to admit competent dentists and has not acted in any restrictive or "turf-protecting" manner.

4. The Board of Pharmacy is to be continued for a four-year period, with some of the statutory changes suggested by the legislative auditors.

With regard to all four Boards retained, the terms should be adjusted to four-year terms, staggered, with no member to serve more than two consecutive four-year terms.

The makeup of the Boards should be adjusted to provide for more lay participation. Each of the four Boards is presently constituted with five admitted professionals and two lay-persons. The statutes should be changed to provide for a ratio of four professionals to three lay-members.

The remaining seven Boards (Licensing, Psychologists and Psychological Associates, Physical Therapists, Chiropractors, Optometrists, Opticians, Veterinarians, and Nursing Home Administrators) should be terminated but not quite in the manner anticipated by the Sunset law. The termination should occur during a period when the Boards are still fully functioning, allowing admission to their professions, while also cooperating with the Division of Occupational Licensing, and transferring their licensing functions to that Division. Our original suggestion was that this termination date be January 1, 1981; however, the budgetary considerations may well cause us to change that recommendation to June 30, 1980. In either case, this will give the Boards and the Division one entire budget cycle with which to deal with the transfer, and will avoid an unfortunate ambiguity in the Sunset law about the role of the Board during is final year of operation if terminated.

Originally, we were considering looking at the legislation that the federal government normally expects from a state which has nursing homes obtaining federal funds. The Nursing Home Administrators were only established in order to guarantee the flow-through of federal money. However, there have been some recent indications that nursing home administrators need only be licensed, but not necessarily by a professional Board as presently constituted. If that is the case, it will fit into our plan with no different treatment for the Nursing Home Administrators; if it is not the case, the Division and the legislature will have adequate time to address the problem in the next session.

This memorandum does not address the practices of the Division of Occupational Licensing, although the review of the Division by the Legislative Audit will necessarily be affected by these recommendations if they are adopted.

Obviously the recommendations anticipate substantial explanation and direction in Committee Reports and in legislation yet to be introduced.

Dated:

_____

Fred Brown, Chairman
House Commerce Committee

10 House Health Commerce

TESTIMONY OF THE ALASKA HEALTH COALITION

submitted by

Jana Varrati, Coordinator

I'm Jana Varrati, coordinator of the Alaska Health Coalition, a member of the dental board and a practicing dental hygienist.

Again at the start I would like to express the Coalition's enthusiasism for the concept of sunset review and our appreciation for the way this committee is working overtime to impliemnt the spirit of the statute. We look to sunset as a way to alleviate some of the problems that have been plaguing our boards for years and we're pleased to have the opportunity to get at them all at once rather than piecemeal. We would also like to thank Elaine Garrett and David Creckman from OL and Mr. Hostak, director of OL, for their roles in supplying information and support to our boards and associations when requested and to the best of their abilities. We also thank the legislative auditors for their willingness to tackle a very difficult job in a sometimes holstile environment.

I would like to address some of the common problems of our boards which hamper their function; funding or a lack of it; communication or a lack of it; filling and creating board vacancies; licensing examiners; incomplete minutes. I would also like to address the auditor's reccommendations after reviewing OL, and make some miscellaneous observations.

Money is the major problem plaguing our boards: money for meetings and for investigative services. There are a couple reasons for the inadequate meetings budget. The boards were never advised by the department of statutes requiring them to submit a budget to the department nor were the boards asked until Mr. Hosting came on to do so. He moved on it right away but the time was short so the needs could not be discussed in a meeting for most boards; therefore in 1978 most ~~boards~~ chairpersons guessed short on what they would need for 1980. Two years projection is a long one and a good number of the boards' members were newly appointed so had little appreciation of time requirements for getting things done on a board. Part of problem is already solved. As a result of this audit we see that our boards are aware of their obligations to devise a workable budget and are better prepared for longer needs projection.

Lack of division funds for investigative services has stymied every board being reviewed. We believe that there is an insufficient number of investigators handling licensing complaints and that the salary classification for the position of investigator is too low. For $1500/month we expect Superman but what we get are [illegible] positions, a lack of qualified applicants, the hiring of less qualified personnell, a high turnover and more cases handled improperly. We reccommend:

1. At least 3 investigator positions be funded for the health boards and that [illegible] be assigned to certain boards so they can be educated in that particular [illegible] to facilitate their investigations;
2. [illegible] the classification for investigator to provide a salary commensurate

with job responsibilities and comparable to other investigator salaries. (For instance, a trooper investigator I starts at $2172, investigator II earns $2238, investigator III makes $2517/month) We expect our investigators to be familiar with Alaska law, to know the Administrative Procedures Act inside out, as well as the practice acts and other applicable statutes, to be a super sleuth and to do it for only $300 more per month than the guy who pushes the broom out in the halls earns.

But supposing we don't keep investigations within the division of OL. There is a strong case to be made for using the department of public safety for investigations- and a good one. The investigators are already there, already trained, and are assigned by specialty and training to each of about 10 categories of crime. They are sufficiently well-paid to be motivated, have the administrative and technical know-how to get the job done and have knowledge of the laws. It should be just one more additional duty to take on board investigations. The big difficulty with this idea lies in the possibility of the boards and the division losing track of cases. That could be solved by having a chief investigator for OL charged with assigning cases to the troopers, to CP and peer review organizations, and with keeping track of the progress and outcome of those assigmnents in order to keep the boards and the divisions informed.

The Coalition also believes that there would be more complaints filed if people knew more about the procedures for doing so. If communications between the [illegible] public existed beyond a cursory notice in the paper of meetings we [illegible] that there would be even more investigations work to be done, probably in [illegible] of consumer protection., rather than actual licensing violations.

In [illegible] to funding some real deficiencies in communications exist which [illegible] action: [illegible] department and the boards, between the boards and [illegible], between related boards, and between boards and the professionals they [illegible].

The lack of communication between the department and the boards has resulted in the introduction of legislation directly affecting the boards but without board knowledge or approval (see HB's 46, 62, 109: SB's 94 and 73). Because the department may and does submit legislation we would like to see:

3. the department required to submit to boards all proposed legislation having a direct or indirect affect on the board, the professionals regulated, or on board function. The boards are responsible for policy as well as for function and should be included in drafting legislation.

4. the department required to speedily set out reasons for opposing or supporting legislation submitted to it by the boards, or favored by the board. The veterinary bill (HB 86) is an example. The veterinary association and board worked hard to draw up a new practice act which failed to get the support of the administration, but neither the board nor the association were told why the bill was rejected, just that it would not be supported. And that only after I told them; before that they had no suspicion that all was not right with their world. It turns out that the reason for the opposition was the inclusion in the bill of a section adding two members to their board, one a veterinarian and one a public member. They were trying to save the state money by asking for only a five person board instead of the seven that is standard, but the department opposed it because two public members were not added. That's what the veterinarians were told. I was told that it was opposed because of the extra expense of adding any members. Whatever the reason, it could have been worked out beforehand. After all, the boards and the department are supposed to be on the same side.

The Coalition would also like to see the department play an active role in resolving disputes between the boards and other departments or agencies. An example of this need is that of the dental board and the Aleutian-Pribiloff Island

dental clinic. The department of Health, Education and Social Services was involved initially before the case slipped its harness and got wrapped up in federal grants and jurisdiction. I know it was because I was involved in some of the discussion with Dr. Fraser about it. Granted, there were several other points at which the whole situation would have been resolved, the work done on the people needing it, and the hard feelings that we see now avoided. The point is, that if the department had taken a stronger role in helping the parties come together and had served as a kind of middle man or middle ground everyone would have benefited. Openness results in more efficient operations and a better understanding of the other side's position. So we reccommend that

5. the department play a stronger role in settling disputes between boards and other agencies, departments , etc.

Another major gap in department/board communications results from board members and their licensing examiners not being familiar with <u>all</u> the statutes affecting their boards. The Coalition sees a strong need for an information packet to be given to each board member and licensing examiner when he/she comes on consisting of:

6. 1. the current statute and regulations governing that board's regulated professionals.

2. any other statutes affecting a board or their activities

   a. Central Licensing
   b. Advertising
   c. Malpractice
   d. Administrative Procedures
   e. Executive Budget Act
   f. [illegible] Act

3. procedures to be followed by the board members regarding

   a. investigation
   b. litigation
   c. examination

4. ethics concerning activities of the members

5. general responsibilities of the board

6. two years of each minutes of the board

The second area of communications lag is that between the boards and the public. Public notices of meetings and examinations are run one time only in differing sections of certain newspapers. Usually the meeting's agenda is not part os the notice. Obviously, a person not knowing where to look, usually doesn't see the notice if it's not on or opposite their favorite feature and if they don't know what's to be discussed they certainly are not going to walk off the job to attend a board meeting on the chance that a topic of interest to them will be considered. Another roadblock to public input is the lack of a form on which to file a complaint with a board. People wisning to complain are told to file a written report but many are hesitant because they don't know how much or what kind of information is need to spark an investigation. Lack of a form which requests specific information slows classification and disposal of cases. Even after a complaint is registered in most cases the complaintant is not informed of what action was taken, the results, etc. The boards get the blame, but truthfully, the boards don't know what kind or how many complaint are filed with OL nor are board members allowed to help decide investigative priorities. To alleviate these matters the Coalition reccommends:

7. that the boards, through the department, by statute or regulation, be required
   a. place notices of all public meetings of the boards in a popular section of the newspapers in which they are published (like opposite the comics or on the second page.)
   b. that these notices always be in the same section of all newspapers in which they are printed.
   c. that they always run for 3 days
   d. that they include a proposed agends whenever possible
   e. that they also be published in alternate newspapers such as the Tundra Times or The Alaska Advocate so people without the Atwood syndrome would be more likely to see them.

8. that the boards, through the department, be required to solicit public input by:
   a. periodic public service announcements on radio and tv;
   b. periodic letters of inquiry to groups such as Ak.PIRG, Native Corporations, OPAG.

9. that the division of OL be required to compose a common complaint form to be used by all the health regulatory boards

10. that the division of OL be required to
   a. advise each complaintant within 30 days of receipt of the complaint what disposition has been made of the complaint:
      1) to CP
      2) to professional peer review committee
      3) to both 1) and 2)
      4) to investigator for further action

5) to the board for immediate action.

b. advise each complaintant as to the findings regarding that complaint.

11. that the boards:

a. be advised at each meeting of the numbers and kinds of complaints against practitioners regulated by that board and the disposition of those cases

b. choose from their membership one person who is to be consulted by the investigator in deciding investigative priorities of licensing violations and other decisions which may require professional knowledge. Such board member will automatically be excluded from deliberations by the board concerning those cases in which she/he was consulted.

Communications between boards with similiar responsibilities and interests is badly needed for reinforcement of purpose, the sharing of information and policies, and discussion and possible solution of common problems. In 1977 Commissioner Hubbard call all the board chairs to a meeting to introduce himself and to recognize shared problems. It had a remarkable effect on the members. We were recognized as people, for one thing, and not as paper agencies! Several people stayed around afterward to discuss certain subjects and got so enthusiastic at the communication that the Coalition was formed. Now the Coalition is an alliance of the professional associations regulated by the boards so the boards are still without ties. Therefore we reccommend:

12. a meeting be held at least once a year for at least two days for the express purpose of discussing common problems and solutions of the boards' problems which shall be attended by members of the health regulatory boards, the Commissioner of Commerce Department, the Director ofOL, representative of the AG"s office, licensing examiners.

13. that each member of each health regulatory board receive from the department the names, addresses and phone numbers of members of the other health boards. (the reasoning behind this reccommendation is that in case of a cross-disciplinary problem, such as between nurses and dental hygienists in the past, a board member can have a contact in the other board, get the information, perhaps even get the problem resolved without haveing to go through the whole rigamarole of official phone calls, investigations, etc. Most of this type problem is just a result of faulty information, misunderstanding of proper information,)

14. a boards' newsletter serving the health regulatory boards. As a board member I would be interested in knowing what is happening with the other boards periodically and officially rather than through the licensing examiner grapevine.

Communications between the boards and the members of the professional associations they regulate are also suffering. Our associations feel there islittle if any

attempt by the boards to encourage participation by the associations in board meetings, discussions, etc. Not so much by intent, but by oversight. We feel this could be corrected if:

15. the boards were required, through the licensing examiner, to send a 30 day advance notice of pending board meetings and public hearings with the proposed agends to the person in charge of the professional newsletter or to the state president of the association represented.

16. the boards were required either by statute or by regulation to send copies of their annual reports,including but not limited to receipts and expenditures and a list of all persons currently licensed in the board's jurisdiction to the president of the professional association represented.

The professionals, the associations, as well as the public suffer when our boards are not working with their full compliment of members. We realize that the governor has the problem of a lack of nominations to such positions, especially for public members. (who in their right mind would want to serve on a board? Often those who do want to for some very wrong reasons.) We propose the following solutions:

17. require the department to actively solicit names for possible appointment from the public and private sectors through newspaper notices, public service announcements, reccommendations from professional associations, private organizations like Ak.PIRG, OPAG, Native groups, and other public interest and service groups on a prescribed form for that purpose

18. that the department review this list periodically and update it with current information.

The governor could then choose from that pool is she or he wanted. The Coalition also reccommends that

19. all the statutes in chapter 08 be revised to limit the number of terms that any board member could serve to two.

By that time any member no burned out either hasn't been doing the job or has gone past caring. Time for new blood in either case.

Now that we've talked about filling vacancies on the boards I think we should talk about creating vacancies. The Coalition feel that there should be a way to remove from duty board members who are not fulfilling their obligations as members. Presently there is nothing in the statutes that set out procedure for accomplishing this but there should be for obvios reasons. We suggest:

20. Either
    a. automatic termination if a member fails to attend 40% of meetings in any fiscal year or
    b. California Statute: Chap.4, Div. 2, Art. 1, Sec. 1605 "The governor has the power to remove from office at anytime any member of the board for continued neglect of duty required by this chapter or for incompetency or unprofessionsl conduct." (Unprofessional is defined in the chapter)

I would like to breifly address what were major areas of concern to our boards but which have been greatly relieved since Mr. Hostak's arrival at OL and these are rapid turnover of licensing examiners and the lack of detailed minutes. Most of our boards seem to be pleased with their licensing examiners now and the licensing examiners seem to be comfortable with their workload except in the case of the person responsible for the pharmacy/medical/psychology boards. These are all very busy boards. The medical board should probably have an executive director like the nursing board. Their jurisdiction is so varied that it's inconceivable to us how they ever address any one issue in depth given their meeting schedule. Obviously they don't function as efficiently as they should given the life and death responsibilities of their profession. I think we've all seen the magic that an executive director can work for a board. The nursing board is the smoothest functioning board, got the highest marks from the auditors, and the fewest reccommendations and the only health board with an executive director. I'm not reccommending executive directors for all boards, most could function with some statute changes, some membership changes, and increased communications as outlined before, and with a periodic review to keep the whole picture in sight.

The taking of minutes has also greatly improved since Mr. Hostak's arrival. In the recent past the minutes were so cursory that it was impossible to read them over and get a fairly clear idea of what went on in the meeting, who voted how and why, what kind of discussion occurred. There is still room for improvement especially in the area of recording discussion and the resons a particular member voted . At Mr. Hostak's direction the licensing examiners are also sending to the members an interin report keeping them informed of OL activity on their behalf between meetings. A real helpful addition.

COALITION REAPONSE TO THE OL AUDIT RECCOMMENDATIONS

Recc. 1. That the division of OL investigations unit be transferred to the Dept of Public Safety.

The Coalition has mixed feelings about this reccommendation. We can see the value in keeping investigations within the department (division) but because of salary restrictions and budgeting restraints on #'s of investigators we feel, as previously stated, that we have no objection to the troopers handling our investigations PROVIDED THAT ALL COMPLAINTS FIRST GO ACCROSS THE DESK AND THROUGH THE HANDS OF THE OL INVESTIGATOR WHO WOULD BE CHARGED WITH:

a. deciding if a complaint is a licensing violation and what priority it should be given, with the aid of a designated board member, if needed

b. assigning the complaint to the proper investigative authority

c. maintaining an open OL file on each complaint and advising the board on the status at each board meeting until the case is closed by theproper authority and to thesatisfaction of the board.

Recc. 2. Statutory amendments are needed to assure appropriate action is taken on consumer complaints against licensed persons.

a. we agree with statute change #1- that the current statute which gives CP the authority to handle consumer complaints be expanded to allow CP to also handle those complaints against licensed persons excluding, however, actual licensing violations. We believe that CP as well as the professional peer review committee should play the major roles in this area so the consumer knows that a specific agency has responsibility but that these complaints, filed on a specifically prescribed form, be filtered throug OL before going to either CP or peer review. We firmly believe that OL must keep the master records of the boards are to keep fully informed and therby functional in their obligation to protect the public.

B. We heartily agree with the reccommendation that boards be allowed to--rather, be required to--define unethical or unscrupulous business practices as licensing violations. I think that most statutes have already addressed this issue but not defined specifically as unethical or unscrupulous practice. The California statutes have a long list under unprofessional conduct, parts of which the Alaska dental board has incorporated into its proposed statute changes to round out an already long list of infractions. Perhaps what needs to be done in reviewing the statutes is to make a complete list similiar to California's and include it in all the practice acts.

c. We aggree with the third reccommendation under #2 regarding coordination between OL and CP be established. The chief investigator can and should handle this.

Recc. 3. The Office of the Governor should keep the appointments of the occupational licensing boards current. We agree and have already presented our reccommendations for a nominations pool and methods for stocking the pool. The reccommendation that retired persons should be considered is an excellent one.

Recc. 4. Legislation should be enacted limiting the length of service for all board members to 2 consecutive terms. Agreed, as already discussed.

Recc. 5. The Department should improve the operation, security and internal control of the 3M Linolex computor system. The Coalition has no reccommendation on use of the computor but does agree with sub-reccommendations

3) establish a policy for regular file backup

4) periodically reconcile computor data with the original license folder

5) pre-number the blank licenses!!!!!!!!

Recc. 6. The Department should review the licensing fee structure and seek appropriate revisions. HERE WE ENCOUNTER THE FALSE PREMISE THAT PROFESSIONALS ARE THE BENEFICIARIES OF THE REGULATORY PROCEDURE AND SHOULD THEREFORE BEAR THE BURDEN OF SUPPORTING THE REGULATORY AGENCY. WE BELIEVE THE BOARDS SHOULD BE ABLE TO GENERATE ENOUGH REVENUE TO PAY FOR THE PAPERWORK GENERATED IN LICENSING AND EXAMINING PROFESSIONALS, TO SUPPORT THE LICENSING EXAMINERS, AND TO PAY THEIR SHARES OF THE SALARIES OF THE COMMISSIONER AND THE OL DIRECTOR, AND OF THE OVERHEAD BUT SINCE IT IS THE PUBLIC THAT BENEFITS FROM THE REGULATION AND LICENSING OF PROFESSIONALS, THAT THE $$ FOR THAT REGULATION COME FROM PUBLIC FUNDS!!! After all, we don't expect the revenues from the parking meters to pay the salaries of the police force.

The auditor was in error when he stated that the medical statute is the only onewhich addresses fees for inactive license renewal. The dental statute also deals with that issue. Here again, we go off into discussion of the advisability of allowing for inactive licenses to renewed. The dental statute requires that any person who allows her or his license to lapse into inactivity must prove that she or he has been in active practice elsewhere during the lapsed time or else to take the examination for licensure again. We could run into the problem of persons dropping out of practice to pursue another line of interst then deciding togo back to medicine (or nursing,etc.) after

a number of years has gone by and they may now under most statutes with out proof of additional schooling, continuing education courses. Only the dental hygiene statute, rewritten last year, defines "active practice" and then when it is a condition for licensure by credentials. The Coalition feels this area needs to be addressed by all the boards and associations in order to assure minimum competency in practice.

Recc. 7. The Department should include the goals, objectives and quantifiable measures of each board in the division of OL budget document and submit performance reports for each as required by AS 37. 07 Executive Budget Act. We agree.

Recc. 8. The Division of OL should collect, record and maintain for 5 years the files, statistics of license and examination and related workload of the licensing examiners. We agree.

Recc. 9. The Department should prepare a board member orientation booklet, including a code of ethics. We agree and feel is should include copies of all statutes and regs affecting each board, 2 years of back minutes, policy and standard procedure for investigation, litigation, and examination as well as the general responsibilities of the boards. The packet should also be distributed to the licensing examiner.

Recc.10. The 11 health boards review their applications and delete questions which could lead to discrimination against applicants. Agreed.

Recc. 11 That formal board minutes be improved. Agreed and implemented already

Recc.12. The Department and boards should ensure that public notices of exams are sufficiently and timely advertized. Agreed. The Coalition feels that this reccommendation should go even further to incorporate the reccommendations we made concerning lack of communications.

MISCELLANEUOS OBSERVATIONS

1. Consistent audit reccommendation for additionsl public members to equal the number of professional members. I disagree that California's experience is a good one. The dental board members were told repeatedly that it is close to a disaster. The public members don't show up, lack interst and experience. Large boards are unweildy and expensive. We belive that one or two public members on a 5 or 7 person board ,respectively, is a suitable number.

2. Consistent audit reccommendations to discontinue the requirement of photographs for board files. We disagree. Photographs are necessary for the identification of the applicants. Remember the Great Imposter?
It could be reccommended that only the licensing examiner check the photograph against the face at the examination sites.

3. Failure of the auditors to recognize the value of the professional peer review committees. The Coalition reccommends that the boards direct the professional assiations to examine, update and oil their peer review mechanisms; and that all complaints sent to CP (as non-licensing violations) be also sent to peer review as a double check. A different facet of the complaint may be explored by peer review than by CP. We believe this dual investigation of a consumer complaint would add comfort and credibility to tje consumer/patient to know that an in-house as well as a public investigation of the complaint is taking place.

To Senate Read 1st
Hess Committee.

Testimony

of

Alaska Health Coalition

The Alaska Health Coalition is a legislative alliance of the state associations of the professionals in nursing, dental hygiene, pharmacy, physical therapy, optometry, occupational therapy, veterinary medicine, speech & hearing, psychology, optical dispensing & nurse practitioners. The purpose of the Coalition is to promote responsible health legislation by monitoring all health bills and taking action deemed appropriate and by providing a resource pool of information and expert witnesses for legislators and their staff members for use in drafting health bills and in legislative hearings. Since the boards regulating most of our members are being reviewed under the Sunset Statute this session the Coalition would like to sumit testimony regarding that review: to point out some of the basic deficiencies of the audit, enumerate problems the Coalition sees as hampering board functions, and to propose some possible solutions.

At the start I would like to state that the Coalition membership enthusiastically supports the concept of Sunset review and looks to it as a way of solving some of the major problems which have been frustrating our boards for years. We sincerely appreciate your efforts to view these hearings as a positive effort to address those problems. In addition we would like to thank Elaine Garrett and David Creekman from Occupational Licensing and Mr. Hastok, Director of OL for their roles in supplying Sunset information and support to our associations and boards when requested and to the best of their ability. We would also like to thank the auditors from legislative audit for their willingness to tackle a very difficult job.

Outline of Contents

I. Limitations of Audit

A. Lack of Precedent
   1. In State
   2. Out of State

B. Conducted by CPA and Accountants
   1. Lacked knowledge of professions
   2. Line of questioning pursued
      a. Too broad
      b. Irrelevant
      c. Lacked flexibility

C. Burden of proof for continuance lies with boards but

   1. Boards unaware of Sunset implications and requirements
      a. Advised by O.L. of statute
      b. No guidelines provided for implementation
   2. Audits
      a. Not started till mid July
      b. Preliminary reports back to boards for response in August
      c. Final reports not available until second week of this legislative session
   3. Funding to deal with Sunset responsibilities
      a. Considerations
         1. No funds from department available for meeting
         2. Geographic appointment of members
      b. Results
         1. Boards not able to mmet to decide what information to request from department
         2. Boards response is simply reaction to audit and information and statistics used by auditors

D. Sixty day provision in statute is restrictive

   1. Hinders in-depth look at all factors

   2. Colorado
      a. Hears 13 boards, commissions, agencies every 2 years (or 6/session)
      b. No time restriction on submitting recommendations
      c. Sessions 5 to 6 months in length

II. Common Problems Hampering Board Functions

A. Funding

1. For meetings
   a. Boards input not requested by department when composing budget until last year
   b. Boards not advised of statute requirements to make budget requests nor of department's responsibility to advise of same
   c. Therefore:
      1. Insufficient funds for meeting needs of boards' workload in budget
      2. Takes longer to get things done

2. For investigative services
   a. Insufficient numbers of investigators
      1. Additional investigators recently hired but numbers still inadequate
      2. Affects speedy classification and disposal of cases.
   b. Low classification of investigator positions results in
      1. Vacancies
      2. Lack of qualified applicants
      3. Hiring of less qualified personnel
      4. Higher turnover
      5. More cases not handled properly
         a. Administrative Procedures Act not fully complied with so accused escapes on technicality
         b. Cases not fully investigated so action by department or boards cannot be taken

3. "Per Diem" too low

B. Lack of Communication

1. Between Department and Boards
   a. Budget - (see II, A, 1, a)
   b. Legislation
      1. Introduction of legislation directly affecting boards but without board knowledge or approval
      2. Failure to support legislation introduced by boards but not offering reasons
   c. Hesitancy of department to involve itself with conflict board may have with another department and to help facilitate solutions
   d. No department policy and procedures manual for board members and licensing examiners

2. Between Boards and Public
   a. Public Notices not sufficient
      1. No prescribed section in newspapers for notices of meetings or examinations
      2. Run one time only
      3. Agendas not published

b. No active solicitation of public input except through public members
c. No prescribed forms for filing complaints
d. No response from boards to complainants regarding action taken, results, etc.
1. Boards don't know what complaints filed with O.I.
2. Boards not allowed to help decide investigative priorities

3. Between Boards and other related boards
4. Between Boards and the professionals they regulate
a. Few statutes require boards to send copy of annual report to associations
b. No special notice given to associations of board meetings and proposed agenda for publication in professional newsletters, announcements of meetings, etc.

C. Vacancies on the Boards

1. Not promptly filled
2. No active solicitation of names for appointment from public or private sources
3. No statutory limitations, in most cases, of number of terms a member may serve

D. Rapid turnover of Licensing Examiners

1. Hiring unqualified personnel for difficult job
2. Overburdening
a. Most are evened out now
b. Medical board shares examiner with two other boards requiring a lot of paperwork: pharmacy & psychology

E. Lack of detailed minutes

F. No procedure for removal of board members

III. Suggested Solutions

A. Funding

1. General

a. Support pending legislation before House Commerce Committee to allow boards to set all fees for licensure, examination, etc. by regulation rather than by statute
   1. Allow boards flexibility
   2. Facilitate process of boards becoming more self-supporting
   3. Eliminate taking valuable legislative time to raise fees

b. Direct O.L. to advise boards of required dates for submission of projected board funding needs for inclusion in department budget.

2. Investigative

a. Upgrade job classification of investigators
b. Budget funds for more investigators

3. Increase "per diem" from $55/day for board members.

B. Communications

1. Between Departments & Boards by regulation:
   a. Require department to submit to the board all proposed legislation having a direct or indirect effect on the board, its members, or its function
   b. Require the department to advise boards submitting legislation of department's reasons for supporting or not supporting that legislation
   c. Require the department to take an active role in settling disputes between a board and another department, agency or commission of the state government.
      1. Not just sending an investigator but
      2. Helping set meetings between key people on both sides of dispute
      3. Coordinate with Attorney General in dispute
   d. require the department to publish and dispense to all board members and to their licensing examiners a manual which includes but is not limited to:
      1. The current statute and regulations governing the board's actions
      2. Any statute affecting a board
         a. Central licensing
         b. Advertising
         c. Malpractice
         d. Administrative procedures
         e. Executive budget act

3. Procedures to be followed in
    a. Investigations
    b. Litigation
    c. Examinatic~
4. Ethics concerning activities of members
5. General responsibilities of the board

2. Between Boards and the Public by regulation
    a. Require that notices of all public meeting or the boards be
        1. Placed in a popular section of the newspapers in which they are published;
        2. That they always be in the same section of all newspapers;
        3. That they always run for three consecutive days;
        4. That they include proposed agendas whenever possible
        5. That they also be published in alternate newspapers such as The Tundra Times and The Alaska Advocate
    b. Require the boards through the department to solicit public input by periodic
        1. Public service announcements
        2. Letters to such groups as AK. P.I.R.G., Native Corporations
    c. Require the division of O.L. to compose a common complaint form to be used by all health regulatory boards which would result in
        1 More comprehensive information from complaintant
        2. Facilitating classification by investigator
        3. Facilitating investigation of complaint
    d. Require that each complaintant
        1. Be advised by O.L. within 30 days of receipt of the complaint what disposition has been made of the complaint:
            a. To Consumor Protection
            b. To professional peer review committee
            c. To both 1. and 2.;
            d. To investigator for further action
            e. To board for immediate action
        2. And that each complaintant be advised as to the findings regarding that complaint.
    c. Require that boards
        1. Be advised at each meeting of the numbers and kinds of complaints against practitioners regulated by that board and the disposition of those cases
        2. Choose from their membership one person who is to be consulted by the investigator in deciding investigative priorities of licensing violations and other decisions which may require professional knowledge; such board member will automatically be excluded from deliberations by the board concerning those cases in which he/she was consulted

3. Between Boards and other Alaska Health Regulatory Boards:
    a. A meeting at least once a year of members of related boards and the commissioner to discuss common problems and solutions
    b. A boards newsletter would be really helpful

4. Between Boards and the Professionals they regulate
   a. Require that all boards either by statute or regulation send copies of annual reports, including but not limited to receipts and expenditures to the professional associations under their regulation
   b. Require that the Boards, through the licensing examiner, send 30 day advance notice of pending board meetings and public hearings with proposed agenda to the person in charge of the professional newsletter of the practitioners regulated.

C. Vacancies on boards

1. Require the department to actively solicit names for appointment from the public and private sectors
   a. Newspaper notices
   b. Public service announcements
   c. Recommendations from professional associations
   d. Recommendations from practitioners by direct mailing with return postage paid

2. Governor may, but would not be required, to fill board vacancies from that pool

3. Pool must be updated periodically

4. Require statutory, not regulatory, limits of two consecutive terms for board members.

D. Rapid Turnover of Licensing Examiners

1. Somewhat alleviated now but has been a real problem in the past.
   a. Recommend selection of licensing examiners be made with great care
   b. Recommend that licensing examiners be provided with information packets and manuals recommended in III, B, 1 & 2

2. Recommend periodic reassessment of workload of all licensing examiners

E. Lack of Detailed Minutes

Agree with audit's recommendation #11 page 16 of Occupational Licensing Review.

F. Removal of Board Members: Suggestions

1. Automatic termination if member fails to attend 40% of meetings in any fiscal year

2. California Statute: Chap 4, Div 2, Art. 1, Sec 1605 "The Governor has power to remove from office at anytime any member of the board for continued neglect of duty required by this chapter or for incompetency or unprofessional or dishonorable conduct"

IV. Review of Recommendations by Legislative Audit of Division of Occupational Licensing, Department of Commerce and Economic Development

A.	Recommendation #1	Disagree
B.	Recommendation #2	Conditionally agree
C.	Recommendation #3	Agree
D.	Recommendation #4	Agree
E.	Recommendation #5	Conditionally agree
F.	Recommendation #6	Conditionally agree
G.	Recommendation #7	Agree
H.	Recommendation #8	Agree
I.	Recommendation #9	Agree
J.	Recommendation #10	Conditionally agree
K.	Recommendation #11	Agree
L.	Recommendation #12	Agree

V. Miscellaneous Observations

A. Consistent audit recommendation for additional public members: Disagree
   1. California experience not a good one
   2. Large boards
      a. Unwieldy
      b. Expensive
   3. Knowledgable public members are assets but non-contributing members are a severe handicap

B. Consistent audit recommendations to discontinue requirement of photographs for board files: Disagree
   1. Necessary for identification of applicants
   2. It could be recommended that only licensing examiners check photograph against face at examination sites (as does dental board)

C. Failure of auditors to recognize the value of professional peer review groups
   Recommendations:
   1. That boards direct professional associations to examine and update and oil their peer review mechanisms
   2. That all complaints sent to C.P. (as non-licensing violations) also be sent to professional peer review
      a. Double check
      b. Different facet of complaint may be explored by peer review than by C.P.
      c. Add credibility and comfort to consumor/patient to know in-house as well as public investigation of problem

Discussion

I. There are three major considerations to keep in mind when viewing the results and recommendations of these audits. First of all, that the whole procedure for this review was experimental, a first for Alaska. Secondly, that the reviews were conducted by C.P.A.'S and Accountants with little or no knowledge of the professions to which they were assigned; therefore, in almost all instances, boards and practitioners expressed frustration at trying to answer questions that were so broad that they sounded inane but the answers to which carried considerable weight. For example, a question asked of the board of dispensing opticians:

Q. Do you believe there is a shortage of opticians in Alaska?

Four members said yes. The auditor concluded that because only Fairbanks, Anchorage, and Homer have resident opticians, there is a great shortage in the rural areas. If he had had knowledge of the bush practices of some optometrists and phthamologists he would have known that the shortage is not as critical as he assumed because those optometrists and opthomologists usually have opticians or other dispensers traveling with them. Members of the pharmacy association expressed frustration that the auditor spent a major portion of his time with them stating that their board was remiss in not regulating the prices of drugs, which, of course is beyond that board's powers. In some instances, boards have expressed concern that because of the auditor's apparent lack of flexibility in attitude that improper weight would be assigned to some answers allowing for faulty conclusions.

The second area of concern of the Coalition is that our boards may be thought somewhat ill-prepared for the hearing process and we would like to point out some of the reasons for this seeming inadequacy. Even though, by statute, the burden of proof lies with the board, most were unaware of Sunset implications and requirements until the actual audits began in July. The boards were advised by O.L. that Sunset legislation had been passed but were provided with no guidelines for implementation. This is probably because O.L. was as much in the dark about procedures as were the boards and the auditors. The audits began in mid-July and preliminary reports from both legislative audit and the department of Commerce were sent back to the board members by mid-August for response. Only then did the boards learn the scope and shape of the process. But by then most boards had used up their budgeted meetings for the year and were informed by O.L. that there was no more money under any circumstances. You might say, if it were really important to them the members would get together on their own to formulate an action plan to deal with Sunset. You must remember, however, that board appointments are made to balance geographic needs and concerns so a meeting is not as simple as calling up the locals for an afterwork session. Consequently, most of our boards were not able to meet even once for the express purpose of dealing with Sunset and the responses are mainly a reaction to audit and the information and statistics used by the auditors, even though a considerable amount of work was done by individual members on behalf of their respective boards. A further hinderance was the fact that the final legislative audit reports were not made available to the boards until January 29th, of this year.

In spite of these limitations the Coalition feels that the audit, viewed as a management study, was very enlightening to all concerned and has focused in on some of the vagaries and inconsistencies in board policies and function as well as discrepancies and shortcomings in the statues and regulations. However, the Coalition also feels that the 60 day provision in the statute by which time all hearings must have been conducted and committee chair reports on board worthiness for continuance be made to the leader of each chamber of the legislature is too restrictive and hinders an in-depth look at all factors as well as places an incredible burden on the committees of reference and their chairpersons. Colorado, by contrast, hears 13 boards or commissions every two years, or an average of six per session, with sessions lasting five to six months and no time restrictions on submitting recommendations.

II. The Coalition sees several problems common the health regulatory boards that hamper efficient function. Lack of funding for meetings is the major deficiency. Until last year the boards were not asked to determine their projected meeting needs nor were they advised of the department's responsibility in asking them to do so. It was difficult to try to predict two years ahead for needs and most boards know now that they seriously underestimated. The results will be that 1980 will find some very frustrated boards attempting to get their acts together after Sunset exposure but severely limited in doing so unless extra budget allowances are made.

Another funding concern of our member association is that there are an insufficient number of investigators to police the health boards. Three persons for 22 boards is ridiculous, especially when the physical

wellbeing and safety of the state's population is at stake. Additional investigators have been hired but numbers are still inadequate to speed up the classification and disposal of cases.

One reason why it is difficult to hire really good investigators with broad and useful backgrounds is the low job classification. An investigator for the boards must have knowledge of laws, procedures and the professions as well as Dick Tracy training. We cannot expect to attract really talented people for $1500/month. Consequently we see positions not filled because of a lack of qualified applicants who want to work for peanuts and subsequent hiring of less qualified persons, a higher turnover, and more cases improperly handled with the accused let off on a technicality either because the complicated Administrative Procedures Act was not followed to the letter or because aspects of cases were not fully investigated.

The final complaint dealing with funding is that the "per diem" is too low. It really is a sacrifice for conscientious board members to spend as much time as they do on board business on their own and then compensate them with only $55/day when participating in scheduled meetings.

In addition to funding some real deficiencies in communication exist which hamper board function. Those between the boards and the department include the introduction of legislation directly affecting the boards but without board knowledge or approval (see HB's 46, 62, 109; SB's 94 & 73); failure to support legislation favored by boards but not offering reasons. The veterinary bill (HB 86) is an example.

The veterinary association and board worked hard to draw up a new practice act which failed to get the support of the asministration only because of the addition in the bill of two more members to the board, one a public member, to bring the board into line with the Governor's Policy of two public members on each board. The veterinary board was not told why their bill was rejected, simply that it would not be supported. There is the problem of the department's hesitancy to get involved with a conflict a board may have with another department or agency. (See Dr. Hansen's report in the dental board file about the Aleutian-Pribilof Island dental clinic)

Lastly, there is no department policy and procedures manual for new board members and licensing examiners. The department personnel are always very helpful in answering questions and pulling files but new board members and licensing examiners need some basic information provided at the outset to enable them to function efficiently.

There are difficulties in communications between the boards and the public. Public notices of meetings and examinations are run one time only in differing sections of certain newspapers. Usually the meeting's agenda is not part of the notice. Obviously, a person not knowing where to look, usually doesn't see the notice if it's not on or opposite their favorite feature and if they don't know what's to be discussed they certainly are not going to walk off the job to attend a board meeting on the chance that a topic of interest to them will be considered. Another roadblock to public input is the lack of a form on which to file a comprehensive complaint with a board. People wishing to complain are told to file a written report but many are hesitant because they don't

know how much or what kind of information is needed to spark an investigation. Lack of a form which requires certain information slows classification and disposal of cases. After a complaint is registered, however, in most cases the complaintant is never informed of the action taken, the results, etc. The boards get the blame but the boards don't even know what kind and how many complaints are filed with O.L., nor are board members allowed to help decide investigative priorities.

There is no communication between the such related boards as the health delivery regulators; therefore, one does not benefit from the struggles and victories of another except through discussions in association alliances such as the Coalition. At that, the associations feel somewhat neglected by their boards because little or no effort is made by boards to encourage participation in meetings, no special notice given to regulated practitioners of board functions and decisions, and few statutes require the boards to make available their annual report to the professionals they regulate.

Vacancies on the boards not promptly filled is a real hinderance to board activity. There seems to be no set policy in the department for soliciting names for possible appointment from either the public or private sectors. So seats remain vacant while the search mechanism, if there is one, is set in action. In addition, the Coalition feels that certain boards have stagnated because their members keep getting reappointed to term after term, a deal danger when there are no statutory limitations to the number of terms a member be allowed to serve.

In the past, the major complaint of all boards was that there was a rapid turnover of licensing examiners and that the examiners were severely overburdened. The former has been fairly well rectified but at least

one examiner is still having to try to be wonder woman to three busy boards.

In addition, most board minutes lack detail which results in re-discussion of the same points of contention or agreement in many meetings, wastes a lot of time, and makes it impossible for any person reading the minutes to have much of an idea of what went on and how, who voted how and why. This is of concern to our associations because we're trying to stay informed of all our boards' activities, to give them input when discussion is raised on certain points and issues, and to initiate discussion on certain points and issues when timely. In addition, a non professional should be able to pick up the minutes and get a fairly clear idea of what goes on at the meetings. Until recently, it wasn't possible to do that.

The Coalition also feels that there should be a way to remove from duty board members who are not fulfilling their obligations as members. Presently there is nothing in statutes or regulations that set out procedure for accomplishing that but there should be for obvious reasons.

CASE PRIORITIES

INDICATORS	CATEGORY	PRIORITY
1. Public danger, real or potential, is severe. Situation present that death has occured, or is imminent, or severe public injury is real or very possible, unless urgent action is taken to correct or remove the danger. Generally this will apply to but is not limited to the health services, i.e. medical, dental and nurse board areas. Use or abuse of drugs, alcoholism, emotional instability and/or gross incompetence in the health board areas; poor or incompetent engineering; and unlicensed activity in the health board areas are some examples which could pose grave danger or severe threats against the general public.	SEVERE	I
2. Public harm, real or potential, is very serious. Indicators can be the same as under Priority I, but the threat of public harm appears not as severe. The matter demands early attention. In the fiduciary area, fraud, incompetency and misconduct are considerations as well as unlicensed activity in the marine pilot and electrical administrator areas.	VERY SERIOUS	II
3. Public harm, real or potential is serious. Indicators can be the same as Priority I and II, but to a lessor degree. Financial improprities such as in trust account activity; licensees acting outside their license category such as in building services and engineering; and misconduct or misrepresentation in all licensing areas which indicate public harm by financial loss are some examples. Unlicensed activity in the fiduciary and building services (except electrical) will usually be in this category.	SERIOUS	III
4. Public harm, potential, due to technical type violations. Public harm can result if the violations are allowed to continue. No indication on receipt that other problems are evident.	TECHNICAL	IV

NOTE: Case prioritization can be influenced by many other considerations as well such as amount of financial loss involved, the number of people or victims indicated and the impact if not acted on right away. Each case must be reviewed with priority assigned according to the merits of the case. Priorities may change as investigation progresses and/or situations dictate.

(EXHIBIT_____)

*Section 1. AS 08.01 is amended by .dding a new section to read:

Sec. 08.01.005. PURPOSE OF CHAPTER. There is established in the Department of Commerce and Economic Development, an Alaska Commission of the Healing Arts, created with the responsibility of assuring the public of safe and competent health care providers.

*Section 2. AS 08.01.010 is amended to read:

Sec. 08.01.010. APPLICABILITY OF CHAPTER. This chapter applies to the

(1) Repealed;

(2) Repealed;

(3) Repealed;

(4) [BOARD OF] chiropractic <u>profession</u>;

(5) Repealed;

(6) [BOARD OF] dental <u>profession</u>;

(7) Repealed;

(8) Repealed;

(9) [STATE] medical <u>profession</u> [BOA.D];

(10) [BOARD OF] nursing <u>profession</u>;

(11) [BOARD OF EXAMINERS IN] optometry profession;

(12) [BOARD OF] pharmacy <u>profession</u>;

(13) Repealed;

(14) [BOARD OF] veterinary <u>profession</u>;

(15) [BOARD OF] psychologist and psychological associate <u>profession</u> [EXAMINERS];

(16) Repealed;

(17) Repealed;

(18) Repealed;

(19) [BOARD OF] dispensing optician [S] profession;

(20) Repealed;

(21) [STATE] physical therapy profession board; [.]

(22) nursing home administrator profession .

*Section 3. AS 08.01.020 is amended to read:

Sec. 08.01.020. COMMISSION [BOARD] MEMBERSHIP AND ORGANIZATION. The commission consists of eleven public members. [UNLESS OTHERWISE PROVIDED, ALL] All commission [BOARD] members are appointed by the legislature for staggered terms of six years [GOVERNOR AND SERVE AT HIS PLEASURE]. However , three initial appointments shall be made for two year terms , four initial appointments for four year terms and four initial appointments for six year terms . No member may succeed himself more than once . [UNLESS OTHERWISE PROVIDED, THE GOVERNOR SHALL DESIGNATE THE CHAIRMAN OF THE BOARD AND ALL] all [OTHER] officers shall be elected by the commission [BOARD] members.

*Section 4. AS 08.01.025 is amended to read:

Sec. 08.01.025. PUBLIC MEMBERS. No [PUBLIC] member of the commission [A BOARD] may:

(1) be engaged in an [THE] occupation which the commission [BOARD] regulates;

(2) be associated by legal contract with a member of an [THE] occupation which the commission [BOARD] regulates except as a consumer of the services provided by a practitioner of an [THE] occupation regulated; or

(3) have a direct financial interest in an [THE] occupation which the commission [BOARD] regulates.

*Section 5. AS 08.01 is amended by adding a new section to read:

Sec. 08.01.026. COMMISSION MEETINGS. The commission shall meet semi-annually for the conduct of its business. The meetings shall be held each time in a judicial district different from the one in which the previous meeting was held.

*Section 6. AS 08.01.030 is amended to read:

Sec. 08.01.030. QUORUM. A majority of the membership of the commission [A BOARD] constitutes a quorum [UNLESS OTHERWISE PROVIDED].

*Section 7. AS 08.01.050(19) is amended to read:

(19) provide investigative services to the commission [BOARDS] established under this chapter [CHS. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 OF THIS TITLE,] for the purpose of assisting the [THOSE] board[S] in matters of professional discipline ; and [.]

*Section 8. AS 08.01.060 is amended by adding new subsections to read:

(20) coordinate the activities of the commission established under this chapter and the advisory boards established under chapters 20, 36, 64, 68, 70, 71, 72, 80, 84, 86, and 98 of this title; and

(21) employ an executive secretary for the commission established under this chapter.

*Section 9. AS 08.01 is amended by adding a new section to read:

Sec. 08.01.065. FEES ESTABLISHED BY REGULATION. (a) The department shall adopt regulations which establish application fees, examination fees, and license fees for the occupations covered by this chapter, and which establish the manner in which the fees must be paid.

(b) Before adopting a regulation under (a) of this section, the department shall consult with the commission.

*Section 10. AS 08.01.070 is amended to read:

Sec. 08.01.070. [ADMINISTRATIVE] DUTIES OF THE COMMISSION [BOARDS]. The commission [EACH BOARD] shall perform the following duties [IN ADDITION TO THOSE PROVIDED IN ITS RESPECTIVE LAW]:

(1) keep minutes and records of all proceedings;

(2) hold a minimum of two [ONE] meetings each year;

(3) hold [AT LEAST ONE] examinations [EACH YEAR];

(4) request, through the departme t, investigations of alleged violations of its laws and regulations;

(5) direct the advisory boards to make recommendations regarding the preparation , selection and grading of examinations [PREPARE AND GRADE EXAMINATIONS];

(6) direct the department to pass on qualifications of routine applicants for examination and license;

(7) forward minutes of meetings to the department within 30 [20] days;

(8) forward results of examinations to the department;

(9) notify the department of meeting dates and places at least 30 [15] days before meeting ; [.]

(10) promulgate all necessary regulations upon advisement by an advisory board and after consultation with representatives of interested professional societies , department staff , consumer organizations and the general public ;

(11) establish minimum educational and training qualifications for all regulated practitioners ;

(12) appoint , from among its membership , committees deemed necessary ;

(13) endorse a valid license issued by a licensing board or commission of another state , jurisdiction , territory or province which was issued upon similar qualifications to those in effect in this state ;

(14) direct the department to remedy any error in the issuance of a license ;

(15) designate a professional conduct officer on recommendation of the commissioner and/or investigative staff in connection with professional misconduct proceedings and criminal matters , such officer to be empowered to issue subpoenas and administer oaths in connection with disciplinary proceedings ;

(16) establish , by regulation , standards of conduct with respect to advertising , fee splitting , practicing under a pseudonym when not authorized , proper use of professional or academic titles tending to imply professional status and other such ethical practices as the board deems necessary ; and

(17) delegate to department officials the disposition of any licensing matters pursuant to board regulations .

*Section 11. AS 08.01.087 is amended to read:

Sec. 08.01.087. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall [MAY], upon its own motion or at the instance of the commission, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the occupations [BOARDS], or to secure information useful in the administration of this chapter.

(b) If it appears to the director [COMMISSIONER] that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it or any of the laws pertaining to the professions [OR REGULATIONS ADOPTED BY THE BOARDS] listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all commission [BOARD] members by telephone or telegraph of a proposed order or action unless a majority of the members of the commission [BOARD] object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the director [COMMISSIONER] may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or

until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the director [COMMISSIONER] or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it or an order issued under it, or any of the laws or regulations pertaining to [OR REGULATIONS ADOPTED BY] the occupations [BOARDS] listed in § 10 of this chapter and adopted by the commission established by this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by the commission [BOARD LISTED IN § 10 OF THIS CHAPTER] and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents.

(c) The director shall bring to the commission cases of alleged violations where the protection of the public health , welfare or safety requires immediate action .

(d) The director may overrule a commission determination regarding the issuance of a license ; however , the commission may overrule the director in this instance by a 2/3rds vote of its total membership .

*Section 13. AS 08.01.100 is amended to read:

Sec. 08.01.100. LICENSE RENEWAL, LAPSE AND REINSTATEMENT. (a) All licenses shall be renewed [BIENNIALLY] on the dates set by the department with the approval of the commission [RESPECTIVE BOARD].

(b) A registration, license, permit or certificate[S] requiring renewal to continue to be effective must be renewed n or before the date set by the department or it will lapse. The department may establish a [A] penalty which must be paid [OF $10

SHALL BE CHARGED] in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

*Section 15. AS 08.01.105 is amended to read:

Sec. 08.01.105. PENALTY FOR IMPROPER PAYMENT. An applicant shall pay a penalty of $15 [$10] each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor.

*Section 16. AS 08.01.110 is amended to read:

Sec. 08.10.110. DEFINITIONS. In this chapter

(1) "board" means the Alaska Commission of the Healing Arts described in § 20 of this chapter [INCLUDES THE BOARDS AND COMMISSIONS LISTED IN § 10 OF THIS CHAPTER];

(2) "department" means the Department of Commerce and Economic Development;

(3) Repealed

(4) "license" means any license, certificate, permit or registration or similar evidence of authority issued by [ONE OF] the commission [BOARDS LISTED IN § 10 OF THIS CHAPTER];

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required and [BY ONE OF THE BOARDS] listed in § 10 of this chapter ; [.]

(7) "director" means the director of the Division of Occupational Licensing of the Department of Commerce and Economic Development .

*Section 17. AS 08.02.010(b) is amended to read:

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of his noncompliance by the commission [HIS APPROPRIATE LICENSING BOARD]. If, after a reasonable time, with opportunity

for a hearing, his noncompliance continues, the commission [BOARD] may suspend or revoke his license or registartion, or administer other disciplinary action which in its determination is appropriate.

*Section 18. AS 08.02.020 is amended to read:

Sec. 08.02.020. LIMITATION OF LIABILITY FOR MEMBERS OF COMMISSIONS [LICENSING BOARDS]. No person is liable for damages or other relief in an action by reason of his activity as a member of a regulatory or advisory [LICENSING] commission or board established under this title or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made.

*Section 19. AS 08.02 is amended by adding a new section to read:

Sec. 08.02.030. PROFESSIONAL ADVERTISING. After the effective date of this Act, it is unlawful for a professional association, trade association, occupational or professional licensing agency, or any other governmental agency to adopt, implement, or enforce, or attempt to adopt, implement, or enforce, any prohibition of truthful advertising including publication of fees and prices. However, this section does not prohibit an association or agency to which licensing functions have been delegated by statute from setting reasonable standards or established reasonable requirements pertaining to advertising by an occupation or profession within its jurisdiction.

*Section 20. AS 08.03.010(c) is repealed and re-enacted to read:

(c) The following commission has the termination date provided by this subsection. The Alaska Commission of the Healing Arts (AS 08.10.005) June 30, 1985.

Chapters 20, 32, 36, 64, 68, 70, 71, 72, 80, 84, 86 and 98 of Title 8 are to be uniformly amended so that each reads similarly and provides for:

(1) creation of an "advisory" board for the profession in question consisting of two members of the profession and one public member who also serves on the Alaska Commission of the Healing Arts. Each professional member is to serve for a term of three years, may succeed himself only once and is appointed by the commission;

(2) minimum qualifications to be met by an applicant for any profession currently regulated by the board now in existance.

Each advisory board should, in the amended version, be given authority to advise the commission on regulation and disciplinary questions. The advisory boards, also, are primarily responsible for the administration of and, where applicable, grading of examinations subject, of course, to final certification or review by the commission. References to executive officer/secretary positions in the amended versions should be repealed as a similar position is being created for the commission as a whole.

Included in each amended section should be, if at all possible and where appropriate, the suggestions for statutory changes which have been made by the individual boards. Much board and division time has gone into some of these drafts with the hoped for result being stronger and more workable laws relating to the practice of any of the health care professions regulated by the state.

Finally, certain appropriate and applicable sections of legislation already introduced should be included in the redraft of all sections to be amended. Those bills with applicable sections to be included are HB 46 (relating to advertising by businesses/professions), HB 86 (relating to the practice of veterinary medicine), SB 94 (relating to occupational licensing fees) and SB 261 (relating to physical therapists).

*Section 1. AS 08.01 is amended by adding a new section to read:

Sec. 08.01.005. PURPOSE OF CHAPTER. There is established in the Department of Commerce and Economic Development, an Alaska Commission of the Healing Arts, created with the responsibility of assuring the public of safe and competent health care providers.

*Section 2. AS 08.01.010 is amended to read:

Sec. 08.01.010. APPLICABILITY OF CHAPTER. This chapter applies to the

(1) Repealed;

(2) Repealed;

(3) Repealed;

(4) [BOARD OF] chiropractic <u>profession</u>;

(5) Repealed;

(6) [BOARD OF] dental <u>profession</u>;

(7) Repealed;

(8) Repealed;

(9) [STATE] medical <u>profession</u> [BOARD];

(10) [BOARD OF] nursing <u>profession</u>;

(11) [BOARD OF EXAMINERS IN] optometry profession;

(12) [BOARD OF] pharmacy <u>profession</u>;

(13) Repealed;

(14) [BOARD OF] veterinary <u>profession</u>;

(15) [BOARD OF] psychologist and psychological associate <u>profession</u> [EXAMINERS];

(16) Repealed;

(17) Repealed;

(18) Repealed;

(19) [BOARD OF] dispensing optician [S] profession;

(20) Repealed;

(21) [STATE] physical therapy profession board; [.]

(22) nursing home administrator profession .

*Section 3. AS 08.01.020 is amended to read:

Sec. 08.01.020. COMMISSION [BOARD] MEMBERSHIP AND ORGANIZATION. The commission consists of eleven public members. [UNLESS OTHERWISE PROVIDED, ALL] All commission [BOARD] members are appointed by the legislature for staggered terms of six years [GOVERNOR AND SERVE AT HIS PLEASURE]. However , three initial appointments shall be made for two year terms , four initial appointments for four year terms and four initial appointments for six year terms . No member may succeed himself more than once . [UNLESS OTHERWISE PROVIDED, THE GOVERNOR SHALL DESIGNATE THE CHAIRMAN OF THE BOARD AND ALL] all [OTHER] officers shall be elected by the commission [BOARD] members.

*Section 4. AS 08.01.025 is amended to read:

Sec. 08.01.025. PUBLIC MEMBERS. No [PUBLIC] member of the commission [A BOARD] may:

(1) be engaged in an [THE] occupation which the commission [BOARD] regulates;

(2) be associated by legal contract with a member of an [THE] occupation which the commission [BOARD] regulates except as a consumer of the services provided by a practitioner of an [THE] occupation regulated; or

(3) have a direct financial interest in an [THE] occupation which the commission [BOARD] regulates.

*Section 5. AS 08.01 is amended by adding a new section to read:

Sec. 08.01.026. COMMISSION MEETINGS. The commission shall meet semi-annually for the conduct of its business. The meetings shall be held each time in a judicial district different from the one in which the previous meeting was held.

*Section 6. AS 08.01.030 is amended to read:

Sec. 08.01.030. QUORUM. A majority of the membership of the commission [A BOARD] constitutes a quorum [UNLESS OTHERWISE PROVIDED].

*Section 7. AS 08.01.050(19) is amended to read:

(19) provide investigative services to the commission [BOARDS] established under this chapter [CHS. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 OF THIS TITLE,] for the purpose of assisting the [THOSE] board[S] in matters of professional discipline ; and [.]

*Section 8. AS 08.01.060 is amended by adding new subsections to read:

(20) coordinate the activities of the commission established under this chapter and the advisory boards established under chapters 20, 36, 64, 68, 70, 71, 72, 80, 84, 86, and 98 of this title; and

(21) employ an executive secretary for the commission established under this chapter.

*Section 9. AS 08.01 is amended by adding a new section to read:

Sec. 08.01.065. FEES ESTABLISHED BY REGULATION. (a) The department shall adopt regulations which establish application fees, examination fees, and license fees for the occupations covered by this chapter, and which establish the manner in which the fees must be paid.

(b) Before adopting a regulation under (a) of this section, the department shall consult with the commission.

*Section 10. AS 08.01.070 is amended to read:

Sec. 08.01.070. [ADMINISTRATIVE] DUTIES OF THE COMMISSION [BOARDS]. The commission [EACH BOARD] shall perform the following duties [IN ADDITION TO THOSE PROVIDED IN ITS RESPECTIVE LAW]:

(1) keep minutes and records of all proceedings;

(2) hold a minimum of two [ONE] meetings each year;

(3) hold [AT LEAST ONE] examinations [EACH YEAR];

(4) request, through the department, investigations of alleged violations of its laws and regulations;

(5) direct the advisory boards to make recommendations regarding the preparation , selection and grading of examinations [PREPARE AND GRADE EXAMINATIONS];

(6) direct the department to pass on qualifications of routine applicants for examination and license;

(7) forward minutes of meetings to the department within 30 [20] days;

(8) forward results of examinations to the department;

(9) notify the department of meeting dates and places at least 30 [15] days before meeting ; [.]

(10) promulgate all necessary regulations upon advisement by an advisory board and after consultation with representatives of interested professional societies , department staff , consumer organizations and the general public ;

(11) establish minimum educational and training qualifications for all regulated practitioners ;

(12) appoint , from among its membership , committees deemed necessary ;

(13) endorse a valid license issued by a licensing board or commission of another state , jurisdiction , territory or province which was issued upon similar qualifications to those in effect in this state ;

(14) direct the department to remedy any error in the issuance of a license ;

(15) designate a professional conduct officer on recommendation of the commissioner and/or investigative staff in connection with professional misconduct proceedings and criminal matters , such officer to be empowered to issue subpoenas and administer oaths in connection with disciplinary proceedings ;

(16) establish , by regulation , standards of conduct with respect to advertising , fee splitting , practicing under a pseudonym when not authorized , proper use of professional or academic titles tending to imply professional status and other such ethical practices as the board deems necessary ; and

(17) delegate to department officials the disposition of any licensing matters pursuant to board regulations .

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Sec. 08.01.087. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall [MAY], upon its own motion or at the instance of the commission, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the occupations [BOARDS], or to secure information useful in the administration of this chapter.

(b) If it appears to the director [COMMISSIONER] that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it or any of the laws pertaining to the professions [OR REGULATIONS ADOPTED BY THE BOARDS] listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all commission [BOARD] members by telephone or telegraph of a proposed order or action unless a majority of the members of the commission [BOARD] object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the director [COMMISSIONER] may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or

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(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it or an order issued under it, or any of the laws or regulations pertaining to [OR REGULATIONS ADOPTED BY] the occupations [BOARDS] listed in § 10 of this chapter and adopted by the commission established by this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by the commission [BOARD LISTED IN § 10 OF THIS CHAPTER] and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents.

(c) The director shall bring to the commission cases of alleged violations where the protection of the public health , welfare or safety requires immediate action .

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(b) A registration, license, permit or certificate[S] requiring renewal to continue to be effective must be renewed on or before the date set by the department or it will lapse. The department may establish a [A] penalty which must be paid [OF $10

SHALL BE CHARGED] in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

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Sec. 08.10.110. DEFINITIONS. In this chapter

(1) "board" means the Alaska Commission of the Healing Arts described in § 20 of this chapter [INCLUDES THE BOARDS AND COMMISSIONS LISTED IN § 10 OF THIS CHAPTER];

(2) "department" means the Department of Commerce and Economic Development;

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(4) "license" means any license, certificate, permit or registration or similar evidence of authority issued by [ONE OF] the commission [BOARDS LISTED IN § 10 OF THIS CHAPTER];

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for a hearing, his noncompliance continues, the commission [BOARD] may suspend or revoke his license or registartion, or administer other disciplinary action which in its determination is appropriate.

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Sec. 08.02.020. LIMITATION OF LIABILITY FOR MEMBERS OF COMMISSIONS [LICENSING BOARDS]. No person is liable for damages or other relief in an action by reason of his activity as a member of a regulatory or advisory [LICENSING] commission or board established under this title or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made.

*Section 19. AS 08.02 is amended by adding a new section to read:

Sec. 08.02.030. PROFESSIONAL ADVERTISING. After the effective date of this Act, it is unlawful for a professional association, trade association, occupational or professional licensing agency, or any other governmental agency to adopt, implement, or enforce, or attempt to adopt, implement, or enforce, any prohibition of truthful advertising including publication of fees and prices. However, this section does not prohibit an association or agency to which licensing functions have been delegated by statute from setting reasonable standards or established reasonable requirements pertaining to advertising by an occupation or profession within its jurisdiction.

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Finally, certain appropriate and applicable sections of legislation already introduced should be included in the redraft of all sections to be amended. Those bills with applicable sections to be included are HB 46 (relating to advertising by businesses/professions), HB 86 (relating to the practice of veterinary medicine), SB 94 (relating to occupational licensing fees) and SB 261 (relating to physical therapists).

ELECT.
EXAM.

Transcript

BOARD OF ELECTRICAL EXAMINERS

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*Testified during morning session and testimony not recorded due to equipment malfunction. Written testimony has been requested.

**Written testimony presented.

***Mr. Mellon testified during the morning session and the afternoon session. Due to equipment malfunction, morning session was not recorded and written testimony has been requested. Mr. Mellon's afternoon testimony was recorded and is included in this transcript.

BURKE: Thank you. First of all, I supervise what we call in the Civil Division, the Business Regulation and Taxation Section. There are four attorneys in that section in our Juneau office, including myself, two in the Anchorage office, although I do not supervise them, and another in the Fairbanks office. And our section basically is responsible for representing the Department of Revenue and the regulatory side of the Department of Commerce. This includes the Division of Occupational Licensing and the licensing boards themselves. Basically, the kind of assistance that we provide to the boards falls into three categories: requests for legal advice on specific questions, assistance in the rule making activity of the board and that is regulation review, and finally representing the Division of Occupational Licensing in disciplinary proceedings or in proceedings where someone is complaining about say the denial of a license or some other action taken by a board. As I understand it, the Department has come under some criticism generally during the course of the sunset review hearing that your Committee has been conducting. I can't really respond to those in any specific sort of way because from what I've heard, they're simply too general at this point. It would be helpful if the Committee desires if specific instances could be brought to our attention, we might be able to make a more specific response to some of the complaints that we've been hearing. I think one area where I myself have heard complaints from boards has been in the area of requests for opinions and that's one area, at least with respect to the one board that I talked with recently, where it seemed to me that some misunderstandings had occurred as to the procedure that the board should go through in order to have these opinions pop out when they want them to. In order to do that, I'd like to explain very briefly about what I call our department's work-management reporting system. Every time an opinion request comes through either the Attorney General or the Deputy Attorney General, a file is opened and it is given a number and the name of the file and the number is put into our computerized information system. And this reports out every month every opinion request that has come into the department through the official channels. Now for my section, I will get a copy of all of the work-management reports for the attorneys in my section. And I go through it at the beginning of every month when I get the report to see how long it has been since these various files have been opened. If it looks to me that something has been open for a couple of months with no action apparently having been taken, I can then go to the attorney to whom the opinion request was assigned and say "What's going on? Are you having any problems with it? Why isn't this getting out?" Now if requests for opinions come into the Department in any other way, either directly to me or directly to one of the other assistant attorneys in my section, it is possible that the request doesn't get logged into our information system -- our management reporting system. And when that happens there is a tendancy for them to get lost. They can

drop through the cracks. Sometimes I have observed that a board will ask a question say of an attorney who is attending a board meeting and the board thinks that is all it has to do and that an opinion will be forthcoming on the question. The attorney is under the impression that the board will send a written request to the Division of Occupational Licensing and that the request in writing will come through the Commissioner's Office to the Attorney General in the normal course of events leaves the meeting and forgets about it. So what I am I guess saying is that the boards need to make sure that the opinion requests come through in this procedure. We have prepared and have provided to all of the licensing boards a copy of a manual for occupational licensing in the state. This manual covers general policy reasons for occupational licensing, rule making authority and how the board should go about promulgating regulations. It goes through disciplinary proceedings and the other adjudicatory functions of the boards and it goes finally lists the functions of the Department of Law and I'd like to read a sentence or two from this, which has been sent to all of the boards: "Requests for opinions made by boards must be made by the board president and must have the approval of the Commissioner or his designee before submission to the Department of Law. This ensures that frivolous or repetitious opinion requests are not submitted." Now in that line, I should also point out that every so often, we will get request for legal advice that aren't really requests for legal advice at all. A board may be reluctant, quite frankly, to make a decision in a particular area and is really asking the Department how should we decide this policy question and, of course, that's not our job and we shouldn't be doing that. The Division of Occupational Licensing is aware of this distinction between legal questions and policy questions and that's another reason for sending the opinion requests through the Division and through the Department and that is that they can screen them for us so that we get only what are truly opinions for legal advice.

BRADLEY: Susan, does that

BURKE: I guess that's basically all that I wanted to tell the Committee. I can answer general questions and I can make note of any specific questions that the Committee members might have and perhaps get back to the Committee at a later time with the answers to specific questions.

BRADLEY: Senator Sturgulewski?

STURBULEWSKI: Mr. Chairman. Susan, I appreciate your comments. As a member of the Health, Education, or HESS Committee in the Senate, we reviewed health boards and now as a member of the Commerce we're obviously getting into a number of other boards and I'll just make a flat out statement that I don't think that we've had a board before us that has not had rather significant problems

in a number of areas. One, the ability to get regulations drafted in a timely manner, the ability to get assistance with statute or practice act changes that are needed, the ability to know just what complaints are filed and what the process and progress and final disposition of those are. I think this has just run through the whole thing. There are some of us that feel if a sunset is to be successful, it's going to take further coordination really between the boards representing the public interest, the occupational licensing and law. I guess I'm at a loss to, I understand how it is necessary to have very specific things brought to you. The fact is we have had, I think, a major breakdown and nonutilization of people who put in a great deal of time either through, in some cases, their not knowing the procedures, in others just a very basic fact of communication. I guess I would challenge you to either at this time or later to assist this Committee in finding a way that we can in fact have an opportunity to have a closer working relationship between the boards, the Department of Law and OL. I don't think I as an individual want the state, you know, you're to blame or this person is to blame. It's to find out how to make the system work and it flat out isn't.

BURKE: Senator Sturgulewski, I will solemnly pledge my assistance to help work out in a constructive way any kind of procedures that will make the occupational licensing system work better. You have my word.

STURGULEWSKI: Mr. Chairman, again I'm certainly in no way critical of any individual but I really appreciate that and I think it is absolutely vital to making the whole process of sunset work. Just getting rid of boards and throwing it on OL without some basic changes, I think is no answer so I really appreciate that comment.

BRADLEY: Any other comments or questions by members of the Committee? Staff?

BASLER: Just a comment.

BRADLEY: Okay, Chris. Christian Basler.

BASLER: Susan, I really would like to take this time to ask you if you could possibly send me expeditiously a copy of the booklet that you referred to that is sent to all the Board members earlier in your testimony. I'd like to really see that as fast as possible.

BURKE: Oh, absolutely. I had intended and neglected to offer to do that without having to be asked earlier. If you tell me where to send it, I'd appreciate it.

BRADLEY: Susan, when was that distributed?

BURKE: I'm not entirely certain, Senator Bradley. The date on it is 1979. I think it was fairly recently. I could look back in our files and give you a more exact date but it was sometime earlier this year.

BRADLEY: Fine, as long as we can get a copy. That will satisfy the request. Thank you, Susan. Does anyone else have any questions or statements? Senator Sturgulewski again.

STURGULEWSKI: Mr. Chairman. Susan, one of the areas that we have had quite frequent requests for and this goes into the health boards and most recently, I believe, before the Board of Engineers, Architects and Land Surveyors, has been the request for the boards to have a more active role in pursuing a complaint and I think that generally their response has been that "No" well because it gets involved somewhere along the process that it is not appropriate for their involvement. And I think that is something that the staff of this committee is going to have to take a look at is how much can we utilize the board in more or less of a self-policing of various professions. I think that's a major issue and I think that your comments along that line may well be needed as we move along in this.

BURKE: May I defer committing myself to any particular comment until later on in the process or would you like me to -- I hesitate to speak on behalf of the Department on this issue because I really haven't discussed either with the Attorney General or his deputy?

STURGULEWSKI: Mr. Chairman. Susan, that obviously is certainly appropriate, but I do think that's an area that goes across the lines in a number of the boards and many of them feel that they really need timely reports, need to know what's going on and become involved in following up on those cases so I think that is something that would be helpful to have a position paper on.

BRADLEY: Thank you very much, Senator Sturgulewski. I think we all share the same feeling about the situation and know that there has to be something done about it. Let me me insert right now for all stations, both Fairbanks and Juneau as well as Anchorage here, anyone that has any written testimony, please submit copies to the Senate Commerce Committee at address 1016 West Sixth Avenue -- I think you probably already have that -- Anchorage, Alaska 99501. If you have any problems, the telephone number is 278-1581 or 82. In that we had some problems with our recording device this morning and we must have that testimony or we'll have to do it all over again and that puts a lot of people to a lot of trouble and time is of the essence right now with the Committee. We have a lot of sunsets. So this applies to those that are still here and we'll contact those that have departed since this morning. It is unfortunate. The first time we've had it to happen but I guess there is always a first time for everything. Now let us have, let me check with Juneau first. Do you have anybody else in Juneau?

JUNEAU MODERATOR: Mr. Chairman, we have one more witness to testify for the Board of Electrical Examiners.

BRADLEY: Hold, Sioux, in Juneau and let me check with Maxine in Fairbanks. Maxine, do you have anybody that's in an extremely big hurry or can we go ahead and finish off Juneau for the afternoon?

FAIRBANKS MODERATOR: Mr. Chairman, that's just fine with us. We realize that Juneau is two hours later. We will take our place in line after them.

BRADLEY: Thank you, Maxine. That's the point I had in mind. Go ahead with the next witness to testify, Juneau.

JUNEAU MODERATOR: Our next witness is Tom Cashen who is representing the International Brotherhood of Electrical Workers, Local 1547.

CASHEN: Senator Bradley, good to talk to you again. I'll be real brief and try not to be redundant with regard to the previous witnesses. I'd like to testify in support of the Board of Electrical Examiners. The elimination of the board would be bad for the general, for the electrical industry and the general public. Some of the reasons given for elimination of the Board are that all electricians are licenses anyway and therefore there is no need to license contractors. Well this, these lower requirements for the Certificate of Fitness would lower the standards of the industry and it would create a thousand new electrical contractors overnight. This would be create a situation that would be impossible to regulate and the result would be no protection for the public. You know, like here today gone tomorrow, no established shops or any responsibility to the customers. Another reason put forth for elimination of the Board is that there is inspection by municipalities. With the exception of Anchorage and Fairbanks and possibly Juneau, the smaller towns do not have an adequate inspection program due to lack of funding and inability to hire qualified people. Of course, you've heard already how impossible it is for one or two State inspectors to try to cover the entire State so rather than eliminating the Board, I think we should try to get some additional funding so that they can do a proper job. Thank you for your time, Senator. Over and out.

BRADLEY: Thank you, Tom, very much. Nice hearing your voice again, too. Any comments or questions by members of the Committee or staff? Tom, we have no questions. Thank you and, Susan, you haven't had anyone else to come in at the last minute have you. Over?

JUNEAU MODERATOR: No, Mr. Chairman, we have not.

BRADLEY: Well, Sioux, thank you very much. Of course you know you are welcome to listen in but you don't have to. So now we'll go to Fairbanks. Maxine, next person to testify, please.

FAIRBANKS MODERATOR: Yes, Mr. Chairman, we have Terence Duszynski, and I will spell both names. Terence is Terence and Duszynski is Duszynski. And he is representing Interior Alaska Dwelling Inspection Council.

BRADLEY: Go ahead, Mr. Duszynski.

DUSZYNSKI: Mr. Chairman, I am an inspector for the Interior Alaska Dwelling Inspection Council and the Council is a private, nonprofit corporation that was formed in 1977 to provide the services of inspection, recommendation and guidance for homeowners, homebuyers and homebuilders in the Fairbanks area because there is no inspection of any kind outside the City limits. The major thrust of our inspection is in electrical and fire safety; however, we do inspect the entire dwelling from the foundation to the chimney. Since we first began operation in June of 1977, I have personally inspected 45 homes, all of these in the Greater Fairbanks area. Of these 45 houses, nine were found to have deficiencies, both electrical and otherwise. Of these nine, five have been inspected because of litigation between owner and builder or owner and seller. I would like to give a short rundown on the kinds of things I have found in these nine homes. The first home was inspected by request of the bank handling the construction loan in August of 1977. This was a spec house which had been wired by the general contractor himself. Although the work was done using correct materials, it was done in a shoddy manner. Wires were not stapled correctly, tiedown clamps were not used for wires coming into the outlet and fixture boxes and insulation was also stripped off the wire well before it came into the boxes. Now the bank required this builder to fix the house so that it was passable. The second house I inspected was done by request of the homeowner in March of 1978. The wiring in this house was also done by the builder. The majority of the outlets had the ground wire cut off or not attached to anything. The main panel was not properly grounded and there was no ground fault protection in the bath and exterior outlets. I don't know what has come from this particular inspection. The third house was also done by request of the owner in March of '78. There were a number of deficiencies that the builder had refused to repair among them was a sloppy wiring job in the basement and at the boiler. I have photos of these. This work was done by an unlicensed electrician for the general contractor. The fourth house was inspected by request of a prospective buyer in April of 1978. This was a ten-year old home and its deficiencies included junction boxes without covers in areas where possible water damage could occur and outlets of the nongrounding type. The work in this house had been done by the owner-builder. The fifth house was done by request of a real estate agent because of a Fanny Mae requirement of inspection of all duplexes that they

finance. This dwelling was five years old. The main grounding for this house was attached to thin air and the hot water heater was connected with black tape with the wires exposed. Now this house had to be repaired in order to be sold. The sixth home inspected was done by request of the owner because the house had recently had a major fire and he wanted to be sure that the contractor doing the work had done it correctly. The wiring was again done by the contractor himself. He left the main power lines from the service to the distribution panel exposed to touch. The wire to the hot water heater and boiler were exposed romex; the lighting in the basement and the garage were exposed romex stapled to the ceiling. There was also no ground fault protection. The seventh house was also inspected by request of the homeowner after repeated attempts to have the builder repair the deficiencies and the builder saying that there was nothing wrong. The house had a number of deficiencies; however, the only electrical problem was that there was no inhibitator used at the connection of the main feeder wire and the interior distribution panel. The eighth house on this list was again done at the request of the owner. The wiring had been done by the previous owner-builder. It was a log home, approximately seven years old and the deficiencies included all the wiring being exposed to touch and light fixtures hanging in mid air supported only by the romex attached to the sides coming in and going out. The last house in this group shows perhaps the most blatant disregard for electrical standards and personal safety that I've ever seen. I inspected this house on Monday of this week. It is two years old. What adds to the seriousness of the deficiencies is the lack of care shown by the persons who should have cared. This home is located in University Heights, which is a fairly expensive subdivision in Fairbanks. It had been appraised by a licensed appraiser at $96,000. It was represented and sold by a realtor. The financing was arranged by a local bank and it is insured for 80% of its value and its mortgage is now held by the Alaska Housing Financing Corporation. At least one-third of the total wiring in this home has been done with zip cord, which is common lamp cord. Zip cord had been used for switches and power for lights, even the humidifier attached to the forced air furnace is wired with lamp cord. The smoke alarm was put on a switch using zip cord. Apparently the furnace often smoked because of improper installation and the owner-builder got tired of the alarm going off so he switched it. The main feeder cable for this out was spliced using some sort of split volt connector and black tape. A bath exhaust fan wired and switched zip code was also vented into the wall. Zip cord goes into junction boxes which contain romex and comes out again. It runs all over the house from attic to basement. It is sandwiched between studs and crushed under the furnace. This house was unsafe for habitation and was still handled just like any other. The purchase occurred last April. This house is a fire waiting to happen. I also would like to bring to your attention that the building we are sitting in right now has a number of deficiencies in it. I have photographs of these which I will send to you. But there is romex exposed on the ceiling, stapled only, and there is romex going in and out of florescent fixtures

without benefit of connectors to either hold it to the fixture or protect it from sharp edges. All these unsafe conditions have persisted while the Board of Electrical Examiners has been administering the contractor's test. Can you imagine what will happen if there is no test given to qualify electrical contractors at all. If this Board is allowed to die and the testing of electrical contractors along with it, then the Legislature will in effect be declaring open season on residents of this State. What we need is more stringent controls on electrical wiremen and contractors, not less. The recommendations by the audit that the Certificate of Fitness will take up the gap if the administrator's examination is done away with is not valid. The electrical administrator's examination is far more stringent than the Certificate of Fitness examination and there is no redundancy of the two examinations. The electrical administrator's examination requires a much greater degree of electrical knowledge and practical skill thereby assuring the general public of a better quality of workmanship. The requirements for application for the inside wiring and electrical administration, administrator, are more restrictive than the requirements for the journeymen electrician certificate of fitness. The administrator-applicant must have three years of current practical experience as a journeyman electrician plus four years of current management experience in inside wiring as a field superintendent, office engineer or similar position or a degree in electricial engineering plus one year's experience as a journeyman electrician in inside wiring. In summary, the applicant is required to have a total of about ten years' experience prior to examination or five years' experienece if he holds an electrical engineering degree. The requirements for application for the journeyman electrician certificate of fitness are four years of experience in electrical trade, which by definition means installation and construction of inside wiring within buildings. The open book examination required for the Certificate of Fitness is composed of questions taken verbatim from the J3 National Electrical Code Course textbook taught in many schools and tests the applicant's knowledge of the National Electrical Code. The examination does not address the practical application of the code nor does it test the working skills of the electrician. It has come to my attention that during a recent NECAIBEW Code Course that an apprentice electrician who had never been employed by a contractor, never carried a set of tools and never performed electrical work of any kind passed the certificate of fitness examination with a grade of 86%. If this student could document four years in the electrical trade, he could apply for an electrical contractor's license and bid any electrical job in the State. That is, if the Board of Electrical Examiners is done away with and there is no more testing. The Certificate of Fitness issued by the Department of Labor does not assure that an electrician has knowledge of the National Electrical Code and should be able to -- excuse me, does assure that the electrician has knowledge of the Code and should be able to install wiring in accordance with that but

the certificate does not assure the ability of the applicant to read blueprints, design layouts, supervise contract or install complicated electrical systems found in many industrial, commercial and multi-family projects. The electrical administrator's examination does address the complicated problems of this wiring. I would like to also say that there have been a couple of state projects that had been wired by nonlicensed electricians. Of these, there was one in Delta Junction. It was some Trooper housing and some Trooper housing in Cantwell also and they had to have the tenants evacuated because of the dangerous conditions there. As you can see, I'm in favor of all testing of contractors, electricial contractors, and also keeping the Certificate of Fitness for any wiremen who work on any electrical work.

BRADLEY: Mr. Duszynski, are you through with your testimony?

DUSZYNSKI: Yes, I am.

BRADLEY: Thank you very much. Any questions by any members of the Committee? or statements? staff? Thank you very much, Mr. Duszynski. Appreciate your enlighting testimony very much. Oh, I'm sorry, I think we do. Senator Sturgulewski?

STURGULEWSKI: Mr. Chairman. No question. Very good testimony. I would hope that we could perhaps consider directing a letter to the appropriate, I would imagine, DOTPF, to specifically ask for a response to that particular comment regarding the Trooper housing and I think that might be interesting to know the answer.

BRADLEY: Very valid, Senator Sturgulewski. Incidentally, can everybody hear all right in the back? It seems to me that everyone was speaking loud enough, sometimes they don't, but if not, just raise your hand. Incidentally, there's coffee back there if anybody so desires. Feel free to help yourself. And now we'll go ahead with another Fairbanks if it's all right. I don't think we have any more electricial examining board testifiers here, right? Couple have come in lately but I guess they were for the welding board. Maxine, next one to testify, over.

FAIRBANKS MODERATOR: Yes, Mr. Chairman. We have Robert Mellon again. He is from Denali Electric. He testified earlier.

MELLON: Hello, Mr. Chairman. I just want to say in closing that we not only need a licensing board to examine the contractors but we need very badly an adequate inspection department that can inspect some of this work even after it's done by the licensed contractors. Most of the work outside the City of Fairbanks, I would say, is being done by unlicensed men and is very sloppy work and definitely hazardous. I would suggest that we spend a little bit of money, in fact an awful lot of money, in increasing our staff of electrical inspectors and not only, not stopping there

but have some plumbing inspectors and some general structural inspectors. It's going to be expensive, definitely, but it could and will save lives, I'm sure. That's all.

BRADLEY: Senator Sturgulewski?

STURGULEWSKI: Mr. Chairman. Mr. Mellon, have you ever appeared before the Assembly with request. I think one of the problems, anytime you get government too far away and inspection too far away, there are problems. It should be done on a local level. Why hasn't it been done in the Fairbanks area as far as the North Star Borough?

MELLON: There is no inspection department for the North Star Borough. There is an inspection department which Jerry here works for but that is on a voluntary basis.

STURGULEWSKI: Mr. Chairman. Mr. Mellon, you might take yourself before that Assembly and tell them to get their act together up there. That might be an answer.

MELLON: I'm the guy that started it.

STURGULEWSKI: Good for you.

BRADLEY: Any other question for Mr. Mellon? No one? Mr. Mellon, thank you very much. We certainly appreciate testimony from someone on the receiving end. Maxine, any other people to testify from the great Fairbanks area?

FAIRBANKS MODERATOR: Mr. Chairman, no one sitting for the Electricial but we do have on person waiting here to testify for the welding end of it.

BRADLEY: Very well. Thank you very much. Juneau any more electricial examiners board to testify?

JUNEAU MODERATOR: Yes, Mr. Chairman, this is Debra in Juneau. We have two individuals wishing to testify for the Board of Welding Examiners.

BRADLEY: We're going to take just about a one minute recess here before we start with the Welding Examiners Board so stand by.

Associated
Independent
Electrical
Contractors of
America

Alaska Chapter

P O Box 3376DT

Anchorage Ak.

337-3432

Nov. 9, 1979

Senate Commerce Committe
Alaska State Senate
Suite 201
1024 West Sixth Ave.
Anchorage, Alaska 99510

Re: Testimony given for Board of Electrical Examiners

Dear Senators:

Thank you for allowing me this opportunity to express the opinions of the membership of A. I. E. C. A. We respectfully submit five suggestions that we feel will help to correct the existing problems with the Board of Electrical Examiners.

First of all, with regard to composition, we feel that all facets of the electrical industry should be represented. The board should be made up of five members to include one licensed administrator from a large union company that performs primarily large commercial jobs, such as high rise office buildings. It should also contain one licensed administrator from a small non-union company that performs primarily residential work, one licensed administrator from a firm that performs high line work, one electrical engineer that has no administrator license, and finally one member that has no knowledge of electrical work, but is very concerned with the publics tax dollars.

Second, the tenure of these people should be a two year term with only one re-appointment possible. These terms should be staggered in accordance with existing statutes.

Third, according to current law, the board is required to submit an annual report, however, I understand that this is not being enforced. I would suggest that this be mandatory under penalty of dismissal for violation.

Fourth, current law in Alaska states that if there is no licensed electical contractor within fifty miles of a location, that anyone may legally contract electrical work in that location. In this situation, we rely on the state electrical inspector for safety, however, in reality, we find that a.) Senate bill 232 seeks to repeal the entire state electrical inspection department, and b.) the largest state in the nation has only two inspectors with an annual travel budget of approximately $2,500.00 each. Considering all of the construction sites in the state of Alaska, very few get proper inspections with that type of budget. Our suggestion would be to increase the number of inspectors, and increase the travel budget to allow them to do thier jobs, and finally to allow them to charge for either mandatory inspections, or mandatory permits so that inspections can be made such as Anchorage handles its inspection programs.

Our last suggestion concerns the testing proceedures within the state. The performance review prepared by the Legislative Audit Division cites two examples of inconsistent grading of tests. We feel that the board should prepare the test and then submit it to the Department of Labor to administer, as they already administer all of the tests for the state certificate of fitness. An applicant for the administrators license should appear before the board with his application and documentation of experience to be qualified to write the test. If his papers are in order, he should be referred to the Department of Labor to schedule his test. The test should be numbered at the Department of Labor when he writes it to protect against any possible biases that the board might have when they grade it at thier next meeting. Grading should be done with one standard answer sheet that has the approval of the entire board. After grading, all tests should be returned to the Department of Labor who would then issue administrator licenses to those individuals who had been given passing grades. This administrators license should encompase both the journeyman and wireman certificate of fitness. As this test is considerably more difficult, those who pass it should not be required to go back and pass a certificate of fitness test.

Sincerely,

Michael L. Frith

Michael L. Frith
Program Coordinator
A. I. E. C. A.

Sunset Review on Electrical Licensing
Senator Brad Bradley, Chairman
-November 7, 1979-

My name is Lawrence M. Slay Jr. and I am here to testify in favor of and for the retention of the requirement for Electrical Administration licensing.

This past summer, the State of Florida, through sunset review did away with the requirement to license psychiatrists. In a very short while they had issued over a thousand permits for individuals to practice psychiatry; a person who would go to one of those untrained individuals should have their head examined. I feel very strongly the same way about using an unqualified person to do your electrical contracting.

I have appeared in court several times as an expert witness for the prosecution attorney in cases where electrical work was not done in a manner conforming to the applicable codes. An example: The village of Elim had a fish processing plant built by a company that did the entire contract and was not qualified to do the electrical, refrigeration, structural, generation nor the general construction. The people in the village that paid for the job were virtually raped. Conductors were left exposed on the ground, house panels were used in an area that was washed down each day. The generator was not fastened down and junction boxes were not used. I wrote up four pages of violations on the National Electric Code, just on that small job. It was a hazard and was in imminent danger of fire. A very similar condition existed in the village of Golovin.

I worked on a house for Dr. Dicksheet in Fairbanks that was so badly wired that the repair of it cost more that the original work. I have seen much shoddy workmanship on houses that are not inexpensive. Zip cord, exposed conductors and general violations are not uncommon. The majority of the work done in the haphazard manner was done by persons not qualified, licensed nor trained in any phase of electrical work. Owners often, in order to save money or the inconvenience, will often allow non-qualified persons to do their work.

Don't get me wrong - I have no complaint about people who wish to do their own work and live in it. They can burn their dwelling right down around their ankles if they so choose. What I argue with is that a person or persons selling services should be made to comply with the code and guarantee their work. Anyone who does electrical work that involves the life and safety of others should be made to comply with the laws

That we presently have. We do not have sufficient inspection or funds for inspection travel nor cooperation of the Attorney General in the enforcement of violations.

In 1976, a New Jersey contractor working at Fort Wainwright had no electrical contractor and had young inexperienced G.I.'s doing the work of residing the housing. At the time, I complained to the base and wrote letters to Washington - nothing was done until a young soldier touched a service drop with an aluminum ladder and was killed. We do not need after-the-fact inspections and compliance.

Contractors that are now licensed, are responsible, have expertise, have been trained, use qualified people, work safely and do their best to protect life and property. Most contractors must maintain their reputation to remain in business. An unlicensed individual would feel no responsibility for any of the foregoing.

This brings up another point that is a real irritant. People from down south bringing a work force to our state, doing a botched up job, not using our Alaska labor and skipping out without paying State tax. I can name numerous jobs done in just this manner. Alaska work is for Alaska people.

Another point is that the State does not even follow it's own laws. They act outside the law, don't follow the codes, do work without the license and use uncertified people. Our Electrical Inspector, Tony Reed can cite you many examples; the State Highway Department, the Department of Public Works, and Department of Transportation are all violators of the law.

I write tests for the State. I am not paid for this but as of this month will start getting my expenses. I make the test as objective as possible. The Board examines in five catagories and we have three tests in each catagory. The material for the test is taken from Code, safety standards, and material that is taught to apprentices. Contractors should have at least that amount of knowledge.

I state that my present position is working for both Labor and Management.. I am presently the coordinator for the Electrical Training School and teach both apprentices and journeymen in all aspects of the trade.

Lawrence M. Slay, Jr.

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1561/278-1582

November 13, 1979

Glenn I. Hudson
6321 East Eighth Avenue
Anchorage, AK 99504

Dear Mr. Hudson:

Thank you for your testimony regarding the Board of Electrical Examiners, which you gave before the Senate Commerce Committee on November 7, 1979.

Due to mechanical problems with the teleconference recording system, we were unable to record your testimony for the Committee's records. The system had been checked out prior to starting the hearings and was in operating condition but when the tapes were checked prior to the afternoon session, it was discovered that only a loud hum had been recorded. If possible, therefore, the Committee would appreciate it if you could submit either a copy of your testimony, if you were speaking from prepared text, or a summation of your views regarding this matter in order that your feelings might be made a part of the Committee's record.

We apologize for any inconvenience and we look forward to receiving your written testimony and/or exhibits concerning the Board of Electrical Examiners. We would like to receive this testimony as soon as possible and should we be able to assist you, please do not hesitate to contact our offices.

Sincerely,

Christian Basler

Christian Basler
Administrative Assistant
Senate Commerce Committee

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business
PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581/278-1582

November 13, 1979

Hugh Macaulay
Box 195
Juneau, AK 99801

Dear Mr. Macaulay:

Thank you for your testimony regarding the Board of Electrical Examiners, which you gave before the Senate Commerce Committee on November 7, 1979.

Due to mechanical problems with the teleconference recording system, we were unable to record your testimony for the Committee's records. The system had been checked out prior to starting the hearings and was in operating condition but when the tapes were checked prior to the afternoon session, it was discovered that only a loud hum had been recorded. If possible, therefore, the Committee would appreciate it if you could submit either a copy of your testimony, if you were speaking from prepared text, or a summation of your views regarding this matter in order that your feelings might be made a part of the Committee's record.

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Sincerely,

Christian Basler

Christian Basler
Administrative Assistant
Senate Commerce Committee

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581/278-1582

November 13, 1979

John Teeter
Power Comm., Inc.
1060 Aspen
Fairbanks, AK 99701

Dear Mr. Teeter:

Thank you for your testimony regarding the Board of Electrical Examiners, which you gave before the Senate Commerce Committee on November 7, 1979.

Due to mechanical problems with the teleconference recording system, we were unable to record your testimony for the Committee's records. The system had been checked out prior to starting the hearings and was in operating condition but when the tapes were checked prior to the afternoon session, it was discovered that only a loud hum had been recorded. If possible, therefore, the Committee would appreciate it if you could submit either a copy of your testimony, if you were speaking from prepared text, or a summation of your views regarding this matter in order that your feelings might be made a part of the Committee's record.

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Sincerely,

Christian Basler

Christian Basler
Administrative Assistant
Senate Commerce Committee

Alaska State Legislature

Senate

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State Capitol
Juneau, Alaska 99811

Official Business
PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581/278-1582

November 13, 1979

Robert Mellon
Denali Electric
151 "C" Street
Fairbanks, AK 99701

Dear Mr. Mellon:

Thank you for your testimony regarding the Board of Electrical Examiners, which you gave before the Senate Commerce Committee on November 7, 1979.

Due to mechanical problems with the teleconference recording system, we were unable to record your testimony for the Committee's records. The system had been checked out prior to starting the hearings and was in operating condition but when the tapes were checked prior to the afternoon session, it was discovered that only a loud hum had been recorded. If possible, therefore, the Committee would appreciate it if you could submit either a copy of your testimony, if you were speaking from prepared text, or a summation of your views regarding this matter in order that your feelings might be made a part of the Committee's record.

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Sincerely,

Christian Basler

Christian Basler
Administrative Assistant
Senate Commerce Committee

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581/278-1582

November 13, 1979

Mr. Harry Wilson
H. Daron Electric
1412 Hyder
Anchorage, AK 99504

Dear Mr. Wilson:

Thank you for your testimony regarding the Board of Electrical Examiners, which you gave before the Senate Commerce Committee on November 7, 1979.

Due to mechanical problems with the teleconference recording system, we were unable to record your testimony for the Committee's records. The system had been checked out prior to starting the hearings and was in operating condition but when the tapes were checked prior to the afternoon session, it was discovered that only a loud hum had been recorded. If possible, therefore, the Committee would appreciate it if you could submit either a copy of your testimony, if you were speaking from prepared text, or a summation of your views regarding this matter in order that your feelings might be made a part of the Committee's record.

We apologize for any inconvenience and we look forward to receiving your written testimony and/or exhibits concerning the Board of Electrical Examiners. We would like to receive this testimony as soon as possible and should we be able to assist you, please do not hesitate to contact our offices.

Sincerely,

Christian Basler

Christian Basler
Administrative Assistant
Senate Commerce Committee

PS: We have copies of the information you submitted at the hearings. Any additional comments you would care to submit would be welcome. Thank you for your assistance.

H. D. WILSON
1317 HYDER
ANCHORAGE, ALASKA 99501
907/337-2118

June 30, 1977

TO WHOM IT MAY CONCERN:

This personal affidavit is true to the best of my knowledge and is presented as a true vesture of my capabilities warranting a working Administrators Contractors Licenses for inside and outside electrical wiring and communication work.

My knowledge and experience in the field total thrity-two years . Working in conjunction with and under the supervision of Merideth E. Young, Contractor in Chicago, Illinois, I have completed basic training, graduating in the field of electricity, majoring in all phases of commercial, industrial and residential wiring.

While employed by New York Shipbuilding Company of Camden, New Jersey and Sunship Building Dry dock of Chester, Pennsylvania, I performed both inside and outside wiring. Such work included generators, motors, transformers, panels, circuits, wiring, testing, and radar signaling, installing and testing. At the same time, I operated my own business, H.D. Wilson Electric.

In 1968, new Pennsylvania legislation required licensing of electrical contractors. At that time, I obtained an electrical contractors license which I have held until moving to Alaska in late 1976. H.D. Wilson Electric has operated for a total of 27 years. We have completed contracts for the City of Philadelphia Water Department, Park District, Recreation Department, School District and the Phildelphia Naval Yard, as well as numerous other contracts. A summary of contract abstracts is attached for your review and consideration.

If there is any additional information you desire, I would be most happy to provide it.

Sincerely,

H D Wilson

H. D. Wilson

GPW

H. D. WILSON

1317 HYDER

ANCHORAGE, ALASKA 99501

907/337-2118

May 12, 1977

The Honorable Mike Gravel
United States Senate
Washington, D. C. 20510

Dear Senator Gravel:

This letter comes to your attention to apprise you of a situation I am now confronted with which leads to my frustration, and represents a challenge to my livelihood.

The problem I am confronted with is that I am a licensed, bonded and certified Electrical Contractor, licensed in the State of Pennsylvania. I have been providing professional services in that field for over 30 years. I am now residing in the State of Alaska, and find it impossible to practice my profession because Alaska has no reciprocity in this field with the State of Pennsylvania, and because of this, I am forced to take an examination for said license.

Should I successfully satisfy the examination requirements, I would be one of a few minorities, and more specifically, one of three Blacks, who have done so in the State of Alaska. However, at this point in my life, this examination poses what I feel is an unnecessary hardship. Therefore, I would want you to intercede.

Under Section 08.40.160 of the Alaska Statutes Waiver of Examination, I feel I am qualified for a waiver of examination because of the above. Please advise me of efforts your office can make to improve opportunities for minority business participation.

I look forward to your reply.

Sincerely,

H. D. Wilson

H. D. Wilson

cc: Glen Campbell
State EEO Officer

Alaska Minority Business Assistance Center

United States Senate

WASHINGTON, D.C. 20510

June 6, 1977

Mr. H. D. Wilson
1317 Hyder
Anchorage, Alaska 99501

Dear Mr. Wilson:

Thank you for your letter asking for assistance in regard to the practice of your profession in the State of Alaska.

Since licensing is a state matter, I have referred your letter to the Commissioner of the Department of Labor. Enclosed you will find a copy of my letter to him. He will be able to advise you on a further course of action.

Please feel free to contact me if you need any further assistance.

Warm regards.

Sincerely,

Mike Gravel

Enclosure

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

October 5, 1978

Mr. H. D. Wilson
1412-C Hyder Street
Anchorage, Alaska 99501

Dear Mr. Wilson:

The Board of Electrical Examiners has confirmed the following dates, times and places:

ACTIVITY:	DATE:	TIME:	PLACE:
Public hearing regarding proposed changes in regulations	11/15/78	9:00 a.m.-Noon	Grand Jury-Room 407 Alaska Court Building 303 K Street Anchorage
Reviews of August exam	11/15/78	1:30 p.m.	YMCA 6th and F Streets Anchorage
Board meeting	11/16/78	8:30 a.m.	YMCA 6th and F Streets Anchorage
Electrical Examination	11/17/78	8:30 a.m.	YMCA 6th and F Streets Anchorage

Testimony from the public, both written and verbal, will be accepted at the public hearing. Written testimony regarding the proposed changes in the regulations should be submitted to the Department of Commerce and Economic Development, Pouch D, Juneau, Alaska 99811, postmarked no later than midnight, November 9, 1978.

The Board of Electrical Examiners will hold a regular meeting for the purpose of conducting its usual business and possible adoption of regulatory changes.

Those who took the examination for the electrial administrators' license in August may review their exam results with the board. Reviews will be taken in alphabetical order.

Mr Scale

Those persons whose applications have been approved and have received notification of approval may sit for the electrical exam. Those who have taken the exam before may retake portions failed, provided they have notified the licensing examiner in advance.

If you have any questions, please feel free to contact this office.

Cordially,

Sharon S. Hammock

Sharon S. Hammock
Licensing Examiner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

EQUAL EMPLOYMENT OPPORTUNITY OFFICE
DEPARTMENT OF ADMINISTRATION

Pouch CE
XXXXXXXX JUNEAU 99811
PHONE: 465 3570

May 19, 1977

Mr. H.D. Wilson
1317 Hyder
Anchorage, Alaska 99501

Dear Mr. Wilson:

We are writing to acknowledge that we received a copy of your letter that you sent to Senator Mike Gravel dated May 12, 1977.

We hope to have some report for you by May 26, 1977.

Keep the faith and don't give up!

Sincerely,

Glen Campbell
EEO Director

02-0018

STATE
of ALASKA

MEMORANDUM

TO: Robert Cates
Deputy Commissioner

DATE: May 11, 1978

FROM: Glen Campbell
EEO Director

SUBJECT: H.D. Wilson, Minority Electrical Contractor

We would like to make you aware of a problem that Mr. H.D. Wilson a minority electrical contractor is encountering in regards to obtaining his license for the State of Alaska (please see attached correspondence).

As indicated, Mr. Wilson requested a waiver of examination due to his qualifications and extensive experience in his field.

Although this matter does not fall within the particular jurisdiction of our office, we are very concerned about it from a humanitarian viewpoint as well as the fact that the present posture of minority electrical contractors within the State of Alaska is extremely low. At present there are only two minority electrical contractors that obtained their license in the State of Alaska, and they did not obtain these licenses through the examination process, but obtained them under the Grandfathers clause. Perhaps the requirements create disparity for minority electrical contractors and this matter should be looked into.

Any assistance that you can offer in regards to this matter would be greatly appreciated.

Thank you,

JAY S. HAMMOND
GOVERNOR

PHONE
907-272-1478

STATE OF ALASKA
OFFICE OF THE GOVERNOR
ANCHORAGE

December 22, 1977

Mr. H. D. Wilson
1317 Hyder
Anchorage, Alaska 99501

Dear Mr. Wilson:

Unfortunately, this is not good news. The Department of Law informs me that there is no legal way that the Governor can grant you a waiver of examination to become an electrical contractor.

We certainly wish we could help in this matter, but just cannot. If you have any other suggestions or ideas on how we might assist, please let us know and we'll take a look.

Sincerely,

Bill McConkey
Special Assistant
to Governor Hammond

PRESENTATION BY MR. H. D. WILSON

History of my experience with the test.

REQUESTS:

1. Is it possible to take a test that is only in the area of electrical work for an electrical contractor's license?

2. If so, when will the test be given in Anchorage?

RECOMMENDATIONS:

Update all questions on the tests and review them to see if they are job related in my field category.

As an Alaskan with an Alaskan electrical license, I feel that some consideration should be given to me. I am a minority and there are only three other minorities in this field -- to my knowledge. There are so few of us who pass the test. I would recommend that you review your own records and see how many minorities have taken the general construction license test series. Then compare the number of minorities who took the test and passed, to the number of nonminorities who took the test and passed. I believe such a comparison would indicate the need for my final recommendation - A tutoring program must be initiated to assist minorities with general questions which will help us to qualify for the test.

H D Wilson

H. D. Wilson

H. Darren Electric
1412 -C Hyder Street
Anchorage, Alaska 99501
August 9, 1978

Mr. Don Hostak, Director
Dept. of Commerce & Economic Dev.
Div. Of Occupational Licensing
Pouch D
Juneau, Alaska 99811

Dear Mr. Hostak:

In regards to your letter of July 14, 1978 I would like to take the Electrical Administrators Examination, but I would prefer taking the exam when it is next held in Anchorage due to the expense of traveling to Juneau.

Please let me know when the next examination will be held in Anchorage, and what I should do to prepare myself for the examination.

Thank you.

Sincerely

H D Wilson

H.D. Wilson

Ombudsman

Frank Flavin

State of Alaska
360 "K" Street, Room 246
Anchorage, Alaska 99501

(907) 276-4011

November 4, 1977

H. D. Wilson
1317 Hyder
Anchorage, Alaska 99501

Re: Ombudsman Complaint 77-1505
(Closed)

Dear Mr. Wilson:

I have researched the matter that you brought to our attention concerning electrical contractors licenses. Unfortunately, there is currently no waiver of examination under Alaska State statutes. The statute allowing this (A.S. 08.40.160) was repealed by the Legislature this year and did not apply to contractors who had had a license in another state, anyway. There is apparently no way for anyone to get a contractors license in this area without taking an examination.

In regard to the possibility of incorporating, it would be at best, a limited solution, as you would have to hire a licensed electrical administrator before your corporation could get an electrical contractors license. Also, you would have to have a licensed electrical administrator on staff at all times in order to retain your contractors license. You can, however, as I understand it, get a general contractors license, but not a specialty contractors license without first hiring someone who has an electrical administrators license.

I hope this answers any questions you may have had. I am sorry that there is not more that we can do, but, our legislative responsibilities do not allow us to go to court nor can we repeal a statute once enacted by the Legislature.

Thank you very much for your patience in this matter.

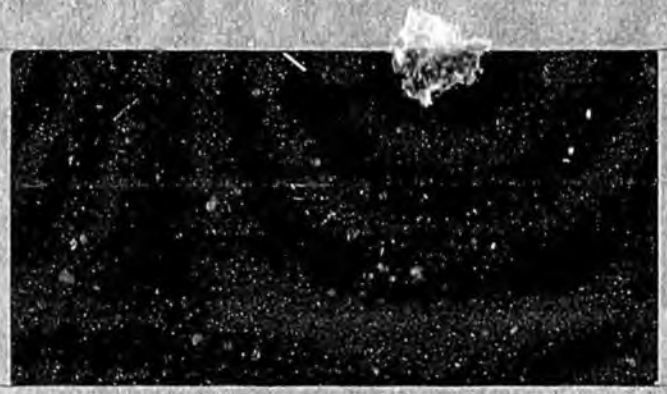
Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

Christian Booster
File Copy

STATE OF ALASKA



DIVISION OF LEGISLATIVE AUDIT
Juneau, Alaska

STATE OF ALASKA

A PERFORMANCE REVIEW OF THE BOARD OF ELECTRICAL EXAMINERS

MAY 2, 1979

Division of Legislative Audit
Juneau, Alaska

A PERFORMANCE REVIEW OF THE BOARD OF ELECTRICAL EXAMINERS

MAY 2, 1979

Commissioner of the Department of Commerce and Economic Development	Charles Webber
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the Board of Electrical Examiners

Chairman	Jerome Trammer
Member	Edward Schenderline
Member	Hugh Macaulay

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

August 3, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
BOARD OF ELECTRICAL EXAMINERS

May 2, 1979

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

31. LH

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), an audit of the Board of Electrical Examiners was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Electrical Examiners should be reestablished. The law currently specifies that this Board will terminate on June 30, 1980, but will continue until June 30, 1981, for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analysing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) interviews with Board members and questionnaires sent to the Board;

(3) interviews with inspection agencies and union officials;

(4) tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) interviews with OL employees;

(6) complaints filed in the last three years with OL, the Ombudsman's Office, Consumer Affairs Agency, and the Equal Employment Opportunity Office;

(7) questionnaires sent to 100 licensed electrical administrators; and

(8) questionnaires sent to 25 applicants for licensure.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor

has it developed and reported performance information required by AS 37.07.090; and

(2) OL has not adequately collected, recorded and maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

The Board of Electrical Examiners was established by the 1960 Session Laws of Alaska, Chapter 158. The three Board members, who are all electrical administrators licensed under this act, are appointed by the Governor with confirmation by the Legislature. Board members serve staggered terms of three years.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). OL provides the Board with licensing and some investigative support, however the enforcement of the electrical administrators statute is primarily the responsibility of the Department of Labor (DOL).

The function of the Board is primarily regulatory, mandated by AS 08.40. Accordingly, the Board has the authority to examine and issue licenses to qualified applicants, establish or amend rules and regulations necessary and desirable to enforce statutes, and to hold hearings to revoke, suspend or deny the license of a person violating the electrical administrator statutes and regulations.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these issues, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the continuation of the Board and the licensing of electrical administrators is not necessary to protect the public's health, safety and welfare (see Recommendation No. 1).

However, if the Legislature deems that the continuation of the Board and the licensing of electrical administrators is in the public's best interest, then several changes need to be implemented in order for the Board to more effectively serve the public.

The Board presently licenses electrical administrators in the communications category. In our opinion, licensing in this category is not necessary to protect the public (see Recommendation No. 2).

The Board has not consistently enforced the licensing criteria as specified by 12 AAC 32. It is the Board's responsibility to determine that applicants are qualified, thereby ensuring the public is adequately protected (see Recommendation No. 3).

The Board needs to establish procedures for conducting, grading, and reviewing examinations to ensure that all examiners are treated equally and fairly (see Recommendation No. 4).

The present Alaska Statutes do not allow licensure by endorsement or reciprocity. Allowing licensure by endorsement and/or reciprocity would help to ensure an adequate supply of electrical administrators to the Alaskan public (see Recommendation No. 5).

Electrical administrators are not required to meet continuing competency standards for license renewal. The public would be better protected if electrical administrators were

required to be familiar with changes in the electrical safety standards (see Recommendation No. 6).

Public members should be added to the Board to assure the representation of the public's interest (see Recommendation No. 7).

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 7 are addressed to the Board of Electrical Examiners. Findings No. 8 and No. 9 are addressed to the Division of Occupational Licensing and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1970".

Recommendation No. 1

The Board of Electrical Examiners should be allowed to terminate on June 30, 1980.

The Board of Electrical Examiners licenses electrical administrators under Alaska Statute 08.40. The purpose of this chapter is to protect the public from the danger of improperly installed electrical wiring. An electrical administrator contracts for the installation and/or repair of electrical wiring, and is responsible for all work done under his license.

To contract electrical work in Alaska you must be, or have in your employ, an electrical administrator. The electrical contractors license is issued under AS 08.18 by the Division of Occupational Licensing. This statute governs construction contractors and provides for the protection of the public from economic loss resulting from negligent or improper work, or breach of contract.

eliminate this duplication

In addition, all electricians are licensed - issued a certificate of fitness - by the Department of Labor (DOL) under AS 18.62. The certificate of fitness issued by DOL assures that an electrician is qualified to perform electrical work in accordance with the minimum electrical safety standards established by AS 18.60.580.[1]

Several municipalities and boroughs (Juneau, Sitka, Anchorage, Palmer, Valdez and Fairbanks) inspect electrical installations to determine if electrical work is done in accordance with the electrical safety standards. The Department of Labor also inspects electrical installations in public

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(1) The 1978 published edition of the "National Electrical Code", approved by the American Standards Association, and the latest published edition of the "National Electrical Safety Code", issued by the United States Department of Commerce, Bureau of Standards, constitute the minimum electrical safety standards of the State.

buildings or places of employment throughout Alaska. We were informed by DOL and city officials, as well as many respondents to our questionnaires, that inspection is the primary safeguard from faulty installation of electrical wiring.

Further, comments from DOL, city officials and respondents to our questionnaires stated that one license is adequate to protect the public, as long as that license ensures that the electrician is qualified to perform electrical work in accordance with the safety standards of AS 18.60.580.

Competition may be unduly restricted by requiring an electrician who has his certificate of fitness issued by DOL, to also have an electrical administrators license before obtaining a contractors license to perform electrical work.

In our opinion, there is no need for the continuation of the Board and the Licensing of electrical administrators. The following measures are adequate to protect the public's health, safety and welfare, and economic well-being:

1. State laws governing electrical safety under DOL (AS 18.60.580-660);

2. certificate of fitness issued by DOL (AS 18.62);

3. State laws governing construction contractors (AS 08.18); and

4. inspections by State and local agencies.

If the Board and the licensing of electrical administrators are terminated, we recommend that AS 08.18.026 requiring an electrical administrators license to contract for electrical work be amended to allow electricians licensed by DOL to obtain an electrical contractors license.

However, if the Board is not terminated and/or licensing of electrical administrators is continued, then the following recommendations should be considered.

Recommendation No. 2

Legislation should be enacted to exempt communications electricians from the electrical administrators statutes.

The Board presently licenses electrical administrators practicing in the communications category under the provisions of 12 AAC 32.051-071 and 12 AAC 32.130-150. However, Alaska Statute 08.40.190 exempts utilities from the requirement of having to employ an electrical administrator. AS 08.40.200(5) defines "utility" as essentially every business or nonbusiness entity that:

(A) Furnishes, by generation, transmission, or distribution, electrical service to the public for compensation.

(B) Furnishes telecommunications service to the public for compensation.

Therefore, many communications electricians who are employed by private or public utilities are exempted by statute from being licensed by this Board.

However, the Board has required that certain utility companies (cable TV, burglar alarm companies) employ an electrical administrator. In the opinion of our legal counsel, Legislative Affairs Agency, Division of Legal Services, cable TV, burglar alarm systems, and similar type companies are exempt since they are utilities and are not required to hire an electrical administrator licensed by the Board. Therefore, the Board should not require cable TV, burglar alarm systems, and similar type companies to hire electrical administrators.

Further, the Department of Labor reported that from a safety to the public standpoint, there was little, if any, need to regulate the communications electricians. This conclusion was reached as a result of hearings and workshops that they conducted prior to repealing 8 AAC 90.050, which requires telecommunications electricians to hold a certificate of fitness issued by DOL.

In our opinion, the licensing of communications electricians is not necessary for the protection of the public.

Recommendation No. 3

The Board should enforce the existing laws for issuing licenses in a uniform and consistent manner.

In our test of licenses issued in the last two years, we noted five applicants did not have a certificate of fitness issued by the Department of Labor as required by 12 AAC 32. Also, one of the five did not meet the experience requirements of 12 AAC 32.

In addition, two applicants were rejected for licensure because the Board felt they did not have adequate documentation of experience. However, the Board has accepted many applications with less information.

In summary, the Board should adopt regulations and/or policies governing review of applications, to include what evidence of experience is necessary so that qualified applicants will not be delayed in obtaining their license.

Recommendation No. 4

The Board should establish procedures for conducting, grading and reviewing examinations.

We observed the November 17, 1978 electrical administrators examination conducted by the Board of Electrical Examiners. During the examination we noted a great deal of noise and confusion occurring because of the different completion times for the various tests.

Also, one portion of the last residential wiring examination was not graded consistently. One individual was given a passing grade of 70%, while another was given a failing grade of 68%, but both had missed five out of fifteen questions. The examination had been graded by different people using a different point value per question, and different methods of scoring.

In addition, two applicants, who had failed an examination, were licensed after their examinations were reviewed and regraded. There was no indication of why their scores were changed from failing to passing, nor what questions had been reviewed. Also, if an examinee successfully challenges a question because it is poorly worded or irrelevant, the Board should consider that questions impact on all who took that examination.

In summary, we recommend the Board establish procedures that will minimize confusion and distractions during the examinations, provide consistent and fair grading of all examinations, and provide control of examination review and regrading to include an evaluation of questions that may be ambiguous or irrelevant.

Recommendation No. 5

The Board should seek legislation to allow licensure by endorsement and/or reciprocity.

The present Alaska Statutes do not allow electrical administrators to be licensed by endorsement and/or reciprocity.

Under endorsement, an applicant who is licensed in another state, and otherwise meets the licensing requirements of the electrical administrators statue, would be eligible for licensure in Alaska without further examination. Reciprocity is similar to endorsement except that it requires an agreement between the two states.

Legislation to allow licensure by endorsement and/or reciprocity would help to ensure an adequate supply of electrical administrators to the Alaskan public.

Recommendation No. 6

Legislation should be introduced which will require electrical administrators to meet continuing competency standards.

To obtain an initial electrical administrators license in Alaska, an applicant must pass an examination to determine his knowledge of the electrical codes and of electrical installations and wiring. However, to renew his license only requires the payment of a biennial license renewal fee.

Once an individual is granted a license to practice an occupation, he has an implied obligation to maintain that minimum competence. Electrical administrators should be required to meet continuing competency standards to assure that they are familiar with changes in the electrical safety standards.

Recommendation No. 7

Legislation should be introduced which will require public members on the board.

The Board regulates electrical administrators for the purpose of public protection. The Board is presently composed of only three electrical administrators licensed by the Board. The Board has requested the Department of Commerce and Economic Development to pursue the possibilities of adding public members to the Board.

We agree with the Board, that the public should have its views represented on the Board since the Board's purpose is to protect the public. The State of California claims that the public's confidence and well-being have been enhanced by their 1977 Public Member Act, which required a majority of public members on all boards except health related and accounting boards.

Recommendation No. 3

The Board should establish formal goals, objectives and quantifiable measures which should be included in the OL's budget document.

Annual Report.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL establishes its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured, neither the Governor's Office nor the Legislature can evaluate the Board's performance.

Recommendation No. 9

The Division of Occupational Licensing should collect, record and maintain for five year periods files and statistics of licensing and testing applicants and related workload of the licensing examiner.

The Division needs relevant facts and statistics for evaluating the performance of its personnel and Board activity. Many past statistics have not been collected and maintained, such as:

1. Number of electrical administrators licensed in the past;

2. number of applicants failing the examination;

3. number of applicants denied the chance to take the examination due to lack of qualifications;

4. correspondence workload of license examiners; and

5. number of persons requesting applications.

It is to the advantage of the Division to keep these records in order to support its budget request, evaluate its personnel and keep the Board informed as to its progress. Also, feedback from the Board and the public should be encouraged so as to determine whether staff performance is adequate.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of Board activities relates to the public need factors defined in the "Sunset" law. These analyses are not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. The Board has not enforced the existing laws for issuing licenses in a uniform and consistent manner (see Recommendation No. 3).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. The Division of Occupational Licensing (OL) has not maintained updated records and statistics for Board use (see Recommendation No. 9 and OL Performance Audit Report).

2. The OL investigative section has not provided adequate investigative support necessary for the enforcement of the law (see OL Performance Audit Report).

3. Occupational Licensing should establish examination and/or reexamination fees for the electrical administrators examination.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. The Board has recommended that public members be added to the Board (see Recommendation No. 7).

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. We found no evidence that the Board has made a special effort to encourage interested

persons to report to it regarding the effect of its regulations and decisions.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. To encourage public participation, the Board advertises upcoming Board meetings, examinations, and proposed regulations in newspapers located in the cities of Juneau, Ketchikan, Anchorage and Fairbanks.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. We noted one complaint filed with the Office of the Ombudsman against the Board. The Board had failed to respond to an inquiry in a timely manner. The complaint was resolved by the Ombudsman's office.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. From March 1973 to October 1978, the number of licensed electrical administrators has increased from 164 to 285.

2. Over the past four years (1975-1978) the failure rate on the examination has averaged 79%.

3. The present Alaska statutes do not allow licensure by endorsement and/or reciprocity (see Recommendation No. 5).

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. Applications for licensure require information such as an applicants birth date, physical characteristics, and picture. These questions are of a potential discriminatory nature and should be eliminated uless they are based upon a bonafide occupational qualification.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

1. Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

BOARD OF ELECTRICAL EXAMINERS
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Average Revenue (Note 1 and Schedule 1)	$21,898
Expenditures (Note 2)	26,547
Excess of Expenditures over Average Revenues	$4,649

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Initial License Fee	$100	With application
License Renewal Fee	$100	Biennially
Late Renewal Fee (additional)	$ 10	If over 60 days after renewal date
Reinstatement Fee (For Lapsed license)	$ 25	With reinstatement notice (Fee is for each year license was lapsed)

Note 1

A significant portion of revenues are composed of license renewal fees. The renewal date is December 31 of the even numbered year which causes revenues to be unequal from year to year. Therefore, we took an average of the revenues collected in Fiscal Year 1977 and 1978 in order to obtain a representative amount of collected revenue.

Note 2

Expenditures include those made by Board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board and OL.

APPENDIX B

ADMINISTRATIVE STATISTICS

Licensing Statistics

Total as of October 1978	285
Total as of March 1973	164
Increase over 5 1/2 years	121

Examination Statistics	1978	1977	1976[1]	1975
Applicants Tested	242	189	67	113
Number of Fails	188	149	59	88
Number of Passes	54	40	8	25
Percentage Pass Rate	22.3%	21.2%	11.9%	22.1%

Passing Rate for 4 year period: 20.8%

(1) For 1976, statistics were available for only one of the two examinations given.

APPENDIX C

QUESTIONNAIRE SENT TO BOARD MEMBERS

1. What do you believe to be the goals and objectives of the Board?

Description	*Number of Board Members' Responses (See Note 1 & 2)*
To protect the public by assuring that:	
a) there are qualified electricians and contractors; and	*2*
b) electrical installations conform to the electrical safety codes.	*2*
To provide adequate direction for the electrical industry in Alaska.	*1*

2. Do you believe that the Board is achieving its goals as you perceive them in question number 1? How does the Board measure its progress in attaining its goals and objectives?

Description	*Number of Board Members' Responses*
No - only one state electrical inspector.	*1*
No - Board has no authority to enforce electrical safety standards, but effectiveness of assuring qualified contractors is measured by historical pass/fail ratio of examination.	*1*
Yes - by requiring electricians to pass the Electrical Administrators' examination	*1*

3. Do you believe there is a duplication of effort by the Board of Electrical Examiners and the Department of Labor (they both require experience in the field and a knowledge of the National Electrical Code as prerequisites to licensure)?

3. (Cont'd.)

Description	Number of Board Members' Responses (See Note 1 & 2)
No - Department of Labor assures that electricians are qualified to perform electrical work, the Board assures the supervisor is qualified.	2
No response.	1

4. Is the Staff from the Department of Commerce and Economic Development and/or other departments adequate to perform and enforce all laws and regulations relating to the Board? What staff support services are provided adequately? Inadequately? Are investigations performed adequately/ inadequately?

Description	Number of Board Members' Responses
Enforcement & investigations are inadequate.	3
Attorney General office support is inadequate.	1

5. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restrictive and/or inadequate to provide the Board with the responsibility and power to properly govern the purpose and activities of the Board? Please list and explain.

Description	Number of Board Members' Responses
Up to the Attorney General's office to tell us if regulations are vague, obsolete, or unduly restrictive.	1
Do not know, A.G.'s office has not responded to our questions.	1
Only one central body should be provided the authority and responsibility to prevent public harm from improper electrical installations.	1

6. What evidence exists demonstrating the the absence of regulations governing electrical administrators and/or the Board would be detrimental to the public's best interest?

Description	Number of Board Members' Responses (See Note 1 & 2)
None.	2
If no law, then anyone could perform electrical work.	1
It can be argued that the Department of Labor's certificate of fitness precludes the necessity for a contractors Board, but these two programs are complementary.	1

7. What changes could be made to the Board which would improve its service to the electrical trade and/or the public?

Description	Number of Board Members' Responses
Continuing education of the Board members.	1
Give Board authority to issue cease and desist order.	1
Add two members to the Board who are associated with the electrical industry, but have no financial interest in the electrical administration field.	1
Revise license and examination fee structure.	1
Provide Board with authority it requires to meet its goals.	1

8. Presently, the Board is composed of 3 electrical administrators. Do you believe adding public members would tend to make the Board:

	Number of Board Members' Responses
A. More receptive to public need.	0
B. Less receptive to public need.	0
C. No change.	3

9. Do you believe there is a shortage of electrical administrators in Alaska? If yes, in what areas?

Description	*Number of Board Members' Responses (See Note 1 & 2*
No	*3*

10. If you answered yes to number 9, what steps are or should the Board take to correct the shortage?

_____

_____

_____

11. Are the questions on the examinations pertinent and relevant? Please mention any studies and/or other support backing your opinion.

Description	*Number of Board Members' Responses*
Yes.	*3*
Would like to see how other electrical boards handle examinations and pick the best method from among them.	*1*
Have compared Alaska's examination to Washington's and Oregon's and they contain comparable questions.	*1*
Would like to add oral examination.	*1*

12. Has the Board recommended any statutory changes which are generally in the public's best interest?

Description	*Number of Board Members' Responses*
Attorney General recommended elimination of the business section of the test.	*1*
Yes, see Chapter 53, Session Laws of Alaska, 1977, and also register 63, 1977 for revision of 12 AAC 32. Also see House Bill No. 705, 1978, which was passed out of House Commerce but was not scheduled through House Rules.	*1*
No response.	*1*

13. Do you think continuing education should be required for license renewal?

Description	*Number of Board Members' Responses (See Note 1 & 2)*
Yes, 1978 code had over 1,200 changes and it is important that licensees be aware of the changes.	*1*
No, being in business is adequate to satisfy the learning process.	*2*

Note 1

Number of Board members sent questionnaires. 3

Number of responses. 3

Note 2

Some Board members responded to each question with several answers. Therefore, total responses for each question may exceed the number of Board members who responded.

APPENDIX D

QUESTIONNAIRE SENT TO ELECTRICAL ADMINISTRATORS

		Number of Responses (See Note 1)		
		Yes	No	No Responses
1.	Do you feel that the absence of the licensing and regulation of electrical administrators would significantly harm, affect, or endanger the public's safety and welfare?	38	1	0
2.	Do you feel that you are able to do a better job because of the requirements you have had to meet to be licensed?	33	6	0
3.	A) Do you feel that there are other methods of regulation which would adequately protect the public?	20	18	1
	B) If yes, which of the following would be appropriate?			
	1) Certificate of Fitness, issued by the Department of Labor.	8	5	26
	2) Inspections by State electrical inspectors.	18	1	20
	3) Inspections by local electrical inspectors.	20	0	19
	4) Specialty contractors license issued by the Division of Occupational Licensing, Department of Commerce and Economic Development.	10	6	23

4. What do you feel is the purpose of the Board of Electrical Examiners?

Responses	Number of Responses
To protect the public by assuring qualified electrical administrators, and by regulating the industry.	35

4. (Cont'd.)

	Number of Responses (See Note 1)
No purpose	*2*
Restrict competition	*1*
No Comment.	*1*

		Number of Responses		
		Yes	No	No Response
5.	Do you believe the Board has operated in the public's best interest?	*30*	*8*	*1*
6.	Are there any statutes or regulations that you believe are obsolete, vague, unduly restrictive?	*14*	*1*	*4*
7.	Do you believe that the examination given by the Board is a fair and reasonable test of an electriciar's knowledge and ability to be an electrical administrator?	*29*	*9*	*3*
8.	Do you believe continuing education should be required for license renewal?	*14*	*22*	*3*
9.	A) Have you ever filed a complaint with the Board or The Division of Occupational Licensing?	*5*	*33*	*1*
	B) Did they investigate and notify you of their findings in a timely manner?	*2*	*5*	*32*
10.	Are you aware that all Board meetings and regulations hearings are open to the public?	*28*	*11*	*0*

11. What improvements and/or modifications do you feel are needed for this examining Board, its regulations and/or the law which created the Board?

Responses included in the report where appropriate.

	Number of Responses (See Note 1)		
	Yes	No	No Response
12. Are you aware of any discriminatory practices involving licensing or investigations of the Board?	5	31	3

13. Any additional comments:

Responses included in the report where appropriate.

Note 1

Number of licensed electrical administrators sent questionnaires.	100
Number of responses.	39

APPENDIX E

QUESTIONNAIRE SENT TO APPLICANTS FOR LICENSURE

		Number of Responses (See Note 1)		
		Yes	No	No Response
1.	Do you feel that the absence of the licensing and regulation of electrical administrators would significantly harm, affect, or endanger the public's safety and welfare?	8	4	0
2.	Do you feel that you are able to do a better job because of the requirements you have had to meet to be licensed?	5	7	0
3. A)	Do you feel that there are other methods of regulation which would adequately protect the public?	9	1	2
B)	If yes, which of the following would be appropriate?			
1)	Certificate of Fitness, issued by the Department of Labor.	4	1	7
2)	Inspections by State electrical inspectors.	7	1	4
3)	Inspections by local electrical inspectors.	7	1	4
4)	Specialty contractors license issued by the Division of Occupational Licensing, Department of Commerce and Economic Development.	4	0	8

4. What do you feel is the purpose of the Board of Electrical Examiners?

Responses	Number of Responses
To assure qualified electrical administrators.	6

4. (Cont'd.)

	Number of Responses (See Note 1)
To control or limit competition.	4
Do not know.	2

	Number of Responses		
	Yes	No	No Response
5. Do you believe the Board has operated in the public's best interest?	6	5	1
6. Are there any statutes or regulations that you believe are obsolete, vague, unduly restrictive?	6	4	2
7. Do you believe that the examination given by the Board is a fair and reasonable test of an electrician's knowledge and ability to be an electrical administrator?	3	7	2
8. Do you believe continuing education should be required for license renewal?	3	6	3
9. A) Have you ever filed a complaint with the Board or The Division of Occupational Licensing?	3	8	1
B) Did they investigate and notify you of their findings in a timely manner?	3	2	7
10. Are you aware that all Board meetings and regulations hearings are open to the public?	8	2	2

11. What improvements and/or modifications do you feel are needed for this examining Board, its regulations and/or the law which created the Board?

Responses included in the report where appropriate.

	Number of Responses (See Note 1)		
	Yes	No	No Responses
12. Are you aware of any discriminatory practices involving licensing or investigations of the Board?	0	8	4

13. Any additional comments:

Responses included in the report where appropriate.

Note 1

Number of unlicensed applicants sent questionnaires.	25
Number of responses.	12

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811

August 29, 1979

Mr. Gerald Wilkerson, CPA
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to your preliminary report entitled "A Performance Review of the Board of Electrical Examiners" as of May 2, 1979.

While we are in general agreement with your findings and are endeavoring to implement your recommendations No. 1 through 9 viable alternatives thereto, we nevertheless reserve the right to make additional findings and conclusions which may affect the continued existence of this board.

A full presentation of your report, interim responses and subsequent evaluations of data by board members and others will be presented at the "Sunset" hearings.

Sincerely,

Charles R. Webber
Commissioner

CRW/kkk3/5

Testimony needed

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

PLEASE REPLY TO:

1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501

Telephone: 278-1581/278-1582

November 13, 1979

Michael L. Frith
8421 Little Dipper
Anchorage, AK 99504

Dear Mr. Frith:

Thank you for your testimony regarding the Board of Electrical Examiners, which you gave before the Senate Commerce Committee on November 7, 1979.

Due to mechanical problems with the teleconference recording system, we were unable to record your testimony for the Committee's records. The system had been checked out prior to starting the hearings and was in operating condition but when the tapes were checked prior to the afternoon session, it was discovered that only a loud hum had been recorded. If possible, therefore, the Committee would appreciate it if you could submit either a copy of your testimony, if you were speaking from prepared text, or a summation of your views regarding this matter in order that your feelings might be made a part of the Committee's record.

We apologize for any inconvenience and we look forward to receiving your written testimony and/or exhibits concerning the Board of Electrical Examiners. We would like to receive this testimony as soon as possible and should we be able to assist you, please do not hesitate to contact our offices.

Sincerely,

Christian Basler

Christian Basler
Administrative Assistant
Senate Commerce Committee

H. D. WILSON
1317 HYDER
ANCHORAGE, ALASKA 99501
907/337-211?

June 30, 1977

TO WHOM IT MAY CONCERN:

This personal affidavit is true to the best of my knowledge and is presented as a true vesture of my capabilities warranting a working Administrators Contractors Licenses for inside and outside electrical wiring and communication work.

My knowledge and experience in the field total thrity-two years . Working in conjunction with and under the supervision of Merideth E. Young, Contractor in Chicago, Illinois, I have completed basic training, graduating in the field of electricity, majoring in all phases of commercial, industrial and residential wiring.

While employed by New York Shipbuilding Company of Camden, New Jersey and Sunship Building Dry dock of Chester, Pennsylvania, I performed both inside and outside wiring. Such work included generators, motors, transformers, panels, circuits, wiring, testing, and radar signaling, installing and testing. At the same time, I operated my own business, H.D. Wilson Electric.

In 1968, new Pennsylvania legislation required licensing of electrical contractors. At that time, I obtained an electrical contractors license which I have held until moving to Alaska in late 1976. H.D. Wilson Electric has operated for a total of 27 years. We have completed contracts for the City of Philadelphia Water Department, Park District, Recreation Department, School District and the Phildelphia Naval Yard, as well as numerous other contracts. A summary of contract abstracts is attached for your review and consideration.

If there is any additional information you desire, I would be most happy to provide it.

Sincerely,

H D Wilson

H. D. Wilson

GPW

H. D. WILSON

1317 HYDER

ANCHORAGE, ALASKA 99501

907/337-2118

May 12, 1977

The Honorable Mike Gravel
United States Senate
Washington, D. C. 20510

Dear Senator Gravel:

This letter comes to your attention to apprise you of a situation I am now confronted with which leads to my frustration, and represents a challenge to my livelihood.

The problem I am confronted with is that I am a licensed, bonded and certified Electrical Contractor, licensed in the State of Pennsylvania. I have been providing professional services in that field for over 30 years. I am now residing in the State of Alaska, and find it impossible to practice my profession because Alaska has no reciprocity in this field with the State of Pennsylvania, and because of this, I am forced to take an examination for said license.

Should I successfully satisfy the examination requirements, I would be one of a few minorities, and more specifically, one of three Blacks, who have done so in the State of Alaska. However, at this point in my life, this examination poses what I feel is an unnecessary hardship. Therefore, I would want you to intercede.

Under Section 08.40.160 of the Alaska Statutes Waiver of Examination, I feel I am qualified for a waiver of examination because of the above. Please advise me of efforts your office can make to improve opportunities for minority business participation.

I look forward to your reply.

Sincerely,

H. D. Wilson

H. D. Wilson

cc: Glen Campbell
State EEO Officer

Alaska Minority Business Assistance Center

United States Senate

WASHINGTON, D.C. 20510

June 6, 1977

Mr. H. D. Wilson
1317 Hyder
Anchorage, Alaska 99501

Dear Mr. Wilson:

Thank you for your letter asking for assistance in regard to the practice of your profession in the State of Alaska.

Since licensing is a state matter, I have referred your letter to the Commissioner of the Department of Labor. Enclosed you will find a copy of my letter to him. He will be able to advise you on a further course of action.

Please feel free to contact me if you need any further assistance.

Warm regards.

Sincerely,

Mike Gravel

Enclosure

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

October 5, 1978

Mr. H. D. Wilson
1412-C Hyder Street
Anchorage, Alaska 99501

Dear Mr. Wilson:

The Board of Electrical Examiners has confirmed the following dates, times and places:

ACTIVITY:	DATE:	TIME:	PLACE:
Public hearing regarding proposed changes in regulations	11/15/78	9:00 a.m.-Noon	Grand Jury-Room 407 Alaska Court Building 303 K Street Anchorage
Reviews of August exam	11/15/78	1:30 p.m.	YMCA 6th and F Streets Anchorage
Board meeting	11/16/78	8:30 a.m.	YMCA 6th and F Streets Anchorage
Electrical Examination	11/17/78	8:30 a.m.	YMCA 6th and F Streets Anchorage

Testimony from the public, both written and verbal, will be accepted at the public hearing. Written testimony regarding the proposed changes in the regulations should be submitted to the Department of Commerce and Economic Development, Pouch D, Juneau, Alaska 99811, postmarked no later than midnight, November 9, 1978.

The Board of Electrical Examiners will hold a regular meeting for the purpose of conducting its usual business and possible adoption of regulatory changes.

Those who took the examination for the electrial administrators' license in August may review their exam results with the board. Reviews will be taken in alphabetical order.

Mr Slade
McCalley Juneau

08-H8LH

Those persons whose applications have been approved and have received notification of approval may sit for the electrical exam. Those who have taken the exam before may retake portions failed, provided they have notified the licensing examiner in advance.

If you have any questions, please feel free to contact this office.

Cordially,

Sharon S. Hammock

Sharon S. Hammock
Licensing Examiner

STATE OF ALASKA

EQUAL EMPLOYMENT OPPORTUNITY OFFICE
DEPARTMENT OF ADMINISTRATION

JAY S. HAMMOND, GOVERNOR

Pouch CE
~~ROUTE~~ JUNEAU 99811
PHONE: 465-3570

May 19, 1977

Mr. H.D. Wilson
1317 Hyder
Anchorage, Alaska 99501

Dear Mr. Wilson:

We are writing to acknowledge that we received a copy of your letter that you sent to Senator Mike Gravel dated May 12,1977.

We hope to have some report for you by May 26, 1977.

Keep the faith and don't give up!

Sincerely,

Glen Campbell
EEO Director

02-001B

STATE
of ALASKA

MEMORANDUM

TO: Robert Gates
Deputy Commissioner

DATE: May 11, 1978

FROM: Glen Campbell
EEO Director

SUBJECT: H.D. Wilson, Minority Electrical Contractor

We would like to make you aware of a problem that Mr. H.D. Wilson a minority electrical contractor is encountering in regards to obtaining his license for the State of Alaska (please see attached correspondence).

As indicated, Mr. Wilson requested a waiver of examination due to his qualifications and extensive experience in his field.

Although this matter does not fall within the particular jurisdiction of our office, we are very concerned about it from a humanitarian viewpoint as well as the fact that the present posture of minority electrical contractors within the State of Alaska is extremely low. At present there are only two minority electrical contractors that obtained their license in the State of Alaska, and they did not obtain these licenses through the examination process, but obtained them under the Grandfathers clause. Perhaps the requirements create disparity for minority electrical contractors and this matter should be looked into.

Any assistance that you can offer in regards to this matter would be greatly appreciated.

Thank you,

JAY S. HAMMOND
GOVERNOR

PHONE
907-272-1478

STATE OF ALASKA
OFFICE OF THE GOVERNOR
ANCHORAGE

December 22, 1977

Mr. H. D. Wilson
1317 Hyder
Anchorage, Alaska 99501

Dear Mr. Wilson:

Unfortunately, this is not good news. The Department of Law informs me that there is no legal way that the Governor can grant you a waiver of examination to become an electrical contractor.

We certainly wish we could help in this matter, but just cannot. If you have any other suggestions or ideas on how we might assist, please let us know and we'll take a look.

Sincerely,

Bill McConkey
Special Assistant
to Governor Hammond

PRESENTATION BY MR. H. D. WILSON

History of my experience with the test.

REQUESTS:

1. Is it possible to take a test that is only in the area of electrical work for an electrical contractor's license?

2. If so, when will the test be given in Anchorage?

RECOMMENDATIONS:

Update all questions on the tests and review them to see if they are job related in my field category.

As an Alaskan with an Alaskan electrical license, I feel that some consideration should be given to me. I am a minority and there are only three other minorities in this field -- to my knowledge. There are so few of us who pass the test. I would recommend that you review your own records and see how many minorities have taken the general construction license test series. Then compare the number of minorities who took the test and passed, to the number of nonminorities who took the test and passed. I believe such a comparison would indicate the need for my final recommendation - A tutoring program must be initiated to assist minorities with general questions which will help us to qualify for the test.

H D Wilson

H. D. Wilson

November 15, 1979

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

July 14, 1978

Mr. H. D. Wilson
H. Darren Electric
1412-C Hyder Street
Anchorage, Alaska 99501

Dear Mr. Wilson:

It has been brought to my attention by other State agencies you are displeased with the Board of Electrical Administrators. I have reviewed your file and find that we have not heard from you since June 30, 1977. You have never stated you would like to retake the examination. Upon passing the electrical examination and board approval of your application, a license would be issued.

The Electrical Administrators Examination is in the process of being rewritten and hopefully, a new exam will be used for the August test. This test will be held August 25, 1978, 8:30 a.m. in the Lumberjack Room of the Hilton Hotel, Juneau, Alaska. If you wish to sit for this examination, you must notify us in writing, as soon as possible.

If you have any questions, or if I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Don Hostak

Don Hostak
Director

DH/cw5/6

08.HBLH

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

July 14, 1978

Mr. H. D. Wilson
H. Darren Electric
1412-C Hyder Street
Anchorage, Alaska 99501

Dear Mr. Wilson:

It has been brought to my attention by other State agencies you are displeased with the Board of Electrical Administrators. I have reviewed your file and find that we have not heard from you since June 30, 1977. You have never stated you would like to retake the examination. Upon passing the electrical examination and board approval of your application, a license would be issued.

The Electrical Administrators Examination is in the process of being rewritten and hopefully, a new exam will be used for the August test. This test will be held August 25, 1978, 8:30 a.m. in the Lumberjack Room of the Hilton Hotel, Juneau, Alaska. If you wish to sit for this examination, you must notify us in writing, as soon as possible.

If you have any questions, or if I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Don Hostak

Don Hostak
Director

DH/cw5/6

H. Darren Electric
1412 -C Hyder Street
Anchorage, Alaska 99501
August 9, 1978

Mr. Don Hostak, Director
Dept. of Commerce & Economic Dev.
Div. Of Occupational Licensing
Pouch D
Juneau, Alaska 99811

Dear Mr. Hostak:

In regards to your letter of July 14, 1978 I would like to take the Electrical Administrators Examination, but I would prefer taking the exam when it is next held in Anchorage due to the expense of traveling to Juneau.

Please let me know when the next examination will be held in Anchorage, and what I should do to prepare myself for the examination.

Thank you.

Sincerely

H.D. Wilson

Ombudsman

Frank Flavin

State of Alaska
360 "K" Street, Room 246
Anchorage, Alaska 99501

(907) 276-4011

November 4, 1977

H. D. Wilson
1317 Hyder
Anchorage, Alaska 99501

Re: Ombudsman Complaint 77-1505
(Closed)

Dear Mr. Wilson:

I have researched the matter tnat you brought to our attention concerning electrical contractors licenses. Unfortunately, there is currently no waiver of examination under Alaska State statutes. The statute allowing this (A.S. 08.40.160) was repealed by the Legislature this year and did not apply to contractors who had had a license in another state, anyway. There is apparently no way for anyone to get a contractors license in this area without taking an examination.

In regard to the possibility of incorporating, it would be at best, a limited solution, as you would have to hire a licensed electrical administrator before your corporation could get an electrical contractors license. Also, you would have to have a licensed electrical administrator on staff at all times in order to retain your contractors license. You can, however, as I understand it, get a general contractors license, but not a specialty contractors license without first hiring someone who has an electrical administrators license.

I hope this answers any questions you may have had. I am sorry that there is not more that we can do, but, our legislative responsibilities do not allow us to go to court nor can we repeal a statute once enacted by the Legislature.

Thank you very much for your patience in this matter.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

FF:gpw

P.O. Box 80846
Fairbanks, AK. 99708
(907) 456-7751

June 14, 1979

The Honorable Jay S. Hammond
Governor, State Of Alaska
State Capitol
Juneau, Alaska 99811

Dear Sir:

The board of Electrical Examiners, in compliance with Alaska Statute 37.07.050 and 37.07.090, respectfully submits this annual report.

The contents of this report reflect the activities of this board for the past year together with many of our concerns for the future. We believe our activities are responsive to the the public need and we welcome any communication you would care to direct to us.

Very truly yours,

J. Trammer, Chairman
Board of Electrical Examiners

MEMBERS OF THE BOARD OF ELECTRICAL EXAMINERS

Mr. Hugh Nacaulay
P.O. Box 195
Juneau, Alaska 99801
Area: Southeastern (Juneau)

Mr. Edward Schenderline
540 West Potter Drive
Anchorage, Alaska 99502
Area: Southcentral (Anchorage)

Mr. Jerome Trammer
16 Glacier #18
Fairbanks, Alaska 99701
Area: Northcentral (Fairbanks)

Licensing Examiner
Ms. Nancy Ferguson
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811

INDEX TO THE

BOARD OF ELECTRICAL EXAMINERS

ANNUAL REPORT FOR 1978

Overview of board activities	Section 1
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Legislative Proposals	Exhibit A
Summary of Examination results	Exhibit B
Financial Information	Exhibit C

SEC.
1

SECTION 1

BOARD OF ELECTRICAL EXAMINERS ACTIVITY

The safety and well being of the people of this state continue to be paramount in formulating this board's policies and procedures. 1978 saw both an increase in the number of licensed administrators within our state and the number of citizen complaints to both the departments of Commerce and Labor regarding unlicensed activity and improperly installed electrical systems.

Prior to July 1,1978, the Department of Commerce license violations section had 180 open electrical administrator cases. The department was able to obtain voluntary compliance in 71 of these; 28 more resulted in cease and desist orders, 3 licenses were revoked and 2 misdemeanor convictions were obtained. Twenty-two additional complaints were received after July 1; 11 of these had been processed by the end of the year, resulting in 7 cases of voluntary compliance and the issuance of 4 cease and desist orders.

The board held two public hearings during 1978. These hearings dealt with further sub-dividing the classes of licensure to more properly encompass our growing telecommunications industry and clarifiying our administrative regulations. These hearings resulted in the promulgation of new regulations which became effective in 1979 under 12.AAC.32.

In 1977, and again in 1978, the board unsuccessfully sponsored ammenditory legislation designed to increase our awareness of the public need and to provide us with the authority to do the job assigned us by the legislature. Our detailed legislative proposals are attached to this report as "Exhibit A".

The Board of Electrical Examiners met 4 times in 1978. Two meetings were held in Anchorage,1 in Juneau and 1 in Fairbanks. In additon to the public hearings held at these meetings, the board administered the licensing examination to qualified individuals. A summary of results of these examinations is attached to this report as "Exhibit B".

The operations of the board during 1978 continued to generate a cash surplus. Our income and expense analysis is detailed in "Exhibit C".

SEC.
2

SECTION 2

A DISSERTATION ON LICENSING

"Licensing is a process by which an agency of government grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the minimal degree of competency required to ensure that the public health, safety and welfare will be reasonably well protected".[1]

"The purpose of this chapter is to protect the safety of people and property in the state from the danger of improperly installed electrical wiring and equipment, by providing a procedure to assure;

(1) The public that persons responsible for making electrical installations in this state are qualified; and

(2) That a sufficient number of persons are so qualified".[2]

From its inception in 1960 until the mid 1970's, the Board of Electrical Examiners functioned, as did most state regulatory agencies, with only minimal guidance and no clear legislative intent to focus upon. In 1977, using the vehicle of board sponsored legislation submitted through the Governor's office, the Alaska State Legislature passed a number of ammendments to AS.08.40.

1. Occupational licensing: Questions a Legislator Should Ask; Shimberg & Roederer, 1978.

2. Alaska Statute AS08,40.005 (Sec.2, Ch. 53, SLA 1977)

Included in these revisions was the statement of legislative intent excerpted above. It is readily apparant that the average citizen of this state is incapable of protecting himself from the hazzards created by improperly installed electrical wiring, because he does not recognize, (by lack of specialized education and experience,) the difference between right and wrong. Everyone knows (but generally ignores,) that electricity can cause fires; that electricity can injure, maim and kill; and that improperly installed wiring is likely to result in loss of comfort, property or worse. How can the average citizen of our state be expected to recognize the difference?

"The purpose of regulation is to project the public, not the economic interest of the occupational group".[3]

The electrical contracting industry in our state is divided (along traditional lines,) into two major groups; Union and Non-Union with a fairly high percentage of "Independant" contractors operating alone. There is no single cohesive force (except the State Regulatory Agency) that is capable of drawing the diverse factions of the industry together to where self regulation would become a viable alternative to our present system.

[3]Occupational licensing: Questions a Legislator Should Ask; Shimberg & Roederer, 1978.

It is the continuing objective of this board to assure the public that an adequate number of qualified practitioners are available to make safe electrical installations within the basic nature of the competitive process. To this end, we have formulated the following goals:

(1) To continue to refine our professional and vocational regulations so that;

a. All requirments and evaluation procedures for entry into this occupation are clearly defined.

b. All complaints are investigated and resolved in a manner which is satisfactory and credible to the public.

c. All disciplinary proceedings against licencees are conducted in a fair and expeditious manner.

d. All applicants and licensees are treated equitably, fairly and equally.

e. All persons coming into contact with this board are guaranteed due process.

(2) To continue to offer proposals to our state legislature in order to;

a. Further define the legislative intent of our statute

b. Provide the board with the authorities necessary to accomplish its responsibilities.

c. Coordinate and consolidate the various existing statutes regulating our industry into a cohesive, intelligible unit.

Exhibit A

EXHIBIT "A"

* Section 1.AS 08.40.010 is ammended to read:

Sec 08.40.010. Creation and membership of the board. There is hereby created a board of Electrical Examiners consisting of three members who are licensed electrical administrators and two members drawn from the public at large.

Rationale: Since regulation affects the vital interests of consumers, it is incumbent upon the legislature to develop a forum upon which public views can be heard.

* Section 2.AS 08.40.030 is ammended to read:

Sec 08.40.030 Chairman of the board. The board shall elect one of its members as chairman. The chairman shall be a licensed electrical administrator.

Rationale: The Board rejects the philosophy that only members of our occupational group are qualified to make judgements about entrance standards, examination content, or disciplinary matters. We do feel, however, that the technical nature of our industry requires the presence of a knowledgeable, technically qualified chair person to represent the Board on a day to day basis.

* Section 3.AS 08.40.040 is ammended to read:

Sec 08.40.040 Board meetings. The Board shall hold a regular quarterly (annual) meeting. The Board may hold special meetings at the call of the

Chairman with prior approval of the Governor. Three (two) members constitute a quarom.

Rationale: The board regularly holds 4 meetings a year as this is the minimum necessary to satisfy the public need. The quorum limitation must be increased to accomodate the public members requested in Section 1, above.

* Section 4.AS 08.40.090

Sec 08.40.090 License required (A) No person may act as an electrical admistrator in the state without a license issued by the board.

1. No person may submit a bid or offer to perform electrical work in the state without a license issued by the board.

(B) A person licensed under this chapter may perform or offer to perform electrical work only in a catagory for which he is licensed.

Rationale: A person who responds to an invitation for bids is proporting to be engaged in the business of electrical contracting unless, as an unlicensed practitioner, he acknowledges his inability to perform the work until he is licensed. Without this contingency, an offer made or contract entered into is, in effect, an agreement to commit a crime and is in violation of the public policy of the state.

* Section 5.AS 08.40.120 is ammended to read:

Sec 08.40.120 Examination of applicant. Each applicant shall be examined to determine his knowledge of electrical installations and wiring, familiarity with the regulations contained in the National Electrical Code and the National Electrical Safety Code, as (approved by the American National Standards Association) adopted and ammended by title 18,

article 6 of the Alaska Health and Safety Code, other appropriate installation and safety regulations (approved by the American Standards Assoc.), and his personal skill and ability.

Rationale: The legislature of the state of Alaska enacts statutory regulations dealing with occupational health and safety. These statutes are not approved by the American Standards Association and as a consequence of the wording of this section, applicants can not be examined on their content. (Yet) knowledge of these (and other similar) requirements will directly affect the quality and safety of contractor's work.

* Section 6. AS 08.40.135 is ammended to read:

Sec 08.40.135 Renewal and Reinstatement.

(a) A license issued under this chapter, unless revoked or suspended, is non-transferrable and may be renewed biennially on a date set by the department without examination, upon submission of adequate proof of activity to the board and by appropriate application.

(b) A lapsed license may be reinstated by payment of all unpaid renewal fees and a penalty fee $25.00 for each year the license has been lapsed, unless the license has been lapsed for more than two (three) years (and the Board has reason to believe that it may be necessary to require) in which case the licensee will be required to take and pass the examination given under section 120 of this chapter.

(c) A licensee who fails to submit adequate proof of activity to the board for more than two consecutive years will be required to take and pass the examination given under section 120 of this chapter to renew his license.

Rationale: At present most inactive practitioners can preserve their right to practice by simply paying the renewal fee. By keeping their licenses in force, they are able to resume practice at any time even though they may have failed to retain their competence.

* Section 7. AS 08.40.165 Is enacted to read:

Sec 08.40.165 Licensure by endorsement. An applicant who is a licensed electrical administrator in another state may apply for licensure without examination upon providing proof satisfactory to the board that;

(A) he is currently actively engaged in the electrical contracting industry and,

(B) The standards of entry in his state of licensure are at least equal to those of this state.

Rationale: In order to encourage the competitive process, it is necessary to provide out of state applicants with fair and reasonable access to our credentialing procedures.

* Section 8.AS 08.40.170 is ammended by enacting sub-section (a)(4) to read:

Sec 08.40.170 Denial, Suspension, and revocation of license.

(a) (4), The licensee has knowingly permitted electrical work to be accomplished in this state under the guise of his license and without his supervision.

Rationale: The accomplishment of electrical work by an unlicensed person is a crime against the state. Persons who deliberately allow other unlicensed persons to accomplish electrical work under the fraudulent "unbrella" of licensed activity are themselves guilty of violating this statute.

* Section 9.AS 08.400.200 (5)(B) is ammended to read:

Sec 9 AS 08.40.200 (5)(B) Definitions. Furnishing (telecommunications) <u>telephone or telegraph</u> service to the public for compenstation.

Rationale: When this definition was added to the statute in 1977, the intent of both the Board and the Legislature was to exclude the activities of Public Service corporations (ie: Municipal Utilities, long lines carriers, etc.,) from the requirements of this chapter. Unfortunately, the wording

we jointly selected has resulted in considerable controversey and needs to be clarified.

* Section 10.AS 08.40.200 is ammended by enacting sub-section 6 to read:

Sec 08.40.200 (6) Definitions "repair" means the performance or accomplishment of work, of a routine recurring nature or otherwise, on an integral electrical circuit component which is or is capable of being energized, when such work involves the removal, replacement, disconnection or reconnection of that integral component.

Rationale: There has been a great deal of controversy over the last several years revolving around the legislative intent of the word "repair". Only by adding a firm definition for this word can we hope to achieve uniform comprehension and enforcement of this statute.

* Section 11.AS 18.60.580 is repealed and re-enacted to read:

Sec 18.60.580. Minimum electrical standards. The latest published editions of the National Electrical Code and the National Electrical Safety Code, both as approved by the American National Standards Institute constitute the minimum Electrical Safety standards of the state.

Rationale: It is both ridiculous and expensive for the legislature to have to review this act every two to three years to change a date so that we may once again be in tune with the rest of the U.S.A.

* Section 12.AS 18.60.590 is ammended to read:

Sec 12.AS 18.60.590 State, Borough and City electrical Codes

Sec 12. AS 18.60.590 Electrical Codes

(A) The (department) Board of Electrical Examiners may be regulation adopt ammendments to the (1971) National Electrical Code and/or the National Electrical Safety Code (as approved and issued by the American Standards Association) provided such ammendments result in standards no less stringent than those prescribed by section 580 of this chapter.

(B) This chapter does not affect the authority of any organized borough, municipality or rural electrification association to prescribe by ordinance, rule or order, standards for their respective areas of jurisdiction no less stringent than the standards prescribed by the (department) Board or those established by section 580 of this chapter.

Rationale: The Department of Labor employes electrical inspectors, not administrators. The technical expertise necessary to formulate ammendments to the National Standards more properly sites with the Board. Additionally, as this statute is now worded, no one can ammend the National Electrical Safety-Code regardless of the rationale behind such an ammendment. Please see attachment 1 to the exhibit for an example of why the Board needs this authority.

* Section 13.AS 18.60.600 is repealed and re-enacted to read:

Sec 18.60.600 Powers and duties of the Board and the Department;

(A) The Board may:

1. Promulgate regulations to carry out the purposes of section 580-610 or this chapter.

2. Inspect, or cause to be inspected, the electrical wiring of any place of employment or public structure in the state.

(B) The department shall:

1. Promulgate regulations to carry out the purposes of section 620-660 of this chapter.
2. Keep a record of all inspection fees collected.
3. Keep a record of all electrical inspections conducted.

Rationale: This revision is necessary to accomodate the other contemplated changes to this chapter.

* Section 14.AS 18.60.610 is ammended to read:

Sec 18.60.610 Delegation of Authority. Upon application to and approval of the Board (department), a person, corporation, electric utility firm, public utility district, Rural Electrification Association, or Municipal-Utility District furnishing electrical current may be authorized (by the commisioner) to inspect the electrical wiring for a public or commercial structure as defined in section 660 of this chapter to which it is to furnish electrical current before energizing the electrical system on, in, or about the premises. Authorization by the Board (commissioner) under this section constitutes a grant of full authority to act within the provisions of sections 580-660 of this chapter with the same immunities and privelages accorded to the state in the performance of these duties. A person or entity whose electrical wiring installation is found, by the authorized inspector, not to meet the standards prescribed, has the right to appeal to the Board (commissioner) for a new inspection. The Board (commissioner) shall, within 15 days, furnish a new inspection by a designee not associated with the person, firm, or utility who did the original inspection.

Rationale: The board has the authority (Granted by AS.08.40.070) to conduct inspections but lacks the tool to implement it. Additionally, the technical direction required by the State Electrical Inspectors must come from the Board as the department has no source of expertise other than the inspectors themselves.

* Section 15.AS 18.60.640 is ammended to read:

Sec 18.60.640 Scope of work covered;

(A) Sections 580-660 of this chapter apply to (cover only) new installations and alterations to existing installations.

(B) These standards are the required (recommended) minimum standards for all new structures in the state.

Rationale: The wording changes are necessary to bring this section into agreement with other sections of this chapter.

* Section 16.AS 18.60.660 (4) is ammended to read:

Sec 18.60.660 Definitions in sections 580-660 of this chapter. (4) "Public Stru..tures" means buildings such as hotels, resident housing, except homes owned by the installer and not intended for sale at the time of making the installation, (with more than one rental unit) restaurants, taverns, lodging houses, children's homes, auditoriums, town halls, or any structure designed or used for public assembly whether publicly or privately owned or financed.

Rationale: This change would allow for inspection of residential occupancies built by contractors and any other dwelling unit intended for rental occupancy regardless of the number of units involved. This authority is required to allow us to comply with the intent of AS 08.40 which again, is to protect the public.

* Section 17. AS 18.60.660 is ammended by enacting sub-section 5 to read:

Sec 18.60.660(5) "Board" means the board of Electrical Examiners as created by Alaska Statute AS 08.40.

Rationale: The necessity for this revision is self evident.

* Section 18.AS 18.62.010 is ammended to read:

Sec 18.62.010 Certificate of fitness required. In connection with work performed subject to the standards established in (AS 18.60.580 and) AS 18.60.705, no person may be employed without a certificate of fitness to perform work.

Rationale: The board considers the certificate of fitness program to be an abrogation of an individual's constitutional right to work at his trade. Additionally, there is absolutely no need for two licensing programs within the same occupation. If the contractor is licensed and responsible for the work accomplished under his license, why then regulate the workman? "There is little justification for licensure if practitioners work under supervision. If regulation is needed, it should be the supervisor who is regulated".[1]

Cost Impact:

The net result of the foregoing legislative package would be a cost increase of approximately $2,500.00 a year to support the two new board members and a cost decrease of untold magnetude in the reduction of administrative costs pertinant to the certificate of fitness program. The machinery for supporting the balance of this legislative package already exists and would neither expand nor contract as a result of these changes.

1. Occupational licensing: questions a legislator should ask, Page 15; Shimberg & Roederer, 1978.

ATTACHMENT I

EXHIBIT A

BOARD OF ELECTRICAL EXAMINERS

1978 ANNUAL REPORT

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

INTERNATIONAL BLDG. ANNEX, SUITE 100
650 W. INTERNATIONAL AIRPORT ROAD
ANCHORAGE, ALASKA 99502

6 April, 1979

Board of Electrical Examiners
Pouch D
Juneau, Alaska 99811

ATTN: Nancy Ferguson

Gentlemen:

Please place us on your agenda for the next Board meeting. We would like to discuss with you experimental single high voltage lines with ground return. Mr. Dwane L. Legg, P. E., of Retherford Associates is requesting from this Department an exception to the National Electrical Safety Code and your opinion regarding the safety of such an operation would be appreciated. It concerns Article 305 (2e) of the National Electrical Code and Article 215 (B4) of the National Electrical Safety Code.

More detailed information will be provided at the time of the meeting.

Yours truly,

A. J. Reed
C. E. I

07-G3LH

ROBERT W. RETHERFORD ASSOCIATES
CONSULTING ENGINEERS
TELEPHONE 344-2585
P. O. BOX 6410
ANCHORAGE, ALASKA 99502
TELEX: 626-380

May 15, 1979 000-900

Mr. Jerome Trammer
16 Glacier #18
Fairbanks, Alaska 99701

Dear Mr. Trammer:

Representatives from the firm of Robert W. Retherford Associates are scheduled to meet with the State Electrical Board in Anchorage on the 23rd of May, 1979, to present information pertaining to the use of Single Wire Ground Return (SWGR) Systems in Alaska.

Enclosed is a general information brief related to SWGR Systems which may be reviewed for familiarization with the single wire ground return concept.

Sincerely,

ROBERT W. RETHERFORD ASSOCIATES

Frank J Bettine

Frank J. Bettine
Staff Engineer

FB:smd/n

SUBJECT: SINGLE WIRE GROUND RETURN SYSTEMS

PURPOSE: Waiver of Article 215-B4, National Electric Safety Code, which prohibits the use of the earth as a return conductor.

DISCUSSION:

A single wire ground return system (SWGR) can best be described as single-phase, single wire transmission system using the earth as a return circuit. SWGR is not a new technology as thousands of miles of line have been in successful operation for more than thirty years - mostly outside the United States i.e., India, New Zealand, Australia, Canada and in areas of the USA during W.W. II.

The SWGR lines suggested here are point-to-point connections with a carefully established grounding system at each end point. (See Figure 1) The design of these end point grounding systems would comply with presently accepted standards for limiting potential ground gradients and would be similar in design to a grounding system found in todays high voltage substation. The substation established at each end would then connect to the conventional multi-grounded distribution system as commonly used today throughout Alaska and the other 49 states. It is believed that the applications proposed here would in no way create any operating system with lesser safety than those now acceptable.

The later editions of the National Electric Safety Code (NESC) does not, however, allow the use of the earth as a return conductor (Part 2, Safety Rules for the Installation and Maintenance of Overhead Electric Supply and Communication Lines, Article 215-B4). The Fifth (effective to 1961) and prior addition of the NESC did, however, allow for use of the earth as a normal return path of an electric circuit in rural areas. Therefore, an exception or waiver to the present restriction in the NESC would be required to implement a SWGR system in Alaska.

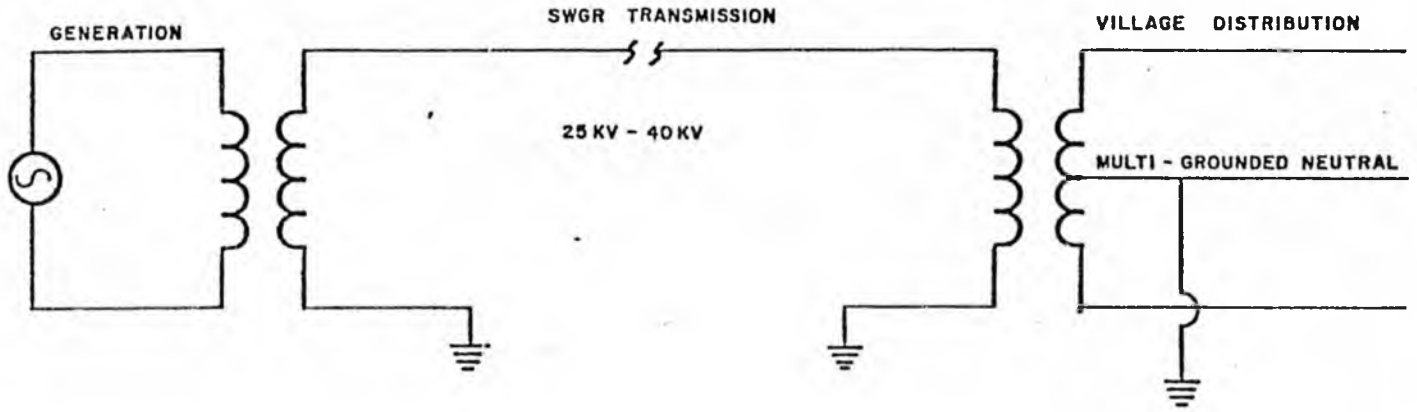

FIGURE 1

SIMPLIFIED SWGR TRANSMISSION SYSTEM

A presently envisioned SWGR systems would be used to connect several small outlying villages within a given geographical area to a centrally located, larger, more efficient, generation facility thereby eliminating the need for each small village to operate their own generating facility. (Figure 2)

Interconnection of these outlying villages to serve present loads by conventional three phase transmission system would be prohibitively expensive. Typical cost in the Anchorage area is approximately $60,000 per mile for conventional 25 kV three phase overhead construction. It is estimated that the cost of a 25 kV to 40 kV SWGR system using the design method as outlined in the attached appendix would be approximately 1/3 the cost of conventional three phase construction. Table 1 compares the relative bus-bar cost per kWh for three alternatives defined below.[1] (Cost of village plant assumed as one.) For the three alternatives listed the economic advantage is in favor of the SWGR system.

1. Village power plant system - power plant at each village.

2. Transmission interconnecting using conventional 3Ø - 4 wire lines to interconnect villages to a central plant.

3. A transmission interconnection using a SWGR system to interconnect villages to a central plant.

TABLE 1 RELATIVE BUS-BAR COST PER kWh

Alternate	
Village Plants	1.0
3Ø Line	0.88
SWGR Line	0.64

[1] A Regional Electric Power System for the Lower Kuskokwim Vicinity, Alaska Power Administration, July 1975.

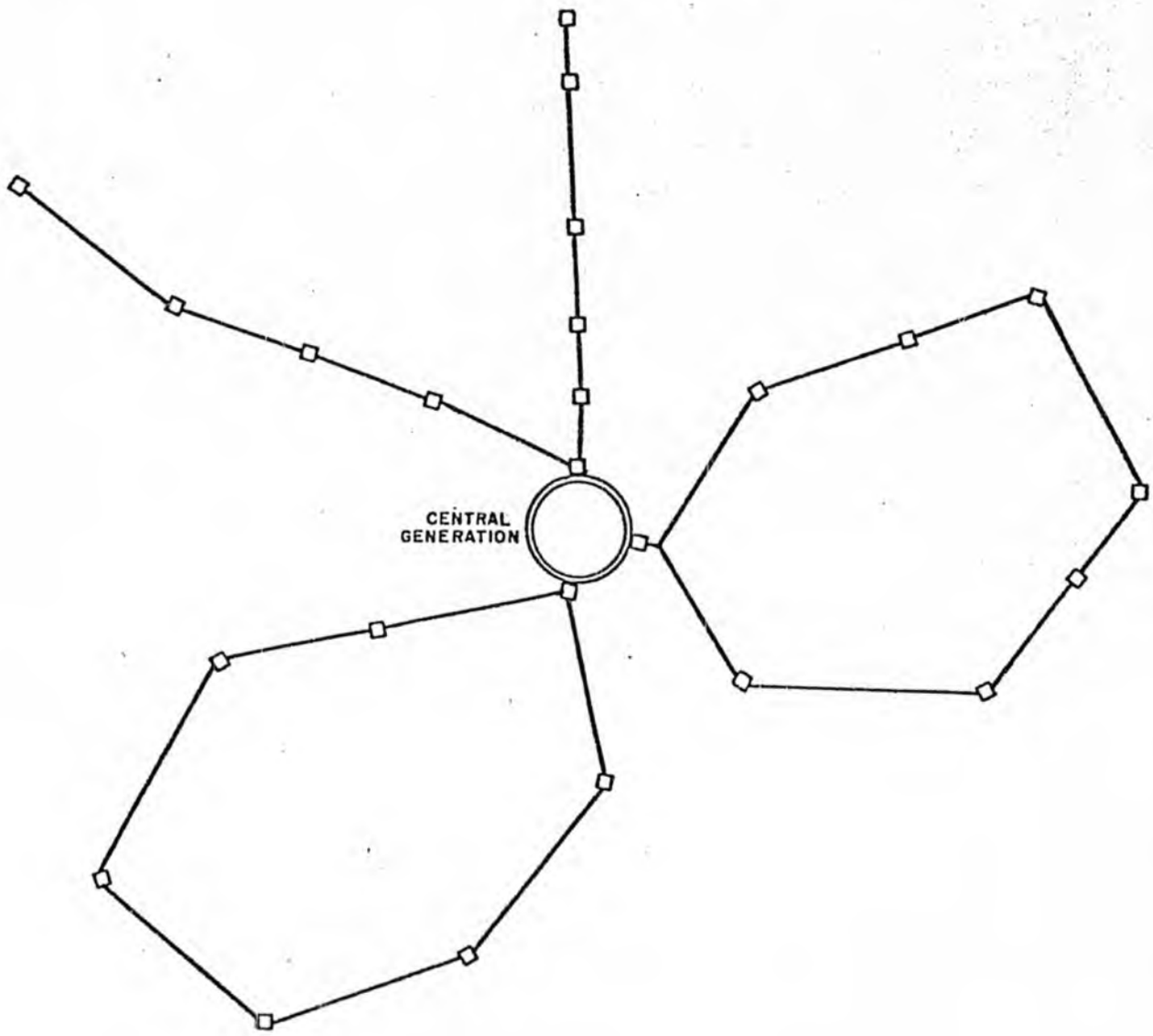

FIGURE 2

TYPICAL SWGR SYSTEM SUPPLY FOR RURAL ELECTRIFICATION

ADVANTAGES OF SWGR

1. The major advantage of a SWGR system is economics. It is much less costly to provide service using a SWGR system than using conventional three phase transmission.

2. The SWGR system proposed for village interconnections can be constructed by the villagers themselves with lightweight equipment and minimum "outside" assistance. This fact provides the opportunity for villagers to return to their communities a substantial share of the construction investment in wages earned locally.

3. Although not previously discussed a SWGR system operating at a line to ground voltage equal to the phase-to-phase voltage of a conventional three phase line will have approximately the same load carrying capability of the three phase line for a given voltage drop. This is the direct result of the low resistance earth return path.

Limitations:

SWGR is generally most suitable for serving low load density rural areas, where little if any problems will be encountered in using the earth as a return conductor.

As the load density increases above a certain level the cost advantage of a SWGR system is lost and conventional three phase transmission will again become the only practical solution.

EXHIBIT B

EXHIBIT "B"

BOARD OF ELECTRICAL EXAMINERS
1978 Annual report

February 17, 1978:

	Inside W.	Inside C.	Res. W.	Outside LW	Outside C.	No Shows
Pass	7	3	4	0	1	
Fail	18	1	9	0	2	
	25	4	13	0	3	14

May 12, 1978:

	Inside W.	Inside C.	Res. W.	Outside LW	Outside C.	No Shows
Pass	7	2	1	2	0	
Fail	40	6	18	2	2	
	47	8	19	4	2	14

August 25, 1978:

	Inside W.	Inside C.	Res. W.	Outside LW	Outside C.	No Shows
Pass	3	0	2	0	1	
Fail	22	2	12	3	1	
	25	2	14	3	2	20

November 17, 1978:

	Inside W.	Inside C.	Res. W.	Outside LW	Outside C.	No Shows
Pass	14	4	5	0	0	
Fail	25	2	13	2	5	
	39	6	18	2	5	12

EXHIBIT C

EXHIBIT "C"

BOARD OF ELECTRICAL EXAMINERS
1978 Annual Report

G. Board Revenues and Expenditures

	FY '76	FY '77	FY '78
Receipts	$8,357.00	$28,759.00	$15,912.14
Refunds	500.00	400.00	475.00
TOTAL	7,857.00	28,359.00	15,437.14

Expenditures

Transportation	$1,053.40	1,884.37	2,232.23
Per Diem	823.44	2,793.28	2,412.75
Phone	128.71	312.50	712.90
Printing, advert. & Postage	193.14	2,202.07	1,217.32
Fees & Services	446.80	362.85	-----
Rents, Leases & other	-----	340.25	91.22
TOTAL	2,645.49	7,895.32	6,666.42
Surplus	$5,211.51	20,463.68	8,970.72

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

November 13, 1979

Honorable Brad Bradley
Chairman
Senate Commerce Committee
P.O. Drawer 8-Q
Anchorage, Alaska 99501

Dear Senator Bradley:

During the Sunset hearings held by your committee November 7, 1979, a Mr. Robert Melon testified. His testimony included complaints about substandard electrical wiring in a home in Bettles, and state housing containing shabby wiring and construction, also in Bettles.

In the first case, Mr. Melon reported to the Department of Labor and was advised that permission to check on it would be necessary from the owner because it was not a commercial building. The owner gave the necessary permission, Mr. Reid checked the wiring, verified it was substandard but was never able to identify who did the wiring. The complaint was not reported to the Division of Occupational Licensing.

The second instance cited by Mr. Melon appears to be state housing units, also in Bettles. This office has not received a complaint. At this time, we are not able to determine if the Department of Labor or any other department has received a complaint or is investigating. If this is unlicensed activity or a violation by a licensee, we will, upon learning details, investigate.

Please contact me if you have any questions or comments.

Sincerely,

for Ann B. Griggs
Director

ABG/cw2N

08-HBLH

BOARD OF ELECTRICAL EXAMINERS BOARD OF ELECTRICAL EXAMINERS

First Problem - refer to dept of Occ Lic Book (Yellow) Section F pg 27 -- 29

Both the Dept of Commerce & Dept of Labor have responsibility of enforcement for the Board of Electrical Examiners.

Second Problem - re: pg 5 Leg Aud Rep (Blue) #(2)
Not only has OL not maintained files and stats but there is also a problem that has tended to discriminate against Alaskan workers: Dept of Labor has enforced the requirement for a fitness certificate only among union people through the hiring halls - the scabs that are brought in up north are not checked for certificates....

FINDINGS & RECOMMENDATIONS OF LEGIS. AUDIT:

#1 - The committee does not agree that the board should be terminated

There is validity in the use of the administrator to assure a safe installation of electrical work.

#2 The licensing of communication electricians.
I believe that we should agree with legis. audit on this one... unless there is considerable change in the experience and testing requirements so that they are applicable to the fields in which the "electrician" is working.
there is a great deal of absurdity in requiring a DP type to have 4000 hours of telephone installation experience.

I think that this is one place where the marketplace will do a better job of checking credentials than this board would be capable of.... (does this sound like a libertine?)

for issueing licenses

#3 enforce existing laws/in a uniform manner....

YES There is a strong indication that the practices have in fact been discriminatory. They should be strongly advised to standardize requirements for taking the exam & to grade the exams in a consistent manner.
(Recommendation #5: reciprocity & Rec. #4 also deal with this area) (SEE APPENDIX A "FOLLOW UP REVIEW" for proposed legislation)
I believe that we should agree with findings #3,4 &5.

Rec. #6 Continuing competency standards.

The board has proposed legislation (see appendix A of "follow up review") that would require submission of proof of activity to the board to renew license. This may or may not assure continuing competency - but probably will.

Rec #7 - They recommend a public member. The Board agrees with this. (as a side note: The Senate is adding public members to ALL boards!) I think it's a good idea.

#8 & 9 The dept of Occ Lic is now doing what the leg aud recommended...

further:

Rick Halford & Hugh Malone both feel that the language in the statute should be strong in requiring the Board to <u>BE FAIR</u> in administering and grading tests and issuing licenses. This would give an applicant that felt wronged a clear ground for appeal. I think you are better equipped to come up with wording to effect this.

Malone also felt that we might consider putting into statute the following:

a requirement that the licensed administrator "sign off" on each job upon completion certifying that it's kosher.

a requirement that the licensed administrator be required to assure that those working under him have the required certificate of fitness. The dept of Lab. hasn't been able to do this ... maybe a little local enforcement at risk of a license would be more effective.

Increase the number of Electrical Inspectors (presently 2) to 5 (and maybe decrease the number of pressure vessel inspectors from 5 to 2 - that's my comment not malones)

Hugh Malone also felt that because of the requirements of the financial institutions and the new state loan programs that we should ask the organized communities to submit some sort of plan for fire and electrical inspection to the next legislature as a condition for revenue sharing in fire protection.... A good idea in the long run that will enable the rural loan programs to go into the RURAL areas. Lack of inspection is a problem in financing rural homes.

Last but not least - WE SHOULD REQUIRE THE STATE TO ABIDE BY THE SAME LAWS AS THE PRIVATE SECTOR (see attached memo from Av. Gross)

ADDITION: The definition of "Repair" offered in their proposed legislation is unacceptable - far too broad.

11/07/79

Electrical Examiners
Sunset Hearings

Testimoney from Witnesesse

Glenn I. Hudson

Examination Applicant at D.O.L w/ slow inefficient service

Michael Frith

A) 2 membership from 3 to 5
1) from large union
1) " small non-union
1) " public
1) " private company

B) 2 year term with 1 re-appointment possible
C) Annual report from Board to Legislature.
D) Testing Procedures ① Consistent exams
② Board submit exam to DOL for administer.
③ Tests by number
Grading 1 standard answer sheet approved by all board members.

Robert Mellon Denali Electric Company (Fbx)

Poor wiring in homes - sub standard
New homes. Contacted Toney Reed but recieved no satisfaction.

Toney Reed → Electrical Examiner from State [only one in state of AK]

State Bid → Project 80-42 Dept of Adm
Div of General Services & Supplies.
in Bethlen Employee Housing

National Electrical Code → best
↳ Minimum Standards / Can exceed them.

JNU Hugh McCauley (Board Member)

Dom Liston Editor & Publisher of "Build Alaska" Magazine.

A) Boards need > $
B) O.L should license
D.O.L responsible for inforcement

FBX John Teeter Power 1) Safety
Rep Board

L H Illay Jr. [Excellent W. Witness]
Expert on Electricity.

Teeth into the law!

Electrical Contractor.

Harry Wilson / "Darson Electric"

Minority Contractors & Reciprocity.
See Rec. #5 / of Audit Report.

08.140
Waiver of Examination

Electrical Board →

Susan Birke →
Booklet →

Tom Catchin - Int Brotherhood of Electrical Workers Local.
⇒ Legged Board
⇒ Safety
⇒ More $ for investigation

(FBX) _____ Duszynski → Ind. Alt Dev Dwelling Inspection Council
Private non-profit started 1977 in FBX area.

Wiring of Trooper Housing in Delta Junction & Cantwell.

Robert Mellon - cont'd.

1/29/80 Board of Electrical Examiners
Sunset Hearings

Senator Ferguson stated he is in favor of retaining the Board. Followed by Tim Kelley's comments "I'm in favor of retaining the Board so you (witnesses) don't have to sell me."

→ Yellow book prepared by the Dept. of Commerce --- has some statutory changes that this committee could help in becoming law.

The use of sunset legislation should and will not allow the board to be used as a hostage for the libulgation of professional standards.

Title 18 sets the minimum electrical standard in ~~Alaska~~ AK.

State inspector is not allowed to enter a home for the purpose of inspection unless the owner gives permission.

She also has stated that she wants the Board continued.

Official Business

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

March 13, 1980

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Your Senate Commerce Committee has had under consideration for "Sunset" review the Board of Electrical Examiners pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, at which written and oral testimony was recieved. Members of the board testified in person or by teleconference. The Committee considered the proposed budget of the board for FY 1981 and particularly examined the performance audit of the activities of the board conducted by the Division of Legislative Audit.

Guided, in part, by this performance review the Committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings: The Committee concurs in some and disagrees with others of the nine findings and recommendations as they appear on pages 9 through 14 of the Performance Review of the Board of Electrical Examiners dated May 2, 1979 which is hereby incorporated by reference as though fully set out herein. While we agree with many of the criticisms of the ongoing functioning of the present Board of Electrical Examiners, we do not concur with the auditor that the Board of Electrical Examiners should be allowed to terminate.

However, having concluded that the Board of Electrical Examiners should not be terminated and that it should continue to license electrical administrators, the Committee has found that it is necessary to provide the board with a short extension and continuing audit monitoring, because it has not been responsive enough to criticisms by the Division of Legislative Audit, particularly even after a period of many months following the original audit report, as can be seen from the follow-up report of February 6, 1980.

For instance, in following up its recommendation number three, relating to a requirement for more uniformity and consistency in the enforcement of current laws by the board, the Legislative Auditor found that even since August, 1979, six of the seventeen electrical administrators who were licensed did not have a certificate of fitness required by present regulations. Also, in following up its recommendation number four regarding the establishment of uniform procedures for examinations, the auditor found some improvement on the conduct of the examination, but found that grading the examination still has the incredible inconsistencies noted in the original audit report.

For instance, as to this last recommendation, the February 6, 1980 report from the auditor notes that "some applicants are passed and others are failed, even though the same questions are missed." (Page two.)

Additionally, while the auditor notes that the problems on review and regrading examinations have been partially corrected, the reasons for changing a grade are still not stated, nor are there indications of follow-up to determine impact on all examinees. The auditor notes that this is directly in violation of a new regulation promulgated by the board on May 25, 1979. Other audit recommendations are yet to be discussed, but it can already be seen that the board has a long way to go to correct the problems originally indicated in the audit.

For these reasons, the Committee is of the view that the Board of Electrical Examiners should be extended for only another two years, rather than the usual four years anticipated by the Sunset legislation, and that the Legislative Budget and Audit Committee should be asked to request the Division of Legislative Audit to perform a more thorough follow-up review of the Board of Electrical Examiners for the intervening year before full Sunset review again occurs in 1982.

Other recommendations urged certain statutory changes (recommendation number two, five, six, and seven).

Briefly, the Committee wishes to address some of these statutory recommendations, but cautiously.

The auditors recommended (number two) that legislation exempt "communications electricians" from the electrical administrator's statutes. The board disagreed, and provided some graphic examples of life-threatening occurrences in the installation of home communications equipment (particularly MDS and cable television services). However, the Committee finds that it is very difficult to easily delineate what areas ought and ought not to be exempted, although some justification for exemption in certain areas seems appropriate.

To the extent possible, the Committee will attempt to provide language in its proposed legislation that will exempt some "communications electricians" from the requirements of the chapter, but which still can address some of the concerns of the board in this area. This will not be easy.

The Committee accepts part of the auditor's recommendation number five which urges statutory changes to allow licensure by endorsement or reciprocity. However, the Committee will attempt to include in its legislation provisions that may still allow the board to require examination of an outside electrical contractor who is fully qualified in his state, but only as to those areas of knowledge and skill required for work in the unique Alaskan environment and that specially relate to the usages of the trade in Alaska.

Pursuant to recommendation number six, the Committee will include in its legislation provisions requiring the board to establish continuing competency requirements for electrical administrators, which may be met by proof of attendance at relevant functions of the applicable trade association, approved on a case by case basis by the board. The board has agreed with recommendation number seven, to add public members to the board, and has suggested legislation along those lines: Such provisions will be included in the Committee's legislation.

The Committee feels it has adequately addressed the recommendations and categories required under AS 44.66.050(d), and recommends that with the changes stated in this report the Board of Electrical Examiners be continued for another two years, that is, that the repealer with regard to the activities of the board be amended to read June 30, 1982, and that an interim one-year performance audit of the board be requested of the Legislative Audit Division through the Legislative Budget and Audit Committee, so that the Legislature can monitor the response of this board to the problems raised in this report.

A bill will be introduced by the Commerce Committee facilitating the changes and recommendations in this report.

Respectfully submitted,

Brad Bradley

Senator Brad Bradley
Chairman
Senate Commerce Committee

BB/bm

HB

1031

COMMITTEE REPORT

SENATE

FURTHER: None

5/14/80

Date: May 20, 1980

Mr. President:

The Committee on COMMERCE has had CSHB 1031

continuing the existence of the Board of Electrical Examiners, and amending the statutes relating to the powers and duties of the board

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for CSHB 1031 [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Brad Bradley

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Tom Kelly No Rec

Brad Bradley
CHAIRMAN

S 60 (Rev. 12/78)

Bill No.	Senate Bill 566	Date	May 5, 1980
Title	"An Act continuing the existence of the Board of Electrical Examiners and amending the laws relating to the licensing of electrical administrators and to electrical safety."	Contact:	Judy DuBois 465-2700 Dale Cheek 465-4870

If the law requiring certificate of fitness for work performed subject to the standards established in AS 18.60.580 is repealed, the public can no longer be assured that electrical wiring installed whether in the home, commercial, or public building will be done by competent electricians.

Under the present Statutes the Department of Labor requires that individuals working in the electrical trade have a certain number of hours experience and pass a written test successfully before they are allowed to be certified. Without those safeguards an inexperienced or untrained individual could install wiring in buildings that could cause loss of property, injury, or even the loss of life because of electrical malfunction which caused a fire.

POSITION PAPER/Department of Labor

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 566

Title An Act continuing the existence of the Board of Electrical Examiners and amending the laws relating to the licensing of electrical Administrators and to electrical safety.

Requested by Commerce Committee Date 4-28-80

II. FISCAL DETAIL

Agency Affected Department of Labor

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected Mechanical Inspection (Pressure Vessel)

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	21.6	21.6	21.6	21.6	21.6
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
PVE Program Receipts		(21.6)	(21.6)	(21.6)	(21.6)	(21.6)

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

If the Electrical Certificate of Fitness program is repealed, the mechanical Inspection Budget Request Unit of the Wage and Hour Division will lose $21.6 in program receipts.

In order to continue the program's full services this loss must be offset by General Funds.

IV. DATE 4-28-80 PREPARED BY James M. Souby, III

AGENCY Labor

PHONE 465-2720

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

May 27, 1980

SUBJECT: Section-by-section analysis of SCS for CSHB 1031 (Work Order No. 8591)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Joseph A. Guthrie
Legislative Counsel

You have requested a section-by-section analysis of SCS for CSHB 1031 (Electrical Examiners).

Section 1 changes the composition of the Board of Electrical Administrators so as to require that one member of the board be a public member, defined in AS 08.01.025 as a person not engaged in the conduct the board regulates or otherwise involved, by legal contact or financial interest, in that conduct. Two members of the board must still be electrical administrators.

Section 2 adds a requirement that a person may not be appointed to serve more than two consecutive terms on the board.

Section 3 adds a requirement that the board adopt regulations establishing the methods and standards whereby the board, in determining whether to renew or reinstate a license, may judge whether the applicant is still competent.

Section 4 adds to the subjects which must be tested in examinations administered to applicants for licensure. Moreover, provision is made for the board to accept the credentials of an electrical administrator licensed in a state other than Alaska for the purposes of licensure of that person in this state, except insofar as the licensing requirements of this state do not duplicate the licensing requirements of the other state.

Section 5 adds a requirement that licenses may not be renewed or reinstated unless the applicant demonstrates that he continues to be competent. Moreover, if reinstatement is sought after a license has lapsed for more than two years, the applicant must take and pass the examination required of new applicants.

Section 6 doubles the fees for original application and renewal of licenses.

Section 7 expands the work which can be performed by persons not licensed as electrical administrators to include not just the "maintenance and repair of telephone systems" but also the operation of those systems as well as the maintenance, repair and operation of telegraph and "intercommunication" systems.

Section 8 includes among the work which can be performed by persons not licensed as electrical administrators the installation, maintenance, and repair of fire and burglar alarms, as well as the maintenance and repair of diesel engines installed on heavy construction equipment.

Section 9 requires an electrical administrator to personally inspect all work done under his supervision, unless the work consists of simple or highly standardized work performed in less than 24 man hours.

Sections 10, 11, 12, and 13 continue the board in existence in lieu of termination mandated by sunset legislation.

JAG:ljb

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

SUBJECT: SCS CSHB 1031, Board of Electrical Examiners

TO: All Senators

FROM: Brad Bradley, Chairman
Senate Commerce Committee

DATE: May 22, 1980

(Sec. 08.40.010) P.1, Ls. 12/15 — Section 1. The Board of Electrical Examiners is composed of three (3) members: two (2) licensed electrical administrators and one (1) public member.

(Sec. 08.04.020) P.1, Ls. 17/22 — Section 2 The board members serve staggered terms of three years and may serve no more than two consecutive terms.

(Sec. 08.40.050) P.1, Ls. 24/28 — Section 3. The board is required to adopt regulations relating to the examination and licensing of electrical administrators. The board shall also adopt regulations establishing continued competency for license renewal and reinstatement. (See attached letter of intent.)

(Sec. 08.40.120) P.2, Ls. 1/13 — Section 4. Each applicant shall be examined to determine:

(1) his ability to understand plans, design and terminology.

(2) his knowledge of electrical installations and wiring.

(3) his familiarity with regulations in National codes approved by the American Standards Association.

(4) his familiarity with other installation and safety regulations established by the American Standards Association.

(5) his familiarity with electrical installation problems and usage peculiar to Alaska.

(6) his personal skill and ability.

(Sec. 08.40.120)
P.2, Ls. 14/24

Sec. 120(b) explains the provisions of examination and licensing reciprocity.

(Sec. 08.40.135)
P.2/3, Ls. 26/8

Section 5. A license may be renewed upon proof of continued competency. A lapsed license may be reinstated upon proof of continued competency and by payment of all renewal fees and a payment fee of $25 for each year the license has been lapsed. If a person's license has been lapsed for more than two years, he is required to take an examination.

(Sec. 08.04.150)
P.3, Ls. 10/12

Section 6. Increases (doubles) license and biennial renewal fees because they have not been increased since 1969.

(Sec. 08.40.190(b)(6))
P.3, Ls. 13/22

Section 7. This is an exclusion section in which this chapter does not apply to any person engaged in:

(6) the operation, maintenance and repair of telephone, telegraph and intercommunication facilities.

Section 8 includes additional work within the exclusionary provisions of this section but is nevertheless subject to the inspection provisions of Sec. 70 of this chapter and must follow the regulations regarding workmanship adopted by the Board.

(7) the installation, maintenance, and repair of fire alarm, intrusion alarm or other low voltage signaling systems of 48 volts to ground or less.

(8) the maintenance or repair of diesel electric engines installed on heavy construction equipment.

(Sec. 08.40.195)
P.3/4, Ls. 24/2

Section 9. An electrical administrator is required to personally inspect the installation and repair of a job unless the installation or repair amounts to simple or highly standardized work performed in less than 24 man-hours by personnel generally under the supervision of the electrical administrator.

(Sec. 08.03.010(c))
P.4, Ls. 3/5

Section 10. The termination date for the Board of Electrical Examiners is June 30, 1982.

(Sec. 08.03.010(b)(5)
P.4, L. 6

Section 11. Removes the Board of Electrical Examiners from the list of Boards which have a termination date of June 30, 1980.

(Sec. 08.40.010)
P.4, Ls.7/10

Section 12. A member serving on the board on the effective date of this act continues to serve until the expiration of his term.

P.4, Ls.11

Section 13. This act takes effect June 30, 1980.

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

LETTER OF INTENT
SCS for CS for HB 1031
May 20, 1980

The Honorable Senator Clem Tillion
Senate President
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Tillion:

The Senate Commerce Committee has reviewed the problems mentioned in our previous report arising from "Sunset" review of the Board of Electrical Examiners. Senate Commerce Committee Substitute for Committee Substitute for HB 1031 addresses these concerns.

One item requires some explanation. On page 1, lines 26 and 28, and on page 2, lines 28 and 29, and on page 3, lines 1 and 2, there is reference to a requirement of "proof of continued competency" and a provision to allow the Board to adopt regulations establishing continued competency for license renewal.

The Committee anticipates that the Board of Electrical Examiners would provide by regulation for compliance with these sections by addressing meetings and functions sponsored by recognized trade associations. In most cases this would probably refer to functions sponsored by the National Electrical Contractor's Association.

The Committee does not intend that there be a strict, classroom-style continuing education program that might not be consistent with this profession and trade, but rather that the Board of Electrical Examiners assure itself that an electrical contractor is keeping in touch with the applicable trade associations and is attending functions sponsored by them which may add to his knowledge about the changes in the field.

There were indications at our committee hearings during the "Sunset" process that the trade organization performs some of this function now and is interested in doing more of it. Of course, passage of this legislation would virtually require the trade organization to become more active in this area. There seems to be no objection to that.

Respectfully submitted,

Senator Brad Bradley
Chairman

Commerce Committee
Letter of Intent to Accompany
Commerce Committee Substitute for HB 1031
Act Continuing the Existence of the
Board of Electrical Examiners
and Amending the Laws Relating
to the Powers and Duties of the Board

May 8, 1980

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Your House Commerce Committee has reviewed the problems mentioned in our previous report arising from "Sunset" review of the Board of Electrical Examiners. Committee Substitute for HB 1031 addresses these concerns.

One item requires some explanation. On page 1, lines 19 and 20, and on page 2, lines 21 and 22, there is reference to a requirement of "proof of continued competency" and a provision to allow the Board to adopt regulations establishing continued competency for license renewal.

The Committee anticipates that the Board of Electrical Examiners would provide by regulation for compliance with these sections by addressing meetings and functions sponsored by recognized trade associations. In most cases this would probably refer to functions sponsored by the National Electrical Contractor's Association.

The Committee does not intend that there be a strict, classroom-style continuing education program that might not be consistent with this profession and trade, but rather that the Board of Electrical Examiners assure itself that an electrical contractor is keeping in touch with the applicable trade associations and is attending functions sponsored by them which may add to his knowledge about the changes in the field.

There were indications at our committee hearings during the "Sunset" process that the trade organization performs some of this function now and is interested in doing more of it. Of course, passage of this legislation would virtually require the trade organization to become more active in this area. There seems to be no objection to that.

Respectfully submitted,

Rep. Fred Brown
Chairman
House Commerce Committee

FB:kfw

STATE OF ALASKA

ALASKA STATUTES
TITLE 8. CHAPTER 1-3

BOARD OF ELECTRICAL EXAMINERS - STATUTES AND REGULATIONS

PRINTED: September 1979

Alaska Statutes

Title 8. Business and Professions.

Chapter

01. Centralized Licensing (§§ 08.01.010 — 08.01.110)
02. Miscellaneous Provisions (§§ 08.02.010 — 08.02.020)
03. Termination, Continuation and Reestablishment of Regulatory Boards (§ 08.03.010)
04. Accountancy Act of 1960 (§§ 08.04.010 — 08.04.690)
08. Alaska Integrated Bar Act (§§ 08.08.010 — 08.08.250)
12. Barbers (§§ 08.12.010 — 08.12.280)
16. Basic Sciences (Repealed)
18. Construction Contractors (§§ 08.18.011 — 08.18.171)
20. Chiropractors (§§ 08.20.010 — 08.20.220)
24. Collection Agencies (§§ 08.24.011 — 08.24.330)
28. Cosmetologists and Hairdressers (§§ 08.28.010 — 08.28.320)
32. Dental Hygienists (§§ 08.32.010 — 08.32.190)
36. Dentistry (§§ 08.36.010 — 08.36.360)
40. Electrical Administrators (§§ 08.40.005 — 08.40.200)
42. Morticians (§§ 08.42.010 — 08.42.130)
44. Embalmers (Repealed)
48. Architects, Engineers and Land Surveyors (§§ 08.48.011 — 08.48.351)
52. Explosives Handlers (§§ 08.52.010 — 08.52.080)
54. Guides (§§ 08.54.010 — 08.54.240)
56. Hotels and Boardinghouses (§§ 08.56.010 — 08.56.070)
60. Junk Dealers and Metal Scrappers (§§ 08.60.010 — 08.60.100)
62. Marine Pilots (§§ 08.62.010 — 08.62.200)
64. Medicine (§§ 08.64.010 — 08.64.380)
66. Motor Vehicle Dealers (§§ 08.66.010 — 08.66.090)
68. Nursing (§§ 08.68.010 — 08.68.410)
70. Nursing Home Administrators (§§ 08.70.010 — 08.70.190)
71. Dispensing Opticians (§§ 08.71.010 — 08.71.240)
72. Optometry Law (§§ 08.72.010 — 08.72.310)
76. Pawnbrokers and Secondhand Dealers (§§ 08.76.010 — 08.76.030)
80. Pharmacy Act (§§ 08.80.010 — 08.80.490)
84. Physical Therapists Practice Act (§§ 08.84.010 — 08.84.200)
86. Psychologists and Psychological Associates (§§ 08.86.010 — 08.86.230)
88. Real Estate Brokers and Salesmen (§§ 08.88.011 — 08.88.431)
92. Concert Promoters (§§ 08.92.010 — 08.92.090)
98. Veterinarians (§§ 08.98.010 — 08.98.250)
99. Board of Welding Examiners (§§ 08.99.010 — 08.99.120)

Chapter 01. Centralized Licensing.

Section		Section	
10.	Applicability of chapter	80.	Department regulations
20.	Board organization	87.	Powers and duties of department
25.	Public members	90.	Applicability of the Administrative Procedure Act
30.	Quorum	100.	License renewal, lapse and reinstatement
40.	Transportation and per diem	105.	Penalty for improper payment
50.	Administrative duties of department	110.	Definitions
60.	Application for license		
70.	Administrative duties of boards		

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

(1) Board of Public Accountancy;

(2) Board of Barber Examiners;

(3) Repealed by § 6 ch 32 SLA 1971.

(4) Board of Chiropractic Examiners;

(5) Board of Hairdressing and Beauty Culture Examiners;

(6) Board of Dental Examiners;

(7) Board of Electrical Examiners;

(8) State Board of Registration for Architects, Engineers and Land Surveyors;

(9) State Medical Board;

(10) Board of Nursing;

(11) Board of Examiners in Optometry;

(12) Board of Pharmacy;

(13) Real Estate Commission;

(14) Board of Veterinary Examiners;

(15) Board of Psychologist and Psychological Associate Examiners;

(16) Collection Agency Board;

(17) Board of Welding Examiners;

(18) Board of Marine Pilots;

(19) Board of Dispensing Opticians;

(20) Guide Licensing and Control Board;

(21) State Physical Therapy Board. (§ 1 ch 59 SLA 1966; am § 2 ch 136 SLA 1967; am § 2 ch 101 SLA 1968; am § 2 ch 143 SLA 1968; am § 2 ch 151 SLA 1968; am § 1 ch 106 SLA 1970; am § 6 ch 32 SLA 1971; am § 4 ch 179 SLA 1972; am § 2 ch 45 SLA 1973; am § 14 ch 65 SLA 1973; am § 1 ch 43 SLA 1975; am § 1 ch 43 SLA 1977)

Effect of amendments. — The first 1973 amendment added paragraph (19).

The second 1973 amendment inserted "and Psychological Associate" in paragraph (15).

The 1975 amendment added paragraph (20).

The 1977 amendment added paragraph (21).

Editor's note. — Section 2, ch. 59, SLA 1966, provides: "The Department of Commerce shall provide for the orderly transfer of the service functions which are to be performed by the department under this chapter."

Section 4, ch. 59, SLA 1966, provides: "A provision in existing law which conflicts with this Act is superseded by this Act."

Legislative committee reports. — For report on ch. 143, SLA 1968 (HB 707), see 1968 House Journal, p. 836. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 08.01.020. Board organization. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members. (§ 1 ch 59 SLA 1966)

Sec. 08.01.025. Public members. No public member of a board may:

(1) be engaged in the occupation which the board regulates;

(2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or

(3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 259 SLA 1976)

Sec. 08.01.030. Quorum. A majority of the membership of a board constitutes a quorum unless otherwise provided. (§ 1 ch 59 SLA 1966)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (§ 1 ch 59 SLA 1966)

Sec. 08.01.050. Administrative duties of department. (a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;

(2) maintain records and files;

(3) issue and receive application forms;

(4) notify applicants of acceptance or rejection of applicants as determined by the board;

(5) designate dates examinations are to be held and notify applicants;

(6) publish notice of examination;

(7) arrange space for holding examinations;

(8) notify applicants of results of examinations;

(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;

(10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of $2;

(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;

(12) compile and maintain current a register of licenses;

(13) answer routine inquiries;

(14) maintain files relating to individual licensees;

(15) arrange for printing and advertising;

(16) purchase supplies;

(17) employ secretarial help when needed;

(18) perform other services which may be requested by the board;

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in § 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned. (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment added paragraph (19) of present subsection (a).

The second 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the introductory paragraph of present subsection (a).

The third 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, substituted "department" for "Department of Commerce" and "when appropriate" for "for the boards" in the introductory language and inserted "by the licensee" in two places in paragraph (10). The amendment also added subsection (b).

While none of the amendments gave effect to the others, this section is set out as it appears in ch. 258, SLA 1976, with the inclusion of paragraph (19) of subsection (a) added by ch. 102, SLA 1976.

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law:

(1) keep minutes and records of all proceedings;

(2) hold a minimum of one meeting each year;

(3) hold at least one examination each year;

(4) request, through the department, investigation of violations of its laws and regulations;

(5) prepare and grade examinations;

(6) pass on qualifications of applicants for examination and license;

(7) forward minutes of meetings to the department within 20 days;

(8) forward results of examinations to the department;

(9) notify the department of meeting dates at least 15 days before meeting. (§ 1 ch 59 SLA 1966)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;

(2) what is contained in application forms;

(3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

Sec. 08.01.087. Powers and duties of department. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by a board listed in § 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (§ 3 ch 258 SLA 1976)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (§ 1 ch 59 SLA 1966; am § 4 ch 258 SLA 1976)

Effect of amendment. — The 1976 amendment added "except those under AS 08.01.087(b)" to the end of the section.

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968)

Sec. 08.01.105. Penalty for improper payment. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (§ 3 ch 258 SLA 1976)

Sec. 08.01.110. Definitions. In this chapter

(1) "board" includes the boards and commissions listed in § 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in § 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in § 10 of this chapter. (§ 1 ch 59 SLA 1966; am § 40 ch 218 SLA 1976; am § 5 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

The second 1976 amendment added paragraphs (3) through (6).

Chapter 02. Miscellaneous Provisions.

Section

10. Professional designation requirements
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) A person licensed in the state as a chiropractor as defined in AS 08.20.220, a dentist as defined in AS 08.36.360, a medical practitioner or osteopath as defined in AS 08.64.380, a professional nurse as defined in AS 08.68.410, an optometrist as defined in AS 08.72.300(3), a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall professionally identify

himself by the use of appropriate letters or a title after his name which represents his specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays his professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and identifies himself by using the letters "M.D." or the title "doctor" or "physician" or any other title which tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of his noncompliance by his appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, his noncompliance continues, the board may suspend or revoke his license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1973)

Sec. 08.02.020. Limitation of liability for members of licensing boards. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976)

Chapter 03. Termination, Continuation and Reestablishment of Regulatory Boards

Section

10. Termination, continuation and reestablishment of regulatory boards

Cross reference. — As to review of the activities of agencies, boards and commissions, see AS 44.66.010 et seq.

Editor's note. — Section 1, ch. 149, SLA 1977, provides: "The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government, and that there is need for an effective and regular system of scrutiny of the programs and activities of all agencies, boards and commissions. The legislature further finds that the establishment of a system for periodic review by the public and the executive and legislative branches of certain state agencies, boards and commissions will help the governor and the legislature to determine the need for the continued existence of each of the agencies, boards and commissions."

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Board of Chiropractic Examiners (AS 08.20.010);

(2) Board of Dental Examiners (AS 08.36.010);

(3) State Medical Board (AS 08.64.010);

(4) Board of Nursing (AS 08.68.010);

(5) Board of Dispensing Opticians (AS 08.71.010);

(6) Board of Examiners in Optometry (AS 08.72.010);

(7) Board of Pharmacy (AS 08.80.010);

(8) Board of Veterinary Examiners (AS 08.98.010);

(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);

(10) Board of Nursing Home Administrators (AS 08.70.010);

(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.010);

(2) Board of Barber Examiners (AS 08.12.010);

(3) Collection Agency Board (AS 08.24.011);

(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);

(5) Board of Electrical Examiners (AS 08.40.010);

(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);

(7) Guide Licensing and Control Board (AS 08.54.010);

(8) Board of Marine Pilots (AS 08.62.010);

(9) Real Estate Commission (AS 08.88.011);

(10) Board of Welding Examiners (AS 08.99.010);

(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

Chapter 40. Electrical Administrators.

Article
1. Board of Electrical Examiners (§§ 08.40.005—08.40.080)
2. Licensing (§§ 08.40.090—08.40.180)
3. General Provisions (§§ 08.40.190—08.40.200)

Cross reference. — As to electrical contractors, see AS 08.18.026.

Article 1. Board of Electrical Examiners.

Section
05. Purpose of chapter
10. Creation and membership of board
20. Appointment and term of office
30. Chairman of board
40. Board meetings
45. Categories of licenses
50. Regulations
60. Examinations
70. Inspection or investigation by board
80. Compensation of board members

Sec. 08.40.005. Purpose of chapter. The purpose of this chapter is to protect the safety of people and property in the state from the danger of improperly installed electrical wiring and equipment, by providing a procedure to assure

(1) the public that persons responsible for making electrical installations in this state are qualified; and

(2) a sufficient number of persons are so qualified. (§ 2 ch 53 SLA 1977)

Sec. 08.40.010. Creation and membership of board. There is hereby created a Board of Electrical Examiners consisting of three members

who are licensed electrical administrators. (§ 1 ch 158 SLA 1960; am § 3 ch 53 SLA 1977)

Effect of amendment. — The 1977 amendment substituted "administrators" for "Contractors" at the end of the section.

Sec. 08.40.020. Appointment and term of office. The members of the board shall be appointed by the governor and confirmed by the legislature for staggered terms of three years, or until their successors are appointed. A member may be removed at the pleasure of the governor. (§ 1 ch 158 SLA 1960)

Sec. 08.40.030. Chairman of board. The board shall elect one of its members as chairman. (§ 1 ch 158 SLA 1960)

Sec. 08.40.040. Board meetings. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. Two members constitute a quorum. (§ 2 ch 158 SLA 1960)

Sec. 08.40.045. Categories of licenses. The board may adopt regulations establishing categories of electrical administrators, establishing qualifications for those categories and the content of examinations for applicants for each category. (§ 4 ch 53 SLA 1977)

Sec. 08.40.050. Regulations. The board shall adopt regulations subject to the Administrative Procedure Act (AS 44.62), relating to the examination and licensing of electrical administrators and the suspension or revocation of licenses. (§ 2 ch 158 SLA 1960; am § 5 ch 53 SLA 1977)

Effect of amendment. —The 1977 amendment substituted "adopt regulations" for "issue rules and regulations" and "administrators" for "contractors."

Sec. 08.40.060. Examinations. A licensing examination, under the supervision of the chairman of the board or his designee, shall be conducted at least twice during each year at appropriate places in the state. (§ 2 ch 158 SLA 1960)

Sec. 08.40.070. Inspection or investigation by board. The board may make or have made a special inspection or investigation into the work of a licensee which it considers necessary, may issue subpoenas and process compelling the attendance of any person and the production of any papers or books, for the purpose of the investigation nad examination, may administer oaths when required, and may petition a court of the state to enforce subpoenas and process or to compel testimony. (§ 5 ch 158 SLA 1960)

Sec. 08.40.080. Compensation of board members. Members of the board are entitled to payments, per diem allowances and transportation expenses allowed by law and paid members of other state examining and licensing boards. (§ 6 ch 158 SLA 1960)

Article 2. Licensing.

Section
90. License required
100. [Repealed]
110. Application for license
120. Examination of applicant
130. Administrator limited to one licensed contractor
135. Renewal and reinstatement
140. Issuance and display of license
150. Fees
160. [Repealed]
170. Denial, suspension and revocation of license
175. Cease and desist order
178. Injunctive relief
180. Violation of chapter

Sec. 08.40.090. License required. (a) No person may act as an electrical administrator in the state without a license issued by the board.

(b) A person licensed under this chapter may perform work only in a category for which he is licensed. (§ 3 (c) ch 158 SLA 1960; am § 6 ch 53 SLA 1977)

Effect of amendment. — The 1977 amendment designated the provisions of this section as subsection (a), substituted "administrator" for "contractor" in that subsection, and added subsection (b).

Purpose. — The purpose of Alaska's electrical contractor's (now administrator's) licensing law is the protection of the public against fire, injury and unsatisfactory craftsmanship. 1967 Op. Att'y Gen., No. 3.

No bond is required, no test of financial responsibility. The licensing provision is designed only to protect those desiring electrical work to be done and those who visit the improved premises from the results, particularly fire hazard, of shoddy workmanship. 1963 Op. Att'y Gen., No. 14.

Legislative intent. — The legislature intended the licensing act to regulate all electrical wiring where there might be a substantial potential hazard to the general public. 1967 Op. Att'y Gen., No. 3.

This chapter prohibits any substantial electrical wiring or rewiring of commercial buildings by nonlicensed individuals, irrespective of who owns or uses them. 1967 Op. Att'y Gen., No. 3, rendered prior to the 1967 amendment to AS 08.40.190.

If the work to be done is of such nature that it would not impose a serious fire or safety hazard even if performed improperly, then it could be considered insignificant. Absent this limitation anyone engaged in wiring a commercial building for monetary gain is engaged in the business of electrical wiring, irrespective of what his usual occupation may be. 1967 Op. Att'y Gen., No. 3, rendered prior to the 1967 amendment to AS 08.40.190.

And a person must be a licensed electrical contractor (now administrator) in order to bid on and construct signal and communication systems. 1966 Op. Att'y Gen., No. 4.

Exception. — As a general rule, the performance by a person engaged in a different occupation or profession of a single transaction, or even a number of isolated transactions, pertaining to a licensed occupation or profession, will not be considered as engaging in or carrying on such occupation or profession within the purview of the law requiring the license. 1967 Op. Att'y Gen., No. 3.

Am. Jur. and C.J.S. references. — 34 Am. Jur., Licenses, § 9.

C.J.S. Licenses §§ 6, 30.

Sec. 08.40.100. Exclusion.
Repealed by § 14 ch 53 SLA 1977.

Editor's note. — The repealed section derived from § 9, ch. 158, SLA 1960.

Sec. 08.40.110. Application for license. An applicant for a license shall apply upon a form prescribed by the board. (§ 3 (d) ch 158 SLA 1960)

Sec. 08.40.120. Examination of applicant. Each applicant shall be examined to determine his knowledge of electrical installations and wiring, familiarity with the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American Standards Association, other installation and safety regulations approved by the American Standards Association, and his personal skill and ability. (§ 3 (d) ch 158 SLA 1960)

Design of chapter. — This chapter is designed to assure that no one installs wiring unless qualified by an examination designed to prove his personal skill and ability. 1963 Op. Att'y Gen., No. 14.

Sec. 08.40.130. Administrator limited to one licensed contractor. No person may qualify for or operate as an electrical administrator for more than one registered contractor. (§ 3 (e) ch 158 SLA 1960; am § 1 ch 30 SLA 1969; am § 7 ch 53 SLA 1977)

Effect of amendment. — The 1977 amendment rewrote this section.
Legislative committee report. — For report on ch. 30, SLA 1969 (CSSB 145), see 1969 House Journal, p. 417.

Sec. 08.40.135. Renewal and reinstatement. (a) A license issued under this chapter, unless revoked or suspended, is nontransferable and may be renewed on a date set by the department, without examination, by appropriate application.

(b) A lapsed license may be reinstated by payment of all unpaid renewal fees and a penalty fee of $25 for each year the license has been lapsed unless the license has been lapsed for more than three years and the board has reason to believe that it may be necessary to require the licensee to take and pass the examination given under § 120 of this chapter. (§ 2 ch 30 SLA 1969; am § 8 ch 53 SLA 1977)

Effect of amendment. — The 1977 amendment, in subsection (a), deleted "is valid for two years after issuance" following "under this chapter" and substituted "on a date set by the department" for "biennially on January 1.

Legislative committee report. — For report on ch. 30, SLA 1969 (CSSB 145), see 1969 House Journal, p. 417.

Sec. 08.40.140. Issuance and display of license. An applicant who successfully passes the examination shall receive a certificate of license. The certificate shall be prominently displayed, while in effect, in the holder's principal place of business. (§ 3 (f) ch 158 SLA 1960)

Sec. 08.40.150. Fees. (a) Each applicant shall pay an original license fee of $100.

(b) The fee for biennial renewal of a license is $100. (§ 3 (f) ch 158 SLA 1960; am § 3 ch 30 SLA 1969)

Legislative committee report. — For report on ch. 30, SLA 1969 (CSSB 145), see 1969 House Journal, p. 417.

Sec. 08.40.160. Waiver of examination.
Repealed by § 14 ch 53 SLA 1977.

Editor's note. — The repealed section derived from § 3 (f), ch. 158, SLA 1960.

Sec. 08.40.170. Denial, suspension and revocation of license. (a) The board may suspend, revoke or refuse to grant a license upon a finding that

(1) the application is fraudulent or misleading;

(2) the licensee has knowingly violated this chapter or a lawful rule, order or regulation of the board;

(3) the licensee is incompetent, or has engaged in fraudulent practices.

(b) Notice of a proposed denial, suspension or revocation of license shall be given in writing, stating the grounds.

(c) Proceedings for the denial, suspension or revocation of a license shall be governed by the Administrative Procedure Act (AS 44.62). (§ 4 ch 158 SLA 1960; am § 4 ch 30 SLA 1969)

Legislative committee report. — For report on ch. 30, SLA 1969 (CSSB 145), see 1969 House Journal, p. 417.

Sec. 08.40.175. Cease and desist order. (a) If the commissioner of labor determines that a person is acting as an electrical administrator in violation of this chapter, he may issue a cease and desist order prohibiting further action by the person as an electrical administrator. The cease and desist order remains in effect until the person has submitted evidence acceptable to the commissioner of labor showing that the violation has been corrected.

(b) A person affected by an order issued under (a) of this section may seek equitable relief preventing the commissioner of labor from enforcing the order. (§ 1 ch 39 SLA 1972; am § 9 ch 53 SLA 1977)

Effect of amendment. — The 1977 amendment substituted "administrator" for "contractor" in two places in the first sentence of subsection (a).

Sec. 08.40.178. Injunctive relief. The commissioner of labor may seek an injunction in the superior court to enjoin a person from violating this chapter. (§ 1 ch 39 SLA 1972)

Sec. 08.40.180. Violation of chapter. A person who knowingly violates this chapter, or who knowingly violates a valid rule, regulation or order of the board, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $300, or by imprisonment for not more than 60 days or by both. (§ 10 ch 158 SLA 1960)

Effect of bid in response to invitation for general construction. — If an invitation to bid is for general construction, including electrical work, and allows subcontracting, no inference that the work will be done by the bidder is involved, the electrical work is incidental to the main contract, and therefore no question of violation of the law arises. 1963 Op. Att'y Gen., No. 14.

And to invitation specifically for electrical work. — If the invitation is specifically for electrical work, the question arises whether the bidder is purporting to be in the business of electrical contracting. 1963 Op. Att'y Gen., No. 14.

Party may ask for bids on contingency. — A party desiring electrical work to be done is not restricted in his right to ask for bids on contingency. 1963 Op. Att'y Gen., No. 14.

And the invitation to bid can be phrased so as to allow bids from persons not qualified to do the work at the time the bids are received. 1963 Op. Att'y Gen., No. 14.

No valid legislative purpose is served by attaching criminal sanctions to entering a contract expressly contingent upon obtaining a license, since the contract does not endanger anyone protected by the statute. Therefore, it is legal for an unlicensed electricial contractor (now administrator) to bid if he acknowledges his inability to perform the work unless and until licensed. 1963 Op. Att'y Gen., No. 14.

But without contingency the contract is, in effect, an agreement to commit a crime and is in violation of the public policy of the state. 1963 Op. Att'y Gen., No. 14.

And such a contract is illegal and unenforceable. 1963 Op. Att'y Gen., No. 14.

Normally a contingent bid is not responsive to the invitation to bid. 1963 Op. Att'y Gen., No. 14.

And constitutes a material variance from state specifications. — The "Invitation to Bid" form normally used by state agencies at the present time contains no provision indicating that the contractor (now administrator) will be permitted to qualify after the opening of the bids to perform the electrical work offered. By submitting a responsive bid to such an invitation a contractor (now administrator) is purporting to be ready and able to do the work and is in violation of the law if the contractor is not licensed. If the bid recites the lack of license qualification, the recital constitutes a variance from the specifications of the invitation. The lack of license is such a material variance as to be basic. State contracting officers are not entitled to waive the variance as an informality since the variance reaches matters of essence and substance. 1963 Op. Att'y Gen., No. 14.

A bidder who admits he is unlicensed and unable to presently perform the work is making no false pretenses. 1963 Op. Att'y Gen., No. 14.

Article 3. General Provisions.

Section
190. Exclusions
200. Definitions

Sec. 08.40.190. Exclusions. (a) This chapter does not apply to any utility or municipality engaged in

(1) electrical construction and maintenance of electrical wiring for the generation and distribution of electrical current where the wiring is an integral part of a system owned and operated by that utility or municipal light and power department;

(2) the installation, operation, maintenance, or repair of telephone, telegraph, signal or communication systems when the work is performed by the employees of that utility.

(b) This chapter does not apply to any person engaged in

(1) the manufacture or repair of electrical apparatus or equipment;

(2) electrical work, the cost of which does not exceed $5,000, involving residences or small commercial establishments in communities

(A) which have a population of under 500; or

(B) which are over 50 miles by air or water transportation from the business place of an electrical administrator licensed under this chapter;

(3) electrical installation on residential property which is owned by the installer or a member of his immediate family and not intended for sale at the time of making the installation;

(4) the operation, maintenance or repair of a television or radio broadcasting system and the installation of a radio broadcasting system under 500 watts input power except for A.C. power supply and wiring;

(5) the installation, maintenance and repair of elevators so long as the work is performed by an agent or employee of the elevator industry and is confined to the elevator control system, which system does not include the power supply, wiring and motor connection;

(6) the maintenance or repair of telephone systems.

(c) Work within the exclusionary provisions of this section is nevertheless subject to the inspection provisions of § 70 of this chapter and must follow the regulations regarding workmanship adopted by the board. (§ 8 ch 158 SLA 1960; am § 1 ch 79 SLA 1967; am § 10 ch 53 SLA 1977)

Effect of amendment. — The 1977 amendment rewrote this section.

Legislative committee report. — For report on ch. 79, SLA 1967 (HB 258), see 1967 House Journal, p. 427.

Section delineates circumstances where strict control not deemed necessary. — The exclusions provided in this section and former AS 08.40.100 delineate within narrow limits those circumstances where strict control is not deemed necessary. 1967 Op. Att'y Gen., No. 3.

Performance of single transaction pertaining to licensed occupation. — As a general rule, the performance by a person engaged in a different occupation or profession of a single transaction, or even a number of isolated transactions, pertaining to a licensed occupation or profession, will not be considered as engaging in or carrying on such occupation or profession within the purview of the law requiring the license. 1967 Op. Att'y Gen., No. 3.

Wiring commercial building for monetary gain. — If the work to be done is of such nature that it would not impose a serious fire or safety hazard even if performed improperly, then it could be considered insignificant. Absent this limitation anyone engaged in wiring a commercial building for monetary gain is engaged in the business of electrical wiring irrespective of what his usual occupation may be. 1967 Op. Att'y Gen., No. 3, rendered prior to the 1967 amendment to this section.

Sec. 08.40.200. Definitions. As used in this chapter

(1) "board" means the Board of Electrical Examiners;

(2) "electrical administrator" means any person engaged in the business of, or purporting to be engaged in the business of, installing or repairing, or contracting to install or repair, electrical wiring, conduits, devices, fixtures, equipment, or other electrical materials for transmitting, using or consuming electrical energy;

(3) "electrical wiring" means and includes wiring, fixtures, conduits, appliances, devices, equipment, overhead or underground wiring systems, or other equipment in connection with the general distribution or utilization of electrical energy;

(4) "manufacture" means fabrication or completion of a product or electrical apparatus exclusive of its completion or installation at a job site;

(5) "utility" means every corporation (whether public, cooperative or otherwise), company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant or system for

(A) furnishing, by generation, transmission or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation. (§ 3 (a) (b) ch 158 SLA 1960; am §§ 12, 13 ch 53 SLA 1977)

Effect of amendment. — The 1977 amendment substituted "administrator" for "contractor" near the beginning of paragraph (2) and added paragraphs (4) and (5).

Installation of signal and communication systems is included within the broad definitions of this section. 1966 Op. Att'y Gen., No. 4.

One who responds to invitation for bids is or purports to be in business of electrical contracting. — A person who responds to an invitation for bids is engaged in and purporting to be engaged in the business of contracting to install or repair electrical wiring, if the necessary purport of his bid, to the inviter, is that he is engaged in the business of electrical contracting. 1963 Op. Att'y Gen., No. 14.

And to "purport" to be in such business requires dissemblance. — To "purport" to be in the business of electrical contracting, as distinct from being engaged in the business, requires dissemblance on the part of the electrician, since "being engaged" includes the appearance of being engaged, unless the appearance is deceptive. 1963 Op. Att'y Gen., No. 14.

CHAPTER 32.
BOARD OF ELECTRICAL EXAMINERS

Article

1. Outside Linework Category (12 AAC 32.010–12 AAC 32.040)
2. Outside Communications Category (12 AAC 32.050–12 AAC 32.080)
3. Inside Wiring Category (12 AAC 32.090–12 AAC 32.110)
4. Inside Communications Category (12 AAC 32.130–12 AAC 32.150)
5. Residential Wiring Category (12 AAC 32.170–12 AAC 32.190)
6. Examinations (12 AAC 32.210–12 AAC 32.240)
7. Applications (12 AAC 32.250–12 AAC 32.260)
8. General Provisions (12 AAC 32.900–12 AAC 32.910)

ARTICLE 1.
OUTSIDE LINEWORK CATEGORY

Section

10. (Repealed)
11. Qualifications for an electrical administrator license in the outside linework category
20. (Repealed)
21. Examination for an electrical administrator license in the outside linework category
30. (Repealed)
31. Scope of an electrical administrator license in the outside linework category
40. (Repealed)

12 AAC 32.010. APPLICATION. Repealed 7/28/77.

12 AAC 32.011. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE LINEWORK CATEGORY. (a) An applicant for an electrical administrator license in the outside linework category shall furnish proof satisfactory to the board that he or she has

(1) three years of current practical experience as a journeyman lineman in outside linework;

(2) four years of current management experience in outside linework as field superintendent, office engineer or similar position; or

(3) a degree in electrical engineering from an accredited college or university plus one year of current practical experience as a journeyman lineman in outside linework. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050

12 AAC 32.020. NOTIFICATION. Repealed 7/28/77.

12 AAC 32.021. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE LINEWORK CATEGORY. An applicant for an electrical administrator license in the outside linework category will be examined to determine his or her knowledge of outside linework, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in outside linework. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045 AS 08.40.060
AS 08.40.050 AS 08.40.120

12 AAC 32.030. EXAMINATIONS. Repealed 7/28/77.

12 AAC 32.031. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE LINEWORK CATEGORY. (a) The holder of an electrical administrator license in the outside linework category may supervise all work defined in (b) of this section. A person holding a current valid license in outside linework on the effective date of the amendment to this section will be granted a license in outside communications without examination.

(b) Outside linework includes

(1) all work necessary to the assembling, installation, erection, operation, maintenance or repair of all electrical apparatus, devices, wires, cables, supports, insulators, conductors, ducts,

and raceways when part of distributing systems outside of buildings;

(2) all underground ducts and cables when they are part of a system of a distributing company or utility;

(3) all outdoor substations and electrical connections up to and including the setting of transformers and the connecting of the primary busses to them;

(4) all outdoor street lighting on public thoroughfares, roadways, and rights-of-way; and

(5) all linework consisting of wood, concrete or metal, or substitutes for those materials; poles or towers, including wires, cables, or other apparatus supported by them. (Eff. 7/28/77, Reg. 63; am 4/11/79, Reg. 70)

Authority: AS 08.40.045
AS 08.40.050
AS 08.40.090

12 AAC 32.040. NOTIFICATION OF RESULTS. Repealed 7/28/77.

ARTICLE 2.
OUTSIDE COMMUNICATIONS CATEGORY

Section
50. (Repealed)
51. Qualifications for an electrical administrator license in the outside communications category
60. (Repealed)
61. Examination for an electrical administrator license in the outside communications category
70. (Repealed)
71. Scope of an electrical administrator license in the outside communications category
80. (Repealed)

12 AAC 32.050. REEXAMINATION. Repealed 7/28/77.

12 AAC 32.051. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE COMMUNICATIONS CATEGORY. An applicant for an electrical administrator license in the outside communications category shall furnish proof satisfactory to the board that he or she

(1) has had two years of current practical experience in outside communications; or

(2) is a graduate of an accredited college or trade school in outside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050

12 AAC 32.060. FAILURE TO APPEAR FOR EXAMINATION. Repealed 7/28/77.

12 AAC 32.061. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE COMMUNICATIONS CATEGORY. An applicant for an electrical administrator license in the outside communications category will be examined to determine his or her knowledge of outside communications, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in outside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045 AS 08.40.060
AS 08.40.050 AS 08.40.120

12 AAC 32.070. ISSUANCE OF LICENSE. Repealed 7/28/77.

12 AAC 32.071. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE OUTSIDE COMMUNICATIONS CATEGORY. (a) The holder of an electrical administrator license in the outside communications category may supervise all work defined in (b) of this section.

(b) Outside communications includes

(1) outside linework as defined by sec. 31(b) of this chapter but limited to the installation, operation, maintenance and repair of telephone, telegraph, and intercommunication facilities, up to the first point of distribution or the first terminal inside of building or property lines; and

(2) the installation, maintenance and repair of fire alarm, intrusion alarm or other low voltage signaling systems of 48 volts to ground or less, outside of buildings or property lines where aerial wires or cables are used between buildings or structures up to the first point of attachment of such conductors to those buildings or structures. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050
AS 08.40.090

12 AAC 32.080. ADMINISTRATOR OF LICENSE. Repealed 7/28/77.

ARTICLE 3.
INSIDE WIRING CATEGORY

Section
90. Qualifications for an electrical administrator license in the inside wiring category
100. Examination for an electrical administrator license in the inside wiring category
110. Scope of an electrical administrator license in the inside wiring category

12 AAC 32.090. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE WIRING CATEGORY. An applicant for an electrical administrator license in the inside wiring category shall furnish proof satisfactory to the board that he or she has

(1) three years of current practical experience as a journeyman electrician in inside wiring;

(2) four years of current management experience in inside wiring as field superintendent, office engineer or similar position; or

(3) a degree in electrical engineering from an accredited college or university plus one year of current practical experience as a journeyman electrician in inside wiring. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050

12 AAC 32.100. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE WIRING CATEGORY. An applicant for an electrical administrator license in the inside wiring category will be examined to determine his or her knowledge of inside wiring, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in inside wiring. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045 AS 08.40.060
AS 08.40.050 AS 08.40.120

12 AAC 32.110. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE WIRING CATEGORY. (a) The holder of an electrical administrator license in the inside wiring category may supervise all work defined in (b) of this section and the work defined under the residential wiring category in sec. 190(b) of this chapter. A person holding a current valid license in inside wiring on the effective date of the amendment to this section will be granted a license in inside examination.

(b) Inside wiring includes

(1) installation, construction, operation, maintenance and repair of all electrical work within buildings and within property lines of any given property, and beginning at the secondary side of the transformer, except linework consisting of poles and towers, including wires or cables and other apparatus supported by them, and except outdoor substations as defined under outside linework jurisdiction; and

(2) work starting immediately after the first point of attachment of aerial conductors to buildings when aerial wires or cables are used to provide power for buildings or structures within the property lines of any given property. (Eff. 7/28/77, Reg. 63; am 4/11/79, Reg. 70)

Authority: AS 08.40.045
AS 08.40.050
AS 08.40.090

ARTICLE 4.
INSIDE COMMUNICATIONS CATEGORY

Section
130. Qualifications for an electrical administrator license in the inside communications category
140. Examination for an electrical administrator license in the inside communications category
150. Scope of an electrical administrator license in the inside communications category

12 AAC 32.130. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE COMMUNICATIONS CATEGORY. An applicant for an electrical administrator license in the inside communications category shall furnish proof satisfactory to the board that he or she

(1) has had two years of current practical experience in inside communications; or

(2) is a graduate of an accredited college or trade school in inside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

12 AAC 32.140. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE COMMUNICATIONS CATEGORY. An applicant for an electrical administrator license in the inside communications category will be examined to determine his or her knowledge of inside communications, familiarity with the applicable portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in inside communications. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050
AS 08.40.060
AS 08.40.120

12 AAC 32.150. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE INSIDE COMMUNICATIONS CATEGORY. (a) The holder of an electrical administrator license in the inside communications category may perform all work defined in (b) of this section.

(b) Inside communications includes

(1) work within the inside wiring jurisdiction but limited to the installation, operation, maintenance and repair of telephone, telegraph and intercommunication facilities, beginning at the first point of distribution or the first terminal inside of building or property lines; and

(2) the installation, maintenance and repair of fire alarm, intrusion alarm or other low voltage signaling systems of 48 volts to ground or less, within buildings or within lines, except as defined under sec. 110(b)(2) of this chapter. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050
AS 08.40.090

ARTICLE 5.
RESIDENTIAL WIRING CATEGORY

Section
170. Qualifications for an electrical administrator license in the residential wiring category
180. Examination for an electrical administrator license in the residential wiring category
190. Scope of an electrical administrator license in the residential wiring category

12 AAC 32.170. QUALIFICATIONS FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE RESIDENTIAL WIRING CATEGORY. An applicant for an electrical administrator license in the residential wiring category shall furnish proof satisfactory to the board that he or she has two years of current practical experience in residential wiring as a residential wireman. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

12 AAC 32.180. EXAMINATION FOR AN ELECTRICAL ADMINISTRATOR LICENSE IN THE RESIDENTIAL WIRING CATEGORY. An applicant for an electrical administrator license in the residential wiring category will be examined to determine his or her knowledge of residential wiring, familiarity with the applicable

portions of the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American National Standards Institute, other applicable installation and safety regulations approved by the American National Standards Institute, and practical skill and ability in residential wiring. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050
AS 08.40.060
AS 08.40.120

12 AAC 32.190. SCOPE OF AN ELECTRICAL ADMINISTRATOR LICENSE IN THE RESIDENTIAL WIRING CATEGORY. (a) The holder of an electrical administrator license in the residential wiring category may supervise all work defined in (b) of this section on a residential dwelling unit not exceeding two stories in height and no larger than a four-plex.

(b) Residential wiring includes inside wiring and inside communications work as defined in secs. 110(b) and 150, respectively, of this chapter, but is limited to residential occupancies described in (a) of this section. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050
AS 08.40.090

ARTICLE 6.
EXAMINATIONS

Section
210. Examination
215. Examination review
220. Reexamination
230. Notice of examination
240 Examination papers

12 AAC 32.210. EXAMINATION. (a) Each part of an examination must be passed with a minimum score of 70 percent.

(b) An applicant may not be examined for more than two electrical administrator license categories at any one scheduled examination. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.045
AS 08.40.050
AS 08.40.120

12 AAC 32.215. EXAMINATION REVIEW. (a) A person receiving a failing score may review his or her examination in the presence of at least one board member if he or she makes a request to the board before the recess of the board's regularly scheduled meeting the day immediately following the examination.

(b) An examination review shall be conducted the day the request for review is made or the following day.

(c) Upon completion of an examination review with an applicant, the board member reviewing the examination will prepare a written and signed statement of any changes the board member determines should be made to the original examination score.

(d) The board will review and act upon all written statements of recommended changes before the adjournment of the board's regularly scheduled meeting immediately following the examination.

(e) The written and signed statement of recommended changes will be returned with the original and unaltered examination papers to the department following the board's meeting. (Eff. 5/25/79, Reg. 70)

Authority: AS 08.40.050
AS 08.40.120

12 AAC 32.220. REEXAMINATION. (a) An applicant failing part of the examination will be allowed to retake the parts failed if he or she notifies the department of his or her intent to retake the examination at least 30 days before the next scheduled examination.

(b) An applicant who fails to retake the parts failed within one year must retake the entire examination. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

12 AAC 32.230. NOTICE OF EXAMINATION. Candidates whose applications for examination have been accepted will be notified of the time and place of examination at least two weeks before the examination. Notice of the examination will also be published in major newspapers at least 30 days before the examination. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050
AS 08.40.060

12 AAC 32.240. EXAMINATION PAPERS. All examination papers will be preserved for a period of at least six months after notification of grade results, during which time any candidate who has failed the examination may inspect his papers in the presence of a board member or his designee. However, no person may inspect examination papers during the 30 days immediately preceding any examination. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050
AS 08.40.060
AS 08.40.120

ARTICLE 7.
APPLICATIONS

Section
250. Application; forms, supporting evidence, and fee
260. Time and place for filing applications

12 AAC 32.250. APPLICATION; FORMS, SUPPORTING EVIDENCE, AND FEE. (a) An application for initial licensure must be submitted on a form provided by the department with

(1) a check or money order in the amount specified in (b) of this section;

(2) transcripts from an accredited school or trade school attended by applicant;

(3) a certified copy of the applicant's degree awarded by an accredited school or certificate from trade school;

(4) evidence of experience required by this chapter.

(b) The appropriate fee under AS 08.40.150 or 08.40.135(b) must accompany an application. The fees under AS 08.40.150 for original license and renewal must be paid for each category applied for. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050
AS 08.40.110
AS 08.40.150

12 AAC 32.260. TIME AND PLACE FOR FILING APPLICATIONS. An application together with the required fee must be filed at least 10 days before a regularly scheduled board meeting in order to be considered at that meeting. Regular meetings are held in the months of February, May, August, and November. (Eff. 4/11/79, Reg. 70)

Authority: AS 08.40.050
AS 08.40.110
AS 08.40.150

ARTICLE 8.
GENERAL PROVISIONS

Section
900. Licensed electrical administrator is responsible for completed project
910. Definitions

12 AAC 32.900. LICENSED ELECTRICAL ADMINISTRATOR IS RESPONSIBLE FOR COMPLETED PROJECT. Completion of a project conducted under an electrical administrator's license constitutes certification by the administrator that work performed and materials used conform to applicable codes and standards. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050
AS 08.40.130

12 AAC 32.910. DEFINITIONS. In this chapter

(1) "board" means the Board of Electrical Examiners;

(2) "department" means the Department of Commerce and Economic Development;

(3) "four-plex" means a building containing four dwelling units erected on a common foundation;

(4) "journeyman lineman" or "journeyman electrician" means a person who has at least four years or 8,000 hours experience in the electrical trade and holds a certificate of fitness as issued by the Department of Labor under AS 18.62;

(5) "residential wireman" means a person who has at least two years or 4,000 hours experience in the residential wiring trade and holds or is otherwise entitled to hold a certificate of fitness as issued by the Department of Labor under AS 18.62. (Eff. 7/28/77, Reg. 63)

Authority: AS 08.40.050

BOARD OF ELECTRICAL EXAMINERS (pages 1-12)

KEY OF REFERENCES:

(Y) = yellow - State of Alaska Sunset Review, 1979
(B) = blue - Division of Legislative Audit Performance Review of Electrical Examiners Board, May 1979.
(Testimony) = Senate Commerce Committee Hearing Minutes, November 7, 1979
(Green) = Board of Electrical Examiners Report, June 1979 to Governor J. S. Hammond

[redacted]

1. Board should not be continued
   (B) Audit - page 7, page 9, Recommendation 1; page 8 (Yellow) O.L.

~~Quote from Elaine Garrett~~

If the Board of Electrical Examiners should be continued the following changes/additions are suggested:

A. Board composed of 4 members -- 2 lay, 2 professional. Two year terms with one re-appointment.
   Testimony - p. 59
   (Y) - p. 10/13 O.L.
   (Y) - p. 32, Board View
   (B) - p. 13, Audit

   (5) 3 + 2 lay
   (TOT) (Prof)

B. Increase the number of inspectors.
   Testimony - p. 60, 6, and 10
   (Y) - p. 11, O.L.
   (Y) - p. 5, Board has power to inspect
   Testimony - Don Liston, Editor of "Building Alaska" magazine

C. Statutory authority for reciprocity should exist.
   Testimony - H. D. Wilson, contractor, p. 69, and ombudsman's letter, p. 80
   (Y) - p. 35, Board
   (B) - p. 12, Audit, Recommendation #5
   (Y) - p. 7, O.L.

   Endorsement

D. Eliminate inspection power from the Department of Labor for Electrical Examiners. Commerce already has this power.
   (Y) - p. 27/29, conclusive p. 30, Attorney General
   Testimony - Don Liston/"Build Alaska"
   SB 232

   O.K.

E. Licensee should not take the certificate of fitness test.
Testimony - p. 60,9
(Y) - p. 39, Board
(Y) - pp. 8, 6
(B) - p. 9 (instead of Sunset, eliminate this duplication) Audit

F. Adopt the National Electrical Code and the National Electrical Safety Code as a minimum standard for the State of Alaska.
(Y) - p. 36 - Board
Testimony - Tony Reid, Inspector
Administration - Memo Oct. 30, 1979 by Bill McConkey, p. 2

O.K.

G. Annual report from Board to Legislature/Put authority in 08 Title.
Testimony - Michael Frith
(B) - p. 13, Audit
(Green) - p. 3, section 2, Board

Yes Report

H. It should not be required that electricians involved in the communications industry be licensed.
(B) - pp. 7, 10, Recommendation 2 - Audit
(Y) - p. 7, Audit

Let to the Bd

I. In regard to fees and licensing a maximum of two-years [redacted] of license should be allowed before reexamination is statutorily required.
(Y) - p. 34, Board
(Y) - p. 13 - fees - O.L.
(Y) - O.L. and Audit agree on fees. Set by OL and Board. SB 94.

J. Licencees should be notified of renewal dates at least thirty days before the expiration date of their licenses.
Repeal 08.01.050 by O.L. per Elaine Garrett

Notify

Original sponsor: Commerce Committee

IN THE HOUSE BY THE COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 1031

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act continuing the existence of the Board of Electrical Examiners, and amending the statutes relating to the powers and duties of the board; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.40.010 is amended to read:

Sec. 08.40.010. CREATION AND MEMBERSHIP OF BOARD. There is [HEREBY] created a Board of Electrical Examiners consisting of three members, <u>two of whom</u> [WHO] are licensed electrical administrators <u>and one of whom is a public member</u>.

* Sec. 2. AS 08.40.020 is amended to read:

Sec. 08.40.020. APPOINTMENT AND TERM OF OFFICE. The members of the board shall be appointed by the governor and confirmed by the legislature for staggered terms of three years, or until their successors are appointed. A member may be removed at the pleasure of the governor. <u>A person may not be appointed to serve more than two consecutive terms on the board.</u>

* Sec. 3. AS 08.40.050 is amended to read:

Sec. 08.40.050. REGULATIONS. The board shall adopt regulations subject to the Administrative Procedure Act (AS 44.62), relating to the examination and licensing of electrical administrators<u>, the establishing of the continued competency of an applicant for license renewal and reinstatement,</u> and the suspension or revocation of licenses.

* Sec. 4. AS 08.40.120 is amended to read:

Sec. 08.40.120. EXAMINATION OF APPLICANT. (a) Each applicant shall be examined to determine

(1) his ability to understand plans, design specifications, and engineering terms commonly used in the electrical field;

(2) his knowledge of electrical installations and wiring;

(3) his [,] familiarity with the regulations contained in the National Electrical Code and the National Electrical Safety Code, as approved by the American Standards Association;

Amendment *

(4) [,] his familiarity with other installation and safety regulations approved by the American Standards Association;

(5) his familiarity with electrical installation problems and the usages of the trade peculiar to Alaska; [,] and

(6) his personal skill and ability.

(b) If an applicant for a license submits proof satisfactory to the board that he is licensed as an electrical administrator or the equivalent by another state or territory, that he meets qualifications established by the board under AS 08.40.045, and that he has passed an examination equivalent to the test administered under (a) of this section except insofar as that examination tests knowledge and skill particularly required to meet the environment and usages of the trade peculiar to Alaska, the board shall waive all of the examination required under (a) of this section except those parts which test knowledge and skill particularly required to meet the environment and usages of the trade peculiar to Alaska.

* Sec. 5. AS 08.40.135 is amended to read:

Sec. 08.40.135. RENEWAL AND REINSTATEMENT. (a) A license issued under this chapter, unless revoked or suspended, is nontransferable and may be renewed on a date set by the department upon proof of continued competency [WITHOUT EXAMINATION], by appropriate application.

(b) A lapsed license may be reinstated upon proof of continued competency by payment of all unpaid renewal fees and a penalty fee of $25 for each year the license has been lapsed unless the license has been lapsed for more than two [THREE] years. If a person's license has been lapsed for more than two years, he is required to take an examination under AS 08.40.120 [AND THE BOARD HAS REASON TO BELIEVE THAT IT MAY BE NECESSARY TO REQUIRE THE LICENSEE TO TAKE AND PASS THE EXAMINATION GIVEN UNDER AS 08.40.120].

* Sec. 6. AS 08.40.150 is amended to read:

Sec. 08.40.150. FEES. (a) Each applicant shall pay an original license fee of $200 [$100].

(b) The fee for biennial renewal of a license is $200 [$100].

* Sec. 7. AS 08.40.190(b)(6) is repealed and re-enacted to read:

(6) the operation, maintenance and repair of telephone, telegraph, and intercommunication facilities;

* Sec. 8. AS 08.40.190(b) is amended by adding new paragraphs to read:

(7) the installation, maintenance and repair of fire alarm, intrusion alarm or other low voltage signaling systems of 48 volts to ground or less;

(8) the maintenance or repair of diesel electric engines installed on heavy construction equipment, either in a shop or on a job site.

* Sec. 9. AS 08.40 is amended by adding a new section to read:

Sec. 08.40.195. PERSONAL SUPERVISION. A person licensed under this chapter as an electrical administrator who contracts to install or repair electrical wiring, conduits, devices, fixtures, equipment, or other electrical materials for transmitting, using, or consuming electrical energy must personally inspect those materials after installation and repair unless the installation or repair amounts to simple or highly

standardized work performed in less than 24 man hours by personnel generally under the supervision of the electrical administrator.

* Sec. 10. AS 08.03.010(c) is amended by adding a new paragraph to read:

(2) Board of Electrical Examiners (AS 08.40.010) -- June 30, 1982.

* Sec. 11. AS 08.03.010(b)(5) is repealed.

* Sec. 12. Notwithstanding AS 08.40.010 amended in sec. 1 of this Act, a member serving on the Board of Electrical Examiners on the effective date of this Act continues to serve on the board until expiration of the term to which he was appointed.

* Sec. 13. This Act takes effect June 30, 1980.

SENATE CS FOR HOUSE CS 1031

MR. PRESIDENT, I MOVE THE ADOPTION OF THE SENATE COMMERCE CS (WHICH HAS BEEN A RESULT OF A JOINT EFFORT WITH THE HOUSE TO PREVENT AN UNNECESSARY AND OFTEN TIME-CONSUMING FCC.).

MAIN BILL SUMMARY

1. SECTION 1, THIS BILL ADDS A PUBLIC MEMBER WITHOUT INCREASING THE SIZE OF THE BOARD.

2. SECTION 2, AS HAS BEEN DONE WITH THE OTHER BOARDS, A MEMBER CANNOT SERVE MORE THAN TWO CONSECUTIVE TERMS OF THREE YEARS EACH.

3. SECTION 3, THIS BILL PROVIDES THAT THE BOARD SHALL ADOPT REGULATIONS ESTABLISHING CONTINUED COMPETENCY OF AN APPLICANT FOR LICENSE RENEWAL AND REINSTATEMENT AND there is A LETTER OF INTENT ATTACHED WHICH EXPLAINS THE DETAILS OF this intent.

4. SECTION 4 OF THE BILL BEEFS UP THE EXAMINATION REQUIREMENTS AND EXPLAINS THE CONDITIONS OF RECIPROCITY.

5. SECTION 5 REQUIRES THAT A PERSON MUST BE RE-EXAMINED IF HIS LICENSE HAS BEEN LAPSED FOR MORE THAN TWO YEARS.

6. SECTION 6 INCREASES THE BIENNIAL RENEWAL LICENSE FEE FROM $100 TO $200 BECAUSE IT HAS NOT BEEN INCREASED SINCE 1969.

7. SECTIONS 7 AND 8 DENOTES THOSE PERSONS IN THE ELECTRICAL FIELD IN WHICH THIS CHAPTER DOES NOT APPLY, BUT WHO ARE SUBJECT TO THE INSPECTION PROVISIONS OF THIS CHAPTER. SECTION 7 EXPANDS SUBPARAGRAPH (6) TO INCLUDE OPERATION, AS WELL AS MAINTENANCE AND REPAIR, OF TELEGRAPH AND INTERCOMMUNICATION FACILITIES. SECTION 8, adds SUBPARAGRAPHS (7) AND (8), which is WORK THAT IS SPECIFICALLY SUBJECT TO INSPECTION PROVISIONS OF SEC. 70 OF THIS CHAPTER.

8. SECTION 9 REQUIRES AN ELECTRICAL ADMINISTRATOR TO PERSONALLY INSPECT AN INSTALLATION AND REPAIR JOB UNLESS THE JOB IS A SIMPLE, one PERFORMED IN LESS THAN 24 HOURS AND IS UNDER THE GENERAL SUPERVISION OF THE ELECTRICAL ADMINISTRATOR.

9. SECTION 10 EXTENDS THE LIFE OF THE BOARD TO JUNE 30, 1982.

10. SECTION 11 REMOVES THE BOARD OF ELECTRICAL EXAMINERS FROM THE LIST OF BOARDS WHICH HAVE A TERMINATION DATE OF JUNE 30, 1980.

11. SECTION 12 PROVIDES FOR THE BOARD MEMBERS SERVING ON THE EFFECTIVE DATE OF THIS ACT TO CONTINUE TO SERVE UNTIL THEIR TERMS EXPIRE.

12. SECTION 13 STATES THAT THIS ACT TAKES EFFECT JUNE 30, 1980.

COMMITTEE REPORT

SENATE

FURTHER: None

5/14/80

Date: May 20, 1980

Mr. President:

The Committee on COMMERCE has had CSHB 1031

continuing the existence of the Board of Electrical Examiners, and amending the statutes relating to the powers and duties of the board

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for CSHB 1031 [✓] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING DO PASS

Brad Bradley

Arlis Hurlburt

Terry A. Stimson

MEMBERS HAVING OTHER RECOMMENDATIONS:

Tim Kelly - No Rec

Brad Bradley
CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

LETTER OF INTENT
SCS for CS for HB 1031
May 20, 1980

The Honorable Senator Clem Tillion
Senate President
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Tillion:

The Senate Commerce Committee has reviewed the problems mentioned in our previous report arising from "Sunset" review of the Board of Electrical Examiners. Senate Commerce Committee Substitute for Committee Substitute for HB 1031 addresses these concerns.

One item requires some explanation. On page 1, lines 26 and 28, and on page 2, lines 28 and 29, and on page 3, lines 1 and 2, there is reference to a requirement of "proof of continued competency" and a provision to allow the Board to adopt regulations establishing continued competency for license renewal.

The Committee anticipates that the Board of Electrical Examiners would provide by regulation for compliance with these sections by addressing meetings and functions sponsored by recognized trade associations. In most cases this would probably refer to functions sponsored by the National Electrical Contractor's Association.

The Committee does not intend that there be a strict, classroom-style continuing education program that might not be consistent with this profession and trade, but rather that the Board of Electrical Examiners assure itself that an electrical contractor is keeping in touch with the applicable trade associations and is attending functions sponsored by them which may add to his knowledge about the changes in the field.

There were indications at our committee hearings during the "Sunset" process that the trade organization performs some of this function now and is interested in doing more of it. Of course, passage of this legislation would virtually require the trade organization to become more active in this area. There seems to be no objection to that.

Respectfully submitted,

Brad Bradley

Senator Brad Bradley
Chairman

GUIDE

LIC +

CONTROL

BOARD

STATE OF ALASKA

A PERFORMANCE REVIEW OF THE GUIDE LICENSING AND CONTROL BOARD

July 17, 1979

A PERFORMANCE REVIEW
OF THE
GUIDE LICENSING AND CONTROL BOARD

July 17, 1979

Commissioner of the Department of Commerce and Economic Development	Charles R. Webber
Commissioner of the Department of Public Safety	William R. Nix
Commissioner of the Department of Revenue	Thomas K. Williams

Members of the
Guide Licensing and Control Board

Chairman	Marcus F. Jensen
Member	Clark Engle
Member	Charles Keim
Member	Glen Glenzer
Member	Hubert C. Weise
Member	Norman G. Sutliff
Member	Donald Harris

AUDIT DIVISION
POUCH W - ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH W—STATE CAPITOL

JUNEAU, ALASKA 99811

July 17, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
GUIDE LICENSING AND CONTROL BOARD

July 17, 1979

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

11-Q1LH

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), an audit of the Guide Licensing and Control Board was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Guide Licensing and Control Board should be reestablished. The law currently specifies that this Board will terminate on June 30, 1980 but will continue until June 30, 1981 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, administration, complaint, examination and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) discussion with the Board and questionnaires sent to Board members;

(3) tests of records and documents of the Board, the Division of Occupational Licensing (OL), Department of Commerce and Economic Development and the Division of Fish and Wildlife Protection - Investigation Section, Department of Public Safety;

(4) interviews with OL employees, Fish and Wildlife Protection employees, Division of Game employees, Department of Revenue employees, employees in the Office of the Governor and employees in the Attorney General's Office;

(5) complaints filed with the Division of Fish and Wildlife Protection, the Ombudsman's Office, the Attorney General's Office, the Equal Employment Opportunity Office and the Human Rights Commission;

(6) questionnaires sent to 180 State licensed Registered and Master Guides.

Scope Constraint

This review was hampered by the Board not having established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information required by AS 37.07.090.

ORGANIZATION AND FUNCTION

The Guide Licensing and Control Board was established by the 1973 Session Laws of Alaska and succeeds the Board of Fish and Game, Department of Fish and Game, which previously regulated the guiding industry. The seven member Board is appointed by the Governor with confirmation by the Legislature and is restricted to having no more than three members as licensed guides. Board members serve staggered terms of three years or until their successors are appointed.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing. Two budgeted positions, a Guide Investigator and Administrative Assistant, in the Department of Public Safety, Division of Fish and Wildlife Protection, have been provided to assist in the licensure and investigations of guides.

The function of the Board is primarily regulatory, mandated by AS 08.54.040. Accordingly, the Board has the capacity to administer examinations; determine qualifications of guides; establish performance standards and regulate activities; maintain guide registers; prohibit harmful guiding activities; conduct hearings regarding licensure; and establish quotas of guides for specified geographical areas (exclusive guiding areas). The Board through the assignment of exclusive guiding areas limits hunting pressure by guides within a specific geographical area.

In addition, the Board licenses "transporters", a licensed "transporter" is a person who transports hunters for hire.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these issues, the legislative oversight committees should consider the findings and alternatives presented in this report in reaching their decision.

Report Conclusion

In our opinion, the Guide Licensing and Control Board should be continued. For the following reasons, we believe the regulation and licensing of guides is needed to protect the public's health, safety and welfare:

A. This profession involves contracting for hunting game that could result in severe physical harm if practiced by incompetent persons. Potential harmful results include injury or death to the hunter due to neglect or carelessness on the part of the guide.

B. Other users of game resources, such as the general public and subsistance hunter, can be directly or indirectly affected by guiding activities. For example, overhunting by guides in an area not only depletes the game resources available to the general public but also adversely affects the subsistance hunters in that area.

C. In order to protect the public without unduly restricting individual rights, AS 16.05.407(a) exempts Alaskan residents from requiring the services of a guide.

While the reasons above indicate that the Board should continue to license and regulate guides, certain changes need to be implemented in order for the Board to more effectively serve the public.

The Board should seek legislation to have the guide licensing function transferred to the Department of Public Safety. Currently, staff support for the Board is being provided by two departments - the Department of Public Safety and the Department of Commerce and Economic Development. Personnel in both Departments believe that the licensing function as well as enforcement would be enhanced by consolidation of the two functions in one department (see Recommendation No. 1).

The Board should seek legislation to have the transporter laws (Alaska Statutes 08.54.142, 144, 146 and 08.54.170(c)) repealed, as they are confusing and of little value (see Recommendation No. 2).

The Board should continue its efforts to make the statutes and regulations more relevant and workable (see Recommendation No. 3).

The Department of Revenue should collect fees from guides as required by statute (see Recommendation No. 4).

The Board should establish formal goals, objectives and quantifiable measures (see Recommendation No. 5).

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 3 are addressed to the Guide Licensing and Control Board, No. 4 is addressed to the Department of Revenue, No. 5 is addressed to the Division of Occupational Licensing (OL) and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978".

Recommendation No. 1

The Guide Licensing and Control Board should seek legislation to have the guide licensing function transferred to the Department of Public Safety.

Staff support for the Guide Licensing and Control Board is currently being provided by two departments - the Department of Commerce and Economic Development (DCED), Division of Occupational Licensing (OL) and the Department of Public Safety (DPS), Division of Fish and Wildlife Protection (F&WP).

Applications for guide licenses are required by Alaska Statute 08.01.060 to be sent to DCED. A licensing examiner in the Division of Occupational Licensing (OL) in Juneau receives the application and fees and, upon authorization from the Board, issues the license. The licensing examiner also provides other administrative and clerical support to the Board. In addition, the licensing examiner maintains files on each individual licensee, and copies of the material in the files are sent to the Division of Fish and Wildlife Protection in Anchorage.

The Division of Fish and Wildlife Protection (F&WP), Investigation Section in Anchorage has two budgeted positions, a Guide Investigator and an Administrative Assistant, assigned to provide assistance in the licensure and investigation of guides. F&WP is also responsible for the enforcement of guide related statutes and regulations. In addition, F&WP maintains current and complete history files on all licensed guides as well as maintaining files on all the exclusive/joint use guiding areas.

Personnel in both OL and F&WP have stated that the licensing and investigative services provided to the Guide Licensing and Control Board should be consolidated within one agency. OL personnel have stated that public convenience, and staff availability would be enhanced by the consolidated effort. F&WP personnel believe that the licensing function as well

as enforcement would be enhanced by consolidation of the two functions. A reduction in operating costs should result to OL, based on the reduced work load of the licensing examiner, who estimates that she spends approximately 2/3 of her time on Guide Board related matters.

Recommendation No. 2

The Guide Licensing and Control Board should seek legislation to have the "transporter laws" repealed.

The purpose of the "transporter laws" (Alaska Statutes 08.54.142,.144.,146 and 08.54.170(c)) is to protect the safety of the citizens of the State and better manage and protect its resources by licensing persons who transport hunters for hire so that reasonable standards and guidelines would be met and activities affecting the State's game resources would be more accurately monitored and assessed.

In our opinion, the "transporter laws" are not needed to protect the safety of the public or manage the game resources.

Personnel in the Department of Public of Safety, Division of Fish and Wildlife Protection, consider the "transporter laws" confusing and difficult to enforce. In addition, we found the information and reports that transporters are required to file are not being used and are not needed to manage the game resources of the State. Furthermore, air transporters' flying safety qualifications and aircraft safety are regulated by the Federal Aviation Administration.

Recommendation No. 3

The Board should continue its efforts to make the statutes more clear, relevant and workable.

Over the past several years the Board has been adopting regulations to make the statutes more clear, relevant and workable. However, we noted several statutes which need further consideration. For example:

A. AS 08.54.142.144, .146 and 08.54.170(c) as discussed in Recommendation No. 2, the Board should seek legislation to have the "transporter laws" repealed.

B. AS 08.54.190(a) requires an annual renewal of guide licenses. This conflicts with AS 08.01.100(a) which requires biennial renewal of occupational licenses. It also creates additional administrative effort for both the Division of Occupational Licensing and the licensee, with no demonstrable benefit to the public.

C. AS 08.54.110(6) pertaining to moral turpitude is considered to be vague and should be repealed as the regulation (12 AAC 38.180) defining unethical activity provides sufficient public protection in this area.

D. AS 08. 54.200(c)(3) is considered to be unduly restrictive because it requires the Board to revoke a guide's license upon two convictions of federal or State sport fish, game or guide violations regardless of how minor the violations may have been or how long ago they may have occurred.

E. AS 08.54.130(2) requiring a Class-A assistant guide to be under the supervision of a registered or master guide is considered vague. The term "supervision" should be clarified to indicate exactly what constitutes supervision during the conduct of a hunt.

Recommendation No. 4

The Department of Revenue should collect fees from guides as required by statute.

Alaska Statute 16.05.340(e) effective January 1, 1977 requires licensed master and registered guides to pay a fee in the following amounts for each caribou, sheep, moose, brown or polar bear taken on a guided hunt over a specified number:

1) over 5 up to a total of 10 per season - $20;

2) over 10 up to a total of 25 per season - $100;

3) over 25 per season - $500.

Executive Order No. 17 requires the Department of Revenue to collect and account for all revenues incidental to the regulation and management of Alaska's fish and game resources. The Department has not developed forms and procedures necessary to collect and account for revenue under AS 16.05. 340(e).

Recommendation No. 5

The Board should establish formal goals, objectives and quantifiable measures which should be included in the Division of Occupational Licensing's (OL's) budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL establishes its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured, neither the Governor's Office nor the Legislature can evaluate the Board's performance.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of Board activities relate to the public need factors defined in the "sunset" law. This analysis is not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. The Board has adopted regulations defining unethical conduct which clarify and strengthen the professional's responsibility to the public.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. The Division of Fish and Wildlife Protection, Department of Public Safety, has handled investigations of complaints in a timely and effective manner.

2. The Board is required to license and regulate transporters under AS 08.54.142, .44, .146 and AS 08.54.170(c). Board members, personnel in the Departments of Public Safety and Fish and Game consider these statutes to be confusing and of little value (see Recommendation No. 2).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. Although the statutes and regulations governing Board activities should be subjected to further review, the Board has adopted revisions to its regulations that significantly improve their clarity and applicability (see Recommendation No. 3)

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. The public is invited to attend Board meetings and to give their input about the workings of the Board. Notices of meetings are advertised in each of three newspapers throughout the State. In addition, guides are notified by registered mail of meetings that might affect them.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. As stated under criteria IV, the public is invited, by published notices in newspapers, to attend Board meetings to give their input about Board regulations or submit written testimony.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. Since 1977, five complaints have been filed with the Ombudsman's Office concerning guides and/or the Board. All five cases were relatively minor and were all resolved satisfactorily.

2. During the period between April 1977 and April 1979, the Investigative Support Unit of the Division of Fish and Wildlife Protection, Department of Public Safety conducted 61

investigations involving all classifications of guides. During this same period, 35 accusations were filed for Disciplinary Hearings before the Board. Many of the Disciplinary Hearings resulted in the Board taking action such as suspending or revoking a guide's license.

VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

1. As of June, 19, 1979 approximately 39 Master Guides, 289 Registered Guides, 116 Class-A Assistant Guides, 468 Assistant Guides and 48 Transporters are licensed in Alaska.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. The applications pertaining to licensing of guides and transporters contain requests for information such as birthdate, birthplace, marital status, sex and whether the applicant is a citizen of the United States. These requests may be violations of the Equal Employment Opportunity requirements. However, some of this information may be necessary to confirm an applicant's qualifications. We recommend that the requirements for licensure be analyzed to determine if a valid need for the information exists (see the OL Performance Audit Report).

2. Although the Board does not have a formal affirmative action plan, it has been making an effort to increase the participation of Native Alaskans in the guiding industry. For example, in August 1979, two Board members, a Fish and Game Biologist and the Chairman of the Interim Subsistence Committee in the State House of Representatives went to several native villages along the Arctic coast for the purpose of explaining the guiding business and how the natives along the Arctic coast can become licensed to guide for marine mammals such as walrus. In addition, a

Board meeting has been scheduled to be held in Nome at the end of November 1979, in order to orally examine native applicants for guide licenses. We recommend that the Board continue its efforts to include more Native Alaskans in the guiding industry.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

1. Staff support for the Guide Licensing and Control Board is currently being provided by two departments. In our opinion, consolidation of the licensing and investigation functions would result in a more efficient, economical and effective performance of both functions (see Recommendation No. 1).

2. Please refer also to the previous section of this report, Findings and Recommendations.

APPENDIXES

APPENDIX A

GUIDE LICENSING AND CONTROL BOARD
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Average Revenue (Schedule 1, Note 1 and Note 2)		$ 40,157
Expenditures-OL (Note 3)	$38,843	
Expenditures-F&WP (Note 3)	77,243	116,086
Excess of Expenditures over Revenues		$(75,929)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Master Guide License	$75	Annually
Registered Guide License	$75	Annually
Class-A Assistant Guide License	$15	Annually
Assistant Guide License	$10	Annually
Transporter License	$10	Annually
Application For A Guide Examination	$25	With Application
Late Renewal Penalty	$10	With Late Payment

Note 1

Although guide and transporter licenses are renewed annually, we calculated and reported an average of the revenues collected in Fiscal Years 1977 and 1978 in order to present a fair representation of collected revenues.

Note 2

The average revenue amount reported does not include revenue obtained from the sale of game tags or hunting licenses. It only includes revenue obtained from fees required to obtain and/or renew guide licenses.

Note 3

Expenditures include those made by Board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of OL. Also included were expenditures which were charged to the Board by the Department of Public Safety, Division of Fish and Wildlife Protection - Investigation Section. The amount reported does not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board, OL and the Division of Fish and Wildlife Protection.

APPENDIX B

ADMINISTRATIVE STATISTICS

Currently Licensed	As of June 19, 1979
Master Guides	39
Registered Guides	289
Class-A Assistant Guides	116
Assistant Guides	468
Transporters	48

Board Meetings Between October 14, 1977 and June 20, 1979

December 03 - 09, 1977

February 18 - 21, 1978

March 27 - 30, 1978

November 25 - December 01, 1979

January 29 - February 01, 1979

April 03 - 06, 1979

Note: The examinations (written and oral) for a Registered Guide license are given once a year in late November or during December.

APPENDIX C

QUESTIONNAIRE SENT TO BOARD MEMBERS

1. What do you believe to be the goals and objectives of the Guide Licensing and Contol Board?

Description	Number of Board Members' Responses (See Notes 1, 2 and 3)
A. *To establish a viable guiding industry.*	2
B. *To assure public protection by allowing adequate entrance of qualified guides into the guiding business.*	1
C. *To establish a conservation program for game management through the use of exclusive guiding areas.*	1
D. *To set standards of conduct such as a Code of Ethics.*	1

2. How does the Board measure its progress in meeting its goals and objectives? Please specify.

Description	Number of Board Members' Responses
A. *By the establishment of exclusive guiding areas by game management units.*	3
B. *Proposed regulations are scheduled for hearings.*	1
C. *Guide exams are scheduled and given.*	2
D. *Hearings on accusations are scheduled and handled.*	1
E. *Monitor political issues that affect the guides and/or the guiding industry.*	1
F. *Progress is measured by the support of the majority of ethical guides/businessmen even while they remain as the Board's constant critic/mentor.*	1

3. What evidence exists demonstrating that the absence of guide regulations and/or the Board would be detrimental to the public's best interest? Please explain.

Description	Number of Board Members' Responses
A. *The Guide Board has the power to act against the license of an errant guide. This power appears to be the greatest deterrent the guides willingly recognize.*	2
B. *Because the Board has spread out the guiding pressure, the public now has a better chance at a good hunting trip. Guides themselves have endorsed the program of exclusive guide areas as a way to conserve game.*	2
C. *Prior to the Board's existence, unqualified people set themselves up as "guides" to an unknowing public--particularly those outside Alaska. This resulted in hunters leaving the State bitterly disappointed.*	1
D. *Through the use of Regulations - Code of Ethics, qualifications and tests, exclusive guiding areas, etc., society is starting to recognize and respect the guide as a professional.*	1

4. A. Is the staff from the Department of Commerce and Economic Development and/or the Department of Public Safety adequate to perform and enforce all laws and regulations relating to the Guide Licensing and Control Board?

Description	Number of Board Members' Responses
A. *Yes. A workable staff has been established. Complaints (founded and unfounded) have dropped over 60% since the Board has been established according to a Public Safety spokesman.*	1
B. *Yes. All staff personnel are doing a good job. There is some delay and confusion in handling inquiries and license*	

4. (Cont'd.)

	Number of Board Members' Responses
research due to the support staff being split into two departments.	1
C. *More support for the enforcement end of the guiding industry is needed.*	1

4. B. What staff support services are provided adequately/inadequately?

Description

A. *Guides, Guide Board files and exclusive guide area maps are handled very well. Support from the AG's Office is good at this time.*	1
B. *Staff support now is the best it has ever been.*	1
C. *The Board needs more travel and per diem so it can meet in other places in the State besides Anchorage, Fairbanks, and very seldom Juneau.*	1

4. C. Are investigations performed adequately/inadequately?

Description

A. *Yes. Present investigations are very thorough.*	1
B. *Yes. The biggest improvement in the last year is in the timeliness of investigations and hearings. This is mainly due to the fact the Attorney General's Office has assigned a special attorney to handle our cases.*	2

5. Are the Board functions and activities and/or the guiding industry hampered by any statutes or regulations which you believe to be obsolete, vague or unduly restrictive? Please list and explain.

Description	Number of Board Members' Responses
A. *Yes. Some statutes and regulations are obsolete, vague and unduly restrictive. The Board and an advisory committee appointed by the Board are reviewing this. Statutes and regulations are a part of each Board meeting, and only with input from the public and the AG's Office can these be evaluated and changed when needed.*	1
B. *The Guide Board set up a joint committee with the professional guides to examine problems concerning regulations or statutes. The joint committee has made recommendations to the Board concerning changes needed in the regulations and statutes.*	2

6. Has the Board recommended any statutory changes which are generally in the public's best interest? Please list and explain.

Description	Number of Board Members' Responses
A. *Believe the Board has recommended changes in the statutes, but without researching, can not list.*	1
B. *The Board just passed a regulation establishing an Arctic Coast guide unit, which would be called Guide Unit 27. In future programs we will be assigning guides for the taking of marine mammals.*	1
C. 1) *Establishment of Exclusive Guiding areas;*	1
2) *placing more emphasis upon the guides' recommendations for assistant guides;*	1

7. What changes could be made to the Board which would improve its service to the public and guiding industry? Please discuss.

Description	Number of Board Members' Responses
A. *Believe the Board has served the public interests and the guiding industry very well.*	1
B. *Have enough funds to pay for a public address system at our meetings.*	1
C. *My experience on the Board has finally convinced me that the mere increase in numbers would make it more efficient, more fair. I believe that with a couple more meetings each year, the Board would have more time before each meeting for discussion.*	1

8. In your opinion, what effect have exclusive and joint use guiding areas had on the guiding profession and the game resources of the State? Are exclusive and joint use guiding areas beneficial to the Alaskan public? Please discuss.

Description	Number of Board Members' Responses
A. *Exclusive and Joint Use Guiding Areas have given guides an incentive to better manage the game resources in their areas.*	4
B. *They have provided the public the following benefits; 1) less guide pressure in areas of high game count; 2) better guide service; 3) more game available to the hunter; 4) over all better public acceptance of hunting as a sport, not a slaughter as some special interest groups would like the public to believe.*	2
C. *With the help of Exclusive Guiding Areas, the Board has largely brought illegal guiding activities under control.*	1

9. Any other comments?

Description	Number of Board Members' Responses
A. *Believe the news media has to be used to better inform the public of guiding and/or hunting.*	1
B. *Fees from guides and guiding activity should reimburse the State for the costs of the Guide Board and related activity of other Departments. The Board should be kept active for a minimum of another four years so that the effect of its performance can be adequately measured.*	1
C. *The Board has passed a regulation setting forth an offshore guide area in the Arctic. This area could offer guided hunts for walrus, seal, whales, and polar bear. There are many non-residents who are interested in these types of hunts. If the Native hunters become interested in the guiding profession it could add a great deal to their economy. Our Board is going to try to make a personal survey with the Arctic villages to see if they are interested in a guide program.* *I feel that the Guide Board is working fairly with the Attorney General's Office, Public Safety, Commerce Department and the professional guides. Our program is pretty well understood by the guides and we have made every effort to be as fair as possible.* *D-2 land settlement might cause the Board to re-evaluate what could be done for those guides put out of business. We would ask for public input and information from the Dept. of Game as to what possibilities are open to us.*	1
D. *The exclusive guiding areas (EGA) are starting to work for the good of all. The removal of the EGA system now would be chaotic. The greatest losses would be to the game populations, the Alaska general public and the industry itself.*	1

Note 1

Number of Board Members 7

Number of Board Members' Responses 4

Note 2

Some Board Members responded to each question with several answers. Therefore, total responses to a question may exceed the number of Board members.

Note 3

Comments were all reviewed and considered in the performance of our audit, and are briefly summarized in this appendix.

APPENDIX D

QUESTIONNAIRE SENT TO LICENSED MASTER GUIDES AND LICENSED REGISTERED GUIDES

The following questionnaire was sent to licensed master and registered guides (see Note 1). For each question on the questionnaire we have noted the percentage of yes and no responses. We have also shown the most typical written comments for each question as compiled from the questionnaire (see Note 2).

	% of Responses (See Note 1)		
	Yes	No	No Opinion
1. Do you believe the Guide Licensing and Control Board has operated in the public's and guiding industry's best interest?	72%	26%	2%
Comments:			
Yes. Competition for hunting areas has been reduced tremendously since assigned areas were implemented by the Board. Action by the Board against unethical operations has had a good effect on the industry.			
2. Would the absence of the Board be detrimental to the public's best interest?	68%	29%	3%
Comments:			
Yes. The Board is necessary if we are to regulate the guiding profession.			
3. Are there any statutes or regulations which you believe to be obsolete, vague or unduly restrictive?	51%	35%	14%
Comments:			
Yes. The three assistant guide limit is unduly restrictive. The transporter law should be deleted, as all it does is legalize a bunch of $10 guides who are not restricted to area, ethics.			

		% of Responses		
		Yes	No	No Opinion
4.	Are you aware of any discriminatory practices by the Board with regard to an individual's race, religion, color, national origin, age or sex?			
	Comments:	*10%*	*88%*	*2%*
	Yes. No comments were received for the 10% yes responses.			
	No. In fact they go overboard to be fair.			
5.	Do you believe that Alaska's licensing requirements (for assistant guide, Class-A assistant guide, registered guide and master guide) are adequate and effective in ensuring that the public is protected?			
	Comments:	*72%*	*24%*	*4%*
	Yes. The requirements are adequate.			
	No. Tests should be much more rigid and cover broader areas.			
6.	Are there any additional statutes, regulations or licensing requirements needed to ensure the public is adequately protected?			
	Comments:	*30%*	*59%*	*11%*
	Yes. There should be a legal limit placed on the number of guides because there is a limited amount of game.			
	No. We have too many statutes and regulations on the books now.			
7.	Do you have any complaints concerning the service provided by the staff support of the:			
	1) Department of Commerce and Economic Development, Division of Occupational Licensing?	*13%*	*75%*	*12%*
	2) Department of Public Safety, Division of Fish and Wildlife Protection?	*30%*	*59%*	*11%*

	% of Responses		
	Yes	No	No Opinion

7. (Cont'd.)

Comments:

Yes. The Department of Commerce and Economic Development is too slow in getting licenses issued.

No. Staff support has been good.

Yes. Protection officers seem to tend to be more interested in making cases than working to prevent offenses. By the same token, they spend time checking sport fishermen for licenses rather than work on more important offenses.

Favoritism. Harassment of some well meaning and hardworking guides.

No. They have been doing a good job.

8. Do you believe that the examination given by the Board for a registered guide license is a fair and reasonable test of a guide's professional knowledge and ability? 79% 14% 7%

Comments:

Yes. Between the written and oral exams an applicant gets adequate testing.

No. Some emphasis should be placed on contracts, civil rights and legal rights. A guide should also be required to attend a First Aid course or an adequate substitute.

9. Do you feel that the issuance of exclusive and joint use guiding area permits is in the best interests of the public and the guiding industry? 63% 34% 3%

Comments:

Yes. It is the only way to preserve our industry and maintain a healthy game population.

No. Areas are unfairly proportioned with little or no standardization. The big money operators were given huge tracts,

	% of Responses		
	Yes	No	No Opinion

9. (Cont'd.)

much of which they seldom if ever use. This has eliminated the opportunity for many newer and smaller guide operations to have any area at all.

10. Do you believe that there is a need for licensure of all transporters in the State? — 42% | 51% | 7%

Comments:

Yes. One of the biggest abuses of the wildlife resource in Interior Alaska has been by transporters (pilots without guide licenses) who act, for all practical purposes as guides.

No. A so called transporter does the same job as a guide and should be qualified as a guide. It's a way around the guide law, and has been abused by many Air Taxi operators and residents.

11. Any other comments to assist us in evaluating the public need for the Board and/or its performance:

The Guide Board has worked very hard for the guiding industry. I believe that should the Guide Board be dissolved, the guiding industry would die. There is evidence that guiding brings a lot of money into the State that stays here. I strongly recommend the Guide Board be retained.

I believe the Guide Board should be abolished. They have been given too much power. If you aren't friends or have the money you are out. Who needs them!

Note 1

Number of questionnaires sent to licensed master guides and licensed registered guides.	180
Number of responses.	91
Response Rate.	51%

Note 2

Comments were all reviewed and considered in the performance of our audit, and are briefly summarized in this appendix.

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED
SEP 28 1979
LEGISLATIVE AUDIT

September 28, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed the enclosed Department of Commerce and Economic Development response to your preliminary report entitled:

"A Performance Review of the Guide Licensing and Control Board -July 17, 1979"

Additionally, we have reviewed the interim response data submitted by the Departments of Revenue and Public Safety and are forwarding them to you.

You will note that the Department of Revenue is consulting with the Department of Law concerning Recommendation No. 4 and that they plan to make an official response within ten days. Also, the Department of Public Safety has indicated that there have been no changes of substance since their response to your interim letter. Accordingly, they and we feel that the original response is adequate and self-explanatory.

Sincerely,

Richard A. Smith

Richard A. Smith
State Internal Auditor

RAS/PJA/mjc
Enclosures

08-H2LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER / POUCH D – JUNEAU 99811

September 27, 1979

RECEIVED
SEP 28 1979
LEGISLATIVE AUDIT

Mr. Gerald Wilkerson, C.P.A.
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Guide Licensing and Control Board, as submitted by the Division of Legislative Audit.

Recommendation No. 1: Agree. We believe that consolidation of guide licensing and control into one agency would enhance efficiency of operations, avoid duplication, and be less confusing. Transfer of licensing to the Department of Public Safety would not, however, have a significant effect in reducing Division of Occupational Licensing operating costs. We still would maintain equipment, overhead expenses, and the licensing examiner who is also currently responsible for two other boards. The reducation in workload would result in reallocation of duties from other high volume areas.

Recommendation No. 2: Agree. The division and the board are in agreement with this recommendation and will be preparing appropriate statutory amendments for consideration during the 1980 legislative session.

Recommendation No. 3: Agree. The board works on a continual basis to make its statutes and regulations comprehensible and relevant. The division will assist the board in these efforts.

Recommendation No. 4: N/A

Recommendation No. 5: Agree. All boards and commissions were requested to submit this information for inclusion in the FY '81 budget document. The Guide Licensing and Control Board has complied with that request.

Thank you for the opportunity to respond to this report and for the time and effort expended by you and your staff.

Sincerely,

Bertram L. Wagnon
Acting Commissioner

BLW/kb

Gerald Wilkerson, Director
Legislative Auditor
Division of Legislative Audit

August 10, 1979

William R. Nix, Commissioner
Department of Public Safety

Interim Letter No. 1
Guide Licensing and
Control Board

Having reviewed the Interim Letter No. 1 concerning the sunset audit conducted by your agency of the Guide Licensing and Control Board, I offer the following comments:

Recommendation No. 1

The Guide Licensing and Control Board should seek legislation to have the guide licensing function transferred to the Department of Public Safety.

This department endorses this recommendation. The duplicated efforts currently practiced by two departments will be eliminated and all guide licensing functions placed under one authority. This will greatly simplify the citizens involvement with guide licensing functions. Additionally, it will eliminate the need to correct numerous errors that currently occur due to a split in the duties and responsibilities.

Recommendation No. 2

The Guide Licensing and Control Board should seek legislation to have the "transporter laws" repealed.

Again the department endorses this recommendation. As written the transporter laws do not serve a useful purpose in enforcement, game management, or protection of the resources. Some discussion between the Department of Fish and Game and the Department of Public Safety on this subject last year indicated that they share our opinion. To a large degree, our functions with the transporter laws overlaps that of the Federal Aviation Administration.

Recommendation No. 3

The Board should continue its efforts to make the statutes more clear, relevant and workable.

In general, many of the statutes and regulations are confusing to the public and our protection officers. It does little good to have statutes on the book and regulations

promulgated if the public doesn't understand them. In response to the examples you cited I offer the following:

A. This was covered in our response to recommendation number 2. This law is not only unworkable, but does not serve the purpose for which it was intended.

B. This may not be as confusing as it sounds because all fish and game licenses are renewed annually. If the guide licensing functions are placed under one authority (recommendation #1) it may eliminate the problems.

C. We admit that the term moral turpitude is vague; yet, ethical conduct or ethical activity, as recommended by the auditor, only applies to persons acting in the guide profession after a license is secured. Section 08.54.110(6) speaks to the qualifications for a registered guide license and the wording "has not been convicted of a crime involving moral turpitude" gives us a court established precedent for requesting applicants fingerprints and for conducting background investigations. If "moral turpitude" is repealed, some substitute qualification should be found that continues to give us the ability to eliminate applicants with serious criminal backgrounds.

D. The department agrees with the auditor that this section is very restrictive. The same intent could probably be accomplished by changing the word shall to may. Other statutes such as AS 08.54.200(b) and AS 08.54.200(c) give the board the authority to revoke licenses for other types of violations.

E. We would like to caution trying to define "supervision" as it could end up in the same category as "participate in a hunt" (AS 38.090) or "cooperate with officials" (AS 38.120). For purposes of enforcement, we feel that the current wording is sufficient.

Recommendation No. 4

The Board should establish formal goals, objectives and quantifiable measures which should be included in the in the Division of Occupational Licensings' budget document.

I feel that the board does have definate objectives and would have no reluctance to stating those objectives.

If you have additional questions or need a comment clarified, please feel free to contact me.

WRN/lsb

STATE of ALASKA

MEMORANDUM

SEP 28 1979

LEGISLATIVE AUDIT

TO: Richard Smith, Director
Internal Audit Division
Department of Administration

DATE: September 28, 1979

FILE NO:

TELEPHONE NO:

FROM: Thomas K. Williams, Commissioner
Department of Revenue JKD for

SUBJECT: Legislative Audit's Performance Review of the Guide Licensing & Control Board

RECOMMENDATION NO. 4 - THE DEPARTMENT OF REVENUE SHOULD COLLECT FEES FROM GUIDES, AS REQUIRED BY STATUTE.

This law requires the participation of several State agencies. In 1976, the Department of Revenue met with the Departments of Law, Fish and Game, Commerce, Public Protection, and the Guide Licensing and Control Board.

The determination at that time was that the Guide Board, working with the Department of Commerce, was the only State agency that could effectively collect fees. The Guide Board and the Department of Law were to resolve the various problems and formulate the policy and procedures.

In the first week of October, the Department of Law is to release a memorandum which will set the guidelines and recommend appropriate action by each participating agency.

The Department of Revenue would like to defer an official response to Recommendation No. 4 until the Department of Law's memorandum has been reviewed. We request a ten-day postponement.

memo RECEIVED

From the desk of

SEP [illegible]

LEGI[illegible]E

9/22/79

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor

Dear Mr. Wilkerson:

Thanks for the copy of the preliminary audit of the Guide Board. Mine caught up with me in Port Angeles a couple of days ago. I notice that the chairman of the Board is requested to provide you with a response within 20 days. The last communication I received from Marcus Jensen via a copy of a letter to someone else indicated that he would not be back in Alaska until the latter part of October. He then will be in Juneau for a time until he goes to deer camp. My reaction to the audit is that it is both thorough and perceptive.

Sincerely,

Member
GL&CB

cc
Mr. Jensen

Norman Sutliffe (Kodiak)

1. One more meeting each year
2. aliens hinting

Charles Kien

1. Can't have a walrus hunt now.
2. Content foreign countries if we cannot use walrus by products, leather, bone meal, & red meat & oil.
3.

Mark Jensen

1. Land problem has fouled up guide areas.
2. Input from guides to Board to regulate guide profession.
3. 4 bills dealing w/ guiding that should have guiding in them & should be passed. (See Mark on this)
4. AC should move the guide cases along
5. Transporter license should be revealed.
6. Financing of board - Need more than 3 meetings per year.
7. Bd pays its on way w/ license fees -
8. Need a good tape recorder & PA system & meeting place for Bd meetings
9. Do not transfer Bd to Protection Div (Pub. Safety Dept) from Commerce Dept

Don Harris

Repeal transporter bill

Phil Driver

add one more guide to Bd

Phil Driver

2. a mailing of each scheduled meeting + a transcript of the decision made during each Bd meeting.
3. Transporter law should be repealed.
4. Re-defining guiding - put in regulation.
5. Should use more than 3 asst. guides.
6. Maybe test for asst. guides - do test basic skills
7. alien thing is biggest problem.
8. How many in favor of Bd + Phil Driver + Ken Fanning + Bill Bellinger or not in favor -

Transport alien (Define): For against

a. all big game animals
b. all food meet animals
c.

Mark Jensen

Repeal access tax on a few guides
a Head tax
Pay a tax for guiding lic

Clark Engle

$25 for a tag fee for a grizzly is not enough.

Alaska
Professional Hunters Association, Inc.

P. O. BOX 4-1932
ANCHORAGE, ALASKA 99509

Phone (907) 243-3977

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PAMELA R. WILSON

SUMMARY OF A.P.H.A. SURVEY OF GUIDING INDUSTRY

RE: ASSESSMENT OF STATE GUIDE LICENSING AND CONTROL BOARD:

RE: REGULATIONS, STATUTES, AND PROBLEMS EFFECTING THE GUIDING INDUSTRY

283 Questionnaires mailed; 56 (20%) Returned
3 undelivered.

Part A

1. How many guide board meetings have you attended during the past three years?

1 to 3 15; 4 to 8 22; 9 to 12 12; More 6;

2. If you attended less than 6, why have you not attended more often:

a. 14 Said to far to travel.

b. I attend one annually which is sufficient. Meetings held other than in Fairbanks and Anchorage are to time consuming, and to costly to attend.

c. Do not know when meetings are set, having no telephone or newspaper.

d. Completely disenchanted with politics which direct Boards activities.

e. I seldom know about the meetings in time to schedule my time for them.

f. Don't feel I could do anything about the way things are being done anyway.

g. Was never notified unless I was personally involved.

h. After being denied five times in a row one gets the feeling no one is listening with an open mind.

3. To what percentage from 0% to 100% do you believe the guide board has fairly and equitably administered the exclusive guide areas?

61.84% average, Comments follow on page 2

3. Comments
   a. 0%, I disagree with exclusive areas.

   b. The board decidedly shows favoritism.

4. The guide board has appointed an informal advisory committee of random guides for the purpose of reviewing statutes and regulations, and submitting the recommended revisions and deletions of statutes and regulations to clarify, improve and make them more relevant. Do you favor the concept of advisory committee to the guide board? YES 48, NO 2. Would you be willing to serve on such a committee YES 39, NO 8.

   a. Our present board is very uninformed in many respects. Not only in statutes and regulations, but in regards to awarding areas.

   b. Get some rural guides on this committee.

   c. Yes, the reasoning used to have assistant guides on it is wrong. I don't need an assistant that is going to tell me how to shape my destiny.

   d. The advisory committee should be made law and funded.

5. Do you believe that the guiding profession could be better served if all board members were licensed master or registered guides? YES 25, NO 25. Comment:

   a. I think four of the members should be active guides. We need some lay people on the board.

   b. No, I feel we should have the imput of the other side, because we tend to be one sided.

   c. No, but would like to see four professional guides on the Board.

   d. Yes, the non-guide members are making decisions on a profession that they were never in. They can not relate to the problems of making a living by guiding.

   e. Yes, to many have no idea of the actual problems involved in actively guiding in Alaska.

   f. Yes, only if it was well thought out when we appointed them.

   g. Yes, no guides are inperative

   h. No, it seems the board has enough trouble being fair and impartial at this time. If the board were completely made up of guides---wow! I think that as a group guides are a little short on scruples.

Cont'd pg. 3

5. Continued, member make-up of guide board.

i. The board should be made up of 1 master guide, 2 registered guides, 1 competent assistant guide, 1 fish and game member, 1 public member, 1 environmentalist, and 1 Alaska native of at least ½ blood, who is a competent progressive individual, but aware of his people.

j. Yes, if a guide board member is to serve on the board he has to know how to guide, have experience in hunting regulations, and know how to care for clients and trophies.

k. Yes, it is hard enough to understand problems even if you hold a license. I think impossible if you do not.

l. No, the board is not there to serve the guides, but to protect the public. The board should not be packed with professional members. This makes for a good image of creditability for the board. This is a fact that should be brought to the attention of the public.

m. Yes, the board should be made up of master guides that are active in the industry

n. No, the guide board is a public serving, governing body. I feel we need some non-guide members.

o. The board needs 3 full time professional outfitters. There is only one full time outfitter now. We need civilians for favorable public opinion even though trade and medical boards don't always have laymen on them.

p. I believe the guide board should be totally eliminated. A board made up of guides from our own ranks, and the Dept. of Fish and Game could better administer the industry.

q. An all guide, guide board would be more acceptable. Each member with 15 years experience.

r. Lets fact it Hammonds men are on the board. That makes it all self-serving. We need guides on the board not paid lobbyists.

s. Board not necessary

t. A majority of guides would not better the boards ability to function for a good guide industry

u. I believe we have the best board possible to set up.

6. Evaluation of Guide Board Members by the guiding industry. Comments:

a. The board has functioned well under the circumstances.

b. I'm pleased with the Guide board and feel we owe them all a vote of thanks and our support.

c. I think they have done as honest a job as they could, but they have been in to long, Keim - Engle - Jensen - Glenzer.

Continued pg. 4

PART A #6. EVALUATION OF GUIDE BOARD MEMBERS BY THE GUIDING INDUSTRY

BOARD MEMBER	PRUDENT	FAIR AND IMPARTIAL	EXHIBITS UNDERSTANDING OF GUIDE PROBLEMS	RESISTS SELF-SERVING DECISIONS OR ACTIONS	EVALUATING SYSTEM
MARCUS JENSEN	21 Avg. 1.77	18 Avg. 1.91	24 Avg. 1.65	17 Avg. 2.04	1 - Good
	13	15	15	10	2 - Acceptable
	11	14	8	19	3 - Unacceptable
	3	1	1	2	4 - No Opinion
CLARK ENGLE	30 Avg. 1.38	23 Avg. 1.53	39 Avg. 1.19	25 Avg. 1.49	1 - Good
	16	20	7	18	2 - Acceptable
	1	2	1	2	3 - Unacceptable
	1	3	1	3	4 - No Opinion
CHARLES KEIM	35 Avg. 1.30	29 Avg. 1.43	34 Avg. 1.32	26 Avg. 1.46	1 - Good
	8	14	9	17	2 - Acceptable
	3	3	3	2	3 - Unacceptable
	2	2	2	3	4 - No Opinion
GLEN GLENZER	17 Avg. 1.63	16 Avg. 1.63	12 Avg. 1.84	18 Avg. 1.56	1 - Good
	18	20	20	10	2 - Acceptable
	3	2	6	4	3 - Unacceptable
	10	10	10	16	4 - No Opinion
NORMAN SUTLIFF	14 Avg. 1.53	11 Avg. 1.65	8 Avg. 1.92	13 Avg. 1.33	1 - Good
	10	13	13	4	2 - Acceptable
	2	2	6	1	3 - Unacceptable
	22	22	21	30	4 - No Opinion
DONALD HARRIS	8 Avg. 1.90	5 Avg. 2.09	3 Avg. 1.91	6 Avg. 2.00	1 - Good
	8	10	10	5	2 - Acceptable
	6	7	7	6	3 - Unacceptable
	25	25	27	30	4 - No Opinion
BILL STROECKER	3 Avg. 1.62	3 Avg. 1.66	3 Avg. 2.08	4 Avg. 1.43	1 - Good
	5	6	5	3	2 - Acceptable
	0	0	4	0	3 - Unacceptable
	39	38	35	40	4 - No Opinion

6. Continued - Guide board evaluation and comment

d. This board has not behaved in accordance with its own regulations in the matter of handling exclusive guiding areas. Certain guides with large financial investments in a given area have historically been overlooked. Other guides have sold "improvements"but have not transfered the exclusive guiding rights as provided by the boards guidelines. In short the board serves a small group leaving most newer guides hanging out in the rain.

e. A good board, they do tend to favor the party who is in front of them at the time. They probably try to satisfy to many people.

f. We need a guide board and it must be a pipeline back to the legislature so we can get things done that are favorable for the industry. Without a board we will be back to no voice at all.

g. The guide board should pay more attention to the advisory committee whose recommendations thus far the board has ignored.

h. Our present board is very uninformed in many respects. Not only in statutes and regulations, but in regards to awarding areas.

PART B

1. Do you believe a guide law is NECESSARY 45, DESIRABLE 9, UNNECESSARY & UNDESIRABLE 2, comments.

a. Necessary, guiding and anything that deals with a renewable resource should be controlled in an effective manner.

b. Necessary, must have a guide law or we will be finished.

c. Necessary, for non-resident hunter safety, if for nothing else.

d. A guide law is necessary in order to have a guide industry. There is not much of a future for big game hunting without a guide industry.

2. In your opinion is the current guide las AS08:54 GOOD 9, ACCEPTABLE 30, UNACCEPTABLE 13, NO OPINION -3.

a. Some areas are unnecessarly restrictive. All licensed registered, and master guides are not listed on the annual state roster.

b. To much regulation

c. Unacceptable, to many regulations and not enough field work is the essence of the guiding industry today.

d. Acceptable, there are too many unnecessary restrictions and to few realistic regulations. A guide is hard put to follow all the rules, besides make the business work. There are few Protections offered a Guide.

3. The exclusive guide area system under 12 AAC 38.051 now in effect, in your opinion, is NECESSARY 30, DESIRABLE 1, UNNECESSARY & UNDESIRABLE 2, NO OPINION 0. COMMENT:

a. It may have some useful purpose, for me now it is unfair and discriminates between new and old guides.

Continued pg. 6

Part B continued, need of guide area system.

3. b. Guide areas should be permanent, saleable, and transferable.

c. Whoever yelled the loudest and was unbending got the most, and those who co-operated got screwed.

d. If handled properly by the guides assigned these areas, it is an excellent management tool.

e. Until the D-2 Land question is settled.

f. It has many faults and needs some refining.

g. A necessary evil, but areas were divided out "politically type wise".

h. With D-2, areas will no longer work, let us guide where we please

i. Undesirable, Exclusive Guide areas are not fair, why should some guides be allowed to hunt in some areas where others are not. Why should Doctors, Lawyers, and Commercial Fishermen be given these areas, to use as a hobby and tax write-off, when other persons who depend on guiding for their livelihood do not have an area to book hunts on. When areas are transferred they are sold for hugh sums, which makes it impossible for the new guide to get an area unless he has lots of bucks. I think I should have the opportunity to make a living at guiding and running my own hunts although I'm poor.

j. Undesirable, The board was very biased, if you arn't liked you are out of luck regardless of longevity or ethics or dollars invested.

k. Undesirable. It prohibits free enterprize and competition. It serves a very select few.

4. Do you believe the concept of the exclusive guide areas is good? YES 40, NO 10. Comments;

a. No other professional people in the State are restricted. I never had trouble with other guides working my camps. This is just a carrot in front of the mule to justify more regulations.

b. Yes. Tends to force a more conscientious management of the wild-life resource.

c. Yes, Needs up dating.

d. Yes, Exclusive use, overlapping no; and not in areas where animals migrate

e. No. Exclusive guide areas are probably unconstitutional.

f. No. Guides forced out of business by D-2, now have no place to hunt as all areas are taken. All guide areas should be desolved.

g. No, With the situation as is stands now I am not in favor of exclusive guiding areas.

h. Yes, Sure the basic concept is good, but the way it presently functions is not good.

i. Yes, It's necessary, but it is to bad the old days arn't still with us. Over abuse of aircraft makes it a necessary evil.

Continued to pg. 7

4. Guide area concept comments cont'd.

   j. Yes, This may not be the case in some areas of the State. For Kodiak it is a definate necessity. We are locked into a ridged permit area system. Without guide areas a guide here would have no assurance of obtaining any permits. As things are it's a gamble.

   k. Yes, If it had been assigned according to the initial theory

   l. Yes, at this time. When it started No.

5. Do you believe the board should review exclusive areas to consider reducing the size of the guide areas if not used appropriately by assigned guides. YES 42, NO 8. Comments:

   a. Some guides have areas larger than they deserve, and some are not deserving of any areas.

   b. Areas should be struck down. This was unjustified bureaucratic meddling with free enterprize.

   c. No. Would give the guide board one more power trip

   d. Yes, Only went on guides word and with many it was just so much "bull".

   e. Yes, Extremely important.

   f. No. A certain buffer area is necessary to keep game species in good shape

   g. Yes, Many guide areas were to large and are still to large since they have never been reconsidered.

   h. Yes, But what would be the criteria.

   i. Yes, Look at some of the areas that are the size of National Monumen

   j. Yes, Not necessarily reduce the size but perhaps allow more joint use.

PART C THE FOLLOWING ARE SOME STATUTES AND REGULATIONS WHICH SOME GUIDES WOULD LIKE TO SEE ELIMINATED OR REVISED. PLEASE INDICATE YOUR PREFERENCES.

1. Qualification for assistant guide license AS08.54.140 requires an individual to be 19 years or more, a resident of the State, is in sound physical condition and be favorably recommended by a registered or master guide. Do you feel this is an adequate qualification for an assistant guide: YES 34, NO16. Comments:

   a. Yes, but guides should be required to stand ready to prove any recommendation he gives is correct and the man is fully qualified.

   b. No, The assistant should have to prove some qualifications and longer residency.

   c. Yes, Should demonstrate more experience--largly OK, but an apprenticeship or breakin period would be better.

   d. No, Assistant guides should be required to demonstrate his ability by a short practical test.

   e. No, Needs 2 years experience, packin job.

   f. Yes, I do not like the thirty day field training law. It is to strangling.

Continued Pg. 8

1. Requirements for an Assistant Guide License, continued.

g. No, An assistant guide should also have to pass a test of basics.

h. Sometimes Yes, but we have quite a few unqualified Registered a and Master guides.

i. Yes, the minimum age of 19 may be to high in some cases.

j. No, Should be required to pass a basic test on hunting skills.

k. Should have field experience.

l. No, Assistant guides are sufficient when supervised by registered guides, but many assistant guides guide with little or no supervisior

m. Yes, The recommending guide should know.

n. No, Would like to see it harder for an assistant to get his License. Some assistants can't start a fire with 2 boxes of matches and 5 gallons of gas.

o. No, Should have lived or camped up to 5 years in the wilderness or made his living trapping, fishing or working for a guide.

2. Do you believe the transporter law serves a useful purpose?
YES 8, NO 40. Comment:

a. No, all it does is make instant illegal guides and I might add (advertising) guides.

b. No, All it does is create a $10.00 guide license and puts unnecessary paperwork for the Registered guide having to file transporter reports, even though he isn't required to have the license.

c. No, I'm not in the transport business, but required to submit unnecessary paperwork.

d. No, It serves as a license to steal. They should not be allowed to operate at all. Transporters are guides without licenses or qualifications.

e. No, $10.00 dollarsguides are a hazard to the public. Repeal the transporters license law.

f. No, This year in my area, several people were guiding for Moose and Caribou, without being restricted to a guide area or having qualifications of a registered guide, under the transporters License.

g. No, Not enforced to any extent. Rather see requirments similar to those placed on guides. For transporters (actually Air Taxi & Outfitters for all intent), are acting as guides.

h. No, I have yet to see any positive results from this law. Absolutly useless, imposes extra paper work of no value

i. Yes, Transporters should have been considered in allocating exclusive guide areas.

j. No, This law has only compounded the problems the guiding industry has by making Semi-Legal a bunch of $10.00 guides with no controls imposed

k. No usefull purpose in its current form. Must be recinded.

l. No, To difficult to administer. Resulting accuracy is questionable

m. Transporters or commercial pilots are acting as guides with no enforcement after them

Continued pg. 9

Part C #2. Transporter Law useful? continued

n. It legalizes about everybody. This is unfair to those who have gone to the trouble, work and testing to become a Licensed Guide.

3. AS08.54.150 makes registered and master guides equally responsible for violations of federal or state sport fish, game, guiding laws, perpetrated by assistant guides under his supervision. Do you believe registered or master guides should be held responsible for such violations reguardless of whether he does not condone, or may not be aware of those acts: YES 14, NO 38. Comment:

a. No, Assistants are adults, they know the law.

b. No, A registered guide should be some responsible in hiring of an assistant guide by knowing the mans background as best as possible.

c. No, This law must be applied properly, there are times when a guide has no control over his subordinates.

d. No, But he should not be allowed to let his assistant guide take his blame either. Every man should bear the burden of his own activities.

e. This is a very sticky subject, but in many cases I believe the guide should be given immunity.

f. No, The guide is only responsible when assistant is working under his direct order or supervision.

g. No, A registered or master guide should not be responsible unless he is personally present and could have prevented the violation.

h. No, the guilty should be punished, not the registered guide who is not partaken of the crime.

i. No, The key word is regardless, that is why I said No. A guide should be responsible for conduct of his employees.

j. Yes, It's the guides show out there and if he can't stay on top of it he is not qualified to be a registered or master guide.

4. AS o8.54.200 Paragraph (c) section (3), dictates the guide board shall revoke a guide license if the licensee has been convicted of two violations of federal or state sport fish, game or guide laws. In your opinion, should revocation of a license be manditory as specified above: YES 18, NO 28. Should such action be left to the discretion of the guide board? YES 27, NO 16, Comment;

a. Let our courts decide.

b. There should be a time limit on any violation, 3, 5, 8 yrs. Then the violation should be scrubed.

c. Why discriminate against one business and not another.

d. No, The "Kangaroo Court" guide board should not have the power to take a guides licenses or areas away. This should be done only by State court which follows safeguards built in over the last 200 years.

continued pg. 10

4. License revokation comments continued.

   e. Yes, As long as the guide board is governing guide activities under the Dept. of Commerce.

   f. No, Have seen guide license removed for very small violation.

   g. No, Much to inflexable to be realistic and fair considering the heavy penalties for two conceivably minor offenses.

   h. Yes, Should be worded so guide board can in very special cases use descretion.

   i. No, A guide should have more than 2 convictions over a 5 year period, like five convictions. Every 5 years the slate should be wiped clean. A time limit is a must.

   j. No, It should be damn hard for the board to revoke a license.

   k. Yes, Why is the work federal in the paragraph? Isn't this a State board? A guide should lose his license if he is convicted of 2 State game violations, and this should be decided by a judge and jury, not the guide board.

   l. Yes, the board is to lenient to their close friends, and to strict on others. The guide board is the most unfair biased group of power people I have ever delt with.

   m. No, However in most cases so far it would be hard to argue that license revocation was not warrented.

   n. Yes, It's damned hard for a licensed guide to accidently break a game regulation. It would make sense to yank a ticket for the first violation. We all know that convictions of game regulation violations are hard to get into court.

   o. I don't like the word shall. We might need different degrees of violation, major and minor.

   p. Board members are to prejudiced. Might be better to have a panel of 6 persons who have no knowledge of the guide or his activities.

   q. The law should be to refer to violations which take place while guiding.

5. A.S. 08.54.210 paragraph (a) section (6) limits the number of assistant guides a registered or master guide may employ at the same time. Do you favor a law that dictates the number of assistant guides a guide may employ? YES 22, NO 32. Comment:

   a. No, This law should be recinded or the APHA should be the front runner in a court battle to prove it wrong.

   b. Unconstitutional

   c. Yes, 3 is as many as any guide can properly supervise.

   d. No, This would stop growth possibilities for the guide. It also leads to a condition where to many clients are tagging along with a single guide or assistant, or lying around inactive for periods of time. I favor potential growth, whether or not an individual guide decides to grow

   e. No, We should be able to have more than three at a time, if I have more than three hunters at a time.

continued page 11.

5 Limits of assistant guides employed, continued.

f. If you limit help you limit quality.

g. Yes, 3 assistants at once may be to restrictive, but it should not be an unlimited number.

h. Stick to free interprize concepts.

i. Yes, tends to keep down mass production hunting, which only fuels the bank and depletes wildlife resources.

j. No, I flat--think this is unconstitutional, discriminatory, and a rediculous law for any business man to live with.

k. Yes, but no restrictions on number of Class-A, registered, or master guides.

l. No, this is the only way we can "make real professionals", and should be used as such.

m. No, this law drastically hampers many guides operations.

n. No, This law was pushed through by a part-time guide with tunnel vision, and has made violators out of honest men-Stupid law.

o. No, This law creates a hardship on the honest operator trying to make ends meet.

p. No, However as long as we have production guides we need the law.

q. Yes, I don't believe I should be controled as to my help, however if this would restrict money hungry guides from raping the land, it should be done.

6. A.S.16.05.340 requires licensed master and registered guides pay fees for animals taken by his clients over a specified number in the following amounts for Caribou, Sheep, Moose, and Brown or Polar Bear.

6 through 10 of each species per season	$20.00.
11 through 25 of each species per season	$100.00.
over 25 of each species per season	$500.00

Do you favor the concept of taxing guides for game taken by their clients as stipulated above? YES 10, NO 46. If yes, do you believe this concept should also apply to all users of renewable resources to include Air Taxi operators? YES 13, NO __. Transporters? YES 13, NO __; Commercial Fisherman? YES 12, NO __. Sport Fisherman? YES 12; Subsistence users? YES 12, NO __.

a. No, If guides are saddled with this tax all Natural resource users should be also.

b. Yes, I believe this tax, if used, should be levied against the hunter on a per animal basis and those funds generated are made for use by the Game Division of ADF&G.

c. I don't know this tax was even enforced, should be repelled or used. The State should give a person with a license the right to take a set number of animals. These animals are public property. Non-residents and aliens are charged for this privilege to hunt, which is good. Still this law is silly because it is not enforced and the tax is ridiculously low.

d. No, If it is good for us guides it should be good for everyone else.

e. Discriminatory - Poor legislation - should not single out one user group.

Continued pg. 12.

6. Animal head tax comments continued.

   f. If this law sticks, then I feel everyone else taking a natural resource should pay too.

   g. The 6-10 animal tax is not fair, but $20.00 isn't going to hurt anyone. The $500. tax should be placed on a lower number than 25. If a guide can take 25 or more animals of a species he is either hurting his area, or has a lot bigger area then he should have.

   h. Should be deleted unless the forrest industry and commercial fisherman are taxed for the use of a natural resource also.

   i. The client will have to pay these fees no matter who they are collected from and trophy fees paid by the hunter is the proper place to collect the tax.

   j. No, God put animals on earth for us to enjoy and have dominance over, not the State, (Although Hammond has been trying to play God to the people of this State).

   k. No, The non-resident fee is more than ample payment.

7. Do you believe the renumeration reports required by the guide board are useful? YES 30, NO 23; Necessary? YES 15, NO 27; An invasion of privacy? YES 29, NO 13.

   a. A written report of game taken should be sufficient. A list of clients and addresses should be turned into the local protection officer only.

   b. If they are used to keep track of guides use of his area. Otherwise they are a real pain.

   c. This is a police report. Not a renumeration report. A simple statement on the Big Game tag form suffices.

   d. Yes, but not to state any amounts.

   e. These are used for the protection dept to be able to go about an unwarranted investigation. The same purpose can be attained by the license that is bought.

   f. This seems like a minimum requirement to access the activities of a guide.

   g. Yes, Some sort of report is required if for no other reason than to determine if a guide is utilizing his guide area.

   h. I would estimate that 95% are falsified. Some are filed with ghost hunters who do not exist. Some declare false areas in order to show use.

   i. Yes, A hunting contract is useful for guide-client relationship.

PART D

THE FOLLOWING ARE SOME CHANGES THE GUIDE BOARD WILL CONSIDER ACTION ON FOR THE COMING YEAR.

1. It has been suggested that regulatory control of the guiding industry be transferred from the Department of Commerce and Economic Development to the Department of Public Safety. Would you favor such a transfer? YES 14 NO 38. Comment:

   a..No, Fish and Game should control guides. Wayne Fleek is the best example why public safety should not have control of guides or guiding.

continued pg. 13.

Part D 1. Guiding industry department control, comments cont'd.

b. No, Why seperate it from other industries and whats the relationship between the guiding industry and Public Safety.

c. No, They have to much control now.

d. No, Might as well hang it up if this happens. Even now you can feel the great influence that D.P.S. has over the guide board and regulations in the guiding industry.

e. Yes, The D.P.S. have a better feel for the guiding industry, and consequently could do a better job of administrating it.

f. No, Absolutely not. The system is terribly biased now. With this, there would be no justice at all. The same agency would be arresting you, trying you and penalizing you.

g. No, Anyone that would ask for this is nuts. Right in the enemy camp. I can appreciate the reason for the desire, but knowing the attitude of most enforcement people about guides I would actively fight against this move with vigor.

h. No, I feel it's bad enough now, but we havn't seen anything if it goes into the protections hands.

i. No, "God!" No way.

j. Yes, Consolidate guiding affairs under one roof, hopefully.

k. Yes, I think they should know more about our activity and way of business.

l. No, The Dept. of Commerce is probably much more fair and square than the Dept of Public Safety would be.

m. Yes, It will make little difference either way.

n. No, ADOLF tried this in 1939.

o. Yes, I don't believe the guide board should have any right to consider this action because they do not represent the guides. They only consider themselves and are looking for more power.

p. No, Don't know what department should administer guides, but it should be separate from enforcement.

q. No, It is working as is.

r. No, The federal government and outside interest has applied to much pressure on our Guided hunts. If the police dept. is after the guided hunt there will be many conflicts.

s. No, Why should the guiding industry be set apart from others. The Dept. of Public Safety has already developed a "get the guide" attitude. Where's the justice.

t. Guiding is a public related business. The pressure the guide lives under from the enforcement groups, Federal, State, etc. is way to much already.

continued pg. 14

2. There has apparently been numerous flagnant violations of game laws perpetuated by alien non-resident hunters. To alleviate this problem the legislature may be asked to consider a bill requiring alien non-resident hunters to have or be accompanied by a guide for all big game hunting. Would you support such a bill? YES 54, NO 2. Comment:

a. I've noted several of these violations in the past three years - these hunters have no regard to our game or our systems.

b. A selfish bill and why discriminate against aliens - unjust.

c. All non-resident big game hunters should be under a mandatory guide law. This would solve some of the transporter problems.

d. All aliens should be required to have a guide for hunting in Alaska.

e. Eliminate the word alien - the south forty-eighters are equally guilty of violations and wanton waste.

f. Will support. Could stop a lot of hunting which is repugnant tc rural residents, i.e., Swedes for Bear and Moose in Units 19 and 21 (45 in 1977).

g. The state would benefit by the revenue going to the guides.

h. Highly necessary tc make progress here. Air Taxi - foreign hunting operations are killing our image.

i. Should exclude all big game for alien hunters.

j. This would be a good step in protecting our resource from rape by foreigners.

k. In my guide area there are men guiding and operating lodges who have no guide licenses. They have numerous alien hunters under the pretext of furnishing transportation.

l. There should be a bill requiring all non-residents to have a guide.

m. It would up-date the industry.

n. It would increase hunter safety for non-residents who are unfamiliar with our state and its wilderness. Besides, its about time air taxis, with their seasonal non-resident pilots, should stop taking advantage of non-resident hunters in an effort to boost revenues. Guides will still need air taxi support and I doubt if the air taxi would suffer financially in the final analysis.

o. The flocks of non-guided aliens are abusing our resources.

3. Due to a possible sharp decline in the brown bear population in game management in unit 14, it has been proposed that the guide board arbitrarily reduce the number of guides certified to guide in unit 4, from 20 to 6 or 8, to preclude and in lieu of game board actions, such as shortened seasons, permit system, and etc., to reduce the bear kill in unit 4. Considering these circumstances, do you believe the guide board should have and use the authority to eliminate some previously certified, active guides in an area while allowing other to continue? Yes 7 No 42. If yes, explain how to distinguish between those that are eliminated and those that are allowed to stay.

   a. The number of bears is the prime concern, not the number of outfitters. The Game and Fish can regulate this with a permit system.

   b. Those allowed to continue should be based upon the same concept as limited entry, i.e., investment, past dependence (full time, part-time) and tenure.

   c. Regulate the harvest by season length.

   d. Absurd. This is a Game Board function, not a Guide Board function.

   e. Lottery on year-by-year swaps.

   f. Unit 4 should be managed like the rest of Alaska.

   g. Close the season if necessary, but don't try reducing the number of guides. Regulate the take with shorter seasons or permits.

   h. How long have they been active - Grandfathers rights!! Alternatives - take turns taking bears, do this for the rest of the state as the need arises.

   i. If necessary, then a drawing out of a hat would be the fairest. This would eliminate any payoffs.

   j. This would set a dangerous precedent and cannot be allowed. The Board has already reduced the number of guides by making guide areas.

   k. Only the ones who aren't using the area should be deleted, otherwise the season should be shortened or a permit system set up.

   l. Out of my area.

   m. 1) Number of years in area.
      2) Consistency of area use over the years.
      3) Resident in the area.
      4) Investment for guiding in the area.
      5) Economic dependency on guiding.
      6) Residence time in Alaska.

   1. It is best for 20 guides in Unit 4 to take a hunter or two a year.

3. Continued - Guide Board authority to eliminate active guides?

   2. Or best, to let 6 or 8 guides make a living in the guide industry. I'd favor #2.

   n. A qualified registered or master guide should simply have the right to practice his profession within the confines of the state.

   o. If bear are declining, something has to be done. Maybe someone who only hunts bear there should have the privilege to hunt over another guide who has a bear area in another unit.

LIST OTHER REGULATIONS OR STATEMENTS YOU WANT DELETED OR MODIFIED.

1. Limiting new guides to three game units. A license to guide should be state-wide.

2. I was born and raised in this state. I have hunted and fished more years than many of the guides now licensed. I have had a registered guide license for two years. In that time I have not been allowed to acquire joint or exclusive areas, while several guides who I know have not hunted areas recently have forced me out. I feel cheated and discriminated against.

3. This board cannot <u>impartially</u> and wisely judge a guide for wrongdoing. This must be done in our courts of law juried by peers with an open mind.

4. Additional guide requirement: Must be a citizen of the U.S.A.

5. We need to get license and area revocation back in the courts where there is a chance for fairness.

6. We need to eliminate the fly-by-night "transporter guide."

7. With exclusive guide areas in effect, it should be required that a guide define the area or drainage where the hunt was conducted on the Remuneration Report. This would show if a guide is using his entire area.

8. We need stronger regulations against guides spending the winter in the lower 48 and coming up here in the summer and ripping off the state. The residency requirement for licensed guides should be more strongly enforced. Maintaining an Alaska address is a cover-up that a lot of these parasites use.

OTHER COMMENTS

1. There are too many guides in Alaska. There has to be some way of limiting guides who do not derive the majority of their income from guiding.

2. How can doctors, lawyers and commercial fishermen who make many tens of thousands of dollars through their profession or business be allowed to have areas and operate as hobby guides when I can't get an area and guiding is the only way I can make a living.

3. A guide should have to accommodate a given number of legitimate clients (this can be checked) per year to remain a guide. Good part-time guides are beneficial but a guide license for tax evasion is ridiculous. Some of these types have tied up good exclusive areas.

4. Once licensed, I believe a guide should have the right to work professionally anywhere in the state. The concept of exclusive guide areas is unconstitutional and without precedence here. This blocks free enterprise, the backbone of the American system.

   Perhaps limiting a guide's total big game kill on a per-annum basis would be more fair to both the resources and guides in general. It would allow the young guides an opportunity to come out of the closet where they are presently forced to compete with air taxis in taking as many non-residents afield as possible, avoiding Brown/Grizzly and sheep hunters.

   Prohibition of hunting the same day as airborne is another poor law. It seems better to apply minimum sizes to animals taken under a guide. I'm sure I know an adult animal when I see one. That includes big bears.

5. Do away with ewe sheep hunts in Tok Management area.

   Do something about permit hunts. Do something so guide areas in permitted hunts can be guaranteed some animals which can't survive otherwise.

   Delete the words "maximum" and "minimum" in the wording of the Tok Management permit hunt.

6. A guide should have to make 80% of his income from guiding in order to hold a Registered or Master Guide license.

7. I do not believe in confiscation laws.

8. The guide area map should be up-dated yearly and sent to all guides. Many guides cannot easily get to town and don't know when revisions have been made affecting them.

9. There should be a provision for guides to receive a percentage of the permits in their guide areas directly.

10. The whole guide program should be thrown out and a fresh new modern-day program designed to replace it.

SUPPLEMENT

PART A 1-6 Questions directly addressing Guide Board

Questions of Prime Interest to Guides:

Part B #5 Page 7
Part C #2 Page 8
Part C #6 Page 11
Part D #2 Page 14

February 19, 1980

Senate Commerce Committee
Pouch V
Mail Stop 3100
Juneau, AK 99811

Gentlemen:

I do not know the purpose of your public hearing on the Guide Licensing & Control Board, but I would like to bring my personal experience with the Board to your attention.

The attached letter to the Board chairman, dated March 7, 1978, pretty well describes my case. The chairman's answer to that letter, dated March 13, 1978, is also attached. I feel that the response to the issues raised in my letter were inadequately addressed by Mr. Jensen. More specifically, I have not been able to get an answer to why, as an active registered guide since 1962, I was not notified in writing of the proposed criteria for allocating exclusive areas and given a chance to comment. Apparently the Board's position was that if a guide didn't attend one of their rare meetings when the subject was discussed, it was too bad. My observation is that the Board adopted very inadequate criteria in their desperation to get the game management units divided into exclusive guide areas. And they did so with little regard for the vast majority of guides, such as myself, who operate "part time."

In the second paragraph of Mr. Jensen's reply, he states that the Board did not restrict me as a registered guide. I don't think he really believes that, but please judge for yourself. Between 1962 and 1978, I was able to contract with my hunters in game management units 6 through 17. Since 1978 I have been prohibited from exercising this right under my license because the Board denied me the use of all requested areas for either exclusive or joint use. The only way I can use my license now for big game hunting is to work for another registered guide with an area.

In the fourth paragraph of Mr. Jensen's letter, he states that a guide had to have contracts for 2 out of the prior 5 years (1972-76) in order to qualify for an area. He left out one critical point. The 2 years of contracts had to be for hunts in the same game management unit. Although I had personally contracted 2 hunters in 1976 for unit 17, 1 hunter in 1972 for unit 7, and had submitted a letter from another guide that I worked for in unit 15 during 1974, that wasn't sufficient to qualify me. A check of my file with the Dept. of Fish and Game will also reveal copies of contracts in 1971, 1969, and earlier.

My letter of March 7, 1978, pointed out a situation where the Board granted another guide joint use of an area with 2 other guides, even though he had not personally signed any of the contracts for the hunters he guided. I have no objection to this per se, but if this particular guide has been allowed to keep his area, fair play would seem to indicate that I should receive similar consideration. Mr. Jensen did not address my question on this issue in his March 13, 1978, response.

In conclusion, I still find it outrageous that an active registered guide can be regulated right out of the profession. My thoughts have not changed from those expressed in my March 7 letter to Mr. Jensen. I think the exclusive area concept should be repealed as a bad effort. I would also strongly favor a return of licensing and control of the guiding profession to the Department of Fish and Game. In my opinion, the Department was not as susceptible to the pressures of special interest efforts.

Respectfully,

Lee Browning

Lee Browning
2907 W. 34th Ave.
Anchorage, AK 99503
Telephone 248-1632

March 7, 1978

Marc Jensen, Chairman
Guide Licensing & Control Board
P. O. Box 2220
Juneau, Alaska 99803

Dear Mr. Jensen:

After several frustrating appearances before your board--and coming away empty-handed--I am persuaded that the best thing I can do for the moment is to state my case in writing.

When I received word in 1976 that I would have to apply for an area in which to guide, I submitted maps on 3 areas in which I had contracts. It was not until the Guide Board meetings of July, 1977 when Units 7, 13 and 15, among others, were divided up that I learned anything about the criteria the Board was using to grant areas.

To make a long story shorter, I appeared before your board three times during those July meetings, submitting additional backup information. I was finally granted temporary joint use of a small area overlapping into Units 7 and 15 to hunt goats and black bear. This was granted because I submitted a letter from another registered guide verifying that I had guided one of his hunters in the area requested during 1974. Coupled with the contract I had for 1972, this gave me the magic 2 years out of the last 5 that I could show use of this area--I thought. I did not have contracts for 2 out of the last 5 years in the other two areas for which I applied, so they were denied outright.

The crowning blow came on Feb. 18, 1978 when the Board reviewed the temporary areas they had granted and decided that I didn't quality after all. I was told that they couldn't accept the letter from my guide friend since I had not personally signed the contract. The Board said they would be inconsistent if they accepted that letter. I assume from this action that Mr. Northcutt (see attached letter of July 17, 1977) also had his area revoked?

Mr. Jensen, I do not criticize the Board for being consistent--they should be. What I am disturbed about is the criteria used, and lack thereof, along with the abrupt way the designated area concept has been handled. Permit me to explain.

The only criteria that I have been able to detect is that a guide must have at least 2 years of contracts on file for a specific Unit during the period of 1972 through 1976 in order to be granted an area. I submit that this is arbitrary, selective, woefully inadequate and very unfair.

Why weren't we as individual guides notified in writing of the proposed criteria for granting areas and given opportunity to comment before they

became a reality? Where were the notices of public hearing to discuss this issue? I never received either of the above. It seems to me that it is normally S.O.P. to do both when new regulations are proposed that have such a profound effect on an individual's life, liberty and pursuit of happiness.

There are a number of other questions crying for answers: (1) Why weren't some guidelines established at the very outset as to the size of an area that a guide could be granted? Right now, the areas granted range from nothing to perhaps a couple of thousand square miles. (2) What provisions are made for new guides who will be entering the profession? (3) What is the criteria for a guide disposing of a part or all of his area? (4) Finally, what was the urgency to divide up the state before answers to these and other questions were developed? It seems quite likely that settlement of the d-2 land issue and conveyance of the native lands will undo a good share of what the board is desperately trying to accomplish.

To conclude this epistle, Mr. Chairman, I have lived in Alaska almost 30 years and have been an active registered guide since 1962. Like most guides, I work at it on a part time basis; however, there have been few years out of the past 16 that I have not guided for myself or some other registered guide. I am registered in Units 6 through 17. The reason I mention my own credentials is that I find it outrageous that a registered guide, such as myself, can suddenly find himself regulated right out of the profession. And I'm sure I am not alone in this predicament.

Mr. Chairman, when your Board promulgates regulations that do what I have described above, there is something wrong with the regulations. Government is supposed to help the individual and strive for fairness, but your criteria for allocating guide areas can't help but result in grave injustices.

Although I was unsuccessful in several attempts to acquire an area, I hope the Board will reconsider its action on qualifying criteria and come forth with new guidelines that provide for longevity and a broader definition for determining "use" of an area. This seems like a reasonable thing to ask if we are to have the concept of designated areas forced upon us.

Sincerely yours,

Lee Browning

Lee Browning
2907 W. 34th Avenue
Anchorage, Alaska 99503

cc: Office of the Governor
Sen. John Rader
Rep. Ed Dankworth
Rep. Joe Hayes
Sen. W.E. (Brad) Bradley

July 17, 1977

Guide Licensing & Control Board
P.O. Box 6188 Annex
Anchorage, Alaska 99502

Gentlemen:

I appreciate your hearing me out last evening after a long day of difficult decisions. This letter is to petition the Board again for temporary joint use of an area in Units 7 & 15 as shown on the attached map. My reasons for this second petition are as follows:

1. One letter of remuneration is in my file for 1972 and one letter proving that I guided another hunter in this area in 1974 with the contract signed by Roy Biffle. I did receive remuneration for that second hunt.

2. On July 16, 1977 the Board permitted Mr. Northcutt to have joint use with Mr. Coleman and Mr. Deering. Mr. Northcutt said he wanted to be included with Coleman and Deering because he has guided there since 1963 but Coleman and Deering signed the contracts. This is a matter of public record taken from notes made by Board member Charles Keim.

As I testified to you, my guiding activity in this area will be for an occasional goat and/or black bear hunt. By occasional, I mean that I may not contract a hunt every year.

I will not reiterate other statements of justification given verbally last evening except to say that I'm certain that there is no reason for conflict among the guides proposing to use this area.

Your consideration of this request is appreciated.

Very truly yours,

Lee Browning

E. L. (Lee) Browning
2907 W. 34th Avenue
Anchorage, AK 99503

P.S. I have only one copy of the map to enclose. The area shown has been reduced from that originally submitted and I am willing to modify the boundaries further as long as specific camp sites are not excluded.

LB

08-H8LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING / POUCH D – JUNEAU 99811

March 13, 1978

Mr. Lea Browning
2907 W. 34th Ave.
Anchorage, Alaska 99503

Dear Mr. Browning:

I will try to get a quick reply off to you in answer to your letter of March 7, as I will be leaving town shortly.

To begin with, the recent Guide Licensing and Control Board action did not restrict you as a registered guide, to guide hunters. This type of guiding you have been doing for many years, working for other registered guides.

Over the last five years the Board has consistently advertised our meetings and published scheduled hearings on regulations. Every year we have held at least one meeting in Anchorage that lasted three to five days. It was at these meetings that the guides and the public had the opportunity for input on proposed regulations. To my knowledge I cannot recall your presence at any of these meetings that had to do with regulations, and where you personally expressed your views. Our attendance at these meetings has been extremely good, with over 100 guides in attendance. Most of these guides have guiding as a vocation and rely on it as a substantial yearly income.

When it came to setting a criteria for qualifying for an area some guides thought that only those guides who used guiding as a vocation to support more than 50% of their income should qualify to hold an area. The final criteria that was accepted by the Board was that to qualify for an area a guide must at least have had contracts in two out of the last five years. In other words, unless a guide was active enough to establish a volume of business of at least $3,000 over 5 years he wasn't a very active guide. The $3,000 could easily be established by taking only two contract hunts for sheep at $1,500 a hunt.

Certainly you can appreciate the fact that a guide should be active to hold a guide area. All the men on the Board, as individuals, try very hard to be fair; in your particular case the majority of the vote was that the evidence you produced was not convincing enough that you had actually signed up hunters yourself.

08-H8LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING / POUCH D -- JUNEAU 99811

The regulations that the Board has been working on for the last two years, with many hearings on public input, should be finalized shortly. When they are finalized the Board will present them to the guiding industry. They will pretty well define some of the questions you have raised in your letter.

If you plan on being more active in the future I would recommend that you spend some time with Mr. William Bellingar and our staff in Anchorage. They are always willing to try and help guides that have a problem find areas that are open and make suggestions that can be helpful. The Board members and myself are spending a great deal of time and effort in trying to make this program go. We welcome suggestions, and the best time for them is at the public meetings that are held and advertised.

Sincerely yours,

Mark.

Marcus F. Jensen, Chairman
Guide Licensing & Control Board
Box 2220
Juneau,Alaska 99803

cc: Office of the Governor
Sen. John Rader
Rep. Ed Dankworth
Rep. Joe Hayes
Sen. W.E.(Brad)Bradley
Members of the Board
Wm.Bellingar

Exclusive Alaskan Hunts
Andy Runyan Master Guide
00404
S.R.C. Box 8860
Palmer, Alaska 99645

Senator Bradley
Senate Commerce Committee

Dear Sir;

The Guide Control Board is an absolute necessity!

5 more impartial men doing a very difficult job would be hard to find.

If you check, or have checked with Fish & Game protection - you'll find they can expect justice from the board where they can't in the courts where violations are concerned.

The handful of guides that wish to destroy the board are the very ones that need controling.

The Guide that operates within the law has nothing to fear from them. From experience we have learned first hand that they will quickly jump to a guide's defense & do all they can to help him, IF he is in the right. The same with Fish & Game.

It is our recommendation that the Guide Control Board be backed by the State Government & given a decent salary for the hard difficult almost impossible job they do!

Sincerely,
Andy Runyan

Exclusive Alaskan Hunts
S.R.C. Box 8860
Palmer, Alaska 99645
Feb 20, 1980

Senator Bradley
Senate Commerce Committee

Dear Sir;

The Guide Control Board is an absolute necessity.

#1. Because there are guides who refuse to 'police' themselves.

#2. There are guides who wish to continue to do as they deem prudent regardless of the laws or whose toes they step on.

#3 Greedy guides who wish to keep huge areas for their exclusive use plus everyone else's

#4 Fish & Game's funds have been cut till they have too few men to do the entire job let alone get the illustrious Judges in the state to back them up!

#5 The Guide Control Board (underpaid for their efforts) is about as impartial a group as there is to be found. Which would you prefer, if you were to be judged on an infraction; 5 men or 1 judge whose wife burnt his toast that A.M.?

#6 The very men who are trying to get rid of the Guide Control Board are the one's that have been raping Alaska for years! It's common knowledge; yet they've managed to continue without getting into serious trouble, so far. They know their days are numbered, hence the push to get rid of the board.

#7 Guiding has a sour reputation up here now. Take away the control of the Guide Board and the federal government is going to step in and take away more of our rights, very quickly!

#8 IF these disgruntled guides force the Guide control Board out of existance is the State prepared to give Fish & Game the funds & men to do the job the Board does at present?

#9. Shouldn't Dept of Fish & Game operate separately from State legislators? Why clutter up your already busy desks with issues such as this?

Guiding brings huge sums of money into the state every year. What 7o of the 'tourists' up here are hunters & fishermen. The Guide control Board controls the guides. WHO controls the residents? Nobody, because Fish & Game hasn't the funds or personnel!

It's time the legislators get behind the very men that are trying to SAVE an industry instead of a disgruntled few with money to buy lobbyists etc.

A very disgusted Guides wife!

Rick & Runyan

KEITH C. KOONTZ
REGISTERED GUIDE & OUTFITTER
BOX 87 • SAVOONGA, ALASKA 99769

Senator Brod Brodley, Chairman
Senate Commerce Committee
Capitol Building Porch IV
Juneau, Alaska 99811

2-24-80

Dear Mr. Brodley,

I am writing in response to your letter concerning the "Guide Licensing and Contact Board".

I think the board has been providing a very valuable service to the guides of Alaska. I have not always agreed with all their decisions, but I would hate to think what the guiding industry would be like without the service they are providing.

I have attended nearly every meeting of the board and feel that the Chairman, and the members are doing an excellent job.

Sincerely

P.S. Keep the capitol in Juneau!

Keith C. Koontz
Master Guide

Form ML3-R112 ©The Drawing Board, Inc., Box 505, Dallas, Texas

08-H8LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING / POUCH D – JUNEAU 99811

April 22, 1979

Mr. Don Hostak, Director
Division of Occupational Licensing
Department of Commerce and Economic Development
Juneau Alaska

Dear Don:

This isthe first report that the Guide Licensing and Control Board has issued covering its activities, and because of that fact I would like to make a statement as to the need for a Guide Board.

There are over 400 registered guides operating in the State of Alaska. The health and status of the game resource is vitally important for the taking of trophy and meat animals. With no control over the guides it was found that there occurred many times a concentration of guides in one area for trophy sheep or trophy bear. This condition led to a great deal of guide friction, very poor hunter success and a much too heavy harvest of the game resource. After many public meetings the guides themselves agreed that the Board should try and set out boundaries for the individual guides based on prior use, capital investments and current active status. An individual filing system was set up in the Anchorage office where a copy of the contracts for each hunt, was filed under the guide's name. This past year has seen the Board complete hearing individual guide petitions for the second go-round. At this writing the majority of the guides now have areas that show on a master map in the Public Safety Office of the Fish and Game Department.

1. Exclusive guide areas have been a big tool for better game management; 2. Exclusive guide areas have reduced guide friction andgiven the hunters better wilderness experiences; 3. Exclusive guide areas have made it possible to identify the harvest of animals in a given area; 4. It has allowed the guides to develop better improvements because they have the opportunity of transferring or selling these improvements at a later date; 6. Exclusive guide area does not belong to the guide but reverts back to the Board for disposal when the guide is through using it.

This last year the Board gave about 30 written guide tests with 24 passing. Each guide was then given an hour oral test by three examiners. All but three guides passed the oral test.

The Board was busy every meeting sitting as a jury on violation cases and hearing petitions for boundary changes. To give the interested parties a brief view of the Boards attivity I am including in this report a copy of the minutes of the January meeting. This is an average meeting but not nearly one of the heaviest workloads that we have.

Sincerely yours,

Marcus F. Jensen, Chairman

08-H8LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING / POUCH D – JUNEAU 99811

April 22, 1979

Mr. Don Hostak, Director
Division of Occupational Licensing
Department of Commerce and Economics
Juneau,Alaska

Dear Don:

Guide Licensing and Control Board proposed program for Fiscal Year 1981:

Three meetings between Juneau, Anchorage, and Fairbanks, from three to four days for each meeting. A possible meeting at Nome or Kotzebue if the Arctic ;guide kprogram moves ahead on schedule.

If the D-2 land bill changes the status of over one hundred guides as to their exclusive guide areas,I think that the Board will be able to handle this work load within the regular three meetings.

I am going to make a line item report, which pretty well identifies the Board's activities during the 1981 FY:

1. Give written and oral guide examinations. Approximately 20 to 25 guides have been taking this exam yearly.

2. The Board would sit as a jury on violation cases presented by the Attorney General's office.

3. Hear petitions from guides on boundary changes.

4. Hear petitions on transfer of guide areas to other qualified guides.

5. Hear testimony for Master Guides.

6. Act on proposed guide areas in Game Units 1 through 4.

7. Hear testimony on impact of D-2 land legislation where guide areas are involved.

8. Testify on S.B. 101 and H.B. 405 requiring changes on the Guide statutes.

9. Make survey of Arctic villages to explain Arctic guide programs, which would involve the taking of marine mammals.

10. Finalize the upgrading of Master guide area maps in the Anchorage office.

STATE OF ALASKA
JAY S. HAMMOND, GOVERNOR
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
POUCH D – JUNEAU 99811

11. Receive applications for areas from new guides. The Board would open the whole state for six months and give everyone an equal chance to file.

12. Request money for a public address system to be used at our public hearings.

The Guide Board will need very few new regulations. The base has been very well established and proven workable. S.B. 101 has passed the Senate and should pass the House. It would repeal Part C, Line 3 in Sec. 08.54.200. This line made it mandatory that the Board revoke a license if guide was convicted of two violations. The Board has this power under another Section, which does not make it mandatory.

I will let your Department add to this report the expense incurred for our meetings and travel.

Yours very truly

Mark Jensen

Marcus F. Jensen, Chairman
Guide Licensing & Control Board

Dan Brase
Box 342
Palmer, Ak. 99645
28 February 1980

Honorable Brad Bradley
Chairman, Senate Commerece Committee
Pouch V
Juneau, Alaska 99811

REF: Guide Licensing
& Control Board

Dear Senator Bradley,

I was one of the three people who attended the tele-conference this afternoon at Wasilla regarding the hearing on the GUIDE LICENSING & CONTROL BOARD. Unfortunately, I didn't have the packet containing the information on the hearing until arriving at the Wasilla office so I was ill prepared to give any testimony to you over the air.

To begin with, I would like to go on record by stating that I fully support the continuance of the Guide Licensing & Control Board as an appropriate method of maintaining a system of checks & balances pertaining to Guide related activities. I began working for Pinnell & Talifson of Kodiak, Alaska at the age of 18 and was fully in their employ until being drafted and upon my return from Vietnam until the present, I have been working for them on a part time basis, now as a Registered Guide during either the Spring or Fall season. Although I have been a State employee for nearly 12 years, the Guiding Profession still holds a very high priority with me.

During the tele-conference this afternoon, I kept somewhat of a score-card of those who called in their testimony with the result being, approximately 3 to 1 in favor of keeping the Guide Licensing & Control Board. It seemed to me as those opposed, were individuals who for one reason or other, had had a confrontation with the Board. Some of their reasoning as to why they shouldn't be held accountable for their actions, i.e. "minor" violations e.g. snagging fish etc., could, in my opinion, be likened to being "little bit pregnant". Now while I believe that most of us sometime in our lives probably have slipped somewhat, I can hardly believe that it is any excuse to use if brought before such a body as the Guide Licensing Board. I would intend to believe that there was more to it than 'snagging a fish'.

Some other areas of interest to me were the collection of Trophy Fees and Protection. I feel that if Trophy Fees are necessary to be collected, these monies should go towards game management rather than placed into the General Fund. Also, Protection should be of a high priority as it is virtually impossible to have Management without Protection. Lastly, I would like to express my views in regards to Exclusive Areas. It would seem logical that if these areas were broken down into smaller units, there would be more hunting pressure as, more guides equals more hunters equals more hunting equals more pressure in increasingly smaller areas. In spite of seemingly unfairness to those who don't have an exclusive area, by maintaining a larger area, a more ideal conservation practice is effected. (Although there may be exceptions). The "heat" for lack of sufficient hunting areas should be more directed towards the Federal Government's land look-up rather than the Guide Licensing & Control Board.

I firmly believe at this time that the continuance of the Guide Licensing & Control Board is very vital issue that should be supported by you and your colleagues and wish to thank you for allowing me my input in this matter of mutual concern. I would be very interested in knowing the results of this hearing and ask that you inform me at your convienence. Thank you.

Sincerely,

Dan Brase

Dan Brase

BRAN-AIR
Commercial Air Charter
Anchorage, ALASKA

Hayes River Lodge
Wilderness Lodge
FISHING • HUNTING • PHOTOGRAPHY • HIKING

Branham Adventures

P.O. Box 6184 Annex
Anchorage, Alaska 99502

Phone (907) 243-4901

DENNIS I. BRANHAM
MASTER GUIDE
PROFESSIONAL PILOT

CHRIS R. BRANHAM, B.A.
REGISTERED GUIDE
PROFESSIONAL PILOT
PHOTOGRAPHER

Feb. 26, 1980

Senate Commerce Committee
Pouch V
Mail Stop 3100
Juneau, Alaska 99811

Dear Senate Members:

In regard to the subject on the Guide Licensing and Control Board hearing, we wish to make our opinions, suggestions and recommendations known.

There is no doubt in our mind that the Guide Board does have a vital purpose to help properly control and manage the guiding industry, undoubtly if the board were terminated chaos would arrise. It is however evident that the board has not succeeded in properly fullfilling its objectives and unless significant changes are made we would favor its termination.

Its initial purpose was greatly needed however soon after its inception there followed continued inconsistantcies in its proceedures and policies. In its efforts to try and protect our investement and livilhood it actually has reduced it. We have been treated fairly in some regard and very unjust in others and thus it has been difficult to maintain proper objectives to stablize our guiding business. More consideration should be given to full time guide operators. They have the most invested and the most to loose. Use of areas should be more accuratally established. Greater consideration should be given to game population for establishing areas. When areas are "joint use" harvest restrictions should be established between guides so that abuse does not arrise out of uncooperativeness.

We are also concerned with the powers that have a dominant force superior to normal court proceedings, violations are not treated in proportion to their severity. Guide laws and regulations are often unclear and ambigeous which need revision. If the D2 legislation remains unresolved we can expect more complications with the increased pressure on the remaining hunting areas. Some guides will infringe on areas by unjust means, creating unbalanced harvest.

We hope that you will recommend that unless the board establishes more positive and consistant policies that a new alternative be found to manage the guiding industry.

Sincerely,

Dennis Branham
Master Guide #2

Chris R. Branham
Reg Guide.

FAIRBANKS

Allen DuBorg	self	For w/cond.
Robert Elliott	Alaskan Range Hunts	For w/cond.
Joe Want	Self	For
Harmon Helmericks	Helmericks family	For
(John Don Gleason)	Self	observer
Charles Gray	Self	For
Pete Buist	Self	For
Urban Rahoi		

ANCHORAGE

Alfred Lee	self-employed guide	against
Ken Owsichek	Self	against
Vern Porter	Self	against
Frenchie Lamoureux	self	For
Wayne Harman	self	For
Andrew Klein	self	against
(Glenn Morgan)	Self	observer

SITKA

WASILLA

Mary Ellen Moe	representing Chuck Moe	against w/cond.	observe
(Dan Brasie)	Self		observe
(Morris Talifson)	Pannel & Talifson (Guides)		observe

John L. Moore — None — For

February 28, 1980

Honorable W.B. Bradley,
State Commerce Committee
Pouch V, Mail Stop 3100
Juneau, Alaska 99811

Dear Mr. Bradley,

The Marine Mammal Act has affected this Island and elsewhere. It also hurts us-Alaskans. For the fact, it has cut down hunting, our source of food supply.

In my belief, as poor as I am, believe that if anyone has a need they should try to get whatever they want. I try to get what I need because it is my need. It shouldn't be any different with anyone else.

If the Guide hunting should begin we would like to run it on our own, in our own way. Others may think that we just give them the trophy they want and let them be on their way. It is not so, the walrus they get is divided amongest the crew- it is not left behind. It is our food.

Most of the boat captains are very much interested in guiding for this also brings money into the families of the crew for there are no employment or occupation here for everyone. I, myself, am for it for it would make me happy to be feeding my family and paying for our bills. I happen to have a large family to feed and clothe.

Thank-you.

Sincerly,
Alexander Akeya
Alexander Akeya
Registered Guide
Box 141
SAVOONGA, AK 99769

Adventures Unlimited

Mile 100, Delani Highway
CANTWELL, ALASKA 99729

Feb 27, 1980

Dear Sen. Bradley:

Although I received the letter regarding the hearing on the Guide licensing and control Board late, I hope my following comments will be noted in your records.

I retired from the US Army in June 1966 as a 1/Sgt (E-8) after 21 years service with almost 9 years of it in Alaska. I have been a legal resident since 1950. During these years of service my dream upon retirement was to build a hunting lodge and become a big game guide. This sounds rather childish in retrospect, but I come from a rather poor background from rural Georgia with a 4th grade formal education. I & my wife raised two sons in Alaska, one is in charge of the Metro Unit in Fairbanks ~~and~~ and the other is a vice officer with the Anchorage Police Dept. So you can see I believe in law and order & I don't believe in indiscriminate welfare.

My wife & I filed on a homesite on the

Adventures Unlimited

Mile 100, Delani Highway
CANTWELL, ALASKA 99729

Denali Highway and for several years we lived in a tent and an old housetrailer. During these years my income was derived from hauling game for hunters + renting camp gear + sites. I worked for various companys all over Alaska during the winter for money to build with in the summer. Some winters I stayed in and trapped. (after I got the walls of our lodge erected + could live in it.) I wanted a guide license in the worst way, but it meant working for some of the most unethical people I'd ever been in contact with. I've had an assistant guides license for many years + tried to get enough time working for registered guides so that I could take the test but invariably I'd get into borderline trouble with the Fish + Game people + get disgusted and give it up.

Quite frankly, I think the present set up of licensing guides + assigning exclusive guide areas is illegal + against the constitution.

I have come to believe that the only way I'll ever get my registered guide's license is to become a school teacher, a Doctor or a politician.

(over please)

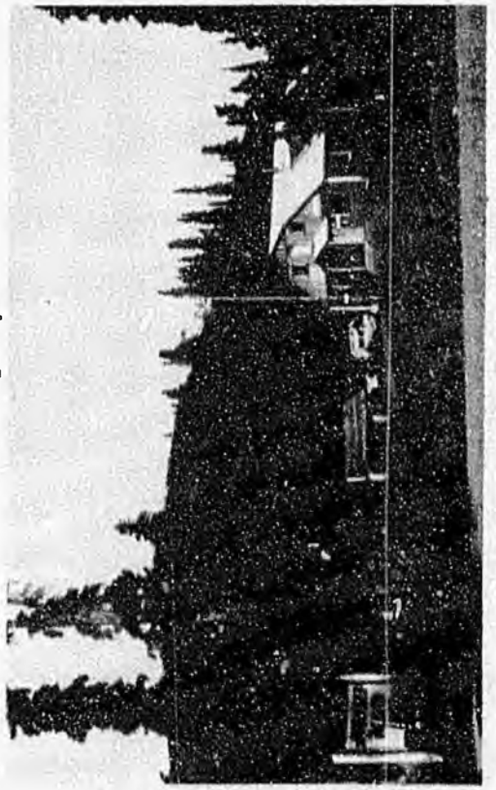
We sell locally made (and mined) gold nugget jewelry; moose and caribou horn carvings as well as animal furs.

Our Lodge offers modern accommodations at reasonable prices. Home cooking and fresh baked pies are our specialty. Reservations accepted. Write for current rates.

Your Hosts: Jim and Vonnie Grimes
Owners-Operators
In Business since 1966

Adventures Unlimited

Mile 100, Denali Highway Alaska

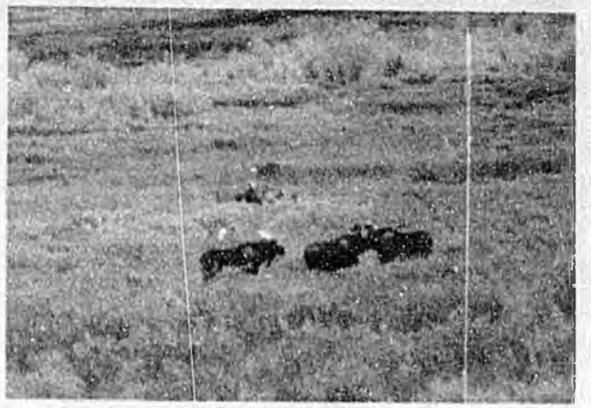


"In The Heart Of The Denali Country"

LOCATION: Adventures Unlimited is located at Mile 100, on Alaska State Highway No. 8 (Denali Highway), 35 miles East of Cantwell. Only 60 miles from Mt. McKinley National Park, 250 miles from Anchorage and 180 miles from Fairbanks. We are situated on the south slope of the mighty Alaskan Range with a magnificent view of the Nenana and Susitna Glaciers, with Mounts Hays, Hess and Debra towering over all. Our lodge is completely modern and self-contained with power and water systems. A truly drivable wilderness lodge.

Mailing Address: Adventures Unlimited
P.O. Box 89
Cantwell, Alaska 99729

Unguided and guided big game hunts can be arranged.

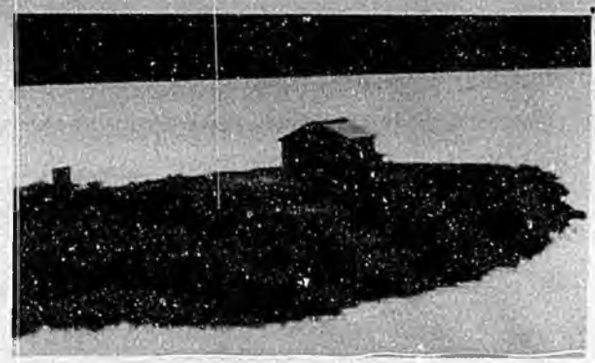


Remote camps

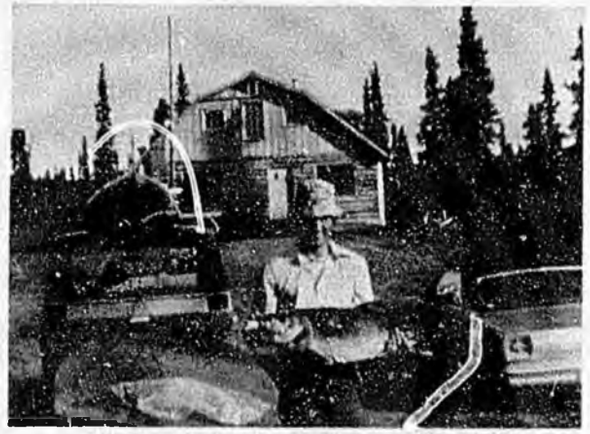
Winter scene

The Lodge sits at the edge of the timberline facing north, with a broad timbered valley stretching away to the serenity of the glaciered mountains. Behind the Lodge to the south is gently rolling hills of tundra dotted with dozens of lakes. For the birdwatcher and backpacker it is superb country for watching the thousands of migratory birds that nest annually on the tundra as well as the animals that roam this vast land. Some of the birds that can be seen here are Golden Plover, Jaeger, Arctic Tern, Curlew, Whembrel, Wilson's Snipe and numerous species of sparrows. Most of the birds begin arriving by the first of June. Also our own Ptarmigan raises his family here. The tundra is dotted with Parka squirrel colonies and fox dens. Part of the Nelchina Caribou herd lives here year around. Wolf, Moose, and Grizzly Bear are commonly seen here. Just a 15 minute walk from our Lodge gives one a sense of aloneness that can be attained in very few places left on this earth. Our nearest permanent neighbor is 35 miles away!

Backcountry trips by large tracked vehicles are conducted out of the Lodge for photographic, fishing gold panning, glacier exploring, etc., for groups of four or more persons.



Adventures Unlimited owns and maintains a large cabin at Butte Lake (Nadiwen). The lake is approximately 9 miles from the main Lodge and is about two miles long by one mile wide. The lake is famous for large grayling and lake trout. Other fish are Burbot (Ling Cod) and white fish.



The cabin sleeps eight persons and is furnished with bunks, cooking utensils, propane stove (propane furnished) wood stove, etc. A sanitary outdoor toilet is provided. Two boats are also furnished with cabin rental. Transportation to the lake is by tracked vehicle. A package plan is offered for groups up to eight people that includes all the above. Reservations from 1 June thru 30 Sept. is recommended. Write for current prices.

Although the Denali Highway is officially closed to vehicular traffic from mid-October until about 1 May, our Lodge remains open year round for the convenience of winter sports enthusiasts. From mid February through April, it is ideal country for cross country skiers, snowmobiling, dog mushers, or just plain getting away from it all. The weather is mostly clear and bright, the daylight grows from 6 to 7 minutes longer each day. There's fantastic displays of The Northern Lights. The temperature ranges from -30 to +35 with very low humidity. For guests who would like to experience a winter adventure, we have arrangements with a Bush flying service to fly in to the Lodge from Cantwell.

Leonard Helgason
4103 N Star Dr.
Anchorage AK 99503

March 1, 1980

Senate Commerce Committee
Juneau, AK 99811

Dear Brad and Committee members,

I want to go on record as being wholeheartedly in favor of keeping the Guide Control Board. I think it is one of the most useful tools we have for law regulation regarding the guiding profession — and should not be discarded unless there is something better to put in it's place.

The men on the guide Board have done a good job and Marc Jensen is to be commended for his efforts.

I speak with over thirty years of guiding experience.

Sincerely,

Leonard Helgason

TELECONFERENCE HEARINGS

TELECONFERENCE CONTACT SHEET

TAKEN BY Sioux/Deborah

TOPIC: 'Guide Licensing & Control Board Hearing'

CONTACT Jon Mathison

PHONE 465-3748

COMMITTEE: Senate Commerce

DATE SCHEDULED

DATE: 2/28/80 DAY: Thursday

LOCATION

TIME: 3:00 p.m. SCHEDULED DURATION: approx 2 1/2

MODERATOR

SITES PARTICIPATING: ALL

CONFERENCE MODE: Audio X Video

PUBLICITY:

PERSONS PARTICIPATING	SITE
Chairman: Sen. Bradley	Juneau

___ Invitational

X Committee making contacts

___ PSAs ___ date ___ quantity

___ News Release ___ date ___ quantity

___ Summary to be provided

___ Text to be provided

___ Quotes to be provided

___ Direct Mail ___ date ___ quantity

___ Phone ___ date ___ quantity

X Post at Info. Office

X Post other local locations

SPECIAL NOTES:

JUNEAU LOCATION:
*Beltz Room, #209, Capitol

POST-TELECONFERENCE NOTES:

Participants 6

Observers 9

Total 15

Legislative Affairs Agency
Legislative Teleconferencing Network
State Capitol . Pouch Y . Juneau . 99811

Phone: 465-4980

Alaska State Legislature

TELECONFERENCE HEARINGS

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Alfred M Lee — Here to Testify ✓

REPRESENTING Self-Employed Guide — Here to Observe ____

MAILING ADDRESS SRC Box 8857 Palmer, AK Zip 99645

TELEPHONE NUMBER 822-3343

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Alfred M. Lee
(signature)

EVALUATION: Have you participated in other legislative teleconferences? No If so, how many? ____

How did you learn about this hearing?

Letter

Would you have participated in this hearing if the network were not available? No

If yes, did you use the network

____ instead of travel

____ instead of phone conversations

____ instead of mailed testimony?

Are you also providing written testimony? No

DATE 2/26/80 SUBJECT Guide Tie + Control Board LOCATION ANCHORAGE

Legislative Affairs Agency
Legislative Teleconferencing Network
Phone: 465-4980

Alaska State Legislature

TELECONFERENCE HEARINGS

2

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Ken Owsichek

Here to Speak X

REPRESENTING SELF

Here to Observe _____

MAILING ADDRESS Box 6301 Anch Zip 99502

TELEPHONE NUMBER 243 5899

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Ken Owsichek
(signature)

EVALUATION: Have you participated in other legislative teleconferences? yes If so, how many? 1

How did you learn about this hearing?
Letter in the mail

Would you have participated in this hearing if the network were not available? No yes

If yes, did you use the network
4 instead of travel
_____ instead of phone conversations
_____ instead of mailed testimony?

Are you also providing written testimony? No

DATE 2/28/80 SUBJECT GLC Board LOCATION ANCHORAGE

Alaska State Legislature

TELECONFERENCE HEARINGS

3

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Vern Porter

Here to Testify ✓

REPRESENTING SELF.

Here to Observe ____

MAILING ADDRESS 4225 Spenard Rd. #96 Zip 99503

TELEPHONE NUMBER 243-6454

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Vernon Porter
(signature)

EVALUATION: Have you participated in other legislative teleconferences? yes If so, how many? one

How did you learn about this hearing?

Would you have participated in this hearing if the network were not available? No

If yes, did you use the network

____ instead of travel

____ instead of phone conversations

____ instead of mailed testimony?

Are you also providing written testimony? No

DATE 2/28/80 SUBJECT GLC Board LOCATION Lunch.

Alaska State Legislature

TELECONFERENCE HEARINGS

4.

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Frenchy Lamoureux Here to Testify ✓

REPRESENTING Game Here to Observe ✓

MAILING ADDRESS P.O. Box 4-444 Spenard AK Zip 99509

TELEPHONE NUMBER 248-4971

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Frenchy Lamoureux
(signature)

EVALUATION: Have you participated in other legislative teleconferences? No If so, how many? _____

How did you learn about this hearing?
Letter from Senator Brad Bradley

Would you have participated in this hearing if the network were not available? Yes

If yes, did you use the network
✓ instead of travel
✓ instead of phone conversations
_____ instead of mailed testimony?

Are you also providing written testimony? Yes

DATE 28 Feb 80 SUBJECT Guide Board LOCATION Anc.

Alaska State Legislature

TELECONFERENCE HEARINGS

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Wayne Hanson — Here to Testify ✓

REPRESENTING myself. — Here to Observe ____

MAILING ADDRESS P.O. Box 172 Wasilla AK Zip 99687

TELEPHONE NUMBER 376-5549

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Wayne Hanson
(signature)

EVALUATION: Have you participated in other legislative teleconferences? No If so, how many? ____

How did you learn about this hearing?

Brad Bradley

Would you have participated in this hearing if the network were not available? ~~No~~ Yes

If yes, did you use the network

____ instead of travel

X instead of phone conversations

X instead of mailed testimony?

Are you also providing written testimony? yes to State Rep.

DATE 2/28/80 SUBJECT Head tax Law. LOCATION Anch.

Alaska State Legislature

TELECONFERENCE HEARINGS

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Andrew Klein Here to Testify ✓

REPRESENTING Myself Here to Observe ✓

MAILING ADDRESS 4401 Forest Rd # Rnch AK Zip 99503

TELEPHONE NUMBER 243-7654

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Andrew Klein
(signature)

EVALUATION: Have you participated in other legislative teleconferences? No If so, how many? _____

How did you learn about this hearing?

Letter

Would you have participated in this hearing if the network were not available? No

If yes, did you use the network

_____ instead of travel

_____ instead of phone conversations

_____ instead of mailed testimony?

Are you also providing written testimony? No

DATE 2-28-80 SUBJECT GLC Board LOCATION Rnch.

Alaska State Legislature

1a.

TELECONFERENCE HEARINGS

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Bob Covey — Here to Testify ____

REPRESENTING Self & Jim Keeling — Here to Observe X

MAILING ADDRESS 3900 Coventry Anch AK Zip 99507

TELEPHONE NUMBER 344-8960

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Robert H Covey
(signature)

EVALUATION: Have you participated in other legislative teleconferences? NO If so, how many? ____

How did you learn about this hearing?
letter from Senate Committee on Commerce

Would you have participated in this hearing if the network were not available? NO

If yes, did you use the network
____ instead of travel
____ instead of phone conversations
____ instead of mailed testimony?

Are you also providing written testimony? ____

DATE 2/28/80 SUBJECT GLC Board LOCATION Anch

Issuing Affairs Agency:

Alaska State Legislature

TELECONFERENCE HEARINGS

2a.

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Goodfellow, Jon K.

Here to Testify _____

REPRESENTING self

Here to Observe ✓

MAILING ADDRESS 7420 Tangle Court, Anchorage, AK. zip 99504

TELEPHONE NUMBER 338-0098

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Jon K. Goodfellow
(signature)

EVALUATION: Have you participated in other legislative teleconferences? No If so, how many? _____

How did you learn about this hearing?

friend

Would you have participated in this hearing if the network were not available? _____

If yes, did you use the network

_____ instead of travel

_____ instead of phone conversations

_____ instead of mailed testimony?

Are you also providing written testimony? _____

DATE 2/28/80 SUBJECT GLC Board LOCATION Anch

Alaska State Legislature

TELECONFERENCE HEARINGS

3a

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME William Petersen — Here to Testify ____

REPRESENTING myself — Here to Observe X

MAILING ADDRESS SR. 2395 — Zip 99504

TELEPHONE NUMBER 344-3116

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

William W Petersen
(signature)

EVALUATION: Have you participated in other legislative teleconferences? no If so, how many? ____

How did you learn about this hearing?

newspaper

Would you have participated in this hearing if the network were not available? ____

If yes, did you use the network

____ instead of travel

____ instead of phone conversations

____ instead of mailed testimony?

Are you also providing written testimony? no

DATE Feb. 29, 80 SUBJECT GLC Board LOCATION Cord

Alaska State Legislature

TELECONFERENCE HEARINGS

92

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Leonard Helgason — Here to Testify ____

REPRESENTING Self — Here to Observe ✓

4103 N. Star Dr.

MAILING ADDRESS Anchorage AK Zip 99503

TELEPHONE NUMBER 277 7466

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Leonard Helgason
(signature)

EVALUATION: Have you participated in other legislative teleconferences? ____ If so, how many? ____

How did you learn about this hearing?
Letter from Brad Bradley

Would you have participated in this hearing if the network were not available? No

If yes, did you use the network
____ instead of travel
____ instead of phone conversations
____ instead of mailed testimony?

Are you also providing written testimony? No

DATE 2-28-80 SUBJECT Guide Board. LOCATION Anch.

Alaska State Legislature

TELECONFERENCE HEARINGS

5a

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME MARIO CERRONI Here to Testify _____

REPRESENTING ALASKA TROPHY OUTFITTERS Here to Observe V

MAILING ADDRESS P.O. Box 4-2012, ANCH, AK Zip 99509

TELEPHONE NUMBER 274-5475

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Mario Cerroni
(signature)

EVALUATION: Have you participated in other legislative teleconferences? NO If so, how many? _____

How did you learn about this hearing?

MAIL

Would you have participated in this hearing if the network were not available? _____

If yes, did you use the network

_____ instead of travel

_____ instead of phone conversations

_____ instead of mailed testimony?

Are you also providing written testimony? No

DATE 2-28-80 SUBJECT GUIDING LOCATION Conf.

Alaska State Legislature

6a

TELECONFERENCE HEARINGS

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME W. N. Bellingar

Here to Testify ____

REPRESENTING F&W Protection & Guide Board Dept. of Public Safety

Here to Observe X

MAILING ADDRESS Box 6-188 Annex Anch. Ab. Zip 99502

TELEPHONE NUMBER 269-5675

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

_____
(signature)

EVALUATION: Have you participated in other legislative teleconferences? Yes If so, how many? 2

How did you learn about this hearing?
a State Employee

Would you have participated in this hearing if the network were not available? If I knew about it.

If yes, did you use the network

X instead of travel

____ instead of phone conversations

____ instead of mailed testimony?

Are you also providing written testimony? No

DATE _____ SUBJECT _____ LOCATION _____

Affairs Agency

Alaska State Legislature

TELECONFERENCE HEARINGS

SUBJECT: GUIDE LICENSING & CONTROL BOARD

COMMITTEE: SENATE COMMERCE

DATE: 2/28/80

TIME: 1:PM

SITES PARTICIPATING:

CONFERENCE MODE: Audio

LOCATION: Soldotna

MODERATOR: Rhoda Eady

NOTES:

CONFIRMATION OF CONFERENCE CENTER: _____

PUBLICITY: Committee made

Invitational -

	Date	Quantity
PSAs	_____	_____
News releases (local)	KSRM, KBBI } RADIO	_____
News releases (outlying media)	Clarion, Cronicle, Chronicle } newspapers	_____
Direct mail	_____	_____
Phone contacts	_____	_____
Other:		

NUMBER IN ATTENDANCE 3
NUMBER TESTIFYING 2

Legislative Affairs Agency
Legislative Teleconferencing Network
State Capitol . Pouch Y . Juneau . 99811
Phone: 465-4980

Alaska State Legislature

TELECONFERENCE HEARINGS

DATE: 2/28/80

LOCATION: Soldotna

SUBJECT: GUIDE LICENSING & CONTROL B
SUNSET REVIEW/SEN. Com

NAME	REPRESENTING	ADDRESS	PHONE	HERE TO OBSERVE	HERE TO TESTIFY
* Steve Black	Black + Associates	P.O. Box 4323, Kenai AK.	776-8596	✓	✓
* CECIL R. JONES	JONES' GUIDE SERVICE	STAR RT. A, BOX 49A HOMER ALASKA	NONE	✓	✓
ROLAND CUSSON	ASSISTANT GUIDE	BOX 218 Kenai AK 99611	283-7020	✓	

Alaska State Legislature

TELECONFERENCE HEARINGS

DATE: 2/28/80
LOCATION: Soldotna
SUBJECT: GUIDE LICENCING & CONTROL BRD SUNSET REVIEW/SEN. COMM.

NAME	REPRESENTING	ADDRESS	PHONE	HERE TO OBSERVE	HERE TO TESTIFY
* Steve Black	Black + Associates	P.O. Box 4323, Kenai Ak.	776-8596	✓	✓
* CECIL R. JONES	JONES' GUIDE SERVICE	STAR RT. A, BOX 49A Homer ALASKA	NONE	✓	✓
ROLAND CUSSON	ASSISTANT GUIDE	BOX 218 Kenai AK 99611	283-7020	✓	

Alaska State Legislature

TELECONFERENCE HEARINGS

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Cecil R. Jones — Here to Testify ✓

REPRESENTING Jones' Guide Service — Here to Observe ✓

STAR RT. A, Box 49A

MAILING ADDRESS Homer, Alaska Zip 99603

TELEPHONE NUMBER None

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Cecil Jones
(signature)

EVALUATION: Have you participated in other legislative teleconferences? No If so, how many? _____

How did you learn about this hearing?
By mail.

Would you have participated in this hearing if the network were not available? No

If yes, did you use the network

_____ instead of travel

_____ instead of phone conversations

_____ instead of mailed testimony?

Are you also providing written testimony? Yes

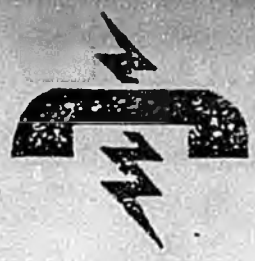
DATE 2/28/80 SUBJECT Guide Board. LOCATION Soldotna

Legislative Affairs Agency
Legislative Teleconferencing Network
State Capitol . Pouch Y . Juneau . 99811

Phone: 465-4980

Alaska State Legislature

TELECONFERENCE HEARINGS



Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Steve Black

Here to Testify ✓

REPRESENTING Black & Associates

Here to Observe ____

MAILING ADDRESS P.O. Box 4323 - Kenai, Alaska Zip 99611

TELEPHONE NUMBER 907-776-8546

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

S. Black
(signature)

EVALUATION: Have you participated in other legislative teleconferences? NO If so, how many? ____

How did you learn about this hearing?
Notice recieved in mail

Would you have participated in this hearing if the network were not available? NO

If yes, did you use the network
____ instead of travel
____ instead of phone conversations
____ instead of mailed testimony?

Are you also providing written testimony? NO

DATE 2-28-80 SUBJECT Guide Board Hearings LOCATION Soldotna

Legislative Affairs Agency
Legislative Teleconferencing Network
State Capitol . Pouch Y . Juneau . 99811

Phone: 465-4980

Alaska State Legislature

TELECONFERENCE HEARINGS

Please Print.
To be returned to Teleconference Moderator.

PARTICIPATION FORM

NAME Roland L. Cusson

Here to Testify _____

REPRESENTING Assistant Guide

Here to Observe ✓

MAILING ADDRESS Box 218 Kenai Alaska Zip 99611

TELEPHONE NUMBER 283-7020

BROADCAST CONSENT: This proceeding may be broadcast live or recorded for later broadcast by radio or television stations. Please indicate your consent by signing below:

Roland L Cusson
(signature)

EVALUATION: Have you participated in other legislative teleconferences? NO If so, how many? _____

How did you learn about this hearing?

Received Notice by MAIL

Would you have participated in this hearing if the network were not available? _____

If yes, did you use the network

_____ instead of travel

_____ instead of phone conversations

_____ instead of mailed testimony?

Are you also providing written testimony? NO

DATE 2-28-80 SUBJECT _____ LOCATION _____

Legislative Affairs Agency
Legislative Teleconferencing Network
State Capitol . Pouch Y . Juneau . 99811
Phone: 465-4980

P.O. Box 695
Eagle River, AK 99577

March 3, 1980

Senate Commerce Committee
Pouch V, Mail Stop 3100
Juneau, AK 99811

Attention: Chairman, Brad Bradley

I would like to add my comments on the Guide Licensing and Control Board Public hearing that was held on February 28, 1980.

I am very much in favor of keeping the Guide Board in existence. I think they are doing a very good job. Also, I am against transferring the jurisdiction to the Department of Public Safety. I would also like to see the transportor law dropped.

I would highly recommend the Guide Board come under the Department of Fish and Game.

Sincerely,

James K. Bailey
Registered Guide

Ken Owsichek's
FISHING
UNLIMITED
THE ULTIMATE ALASKAN FISHING EXPERIENCE

March 3, 1980

Senator Brad Bradley, Chairman
Senate Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley,

Last week, I spoke at the Teleconference Hearings on the Guide Licensing and Control Board. Mr. Jensen's closing statements on why the board revoked a guide's license after one violation clearly shows the position the board has taken. If they do not like an individual, they make it hard on you. No board should have the power to operate in this manner. It is a gross misuse of our system.

I strongly recommend an investigation of all the actions of the guide board from 1975 till present to clearly see how unfairly they have acted. I have completed many pages of notes and would gladly help in any manner.

I am thankful for the opportunity to share my views with the legislature. There are many people who share my views but who are afraid to speak out against the board. I personally, have felt their prejudice in my dealings with them. It is a very tough road to travel when a board is allowed to act the way this board has acted.

Thank you very much.

Sincerely yours,

Ken Owsichek

Ken Owsichek

P.S. I would also like to have a copy of Mr. Jensen's last statement to the committee on why they revoked the license.

KEN OWSICHEK (O-say-chek) • P.O. BOX 6301 • ANCHORAGE, ALASKA 99502 • (907) 243-5899

TROPHY FISHING

Katmai Guide Service

PHOTOGRAPIC EXPEDITIONS

P.O. BOX 313
KING SALMON, ALASKA 99613

Feb. 28

Senator Bradley,

Thanks for the letter informing me of the hearing on the guide Lisence and Control Board. I attended the tele-conference in Dillingham.

As an assrstant guide, I have totaly dedicated myself to becoming the very best and most competent guide possible. This yeai- I will be elligable to take the registered guide tests, I support the conept of exclusive guide areas that allows "joint usage" as this seems the only logical way of preventing too much pressure in certain areas and protecting the non-pilot guide, like myself, from those who would roam freely in their super cubs to high game population centers. At least in the case

of Kodiak, the exclusive area concept has made each guide highly concious and responsible for the game in ther areas,

At the Same time time, however, it has become increasingly more dificult for young assistant guides and registered guides to find openings in the proffesion. with anti-hunting pressure as strong as it is, I think it is important that the young men after having completed their "internship" have the opportunity to earn their living at what they have worked so hard to achieve. The future of hunting depends on these young men.

I think the board is doing a good job and should be retained

Thanks

Joe Klutsch

Cecil R Jones
St Rt A Box 49A
Homer Alaska 99603
March 1, 1980

Dear Folks,

In the recent hearings on the guide board there was considerable testimony on the problem of new guides in the state trying to aquire a guide area permit. Many were in favor of the Guide Area Concept but felt that something should be done for the new guides starting out in the business. Here is the way I feel on this issue. The board should do a field investigation of the guides who are presently holding oversize areas or more than two areas. If they find the guide isn't utilizing the entire area, cut the area down to his traditional use. This would produce more areas, also the resident requirement for guides should be enforced. We all know guides presently operating in Alaska who have basically retired. Guides who live in the lower 48' who come to Alaska only during hunting season. When hunting season ends they go home and take their money with them. Money that should remain in the state. I feel that anyone not making Alaska his year-round residence should not be allowed to operate in this state. Let them retire from the guide business and pass his area permit on, there by opening the way for a new guide.

These two things could help the new guides tremendously and not hurt the industry at all. Beyond these two things the only alternative new guides have is to find a good outfit to work for and stay with him.

The guide area permit concept is a good thing. It just needs a few wrinkles ironed out. Thank You.

Sincerley

Cecil Jones

Cecil Jones

Clark Engle
4129 Lana Court
Anchorage, Alaska 99504
Phone (907) 333-5214

March 27, 1980

Rep. Al Osterback, Chairman
Puoch V
Juneau, Alaska 99811

Dear Mr. Chairman,

This letter is in regards to the Sunset Review of the Guide License and Control Board. As a member of said board, I feel I must comment on the review and a copy of a letter of a request by Rep. Rick Halford, to attorney general's office about a legal audit.

First, I would like to comment on Rep. Halford. It has come to my attention that certain people have made accusations against him. They say he has a conflict of interest, he is letting his family get in his way of making good judgement, etc. I want you to understand I am not a fan of Rep. Halford's, in fact, we very seldom agree on most facts. However, I do think Rep. Halford is an honest legislator and his integrety, as far as I am concerned, has never been in doubt. To say he has a conflict of interest is ridiculous and the family problem is even more ridiculous.

I feel this attack on him was due to him asking for a legal audit. As one of the board members, I say it is about time and I welcome a legal audit. I cannot understand anyone not wishing to adhere to the constitution, and after all, that is what is expected of us.

Now, I would like to comment on the review finding by the House Resources.

No. 1 I am happy to see you find need for the board, for safety and welfare of the public. I feel you have left out one important thing, that is, the great need by the industry, for a board, to better the guiding industry.

No. 2 I disagree with finding in this case. The board should not be under public safety. A seperation of the police and the board should be distinct. The reason given me for putting it under protection is commerce does not do its job. If this is true and I believe it is, the legislator should shape the bureaucracy up, not transfer the problem.

No. 3 The transporter law, like many laws, was designed to correct a problem. And like many other laws, it failed miserably,

in fact it caused more problems. All this law did was to license a $10.00 guide.

No. 4 This finding has much merit. For years we have been trying to change some simple statutes. I shall list them, these will not be in there order of importance.

(a) Repeal of the guide head tax (Alaska Statute Sec. 16.05.340). This head tax is the most unfair, and I believe, it is a discriminatory tax. It sets the guide aside and taxes him and does not tax any other user of the natural resources, such as resident hunter, timber people, commerical fishermen, sports fishermen, miner, subsistance hunter and fishermen. You must remember, we do not shoot the game, all we do is provide a service for a hunter. The hunter has already paid for the right to hunt by buying a license and tags. I take note of the lack of tax on bird watchers who takes pictures, etc. I encourage you to repeal this law.

(b) In the guide law (Sec. 08.54.200) grounds for disciplining a licensee. According to this statute, the board must have a hearing, if a licensee has had 3 or more complaint letters from Clients. There is no time element on this, these complaints could be 10 or 15 years apart. I suggest the mandatory section be removed. Leave it up to the board, there are times when one complaint should be heard. All complaints should be investigated and the results should be presented to the board.

(c) Sec. 08.54.200 grounds for disciplining a license Section (C) No. (3) It is mandatory the board revoke a license if a licensee is convicted of two violations. This manadatory section should be removed also. Some convictions do not merit revoking a license. Example (a guide is convicted of forgetting his license one year, 10 years later he is convicted of not having proper survival gear in the aircraft, the guide claims the gear was stolen. It would be mandatory for the board to revoke his license for 5 years. I say leave this decision to the board, do not make it mandatory.

(d) New sections to be added. The board will advertise to the public for proposals to change guide regulation and will consider them and take action at least once a year. At this time the public has no way to submit a proposed change of regulation unless the board chairman O.K.'s them or one of the board members submit them. This should be set up simular to Game Board.

(e) New section to be added. Annual election of chairman and vice chairman. Chairman and vice chairman will only serve 2 consecutive years. Mark Jenson has been Chairman for 6 years and he has been a very dedicated chairman, however, I think it is healthy for a board to have a new chairman every two years for new thinking, new ideas, a new outlook on matters.

(f) New section. Guide Board members must attend at least 3/4th of the meetings each year, and registered guide members of the board must be active. To prove activity they must have at least 5 financial renumeration statements on file, per year. It does no no good to have a guide on the board that is not active, he is out of the main stream of the industry.

No. 5 I hope the legislators do not hamstring the board by continuing the board for just one year. We are only allowed 3 meetings a year, by the commerce dept. They tell us they have no more funds. There is only a certain amount one can expect from a board that will be in session for 15 days a year. Possibly the answer to that, if you do continue us for just one year is, set asside a special appropriation for more meetings and longer meetings.

(5b) Last but not least this deals with rural resident guides. I am happy to see our rural resident s taken care of. However, let me caution you, make dam sure that all guides, whether they be rural or urban, be treated equal. Do not make the law double standard.

I realize I have been long winded, as I usually am, but I feel you should get as much imput from all segment of the guiding industry. Only then can you make workable laws.

Sincerely,

Clark L. Engle

cc:Reps: Pat Carney
Bill Miles
Chat Chatterton
Fred Zharoff
Jack Fuller
Sam Cotten
Rick Halford
Joe Hayes
Sens: Brad Bradley
Ed Dankworth
Arliss Sturgulewski
All Guide Board Members
Bill Bellinger

Fairbanks Ak
March 7, 1980

Brad Bradley
Chairman, Senate Commerce Committee

Dear Mr. Bradley

Enclosed is my resume as requested in your letter of Feb 28.

Very truly
J. B. Snoecker

RESUME

Wm. G. Stroecker

Business Position:

Chairman of the Board, First National Bank of Fairbanks; Secretary and Treasurer of Wilners Fuel Co, Inc.; President of Future, Inc.

Education:

Graduate of Fairbanks High School; New Mexico Military Inst. Jr. College; University of Alaska; U.S. Army - May 1942 to Dec. 1945

Organizations:

B.P.O.E.
Pioneers of Alaska - Life Membership
Rotary
Alaska Goldpanner Baseball Inc. - President
Salvation Army - Board Member
University of Alaska Heating Corp. - Board Member
Fairbanks Memorial Hospital Foundation - Board Member
National Rifle Association - Life Member
Ducks Unlimited - National Trustee of Alaska
Tanana Valley Sportsman - Life Member
Interior Wildlife Association - Board Member
Association of U.S. Army - Member
Air Force Association - Member

Murder Lake, Alaska
2/28/'80

Sen. Brad Bradley
Alaska Senate Commerce Committee
Greetings;

Rec. Communication re: hearing on Guide License & Control Board - too late for any timely remarks, since I live in a remote area with no regular mail service. I am, an unaffiliated, Reg. Guide; and as Monday-after-the-game Comment my impression of the Board is that I disagree with the basic concept they seem to operate: in short, I am opposed to commercialization of Alaska Game resources for the enrichment of a small group.

But I was glad to receive your communication, since now I have an address, where to write re: a couple queries been in mind:

I would like to know by what Statute, the Division of Occupational Licensing is empowered to charge,and collect, extra $IO fee for Guide License applied for later than Feb. of the year affected - even an extra, $IO besides, for a past year in which no, License was applied (?)

And re: the Statute whereby an extra fee is charged to Guides taking more than 5, of some big game species -I heard over Radio that after this was passed into law, legislators decided it would be un-enforceable ; but then the Dept. of Commerce took it upon themselves, stating they, would, enforce it. Now I have no quarrel with that Statute - seems a good idea; but I do have misgivings about the methods used in enforcement. All I knew of the Statute I heard over Radio. But then Guides were sent Forms to fill, which amounted to self-imposed billing, the extra fees for the past 3, years, since the Statute was enacted. I owed nothing, so, in opposition to principles, I filled the Form and returned. But such action seems to parallel - selling someone something, then a couple years later coming around saying they should be paid more. I'd like to know by what Statute this Retroactive,fee is allowed.

Since the Dept of Commerce (& Econ. Dev.) is so apt letting people know when People, U.S., Alaska citizens, who are supposed to be the main issue and cause for, Gov't; owe, them I think it would be only just that they let us know in advance, about such extra fees to be charged - so that we, might include allowance for such in our, charges to customers; and further, that they be required to state, by what authority such extra fees and methods are

allowed - which was not, done in either of cases above.

Sorry, I meant to add, re: extra $10 for Guide License after Feb. - the only Regulation I know of on this states that a Guide must have Alaska Guide License at the time actually guiding or Contracting, hunters. Tho' this latter may be done earlier thru mail, in my experience Contracts have been signed just before beginning hunting, hunters already at the hunting camp. For a small operator like myself, the $75 License fee is an important amount - and I understand we are allowed to skip applying for one year, in which we do not plan to guide; since now we are under a system of Designated Guide Areas, a Guide interested in perpetuity of resources within their Area, might think best to rest, it for a time, perhaps because contrary circumstances are threatening maintenance of Game resources there. Amen.

Truly yours,

John Ireland

JOHN IRELAND
MURDER LAKE
TALKEETNA, AK
99676

SB
574

COMMITTEE REPORT

SENATE

FURTHER:

4/22/80

Date: _____

Mr. President:

The Committee on COMMERCE has had SB 574 continuing the existence of the Guide Licensing and Control Board

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for SB 574 [✓] same title [ ] new title

and recommends NEB

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
Tim Kelly	
Terry D. Stimson	
Curtis Hungerford	
Brad Bradley	

Brad Bradley
CHAIRMAN

S 60 (Rev. 12/78)

CS FOR SENATE BILL 574

MR. PRESIDENT, I MOVE THE ADOPTION OF CS FOR SB 574, WHICH IS IDENTICAL, AT THIS POINT, TO THE HOUSE BILL FOR THE SAME BOARD. WE HAVE WORKED JOINTLY TO TRY TO PREVENT AN UNNECESSARY AND OFTEN TIME-CONSUMING FREE CONFERENCE COMMITTEE.

THIRD READING

I will attempt to cover the changes to current law by section as quickly as possible

(SEC. 08.54.010) P. 1, L. 12

- SECTION 1 ESTABLISHES THE GUIDE LICENSING AND CONTROL BOARD SOLELY IN THE DIV. OF FISH AND WILDLIFE PROTECTION OF THE DEPT. OF PUBLIC SAFETY. CURRENTLY, THE BOARD IS ESTABLISHED IN THE DIV. OF OCCUPATIONAL LICENSING OF THE DEPT. OF COMMERCE AND ECONOMIC DEVELOPMENT AND THIS DIVISION PLUS THE DIV. OF FISH AND WILDLIFE PROTECTION OF THE DEPT. OF PUBLIC SAFETY SHARE THE RESPONSIBILITY FOR STAFF SUPPORT. THIS SECTION ALSO ENSURES THAT THREE MEMBERS OF THE BOARD WILL BE ACTIVELY INVOLVED IN GUIDING AND THE REMAINING FOUR WILL HAVE NO INVOLVEMENT IN THE GUIDING BUSINESS. CURRENTLY, THREE MEMBERS ARE JUST REQUIRED TO HAVE A GUIDE LICENSE AND THE OTHER FOUR A GENERAL KNOWLEDGE OF GAME RESOURCES.

(SEC. 08.54.020) P. 1, L. 28

- SECTION 2 PROVIDES THAT THE MEMBERS OF THE BOARD MAY NOT BE APPOINTED FOR MORE THAN TWO CONSECUTIVE TERMS. A TERM IS FOR THREE YEARS. CURRENTLY, THERE IS NO LIMIT TO HOW MANY CONSECUTIVE TERMS A MEMBER MAY SERVE if appointed.

(SEC. 08.54.030) P. 2, L. 2 — SECTION 3 REQUIRES THAT THE BOARD MUST ELECT A CHAIRMAN AND A VICE-CHAIRMAN ANNUALLY. THE CHAIRMAN MAY NOT SERVE FOR MORE THAN TWO CONSECUTIVE TERMS. TESTIMONY INDICATED THAT SUCH ROTATION WOULD ASSURE THAT THE BOARD WOULD BE MORE RESPONSIVE TO THE PUBLIC INTEREST. CURRENTLY, THERE IS NO LIMIT TO HOW LONG A CHAIRMAN CAN SERVE.

(SEC. 08.54.070(A)) P. 2, L. 7 — SECTION 4 REQUIRES GUIDE LICENSE FEES TO BE PAID BIENNIALLY AND GENERALLY INCREASES THEM 25 TO 30 PERCENT.

(SEC. 08.54.182) P. 2, L. 13 — SECTION 5. PERSONS SEEKING REGISTERED AND MASTER GUIDE LICENSES MUST PASS AN EXAMINATION, AND THAT EXAMINATION SHALL BE HELD TWICE A YEAR AT BOTH JUNEAU AND ANCHORAGE FOR THE CONVENIENCE OF APPLICANTS. CURRENTLY, THE EXAMINATIONS ARE ADMINISTERED ONLY IN ANCHORAGE.

(SEC. 08.54.190(A)) P. 2, L. 18 — SECTION 6 ELIMINATES A LICENSURE PROVISION FOR AIR TRANSPORTERS AND IT ASSURES THAT ALL GUIDE LICENSES ARE VALID FOR AT LEAST ONE FULL YEAR. UNDER EXISTING LAW, ALL LICENSES EXPIRE ON DECEMBER 31 FOLLOWING ISSUANCE REGARDLESS OF WHEN THEY WERE ISSUED. PERSONNEL IN THE DIV. OF FISH AND WILDLIFE PROTECTION CONSIDER THE "TRANSPORTER LAWS" CONFUSING AND DIFFICULT TO ENFORCE. IN ADDITION, THE INFORMATION AND REPORTS THAT TRANSPORTERS ARE REQUIRED TO FILE ARE NOT BEING ACCOMPLISHED AND ARE NOT NEEDED TO MANAGE THE GAME RESOURCES OF THE STATE. Testimony was unanimous that the transporter license should be eliminated.

(SEC. 08.54.190(B)) P. 2, L. 23 SECTION 7 REQUIRES THAT AN ASSISTANT GUIDE OR A CLASS-A ASSISTANT GUIDE THAT HAS NOT RENEWED HIS LICENSE FOR FOUR YEARS MAY NOT BE RENEWED UNTIL HE MEETS THE QUALIFICATIONS FOR AN INITIAL LICENSE. CURRENTLY, THE GRACE PERIOD IS FOR ONLY TWO YEARS.

(SEC. 08.54.200(A)) P. 2, L. 28 SECTION 8. UNDER EXISTING LAW, THE BOARD IS REQUIRED TO HOLD A HEARING TO CONSIDER DISCIPLINARY ACTION IF IT RECEIVED COMPLAINTS FROM THREE OR MORE SEPARATE PARTIES TO WHICH A LICENSEE HAS PROVIDED SERVICES. NO TIME PERIOD WAS INDICATED; IT COULD BE THREE COMPLAINTS IN THIRTY YEARS, which is impractical. SECTION 8 PROVIDES A TIME PERIOD OF FIVE YEARS WITHIN WHICH THESE COMPLAINTS MUST BE RECEIVED BEFORE THE BOARD IS REQUIRED TO HOLD A DISCIPLINARY HEARING. THIS SECTION ALSO PROVIDES THAT THE BOARD IS NO LONGER OBLIGATED TO HOLD A DISCIPLINARY HEARING WHEN A LICENSEE IS MERELY CHARGED WITH A VIOLATION OF FEDERAL OR STATE SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS. HOWEVER, UPON A CONVICTION, THE BOARD IS STILL REQUIRED TO HOLD A DISCIPLINARY HEARING.

(SEC. 08.54.200(C)) P. 3, L.9 SECTION 9 PROVIDES THE BOARD THE OPTION OF REVOKING, SUSPENDING, OR DENYING RENEWAL OF A LICENSE IF THE BOARD FINDS THAT THE LICENSEE DOES NOT MEET CERTAIN REQUIREMENTS. UNDER EXISTING LAW, THE BOARD WAS REQUIRED TO REVOKE THE LICENSE UPON SUCH A FINDING. THIS SECTION ALSO PROVIDES THAT SPECIFIED DISCIPLINARY

ACTION MUST BE TAKEN BY THE BOARD ONLY WHEN A LICENSEE HAS BEEN CONVICTED OF TWO VIOLATIONS OF FEDERAL OR STATE SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS WITHIN THE PAST FIVE YEARS. UNDER CURRENT LAW, TWO VIOLATIONS TRIGGER MANDATORY DISCIPLINARY ACTION REGARDLESS OF THE TIME PERIOD.

(SEC. 08.54.210(A)(1)) P. 3, L. 20 • SECTION 10 REMOVES REFERENCE TO A TRANSPORTER BECAUSE TRANSPORTERS WILL NO LONGER BE LICENSED UNDER THIS ACT. (SEE SECTION 6 AND SEC. 08.54.142 AND 144)

(SEC. 08.54.210(A)(2)) P. 3, L. 26 • SECTION 11 REMOVES REFERENCE TO A TRANSPORTER.

(SEC. 08.54.210(A)(4)) P. 4, L. 5 • SECTION 12 REMOVES REFERENCE TO A TRANSPORTER.

(SEC. 44.41.020) P. 4, L. 11 • SECTION 13 PROVIDES THAT A NEW DUTY OF THE DEPT. OF PUBLIC SAFETY SHALL BE THE SOLE RESPONSIBILITY FOR ADMINISTRATIVE STAFF SUPPORT OF THE GUIDE LICENSING AND CONTROL BOARD (SEE SECTION 1).

(SEC. 08.03.010(C)) P. 4, L. 15 • SECTION 14 PROVIDES FOR JUNE 30, 1984, AS THE TERMINATION DATE FOR THE GUIDE LICENSING AND CONTROL BOARD.

P. 4, L. 16 • SECTION 15. THIS SECTION REPEALS PROVISIONS WHICH ARE INCONSISTENT WITH THIS ACT.

AS 08.01.010(20) REMOVES THE GUIDE LICENSING AND CONTROL BOARD FROM THE LIST OF BOARDS TO WHICH CHAPTER 01 APPLIES, SINCE THIS BOARD

WILL NO LONGER BE ADMINISTERED BY THE DEPT. OF COMMERCE AND ECONOMIC DEVELOPMENT.

AS 08.03.010(B)(7) REPEALS THE SUNSET PROVISION FOR THIS BOARD;

AS 08.54.100(5) ELIMINATES THE BOARD'S DISCRETION TO ESTABLISH QUALIFIACTIONS FOR LICENSING MASTER GUIDES IN ADDITION TO THOSE ESTABLISHED BY STATUTE (IF THE BOARD WAS PERMITTED TO ESTABLISH QUALIFICATIONS IN ADDITION TO THOSE IN THE STATUTES, IT WAS THOUGHT THERE COULD POSSIBLY BE SOME CHANCE OF DISCRIMINATION);

AS 08.54.110(12) ELIMINATES THE BOARD'S DISCRETION TO ESTABLISH QUALIFICATIONS FOR LICENSING REGISTERED GUIDES IN ADDITION TO THOSE ESTABLISHED BY STATUTE (THE SAME REASON AS FOR MASTER GUIDES ALSO APPLIES HERE);

TRANSPORTER REPEALS BEGINS HERE (NEXT 5 SECTIONS)

AS 08.54.142 REPEALS THE SECTION DEALING WITH LICENSURE OF TRANSPORTERS;

AS 08.54.144 REPEALS THE RESTRICTIONS ON TRANSPORTATION OF HUNTERS BY TRANSPORTERS;

AS 08.54.146 REPEALS THE SECTION REQUIRING PREPARATION AND FILING OF TRANSPORTER REPORTS;

AS 08.54.170(c) ELIMINATES THE LICENSE FEE FOR A TRANSPORTER;

AS 08.54.240(5) REMOVES THE DEFINITION OF "TRANSPORTING" AND "ACTIVITY OF TRANSPORTING";

TRANSPORTER REPEALS

END HERE.

AS 16.05.340(E) ELIMINATES FEES CHARGED TO MASTER GUIDES AND REGISTERED GUIDES FOR THE TAKING OF SPECIFIED GAME ANIMALS. (Head Tax).

P. 4, L. 19 ● SECTION 16 PROVIDES FOR THIS ACT TO TAKE EFFECT JUNE 30, 1980, THE DATE ON WHICH THE BOARD IS SCHEDULED TO TERMINATE.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM April 26, 1980

SUBJECT: Section-by-section analysis of SB 574 dealing with the Guide Licensing and Control Board (Work Order No. 8526)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have requested a section-by-section analysis of Senate Bill 574 entitled "An Act continuing the existence of the Guide License and Control Board and amending the law relating to its powers and responsibilities; and providing for an effective date."

Section 1. The Guide Licensing and Control Board is established in the division of fish and wildlife protection, Department of Public Safety. This amendment ensures that three members of the board will be involved in guiding and that the remaining four members will have no involvement in the guiding business.

Section 2. This amendment provides that members of the board may not be appointed for more than two consecutive terms. Since a term is for three years, a person would have to wait three years before being reappointed to the board after serving two terms. There is no limitation on the total number of terms which a person may serve on the board.

Section 3. The board must elect a chairman and a vice-chairman annually.

Section 4. This section generally increases fees required for licenses to engage in the profession of guiding.

Section 5. Persons seeking licenses must pass an examination, and that the examination shall be held twice a year at both Juneau and Anchorage for the convenience of applicants.

Section 6. This section is amended to eliminate a licensure provision for transporters and to assure that a license is valid for at least one full year. Under existing law all licenses expire on December 31st following issuance regardless of when they were issued.

Section 7. An assistant guide license which has not been renewed for four years may not then be renewed until the applicant meets the qualifications for an initial license. Under the existing statute only a two-year grace period is provided.

Section 8. Under existing law the board is required to hold a hearing to consider disciplinary action if it receives complaints from three or more separate parties which a licensee has provided services to. The amendment provides a time period of five years within which these complaints must be received before the board is required to hold a disciplinary hearing. This section is also amended so that the board is no longer obligated to hold a disciplinary hearing when a licensee is merely charged with a violation of federal or state sport fish, game or guide statutes or regulations. Upon a conviction, however, the board is still required to hold a disciplinary hearing.

Section 9. The board is permitted the option of revoking, suspending, or denying renewal of a license if the board finds that the licensee does not meet certain requirements. Under existing law the board was required to revoke the license upon such a finding. This section is also amended to provide that specified disciplinary action must be taken by the board only when a licensee has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations within the past five years. Under current law, two violations trigger mandatory disciplinary action regardless of the time period between the violations.

Section 10. This section is amended to remove reference to a transporter because transporters will no longer be licensed under this act.

Section 11 A reference to a transporter is deleted.

Section 12 A reference to a transporter is deleted.

Section 13 A new duty of the Department of Public Safety shall be the administration of the Guide License and Control Board.

Section 14. June 30, 1984 is set as the termination date for the Guide License and Control Board.

Section 15. This section repeals provisions which are inconsistent with this act.

AS 08.01.010(20) removes the Guide Licensing and Control Board from the list of boards to which Chapter 01 applies, since this board will no longer be administered by the Department of Commerce and Economic Development;

AS 08.03.010(b)(7) repeals the sunset provision for this board;

AS 08.54.100(5) eliminates the board's discretion to set qualifications in addition to those established by statute for licensure of master guides;

AS 08.54.110(12) eliminates the board's discretion in establishing qualifications for registered guide licenses in addition to those established by statute;

AS 08.54.142 repeals the section dealing with licensure of transporters;

AS 08.54.144 repeals the restrictions on transportation of hunters;

AS 08.54.146 repeals the section requiring preparation and filing of transporter reports;

AS 08.54.170(c) eliminates the license fee for a transporter;

AS 08.54.240(5) removes the definition of "transporting" and "activity of transporting";

AS 16.05.340(e) eliminates fees charged to master guides and registered guides for the taking of specified game animals;

Section 16. This act takes effect June 30, 1980, the date on which the board is scheduled to terminate.

If you have any further questions, please contact me.

TBC:ljb

1. The Guide Licensing and Control Board should continue until July 1, 1982.

2. Eliminate the Transporter laws:

Sec.	08.54.142	(Qualification)
	08.54.144	(Restriction)
	08.54.146	(Report)
	08.54.170(c)	(License fee)

3. The Board and regulations should be transferred to the Division of Fish & Wildlife Protection, Department of Public Safety.

4. Grounds for disciplining a licensee. (08.54.200)

(a)(1) complaints concerning the licensee have been filed with the board from three or more clients of separate parties within the past five years; or

(a)(2) [A LICENSEE HAS BEEN CHARGED WITH A VIOLATION OF FEDERAL OR STATE SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS; OR]

(c) After a hearing, the board [SHALL] may revoke, suspend, or deny renewal of a license if the board finds that the licensee

(c)(3) has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations within the past five years.

5. Expiration and renewal (08.54.190)

Change license renewal from the existing one year to two years.

6. Appointment and terms of office (08.54.020)

Members of the board may not serve more than two consecutive terms.

7. Creation and membership of board. (08.54.010)

There is created the Guide License and Control Board consisting of seven members. [NO MORE THAN THREE MEMBERS OF THE BOARD SHALL HAVE A GUIDE LICENSE] Three members of the board shall be active licensed guides receiving a substantial portion of their income from guiding activities.

8. Sec. 08.54.030 Chairman of Board. The board shall annually elect one of its members as chairman [.] and one of its members as vice chairman.

9. AS 16.05.340(e) repeal of head tax.

10. Sec. 08.54.170. License fees. (a) License fees for engaging in the profession of guiding are:

(1)	master guide license, biennial	[75]	$200
(2)	registered guide license, biennial	[75]	$200
(3)	class A assist and guide, biennial	[15]	$50
(4)	assistant guide license, biennial	[10]	$30

11. Sec. 08.54.100(5) eliminate this section.

[MEETS ADDITIONAL QUALIFICATIONS WHICH THE BOARD MAY REQUIRE.]

This change will mean that all guides will be operating by law and not isolated regulations.

12. Examinations: Instead of one exam per year for registered and master guides there should be two exams per year in two different areas of the state-i.e., one in Anchorage, one in Juneau.

13. 08.54.110(12) eliminate this section.

A person is entitled to be licensed as a registered guide if he [MEETS ADDITIONAL QUALIFICATIONS WHICH THE BOARD MAY REQUIRE.]

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for Senate Bill No. 574 - An Act continuing the existence of the Guide Licensing and Control Board and amending the law relating to its
Title powers and responsibilities; and providing for an effective date.
Requested by Commerce Committee Date April 29, 1980

II. FISCAL DETAIL
Agency Affected Commerce and Economic Development
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected Regulation and Licensing of Professions
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-0-	(20.1)	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400	COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600	LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL	-0-	(20.1)	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	(20.1)	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The 20.1 represents the monies requested by our Division for the Guide Licensing and Control Board's FY81 travel. It also includes travel that would have been incurred by the Licensing Examiner to all their meetings.

IV. DATE 4/29/80 PREPARED BY Ann Griggs, Director
AGENCY Occupational Licensing
PHONE 465-2534

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33--001 (Rev. 12/79)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 1032 - "A. Act continuing existence of the Guide Licensing &
Title Control Board and providing for an effective date."
Requested by _____ Date May 14, 1980

II. FISCAL DETAIL

Agency Affected Public Safety
Program Category Affected NRMEC
BRU, Program, or Subprogram(s) Affected Fish & Wildlife Protection Director's Office
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		49.1	52.5	56.2	60.1	64.3
200 TRAVEL		26.1	27.9	29.9	32.0	34.2
300 CONTRACTUAL		4.0	4.3	4.6	4.9	5.2
400 COMMODITIES		4.0	4.3	4.6	4.9	5.2
500 EQUIPMENT		4.4				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		87.6	89.0	95.3	101.9	108.9

FUNDING (Thousands of Dollars)

GENERAL FUND		87.6	89.0	95.3	101.9	108.9
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		2	2	2	2	2
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Operational funding for the Guide Licensing and Control Board would be required to include the establishment of two positions, an Administrative Assistant I (range 12) and a Clerk-Typist III (range 8) and associated costs. These two positions would be located in Anchorage under the Director of the Fish & Wildlife Protection Division, and would provide administrative and clerical support to the Board. Travel costs are estimated for five members of the Board plus the Administrative Assistant for three meetings (approximately twelve days each) annually. The costs shown for FY81 also include office equipment for the new positions and an audio recording system to be used to document testimony and Board actions in cases of license suspension, revocation, or denial which are litigated. Dollar amounts shown after FY81 include a 7% inflation factor.

If the Board membership is increased, travel costs will be correspondingly higher than the estimates indicated.

IV. DATE May 14, 1980 PREPARED BY Marcia Lynn McKenzie
AGENCY Public Safety
PHONE 465-4349

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
1	Administrative Assistant I			12/A	G	Anchorage	GOV.		
2	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG.		

	TYPE OF EXPENDITURE	1	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY		20,652	
5	BENEFITS		3,406	
6	FICA		1,373	
7	HEALTH INS.		1,524	
8	TOTAL PERSONAL SERVICES			26,955
9	TRAVEL			2,850
10	CONTRACTUAL			1,000
11	COMMODITIES			500
12	EQUIPMENT			1,500
13	OTHER			
14	TOTAL COST			32,805

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	32.8
17		GEN. FUND	
18		I-A RCPTS.	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

4A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

The Department currently does not have sufficient clerical staff to adequately administer the Guide Licensing and Control Board.

This position will be responsible for all administrative duties required and would process and issue approximately 1,500 guide licenses annually as well as preparing the Guide Register for public distribution annually and maintaining all Board records. The incumbent will also be required to arrange and attend all Board meetings to provide support as necessary and ensure proper documentation of all Board activities.

AGENCY Public Safety PROGRAM AREA Fish & Wildlife Protection

BRU Director's Office

COMPONENT _____

FY 81

13 REQUEST FOR NEW POSITION.

REVISED DATE _____

02-1013 (Rev. 7/79)

	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION		APPROV	DISAPP.
1	Clerk Typist III			8/B	G	Anchorage	GOV		
	TYPE OF POSITION	STAT. MONTHS	RP No. / PCN No.	PRIORITY		FORM 12 PAGE/LINE			
2	PFT	12					LEG.		

3	TYPE OF EXPENDITURE	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY	16,740	
5	BENEFITS	2,760	
6	FICA	1,113	
7	HEALTH INS.	1,524	
8	TOTAL PERSONAL SERVICES		22,137
9	TRAVEL		
10	CONTRACTUAL		500
11	COMMODITIES		500
12	EQUIPMENT		1,500
13	OTHER		
14	TOTAL COST		24,637

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	
17		GEN. FUND	24.6
18		I-A RCPTS.	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

BA KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

The Department currently does not have sufficient clerical staff to adequately administer the Guide Licensing and Control Board.

This position would be responsible for all clerical support to the Board, including transcriptions of Board meetings for use in possible hearings and litigations. At present, some of this work is being accomplished by the Director's staff to the detriment of other duties and obligations. Approximately 15,000 financial remuneration statements submitted by guides annually are currently being filed by professional level investigators, decreasing their time available for program operations.

Some of the functions, in part, are currently being accomplished by the Dept. of Commerce. When the Board is transferred to this Department, however, clerical support will not be transferred. Denial of this position will result in program ineffectiveness, as professional level staff will have to be diverted to clerical work as indicated above.

AGENCY Public Safety PROGRAM AREA Fish & Wildlife Protection

BRU Director's Office

COMPONENT _____

13 REQUEST FOR NEW POSITION.

FY 81

REVISED DATE _____

2/14/80 Confirmation Hearing
Guide Board.

☆ Norman Sutliff

Alien Hunting (non-resident) damaging our game resources. What can we do?

☆ Mr. Charles Kern

Board members should have limited terms.

Walrus situation --- AK Walrus Commission and include more AK natives in the hunting industry. The Economic reward for ivory makes it difficult to control the slaughter of these noble animals.

→ If we don't use the leather from Walrus why not export this raw material.

Letter | ☆☆. → Contact the American Leather Industry w/r to its interest in AK. Walrus as a resource.

William Proecter
→ FBX.

Mark Jensen (Chairman of the Board) since 1973.

History since '73.

Under no dept. no staff, no $ --- just floating along. About 3 years time evolved until this was reclassified. Then started the guide management concept of 'areas' for a specific guide

⇒ Cumently the land 'D-2' issues are having a major impact on professional hunters.

SB-101 & 102

Current Bills on Guiding are good.

& Transporter Licence - be repealed.

Clark Engle ⇒
A) $ & for Board.

Don. Hanns ⇒ Previously on Fish & Game Board.

& Phil Driver - President AK Hunters Ass.
Transporter Law - bad law
Transfer to Public Safety - no good.

Define Guiding ⇒ what is it.

→ Use of 3 assist. guides should be eliminated

→ Industry is saturated currently. Work into it.

&& ⇒ Alien Problem.

→ TAX. (Head TAX)

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

FOR FURTHER INFORMATION: Senate Commerce Committee
Jon Mathison, AA
Assembly Building, Room 303
Juneau, AK 99811
(907) 465-3748/3783

FEBRUARY 12, 1980

PUBLIC SERVICE ANNOUNCEMENT

The Senate Commerce Committee will convene at 3:00 p.m. (Juneau time) on Thursday, February 28, 1980, for the purpose of holding a public hearing on THE GUIDE LICENSING AND CONTROL BOARD. The hearing will be held in Juneau in the Beltz Room, Room 209 of the Capitol Building, and will be teleconferenced to the following cities:

Anchorage	1:00 p.m.	Legislative Information Office 1024 West Sixth Avenue Anchorage, AK 99501
Fairbanks	1:00 p.m.	Legislative Information Office 101 College Road, Building F, Room 252 Fairbanks, AK 99701
Barrow	1:00 p.m.	North Slope Borough, Assembly Room Barrow Teleconference Center
Bethel	1:00 p.m.	Bethel Information Office Kuskokwim Inn Annex
Dillingham	1:00 p.m.	Combined State Facility, Court Room
Kenai	1:00 p.m.	Cordova Building, Spur Highway Soldotna, Alaska
Ketchikan	3:00 p.m.	Information Office 415 Main Street, Room 301
Kodiak	1:00 p.m.	Kodiak Island Borough Building, Room 314
Kotzebue	12:00 p.m.	Eskimo Building, 333 Front Street
Nome	12:00 p.m.	State Building, 2nd Floor Conference Room

Sitka - 3:00 p.m. - Sitka Information Office
210 Lake Street

Valdez - 1:00 p.m. - Municipal Building
Council Chambers

Wasilla - 1:00 p.m. - Matsu Information Office
Parks Highway and Knik Road
Wasilla, Alaska

Public participation is invited and any written testimony or comments may be submitted to the Senate Commerce Committee, Pouch V, Mail Stop 3100, Juneau, AK 99811.

Brad Bradley

SENATOR BRAD BRADLEY, CHAIRMAN
SENATE COMMERCE COMMITTEE

Alaska State Legislature

REPRESENTATIVE
Rick Halford
District 8

P.O. BOX 66
CHUGIAK, ALASKA 99567
Phone 907-688-2470

While in Juneau
POUCH V
JUNEAU, ALASKA 99811

House of Representatives

To: Office of the Attorney General

From: Representative Rick Halford

Date: March 10, 1980

Request: Legal Review of the Powers, Duties and Performance of the State Guide Licensing and Control Board

The House Resources Committee is considering the merits of continuation or termination of the Guide Licensing and Control Board under the Sunset review process. Because the Guide Board's mandate and procedures have been the subject of numerous legal questions, it seems appropriate to request that your department review certain issues which are beyond the expertise of Legislative audit.

A substantial portion of the Guide Board's time, since its creation, has been devoted to the development and implementation of a limited entry system under the terminology of "exclusive guide areas". Specific questions include:

1) Does the exclusive guide area system comply with the provisions of Article I, Section I of the State Constitution and the further provisions of Article VIII, Section 17 in concept (if carried out properly).

2) If the system is conceptually within Constitutional bounds, does the method of implementation used by the Guide Licensing and Control Board comply with all applicable Consititutional and Statuatory provisions.

These two questions are basic to the entire area system which has been in place for several years:

1) If guide A is cited for guiding in an area assigned to guide B, and guide A is willing to go through the entire legal appeal process, will he win if he is in every other way legal to guide in the area in question?

2) Do the broad protections applied to a guide's license in the Herscher case logically extend to the exclusion from using that license under the exclusive areas?

It would also be useful to have copies of all past correspondence between your office and the Department of Public Safety or the Guide Board on this subject.

P.O. Box 695
Eagle River, AK 99577

March 3, 1980

Senate Commerce Committee
Pouch V, Mail Stop 3100
Juneau, AK 99811

Attention: Chairman, Brad Bradley

I would like to add my comments on the Guide Licensing and Control Board Public hearing that was held on February 28, 1980.

I am very much in favor of keeping the Guide Board in existence. I think they are doing a very good job. Also, I am against transferring the jurisdiction to the Department of Public Safety. I would also like to see the transportor law dropped.

I would highly recommend the Guide Board come under the Department of Fish and Game.

Sincerely,

James K. Bailey
Registered Guide

February 28, 1980

Honorable W.B. Bradley,
State Commerce Committee
Pouch V, Mail Stop 3100
Juneau, Alaska 99811

Dear Mr. Bradley,

The Marine Mammal Act has affected this Island and elsewhere. It also hurts us-Alaskans. For the fact, it has cut down hunting, our source of food supply.

In my belief, as poor as I am, believe that if anyone has a need they should try to get whatever they want. I try to get what I need because it is my need. It shouldn't be any different with anyone else.

If the Guide hunting should begin we would like to run it on our own, in our own way. Others may think that we just give them the trophy they want and let them be on their way. It is not so, the walrus they get is divided amongest the crew- it is not left behind. It is our food.

Most of the boat captains are very much interested in guiding for this also brings money into the families of the crew for there are no employment or occupation there for everyone. I, myself, am for it for it would make me happy to be feeding my family and paying for our bills. I happen to have a large family to feed and clothe.

Thank-you.

Sincerly,
Alexander Akeya
Alexander Akeya
Registered Guide
Box 141
SAVOONGA, AK 99769

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DENNIS I. BRANHAM
MASTER GUIDE
PROFESSIONAL PILOT

CHRIS R. BRANHAM, B.A.
REGISTERED GUIDE
PROFESSIONAL PILOT
PHOTOGRAPHER

Feb. 26, 1980

Senate Commerce Committee
Pouch V
Mail Stop 3100
Juneau, Alaska 99811

Dear Senate Members:

In regard to the subject on the Guide Licensing and Control Board hearing, we wish to make our opinions, suggestions and recommendations known.

There is no doubt in our mind that the Guide Board does have a vital purpose to help properly control and manage the guiding industry, undoubtly if the board were terminated chaos would arrise. It is however evident that the board has not succeeded in properly fullfilling its objectives and unless significant changes are made we would favor its termination.

Its initial purpose was greatly needed however soon after its inception there followed continued inconsistantcies in its proceedures and policies. In its efforts to try and protect our investement and livilhood it actually has reduced it. We have been treated fairly in some regard and very unjust in others and thus it has been difficult to maintain proper objectives to stablize our guiding business. More consideration should be given to full time guide operators. They have most invested and the most to loose. Use of areas should be more accuratally established. Greater consideration should be given to game population for establishing areas. When areas are "joint use" harvest restrictions should be established between guides so that abuse does not arrise out of uncooperativeness.

We are also concerned with the powers that have a dominant force superior to normal court proceedings, violations are not treated in proportion to their severity. Guide laws and regulations are often unclear and ambigeous which need revision. If the D2 legislation remains unresolved we can expect more complications with the increased pressure on the remaining hunting areas. Some guides will infringe on areas by unjust means, creating unbalanced harvest.

We hope that you will recommend that unless the board establishes more positive and consistant policies that a new alternative be found to manage the guiding industry.

Sincerely,

Dennis & Chris Branham

Dan Brase
Box 342
Palmer, Ak. 99645
28 February 1980

Honorable Brad Bradley
Chairman, Senate Commerece Committee
Pouch V
Juneau, Alaska 99811

REF: Guide Licensing
& Control Board

Dear Senator Bradley,

I was one of the three people who attended the tele-conference this afternoon at Wasilla regarding the hearing on the GUIDE LICENSING & CONTROL BOARD. Unfortunately, I didn't have the packet containing the information on the hearing until arriving at the Wasilla office so I was ill prepared to give any testimony to you over the air.

To begin with, I would like to go on record by stating that I fully support the continuance of the Guide Licensing & Control Board as an appropriate method of maintaining a system of checks & balances pertaining to Guide related activities. I began working for Pinnell & Talifson of Kodiak, Alaska at the age of 18 and was fully in their employ until being drafted and upon my return from Vietnam until the present, I have been working for them on a part time basis, now as a Registered Guide during either the Spring or Fall season. Although I have been a State employee for nearly 12 years, the Guiding Profession still holds a very high priority with me.

During the tele-conference this afternoon, I kept somewhat of a score-card of those who called in their testimony with the result being, approximately 3 to 1 in favor of keeping the Guide Licensing & Control Board. It seemed to me as those opposed, were individuals who for one reason or other, had had a confrontation with the Board. Some of their reasoning as to why they shouldn't be held accountable for their actions, i.e. "minor" violations e.g. snagging fish etc., could, in my opinion, be likened to being "little bit pregnant". Now while I believe that most of us sometime in our lives probably have slipped somewhat, I can hardly believe that it is any excuse to use if brought before such a body as the Guide Licensing Board. I would intend to believe that there was more to it than 'snagging a fish'.

Some other areas of interest to me were the collection of Trophy Fees and Protection. I feel that if Trophy Fees are necessary to be collected, these monies should go towards game management rather than placed into the General Fund. Also, Protection should be of a high priority as it is virtually impossible to have Management without Protection. Lastly, I would like to express my views in regards to Exclusive Areas. It would seem logical that if these areas were broken down into smaller units, there would be more hunting pressure as, more guides equals more hunters equals more hunting equals more pressure in increasingly smaller areas. In spite of seemingly unfairness to those who don't have an exclusive area, by maintaining a larger area, a more ideal conservation practice is effected. (Although there may be exceptions). The "heat" for lack of sufficient hunting areas should be more directed towards the Federal Government's land lock-up rather than the Guide Licensing & Control Board.

I firmly believe at this time that the continuance of the Guide Licensing & Control Board is very vital issue that should be supported by you and your colleagues and wish to thank you for allowing me my input in this matter of mutual concern. I would be very interested in knowing the results of this hearing and ask that you inform me at your convienence. Thank you.

Sincerely,

Dan Brase

Dan Brase

Land Planning
Board Hearing

(1)

Board Strengthening: Autleff - Kodiak.
(1) Have at least 1 more meeting per year.

Problems c̄ aliens going after our game. Major problem.

Chas Keim

Native population into guiding system - an effort is being made to do this.

Cruelty to animals - chased by snow machines etc (Carabo) - Western Arctic heards. A handle is now getting on this -

As natives become part of this system they become bound to it - helps stop the dessination.

Need for native involvement into system.

Legislature can assist by:

Alaska should contact Korea, Japan etc. & see if we can't bring in some barges & salvage rest of walrus for Orient at a profit. Natives just go for - the tusks (ivory) etc. Salvage rest for Orient for meat, oil, leather, protein bone meal etc. We were on the verge of doing this.

Wm. Stroecker - confirmed also.

Mark Jensen - Reeds

Better recognition by Senate & House as to the place where guides fit in to Alaska.

Recognize the Committee as part of Alaska —
4 bills dealing c̄ Guide Licensing which should have priority — Mark feels these should be priority.
Transporter licenses S/B repealed.

Clark Engle

Financing of the Board, a problem: — more funding needed to have more meetings c̄ a good mike — a problem. — Against it going into protection division.

Don Harris: Repeal transporter licenses.
Hunters closer to areas where they can get licenses.

Phil Driver — Pres. Hunters Association
Problem: Dissemination of what is going on in the bush areas of the state — more mailings to all areas. Advisory Board System should/b made up to advise board of what is going on in the Guide Industry.

Not in favor of transfer to Public Safety — S/not/b under 1 roof.

Against "transporter" law

Guidelines S/B set down as to what guiding consists of —
Recind assistant guide statute — would like more than 3 → quality + bring more guides into

the industry.

A test of phrases or something s/ also be given to assistant guides.

Industry is saturated c̄ working guides

Alien thing is one of the biggest pbs we have — aliens c̄ own guides. We need an alien guide law. **

non-resident alien — I was a guide. Had 2 — should prevent this.

*Excess tax on a few guides — a head tax — not fair should be repealed. Pay tax for guiding license & business license also.

STATE OF ALASKA

GUIDE REGISTER

1979

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All licenses contained in this booklet expire 12/31/79.

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Division of Occupational Licensing
Guide Licensing and Control Board
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Juneau, Alaska 99811

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Fish and Wildlife Protection
Guide Investigations
Box 6188 Annex
Anchorage, Alaska 99502

Phone: (907) 264-5675

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Box 1157
Kodiak, Alaska 99605

Donald Harris
Box 125
McGrath, Alaska 99627

MASTER
GUIDES

AA 0008	BRANHAM, (BUD) E. G.	1 THRU 26 P.O. BOX 6128 ANNEX	ANCHORAGE	AK	99502
AA 0039	CASTLE, LYNN M.	UNITS: 18-26 P.O. BOX 1616	FAIRBANKS	AK	99707
AA 0019	CONKLE, "BUD" C. M.	6 THRU 26 GENERAL DELIVERY	GAKONA	AK	99586
AA 0034	ELLIS, BILL	UNITS 6-26 MILE 42 NABESNA RD	NABESNA	AK	99586
AA 0029	ENGLE, CLARK L.	UNITS 1-26 4126 LANA COURT	ANCHORAGE	AK	99504
AA 0037	ERICKSON, JOHN E.	UNIT 1-7,11-16,18-21,24,25 BOX 101	TOK	AK	99780
AA 0041	FRANCISCO, LEON	UNITS 6 THRU 17 P.O. BOX [illegible]	KODIAK	AK	99615
AA 0018	GAY, WARD I.	1 THRU 26 2202 LORD BARANOF	ANCHORAGE	AK	99503
AA 0028	GRAY, CHARLES LEE	6 THRU 26 311 SLATER STREET	FAIRBANKS	AK	99701
AA 0009	HAMMOND, JAY S.	6 THRU 26 P.O. BOX 128	NAKNEK	AK	99633
AA 0026	HANCOCK, LEE	6 THRU 17 P.O. BOX 955	ANCHORAGE	AK	99510
AA 0004	HELMERICKS, HARMON R.	UNITS: 18-26 VIA 930 9TH AVENUE	FAIRBANKS	AK	99701
AA 0032	HENDRICKS, JOE	UNITS: 6-17, 22, 23, 26 P.O. BOX 2104	ANCHORAGE	AK	99510
AA 0020	JENSEN, MARCUS F.	UNITS 1-5, 18, 21, 24 & 25 P.O. BOX 2220	JUNEAU	AK	99803
AA 0033	JOHNSON, DONALD L.	UNITS: 6-26 GENERAL DELIVERY	PORT MOLLER	AK	99695
AA 0035	JOHNSON, KEITH N.	6 THRU 9, 11 THRU 17 & 20 3640 NORTH POINT DRIVE	ANCHORAGE	AK	99502
AA 0010	LANE, KARL E.	1 THRU 7 11 THRU 16 P.O. BOX 295	JUNEAU	AK	99802
AA 0025	LEE, JOHN J.	UNITS: 6-17,19,22,23,26 P.O. BOX 4-2495	ANCHORAGE	AK	99509
AA 0038	MCNUTT, RAY	UNITS: 6-26 WRANGELL R. RANCH	STERLING	AK	99672
AA 0024	MUNSEY, PARK	UNITS: 6-17 P.O. BOX 1186	KODIAK	AK	99615
AA 0014	POLLARD, GEORGE R.	UNITS: 6-17 P.O. BOX 40	KASILOF	AK	99610
AA 0042	REAKOFF,RICHARD E."RICK"	UNITS: 18-26 GENERAL DELIVERY	WISEMAN	AK	99726
AA 0040	RUNYAN, ANDY H.	UNITS: 1-26 SRC BOX 257B	PALMER	AK	99645
AA 0005	SEE, FRANK	1 THRU 5 P.O. BOX 136	HOONAH	AK	99829
AA 0017	SHEDAL, LEROY	UNITS 6 THRU 26 BOX 5841	NORTH POLE	AK	99705
AA 0030	SMITH, TARLETON F.	UNITS: 1 THRU 5 P.O. BOX 1132	SITKA	AK	99835
AA 0011	STEVENS, KARL A.	6 THRU 21, 24, 25 P.O. BOX 1254	HOMER	AK	99603
AA 0031	SWISS, JOHN S.	6 THRU 26 129 F STREET	ANCHORAGE	AK	99501
AA 0003	WALKER, NELSON	18 THRU 26 P.O. BOX 57	KOTZEBUE	AK	99752
AA 0022	WILLARD, GEORGE "JESS"	UNITS: 6-26 CARIBOU LAKE	HOMER	AK	99603

REGISTERED

GUIDES

AA 0416	AKEYA, ALEXANDER	UNIT: 22 P.O. BOX 108	SAVOONGA	AK	99769
AA 0093	ALLEN, CHARLES P.	UNITS: 6 THRU 26 P.O. BOX 6106	ANCHORAGE	AK	99502
AA 0256	ALMASY, THEODORE J.	UNITS: 8-10,17-21,24,25 GENERAL DELIVERY	MC GRATH	AK	99627
AA 0425	ANDREIS, ARTHUR J.	UNITS: 23,25,26 MANLEY HOT SPRINGS		AK	99756
AA 0232	ARMOUR, WILLIAM H.	UNITS 1 THRU 5 RR 6 BOX 4100-9	JUNEAU	AK	99803
AA 0077	ATKINS, RAY	UNITS 20, 25, 13 PO BOX 22	CANTWELL	AK	99729
AA 0451	BAILEY, JAMES K.	UNIT 13 P.O. BOX 695	EAGLE RIVER	AK	99577
AA 0188	BEEMAN, EDWARD E.	UNITS: 6,7,11-16,18-21,24,25 P.O. BOX 134	CHUGIAK	AK	99567
AA 0452	BELMONTE, DALE J.	UNIT 13 SR BOX 1183	CHUGIAK	AK	99567
AA 0435	BERGERON, STEVEN R.	UNIT: 8 731 MUMFORD, #8	ANCHORAGE	AK	99504
AA 0199	BETZ, RICHARD E.	UNITS: 6,7,11-16 P.O. BOX 4-2053	ANCHORAGE	AK	99509
AA 0149	BEVINS, WILLIAM S.	6 THRU 17, 22, 23, 26 235 E. 9TH AVENUE	ANCHORAGE	AK	99501
AA 0211	BIFFLE, ROY LEON	UNITS: 1-17 BOX 1276	PALMER	AK	99645
AA 0266	BRAENDEL, KARL G.	6 THRU 17 PO BOX 474	EAGLE RIVER	AK	99577
AA 0387	BRASE, DANNY L.	UNITS 8, 9, 10 17 P.O. BOX 342	PALMER	AK	99645
AA 0176	BROWNING, EUGENE LEE	UNITS 6 THRU 17 2307 W. 34TH AVE	ANCHORAGE	AK	99503
AA 0086	BRUNNER, EBERHARD GEORGE	UNITS 6, 17, 19 P.O. BOX 6808	ANCHORAGE	AK	99502
AA 0437	BRYANT, LARRY	UNIT: 17-21,22 P.O. BOX 49	ILIAMNA	AK	99606
AA 0245	BUNCH, KENNETH H.	6 THRU 17, 22, 23, 26 P.O. BOX 31	GLENNALLEN	AK	99588
AA 0256	BUZBY, DENNIS L.	18 THRU 21, 24, 25 C/O 1504 W 11TH AVE	ANCHORGE	AK	99501
AA 0392	CANN, JIM MILTON	6 THRU 26 P.O. BOX 926	ANCHORAGE	AK	99510
AA 0157	CARLO, WILLIAM., SR.	18 THRU 21, 24, 25 2111 SOUTHERN AVENUE	FAIRBANKS	AK	99701
AA 0174	CARLSON, PAUL R.	8, 9, 10, 17 GENERAL DELIVERY	PORT ALSWORTH	AK	99653
AA 0096	CENTER, CLINTON C.	UNITS: 6, 7, 11-16 8134 LAKE OTIS PARKWAY	ANCHORAGE	AK	99507
AA 0274	CERAMI, MARIO	UNITS: 6-21, 24,25 P.O. BOX 4-2012	ANCHORAGE	AK	99509
AA 0359	CHRISTENSEN, MACARLO	UNITS 8, 9, 10, 17 GENERAL DELIVERY	PORT HEIDEN	AK	99549
AA 0081	CLAYTON, ALFRED T.	6, 7, 11 THRU 16 P.O. BOX 303	GLENNALLEN	AK	99588
AA 0398	COLE, LEE A.	6-10, 14-17 P.O. BOX 567	HOMER	AK	99603
AA 0307	COLEMAN, ROBERT O.	6 THRU 17, 22, 23, 26 SRC BOX 175	PALMER	AK	99645
AA 0357	COLLINS, GRENOLD	6 THRU 26 835 W. NORTHERN LIGHTS BLVD.	ANCHORAGE	AK	99503
AA 0026	COOK, FRANK	UNITS 6, 7, 11 THRU 16 109 6TH AVE. WEST	ANCHORAGE	AK	99501
AA 0298	COX, CHARLES RICHARD	UNITS 1-5, 18-21 P.O. BOX 36	YAKUTAT	AK	99689
AA 0159	COX, WALTER E.	UNITS: 6-17, 22,23, AND 26 621 NATHAN CIRCLE	ANCHORAGE	AK	99502
AA 0054	CURTIS, ROBERT E.	UNITS: 8,9,10, 17THRU 26 P.O. BOX 1631	ANCHORAGE	AK	99510

AA 0443	DAM, WILLIAM E. SR.	UNIT 13 211 E COOK AVE	ANCHORAGE	AK	99501
AA 0409	DE HART, MARY FRANCES	UNITS: 11,12,13 HART D RANCH	OAKONA	AK	99586
AA 0272	DEERING, DONALD	6, 7, 11 THRU 16, 22, 23, 26 BOX 176	PALMER	AK	99645
AA 0112	DESROCHERS , AUL A.	UNITS: 18-21,24,25 113 COWLES	FAIRBANKS	AK	99701
AA 0315	DETTINGER, ROBERT V.	UNITS: 6,7, 11-16 P.O. BOX 153	CORDOVA	AK	99574
AA 0434	DILLON, VELDON F.	UNITS: 8, 15, 19 P.O. BOX 591	HOMER	AK	99603
AA 0177	DRISKELL, CLIFFORD H.	6 THRU 17 235 E. 9TH AVENUE	ANCHORAGE	AK	99501
AA 0324	DRIVER, PHILIP E.	UNITS: 23, 26A 1306 E. 26TH AVENUE	ANCHORAGE	AK	99504
AA 0269	ECKMAN, ROBERT L.	UNITS: 1-5 AKWE RIVER	YAKUTAT	AK	99689
AA 0164	EFFLER, EUGENE M.	UNITS: 6-17, 22,23,26 4300 IOWA DRIVE	ANCHORAGE	AK	99503
AA 0143	EICHOLZ, GEORGE A.	UNITS: 6,7, 11-26 4035 E. 7TH AVENUE	ANCHORAGE	AK	99504
AA 0147	ELKINS, LESTER E.	1 THRU 5 P.O. BOX 409	PETERSBURG	AK	99833
AA 0445	ELLIOTT, DANIEL B. II	UNIT 9, 19, 25 310 W 8TH AVE	ANCHORAGE	AK	99501
AA 0160	ELLIOTT, ROBERT	UNITS: 6,7, 11-16, 18-26 5920 AIRPORT WAY	FAIRBANKS	AK	99701
AA 0432	ELLIS, D. LYNN	UNITS: 6, 11, 12 BOX 105	GLENNALLEN	AK	99588
AA 0158	ELMORE, JOHN W.	6 THRU 26 PO BOX 1045	NOME	AK	99762
AA 0205	ERICKSON, WILLIAM	6 THRU 17 P.O. BOX 907	ANCHORAGE	AK	99510
AA 0195	FAERBER, GEORGE L.	6, 13, 14, 16, 17, 19 P.O. BOX 293	WASILLA	AK	99687
AA 0090	FAIT, GARY E.	UNITS: 13,21,22 P.O. BOX 413-C SRA	ANCHORAGE	AK	99507
AA 0064	FASSLER, HERBERT F.	UNITS: 6,7, 11-16 P.O. BOX 181	CHUGIAK	AK	99567
AA 0136	FERGUSON, RAY W.	UNITS: 6-17 P.O. BOX 3-456	ANCHORAGE	AK	99501
AA 0224	FIELDS, ARTHUR R., SR.	UNITS 22, 23, 26 P.O. BOX 13	KOTZEBUE	AK	99752
AA 0068	FLYNN, HOWARD D.	UNITS 6 THRU 17 4203 MINNESOTA DRIVE	ANCHORAGE	AK	99503
AA 0277	FORBES, BEN H.	UNITS 1 THRU 5 106 FINN ALLEY	SITKA	AK	99835
AA 0017	FROST, STANLEY	UNITS: 6,8,9,12,13,16THRU26 SRA BOX 395-C	ANCHORAGE	AK	99507
AA 0301	GAEDEKE, BERND A.	UNITS 18 THRU 26 P.O. BOX 80424	FAIRBANKS	AK	99708
AA 0227	GAY, KIRK D.	UNITS: 9, 17, 19 P.O. BOX 6583	ANCHORAGE	AK	99502
AA 0200	GELVIN, EDWIN C.	UNITS 18 THRU 21, 24, 25 GENERAL DELIVERY	CENTRAL	AK	99730
AA 0352	GENET, RAY	UNITS: 6,7, 11-16 GENERAL DELIVERY	TALKEETNA	AK	99676
AA 0402	GOLL, CHRIS F.	UNITS: 13, 15, 16 6425 COLGATE DRIVE	ANCHORAGE	AK	99504
AA 0340	GRANT, NORMAN B., JR.	UNITS 6, 7 11 THRU 16 2659 NATHANIEL CT	ANCHORAGE	AK	99503
AA 0364	GRATIAS, VERN R.	UNITS 6, 7 11 THRU 16 3233 RICHMOND	ANCHORAGE	AK	99504
AA 0223	GRIFFIN, FRANK J.	UNITS 1 THRU 26 PO BOX 6081	KETCHIKAN	AK	99901
AA 0170	GUNLOGSON, RICHARD W.	UNITS: 6-17,22,23,26 P.O. BOX 4-1062	ANCHORAGE	AK	99509

AA 0446	GUTHRIE, RICHARD A.	UNIT 19 9530 ALBATROSS DRIVE	ANCHORAGE	AK	99502
AA 0458	HAMMER, ROBERT K.	UNIT 11 GENERAL DELIVERY	MCCARTHY	AK	99566
AA 0021	HANKEE, JOHN	UNITS: 18-21, 24, 25 GENERAL DELIVERY	BEETLES	AK	99726
AA 0417	HANNON, HARRY ROBERT	UNITS: 19,22,23 BOX 6532	ANCHORAGE	AK	99502
AA 0189	HANS, WAYNE C.	UNITS: 8,9,10,17 P.O. BOX 621	KODIAK	AK	99615
AA 0085	HANSON, WAYNE B.	6, 7, 11 THRU 16 P.O. BOX 172	WASILLA	AK	99687
AA 0193	HARMS, HARVEY DENNIS	6 THRU 26 P.O. BOX 71	CHUGIAK	AK	99567
AA 0141	HARROWER, JAMES K.	6 THRU 26 SRA, BOX 809	ANCHORAGE	AK	99502
AA 0303	HARVEY, FRANK	6 THRU 17 BOX 1620	WASILLA	AK	99687
AA 0430	HAUTANEN, NELSON E.	UNIT 9 AND 17 3137 W. 64TH AVE.	ANCHORAGE	AK	99502
AA 0263	HAYES, RON	UNITS: 6-17, 22-26 P.O. BOX 1711	ANCHORAGE	AK	99510
AA 0412	HEDLUND, NELS K., JR.	UNITS: 17 AND 19 BOX 74	ILIAMNA	AK	99606
AA 0407	HELGASON, LEONARD	UNIT 8 4103 N. STAR DRIVE	ANCHORAGE	AK	99503
AA 0295	HELMERICKS, JAMES W.	UNITS 18 THRU 26 COLVILLE VILLAGE VIA	BARROW	AK	99723
AA 0349	HENLEY, DAVID W.	UNITS 8,9,10,17 P.O. BOX 1545	KODIAK	AK	99615
AA 0153	HEPLER, JOHN E.	6 THRU 21, 24, 25 10168 MARMOT CIRCLE	ANCHORAGE	AK	99502
AA 0447	HOLLAND, PAUL S.	UNIT 13 SRC BOX 128	PALMER	AK	99645
AA 0408	HOLLEMAN, DAN FOY	UNITS 25 & 26 P.O. BOX 80085	FAIRBANKS	AK	99708
AA 0165	HOLLIDAY, BILL M.	UNITS 6 THRU 17 6709 CHEVIGNY	ANCHORAGE	AK	99502
AA 0273	HOUGH, FRED L.	UNITS: 18-26 309 - BENTLEY DRIVE EAST	FAIRBANKS	AK	99701
AA 0180	HOWARD, JACK L.	UNITS 18-21, 24, 25 P.O. BOX 5263	NORTH POLE	AK	99705
AA 0382	HUMBLE, C. VERNON	UNITS 16, 19 AND 23 3090 AMBER BAY LOOP	ANCHORAGE	AK	99502
AA 0299	INGLEDUE, FRANKLIN W.	1 THROUGH 5 ROUTE 3, BOX 3102	JUNEAU	AK	99801
AA 0140	ISRAELSON, ARNOLD J.	UNIT 1 P.O. BOX 267	YAKUTAT	AK	99689
AA 0134	JACOBSON, JAMES F.	6 THRU 26 P.O. BOX 124	KOTZEBUE	AK	99752
AA 0439	JAMES, WINFRED, SR.	UNITS: 22-A P.O. BOX 6	GAMBELL	AK	99742
AA 0091	JAMIESON,DAVID Y.(SANDY)	UNITS 18 THRU 21, 24, 25 GENERAL DELIVERY	ESTER	AK	99701
AA 0431	JOHNSON, WARREN E.	UNIT: 9 BEAR LAKE LODGE	PORT MOLLER	AK	99695
AA 0373	JOHNSTONE, BRUCE	UNITS 1 THRU 4 3353 FIRST STREET - UPPER	KETCHIKAN	AK	99901
AA 0444	JONES, CECIL R.	UNIT 7, 15 ST RT A BOX 49A	HOMER	AK	99603
AA 0282	KEELER, LARRY D.	UNITS: 6-21, 24, 25 GENERAL DELIVERY, MILE 152	ANCHOR POINT	AK	99556
AA 0421	KEELINE, JIM H.	UNIT 5,6 P.O. BOX 1333	JUNEAU	AK	99802
AA 0249	KEEN, GARLEN ROCKY	UNITS: 6,7, 11-16 P.O. BOX 1605	ANCHORAGE	AK	99510
AA 0196	KEIM, CHARLES J.	UNITS: 6,7, 11-16, 18-26 P.O. BOX 80-242	COLLEGE	AK	99708

AA 0385	KEMPF, EUGENE	UNITS 9, 15, 17 P.O. BOX 503	KENAI	AK	99611
AA 0433	KING, GARY JR.	UNITS: 9, 11, 13 2500 A BENZ	ANCHORAGE	AK	99502
AA 0106	KING, HARLEY B.	UNITS: 6,7, 11-16, 18-26 MCCARTHY	VIA GLENNALLEN	AK	99588
AA 0052	KING, M. EDWARD	UNITS: 8-10,17,22,23,26 P.O. BOX 26	NAKNEK	AK	99633
AA 0422	KNIGHTON, DONALD E.	UNITS: 9 AND 17 P.O. BOX 177	ANCHOR POINT	AK	99556
AA 0209	KNUTSON, HOWARD J.	UNITS: 6, 11, 13, 23,25,26 GENERAL DELIVERY	CHITINA	AK	99566
AA 0105	KOONTZ, KEITH C.	UNITS: 18 THRU 26 P.O. BOX 87	SAVOONGA	AK	99769
AA 0063	KUBICK, ROBERT W.	UNITS: 6,7, 11-16 621 WEST DIMOND BLVD.	ANCHORAGE	AK	99502
AA 0322	LA BOUNTY, CLARENCE	UNITS 6, 7, 11 THRU 16 STAR ROUTE	SEWARD	AK	99664
AA 0208	LAABS, DONALD L.	UNITS: 6,7, 11-16 506 EAST FIREWEED LANE	ANCHORAGE	AK	99503
AA 0179	LAMBERT, WILLARD D.	UNITS: 6-21, 24, 25 1419 SECOND AVENUE	FAIRBANKS	AK	9701
AA 0233	LANE, AMOS	UNITS 22,23,26 PO BOX 27	POINT HOPE	AK	99766
AA 0103	LANNI, JOSEPH D.	UNT 6,9,11-16, 18-21, 24, 25 MILE 195 RICHARDSON HIGHWAY	DELTA JUNCTION	AK	99737
AA 0187	LAROSE, GARY B.	UNITS: 6-17 SRA, BOX 175	PALMER	AK	99645
AA 0031	LAZER, DAVID L.	UNITS: 8, 9, 14, 17 SRC-BOX 36	PALMER	AK	99645
AA 0183	LEWIS JACK	UNITS: 6-17,22,23,24,25,26 P.O. BOX 511	KENAI	AK	99611
AA 0252	MARSHALL, RALPH EDWARD	UNITS: 6, 7, 11-16,22,23,26 306 GLORIA	FAIRBANKS	AK	99701
AA 0230	MATFAY, LARRY	UNITS: 8, 9, 10, 17 BOX 2	OLD HARBOR	AK	99643
AA 0117	MCELROY, PATRICK JOSEPH	UNITS: 6, 7, 11 THRU 16 RT. 2 BOX 705	KASILOF	AK	99610
AA 0190	MCLAY, BERT A.	UNITS: 8, 9, 10, 17 BOX 815	HOMER	AK	99603
AA 0457	MCMAHAN, CHARLES E.	UNITS 11,12, 3 P.O. BOX 113	GAKONA	AK	99586
AA 0191	MCMAHAN, CLEO B.	UNITS: 1 THRU 26 P O BOX 7	GAKONA	AK	99586
AA 0321	MEEKIN, AUSTIN F.	UNITS: 6,7, 11-17 ROUTE C, BOX 142	PALMER	AK	99645
AA 0446	MEEKIN, MARK P.	UNIT 13 RT. C, BOX 142	PALMER	AK	99645
AA 0455	MEEKIN, MIKE	UNIT 13 BOX 142, ROUTE C	PALMER	AK	99645
AA 0456	MEEKIN, STEVEN S.	UNIT 13 ROUTE C, BOX 142	PALMER	AK	99645
AA 0296	MERCER, DERLE E.	18 THRU 25 MERCER RANCH-LIGNITE	HEALY	AK	99743
AA 0389	MEREDITH, JERRY	UNITS 9 & 19 SRA, BOX 391	ANCHORAGE	AK	99507
AA 0043	METHENY, JAMES R.	UNITS: 6,7,11-16,23,25,26 3233 RICHMOND AVE	ANCHORAGE	AK	99504
AA 0305	MILLER, C. DALE	1 THRU 17 ROUTE 5, BOX 5746	JUNEAU	AK	99803
AA 0023	MILLER, JOE	18 THRU 21, 24, 25 SR BOX 20210	FAIRBANKS	AK	99701
AA 0267	MOE, CHARLES R.	6, 7, 11 THRU 16 SR 5090	WASILLA	AK	99687
AA 0210	MOHR, FREDERICK C., JR.	UNITS: 6-16 P.O. BOX 10-113 KLATT STATION	ANCHORAGE	AK	99511
AA 0235	MOORE, JUNE E.	6, 7, 11 THRU 16,22,23,26 MILE 78 TOK CUTOFF	GAKONA	AK	99586

AA 0427	MORGAN, ROBERT A. II	UNITS: 7,8,19 P.O. BOX 641	SEWARD	AK	99664
AA 0053	MORRIS, WALTER L.	UNITS: 1 THRU 26 P.O. BOX 4-110	ANCHORAGE	AK	99509
AA 0226	MUELLER, JAY C.	UNITS: 6-21, 24, 25 1633 BANNISTER DRIVE	ANCHORAGE	AK	99504
AA 0124	MYERS, JACK A.	UNITS: 8,9,10,17 P.O. BOX 286	SOUTH NAKNEK	AK	99670
AA 0156	NEEDLES, GENE E.	UNITS: 6-17, 22,23,26 P.O. BOX 8	CHUGIAK	AK	99567
AA 0304	O'DONNELL, JACK	1 THRU 5 P.O. BOX 394	PETERSBURG	AK	99833
AA 0242	OLDHAM, KENNETH	UNITS: 6THRU26 P.O. BOX 3-127	ANCHORAGE	AK	99501
AA 0243	OLDHAM, MARY	UNITS: 9, 13, 22 P.O. BOX 3-127	ANCHORAGE	AK	99501
AA 0080	ONEY, TONY	UNITS: 6-26 2631 WEST 100TH	ANCHORAGE	AK	99502
AA 0401	OWSICHEK, KENNETH D.	UNITS: 17,18,19 P.O. BOX 6301	ANCHORAGE	AK	99502
AA 0218	PALMER, GEORGE E.	UNITS: 6, 16, 19 P.O. BOX 878	PALMER	AK	99645
AA 0207	PAYNE, EARL E.	6 THRU 21, 24, 25 P.O. BOX 1310	PALMER	AK	99645
AA 0100	PEDERSON, HARRY G.	6-10, 13-17,22,25 P.O. BOX 6-504	ANCHORAGE	AK	99502
AA 0239	PERKINS, MAYNARD G.	UNITS: 6-17 SRC, BOX 265A	PALMER	AK	99645
AA 0442	PERRY, NATHAN E. JR.	UNITS 8, 19, 15 ST RT A BOX 64	HOMER	AK	99603
AA 0380	PETERSON, WILLIAM W.	UNITS: 1-4 SRA, BOX 395, HILLSIDE DR.	ANCHORAGE	AK	99507
AA 0254	PINNELL, BILL	UNITS: 8, 9, 10, 17-26 OLGA BAY	KODIAK	AK	99615
AA 0275	POGANY, GARY C.	UNITS: 6,7, 11-17,19,22,23,26 P.O. BOX 323	EAGLE RIVER	AK	99577
AA 0381	POOR, JEFFREY L.	UNIT: 12 3140 WEST 79TH	ANCHORAGE	AK	99502
AA 0450	POTTER, GERALD OTIS	UNITS 9, 16, 19 5601 TONGA ST.	ANCHORAGE	AK	99507
AA 0220	REESE, ELDEN LEE	6 THRU 17 ROUTE C, BOX 95	PALMER	AK	99645
AA 0271	RICE, DICK	UNITS: 6,7, 11-16 P.O. BOX 10	PALMER	AK	99645
AA 0404	RIVERS, LARRY	UNITS 9, 19 & 25 P.O. BOX 107	TALKEETNA	AK	99676
AA 0290	ROCHESTER, WALLACE W.	UNITS: 18-26 P.O. BOX 499	CLEAR	AK	99704
AA 0045	RODEY, DANIEL JAMES	UNITS: 18-26 4070 BIRCH LANE	FAIRBANKS	AK	99701
AA 0135	ROSENBRUCH, JIMMIE	UNITS: 1-7, 11-16 P.O. BOX 66	GUSTAVUS	AK	99826
AA 0281	RUST, HENRY B.	UNITS: 6-17,22,23,26 P.O. BOX 6325	ANCHORAGE	AK	99502
AA 0185	RYMEND, CLARENCE H.	6, 7, 11 THRU 16 3202 WOODLAND DRIVE	ANCHORAGE	AK	99503
AA 0436	SAGE, C. MICHAEL	UNIT: 6 5108 STRAWBERRY ROAD	ANCHORAGE	AK	99502
AA 0285	SAGER, ROBERT H.	18 THRU 21, 24, 25 P.O. BOX 963	DELTA JUNCTION	AK	99737
AA 0061	SAILORS, KENNY	UNITS: 6, 7, 11-16 P.O. BOX 186	GAKONA	AK	99586
AA 0215	SAMSAL, LLOYD E.	6 THRU 26 2733 W. 100TH AVENUE	ANCHORAGE	AK	99502
AA 0377	SCHETZLE, HAROLD	UNITS 16 & 19 PO BOX 219	CHUGIAK	AK	99567
AA 0414	SHAVINGS, EDWARD SR.	UNIT: 18A P.O. BOX 31	MEKORYUK	AK	99630

AA 0024	SHELLABARGER, LEON	UNITS: 6-26 P.O. BOX 11	KOTZEBUE	AK	99752
AA 0248	SIMPSON, LORN C.	6 THRU 17 203 STEWART STREET	ANCHORAGE	AK	99504
AA 0132	SJODEN, DICK (RICHARD A)	UNITS: 6 THRU 26 1326 W. 15TH AVE	ANCHORAGE	AK	99501
AA 0213	SMITH, ARTHUR W.	6 THRU 17 PO BOX 472	WOODSTOCK	VA	22664
AA 0396	SMITH, HARDY M.	UNITS: 22, 23, 26 P.O. BOX 5153	NORTH POLE	AK	99705
AA 0009	SMITH, JACK R.	18 THRU 21, 24, 25 GENERAL DELIVERY	MEDFRA	AK	99629
AA 0036	SMITH, KENT E.	6, 7, 11 THRU 16 STAR RT. B., BOX 374A	WILLOW	AK	99688
AA 0374	SMITH, SHERMAN C.	UNITS 1 THRU 7 11 THRU 25 BOX 770	COOPER LANDING	AK	99572
AA 0394	SOMMERVILLE, BERNARD J.	UNITS: 6, 7, 11-16, 22, 23,26 S R A BOX 1773	ANCHORAGE	AK	99507
AA 0367	ST. AMAND, CLAUDE	UNITS: 1-23, 25 P.O. BOX 61, EDGERTON PART RD.	PALMER	AK	99645
AA 0369	ST. AMAND, LOREN L.	6, 7, 11 THRU 16 BOX 801	COPPER CENTER	AK	99573
AA 0144	STICKNEY, ROLAND F.	6 THRU 17 512 AURORA DRIVE	ANCHORAGE	AK	99503
AA 0269	STRANG, JOSEPH	6 THRU 17 P.O. BOX 4985	SPENARD	AK	99509
AA 0338	SUTHERLAND, RICHARD W.	6, 7, 11 THRU 16 3730 RHONE CIRCLE	ANCHORAGE	AK	99504
AA 0449	SWISS, JOHN TYLER	UNITS: 9 AND 16 129 F STREET	ANCHORAGE	AK	99501
AA 0253	TALIFSON, MORRIS L.	UNITS: 8, 9, 10, 17-26 OLGA BAY	KODIAK	AK	99615
AA 0399	TARNOWSKI, ROBERT J.	UNITS: 24,25,26 P.O. BOX 60006	FAIRBANKS	AK	99706
AA 0403	TAYLOR, DONALD W.	UNITS: 12,13 GENERAL DELIVERY	GAKONA	AK	99586
AA 0212	TEMPLE, LONNIE H.	UNITS: 6-17, 22,23,26 428 PEARL DRIVE	ANCHORAGE	AK	99502
AA 0356	THIELE, REINHOLD MAX	UNITS: 6,7, 11-16, 22,23,26 8126 TRI-LAKE ROAD	ANCHORAGE	AK	99502
AA 0228	THOMAS, NORMAN K.	UNITS: 18-21, 24, 25 2104 CENTRAL AVENUE	FAIRBANKS	AK	99701
AA 0018	TILLION, CLEM V.	UNITS: 6 THRU 17 VIA BOX 373, HALIBUT COVE	HOMER	AK	99603
AA 0334	TOZER, KENNETH H.	UNITS: 6,7, 11 THRU 16 611 E. 10TH #7	ANCHORAGE	AK	99501
AA 0219	UMLAUF, PAUL MICHAEL	6 THRU 26 SRA, BOX 385-C	ANCHORAGE	AK	99507
AA 0410	VAN VEENEN, ERIK	UNITS: 6, 22, 23 P.O. BOX 80766	FAIRBANKS	AK	99708
AA 0037	VINCENT, DAVID L.	6 THRU 17 P.O. BOX 65	KASILOF	AK	99610
AA 0197	WALKER, THOMAS J.	UNITS 6,20,24 P.O. BOX 292	TALKEETNA	AK	99676
AA 0025	WALTER, FRANK	18 THRU 21, 24, 25 GENERAL DELIVERY	FT YUKON	AK	99740
IS 0391	WARREN, M.J.(CURLEY)	SUSPEND 1 YR AS OF 11/27/78 SRA BOX 467	EAGLE RIVER	AK	99577
AA 0378	WARTES, MARK ALLISON	UNITS: 23, 24, 26 1713 CENTRAL AVE.	FAIRBANKS	AK	99701
AA 0383	WASSOM, JESS M.	6, 9, 26 803 4TH AVENUE	SEWARD	AK	99664
AA 0181	WAUGAMAN, WILLIAM I.	UNITS: 1-5, 18-21, 24, 25 P.O. BOX 80589	COLLEGE	AK	99708
AA 0416	WHATLEY, DANNY W.	UNITS: 13, 14, 20 P.O. BOX 2220	WASILLA	AK	99687
AA 0202	WHEELER, JAMES P.	6 THRU 17 6801 MINK AVENUE	ANCHORAGE	AK	99504

AA 0186	WHITE, BEN C.	UNITS: 1-26 1513 F STREET	ANCHORAGE	AK	99501
AA 0311	WIKE, LARRY K.	18 THRU 21, 24, 25 536 2ND AVENUE	FAIRBANKS	AK	99701
AA 0240	WILSON, IVO LAVELL	UNITS: 6,7,11-16,18-21,24,25 P.O. BOX 156	TOK	AK	99780
AA 0154	WILSON, JACK E.	UNITS: 6,7,11-14, 22,23,26 P.O. BOX 316	GLENNALLEN	AK	99588
AA 0012	WINDELL, GORDON E.	UNITS: 6,7,11-16,22,23,25 MILE 32.5	TOK	AK	99586
AA 0075	WITMAN, HARRY F.	6, 7, 11 THRU 16 STAR RT. BOX 247	EAGLE RIVER	AK	99577
AA 0268	WITT, EUGENE M.	18 THRU 21, 24, 25 FRONTIER LODGE SR BOX 60177	FAIRBANKS	AK	99701
AA 0167	WRIGHT, ALFRED F.	UNITS: 18 THRU 25 3.5 MILE CHENA PUMP RD.	FAIRBANKS	AK	99706
AA 0314	YOUNG, FRED W.	6, 7, 11 THRU 16 2205 ROMIG PLACE	ANCHORAGE	AK	99503
AA 0175	YUKNIS, LEONARD F.	6 THRU 17 8313 SUNDI DRIVE	ANCHORAGE	AK	99502

Chris

This goes with the
Marc Jensen Guide
stuff —

J.

Interior Wildlife Association of Alaska Conservation: Wise USE of Resources

PHONE (907) 452-3788 • BOX 60255 • FAIRBANKS, ALASKA 99701

BOARD OF DIRECTORS:

Dr. P. B. Haggland, Chairman
H. C. "Bud" Wiese, Treas.
William G. Straecker
Richard A. Burley
William I. Waugaman
Charles L. Gray

March 20, 1980

Representative Alvin Osterback
Co-Chairman, Resources Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Osterback and Committee Members,

As a former member of the Guide Board, I have an abiding interest in its success. Any objective study or audit of the Board will show that a lot has been accomplished in the face of adversity. The Board, through its dedicated chairman, has accomplished the near-impossible in straightening out and bringing some degree of professionalism to the guiding business.

Because of this, we are distressed that a more positive report regarding the sunset review did not come out of your committee (House Journal, No. 29, 3-13-80). We are particularly concerned about paragraphs 5 and 5a. Surely the clean bill given the Board by the Division of Legislative Audit and by the Senate Commerce Committee this year warrant better than a one year extension by your committee! What long range plans can be carried out with a restriction like that? What further miracles must the Board perform to be given a pat on the back and encouraged rather than have additional road blocks thrown in the way?

Judging from Represenative Rick Halford's request to the AG's office for a legal review of the Board, he may have had an adverse affect on your committee's report. It would appear to us, based on wording in Halford's request, that his personal and family problems with the Board may be coloring his views.

It is rumored in Fairbanks that Representative Halford has had lucrative summer flying contracts for the Game Department. Until this is checked out, we can only question the propriety of such practices by a legislator and wonder about conflict of interest problems--moral, if not legal. Maybe the AG should be asked about this?

The Guide Board needs assistance and encouragement, not unnecessary impediments. Much has been accomplished and much more can be accomplished if the Board is given a chance. It doesn't appear your committee is giving it that chance.

Sincerely,
Interior Wildlife Assoc.

Bud Wiese

Bud Wiese
Director

cc: Committee Members

"Concerned Sportsmen"

08-H8LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING / POUCH D – JUNEAU 99811

June 29, 1978

Governor Jay Hammond
Office of the Governor, State of Alaska
Juneau, Alaska

Dear Governor Hammond:

Since 1973 I have been chairman of the State Guide Licensing and Control Board. As chairman it has been necessary for me to work closely with the staff in the Licensing Department under the Department of Commerce. Our particular board is handling the correspondence and problems of about 420 registered guides and over 500 assistant guides, plus over 120 Class A guides. There is a wide variety of correspondence to answer. I personally have willingly given generously of my time to see that the questions that come up are properly answered.

My chief reason for writing this letter is to bring to your attention the fact that since my contact with the Department there has been a steady turnover of help in the Department. The turnover in the guide section has been atthe rate of about 1 each year. My observation places the turnover on the other desks representing the other twenty boards at a very similar rate. In all the cases of where the Guide Board had a change of secretarial help the change was related to the workload required and the lack of salary connected with that workload. The amount of time it takes to acquaint a new secretary with the work, and have her assume responsibility of moving the correspondence smoothly, is a major factor in how good, and smoothly, our Board functions. All the girls I have worked with in the Department have been very good and competent. In some cases, however, some have taken more responsibility than others, which certainly brings the workload up to a higher efficiency.

The Administration is now in the process of building up the new budget, and I would sincerely hope the proper agency would evaluate the increased workload that has occurred in the Licensing Division in the last five years, and also a recap of the turn-over of help in this division. If this is recapped I am certain that the rate of turn-over would be many times the state's normal average. That alone should raise some questions that require answers. We are all interested in good government and the way we get it is attention to the state employee problem when needed.

Sincerely yours,

Marcus F. Jensen, Chairman
Guide Licensing and Control Board

cc: Commissioner of Commerce
Director of Licensing
Personnel
Rep. Duncan

CHARLES GRAY
311 Slater Street
FAIRBANKS, ALASKA 99701

March 21, 1980

Representative Alvin Osterback
Co-Chairman, Resources Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Osterback,

As one of 10 guides who spontaneously appeared in Fairbanks for the recent Senate Commerce Committee teleconference on the sunset provision for the Guide Board, I want to tell you that we are all disappointed in the lukewarm endorsement for the Board that came out of your committee. When I say "we", I assume the others will be, too, for they all spoke highly of the Board's accomplishments.

Thanks to the Board, a guide can now concentrate on producing a quality hunt instead of trying to out-fox other guides that are vying for the same area. I would also call your attention to the fact that two of the five biggest vacuum cleaning outlaws have been put out of business by the Board.

I particularly feel it is unfair to only recommend a temporary one year extension of the Board while the Department of Law looks for problems. Instead of causing the Board trouble, you should be praising them for accomplishing the near-impossible.

As for paragraph 5b of your report to the House Speaker, it appears your committee is suggesting a special class of citizen be created to accommodate rural residents. While I won't attempt to probe the constitutionality of this, I would remind you that the function of the Board is to upgrade the guiding profession. Guides have to handle a lot of correspondence, contracts and other business functions that cannot be neglected in a profession.

Now having said that, I would point out that the Board bends over backwards to accommodate native people that genuinely want to get into guiding. Examples would be some of the walrus hunters on St. Lawrence Island and muskoxen guides on Nunivak. At the Board's request, I am presently assisting a native guide from Arctic Village to prepare his case for a guiding area. This fellow, whom I helped into the guiding business many years ago, has failed to show up at Board meetings on several occasions when contenders for the area have been greatly inconvenienced by this fact. Still the Board has kept his application open long after it would

have been closed for any white guide. I don't object to this; I think it is good that the Board goes the extra mile, but I fail to see how you can expect them to do more, by any stretch of the imagination.

I sincerely hope you will take these comments as constructive and informative and see your way clear to give the Board greater assistance, for none of the guides I know want to return to the chaos we had prior to the formation of the Guide Board.

Sincerely,

Chuck Gray

Charles L. Gray

cc: Resource Committee Members

Interior Wildlife Association of Alaska

Conservation: Wise USE of Resources

PHONE (907) 452-3788 • BOX 60255 • FAIRBANKS, ALASKA 99701

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Interior Wildlife Assoc.

Bud Wiese

Bud Wiese
Director

cc: Committee Members

"Concerned Sportsmen"

CHARLES GRAY
311 Slater Street
FAIRBANKS, ALASKA 99701

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Co-Chairman, Resources Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

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Sincerely,

Chuck Gray

Charles L. Gray

cc: Resource Committee Members

08-H8LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING / POUCH D – JUNEAU 99811

April 22, 1979

Mr. Don Hostak, Director
Division of Occupational Licensing
Department of Commerce and Economics
Juneau, Alaska

Dear Don:

Guide Licensing and Control Board proposed program for Fiscal Year 1981:

Three meetings between Juneau, Anchorage, and Fairbanks, from three to four days for each meeting. A possible meeting at Nome or Kotzebue if the Arctic ;guide kprogram moves ahead on schedule.

If the D-2 land bill changes the status of over one hundred guides as to their exclusive guide areas, I think that the Board will be able to handle this work load within the regular three meetings.

I am going to make a line item report, which pretty well identifies the Board's activities during the 1981 FY:

1. Give written and oral guide examinations. Approximately 20 to 25 guides have been taking this exam yearly.

2. The Board would sit as a jury on violation cases presented by the Attorney General's office.

3. Hear petitions from guides on boundary changes.

4. Hear petitions on transfer of guide areas to other ;qualified guides.

5. Hear testimony for Master Guides.

6. Act on proposed guide areas in Game Units 1 through 4.

7. Hear testimony on impact of D-2 land legislation where guide areas are involved.

8. Testify on S.B. 101 and H.B. 405 requiring changes on the Guide statutes.

9. Make survey of Arctic villages to explain Arctic guide programs, which would involve the taking of marine mammals.

10. Finalize the upgrading of Master guide area maps in the Anchorage office.

08-H8LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING / POUCH D – JUNEAU 99811

11. Receive applications for areas from new guides. The Board would open the whole state for six months and give everyone an equal chance to file.

12. Request money for a public address system to be used at our public hearings.

The Guide Board will need very few new regulations. The base has been very well established and proven workable. S.B. 101 has passed the Senate and should pass the House. It would repeal Part C, Line 3 in Sec. 08.54.200. This line made it mandatory that the Board revoke a license if guide was convicted of two violations. The Board has this power under another Section, which does not make it mandatory.

I will let your Department add to this report the expense incurred for our meetings and travel.

Yours very truly

Mark Jensen

Marcus F. Jensen, Chairman

Guide Licensing & Control Board

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 13, 1980

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Your Senate Commerce Committee has had under consideration for "Sunset" review the Guide Licensing and Control Board pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this Board, at which written and oral testimony was received. Members of the board testified in person or by teleconference. The committee considered the proposed budget for the board for FY 1981 and particularly examined the performance audit of the activities of the board conducted by the Division of Legislative Audit.

Guided, in part, by this performance review the Committee took into consideration the factors required to be considered under AS 44.66.050(c).

In considering the findings and recommendations of the Division of Legislative Audit as they appear on pages 9 through 12 of the Performance Review of the Guide Licensing and Control Board dated July 17, 1979, which is hereby incorporated by reference as though fully set out herein, the Committee makes the following recommendations:

The Committee finds that it would be in the best interest of the people of the state of Alaska for the board to be continued.

The Committee has not yet reached a concise opinion

regarding the transfer of the Guide Licensing functions to the Department of Public Safety.

The Committee feels that the "transporter laws" are not needed to protect the safety of the public or manage game resources.

The Committee feels it has adequately addressed the recommendations and categories required under AS 44.66.050(d), and recommends that the Guide Licensing and Control Board be continued for another four years, that is, that the repealer with regard to the activities of the board be amended to read June 30, 1984.

A bill will be introduced by the Commerce Committee to implement the recommendations in this report.

Respectfully submitted,

Brad Bradley

Senator Brad Bradley
Chairman
Senate Commerce Committee

BB:jss

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 1032 - "An Act continuing existence of the Guide Licensing &
Title Control Board and providing for an effective date."
Requested by _____ Date May 14, 1980

II. FISCAL DETAIL
Agency Affected Public Safety
Program Category Affected NRMEC
BRU, Program, or Subprogram(s) Affected Fish & Wildlife Protection Director's Office
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		49.1	52.5	56.2	60.1	64.3
200 TRAVEL		26.1	27.9	29.9	32.0	34.2
300 CONTRACTUAL		4.0	4.3	4.6	4.9	5.2
400 COMMODITIES		4.0	4.3	4.6	4.9	5.2
500 EQUIPMENT		4.4				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		87.6	89.0	95.3	101.9	108.9

FUNDING (Thousands of Dollars)

GENERAL FUND		87.6	89.0	95.3	101.9	108.9
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		2	2	2	2	2
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
Operational funding for the Guide Licensing and Control Board would be required to include the establishment of two positions, an Administrative Assistant I (range 12) and a Clerk-Typist III (range 8) and associated costs. These two positions would be located in Anchorage under the Director of the Fish & Wildlife Protection Division, and would provide administrative and clerical support to the Board. Travel costs are estimated for five members of the Board plus the Administrative Assistant for three meetings (approximately twelve days each) annually. The costs shown for FY81 also include office equipment for the new positions and an audio recording system to be used to document testimony and Board actions in cases of license suspension, revocation, or denial which are litigated. Dollar amounts shown after FY81 include a 7% inflation factor.

If the Board membership is increased, travel costs will be correspondingly higher than the estimates indicated.

IV. DATE May 14, 1980 PREPARED BY Marcia Lynn McKenzie
AGENCY Public Safety
PHONE 465-4349

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

22-001 (Rev. 12/79)

	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
1	Administrative Assistant I			12/A	G	Anchorage	GOV.		
2	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG.		

	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES: SALARY	20,652	
5	BENEFITS	3,406	
6	FICA	1,373	
7	HEALTH INS.	1,524	
8	TOTAL PERSONAL SERVICES		26,955
9	TRAVEL		2,850
10	CONTRACTUAL		1,000
11	COMMODITIES		500
12	EQUIPMENT		1,500
13	OTHER		
14	TOTAL COST		32,805

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	32.8
17		GEN. FUND	
18		I-A RCPTS.	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

4A KEY NUMBER _____ COLUMN NO. ____

JUSTIFICATION:

The Department currently does not have sufficient clerical staff to adequately administer the Guide Licensing and Control Board.

This position will be responsible for all administrative duties required and would process and issue approximately 1,500 guide licenses annually as well as preparing the Guide Register for public distribution annually and maintaining all Board records. The incumbent will also be required to arrange and attend all Board meetings to provide support as necessary and ensure proper documentation of all Board activities.

AGENCY Public Safety PROGRAM AREA Fish & Wildlife Protection

BRU Director's Office

COMPONENT _____

13 REQUEST FOR NEW POSITION.

FY 81

REVISED DATE _____

02 1013 (Rev. 7/79)

	POSITION TITLE				RANGE/STEP	BARG. UNIT.	LOCATION	GOV.	APPROV	DISAPP.
1	Clerk Typist III				8/B	G	Anchorage			
	TYPE OF POSITION	STAFF MONTHS	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE			
2	PFT	12						LEG.		

3	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES: SALARY	16,740	
5	BENEFITS	2,760	
6	FICA	1,113	
7	HEALTH INS.	1,524	
8	TOTAL PERSONAL SERVICES		22,137
9	TRAVEL		
10	CONTRACTUAL		500
11	COMMODITIES		500
12	EQUIPMENT		1,500
13	OTHER		
14	TOTAL COST		24,637

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	
17		GEN. FUND	24.6
18		I-A RCPTS.	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

AA KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

The Department currently does not have sufficient clerical staff to adequately administer the Guide Licensing and Control Board.

This position would be responsible for all clerical support to the Board, including transcriptions of Board meetings for use in possible hearings and litigations. At present, some of this work is being accomplished by the Director's staff to the detriment of other duties and obligations. Approximately 15,000 financial remuneration statements submitted by guides annually are currently being filed by professional level investigators, decreasing their time available for program operations.

Some of the functions, in part, are currently being accomplished by the Dept. of Commerce. When the Board is transferred to this Department, however, clerical support will not be transferred. Denial of this position will result in program ineffectiveness, as professional level staff will have to be diverted to clerical work as indicated above.

AGENCY Public Safety PROGRAM AREA Fish & Wildlife Protection

BRU Director's Office

COMPONENT _____

13 REQUEST FOR NEW POSITION.

FY 81

REVISED DATE _____

02-1013 (Rev. 7/79)

Introduced: 5/8/80
Referred: Resources

IN THE HOUSE BY THE RESOURCES COMMITTEE

HOUSE BILL NO. 1032

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act continuing the existence of the Guide Licensing and Control Board, annulling regulations relating to exclusive guide licensing areas, and amending the law relating to the board's powers and responsibilities; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.54.010 is amended to read:

Sec. 08.54.010. CREATION AND MEMBERSHIP OF BOARD. There is created in the division of fish and wildlife protection, Department of Public Safety, the Guide Licensing and Control Board consisting of five [SEVEN] members. Three [NO MORE THAN THREE] members of the board shall be master guides or registered guides actively involved in guiding [HAVE A GUIDE LICENSE]. The other members shall have a general knowledge of the game resources of the state but may not (1) be engaged in guiding; (2) be associated by legal contract with a guide except as a consumer of the services provided by the guide; or (3) have a direct financial interest in a guide business. A minimum of 10 years residence in the state is required for all members of the board.

* Sec. 2. AS 08.540.020 is amended to read:

Sec. 08.54.020. APPOINTMENT AND TERM OF OFFICE. The members of the board shall be appointed by the governor and confirmed by the legislature for staggered terms of three years or until their successors are appointed. [INITIAL TERMS ARE AS FOLLOWS: THREE MEMBERS FOR ONE YEAR, TWO MEMBERS FOR TWO YEARS, AND TWO MEMBERS FOR THREE YEARS.] A member

may be removed at the pleasure of the governor. A person may not be appointed to the board for more than two consecutive terms.

* Sec. 3. AS 08.54.030 is amended to read:

Sec. 08.54.030. CHAIRMAN OF BOARD. The board shall annually elect one of its members as chairman and one of its members as vice-chairman. A person elected as chairman may not serve for more than two consecutive years.

* Sec. 4. AS 08.54.170(a) is amended to read:

(a) License fees for engaging in the profession of guiding are:

(1) master guide license, biennial [ANNUAL]. . . $200 [$75]

(2) registered guide license, biennial [ANNUAL]. $200 [75]

(3) class-A assistant guide, biennial [ANNUAL] . $ 50 [15]

(4) assistant guide license, biennial [ANNUAL] . $ 30 [10]

* Sec. 5. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.182. EXAMINATION. The qualification examination required to be passed by persons seeking licensure under AS 08.54.100 and 08.54.110 shall be administered twice a year in both Juneau and Anchorage.

* Sec. 6. AS 08.54.190(a) is amended to read:

(a) A master guide, registered guide, class-A assistant guide, or assistant guide [OR TRANSPORTER] license expires on December 31 of the calendar year following the calendar year in which the license was issued [FOLLOWING ISSUANCE].

* Sec. 7. AS 08.54.190(b) is amended to read:

(b) No license may be issued to a class-A assistant guide or assistant guide who has failed to renew his license for four [TWO] consecutive years unless he again meets the qualifications for initial issuance of the license.

* Sec. 8. AS 08.54.200(a) is amended to read:

(a) The board shall hold a hearing to determine if disciplinary action is necessary if

(1) complaints concerning the licensee have been filed with the board from three or more clients of separate parties within the past five years; or

(2) [A LICENSEE HAS BEEN CHARGED WITH A VIOLATION OF FEDERAL OR STATE SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS; OR]

(3) a licensee has been convicted of a violation of federal or state sport fish, game or guide statute or regulation.

* Sec. 9. AS 08.54.200(c) is amended to read:

(c) After a hearing, the board shall revoke, suspend, or deny renewal of a license if the board finds that the licensee

(1) does not meet the qualifications specified by statute or regulation for the class of license held;

(2) is incompetent as a master guide, registered guide, class-A assistant guide, or assistant guide;

(3) has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations within the past five years.

* Sec. 10. AS 08.54.210(a)(1) is amended to read:

(1) a master guide, registered guide, class-A assistant guide, or assistant guide [OR TRANSPORTER] to fail to timely report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, violations by a client of a state fish, game or guiding statute or regulation;

* Sec. 11. AS 08.54.210(a)(2) is amended to read:

(2) a master guide, registered guide, class A assistant guide, or assistant guide [OR TRANSPORTER] to aid the commission of a violation of this chapter or of AS 16.05 or a regulation adopted [PROMUL-

GATED] under either chapter, or permit the commission of a violation in his sight without attempting to prevent it, short of using force, and without reporting it;

* Sec. 12. AS 08.54.210(a)(4) is amended to read:

(4) a person to advertise as or represent himself to be a licensed master guide, registered guide, class-A assistant guide, or assistant guide [OR TRANSPORTER] without being currently licensed, or to falsely advertise services;

* Sec. 13. AS 44.41.020 is amended to read:

Sec. 44.41.020. DUTIES OF DEPARTMENT. (a) The Department of Public Safety shall administer functions relative to the protection of life and property.

(b) The Department of Public Safety shall administer the Guide Licensing and Control Board established under AS 08.54.010.

* Sec. 14. AS 08.03.010(c) is amended by adding a new paragraph to read:

(2) Guide Licensing and Control Board (AS 08.54.010) -- June 30, 1984.

* Sec. 15. The terms of the members of the Guide Licensing and Control Board appointed under AS 08.54.020 terminate on the effective date of this Act. The governor shall appoint members to the board for the following initial terms: one member for one year, two members for two years, and two members for three years.

Repeal existing guide areas.

* Sec. 16. 12 AAC 38.051 - 12 AAC 38.058 are annulled.

* Sec. 17. AS 08.01.010(20); AS 08.03.010(b)(7); AS 08.54.040(a)(8), 08.54.100(5), 08.54.110(12), 08.54.142, 08.54.144, 08.54.146, 08.54.170(c), 08.54.240(5); and AS 16.05.340(e) are repealed.

* Sec. 18. This Act takes effect immediately in accordance with AS 01.10.-070(c).

3/9/80
Ammendments from House Resources.

AMENDMENT TO HOUSE BILL 1032

Delete Repeal in Sect 17 of bill

Sec. 4 AS 08.54.040 Powers and duties (a) is amended to read

(8) [ESTABLISH A QUOTA OF LICENSED OPERATING GUIDES WHO MAY OPERATE WITHIN DESIGNATED GEOGRAPHICAL GAME UNITS OR SUBUNITS OF THE STATE AND PROVIDE FOR AN EQUITABLE AND REASONABLE PROCEDURE FOR LIMITING THE NUMBER OF GUIDES TO THAT QUOTA; PREFERENCE SHALL BE GIVEN TO QUALIFIED, AVAILABLE AND WILLING LICENSED GUIDES WHO RESIDE WITHIN THE DESIGNATED GAME UNIT OR SUBUNIT.] the authority of the board does not extend to the creation of exclusive use areas for guides.

Sect 5
New section to read:

AS 08.54.065 Quorum. A majority of the members of the board constitutes a quorum for the transaction of business, for the performance of any duty, and for the exercise of any power. However, a majority of the full board membership is required to carry all motions, regulations and resolutions.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M April 26, 1980

SUBJECT: Section-by-section analysis of SB 574 dealing with the Guide Licensing and Control Board (Work Order No. 8526)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have requested a section-by-section analysis of Senate Bill 574 entitled "An Act continuing the existence of the Guide License and Control Board and amending the law relating to its powers and responsibilities; and providing for an effective date."

Section 1. The Guide Licensing and Control Board is established in the division of fish and wildlife protection, Department of Public Safety. This amendment ensures that three members of the board will be involved in guiding and that the remaining four members will have no involvement in the guiding business.

Section 2. This amendment provides that members of the board may not be appointed for more than two consecutive terms. Since a term is for three years, a person would have to wait three years before being reappointed to the board after serving two terms. There is no limitation on the total number of terms which a person may serve on the board.

Section 3. The board must elect a chairman and a vice-chairman annually.

Section 4. This section generally increases fees required for licenses to engage in the profession of guiding.

Section 5. Persons seeking licenses must pass an examination, and that the examination shall be held twice a year at both Juneau and Anchorage for the convenience of applicants.

Section 6. This section is amended to eliminate a licensure provision for transporters and to assure that a license is valid for at least one full year. Under existing law all licenses expire on December 31st following issuance regardless of when they were issued.

Section 7. An assistant guide license which has not been renewed for four years may not then be renewed until the applicant meets the qualifications for an initial license. Under the existing statute only a two-year grace period is provided.

Section 8. Under existing law the board is required to hold a hearing to consider disciplinary action if it receives complaints from three or more separate parties which a licensee has provided services to. The amendment provides a time period of five years within which these complaints must be received before the board is required to hold a disciplinary hearing. This section is also amended so that the board is no longer obligated to hold a disciplinary hearing when a licensee is merely charged with a violation of federal or state sport fish, game or guide statutes or regulations. Upon a conviction, however, the board is still required to hold a disciplinary hearing.

Section 9. The board is permitted the option of revoking, suspending, or denying renewal of a license if the board finds that the licensee does not meet certain requirements. Under existing law the board was required to revoke the license upon such a finding. This section is also amended to provide that specified disciplinary action must be taken by the board only when a licensee has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations within the past five years. Under current law, two violations trigger mandatory disciplinary action regardless of the time period between the violations.

Section 10. This section is amended to remove reference to a transporter because transporters will no longer be licensed under this act.

Section 11 A reference to a transporter is deleted.

Section 12 A reference to a transporter is deleted.

Section 13 A new duty of the Department of Public Safety shall be the administration of the Guide License and Control Board.

Section 14. June 30, 1984 is set as the termination date for the Guide License and Control Board.

Section 15. This section repeals provisions which are inconsistent with this act.

AS 08.01.010(20) removes the Guide Licensing and Control Board from the list of boards to which Chapter 01 applies, since this board will no longer be administered by the Department of Commerce and Economic Development;

AS 08.03.010(b)(7) repeals the sunset provision for this board;

AS 08.54.100(5) eliminates the board's discretion to set qualifications in addition to those established by statute for licensure of master guides;

AS 08.54.110(12) eliminates the board's discretion in establishing qualifications for registered guide licenses in addition to those established by statute;

AS 08.54.142 repeals the section dealing with licensure of transporters;

AS 08.54.144 repeals the restrictions on transportation of hunters;

AS 08.54.146 repeals the section requiring preparation and filing of transporter reports;

AS 08.54.170(c) eliminates the license fee for a transporter;

AS 08.54.240(5) removes the definition of "transporting" and "activity of transporting";

AS 16.05.340(e) eliminates fees charged to master guides and registered guides for the taking of specified game animals;

Section 16. This act takes effect June 30, 1980, the date on which the board is scheduled to terminate.

If you have any further questions, please contact me.

TBC:ljb

5

STATE OF ALASKA
Inter-Department Route Slip 3rd floor Assembly

TO:
MAIL STATION NUMBER 2

DEPARTMENT Sen. Bradley's Office

ATTENTION Kristin Bowles

- ☐ Approval
- ☐ Signature
- ☐ Comment
- ☐ Contact Me
- ☐ Prepare Reply
- ☐ For Your File
- ☐ Note & Return
- ☐ Initial & Return
- ☐ Return As Requested
- ☐ Return For Approval
- ☐ Necessary Action
- ☐ Your Information

Remarks: If Dave Walker doesn't get ahold of you, he said call him. He agrees that it isn't automatic.

FROM:
MAIL STATION NUMBER 0800

DEPARTMENT DOL

BY Louise DATE 1-30-86

02-002 (REV. 10/73)

PS: what about a bill that would terminate the board, but continue licensing under Public Safety!?*!!

ATTACHMENT #1

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM October 11, 1979

SUBJECT: Sunset (Work Order Number 7408)

TO: Representative Fred E. Brown

FROM: David T. Walker
Legislative Counsel

You have requested an opinion as to the status of statutory provisions relating to the responsibilities of a board or commission terminated under the provisions of AS 44.66.

I recall discussion of that issue during the hearings and meetings involved with setting up the "sunset" concept and legislation. The legislature intentionally modeled this portion of our law after the Colordao statute (CS 24-34-104). Under this version of sunset the statutory provisions relating to the responsibilities of a board or commission are rendered ineffectual by the termination of the board or commission. It is expected that the legislature would subsequently act to expressly repeal those statutes. The revisor's bill is considered a likely vehicle for that purpose.

Under the sunset concept the legislative committee of reference identifies problems and needs addressed by board and agency programs and evaluates among other things, whether or not continued regulation of the activity is in the public interest. One purpose of sunset legislation is to subject the programs and activities of all agencies, boards and commissions to a regular system of legislative scrutiny. When the investigating committee determines that an agency activity should be modified, or the activity continued but transferred to another agency, it introduces a bill to effect the recommended change. It recommends a measure of deregulation of an activity by doing nothing - allowing the regulating agency to terminate under the terms of AS 44.66.

If, for example, the legislature allowed the Alcoholic Beverage Control Board to terminate and no additional legislation was introduced to transfer responsibilities, etc., I believe a person could sell alcoholic beverages without a license but that it would remain a misdemeanor to sell alcoholic beverages to a person under the age of 19 years.

It is my opinion that statutes which depend upon the exercise of a power of a board or commission for their execution are rendered ineffectual by the termination of that board or commission under AS 44.66.

DTW:ljb

Hon. Thomas K. Williams
Commissioner
Department of Revenue
ATTN: Joseph K. Donohue
Deputy Commissioner

November 9, 1979

J-66-103-80

AVRUM M. GROSS
ATTORNEY GENERAL

Status of ABC Board in 1980

By:
Rodger W. Pegues
Assistant Attorney General

You have asked if it is within the scope of the Sunset Law to continue the normal exercise of the powers of the ABC Board at least until March 1980 and then, absent any statutory resurrection, phasing it out.

We believe that you are acting within the scope of the law.

The 1977 Legislature enacted a sunset law for two classes of agencies. §§ 2 and 3, ch. 149, SLA 1977. One section applies to 22 expressly designated professional and occupational licensing boards. It has been codified as AS 08.03.010. The other applies, first, to five expressly designated regulatory commissions and then to certain other agencies. It is codified as AS 44.66.010, 020. The latter, over a period of years, provides for review and potential termination of all state agencies and institutions. */ The ABC Board is one of the regulatory agencies specified in AS 44.66.010.

Both provide for "termination" on dates certain, e.g., June 30, 1979, in the case of the ABC Board. Both provide for a terminated agency to "continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs." Compare AS 08.03.010(c) with AS 44.66.010(b). It is at this point, however, that an apparent distinction arises.

Under AS 08.03.010(c), during its year of continued "existence," the terminated agency's powers expressly remain undiminished. A similar provision does not occur in AS 44.66.010(b). It is silent on the matter. Ordinarily,

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*/ Because they are constitutionally established or mandated, certain agencies cannot be abolished, e.g., the Alaska Legislative Council, Alaska Const., art. II, § 11.

when two provisions are enacted together on related matters and are distinguishable in this manner, the distinction is considered to intend a substantial difference, i.e., here, that agencies terminated under AS 44.66.010 do not continue to possess their powers during this closing-out year. There is no reason, however, to perceive such a difference here. The situation is the same for both classes of agencies and for the objects of regulation and public protection. Indeed, AS 08.03.010(d) provides that the provisions of AS 44.66.050 govern the termination of agencies under AS 08.03, a rather persuasive indication that the same rules are to apply to both classes of agencies.

Our conclusion is, therefore, that the difference in wording is inadvertant and that there was no intention to strip the regulatory boards terminated under AS 44.66 of their powers during the year in which they are closing out. If the boards are not resurrected during that last year, then their powers cease to exist, and they cannot -- absent new legislation -- be delegated to the departments in which the boards were located.

RWP/pjg

FISCAL NOTE

I. REQUEST Bill/Resolution No. CS for Senate Bill No. 574 - An Act continuing the existence of the Guide Licensing and Control Board and amending the law relating to its powers and responsibilities; and providing for an effective date.
Title
Requested by Commerce Committee Date April 29, 1980

II. FISCAL DETAIL
Agency Affected Commerce and Economic Development
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected Regulation and Licensing of Professions
(Note: if more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-0-	(20.1)	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400	COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600	LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL	-0-	(20.1)	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	(20.1)	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The 20.1 represents the monies requested by our Division for the Guide Licensing and Control Board's FY81 travel. It also includes travel that would have been incurred by the Licensing Examiner to all their meetings.

IV. DATE 4/29/80 PREPARED BY Ann Griggs, Director
AGENCY Occupational Licensing
PHONE 465-2534

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33--001 (Rev. 12/79)

CS FOR SENATE BILL 574

08.54.010
p.1, L.12/14

SECTION 1. THE GUIDE LICENSING AND CONTROL BOARD IS ESTABLISHED SOLELY IN THE DIVISION OF FISH AND WILDLIFE PROTECTION, DEPARTMENT OF PUBLIC SAFETY. CURRENTLY DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT (OCCUPATIONAL LICENSING) AND DIVISION OF PUBLIC SAFETY (FISH AND WILDLIFE PROTECTION) HAVE RESPONSIBILITY FOR STAFF SUPPORT. THIS

p.1, L.15/20

AMENDMENT ALSO ENSURES THAT THREE MEMBERS OF THE BOARD WILL BE ACTIVELY INVOLVED IN GUIDING AND THE REMAINING FOUR WILL HAVE NO INVOLVEMENT IN THE GUIDING BUSINESS.

08.540.020
p.1,L.28/29

SECTION 2. PROVIDES THAT MEMBERS OF THE BOARD MAY NOT BE APPOINTED FOR MORE THAN TWO CONSECUTIVE TERMS. A TERM IS FOR THREE YEARS.

08.54.030
p.2, L.2/5

SECTION 3. THE BOARD MUST ELECT A CHAIRMAN AND A VICE-CHAIRMAN ANNUALLY. THE CHAIRMAN MAY NOT SERVE FOR MORE THAN TWO CONSECUTIVE YEARS. ADEQUATE ROTATION WILL ASSURE A MORE RESPONSIVE BOARD TO THE PUBLIC INTEREST.

08.54.070(a)
p.2, L.8/11

SECTION 4. THIS SECTION GENERALLY INCREASES FEES REQUIRED FOR LICENSES TO ENGAGE IN THE PROFESSION OF GUIDING.

08.54.182
p.2, L.13/16

SECTION 5. PERSONS SEEKING LICENSES MUST PASS AN EXAMINATION, AND THAT THE EXAMINATION SHALL BE HELD TWICE A YEAR AT BOTH JUNEAU AND ANCHORAGE FOR THE CONVENIENCE OF APPLICANTS.

08.54.190(a)
p.2, L.18/20

SECTION 6. THIS SECTION IS AMENDED TO ELIMINATE A LICENSURE PROVISION FOR TRANSPORTERS AND TO ASSURE THAT A LICENSE IS VALID FOR AT LEAST ONE FULL YEAR. UNDER EXISTING LAW ALL LICENSES EXPIRE ON DECEMBER 31 FOLLOWING ISSUANCE REGARDLESS OF WHEN THEY WERE ISSUED. PERSONNEL IN THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FISH AND WILDLIFE PROTECTION, CONSIDER THE "TRANSPORTER LAWS" CONFUSING AND DIFFICULT TO ENFORCE. IN ADDITION, WE FOUND THE INFORMATION AND REPORTS THAT TRANSPORTERS ARE REQUIRED TO FILE ARE NOT BEING USED AND ARE NOT NEEDED TO MANAGE THE GAME RESOURCES OF THE STATE. FURTHERMORE, AIR TRANSPORTERS' FLYING SAFETY QUALIFICATIONS AND AIRCRAFT SAFETY ARE REGULATED BY THE FEDERAL AVIATION ADMINISTRATION.

08.54.190(b)
p.2, L.24

SECTION 7. AN ASSISTANT GUIDE LICENSE WHICH HAS NOT BEEN RENEWED FOR FOUR YEARS MAY NOT THEN BE RENEWED UNTIL THE APPLICANT MEETS THE QUALIFICATIONS FOR AN INITIAL LICENSE. UNDER THE EXISTING STATUTE ONLY A TWO-YEAR GRACE PERIOD IS PROVIDED.

08.54.200(a)
p.3, L.2
p.3, L.6

SECTION 8. UNDER EXISTING LAW THE BOARD IS REQUIRED TO HOLD A HEARING TO CONSIDER DISCIPLINARY ACTION IF IT RECEIVED COMPLAINTS FROM THREE OR MORE SEPARATE PARTIES TO WHICH A LICENSEE HAS PROVIDED SERVICES. THE AMENDMENT PROVIDES A TIME PERIOD OF FIVE YEARS WITHIN WHICH THESE COMPLAINTS MUST BE RECEIVED BEFORE THE BOARD IS REQUIRED TO HOLD A DISCIPLINARY HEARING. THIS SECTION IS ALSO AMENDED

SO THAT THE BOARD IS NO LONGER OBLIGATED TO HOLD A DISCIPLINARY HEARING WHEN A LICENSEE IS MERELY CHARGED WITH A VIOLATION OF FEDERAL OR STATE SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS. UPON A CONVICTION, HOWEVER, THE BOARD IS STILL REQUIRED TO HOLD A DISCIPLINARY HEARING.

08.54.200(c) p.3, L.9 p.3, L.16 SECTION 9. THE BOARD IS PERMITTED THE OPTION OF REVOKING, SUSPENDING, OR DENYING RENEWAL OF A LICENSE IF THE BOARD FINDS THAT THE LICENSEE DOES NOT MEET CERTAIN REQUIREMENTS. UNDER EXISTING LAW THE BOARD WAS REQUIRED TO REVOKE THE LICENSE UPON SUCH A FINDING. THIS SECTION IS ALSO AMENDED TO PROVIDE THAT SPECIFIED DISCIPLINARY ACTION MUST BE TAKEN BY THE BOARD ONLY WHEN A LICENSEE HAS BEEN CONVICTED OF TWO VIOLATIONS OF FEDERAL OR STATE SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS WITHIN THE PAST FIVE YEARS. UNDER CURRENT LAW, TWO VIOLATIONS TRIGGER MANDATORY DISCIPLINARY ACTION REGARDLESS OF THE TIME PERIOD BETWEEN THE VIOLATIONS.

08.54.210(a)(1) p.3, L.20 SECTION 10. THIS SECTION IS AMENDED TO REMOVE REFERENCE TO A TRANSPORTER BECAUSE TRANSPORTERS WILL NO LONGER BE LICENSED UNDER THIS ACT. SEE SECTION 6.

08.54.210(a)(2) p.3, L.26 SECTION 11. A REFERENCE TO A TRANSPORTER IS DELETED.

08.54.210(a)(4) p.4, L.5 SECTION 12. A REFERENCE TO A TRANSPORTER IS DELETED.

44.41.020 p.4, L.11 SECTION 13. A NEW DUTY OF THE DEPARTMENT OF PUBLIC SAFETY SHALL BE THE TOTAL ADMINISTRATIVE STAFF SUPPORT OF THE GUIDE LICENSE AND CONTROL BOARD.

08.03.010(c)
p.4, L.15

SECTION 14. JUNE 30, 1984 IS SET AS THE TERMINATION DATE FOR THE GUIDE LICENSING AND CONTROL BOARD.

SECTION 15. THIS SECTION REPEALS PROVISIONS WHICH ARE INCONSISTENT WITH THIS ACT.

AS 08.01.010(20) REMOVES THE GUIDE LICENSING AND CONTROL BOARD FROM THE LIST OF BOARDS TO WHICH CHAPTER 01 APPLIES, SINCE THIS BOARD WILL NO LONGER BE ADMINISTERED BY THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT;

AS 08.03.010(B)(7) REPEALS THE SUNSET PROVISION FOR THIS BOARD;

AS 08.54.100(5) ELIMINATES THE BOARD'S DISCRETION TO SET QUALIFICATIONS IN ADDITION TO THOSE ESTABLISHED BY STATUTE FOR LICENSURE OF MASTER GUIDES;

AS 08.54.110(12) ELIMINATES THE BOARD'S DISCRETION IN ESTABLISHING QUALIFICATIONS FOR REGISTERED GUIDE LICENSED IN ADDITION TO THOSE ESTABLISHED BY STATUTE:

AS 08.54.142 REPEALS THE SECTION DEALING WITH LICENSURE OF TRANSPORTERS;

AS 08.54.144 REPEALS THE RESTRICTIONS ON TRANSPORTATION OF HUNTERS;

AS 08.54.146 REPEALS THE SECTION REQUIRING PREPARATION AND FILING OF TRANSPORTER REPORTS;

AS 08.54.170(c) ELIMINATES THE LICENSE FEE FOR A TRANSPORTER;

AS 08.54.240(5) REMOVES THE DEFINITION OF "TRANSPORTING" AND "ACTIVITY OF TRANSPORTING;"

AS 16.05.349(e) ELIMINATES FEES CHARGED TO MASTER GUIDES AND REGISTERED GUIDES FOR THE TAKING OF SPECIFIED GAME ANIMALS;

Section 16. THIS ACT TAKES EFFECT IMMEDIATELY.

HAIR DRESS + BEAUTY CULTURE

SCHEDUAL~~-~~ FOR OCTOBER 22/23 SENATE COMMERCE COMMITTEE HEARINGS ON SUNSET LEGISLATION.

OCTOBER ~~22~~ 23/ 1979

Anchorage --- Room 262
University of Alaska
Consortium Library
3211 Providence Drive, Anchorage Ak.

(Judy Mengel '63-1832)

Time (9:00 am to 5:00 pm) ANC time

Juneau --- Butrovich Room #207
Capitol Building
Juneau, Alaska

(Dave Hammick) 586-1201
(Sue Plumer)

Time (11;00 am to end) JNU Time

Fairbanks --- Legislative Affairs
101 College Road, Building F., Room #250
Fairbanks, Alaska

(Maxine 452-4449)

Time (9;00 am to 5:00 pm) FBX Time

Board of Registration for Architects, Engineers and Land Surveyors

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AUDIT REPORTS ---

A PREFORMANCE REVIEW OF THE BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS
May 11, 1979

Divison of Legislative Audit, Att: Gerald L. Wilkerson
State Office Building
Pouch W, State Capitol, Juneau, Alaska 99811 (465-3830

STATEMENT OF THE LEGISLATIVE CHAIRMAN

ALASKA HAIRDRESSERS AND COSMETOLOGISTS ASSOCIATION

RE BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS

Mr. Chairman and members of the Committee, my name is Wilma Raduege and I am a licensed cosmetologist since 1964. The Alaska Hairdressers and Cosmetologists Association and I appreciate the opportunity to testify before you on the subject of whether or not the Board of Hairdressing and Beauty Culture Examiners should continue in existence.

To begin, our Association fully supports the principle of legislative review of the operations of all boards and commissions created by the Legislature for the purpose of eliminating those boards and commissions whose continued existence is not in the public interest. At the same time, we believe that when it becomes apparent that a regulatory agency is not founded upon an adequate statute, or has not been properly administered, the first consideration should be whether regulation of the particular profession should be abandonned, or whether the enabling statute and the administrative functions of the agency ought to be improved. Even before reaching that point, it should be determined whether regulation of a particular occupation is or is not in the public interest. That consideration, in turn, includes, in part, the three points requiring determination as set out at page 7 of the report of the Division of Legislative Audit while those three points for consideration are fairly stated by the Report, the Alaska

Hairdressers and Cosmetologists Association disagrees with conclusions reached by the Report to the extent that it recommends termination of the Board and and discontinuance of licensure. Other recommendations of the Report will be addressed separately. Before considering the three points raised by the Report for determination, let us recognize that the Board has not been, and is not a financial burden upon the State of Alaska. In a Memoradum of October 31, 1978, the Division of Occupational Licensing reported that the previous year the Board of Hairdressing and Beauty Culture examiners had a revenue of $21,821.00 and expenditures of $4,823.14. Assuming the accuracy of that report, the State Treasury benefitted by about $17,000.00.

In another report of June 4, 1979, the Division of Occupational Licensing advised the State Legislative Chairman that during the period of July 1, 1978 to April 30, 1979, and thus not a full year's report, revenues amounted to $10,017.00, and expenditures were in the sum of $4,361.32. Again, a clear profit for the State Treasury and I suspect that a report for the entire year might well be much closer to the previous one. Thus, it is safe to conclude that regulation of the field of hairdressing and cosmetology does not result in a financial drain upon the taxpayers of the State of Alaska.

The first point for consideration stated by the report is "the unlicensed practice of cosmetology poses a serious threat to the health, safety, or economic well-being of the consuming public". The question is basically treated in the second

paragraph at page 8 of the report. Those comments are to the effect that:

(1) Cosmetological products are manufactured outside of Alaska.

(2) Their sale and distribution is controlled by the federal departments of Health, Education and Welfare, Public Health Service, and Food and Drug Administration.

(3) The labelling of the products contains instructions for their use and precautions to be observed.

(4) That most manufacturers have persons on their staff who specialize in product liability to ensure that the products' labels comply with federal regulations and can be read and understood by ordinary individuals.

The conclusion reached is that if a cosmetologist, licensed or unlicensed, followed the instructions and precautions on the label of professional cosmetics, the potential harm to the consumer would be minimal. Mr. Chairman, the Report is submitted by a Certified Public Accountant. Conceivably, it could be argued that if the public read the applicable statutes and regulations written by legislators and qualified government employees, they could do their own financial reports and there should be no need for C.P.A.s.

As any members of the Committee who have occasion to watch television know, there is a national federal campaign to encourage members of the public to read labels because it is a commonly well-established fact that people either do not read labels, or do not read them carefully.

It is a fact that regulation of the Hairdressing and Cosmetology profession exists not only throughout the United States, but in many other countries as well. Such almost universal practice is not the result of a strong lobby since, as the members of the Committee know, they have never been approached by a lobbyist on behalf of this profession at any time for the good reason that we have never had one. In order to agree with the conclusions of the Report, one would also have to conclude that the legislatures of the various states and foreign nations who have adopted regulation of the profession have all done so in error. Nothing could be further from the truth.

The preparer of the Report inquired regarding complaints or investigations from the Federal Drug Administration, Seattle field office. Apparently, they did not bother to check with the federal departments of Health, Education and Welfare, Public Health Service, and Food and Drug Administration at the top level.

The fact that the FDA field office indicated infrequent need for investigation can be indicative of many things. Most members of the public are not in the habit of turning to government agencies to lodge their complaints. The home user of cosmetological products who winds up with unsatisfactory, or even harmful results, is most likely to blame herself or himself. If the individual resorted to the services of an unlicensed person, it was probably done at home by a friend and complaints to federal agencies would be most unlikely to follow.

The Report is completely silent on the question of law suits

filed, although such may be the course most likely followed by an injured person whose first inclination would be to see an attorney, and the attorney would be more likely to file suit than to complain to any governmental agency. According to the experience of members of this Association, most instances of unsatisfactory results or harmful results are of limited monetary potential by way of claims, so that cases are most often either abandoned or settled without litigation or any report to any state or federal agency. The mounting and unreachable cost of litigation for most people in most instances is only too well known. It is specifically in this area of damages amounting to a value of a few hundred to a few thousand dollars that the need for regulation is most readily apparent to prevent harm that may not be realistically compensable through our expensive judicial system.

The very existence of regulation assures the public of trained specialists and of clean and sanitary beauty salons where members of the public can receive the beauty treatment they require with the peace of mind of knowing that the work is to be performed in a proper manner and that their hair, scalp, skin and eyes are in relative safety.

In addition to the health and sanitary aspects, one should consider the psychological importance of appearance to the patrons of beauty salons. Whether it be for social, business, or romantic reasons, or even just personal satisfaction, patrons of beauty salons, particularly women, are willing to spend large amounts of money in order to achieve the desired appearance.

without the training and education required by the regulatory statute, and without the examination and licensing, it would be impossible for the consumer to know that the operator is well trained. Please try to imagine the dispair and mortification of the lady who is invited to a legislative social function, a Governor's ball, or dinner with the boss or her spouse's boss, or for an important date and who finds herself either physically harmed, or unattractively coiffed, having gone to an unlicensed hairdresser after work on the evening in question. Isn't that economic and psychological interest also to be protected?

Mr. Chairman and members of the Committee, as you well know, there is both national and state interest in the examination and licensing of automobile mechanics to protect the consumer of those services for similar safety and economic consumer protection reasons.

You will note that there are four appendices to the Report. Appendix A indicates a deficit of revenues over expenditures. It is unaudited and reportedly, was conducted in a rather haphazard manner. It also appears to be contrary to the two reports I have mentioned earlier. Assuming the truth of Appendix A, a readjustment of fees charged to the profession can easily take care of that problem. Appendix B indicates that there are 1,678 current licenses. However, Appendix D shows that only 225 questionaires were mailed to regulated persons. How those were chosen, and whether they are representative is unknown.

Appendix C consists of a questionaire sent to Board members. It appears that there was not a single attempt made at obtaining

any reaction from the public served. It is stated at page 10 of the Report that regulation of the practice of cosmetology was instituted to meet a public need. That is, to protect the health, safety and economic welfare of Alaskans. The Report recommends that if the Board is to be continued in existence, there should be two members of the public placed on the Board. But no sampling of the feeling of the public concerning de-regulation was even sought.

Mr. Chairman, there are cosmetological products advertised on television, radio, newspapers and magazines, and products are available on the shelves of supermarkets and drug stores. If self help or mutual help among unlicensed persons in the use of those products were the preferred method of the using public, we would not have 1,678 current licenses in Alaska for the good reason that beauticians could not afford to stay in business. The very existence of the 229 owner-operator licenses, 219 manager-operator licenses, and other businesses listed give you a strong indication of the feelings of the using public. It is only reasonable to assume that the many thousands of customers served by those businesses and those operators would resort to self help and mutual help with the less expensive use of off-the-shelf products if it were not for their concern over apearance, confidence in the training of the operators, and concern for their health and safety.

The second point raised at page 7 of the report is that "potential users can be expected to possess the knowledge needed to evaluate the qualifications of those offering the service."

There is not one word of commentary in the report to support such a conclusion. My previous comments on point number 1, however adequately answer the second point in the negative.

The third question raised is whether "benefits to the public clearly outweigh any potential harmful effects, such as a decrease in the numbers of cosmetologists or higher cost of service, created by regulation". Again, that point is not discussed in the commentary that follows in the report. One wonders why the questions are raised if they are not answered by the report.

I cannot furnish you with any exact numbers, but out of a population of approximately 200,000 people in the State of Alaska, I would venture that more than half consist of persons who do not frequent beauty salons. Out of the balance of the population, it must be assumed that a fair percentage are users of self help or mutual help with off-the-shelf products, which should leave us with an average of approximately one licensed operator for 30 to 40 consumers. The obvious conclusion is that the number of cosmetologists is obviously more than adequate, and that such level of competition assures the public of competitive pricing.

The analysis of public need in the report addresses well deserved criticism of the administration by the Board and by the Division of Occupational Licensing. Considerable improvement of the statute and of the regulations are needed. Most of the recommended changes are sound.

Other speakers will make more specific recommendations, but

on behalf of the Alaska Hairdressers and Cosmetologists Association, I urge this committee and the legislature not to throw out the baby with the bath water. The system is far from perfect. Part of the problem resides with the Board, but part of the problem resides with an inadequate statute and with inadequate support and cooperation by the Attorney General's office in assisting in preparing amendments to the statutes and to the regulations, and inadequate support and cooperation by the Division of Occupational Licensing as pointed out by the report, and a total lack of updated regulations and inspections by the Department of Health and Social Services. The public need exists. It is up to you, members of the legislature, to create a better vehicle with better support and better cooperation for use by an updated Board. Discontinuance of regulation and abandonment of licensing are definitely not the answer. Thank you very much for your time and attention.

TESTIMONY OF DOROTHY NEAL

RE BOARD OF HAIRDRESSERS AND BEAUTY CULTURE EXAMINERS

Mister Chairman and Members of the Committee, my name is Dorothy Neal, and I am a licensed and practicing cosmetologist. I appreciate the opportunity to appear and testify before you on the subject of the proposed discontinuance of regulation and licensure of the hairdressers and cosmetologists in Alaska. I fully endorse the position of the Alaska Hairdressers and Cosmetologists Association in favor of continued regulation and licensing.

Rather than repeat testimony covered by others, I would address myself to some of the questions on occupational licensing indicated by the Council of State Governments in the pamphlet entitled Questions a Legislator Should Ask, as they apply to the Board of Hairdressing and Beauty Culture Examiners.

1. There is no indication whatsoever that the public has been harmed because this occupational group has been regulated. The statute has been in effect for many years, and I am not aware of any outcry from any part of the public served against the regulation or licensure of this profession.

2. Who are the users of services offered? They are members of the general public who lack the knowledge necessary to evaluate the qualifications of those offering the service. The person who enters a beauty salon would have no way of determining the technical knowledge and the experience of the operator without the existing regulation. An unsubstantiated claim of knowledge or experience by the operator, in most instances, could not be verified.

3. Are there institutions or qualified professionals who

have the knowledge to evaluate the qualifications? The answer to that question is that the Alaska Hairdressers and Cosmetologists Association does have such persons, and the members of the State Board are regularly members of the Association. However, the Association is not, at this time, structured and prepared to handle such regulation, although it is conceivable that it could be so geared in the future if it were to receive the kind of official recognition that the Board of Governors of the Alaska Bar Association has, as a State agency.

4. What is the extent of autonomy of practitioners? There is a considerable degree of independent judgment required of practitioners in the choice of products to be used and in the treatment required for a particular customer, as well as in the styling most appropriate for a particular customer.

Unquestionably, a considerable amount of skill and experience are required in making these judgments. That is one of the reasons why proof of training, and the passing of an examination are required in order to permit one to be licensed.

While many practitioners customarily work on their own and without supervision, many of the practitioners who are new in the field gain much by working under the supervision and guidance of more experienced practitioners. However, no such supervision or guidance is required by any of the existing statutes or regulations. Once licensed, a practitioner is able to perform most of the required services, but may not be able to perform them as well as someone with more experience. Thus, such supervision and guidance are a matter of choice exercised by

employers and by new practitioners who, rather than work independently, prefer to work in an establishment where the owner or the manager can help the new person in gaining experience in the field. Again, the parallel can be made with the attorney admitted to practice who, usually, finds it most beneficial to work for and under the supervision and guidance of more experienced attorneys, although he or she has the legal right to practice independently.

5. What efforts have been made to address the problems? Unfortunately, too little has been done. The Board and the State administration have been lax in promulgating adequate regulations and seeking meaningful amendments to the statutes. Still, what has been done has served the public well to date. The vehicle can be improved or replaced with a new model, but there is no indication that we should do without some means of testing, regulating, inspecting and licensing.

6. There has been no suggestion of unfair and deceptive trade practices. Injunctions, cease and desist orders, etc. require some authority to initiate them. A regulatory authority such as the Board should properly be the agency to initiate such action with better support from the Department of Commerce and from the Attorney General's office than have been available in the past.

7. The alternatives indicated at page 16 of the pamphlet are clearly not applicable. We are not talking about licensing a restaurant rather than cooks or waiters or waitresses. Certification of practitioners may have some value, but the

certificating agency again should be a competent agency for the purpose such as the present Board. As a matter of fact, that is largely what the present licensing accomplishes. The law prohibits persons from engaging in the practice of hairdressing or beauty culture for compensation or other reward. Self-help and mutual help without compensatior are not prohibited, and are commonly practiced by those members of the public who purchase cosmetological products from retail establishments. It is the experience of every busy shop that every week and sometimes a number of times in a week customers come in for corrective treatment to undo the bad job performed either by themselves or by a friend with off the shelf products from the drugstore or the supermarket. If the customer did not know that he or she was now turning to a trained capable operator, who would that person turn to? In this connection, those very numerous instances of dissatisfied users of off the shelf products wind up in a beauty salon and do not become statistics in the books of the FDA or any other state or federal office. The professional cosmetologist took care of the problem and there was no complaint registered or litigation that followed.

8. Does the public benefit from regulation of the occupation? We submit that the answer to that question is yes because licensure helps the public identify qualified practitioners and regulation assures the public of an acceptable level of sanitation in the establishments rendering the service. Further, the regulation assures that the practitioners are competent because of the fact that they have received formal

education covering aspects of dermatology, hair structure, properties of the chemicals used and how to use them, principles of beauty treatments and hair styling, as part of a total of 2000 hours of training which includes a well defined panoply of practicum.

9. As to the length of training and experience required, there exists some variation from state to state, but no suggestion has been made by anyone that the requirements in Alaska are of excessive duration when compared with other states.

10. In the area of complaints from the public, improvements can be made by way of both state and institutional advertising to let the public know where and how they may lodge complaints.

11. It should be obvious that our licensing procedures do not exist to restrict entry into the field by qualified persons. During the fiscal year 1978-1979, there were four one-day examinations given. Out of 90 applicants, there were 74 students, 11 manicurists and 5 instructors, and 99 persons were admitted by reciprocity for a total of 189 new licenses issued during that year. The average score of persons examined was 83.6. With approximately 1700 licensed persons in the State of Alaska, there can be no question but a highly competitive market exists and grows, and that the public has a wide choice of qualified persons from which to choose.

In conclusion, Mr. Chairman, it appears that all or most of the points raised by the Council of State Governments for consideration by legislators are clearly answered in favor of continuation of the Board, regulation, testing, inspection and

licensure. Instead of wielding an indiscriminate ax, it would be far preferable to improve the statute and to direct the support services of the administration to better assist the Board in improving regulations, inspection and enforcement. Thank you for your attention, I will gladly try to answer any questions you may have.

TESTIMONY OF WINNIE GRAY

RE BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS

Mr. Chairman and members of the Committee, my name is Winnie Gray, and I am a practicing cosmetologist in Alaska, and a member of the Alaska Hairdressers and Cosmetologists Association.

The Alaska Hairdressers and Cosmetologists Association which represents about 300 licensed cosmetologists, vigoroulsy supports the retention of the Alaska Board of Hairdressing and Beauty Culture Examiners as vital to the health and general welfare of the citizens of this state. We therefore present this statement in opposition to any effort to terminate the Board of Hairdressing and Beauty Culture Examiners and eliminate the State's authority to inspect and license beauty salons, conduct licensing examinations for cosmetologists, inspect and regulate schools of cosmetology and such other matters pertinent to regulating the practice of cosmetology.

I. REGULATION OF THE COSMETOLOGY PROFESSION BY THE BOARD-PROTECTS THE CONSUMER.

Cosmetologists in the course of styling hair or applying cosmetics can, through incompetence, affect the physical health and well being of their patrons. Unlike other occupations such as accountants or real estate agents which are generally subject to State regulation, the danger arising from unqualified practitioners is not merely a loss of money; rather, in the caseof an unskilled cosmetologist, the result could be facial disfigurement, baldness, or even blindness. Thus, it is

imperative that the practice of cosmetology be regulated by a state board with specific authority and sufficient expertise to insure that the high standards of this profession continue to be met.

Like doctors, nurses and other members of the health professions, the cosmetologist deals with the human body on a daily basis. Literally thousands of women each day entrust not only their hair and their scalps but also their faces and upper torsos to their hairdressers in the course of obtaining the services offered by the practitioners of beauty culture. To meet the demands of their clientele, cosmetologists must apply a variety of chemical compounds, ranging from such mild and generally harmless products as shampoo, rouge and nail polish to such potentially dangerous chemical formulas as permanent wave and hair straightening solutions, tints and bleaches.

Not only could improper application of such such strong chemical compounds singe the hair or cause it to fall out, but an unskilled operator could also seriously and permanently scar the scalp, face or neck of a patron or even cause blindness should such chemicals be inexpertly applied. Tinting of the eyebrows and the removal of facial hair through the use of wax depilatories and electricity also have inherent dangers to the physiognomy of the customer of the beauty salon. Even curling irons which have recently returned to vogue could result in facial disfigurement in the hands of an ill-trained cosmetologist.

Thus, it is clear that an unqualified cosmetologist presents

a clear and present danger to Alaska citizens because the hairdresser must necessarily apply strong chemicals and use razor-sharp or electrically wired instruments in close contact with the human body. The Alaska Board of Hairdressing and Beauty Culture Examiners is therefore needed to prevent such harmful effects by ensuring that cosmetologists meet minimum state standards. It does so by requiring a comprehensive and up-to-date curriculum for cosmetology schools and by testing all graduates for licensure to make certain that the subjects taught have been adequately learned. A licensing examination which tests a candidate in the theory and practice of hairdressing, hair coloring, chemical hair relaxing, cosmetic chemistry, scalp treatments and hair conditioning, facial massage and cosmetic use will assure that cosmetologists who apply such skills to patrons have mastered a minimal competency in these cosmetic techniques and should therefore be allowed to apply their training to members of the public.

Moreover, there is no reasonable method of protecting the public; normal market forces just will not adequately protect the patron of a beauty salon. Although a consumer will be able to discern if she has been injured, it is unlikely that she will be able to evaluate in advance the likelihood of harm resulting from her choice of cosmetologist since a patron cannot readlily predict the aptitude of her cosmetologist and, given the size of modern communities, will probably not learn of the injuries inflicted on other customers by an inept operator. Without such information, patrons are often unable to make intelligent

decisions concerning their choice of cosmetologists and, considering the potential for serious injury, regulation is therefore vital to assure the public that salon operators meet at least minimum standards of competence.

II. REGULATION OF THE COSMETOLOGY PROFESSION BY THE BOARD AIDS THE BEAUTY SALON OWNER AND THE STUDENT.

The continuation of the Board of Hairdressing and Beauty Culture Examiners not only serves the public interest but it also helps the members of the cosmetology profession. By establishing curriculum standards for beauty schools, the salon owner is assured that the graduates he hires have been provided with a comprehensive and up-to-date curriculum. Further, the licensing examination conducted by the Board guarantees the salon owner that prospective employees have not only been taught the requisite skills but that they have mastered them as well. Similarly, students can be confident that the instruction offered by the beauty schools they attend -- and to which they pay tuition -- will provide them with the skills needed to earn their future living.

Moreover, if the Board is terminated, there is currently no guarantee that the beauty schools will provide sufficient training. It is only relatively recently that a national accrediting agency has been established to accredit beauty schools and attempt to ensure that they provide an adequate program for their students. However, the overwhelming majority of beauty schools are still not accredited by the Federally-recognized Cosmetology Accrediting Commission (CAC) nor

are they required by any state or national law to become so. But even if they should receive accreditation from the Commission, professional competence is not assured because the CAC's standards and procedures were recently challenged in proceedings held by the U.S. Office of Education. As a result, CAC has only received provisional accreditation and must revise its practices. If it does not, CAC will lose its recognition as a national accrediting agency and beauty schools will not be able to voluntarily submit their curriculums to any agency for review.

III. COMMENTS ON THE REPORT'S RECOMMENDATIONS.

1. The recommendation no. 1 requiring that two of the five Board members be public members and to limit Board member service to not more than two consecutive three-year terms appears reasonable and is not objectionable, but there should be some provision concerning the qualifications of the public members requiring that they have some specialized or professional background that would especially contribute to the function of the Board.

2. Recommendation no. 2 concerning inspection of beauty schools on a regular basis, and prompt investigation of violations and complaints is sound and should be adopted. However, amendment of A.S.08.28.040(5) should be considered because it specifically excepts health and sanitary inspection from the jurisdiction of the Board by reference to A.S.08.28.280. In fact, the Department of Health and Social Services has not been performing the required inspections and that Department's regulations in this respect are badly in need of review and

updating. The writer of the report has not made an adequate review of the statutory provisions governing both this Board and the Division of Occupational Licensing, as is obviously apparent in the light of the comments made. Investigative services statutorily provided are limited to boards other than this by A.S.08.01.050(a)(19) and requests for other services under (18) should be specific and in writing so as to give OL jurisdiction.

3. Recommendation no. 3 is questionable, although it appears sound in the light of 12 A.A.C. 24.050 as presently written. The present policy of the Board does not violate the intent of any provision of the statute as suggested by the writer of the report. Nor is it discriminatory unless one takes the view that it discriminates against shop owners in the vicinity of a school. The argument can properly be made that the interest of the public is best served by having quality schools with an adequate curriculum and teaching staff, entirely devoted to the teaching of the profession. Under the interpretation of recommendation no. 3 and comments thereunder, every shop automatically becomes an "approved shop" for the purpose of training an apprentice, without any proof whatsoever that the licensed personnel in that shop make qualified instructors. In fact, the comment makes meaningless the requirement in the statute at A.S.08.28.110(4) for a "shop approved by the Board". In case of a conflict between the statute and the regulation, it should be the regulation that gives way to the statute, not the other way around. In this instance, instead of restricting entry into the practice of cosmetology, the present policy of the Board

in fact facilitates entry for the reason that students trained under a teaching staff in a school should be better trained, and therefore better able to pass the licensing test.

4. Recommendation no. 4 is inaccurate both in its reasoning and its conclusion. The school that has been educating and, hopefully, giving tests and grades to an individual student throughout his or her 2000 hours of training has a vital interest in being informed of the students' results at the examination. The school is already in possession of test scores for that student and can, and should be, trusted with one more score to be kept as confidential as the rest. It is also of vital importance to the evaluation of a school by itself and by the Board to have information about the percentage of its own students who pass the examination, compared with the average statewide. In any event, that recommendation is not one for consideration by the legislature, since it is not for amendment to the statute, but a recommendation to the Board concerning one of its resolutions.

5. Recommendation no. 5 points to a violation of the statute by both the Division of Occupational Licensing and the Board. Apparently, the legislative intent was that the Board exercises some discretion in deciding whether to have the Division of Occupational Licensing issue the licenses, or else the statutory provision at A.S.08.01.050(a)(9) would not have included the words "as authorized by the Board." Either the Board should be left with that discretion, or the legislature should amend the statutory language to eliminate the discretion.

6. Recommendation no. 6 sounds impressive, but appears to

be couched in bureaucratic jargon difficult to understand. Perhaps the writer of the report ought to give some specific examples of "goals and quantifiable objectives". It appears that the goal should be the regulation of the profession with the prompt resolution of complaints and violations, and the achievement of the greatest possible reduction in the causes for complaints and violations. One gets the impression that the greater the quantity of objectives, or statistics, the better the performance. Hopefully, the contrary may well be the most desirable goal. Just what the difference is between a goal and an objective, I don't know. If one can clarify what is intended by establishment of goals and quantifiable objectives, recommendation no. 6 may well be very sound.

7. Recommendation no. 7 deserves a great amen, and our full endorsement without more comment. The same is true of recommendation no. 8, although example "C" under it doesn't seem to make any sense as written. Further, the comments in the report concerning the cost of "operating the Board" is subject to considerable doubt. As far as we have been able to determine, neither the Office of Occupational Licensing, nor the Department of Commerce, nor the Attorney General's office, has any records allocating time and costs in the manner suggested. We believe that the amount reported could have just as easily been $10,000.00 profit as $15,000.00 or $30,000.00 or more deficit. The gathering of that type of information does not seem to have been among the quantifiable objective in statistics of those agencies.

8. Recommendation no. 9 appears entirely reasonable and should be adopted.

In conclusion, Mr. Chairman, it seems that amendment of the statute and improvement in support services would do a great deal towards improving the quality of the regulation, and that these past deficiencies that are correctable should not form the basis for abolishing a much needed service. We urge you to exercise the legislative continuance of the Board for a limited period of time during which the necessary amendments to the statutes can be enacted by the legislature, and improvements in support services provided to the Board to permit it to render the kind and quality of service that the public has a right to expect.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M May 2, 1980

SUBJECT: Section-by-section analysis CS for SB 544 (Work Order Number 8541)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have asked for a section-by-section analysis of CS for Senate Bill 544 entitled: "An Act relating to the regulation of the practice of barbering, hairdressing, and cosmetology; terminating the existence of Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners; establishing the Board of Barbers and Hairdressers; providing for an effective date."

Section 1. A new chapter is created in Title 8 covering the combined professions of barbering and hairdressing.

Sec. 08.13.010. The Board of Barbers and Hairdressers is composed of five persons appointed by the governor, two barbers, two hairdressers, and one public member.

Sec. 08.13.020. The board members serve staggered terms of three years and may serve no more than two consecutive terms.

Sec. 08.13.030. The board has the following duties:

(1) to exercise general control over the vocations of barbering, hairdressing, and cosmetology;

(2) to examine applicants and approve issuance of licenses and permits;

(3) to approve the issuance of licenses for schools of barbering, hairdressing, and cosmetology;

(4) to set fees as necessary to cover the operating expenses of the board;

(5) to submit a budget to the legislature and request appropriations from the general fund which may not exceed income generated from fees collected by the board.

The board has the following powers:

(1) to suspend or revoke a license or permit;

(2) to conduct hearings and request the Department of Commerce and Economic Development to investigate the practices of the occupations being regulated;

(3) to carry out the provisions of this chapter through adopting regulations or doing any required act.

Sec. 08.13.040. The board is free to meet as often as required. It shall hold examinations in the fields of barbering, hairdressing, and cosmetology at least twice each year. An applicant for licensure may choose the field of practice he wishes to enter, or may choose to be examined in more than one field of practice.

Sec. 08.13.050. The board is obligated to keep records of permits and licenses issued or revoked and to report on its operations to the governor annually.

Sec. 08.13.060. This section prohibits

(1) the practice of barbering, hairdressing or cosmetology without a license or permit unless exempted under this act;

(2) conducting a school of barbering, hairdressing, or cosmetology without a license;

(3) operating a shop without a license unless specifically exempted by statute;

(4) allowing an employee or person being supervised to practice without a license or a permit unless specifically exempted by statute;

(5) permitting the use of a license or permit by another person;

(6) obtaining a license or permit by fraudulent means.

Sec. 08.13.080. There are three separate occupational fields which an applicant may seek licensure in. To qualify for licensure an applicant must have finished the courses that a school with a program in the particular field is required to teach in order to be licensed under this chapter. It is left up to the board to establish by regulation the standards for the licensing of schools. So, the educational requirements set out in this section are not specific, but rather, shall match the requirements which the board sets for schools. In this way, if a person attends a licensed occupational school, he will be assured of meeting the state educational requirements. In addition, an applicant must pass an examination in order to be licensed in a particular field. Separate examinations shall be given for the fields of barbering, hairdressing, and cosmetology. It is also possible for an applicant to qualify for examination through serving an apprenticeship, rather than by attending a licensed occupational school.

Sec. 08.13.082. This section describes the accepted apprenticeship program, which may only be conducted in a shop approved by the board. A person wanting to become a barber is required to receive 1,500 hours of apprenticeship training. The program must last at least nine months and may not be extended past two years. A person who wishes to become a hairdresser must complete 2,000 hours of apprenticeship training in not less than one year and not over two years. A person who wishes to practice cosmetology must receive 350 hours of apprenticeship training over a period of six months but within one year.

Sec. 08.13.090. Each applicant for licensure must pass a written examination covering sanitary practices, safety of procedures used in a particular field, and the use of instruments, equipment and chemicals pertinent to the particular field. The board has discretion to require a practical examination as well through regulation.

Sec. 08.13.100. A license is valid for two years and shall state the field or fields of practice which a person is qualified to perform. A person who is licensed in another

state or country is automatically entitled to a license in this state upon payment of required fees if he has training and work experience which the board finds meets the minimum requirements of this state.

Sec. 08.13.110. Schools of barbering, hairdressing, and cosmetology shall be licensed if they meet standards set by the board. The board must adopt regulations setting standards for licensing, including curriculum requirements, hours of instruction, physical condition of school facilities, and financial responsibility of the owner. Under the broad provision of AS 08.13.030(c)(3) granting the board power to adopt regulations needed to carry out its duties, the board has the discretion to adopt regulations setting standards for school licensure.

Sec. 08.13.120. The board is required to adopt regulations for licensing barber, hairdressing, and cosmetology shops. An owner will be licensed to operate a shop without an examination, however, unless he himself is licensed to practice, he must employ a manager who is. No licensure requirement is imposed upon shops located in communities having a population of less than 1,000 people as long as there is not a community of over 1,000 people within 25 miles.

Sec. 08.13.130. A person licensed under this act is required to display his license or to keep it with him if he is going to work outside of a regular place of business. A shop owner is affirmatively obligated to display the licenses of his employees.

Sec. 08.13.140. A license which has not been renewed for three years may be reinstated after payment of any required fees.

Sec. 08.13.150. The board has discretion to refuse, suspend, or revoke a license or permit for failure to comply with this chapter, with a regulation, or with an order of the board.

Sec. 08.13.160. Persons with valid licenses under existing law are allowed to continue to practice until their licenses expire. At that time, they will be required to comply with the provisions of this chapter and to obtain new licenses. The grandfather clause applies to persons who hold licenses

to practice barbering, and to persons holding any license under AS 08.28, which includes persons involved in the practice of hairdressing and beauty culture, managers, owners, instructors, and schools. Under AS 08.28 managers manicurists were licensed; but since they are no longer required to obtain a special license, the grandfather provision has no practical effect on them. The licensing requirements of this act also do not apply shampoo persons, persons who wash hair while under the supervision of a licensed practitioner. Additionally, no license is required to practice in a community having a population of less than 1,000 people so long as it is not within 25 miles of a community which is larger.

Sec. 08.13.170. A permit is available to a person who wishes to practice on a temporary basis in the state for educational purposes, and who is otherwise qualified. The board determines whether or not an applicant is qualified and a permit must specify the purpose for which the permit is granted, the period during which the holder may practice, and the place or places which the holder may practice.

Sec. 08.13.180. A person attending a school or serving an apprenticeship must hold a student permit. A permit to practice barbering or hairdressing is valid for two years, while one to practice cosmetology is valid for one year. A student permit may not be renewed; but the board has the discretion to issue a new permit to the same person or to extend an expired permit to the date of the next scheduled examination so that a person may continue training while waiting to be tested. If a person applies for a new student permit, the board has the discretion to transfer credit earned under the expired permit.

Sec. 08.13.190. A person who practices barbering, hairdressing, or cosmetology, operates a shop, operates a school, or teaches in a school without a license or permit commits a class B misdemeanor. This criminal penalty does not apply to a person practicing in or a shop located in a community of less than 1,000 people which is not within 25 miles of a larger community.

Sec. 08.13.200. Money generated through fees imposed under this chapter shall be deposited into the general fund.

Sec. 08.13.210. The Department of Health and Social Services is responsible for supervising sanitary conditions in shops and schools.

Sec. 08.13.220. This section defines terms.

(1) "Apprentice" is a person receiving on the job training under the supervision of someone licensed under this chapter. An apprentice may not receive a wage or commission until he has completed 350 hours of training, and no charge may be made for his work until that time.

(2) "Barbering" is shaving, trimming, cutting the beard or hair of a living person for a fee. A person practices barbering only when this is done for cosmetic, rather than for medical, purposes.

(3) "Board" refers to the Board of Barbers and Hairdressers.

(4) "Cosmetology" involves work upon the human body for cosmetic purposes for a fee.

(5) "Hairdressing" differs from "barbering" in that it includes temporary waving, permanent waving, singeing, bleaching, and coloring hair as well as shaving, trimming, or cutting the beard or hair.

(6) "Manicurist" is a person who works upon hands and nails for cosmetic purposes for fee. Manicurists are exempted from licensure.

(7) "Practitioner" is broadly defined to include all persons licensed to practice under this chapter.

(8) "Shampoo person" is a person who cleans or conditions hair under the supervision of a person who is licensed. A shampoo person is exempted from licensure.

(9) "Shop" includes barbering, hairdressing, and cosmetology establishments.

Section 2. The termination date of the Board of Barbers and Hairdressers is June 30, 1984.

Section 3. In order to include hairdressing establishments this section amends a provision which requires the commissioner of the Department of Health and Social Services to adopt regulations setting standards of cleanliness.

Section 4. The Board of Barbers and Hairdressers is added to the list of boards and agencies required to following the adjudicatory procedures of the Administrative Procedure Act.

Section 5. Provisions establishing a termination date of June 30, 1980 for the Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners are repealed; the chapters dealing with those boards are repealed entirely; and those two boards are removed from the list of boards and agencies required to comply with the adjudicatory provisions of the Administrative Procedure Act.

Section 6. The act becomes immediately effective.

If you have any further questions, please contact me.

TBC:ljb

CSSB 544

BOARD OF BARBERS AND HAIRDRESSERS

the Commerce C.S.

1. MR. PRESIDENT, I MOVE THE ADOPTION OF ~~CSSB 544 WHICH TERMINATES THE EXIST-~~
2. Mr. President, This bill terminates the existing Board of Barber Examiners and
~~ING BOARD OF BARBER EXAMINERS AND THE EXISTING BOARD OF HAIRDRESSING AND~~
Board of Hairdressing and
BEAUTY CULTURE EXAMINERS; AND ESTABLISHES A NEW BOARD, ~~ENTITLED~~ THE
Which combines
(and Cosmetologists into one board;)
BOARD OF BARBERS ~~AND~~ HAIRDRESSERS. ~~THE BARBERS, HAIRDRESSERS, AND~~
are qualified and as both barbers and hairdressers.
The ~~COSMETOLOGISTS ARE BROUGHT UNDER THE ONE BOARD. IT IS FELT THAT THE~~ Both the
Senate and House Commerce Committee as well as the Barbers and Hairdressers who
~~REGULATION OF~~ THESE PROFESSIONS WILL OPERATE MORE EFFECTIVELY AND testified or their
representatives
ECONOMICALLY UNDER THE NEW BOARD SINCE THESE PROFESSIONS ARE SIMILAR agreed to the
provisions of this bill.
IN NATURE. It is felt that

(SEC. 08)
P. 1, Ls. 13-15

SEC. 1 CREATES A NEW CHAPTER IN TITLE 8 COVERING THE COMBINED PROFESSIONS OF BARBERING AND HAIRDRESSING.

(SEC. 08.13.010)
P. 1, Ls. 16-23

CREATES THE BOARD OF BARBERS AND HAIRDRESSERS CONSISTING OF 5 MEMBERS APPOINTED BY THE GOVERNOR. THE BOARD CONSISTS OF 2 BARBERS, 2 HAIRDRESSERS AND 1 PUBLIC MEMBER.

(SEC. 08.13.020)
P. 1, Ls. 24-27

PROVIDES FOR MEMBERS OF THE BOARD TO SERVE STAGGERED TERMS OF 3 YEARS AND MEMBERS MAY SERVE NO MORE THAN TWO CONSECUTIVE TERMS.

(SEC. 08.13.030)
P. 1/2, Ls. 28/12

SPELLS OUT THE DUTIES OF THE BOARD, WHICH ARE THE FOLLOWING:

(1) THE BOARD SHALL EXERCISE GENERAL

CONTROL OVER THE VOCATIONS OF BARBERING, HAIRDRESSING AND COSMETOLOGY.

(2) THE BOARD SHALL EXAMINE APPLICANTS AND APPROVE THE ISSUANCE OF LICENSES AND PERMITS.

(3) THE BOARD SHALL APPROVE THE ISSUANCE OF LICENSES FOR SCHOOLS OF BARBERING, HAIR-DRESSING AND COSMETOLOGY.

(4) THE BOARD WILL SET FEES FOR LICENSING, ISSUING PERMITS, LICENSE AND PERMIT RENEWAL, AND OTHER CHARGES AS NECESSARY TO COVER THE OPERATING EXPENSES OF THE BOARD.

(5) THE BOARD SHALL SUBMIT A BUDGET TO THE LEGISLATURE AND REQUEST APPROPRIATIONS FROM THE GENERAL FUND, NOT TO EXCEED THE INCOME GENERATED FROM FEES TO COVER OPERATING EXPENSES.

(SEC. 08.13.030)
P. 2, LS. 13-20

SPELLS OUT THE <u>POWERS</u> OF THE BOARD, WHICH ARE AS FOLLOWS:

(1) THE BOARD HAS THE POWER TO SUSPEND OR REVOKE A LICENSE OR PERMIT;

(2) THE BOARD HAS THE POWER TO CONDUCT HEARINGS AND REQUEST THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO INVESTIGATE THE PRACTICES OF A PERSON OR SHOP OR SCHOOL WHICH IS INVOLVED IN THE PRACTICE OF TEACHING BARBERING, HAIRDRESSING,

OR COSMETOLOGY.

(3) THE BOARD HAS THE POWER TO ADOPT REGULATIONS OR DO ANY ACT TO CARRY OUT THE PROVISIONS OF THIS CHAPTER.

(SEC. 08.13.040)
P. 2, LS. 21-27

GIVES THE BOARD THE POWER TO MEET AS OFTEN AS NECESSARY TO CONDUCT ITS BUSINESS. THE BOARD SHALL CONDUCT SEPARATE EXAMINATIONS COVERING THE FIELDS OF BARBERING, HAIRDRESSING, AND COSMETOLOGY. THE EXAMINATIONS SHALL BE GIVEN AT LEAST TWICE IN EVERY YEAR FOR EACH FIELD OF PRACTICE FOR WHICH APPLICATIONS FOR LICENSURE ARE PENDING. AN APPLICANT MAY TAKE AN EXAMINTION IN MORE THAN ONE FIELD DURING THE SAME TESTING SESSION. HE MAY CHOOSE TO ENTER MORE THAN ONE FIELD OF PRACTICE.

(SEC. 08.13.050)
PS. 2/3, LS. 28/4

REQUIRES THE BOARD TO KEEP RECORDS OF THE ISSUANCE, REFERRAL, SUSPENSION AND REVOCATION OF LICENSES AND PERMITS. THEIR RECORDS SHALL CONTAIN THE NAME, PLACE OF BUSINESS AND DATE OF EACH LICENSE AND PERMIT ISSUED AND THEIR RECORDS ARE OPEN TO INVESTIGATION BY THE PUBLIC. THE BOARD IS ALSO REQUIRED TO SUBMIT AN ANNUAL REPORT ON ITS OPERATIONS TO THE GOVERNOR.

(SEC. 08.13.070)
P. 3, LS. 6-20

PROHIBITS:

(1) THE PRACTICE OF BARBERING, HAIRDRESSING OR COSMETOLOGY WITHOUT A LICENSE OR PERMIT UNLESS EXEMPT UNDER AS 08.13.160(c);

(2) OPENING OR CONDUCTING A SCHOOL OF BARBERING, HAIRDRESSING OR COSMETOLOGY WITHOUT A LICENSE;

(3) OPERATING A SHOP WITHOUT A LICENSE UNLESS SPECIFICALLY EXEMPTED BY STATUTE;

(4) ALLOWING AN EMPLOYEE OR PERSON BEING SUPERVISED TO PRACTICE BARBERING, HAIR-DRESSING OR COSMETOLOGY WITHOUT A LICENSE OR A PERMIT UNLESS EXEMPTED BY AS 08.13.160(c);

(5) PERMITTING THE USE OF A LICENSE OR PERMIT BY ANOTHER PERSON;

(6) OBTAINING OR ATTEMPTING TO OBTAIN A LICENSE OR PERMIT BY FRAUDULENT MEANS.

(SEC. 08.13.080)
PS. 3/4, LS. 21/4

SPELLS OUT THE QUALIFICATIONS OF APPLICANTS FOR EXAMINATION. THERE ARE THREE SEPARATE OCCUPATIONAL FIELDS WHICH AN APPLICANT MAY SEEK LICENSURE IN -- BARBERING, HAIRDRESSING, OR COSMETOLOGY. TO QUALIFY FOR LICENSURE, AN APPLICANT MUST HAVE FINISHED THE COURSES AND PASS THE EXAMINATION THAT A SCHOOL WITH A PROGRAM IN THE PARTICULAR FIELD IS REQUIRED TO TEACH. SEPARATE EXAMINATIONS SHALL

BE GIVEN FOR THE FIELDS OF BARBERING, HAIR-DRESSING, AND COSMETOLOGY. IT IS ALSO POSSIBLE FOR AN APPLICANT TO QUALIFY FOR EXAMINATION THROUGH SERVING AN APPRENTICESHIP, RATHER THAN BY ATTENDING A LICENSED OCCUPATIONAL SCHOOL.

(SEC. 08.13.082)
P. 4, LS. 5-22

DESCRIBES THE ACCEPTED APPRENTICESHIP PROGRAM, WHICH MAY ONLY BE CONDUCTED IN A SHOP APPROVED BY THE BOARD. A PERSON WANTING TO BECOME A BARBER IS REQUIRED TO RECEIVE 1,500 HOURS OF APPRENTICESHIP TRAINING. THE PROGRAM MUST LAST AT LEAST NINE MONTHS AND MAY NOT BE EXTENDED PAST TWO YEARS. A PERSON WHO WISHES TO BECOME A HAIRDRESSER MUST COMPLETE 2,000 HOURS OF APPRENTICESHIP TRAINING IN NOT LESS THAN ONE YEAR AND NOT OVER TWO YEARS. A PERSON WHO WISHES TO PRACTICE COSMETOLOGY MUST RECEIVE 350 HOURS OF APPRENTICESHIP TRAINING OVER A PERIOD OF SIX MONTHS BUT WITHIN ONE YEAR.

(SEC. 08.13.090)
PS. 4/5, LS. 23/4

REQUIRES THAT EACH APPLICANT FOR LICENSURE MUST PASS A WRITTEN EXAMINATION COVERING SANITARY PRACTICES, SAFETY OF ALL

PROCEDURES USED IN A PARTICULAR FIELD, AND THE CARE OF INSTRUMENTS, EQUIPMENT AND CHEMICALS PERTINENT TO THE PARTICULAR FIELD. THE BOARD THROUGH REGULATION HAS THE DISCRETION TO REQUIRE A PRACTICAL EXAMINATION.

(SEC. 08.13.100)
P. 5, LS. 5-20

STATES THAT A LICENSE IS VALID FOR 2 YEARS AND IT SHALL STATE THE FIELD OR FIELDS OF PRACTICE WHICH A PERSON IS REQUIRED TO PERFORM. A PERSON WHO IS LICENSED IN ANOTHER STATE OR COUNTRY IS AUTOMATICALLY ENTITLED TO A LICENSE IN THIS STATE WITHOUT EXAMINATION UPON PAYMENT OF THE REQUIRED FEES AND PROOF OF COMPLETED TRAINING AND WORKING EXPERIENCE.

(SEC. 08.13.110)
P. 5, LS. 21-25

PROVIDES THAT SCHOOLS OF BARBERING, HAIRDRESSING, AND COSMETOLOGY SHALL BE LICENSED IF THEY MEET STANDARDS SET BY THE BOARD. THE BOARD MUST ADOPT REGULATIONS SETTING STANDARDS FOR LICENSING, INCLUDING CURRICULUM REQUIREMENTS, HOURS OF INSTRUCTION, PHYSICAL CONDITION OF SCHOOL FACILITIES, AND FINANCIAL RESPONSIBILITY OF THE OWNER.

(SEC. 08.13.120)
PS. 5/6, LS. 26/3

REQUIRES THE BOARD TO ADOPT REGULATIONS FOR LICENSING BARBER, HAIRDRESSING, AND COSMETOLOGY SHOPS. AN OWNER WILL BE LICENSED TO OPERATE A SHOP WITHOUT AN EXAMINATION; HOWEVER, UNLESS HE IS LICENSED TO PRACTICE, HE MUST EMPLOY A MANAGER WHO IS. NO LICENSURE REQUIREMENT IS IMPOSED UPON SHOPS LOCATED IN COMMUNITIES HAVING A POPULATION OF LESS THAN 1,000 PEOPLE AS LONG AS THERE IS NOT A COMMUNITY OF OVER 1,000 PEOPLE WITHIN 25 MILES.

(SEC. 08.13.130)
P. 6, LS. 4-8

REQUIRES A PERSON LICENSED UNDER THIS ACT TO DISPLAY HIS LICENSE OR TO KEEP IT WITH HIM IF HE IS GOING TO WORK OUTSIDE OF A REGULAR PLACE OF BUSINESS. A SHOP OWNER IS ALSO AFFIRMATIVELY OBLIGATED TO DISPLAY THE LICENSES OF HIS EMPLOYEES.

(SEC. 08.13.140)
P. 6, LS. 9-12

A LAPSED LICENSE MAY BE REINSTATED IF THE LICENSE HAS NOT BEEN LAPSED FOR A PERIOD OF MORE THAN THREE YEARS, AND ALL RENEWAL AND DELINQUENT FEES ARE PAID.

(SEC. 08.13.150)
P. 6, LS. 13-17

GIVES THE BOARD THE DISCRETION TO REFUSE, SUSPEND, OR REVOKE A LICENSE OR PERMIT FOR FAILURE TO COMPLY WITH THIS CHAPTER, WITH A REGULATION, OR WITH AN ORDER OF THE BOARD.

(SEC. 08.13.160)
Ps. 6/7, Ls. 18/8

IS THE GRANDFATHER CLAUSE WHICH ALLOWS A PERSON WITH VALID LICENSES UNDER EXISTING LAW TO CONTINUE TO PRACTICE UNTIL THEIR LICENSES EXPIRE. AT THAT TIME, THEY WILL BE REQUIRED TO COMPLY WITH THE PROVISIONS OF THIS CHAPTER. ADDITIONALLY, NO LICENSE IS REQUIRED TO PRACTICE IN A COMMUNITY HAVING A POPULATION OF LESS THAN 1,000 PEOPLE SO LONG AS IT IS NOT WITHIN 25 MILES OF A COMMUNITY WHICH IS LARGER.

(SEC 08.13.170)
P. 7, Ls. 9-20

THIS SECTION STATES THAT A TEMPORARY PERMIT IS AVAILABLE TO A PERSON WHO WISHES TO PRACTICE ON A TEMPORARY BASIS IN THE STATE FOR EDUCATIONAL PURPOSES, AND WHO IS OTHERWISE QUALIFIED.

(SEC. 08.13.170)
Ps. 7/8, Ls. 21/1

DEALS WITH STUDENT PERMITS AND STATES THAT A PERSON ATTENDING A SCHOOL OR SERVING AN APPRENTICESHIP MUST HOLD A STUDENT PERMIT. A PERMIT TO PRACTICE BARBERING OR HAIRDRESSING IS VALID FOR TWO YEARS, WHILE ONE TO PRACTICE COSMETOLOGY IS VALID FOR ONE YEAR. A STUDENT PERMIT MAY NOT BE RENEWED; BUT THE BOARD HAS THE DISCRETION TO ISSUE A NEW PERMIT TO THE SAME PERSON OR TO EXTEND AN EXPIRED PERMIT TO THE DATE OF THE NEXT SCHEDULED EXAMINATION SO THAT A PERSON MAY CONTINUE TRAINING WHILE WAITING TO BE TESTED. IF A PERSON APPLIES FOR A NEW STUDENT PERMIT, THE BOARD HAS THE DISCRETION

TO TRANSFER CREDIT EARNED UNDER THE EXPIRED PERMIT.

(SEC. 08.13.190) P. 8, Ls. 2-8 — A PERSON WHO PRACTICES BARBERING, HAIRDRESSING, OR COSMETOLOGY, OPERATES A SHOP, OPERATES A SCHOOL, OR TEACHES IN A SCHOOL WITHOUT A LICENSE OR PERMIT COMMITS A CLASS B MISDEMEANOR. THIS CRIMINAL PENALTY DOES NOT APPLY TO A PERSON PRACTICING IN OR A SHOP LOCATED IN A COMMUNITY OF LESS THAN 1,000 PEOPLE WHICH IS NOT WITHIN 25 MILES OF A LARGER COMMUNITY.

(SEC. 08.13.200) P. 8, Ls. 11-12 — STATES THAT MONEY GENERATED THROUGH FEES IMPOSED UNDER THIS CHAPTER SHALL BE DEPOSITED INTO THE GENERAL FUND.

(SEC. 08.13.210) P. 8, Ls. 13-16 — STATES THAT IT IS THE RESPONSIBILITY OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES TO SUPERVISE SANITARY CONDITIONS IN SHOPS AND SCHOOLS.

(SEC. 08.13.220) Ps. 8/9, Ls. 10/21 — CONSISTS OF DEFINITIONS.

(SEC. 08.03.010(c)) P 9, Ls. 22-24 — SECTION 2 STIPULATES THE TERMINATION DATE FOR THE BOARD OF BARBER AND HAIRDRESSERS AS JUNE 30, 1984.

(SEC. 18.05.040) Ps. 9/10, Ls. 26/3 — SECTION 3 IS AMENDED TO INCLUDE HAIRDRESSING AND COSMETOLOGY ESTABLISHMENTS IN THE EXISTING REQUIREMENT OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES TO ADOPT REGULATIONS SETTING STANDARDS OF CLEANLINESS FOR THESE ESTABLISHMENTS.

(SEC. 44.62.330(A)) P. 10, Ls. 4-5 — SECTION 4 ADDS THE BOARD OF BARBERS AND HAIRDRESSERS TO THE EXISTING LIST OF BOARDS REQUIRED TO FOLLOW THE ADJUDICATORY PROCEDURES OF THE ADMINISTRATIVE PROCEDURES ACT.

P. 10, Ls. 6-7 — SECTION 5 REPEALS THE FOLLOWING:

AS 08.03.010(B)(2) AND (4) - REMOVES THE BOARD OF BARBER EXAMINERS AND THE BOARD OF HAIRDRESSING AND BEAUTY CULUTURE EXAMINERS FROM THE LIST OF BOARDS WHICH HAD A TERMINATION DATE OF JUNE 30, 1980.

AS 08.12 - REPEALS THE BOARD OF BARBER EXAMINERS.

AS 08.28 - REPEALS THE BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS.

AS 44.62.330(A)(1) AND (7) - REMOVES THE BOARD OF BARBER EXAMINERS AND THE BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS FROM THE LIST OF BOARDS REQUIRED TO FOLLOW THE ADJUDICATORY PROCEDURES OF THE ADMINISTRATIVE PROCEDURES ACT.

P. 10, Ls. 8-9 SECTION 6 PROVIDES THAT THIS ACT TAKES EFFECT IMMEDIATELY.

Aurora Hair Forum
547 2nd Avenue
Fairbanks, Alaska
99701

Alaska State Legislature
Senate
Committee On Commerce

To Whom It May Concern:

This is my testimony regarding the Board of Barbers Examiners, Oct. 22, 1979.

The members of the BArbers Board has operated in the interest of the public, by encouring the Barbers to promote communicable hygiene and Sanitation.

Doing the Hickel administration the members of the Board tried to get an apprentice bill passed. The apprentice bill lost by one vote.

Recommendation No. 8; States that the minutes are not complete and in enough detail to recreate what happen at the Board meeting.
I had a chance to sit in on one of the Board meetings to ask a question. The entire meeting were taped. I asked about the taping .
The members said the tapes were sent to the commerce department to be typed and mailed to the Boards secretary to be signed , and mailed back to the commerce department. There you have two copies.
With this procedure you have all of the meeting in complete detail.

To protect the public the Board members has made sure that No Barber Stylist are working under the influence of alcohol or drugs.

End of testimony.

Thank You,
Alberta J. Grant

Alberta J. Grant

I feel that every professional organization should have there own Board Examiners.
Here are some laws that I would like to see changed.

SEC. 081280 Numbers one and two. Barbering defined. Add chemicals, bleaching , Makeups and skincare.
SEC. 0812030 eliminate numbers 4,6,&7. Board members to revised inspection sheets.
SEC 0812040 Multiple choice exams.
Sec 0812010Board members (Four Barbers) Fifth Person AConsumer.
SEC. 0812020 Add one consumer who has resided in the State of Alaska for ten or more years.
SEC. 0812030 Add photo to displayed license.

Thank You,

Alberta J. Grant

Alberta J. Grant

PETITION

For the safety of the public we, the undersigned registered voters, petition our Alaska State Legislative Body to reestablish the Alaska State Board of Barber Examiners.

NAME	ADDRESS
[illegible]	SR BOX 80660 FAIRBANKS AK 99701
Jerry Williams	1629 Pioneer Rd. FBKS AK 99701
[illegible]	915 21st Ave
Hugh Butler	822 7th AVE
[illegible]	SR Box 50125 FBKS AK
[illegible]	PO Box 10077 FBKS
[illegible]	
[illegible] Meetfell	SR 51039
[illegible]	702 24th ST FBKS AK
Michele Watkins	1420 Lathrop St.
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John C Bates	BOX F FAIRBANK
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Leonard [illegible]	Box 81323 College AK
James Vande Voorde	Box 60324 Fairbanks AK

PETITION

For the safety of the public we, the undersigned registered voters, petition our Alaska State Legislative Body to reestablish the Alaska State Board of Barber Examiners.

NAME	ADDRESS
[illegible]	P.O. Box 2641, Fbks
[illegible]	217 McIntosh Hall, College
[illegible]	Box 5342 North Pole, Ak 99705
[illegible]	2022 Blueberry St City
[illegible]	1234 McCarty ST.
[illegible]	220 ½ Barnette Ave City
[illegible]	14 REDE RD
[illegible]	SR 20671
[illegible]	303 O'connor #15
[illegible]	606 Gentry Dr.
[illegible]	Box 1912
[illegible]	Box 791
[illegible]	1205 Park Fbks. Ak
[illegible]	1709 So. Reagan Court.
[illegible]	330 Wedgewood F-5
[illegible]	1918 Central
[illegible]	P.O. Box 1025 Fairbanks Alaska 99707
[illegible]	1114 Nenana St. Fbks, AK. 99701
[illegible]	SR Barnette Fairbanks 99701
[illegible]	4027 Birch Ln - Fairbanks
[illegible]	825 17th apt 124 Fairb
[illegible]	SR 10592 Fbks 99701
[illegible]	P.O. Box 60536 Fbks AK 99701
[illegible]	619 11th Ave #B Fbks.
[illegible]	1133 19th Ct
[illegible]	Manley Hot Springs Alaska
[illegible]	S. R. Box 20575 Fairbanks, AK 99701
[illegible]	PF Box 72973 FRBK 99707
[illegible]	P.O. Box BH91, Fbks AK 99708
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Nissel A. Rose
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April 2, 1980

Alaska State Legislature
Senate Commerce Committee
Pouch V
Juneau, AK 99811

Attn: The Honorable Senator Bradley, Chairman

Dear Senator Bradley:

This letter offers comments on HB 978. On behalf of the Alaska Hiardressers and Cosmetologists Association, it is submitted that the bill does not meet the desires of the thousands of consumers who have submitted statements to your committee, or the substance of the testimony at hearings held by your committee. The consolidation of the two existing boards, Barbers and Hairdressing and Beauty Culture, does not require the combining of the professions or the domination of the new agency by barbers, as the new bill proposes.

Passage of HB 978 would deal a serious blow at cosmetologists as the word is used in the beauty culture field and by legislatures elsewhere, which includes hairdressers, as opposed to barbers. We believe that it would also be of real concern to the customers who would have no way of knowing whether an operator (licensee) is a person trained in one area or the other.

While other states such as California have expanded the role of boards of cosmetology as reflected by the bill proposed by the Association, and require continuing professional eduction as a condition of renewal of licenses for the protection of the using public, HB 978 appears to be a step backwards from consumer protection and a lowering of professional requirements.

The bill appears to be a great one for barbers, but a sad one for hairdressers.

1. The definition of cosmetology used (A.S. 08.13.220(3)) does not follow the meaning of the word generally adopted throughout the nation or by the writers in the subject.

2. "Hairdressing" is not defined.

3. "Hairdresser" is not defined.

4. No legislative guideline or standard is given for schools other than requiring regulations as to "curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsibility of the owner." (A.S. 08.13.110). Nothing is provided regulating or establishing standards for teachers, or student-teacher ratio, minimum equipment required, supplies, reports, required filings, or standards for approval, disapproval suspension, or revocation.

5. No standards are provided for shops.

6. No inspection of shops or schools is provided, except for health and sanitation enforcement by Health and Social Services who has had a dismal performance of the same authority in the past. California has resorted to inspectors under Board of Cosmetology supervision for the purpose, the same here would combine health, sanitation and compliance with other standards such as display of licenses, equipment used, checking personnel, professional supervision, etc. As licensees are required to demonstrate knowledge in these areas, they should be well qualified, and inspector qualifications can be higher.

7. Historically, as far back as ancient history, barbers and cosmetologists have been separate professions. They have separate associations. But this bill lumps them together so that the board may be totally controlled by one profession. As set out by Section 6, the five members of the existing Board of Barbers are to be voting ex-office members, thus assuring control of the new Board by Barbers to the exclusion of cosmetologists. Even without it, three "Hairdressers" may be all barbers! Only one cosmetologist is assured.

8. Grandfather rights are provided for barbers by A.S. 08.13.150, but none are provided for cosmetologists.

9. A "barber" license is provided by A.S. 08.13.150 and 010(b)(1) no definition is offered as to what is a barber, except by reference to A.S. 08.12 and regulations thereunder, but that statute is repealed by Section 5, and all regulations thereunder are repealed by implication, as they rely upon A.S. 08.12 for their validity. Thus, once A.S. 08.12 is repealed, any interested person would have to search statutes and regulations

no longer published to attempt to find the meaning of the new statute. That is both unfair, unjust and unduly expensive and time consuming.

10. The only licenses contemplated by A.S. 08.13.070 are (1) for hairdressing or cosmetology, and (2) to organize, open or conduct a school. None appears to be provided for "barbers" or for teachers.

11. Qualifications under A.S. 08.13.080 require successful completion of all courses required to be taught by a school of hair design, but does not include any mention of a school of cosmetology. Furthermore, these provisions appear contrary to A.S. 08.13.090 which contemplates examination "within the field of practice for which the applicant is seeking a license", and to A.S. 08.13.100(b) which provides that "A license shall state the areas of practice the practitioner is qualified to perform." Again, that section provides for a designation as "barber", "hairdresser" or both, but neither is defined by the bill. Surely, if one is to be licensed in a limited area of practice, then one should not be required to successfully complete all courses offered.

12. It appears that A.S. 08.13.120 permits practice "outside of a place of business", but provides no criteria for such itenerant practice, particularly in the area of sanitation, and would appear to make it virtually impossible to subject such itenerant practitioner to any form of inspection, thus negating the intent.

13. If licensing and regulation of hairdressers and cosmetologists is deemed desirable for the protection of the consumers of the service, there appears to exist no logical reason for excluding from that protection communities of less than 1,000 people as provided by A.S. 08.13.150(b). The further question arises as to the status of an unlicensed practitioner in such a community who, after a period of some years of such practice, moves to a more populated area, or the area in which such person practices increases in populaiton from 999 to 1,000. Would such a practitioner be suddenly illegal, or would he or she be somehow "grandfathered in"? There appears to be no reason why such a practitioner should not be required to be examined and licensed initially. The subsection should be eliminated.

14. While A.S. 08.13.150(b) appears to create an exemption, the misdemeanor provisions of A.S. 08.13.180 contain no exception. Clarification would be helpful.

15. Page 8, line 10, "affect" is apparently intended to be "effect".

16. The loose definition of "cosmetology" in A.S. 08.13.220 may, conceivably, include manicurists, cosmeticians, and electrologists, but appears to be intended to cover only cosmeticians, although the phrase, "similar work" is subject to widely varying interpretations, and what is intended by "the human body" is likewise vague. For example, it could include pedicure, or even the occupation engaged in by massage parlors, erotic or otherwise. On may also wonder whether the head and the limbs are intended to be included in "the human body", or whether the phrase includes only the torso.

17. Although the minimum requirements of A.S. 08.13.082 [one year under (a), and six months under (b)] are understandable, the maximum requirements are not. If the language is changed to "not more than" instead of "not less than", the meaning is clearer, but the result would appear highly inequitable if the apprentice had to interrupt education for a period of time, such as for illness, resulting is going over the limitation. If A.S. 08.13.170 is intended to cure the problem such is not indicated by 082.

18. A number of states are requiring continuing professional education as a condition of license renewal. The bill proposed by the Alaska Hairdressers and Cosmetologists Association contained such a provision because customers should be entitled to know that new procedures, products, styles and safety provisions are known to the practitioner. This bill has no such provision, but it should.

19. The administrative disciplinary powers conferred upon the Board include only suspension and revocation of licenses. The harshness of the provisions often result in their failure of enforcement, or undue litigation efforts and expense on the part of the threatened licensee who needs to protect his right to earn a livelihood. Again, the bill proposed by the Association provided for the assessment of civil penalties or fines, which can often accomplish the desired result much more equitably,

efficiently, and economically for the state as well as for the licensee. A specific power to issue orders to show cause might well speed up and facilitate the Board's administration of its disciplinary authority.

The attached draft statement for use by the various state chapters of the National Hairdressers and Cosmetologists Association discusses the wide differences between the professions which are not addressed by HB 978.

In conclusion, the bill, as written, appears to be in need of considerable revision if it is to accomplish the desired purposes equitably, with clarity, in the interest of the public, and without undue discrimination against cosmetologists who are considerably more numerous than barbers.

Very truly yours,

ROSE & BREEZE, P. C.

By: _____
Nissel A. Rose

cc: All members of Committee
Mr. Christian Basler
Alaska Hairdressers & Cosmetologists Association

NAR:lw

500.

STATEMENT BY THE

[STATE] HAIRDRESSERS AND COSMETOLOGISTS ASSOCIATION

CONCERNING THE MERGER OF THE

[STATE] BOARDS OF COSMETOLOGY AND BARBERING

For the past [number] years, the [State] Hairdressers and Cosmetologists Association has represented the concerns of the now more than [number] licensed cosmetologists in [state] and has been committed to ensuring high standards of professionalism among the practitioners of beauty culture. To this end, the [State] Hairdressers and Cosmetologists Association has sought to expand and intensify the curriculum of beauty schools and has supported an active role for the [state] board of cosmetology. However, because of such activities and because the officers of the [State] Hairdressers and Cosmetologists Association are themselves practicing cosmetologists, the [State] Hairdressers and Cosmetologists Association is vitally aware of the uniqueness of this profession and particularly the specialized skills required to service the patrons of beauty salons.

It is because of the distinctiveness of this profession that the [State] Hairdressers and Cosmetologists Association opposes the merger of the [state] boards of cosmetology and barbering. The qualifications and characteristics of these two professions are so diverse as to make it infeasible and therefore inappropriate for cosmetologists to serve on a board

which examines the qualifications of graduates of barber schools and conversely for barbers to evaluate the competency of graduates of beauty schools. It would be equally difficult for cosmetologists to fairly evaluate whether a barber's license should be suspended or revoked as it would be similarly infeasible to expect a barber to be able to judge the performance of a licensed cosmetologist. Therefore, the merger of these traditionally separate boards would do a disservice to both professions and would hinder the respective board members' ability to effectively fulfill their statutory obligations.

Moreover, there are limitations on a legislature's power to classify or merge various occupations with respect to licensure. In order to be lawful, the classification of occupations must be reasonable; accordingly, different classes must be regulated by different administrative bodies. Although the differences among the established classes must be "substantial" to warrant separate administration, it is clear that they do not have to be "great" to require individual licensing.

The disparity between the cosmetology profession and the barbering profession clearly requires separate and distinct licensing requirements and separate and distinct regulatory boards. The disparity is most noticeably reflected in the diversity of the services each renders to its particular clientele. Since the cosmetologist primarily serves female patrons, fashion is a critical factor in the performance of the art of hairdressing. It

is not enough to know how to cleanse and cut hair. A licensed cosmetologist must be an expert in hairstyling and be able to cut, set and comb out a patron's hair so that it not only reflects the latest trends in hair fashion but also suits the personality and physiognomy of the customer.

Since women can wear their hair short or long, straight or curly, twisted into French knots or corn rows, plain or adorned with ribbons, hairpieces, combs or barretts, it is obvious that the hairdresser requires different skills than the barber who remains essentially immune from the vagaries of hair fashion. In order to achieve certain effects, the hairdresser must be trained in finger-waving, wigology, curling, singeing, thinning, tinting, streaking, bleaching, rinsing, permanent waving, hair straightening, pin and roller curling as well as iron curling. Many of these skills would be of little service in a barber shop.

In addition, because the salon owners service a female clientele, the licensed cosmetologist must be skilled in the application of cosmetics. Not only do hairdressers need to understand the use and advantages of such cosmetics as eyeshadow, rouge and nail polish, but they must also be able to arch and tint eyebrows as well as remove facial hair by the use of tweezers, wax, depilatories and electricity or camouflage such superfluous hair by bleaching, again employing techniques not required by barbers who service their clients more appropriately by shaving off facial hairs.

Because cosmetologists and barbers provide different services to their patrons, they generally rely on different instruments and tools. It is the rare occasion at most that a barber would be called on to use hair pins, bobby pins, clips, curlers, rollers, hair nets, curling irons, hair dryers or eyebrow tweezers. It would be equally unusual for a cosmetologist to wield a straight razor during the course of a traditional day's practice.

Such diversity in the services performed and the implements used are reflected in the differences in the curriculum provided and often required by statute in schools that train future cosmetologists and barbers. The very fact that there are beauty schools which are separate and distinct in ownership and operation from barber schools underscores the separateness of the two professions. A perusal of the subjects offered in beauty schools indicates that cosmetologists emphasize clinical instruction and receive extensive training in hair styling, permanent waving (a service which barbers are prohibited by law from offering in California and several other states), cosmetics, hair coloring and lightening as well as the care and styling of wigs.

In addition, a survey of the hours of training required for cosmetologists and barbers reveals that cosmetologists in 29 states were required by law to have considerably more instruction than student barbers. In another 13 states, both professions have an equal number of training

hours, leaving only 8 states where cosmetologists receive less instruction than barbers. In fact, cosmetologists generally receive 1,000 to 2,500 hours of training in contrast to barbers who receive from 0 to 2,000 hours. Further, not only are cosmetologists' apprenticeship training periods generally longer than in the barber apprenticeship programs, but the minimum educational qualifications for admission to beauty schools are higher than the requirements for acceptance in barber schools.

Finally, the existence of two separate and distinct professions is confirmed by the fact that there are now and traditionally have been two separate trade associations, the National Hairdressers and Cosmetologists Association, Inc., which represents the concerns of the licensed cosmetologist and the Associated Master Barbers and Beauticians Association which represents the practicing barber. Each explores the interests and deals with the problems unique to its membership. Although there is informational exchange between the two groups, each association works to service the particular needs and express the views of their individual members.

Thus, it is imperative that the [state] board of cosmetology and the [state] board of barbering continue to function as two separate entities. The cosmetologist and the barber serve different clients, perform different services, use different implements, study different courses and have different interests as reflected in the existence of their separate

trade associations. The [State] Hairdressers and Cosmetologists Association therefore opposes the merger of these two distinctive licensing boards so that applicants and practitioners alike can be evaluated by those best suited to judge their capabilities and their performance.

March 17 ,1980

The Hon. W. "Brad" Bradley
Chairman, Senate Commerce Committee
Pouch V
Juneau, AK 99811

Dear Sen. Bradley:

Supplementing my prior statement before your committee concerning the sunset consideration of the Board of Hairdressing and Beauty Cultures Examiners. You have been furnished by Mr. Rose with some of the thousands of consumer statements which have been gathered by beauty shops and operators in various parts of the State. There are many more that should be on their way to your committee. Interestingly, none of the users of services of cosmetologists have seen fit to file any statements in opposition to continuing regulation, supervision and licensing of the profession and shops. Neither have any of the consumers opted for any form of bureaucratic supervision by any office of the administration composed of State employees rather than members of the profession.

Obviously, there appears to be a strong feeling on the part of consumers in support of the Association's position expressed before your committee.

You have also been furnished with the draft of a proposed bill terminating the existence of Board of Hairdressing and Beauty Culture Examiners, and replacing it with a Board of Cosmetology consisting of seven members, including two public members and five cosmetologists. In preparing this comprehensive bill, the Association has considered existing statutes of a number of other jurisdictions, and has chosen to pattern the bill basically after the California statute, with a few modifications taken from Florida law and from existing Alaska law, generally to fit the local situtation better.

The jurisdiction of the proposed Board of Cosmetology has been expanded to include Cosmeticians, which is a relatively new branch

among Cosmetologists, and Electrology, which involves the permanent removal of hair by the application of electricity.

The Association and myself, sincerely believe that the proposed bill constitutes a considerable improvement over the existing statute, and we respectfully urge you to give it favorable consideration.

Very truly yours,

By: Wilma Radegue
Wilma Radegue

WR:pj

AMENDMENT

OFFERED IN THE SENATE: BY: BRADLEY

TO: CS SENATE BILL No. 544

HOUSE BILL No. _____

PAGE: _____ LINE: _____

1. on / Page 6, Lines 22 thru 24: (Sec. 160(a))

After the word "expires," delete the ", at which time the provisions of this chapter apply and a license issued under AS 08.12 cannot be renewed" (This change grandfathers in Barbers.)

remainder of the sentence.

2. on / Page 6, lines 27 thru 29:

After the word "expires", delete the ", at which time the provisions of this chapter apply and a license issued under AS 08.28 cannot be renewed" (This change grandfathers in Hairdressers.)

remainder of the sentence

3. on / Page 7, before line 1: (Sec. 160(a) and (b))

Insert the following new material as a new subparagraph (c)

(c) A person holding a valid license issued under AS 08.12 (Barbers chap.) or AS 08.28 (Hairdressers chap.) shall be entitled upon expiration of the license to a license to practice under this chapter, without meeting requirements for new licensure. (This subparagraph was added, and it applies to the grandfathering in of both Barbers and Hairdressers.)

4. Page 7, line 1:

Delete "(c)" and insert "(d)" in its place. (This, of course, is merely a relettering of subparagraphs.)

*The reason for this entire amendment is to allow anyone who holds a current license in either barbering or hairdressing, no matter how it was obtained, to be entitled to a new license under this chapter without having to go to school and be examined.

Mike - Concur w/ House changes

HOUSE CS FOR CS FOR SENATE BILL 544
THE BOARD OF BARBERS AND HAIRDRESSERS

The following changes were made by the house regarding CSSB 544:

(1) P. 2. LS. 7-12 (CSSB 544) - The house deleted these lines in the Senate Bill which removes the regulation of fees by the board. The house inserted a fee schedule into ststute which we can go along with. In the HCS the fee schedule is added on P. 8/9, Ls. 5/1.

(2) P. 5. LS. 7-10 (HCSCSSB 544) - The house added a section (c) which allows the board to create limited areas of professional licensing of cosmotology by regulation.
The board may not restrict or regulate the fields of manicure or pedicure. Initially the Senate didn't realize that there were only 4 (four) manicurirts in the state. All their equipment and materials can be purchased over the counter and there is no need to regulate these fields. We can go along with this change. Section (c) in the senate bill was changed to (d) in the HCS to allow for this change.

(3) P. 6. LS. 8-10 (HCSCSSB 544) - The house added a sentence requiring a person holding a student permit or temporary permit to have his permit available for inspection when engaged in practice. This goes along with the requirement for display of license of other practitioners as well.

(4) P. 7. LS. 8 (CSSB 544) - - The house deleted [a manacurist] from this section since there is no need for regulation of manacurists. (see (2) above).

(5) P. 9, LS. 9-13 - The definition of manacurist was deleted. (see (2) above)

Original sponsor: Commerce Committee

IN THE SENATE BY THE COMMERCE COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 544

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of the practice of barbering, hairdressing, and cosmetology; terminating the existence of the Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners; establishing the Board of Barbers and Hairdressers; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08 is amended by adding a new chapter to read:

CHAPTER 13. BARBERS AND HAIRDRESSERS.

ARTICLE 1. BOARD OF BARBERS AND HAIRDRESSERS.

Sec. 08.13.010. CREATION AND MEMBERSHIP OF BOARD. (a) There is created the Board of Barbers and Hairdressers consisting of five members appointed by the governor.

(b) The board consists of

(1) two persons licensed as barbers under this chapter;

(2) two persons licensed as hairdressers under this chapter; and

(3) one public member.

Sec. 08.13.020. TERM OF OFFICE AND REMOVAL OF MEMBERS. Members serve staggered terms of three years at the pleasure of the governor. Members of the board may be appointed to serve no more than two consecutive full terms.

Sec. 08.13.030. POWERS AND DUTIES OF THE BOARD. (a) The board shall exercise general control over the vocations of barbering, hair-

dressing, and cosmetology.

(b) The board shall

(1) examine applicants and approve the issuance of licenses and permits to practice;

(2) authorize the issuance of licenses for schools of barbering, hairdressing, and cosmetology.

(c) The board may

(1) suspend or revoke a license or permit;

(2) on its own motion or upon receipt of a written complaint, conduct hearings and request the department to investigate the practices of a person, shop, or school involved in the practice or teaching of barbering, hairdressing, or cosmetology;

(3) adopt regulations or do any act necessary to carry out the provisions of this chapter.

Sec. 08.13.040. MEETINGS AND EXAMINATIONS. The board shall meet as often as necessary to conduct its business. It shall conduct separate examinations covering each field of practice: barbering, hairdressing, and cosmetology. Examinations shall be given at least twice in every year for each field of practice for which applications for licensure are pending. An applicant may take an examination in more than one field during the same testing session.

Sec. 08.13.050. RECORDS OF THE BOARD. The board shall keep a record of its proceedings related to the issuance, refusal, suspension, and revocation of each license and permit. The record shall contain the name of the person to whom a license or permit is issued, his place of business, the date of issuance for each license and permit, and whether it is currently valid. The record shall be open to inspection by the public at all reasonable times. The board shall submit an annual report on its operations to the governor.

ARTICLE 2. EXAMINATION AND LICENSING.

Sec. 08.13.070. LICENSE REQUIRED. A person may not

(1) practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit unless exempted under AS 08.13.160(d);

(2) open or conduct a school of barbering, hairdressing, or cosmetology without a license;

(3) operate a shop in violation of AS 08.13.120;

(4) permit a person in his employ or under his supervision who is not exempted under AS 08.13.160(d) to practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit;

(5) permit the use of his license, temporary permit, or student permit by another person;

(6) obtain or attempt to obtain a license, temporary permit, or student permit by fraudulent means.

Sec. 08.13.080. QUALIFICATIONS OF APPLICANTS. An applicant for examination must

(1) have successfully completed all courses that a school with a program in barbering is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice barbering;

(2) have successfully completed all courses that a school with a program in hairdressing is required to teach to be licensed under AS 08.13.110 if applying for a license to practice hairdressing;

(3) have successfully completed all courses that a school with a program in cosmetology is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice cosmetology; or

(4) have served an apprenticeship under AS 08.13.082.

Sec. 08.13.082. APPRENTICESHIP. (a) The period of apprenticeship

required to qualify an applicant for a license to practice barbering is 1,500 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than nine months from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(b) The period of apprenticeship required to qualify an applicant for a license to practice hairdressing is 2,000 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than one year from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(c) The period of apprenticeship required to qualify an applicant for a license to practice cosmetology is 350 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than six months from the date of its commencement and must be completed in not more than one year from the date of its commencement.

Sec. 08.13.090. EXAMINATIONS AND OTHER REQUIREMENTS. (a) A written examination shall be given to each applicant for examination at a time and place determined by the board. The board may delegate the power of examination to a committee of the board or a board member.

(b) The written examination shall cover subjects designated by the board and shall test the applicant's knowledge of sanitary practices, safety of all procedures, and use of instruments, equipment and chemicals permitted within the field of practice for which the applicant is seeking a license.

(c) The board may by regulation establish requirements for a practical examination for licensure.

Sec. 08.13.100. LICENSE. (a) The board shall authorize the

issuance of a license to each qualified applicant who has passed an examination under AS 08.13.090. The license is valid for two years and subject to renewal.

(b) A license shall state the areas of practice (barbering, hairdressing, cosmetology, or any combination) which the practitioner is qualified to perform.

(c) The board may by regulation create areas of limited professional licensing in the field of cosmetology, except that the board may not restrict or otherwise regulate the practice of manicure or pedicure. Any limitation must be stated on the license.

(d) A person holding a current valid license from a board of barbering, hairdressing, or cosmetology in another state or country is entitled to a license under this chapter without examination. An application shall include:

(1) proof of a valid license issued by another licensing jurisdiction;

(2) proof of completed training and working experience which the board finds to meet the minimum requirements of the state;

(3) payment of a credential investigation fee.

Sec. 08.13.110. SCHOOL LICENSE. The board shall adopt regulations for the licensing of schools of barbering, hairdressing, and cosmetology. The regulations shall include details of the curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsiblity of the owner.

Sec. 08.13.120. SHOP LICENSE. The board shall adopt regulations for the licensing of shops. A shop owner will be licensed to operate a shop without examination, but unless he is a practitioner he may not conduct business without employing a manager who is a practitioner. This section does not apply to a shop located in a community having a

population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people.

Sec. 08.13.130. DISPLAY OF LICENSE OR PERMIT. A practitioner shall display his license in a conspicuous location in his place of business. Each shop owner is responsible for the display of the licenses of employees. A practitioner who practices outside of a place of business shall carry his license with him to be shown to persons upon whom work is performed. →A person holding a student permit or temporary permit shall have his permit available for inspection when engaged in practice.

Sec. 08.13.140. LAPSED LICENSE. A lapsed license may be reinstated if the license has not been lapsed for a period of more than three years, and all renewal and delinquent fees for the period during which the license has been lapsed are paid.

Sec. 08.13.150. GROUNDS FOR REFUSAL, SUSPENSION OR REVOCATION OF A LICENSE OR PERMIT. The board may refuse, suspend, or revoke a license, student permit, or temporary permit for failure to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board.

Sec. 08.13.160. APPLICATION OF LICENSE REQUIREMENTS. (a) A person holding a valid license to practice barbering under AS 08.12 is licensed under this chapter, and may continue to practice barbering under the conditions imposed by AS 08.12 and the regulations issued under AS 08.12 until the license expires.

(b) A person holding a valid license under AS 08.28 may continue to practice under the conditions imposed under AS 08.28 and the regulations issued under AS 08.28 until the license expires.

(c) A person holding a valid license issued under AS 08.12 or AS 08.28 shall be entitled upon its expiration to a license to practice

under this chapter in the field of practice for which he was originally licensed, without meeting requirements for new licensure.

(d) The licensing and permit provisions of this chapter do not apply to

(1) a person practicing barbering, hairdressing, or cosmetology in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people and who uses only chemicals available to the general public;

(2) a shampoo person.

Sec. 08.13.170. TEMPORARY PERMITS. (a) A person not licensed under this chapter who wishes to practice and teach barbering, hairdressing, or cosmetology temporarily and primarily for educational purposes who is otherwise qualified to practice barbering, hairdressing, or cosmetology as determined by the board shall first obtain a temporary permit.

(b) The temporary permit shall specify

(1) the purpose for which it is granted;

(2) the period during which the holder of the temporary permit may practice;

(3) the place or places the holder of the temporary permit may practice.

Sec. 08.13.180. STUDENT PERMITS. A person attending a licensed school of barbering, hairdressing, or cosmetology, and a person apprenticed to a practitioner in a shop approved by the board shall obtain a student permit. A student permit to practice barbering or hairdressing is valid for two years. A student permit to practice cosmetology is valid for one year. A student permit may not be renewed, but, upon application, the board may issue a new permit to the same person, or extend an expired permit to the date of the next scheduled examination.

Credit earned under an expired student permit may be transferred to a new permit as determined by the board.

Sec. 08.13.185. FEES. The following fees are imposed under this chapter as applicable:

(1) schools:

initial two-year license fee.....$700

biennial renewal..... 400

(2) school owner:

initial two-year license fee.....$ 70

biennial renewal..... 60

(3) instructor:

initial two-year license fee.....$ 70

biennial renewal..... 60

(4) shop owner:

initial two-year license fee.....$ 45

biennial renewal..... 40

(5) practitioner of barbering:

initial two-year license fee.....$ 55

biennial renewal..... 40

(6) practitioner of hairdressing:

initial two-year license fee.....$ 55

biennial renewal..... 40

(7) practitioner of cosmetology:

initial two-year license fee.....$ 45

biennial renewal..... 30

(8) temporary permit.....$ 30

(9) student permit.....$ 20

(10) examination fee.....$ 25

(11) investigation fee.....$ 25

(12) delinquent fee for late renewal.....$ 20

Sec. 08.13.190. FAILURE TO POSSESS A LICENSE OR PERMIT. A person who practices barbering, hairdressing, or cosmetology, or operates a shop, or operates a school of barbering, hairdressing, or cosmetology, or teaches in a school of barbering, hairdressing, or cosmetology, without a license, temporary permit, or student permit and who is not exempt under AS 08.13.120 or under 08.13.160(d) is guilty of a class B misdemeanor.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 08.13.200. DEPOSIT OF RECEIPTS. Money received by the board from the payment of fees shall be paid into the general fund of the state.

Sec. 08.13.210. HEALTH AND SANITARY CONDITIONS. Health and sanitary conditions in shops and schools of barbering, hairdressing, and cosmetology shall be supervised by the Department of Health and Social Services.

Sec. 08.13.220. DEFINITIONS. As used in this chapter,

(1) "apprentice" means a person who receives on-the-job training under the direct supervision of a practitioner, who does not receive a wage or commission before he has completed 350 hours of training, and for whose work no charge is made before he has completed 350 hours of training;

(2) "barbering" means shaving, trimming, or cutting the beard or hair of a living person for a fee and for cosmetic purposes;

(3) "board" means the Board of Barbers and Hairdressers;

(4) "cosmetology" means the use of the hands, mechanical or electric apparatus or appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing, stimulating, or similar work on the human body for cosmetic purposes for a fee;

(5) "hairdressing" means performing, for a fee, the following services for cosmetic purposes:

(A) shaving, trimming, or cutting the beard of a living person; and

(B) arranging, styling, dressing, curling, temporary waving, permanent waving, cutting, singeing, bleaching, coloring, cleansing, conditioning, or similar work on the hair of a living person;

(6) "practitioner" means a person licensed to practice barbering, hairdressing, or cosmetology under this chapter;

(7) "shampoo person" means a person who, for a fee and under the supervision of a practitioner of barbering or hairdressing, cleanses or conditions the hair of the human head with products which have no effect other than cleaning or conditioning the hair;

(8) "shop" is an establishment operated for the purpose of engaging in barbering, hairdressing, or cosmetology.

* Sec. 2. AS 08.03.010(c) is amended by adding a new paragraph to read:

(2) Board of Barbers and Hairdressers (AS 08.13.010) -- June 30, 1984.

* Sec. 3. AS 18.05.040(a)(9) is amended to read:

(9) standards of cleanliness and sanitation in connection with the construction, operation and maintenance of a camp, cannery, food handling establishment, food manufacturing plant, mattress manufacturing establishment, industrial plant, school, barber shop, hairdressing or cosmetology [COSMETOLOGICAL] establishment, soft drink establishment, beer and wine dispensaries, and for other similar establishments in which insanitation may create a condition causative of disease.

* Sec. 4. AS 44.62.330(a) is amended by adding a new paragraph to read:

(47) Board of Barbers and Hairdressers (AS 08.13.010).

* Sec. 5. AS 08.03.010(b)(2) and (4); AS 08.12; AS 08.28; and AS 44.62.-330(a)(1) and (7) are repealed.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Original sponsor: Commerce Committee

IN THE SENATE BY THE COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 544

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of the practice of barbering, hairdressing, and cosmetology; terminating the existence of the Board of Barber Examiners and the Board of Hairdressing and Beauty Culture Examiners; establishing the Board of Barbers and Hairdressers; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08 is amended by adding a new chapter to read:

CHAPTER 13. BARBERS AND HAIRDRESSERS.

ARTICLE 1. BOARD OF BARBERS AND HAIRDRESSERS.

Sec. 08.13.010. CREATION AND MEMBERSHIP OF BOARD. (a) There is created the Board of Barbers and Hairdressers consisting of five members appointed by the governor.

(b) The board consists of

(1) two persons licensed as barbers under this chapter;

(2) two persons licensed as hairdressers under this chapter; and

(3) one public member.

Sec. 08.13.020. TERM OF OFFICE AND REMOVAL OF MEMBERS. Members serve staggered terms of three years at the pleasure of the governor. Members of the board may be appointed to serve no more than two consecutive full terms.

Sec. 08.13.030. POWERS AND DUTIES OF THE BOARD. (a) The board shall exercise general control over the vocations of barbering, hair-

dressing, and cosmetology.

(b) The board shall

(1) examine applicants and approve the issuance of licenses and permits to practice;

(2) authorize the issuance of licenses for schools of barbering, hairdressing, and cosmetology;

(3) set fees for licensing, issuing permits, license and permit renewal, examining applicants and other charges as necessary to cover the operating expenses of the board;

(4) prepare an annual budget to be submitted to the legislature and request appropriations from the general fund, not exceeding the income generated from fees, to cover operating expenses.

(c) The board may

(1) suspend or revoke a license or permit;

(2) on its own motion or upon receipt of a written complaint, conduct hearings and request the department to investigate the practices of a person, shop, or school involved in the practice or teaching of barbering, hairdressing, or cosmetology;

(3) adopt regulations or do any act necessary to carry out the provisions of this chapter.

Sec. 08.13.040. MEETINGS AND EXAMINATIONS. The board shall meet as often as necessary to conduct its business. It shall conduct separat examinations covering each field of practice: barbering, hairdressing, and cosmetology. Examinations shall be given at least twice in every year for each field of practice for which applications for licensure are pending. An applicant may take an examination in more than one field during the same testing session.

Sec. 08.13.050. RECORDS OF THE BOARD. The board shall keep a record of its proceedings related to the issuance, refusal, suspension

and revocation of licenses and permits. The record shall contain the name, place of business, and date of each license and permit issued and shall be open to inspection by the public at all reasonable times. The board shall submit an annual report on its operations to the governor.

ARTICLE 2. EXAMINATION AND LICENSING.

Sec. 08.13.070. LICENSE REQUIRED. A person may not

(1) practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit unless exempted under AS 08.13.160(c);

(2) open or conduct a school of barbering, hairdressing, or cosmetology without a license;

(3) operate a shop in violation of AS 08.13.120;

(4) permit a person in his employ or under his supervision who is not exempted under AS 08.13.160(c) to practice barbering, hairdressing, or cosmetology without a license, temporary permit, or student permit;

(5) permit the use of his license, temporary permit, or student permit by another person;

(6) obtain or attempt to obtain a license, temporary permit, or student permit by fraudulent means.

Sec. 08.13.080. QUALIFICATIONS OF APPLICANTS. An applicant for examination must

(1) have successfully completed all courses that a school with a program in barbering is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice barbering;

(2) have successfully completed all courses that a school with a program in hairdressing is required to teach to be licensed under AS 08.13.110 if applying for a license to practice hairdressing;

(3) have successfully completed all courses that a school

with a program in cosmetology is required to teach in order to be licensed under AS 08.13.110 if applying for a license to practice cosmetology; or

(4) have served an apprenticeship under AS 08.13.082.

Sec. 08.13.082. APPRENTICESHIP. (a) The period of apprenticeship required to qualify an applicant for a license to practice barbering is 1,500 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than nine months from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(b) The period of apprenticeship required to qualify an applicant for a license to practice hairdressing is 2,000 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than one year from the date of its commencement and must be completed in not more than two years from the date of its commencement.

(c) The period of apprenticeship required to qualify an applicant for a license to practice cosmetology is 350 hours. The apprenticeship must be served in a shop approved by the board. The apprenticeship may not be completed in less than six months from the date of its commencement and must be completed in not more than one year from the date of its commencement.

Sec. 08.13.090. EXAMINATIONS AND OTHER REQUIREMENTS. (a) A written examination shall be given to each applicant for examination at a time and place determined by the board. The board may delegate the power of examination to a committee of the board or a board member.

(b) The written examination shall cover subjects designated by the board and shall test the applicant's knowledge of sanitary practices, safety of all procedures, and use of instruments, equipment and chemi-

cals permitted within the field of practice for which the applicant is seeking a license.

(c) The board may by regulation establish requirements for a practical examination for licensure.

Sec. 08.13.100. LICENSE. (a) The board shall authorize the issuance of a license to each qualified applicant who has passed an examination under AS 08.13.090. The license is valid for two years and subject to renewal.

(b) A license shall state the areas of practice (barbering, hairdressing, cosmetology, or any combination) which the practitioner is qualified to perform.

(c) A person holding a current valid license from a board of barbering, hairdressing, or cosmetology in another state or country is entitled to a license under this chapter without examination. An application shall include:

(1) proof of a valid license issued by another licensing jurisdiction;

(2) proof of completed training and working experience which the board finds to meet the minimum requirements of the state;

(3) payment of a credential investigation fee.

Sec. 08.13.110. SCHOOL LICENSE. The board shall adopt regulations for the licensing of schools of barbering, hairdressing, and cosmetology The regulations shall include details of the curriculum, minimum hours of instruction, physical condition of the facilities, and financial responsiblity of the owner.

Sec. 08.13.120. SHOP LICENSE. The board shall adopt regulations for the licensing of shops. A shop owner will be licensed to operate a shop without examination, but unless he is a practitioner he may not conduct business without employing a manager who is a practitioner.

This section does not apply to a shop located in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people.

Sec. 08.13.130. DISPLAY OF LICENSE. A practitioner shall display his license in a conspicuous location in his place of business. Each shop owner is responsible for the display of the licenses of employees. A practitioner who practices outside of a place of business shall carry his license with him to be shown to persons upon whom work is performed.

Sec. 08.13.140. LAPSED LICENSE. A lapsed license may be reinstated if the license has not been lapsed for a period of more than three years, and all renewal and delinquent fees for the period during which the license has been lapsed are paid.

Sec. 08.13.150. GROUNDS FOR REFUSAL, SUSPENSION OR REVOCATION OF A LICENSE OR PERMIT. The board may refuse, suspend, or revoke a license, student permit, or temporary permit for failure to comply with this chapter, with a regulation adopted under this chapter, or with an order of the board.

Sec. 08.13.160. APPLICATION OF LICENSE REQUIREMENTS. (a) A person holding a valid license to practice barbering under AS 08.12 is licensed under this chapter, and may continue to practice barbering under the conditions imposed by AS 08.12 and the regulations issued under AS 08.12 until the license expires, at which time the provisions of this chapter apply and a license issued under AS 08.12 cannot be renewed.

(b) A person holding a valid license under AS 08.28 may continue to practice under the conditions imposed under AS 08.28 and the regulations issued under AS 08.28 until the license expires, at which time the provisions of this chapter apply and a license issued under AS 08.28 cannot be renewed.

(c) The licensing and permit provisions of this chapter do not apply to

(1) a person practicing barbering, hairdressing, or cosmetology in a community having a population of less than 1,000 people which is not within 25 miles of a community of more than 1,000 people and who uses only chemicals available to the general public;

(2) a shampoo person;

(3) a manicurist.

Sec. 08.13.170. TEMPORARY PERMITS. (a) A person not licensed under this chapter who wishes to practice and teach barbering, hairdressing, or cosmetology temporarily and primarily for educational purposes who is otherwise qualified to practice barbering, hairdressing, or cosmetology as determined by the board shall first obtain a temporary permit.

(b) The temporary permit shall specify

(1) the purpose for which it is granted;

(2) the period during which the holder of the temporary permit may practice;

(3) the place or places the holder of the temporary permit may practice.

Sec. 08.13.180. STUDENT PERMITS. A person attending a licensed school of barbering, hairdressing, or cosmetology, and a person apprenticed to a practitioner in a shop approved by the board shall obtain a student permit. A student permit to practice barbering or hairdressing is valid for two years. A student permit to practice cosmetology is valid for one year. A student permit may not be renewed, but, upon application, the board may issue a new permit to the same person, or extend an expired permit to the date of the next scheduled examination. Credit earned under an expired student permit may be transferred to a new

permit as determined by the board.

Sec. 08.13.190. FAILURE TO POSSESS A LICENSE OR PERMIT. A person who practices barbering, hairdressing, or cosmetology, or operates a shop, or operates a school of barbering, hairdressing, or cosmetology, or teaches in a school of barbering, hairdressing, or cosmetology, without a license, temporary permit, or student permit and who is not exempt under AS 08.13.120 or under 08.13.160(c) is guilty of a class B misdemeanor.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 08.13.200. DEPOSIT OF RECEIPTS. Money received by the board from the payment of fees shall be paid into the general fund of the state.

Sec. 08.13.210. HEALTH AND SANITARY CONDITIONS. Health and sanitary conditions in shops and schools of barbering, hairdressing, and cosmetology shall be supervised by the Department of Health and Social Services.

Sec. 08.13.220. DEFINITIONS. As used in this chapter,

(1) "apprentice" means a person who receives on-the-job training under the direct supervision of a practitioner, who does not receive a wage or commission before he has completed 350 hours of training, and for whose work no charge is made before he has completed 350 hours of training;

(2) "barbering" means shaving, trimming, or cutting the beard or hair of a living person for a fee and for cosmetic purposes;

(3) "board" means the Board of Barbers and Hairdressers;

(4) "cosmetology" means the use of the hands, mechanical or electric apparatus or appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing, stimulating, or similar work on the human body for cosmetic purposes for a fee;

(5) "hairdressing" means performing, for a fee, the following services for cosmetic purposes:

(A) shaving, trimming, or cutting the beard of a living person; and

(B) arranging, styling, dressing, curling, temporary waving, permanent waving, cutting, singeing, bleaching, coloring, cleansing, conditioning, or similar work on the hair of a living person;

(6) "manicurist" means a person who uses the hands, mechanical or electric apparatus or appliances, cosmetic preparations, antiseptics, or lotions in massaging, cleansing or similar work on the human hands or trims, shapes or polishes the nails of the human hands for cosmetic purposes for a fee;

(7) "practitioner" means a person licensed to practice barbering, hairdressing, or cosmetology under this chapter;

(8) "shampoo person" means a person who, for a fee and under the supervision of a practitioner of barbering or hairdressing, cleanses or conditions the hair of the human head with products which have no effect other than cleaning or conditioning the hair;

(9) "shop" is an establishment operated for the purpose of engaging in barbering, hairdressing, or cosmetology.

* Sec. 2. 18.03.010(c) is amended by adding a new paragraph to read:

( ) Board of Barbers and Hairdressers (AS 08.13.010) -- June 30, 34.

* Sec. 3. S 18.05.040(a)(9) is amended to read:

(9) standards of cleanliness and sanitation in connection with the construction, operation and maintenance of a camp, cannery, food handling establishment, food manufacturing plant, mattress manufacturing establishment, industrial plant, school, barber shop, hairdressing

or cosmetology [COSMETOLOGICAL] establishment, soft drink establishment, beer and wine dispensaries, and for other similar establishments in which insanitation may create a condition causative of disease.

* Sec. 4. AS 44.62.330(a) is amended by adding a new paragraph to read:

(47) Board of Barbers and Hairdressers (AS 08.13.010).

* Sec. 5. AS 08.03.010(b)(2) and (4); AS 08.12; AS 08.28; and AS 44.62.-330(a)(1) and (7) are repealed.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS
November 5, 1979

Chris
Have Janet
schedul this &
you & I attend.
B

The Honorable Brad Bradley
Chairman
Senate Commerce Committee
P. O. Drawer 8-Q
Anchorage, Alaska 99508

Dear Senator Bradley:

The Board of Hairdressing and Beauty Culture Examiners cordially invites you and your committee to their meeting which will be held Tuesday, November 20, 1979 at 9:00 a.m. The meeting is scheduled for Room C-105 of the Federal Court Building, 701 C Street, Anchorage.

The topic of discussion at the meeting which will pertain to the Senate Commerce Committee is the Sunset Review.

Sincerely,

Ione M. Lambert

Ione Lambert
Board Chairman

cc: Board Members

08-H8LH

STATE
of ALASKA

MEMORANDUM

TO: Christian Basler
Administrative Assistant
Senate Commerce Committee

DATE: November 16, 1979

FILE NO:

TELEPHONE NO: 465-2534

FROM: David Creekman
Regulations Specialist
Department of Commerce and
Economic Development

SUBJECT: Proposed legislation---
Board of Hairdressing and
Beauty Culture Examiners

Mrs. Ione Lambert of the Alaska Board of Hairdressing and Beauty Culture Examiners has requested that I send you the attached copy of proposed legislation which was drafted by this division on behalf of the board for possible introduction as Executive Branch Legislation.

The draft was not approved by Governor Hammond for his introduction and the board has been informed that they must now seek an alternate method of introduction if an interest in this draft still exists.

Attachment

BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS SUNSET

KEY TO REFERENCES:

Sec. D (Y) - (yellow cover) - State of Alaska Sunset Review, 1979, Prepared by the Division of Occupational Licensing.
(B) - (blue cover) - Division of Legislative Audit Performance Review.
(W) - (white cover) - Senate Commerce Committee Public Hearing testimony, October 22, 1979.

1. Two public members should be included on the board filling the first two vacancies which occur.
yes
(Y) - p. 11, par. 4; p. 13, par. 2
(W) - p. 33, par. 3; p. 39, par. 1
(B) - p. 10, recommendation #1

2. Statutory amendments should be introduced which would repeal
Sec. 08.28.150 -Admission of shop owner without examination.
Sec. 08.28.250 -A person holding a valid license as an operator issued before March 16, 1957, is not required to obtain a new license...these are simply obsolete.
Sec. 08.28.250 - (grandfather clause to the above)
Sec. 08.28.260 - (grandfather clause to the above)
(Y) - p. 11/12, last par. Clauses are on p. 21.

Oven but can't operate.
OK
OK
OK

3. The board should explore methods of informing the general public of its existence and functions.
(Y) - p. 11/13
(W) - p. 50, par. 1

4. I suggest a mandatory annual inspection of the schools by the board, and there is a need for more assessment and follow-through on complaints as well as record keeping procedures.
(Y) - p. ~~13~~ 15
(W) - p. 39, par. 1; p. 50, par. 1
(B) - p. 10, recommendation #2, p. 18. IV.

Conflict of interest!

5. The Board should review and revise its application forms and procedures.
(Y) - p. 15, par. 4.
(W) - p. 40, par. 3.
(B) - p. 13, recommendation #7.

6. Mandatory annual inspection of the shops and schools by the Department of Health and Social Services should be enforced by new regulations. This is a requirement now, but it is not being done. (Section 08.28.280)
(W) - p. 39, par. 1

letter to Governor!

7. Occupational Licensing should maintain operating statutes on licensing, examinations, and related business workload.
(W) - p. 40, par. 3
(B) - p. 15, recommendation #9.

8. AS 08.28.140
(1) proof of out-of-state or foreign license;
Board recommendation.

OK

9. AS 08.28.170 Fees.

(1)	schools	
	registration and initial license fee	$500
	biennial renewal	$200
(2)	school owner:	
	registration and initial license fee	$ 50 [$40]
	biennial renewal	$ 40 [$30]
(3)	instructor-operator:	
	registration and initial license fee	$ 50 [$40]
	biennial renewal	$ 40 [$30]
(4)	owner-operator:	
	registration and initial license fee	$ 40 [$25]
	biennial renewal	$ 30 [$20]
(5)	owner only, beauty shop:	
	registration and initial license fee	$ 40 [$25]
	biennial renewal	$ 30 [$20]
(6)	manager-operator:	
	registration and initial license fee	$ 40 [$25]
	biennial renewal	$ 30 [$20]
(7)	demonstration or consultant:	
	registration and initial license fee	$ 40 [$25]
	biennial renewal	$ 30 [$20]
(8)	operator:	
	registration and initial license fee	$ 25 [$15]
	biennial renewal	$ 20 [$10]
(9)	apprentice or student:	
	registration and one-year permit fee	$ 10 [$5]
	biennial renewal	$ 20 [$3]
(10)	manicurist:	
	registration and initial license fee	$ 20 [$15]
	biennial renewal	$ 15 [$10]
(11)	examination fee	$ 25 [$15]
(12)	investigation fee	$25
(13)	consultant:	
	seven day permit fee	$ 30
	one-time renewal of permit fee	$ 10

Re. to Dept. - input from Board!

Board recommendation.

HOUSE RESEARCH AGENCY
Pouch Y - State Capitol
Juneau, Alaska 99811
465-3991

MEMORANDUM March 4, 1980

TO: Representative Fred Brown

FROM: Elaine Mitchell, Research Analyst

RE: Oregon's Combined Board of Hairdressers and Barbers
Research Request No. 89

Background

In 1977, the Oregon Legislature, under sunset provisions, was considering the activities of various boards and commissions. At that time, there were separate boards of examiners for barbers and for hairdressers. There had been for a number of years, according to one contact, fighting between the two associations over "turf" i.e., which profession would prevail over what services of the industry. There was also a belief among some of the industry that if they didn't come up with a viable proposal, the legislature would "do it for them."

Opposition to the combination of the two boards was voiced strongly by organized barbers. Through the barbers' union, the traditional entry into the profession was via the apprentice-journeyman route. The barbers were opposed to any change in the system and mounted a labor-intensive campaign in an attempt to defeat the legislation to combine the boards.

An organization was formed for the specific purpose of lobbying for a combined board of examiners--to place the hairdressers and the barbers under one examining board. The organization, still in existence, is named The Professional Hair Industry, Inc.

Interview Comments

According to a spokesman for that organization, Wayne Beinert, who is head of the Executive Barbers School in Portland, the combined board is a positive move for the industry in general. It has simplified the licensing procedure by (a) providing for a "one-stop" examination and licensing procedure; (b) eliminating the practical demonstration type examination; and (c) providing for an on-going licensing procedure schedule. Exams are scheduled once a month at designated areas throughout the state; are written exams only; and cover five categories: chemistry, safety, sanitation, use of implements, and state laws.

The administrator of the combined boards, Virginia Honeywell, discussed positive results: reduced paperwork within the administration and reduced cost. The latter will result this year in reduced cost to license applicants from $50 to $30, effective July 1, 1980; examination fees will be reduced from $15 to $10.

Individual licensed shop owners were also contracted. A barber (Eddie Gustamente) was a licensed barber at the time of the combination of the two boards, and is now a licensed hairdresser and barber. He related a positive reaction to the combined boards; and stated that objections by barbers at the time of the legislative consideration were voiced "probably because they were not prepared to get into 'hairdressing.'"

A hairdresser (Ilene Copeland) was a licensed hairdresser at the time of legislative consideration of the combination of the two boards, and is a member of the above named organization which lobbied for the change. She also related a positive attitude for the change, pointing out, in addition to the above comments, that it "has made life simpler for the licensed shop owner."

If you would like additional information, please let us know.

EM/dp

VICTOR ATIYEH
GOVERNOR

Department of Commerce
BOARD OF BARBERS AND HAIRDRESSERS
FOURTH FLOOR, LABOR & INDUSTRIES BUILDING, SALEM, OREGON 97310 PHONE 378-8667

February 21, 1980

Mr. John Mathison
Senate Commerce Committee
Pouch V
Juneau, ALASKA 99811

Dear Mr. Mathison:

I enjoyed talking with you today, and appreciate you looking to Oregon as a model for your proposed legislation.

Enclosed is the following information as per our telephone conversation:

1. Xeroxed copy of C-Engrossed and Enrolled HB-3167;
2. Summary of HB-3167;
3. ORS Chapter 690;
4. OAR Chapter 817;
5. In-State Packet;
6. Out-of-State Packet;
7. Assorted Forms;
8. Baker vs. Daly.

Upon review of the packets, you will note that we no longer require pre-filing for examination by the applicant (this eliminates a tremendous amount of paper-shuffle). *

When reviewing ORS Chapter 690, you will find that students can choose the area or field in which they wish to train. Example: a student may choose to train in hairdressing only, or any field, or combination of fields. Upon completion of training, he or she can be examined in that area(s) without being required to train in the others. * This approach says: It is not incumbent upon the practitioner to know how to manicure to be able to dress hair. I believe this concept is in keeping with the 14th Amendment to the Constitution of the United States.

.../2

I'm also enclosing a 1926 District Court case that you may find of interest. Our required curriculum is in keeping with the decision of this case. Although students were required to train in all areas until 1977, when the Legislature acknowledged and legislated separate fields of training, e.g., hairdressing, cosmetology and manicuring.

If I can be of further assistance, please feel free to contact me.

Sincerely,

Virginia L. Honeywell

Virginia L. Honeywell,
Administrator

enclosures: (8)

Chapter 690

1977 REPLACEMENT PART

Barbers and Hairdressers

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GENERAL PROVISIONS

690.005 Definitions. As used in ORS 690.005 to 690.243:

(1) "Board" means the State Board of Barbers and Hairdressers.

(2) "Certificate" means a certificate of registration, issued in accordance with ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992, authorizing the holder to practice hair design, cosmetology or manicure in accordance with the provisions of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.

(3) "Cosmetology" means the use of the hands, mechanical or electrical apparatus or appliances, cosmetic preparations, antiseptics, tonics, lotions or creams in massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work performed on the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment either directly or indirectly for the public generally.

(4) "Hair design" means, when done upon the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment either directly or indirectly for the public generally, any one or more of the following practices:

(a) Shaving, trimming or cutting of the beard.

(b) Arranging, styling, dressing, curling, temporary waving, permanent waving, relaxing, cutting, singeing, bleaching, coloring, dyeing, cleansing, shampooing, conditioning, applying hair tonics or similar work upon the hair of an individual.

(5) "License" means a license to operate a shop issued under the provisions of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.

(6) "Manicure" means cutting, trimming, polishing, coloring, tinting, cleansing, or otherwise treating the nails of the hand or massaging, cleansing, treating or beautifying the hands performed for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment either directly or indirectly for the public generally.

(7) "Practitioner" means a person certified and registered to practice hair design, cosmetology or manicure under the provisions of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.

(8) "School of hair design" means an establishment operated for the purpose of teaching hair design and licensed under ORS chapter 345.

(9) "Shop" means an establishment operated for the purpose of engaging in the practice of hair design, cosmetology or manicure and licensed under the provisions of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.

[1977 c.886 §1]

690.010 [Amended by 1969 c.687 §1; 1977 c.270 §1; repealed by 1977 c.842 §28 and 1977 c.886 §42]

690.015 Certificate required; prohibited acts. No person shall:

(1) Practice or attempt to practice hair design, cosmetology or manicure without a certificate as a practitioner issued pursuant to ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.

(2) Operate a shop unless it is at all times under the direct supervision and management of a practitioner.

(3) Display a sign or in any way advertise or hold himself out as a practitioner, barber or hairdresser or as being engaged in the practice or business of hair design, cosmetology or manicure without first obtaining a certificate or license as provided in ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.

(4) Knowingly make a false statement on an application for a license, certificate or permit or for the renewal of a license, certificate or permit issued under the provisions of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.

(5) Permit any person in his employ or under his supervision or control to practice hair design, cosmetology or manicure without a certificate as required by ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.

(6) Obtain or attempt to obtain a certificate, license or permit by fraudulent means.

(7) Permit the fraudulent use of his certificate by another person.

[1977 c.886 §3]

690.020 [Amended by 1961 c.300 §3; 1969 c.687 §2; repealed by 1977 c.842 §28 and 1977 c.886 §42]

690.025 Application of chapter. ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992 do not apply to:

(1) Services performed without compensation in case of emergency or in domestic administration.

(2) The following persons while in the proper discharge of their professional duties:

(a) Persons authorized by the law of this state to practice medicine, osteopathy, surgery or dentistry.

(b) Registered nurses.

(c) Persons licensed by the State Board of Pharmacy, merchants or other individuals when demonstrating apparatus or supplies for purposes of sale.

(d) Commissioned medical and surgical officers of the United States Army, Navy or Marine Hospital Service.

(3) A student attending a school licensed to teach hair design, cosmetology or manicure under ORS chapter 345 nor is such person required to obtain a license under ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992 to perform within the scope of his training.
[1977 c.886 §2]

690.030 [Repealed by 1977 c.842 §26 and 1977 c.886 §42]

CERTIFICATES, LICENSES AND PERMITS

690.035 Application for license or certificate. A person desiring to obtain a license or certificate shall apply in writing to the board on a form provided by the board. Each application shall be accompanied by evidence under oath or affirmation and satisfactory to the board that the applicant possesses the necessary qualifications.
[1977 c.886 §4]

690.040 [Repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.045 Qualifications; issuance of certificate; duration of validity. (1) To be issued a certificate as a practitioner, each applicant shall:

(a) Pass the certification examination given by the board pursuant to ORS 690.065;

(b) Pay the examination fee and application fee determined by the board; and

(c) If the applicant is applying for a certificate to practice hair design, have successfully completed all courses a school of hair design is required to teach to be licensed under ORS chapter 345; or

(d) If the applicant is applying for a certificate to practice cosmetology or manicure, have successfully completed all courses a school permitted to teach cosmetology or manicure is required to teach to be licensed under ORS chapter 345.

(2) An applicant who holds a currently valid license or certificate to perform hair design, cosmetology or manicure issued by a licensing agency of another state or territory of the United States shall not be required to comply with paragraph (c) or (d) of subsection (1) of this section.

(3) An applicant shall not be required to comply with paragraph (c) or (d) of subsection (1) of this section if the applicant is the graduate of a hair design, cosmetology or manicure school in another state or territory or in a state correctional institution and the requirements for successful completion of training at the school are determined by the Superintendent of Public Instruction to meet the minimum requirements for licensing a school of hair design or a school permitted to teach cosmetology or manicure under ORS chapter 345.

(4) The board shall issue to each qualified applicant a certificate. A certificate shall be valid for one year. The certificate shall be prima facie evidence of the right of the holder to practice in the field of practice for which the holder has qualified and to represent himself as a practitioner.

(5) At the request of any applicant who has qualified to perform hair design under this section, the board shall issue a certificate designating its holder as either a "barber" or "hairdresser," or both, as the applicant requests.

(6) A certificate shall state the areas of practice the practitioner may preform.
[1977 c.886 §5]

690.050 [Amended by 1959 c.630 §1; 1961 c.436 §1; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.055 Shop license requirements. (1) To be issued a license for a shop, each applicant shall:

(a) Be 18 years of age.

(b) Comply with the rules of the board concerning health, safety and sanitation.

(c) Comply with the applicable health and safety laws and rules of the Health Division and any other state agencies.

(d) Pay the application fee determined by the board.

(2) The board shall issue to each qualified applicant a license. A license shall be valid for one year. The license shall be prima facie evidence of the right of the owner of the shop to operate a shop and to advertise as offering the services for which the shop is licensed.

(3) A shop issued a license under the provisions of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992 must at all times be under the direct supervision and management of a practitioner. If hair design is practiced in the shop, the practitioner who supervises the shop must have a certificate to practice hair design.
[1977 c.886 §6]

690.060 [Amended by 1959 c.630 §2; 1961 c.436 §2; 1969 c.687 §3; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.065 Examinations. (1) Examinations shall be given at such times and places as the board may determine, but in no instance less often than once every month.

(2) Examinations shall be written or oral tests and shall test the applicant's knowledge of sanitary practices and safety for all procedures permitted and in the use of all instruments, equipment or chemicals permitted within the scope of a license and certificate in the field of practice for which the applicant is seeking certification.
[1977 c.886 §7]

690.070 [Repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.075 Grounds for refusal, suspension or revocation of certificate or license. The board may refuse to issue or may suspend or revoke any certificate or license for any one or more of the following causes:

(1) Continued performance of hair design, cosmetology or manicure by a person knowingly having an infectious or communicable disease.

(2) Violation of ORS 646.608 in the conduct of a hair design, cosmetology or manicure business.

(3) Violation of any of the provisions of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.
[1977 c.886 §8]

690.080 [Repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.085 Renewal of certificates and licenses. (1) Except as otherwise provided by ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992, all certificates and licenses issued under ORS 690.005 to 690.243 and 690.992 shall expire one year after the date of issue, unless renewed within 30 days of the expiration date by payment of the required renewal fee and compliance with other requirements for renewal. The board, however, may vary the date of certificate and license renewal by giving to the applicant written notice of the renewal date being assigned and by making prorated adjustments in the renewal fee.

(2) Any license or certificate not renewed before it expires may be renewed within one year by payment of the required renewal fee, compliance with other requirements for renewal and payment of a late renewal fee set by the board.

(3) A certificate that has not been renewed for more than one year, and less than five years, after the date of expiration may be renewed and restored upon payment of one year's renewal fee.

(4) A certificate that has not been renewed for a period of five years after date of expiration may be renewed and restored if the applicant:

(a) Satisfactorily passes the examination required by ORS 690.065.

(b) Pays one year's license fee in advance.
[1977 c.886 §9]

690.090 [Repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.095 Display of certificate required. (1) Every holder of a certificate shall display it in a conspicuous place adjacent to or near his work chair. If he has no work chair, the certificate shall be displayed in a conspicuous place within the shop.

(2) Every holder of a license shall display it in a conspicuous place within the shop.
[1977 c.886 §10]

690.100 [Amended by 1961 c.300 §4; 1969 c.687 §4; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.105 Permit requirements. (1) A person not certified under ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992 who wishes to practice, demonstrate and teach hair design, cosmetology or manicure, or perform any one or more of such functions, temporarily and primarily for educational purposes and is otherwise quali-

fied as determined by the board shall first obtain a permit from the board.

(2) The permit shall specify:

(a) The purpose for which it is granted.

(b) The period during which the person is permitted to practice, demonstrate and teach, which period shall not exceed 10 days.

(c) The time and place of exercising the privilege granted by the permit.

(3) A person may be granted a permit under subsection (1) of this section if he:

(a) Makes application to the board for the permit.

(b) Is currently licensed or certified to practice or teach hair design, cosmetology or manicure in another state and presents satisfactory evidence of that fact to the board, or is otherwise qualified as determined by the board.

(c) Describes the purpose for which the permit is sought.

(d) Pays the required permit fee.
[1977 c.886 §11]

690.110 [Repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.115 Temporary premises license. (1) A person who wishes to temporarily operate any premises for teaching hair design, cosmetology or manicure shall first obtain a temporary premises license from the board.

(2) A person may be granted a license under subsection (1) of this section if he:

(a) Makes application to the board.

(b) Describes the purpose for which the license is sought.

(c) Identifies the location of the premises to be licensed.

(d) States the time and dates for which the license will be issued.

(e) Pays the required license fee.

(3) The license shall specify:

(a) The times, dates and location.

(b) The purpose for which the license is granted.

(c) The person to whom the license is issued. The person specified shall be responsible for the adherence to board rules governing health and sanitation.

(4) The period during which the premises shall be licensed shall not exceed five days.

(5) A temporary premises license is not required and shall not be issued if the educational activity is conducted in a licensed school of hair design, cosmetology or manicure.
[1977 c.886 §12]

690.120 [Amended by 1961 c.300 §5; 1973 c.832 §38; 1977 c.873 § 8; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.123 Certificate of identification. (1) A practitioner who practices outside of or away from a place of business shall carry with him a certificate of identification which must be shown to a person upon whom the work is being performed. The certificate shall contain the signature of the practitioner, his post-office address, the number and date of his certificate.

(2) The board shall, without charge, issue such certificates upon demand by any practitioner who practices away from his place of business on persons who are physically unable to visit a licensed shop.
[1977 c.886 §13]

690.125 [1961 c.300 §2; 1969 c.687 §6; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.130 [Amended by 1959 c.630 §3; 1961 c.300 §6; 1961 c.436 §3; 1969 c.687 §7; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.140 [Amended by 1965 c.274 §1; 1973 c.832 §39; 1977 c.873 §9; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.150 [Amended by 1961 c.300 §7; 1965 c.274 §2; 1969 c.687 §11; 1971 c.86 §1; 1973 c.832 §40; repealed by 1977 c.842 §26 and 1977 c.886 §42]

STATE BOARD

690.155 State Board of Barbers and Hairdressers; qualifications; appointment. (1) There is created within the Department of Commerce a State Board of Barbers and Hairdressers consisting of seven members appointed by the Director of Commerce. Each member of the board shall serve for a term of three years and until his successor is appointed and qualified. At all times the membership of the board shall be so constituted that:

(a) Six members of the board shall be practitioners licensed under the provisions of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.

(b) One member shall be a public member not licensed under ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.

(2) A person is not eligible for appointment as a member of the board if:

(a) He is associated, directly or indirectly, in the manufacture of cosmetic or barber appliances or supplies or their rental, sale or distribution to licensees.

(b) He has previously served two terms.

(3) A member of the board serves at the pleasure of the Director of Commerce. Vacancies shall be filled by the Director of Commerce, by appointment for the unexpired term.
[1977 c.886 §14]

690.160 [1969 c.687 §9; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.165 Powers of board. In addition to the powers otherwise granted by ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992, the board shall have the power:

(1) To determine whether applicants to practice hair design, cosmetology or manicure meet the qualifications under ORS 690.045 or 690.055, to conduct examinations, and to grant certificates and licenses to qualified applicants upon compliance with ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992 and the rules of the board.

(2) To establish sanitary and safety standards for the practice of hair design, cosmetology or manicure, and to enforce the standards.

(3) To prescribe and furnish forms for applications for examinations, certificates, licenses and permits.

(4) To do any act necessary or proper to effect and carry out the duties required of the board by ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.
[1977 c.886 §21]

690.170 [1969 c.687 §10; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.175 Officers; rules; meetings; quorum; compensation and expenses. (1) The board shall elect a chairperson. The board shall prescribe rules to govern the proceedings of the board. The board shall hold meetings at such times and places as it determines. A majority of the members of the board shall constitute a quorum.

(2) Each member of the board is entitled to compensation and expenses as provided in ORS 292.495.
[1977 c.886 §§16, 17]

690.185 Administrator; appointment and compensation; services and employes. (1) The Director of Commerce shall fix the qualifications of and appoint an administrator for the board who shall not be a member of the board. Subject to the applicable provisions of the State Merit System Law, the director shall fix the compensation of the administrator, who shall be in the unclassified service.

(2) The Director of Commerce shall provide the board with such services and employes as the board requires to carry out its duties under the provisions of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992.
[1977 c.886 §18]

690.195 Records of board. The board shall keep a record of its proceedings relating to the issuance, refusal, suspension and revocation of certificates. This record shall also contain the name, place of business and the date of each certificate and license issued by the board. The records of the board shall at all reasonable times be open to inspection by the public.
[1977 c.886 §19]

690.200 [Repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.205 Rules; approval of Health Division; when domestic use of premises permitted. (1) The board has authority to make reasonable rules for the administration of the provisions of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992 and prescribe sanitary and safety requirements for shops. Sanitary requirements for shops shall be subject to the approval of the Health Division. A copy of the rules adopted by the board shall be furnished by the board to the owner or manager of each shop.

(2) Notwithstanding subsection (1) of this section, the board may not prohibit the use of the shop for domestic purposes if the part devoted to domestic purposes is in a completely separate room not used by customers, with walls extending from floor to ceiling and with any connecting doors kept closed while the shop is in actual operation.

(3) Any rules adopted by the board shall be adopted in accordance with the procedures set forth in ORS chapter 183.
[1977 c.886 §§20, 22 (2)]

690.210 [Repealed by 1977 c.270 §3; 1977 c.842 §26 and 1977 c.886 §42]

690.215 When hearing required. Where the board proposes to revoke or suspend or refuse to issue or renew a certificate, permit or license, opportunity for hearing shall be accorded as provided in ORS chapter 183.
[1977 c.886 §22 (1)]

690.220 [Amended by 1969 c.687 §12; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.225 Inspections. (1) In addition to any other duties prescribed by law, the Director of Commerce shall establish within the Department of Commerce a program to provide for the inspection of shops licensed under ORS 690.005 to 690.243 and 690.992 and of schools licensed to teach hair design, cosmetology or manicure under ORS chapter 345.

(2) Inspections conducted under this section shall determine whether the shops comply with the sanitary and safety requirements under ORS 690.005 to 690.243 and 690.992 and rules adopted thereunder and whether the schools comply with the sanitary and safety requirements under ORS chapter 345 and rules adopted thereunder. Upon completion of each school inspection the Director of Commerce shall cause a report of the results of the inspection to be submitted to the Superintendent of Public Instruction.
[1977 c.886 §26]

690.230 [Amended by 1961 c.436 §4; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.235 Fees. Fees required to be paid shall be paid in amounts determined by the board and approved by the Director of Commerce, except that no fee shall exceed the following:

(1) The filing of an application for an original certificate as a practitioner, $15.

(2) An annual renewal of a certificate as a practitioner, $15.

(3) Each examination for a certificate as a practitioner, $15.

(4) A temporary permit issued under ORS 690.105, $5.

(5) A shop license, $50.

(6) An annual renewal for a shop license, $25.

(7) A temporary premises license, $25.

(8) A duplicate or replacement of any certificate, license or permit, $5.

(9) A late renewal fee, $5.
[1977 c.886 §23]

690.240 [Amended by 1969 c.377 §2; repealed by 1971 c.734 §21]

690.243 Use of fees. All fees and other funds received by the Department of Commerce under ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992 shall be paid into the Commerce Administration Account. The payments shall be credited to a separate subaccount, and are continuously appropriated for the purpose of administering ORS 690.005 to 690.243 and 690.992.
[1977 c.886 §24]

690.245 [1971 c.734 §146; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.250 [Amended by 1969 c.377 §3; repealed by 1971 c.734 §21]

690.260 [Repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.270 [Repealed by 1977 c.842 §26 and 1977 c.886 §42]

SCHOOL LICENSE

690.275 Election for school to be regulated under this chapter or under vocational school law. (1) Notwithstanding any other provision of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992, any school licensed to teach barbering under the provisions of this chapter on July 27, 1977, may continue, at the election of the school, to operate under the provisions of this chapter and any rules adopted thereunder as effective on July 27, 1977, and as administered by the Superintendent of Public Instruction. If a school elects to become subject to the provisions of this section all aspects of the operation of the school shall become subject to regulation under this section, including, but not limited to, the course of study, admission requirements, teacher requirements and qualifications, teacher licensing and license renewal, requisites for graduation, work station requirements, curriculum and all other requirements for the school.

(2) If a school elects to be regulated according to the provisions of this section, it is not subject to regulation pursuant to any other provision of ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 to 690.992. Any student attending a school regulated according to the provisions of this section and any teacher teaching in the school are subject to the requirements of this chapter and any rules adopted thereunder only while attending or teaching in the school.

(3) No school shall be regulated according to the provisions of this section unless the school so elects before the effective date of the rules adopted by the State Board of Education pursuant to section 39, chapter 886, Oregon Laws 1977. Any school electing to operate according to this section may at any later time elect to withdraw from the provisions of this

section and become regulated as otherwise provided by ORS 293.110, 345.010, 345.400 to 345.450 and 690.005 tc 690.992.

(4) Any license or certificate to teach barbering issued by the Board of Barber Examiners pursuant to this chapter before July 27, 1977, sh.ll remain valid and may be renewed according to the provisions of this chapter and rules adopted thereunder as effective on July 27, 1977, ac long as the holder teaches at a school regulated according to this section.

(5) The Superintendent of Public Instruction shall administer the provisions of this section.
[1977 c.886 §38a]

690.280 [Amended by 1965 c.373 §1; 1971 c.753 §51; repealed by 1977 c.842 §26 and 1977 c.886 42]

690.290 [Amended by 1969 c.377 §1; 1973 c.832 §40a; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.300 [Amended by 1965 c.274 §3; 1969 c.314 §91; 1969 c.377 §4; 1973 c.832 §40b; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.310 [Amended by 1969 c.377 §5; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.320 [Amended by 1973 c.832 §41; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.330 [Amended by 1961 c.436 §5; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.340 [Amended by 1967 c.637 §34; repealed by 1977 c.842 §26 and 1977 c.886 §42]

PENALTIES

690.990 [Amended by 1977 c.270 §2; repealed by 1977 c.842 §26 and 1977 c.886 §42]

690.992 Penalties. Violation of ORS 690.015 is a Class B misdemeanor.
[1977 c.886 §25]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1977.

Thomas G. Clifford
Legislative Counsel

Chapter 691

1977 REPLACEMENT PART

Cosmetic Therapists

691.010 [Repealed by 1967 c.587 §1 (subsections (1) to (5) and (8) to (13) of 691.011 enacted in lieu of 691.010)]

691.011 [Subsections (1) to (5) and (8) to (13) enacted as 1967 c.587 §2 (enacted in lieu of 691.010); subsections (6) and (7) enacted as 1967 c.355 §4; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.020 [Amended by 1967 c.355 §2; 1967 c.587 §§3, 58; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.030 [Repealed by 1967 c.587 §11 (691.055 enacted in lieu of 691.030)]

691.040 [Amended by 1967 c.587 §4; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.045 [1967 c.355 §5; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.050 [Amended by 1961 c.386 §1; repealed by 1967 c.587 §11 (691.055 enacted in lieu of 691.050)]

691.052 [1967 c.587 §5; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.055 [1967 c.587 §12 (enacted in lieu of 691.030, 691.050 and 691.080); 1975 c.465 §1; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.060 [Amended by 1953 c.231 §4; 1967 c.587 §15; 1971 c.762 §1; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.070 [Repealed by 1967 c.587 §13 (691.071 enacted in lieu of 691.070)]

691.071 [1967 c.587 §14 (enacted in lieu of 691.070); 1973 c.832 §42; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.080 [Repealed by 1967 c.587 §11 (691.055 enacted in lieu of 691.080)]

691.085 [1967 c.587 §50; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.090 [Amended by 1967 c.587 §16; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.100 [Amended by 1967 c.587 §17; 1975 c.465 §2; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.105 [1955 c.155 §2; 1967 c.587 §18; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.110 [Amended by 1957 c.194 §1; 1967 c.587 §28; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.120 [Amended by 1953 c.231 §4; 1955 c.155 §3; 1961 c.102 §1; 1967 c.587 §6; 1973 c.832 §43; 1977 c.873 §10; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.130 [Amended by 1961 c.386 §2; 1967 c.587 §39; 1971 c.762 §3; 1973 c.832 §44; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.140 [Amended by 1967 c.587 §41; repealed by 1971 c.734 §21]

691.145 [1971 c.734 §148; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.150 [Amended by 1967 c.587 §42; repealed by 1971 c.734 §21]

691.160 [Amended by 1967 c.587 §9; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.170 [Amended by 1953 c.231 §4; 1967 c.587 §10; 1971 c.762 §4; repealed 1977 c.886 §42]

691.180 [Amended by 1953 c.231 §4; 1955 c.155 §4; 1959 c.29 §1; 1963 c.52 §2; 1967 c.18 §2; 1967 c.587 §7; renumbered 691.300]

691.190 [1967 c.587 §30 (691.190 enacted in lieu of 691.220); 1971 c.762 §5; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.195 [1967 c.587 §31 (enacted in lieu of 691.220); repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.200 [1967 c.587 §32 (enacted in lieu of 691.220); repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.205 [1967 c.587 §33 (enacted in lieu of 691.220); repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.210 [Repealed by 1967 c.587 §57]

691.215 [1967 c.587 §34 (enacted in lieu of 691.220); repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.220 [Amended by 1955 c.155 §5; 1961 c.386 §3; repealed by 1967 c.587 §29 (691.190 to 691.215, 691.235 and 691.245 enacted in lieu of 691.220)]

691.225 [1961 c.386 §5; 1965 c.184 §1; repealed by 1967 c.587 §37 (691.226 enacted in lieu of 691.225)]

691.226 [1967 c.587 §38 (enacted in lieu of 691.225); repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.230 [Amended by 1957 c.272 §1; 1961 c.386 §6; 1967 c.587 §40; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.235 [1967 c.587 §35 (enacted in lieu of 691.220); 1971 c.762 §6; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.240 [Amended by 1955 c.155 §6; 1967 c.452 §1; repealed by 1967 c.452 §11 and by 1967 c.587 §57]

691.245 [1967 c.587 §36 (enacted in lieu of 691.220); 1975 c.465 §3; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.248 [1973 c.832 §46; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.250 [Amended by 1957 c.406 §1; 1961 c.42 §1; 1967 c.452 §2; repealed by 1967 c.452 §11 and by 1967 c.587 §24]

691.252 [1967 c.452 §7; 1967 c.587 §19; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.260 [Amended by 1957 c.406 §2; 1961 c.42 §2; 1967 c.452 §3; repealed by 1967 c.452 §11 and by 1967 c.587 §22 (691.261 enacted in lieu of 691.260)]

691.261 [1967 c.452 §8; 1967 c.587 §23 (enacted in lieu of 691.260); repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.270 [Repealed by 1967 c.587 §20 (691.271 enacted in lieu of 691.270)]

691.271 [1967 c.587 §21 (enacted in lieu of 691.270); repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.275 [1957 c.406 §3; 1961 c.42 §3; repealed by 1967 c.587 §26 (691.276 enacted in lieu of 691.275)]

691.276 [1967 c.587 §27 (enacted in lieu of 691.275); repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.280 [Amended by 1953 c.231 §4; 1961 c.386 §7; 1967 c.587 §8; renumbered 691.297]

691.290 [1967 c.452 §10; 1971 c.762 §7; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.295 [1967 c.452 §6; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.297 [Formerly 691.280; repealed by 1971 c.762 §8]

691.300 [Formerly 691.180; 1971 c.762 §9; 1973 c.832 §47; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.310 [Amended by 1967 c.325 §§1, 2; 1967 c.587 §43; 1971 c.753 §32; 1971 c.762 §10; 1973 c.832 §48; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.320 [Amended by 1967 c.587 §45; 1971 c.762 §11; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.330 [Amended by 1965 c.218 §1; 1967 c.587 §44; 1969 c.314 §92; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.340 [1967 c.587 §46; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.345 [1967 c.587 §48; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.350 [Amended by 1961 c.386 §8; 1967 c.587 §49; 1971 c.762 §12; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.360 [Amended by 1967 c.587 §51; 1971 c.762 §13; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.370 [Amended by 1967 c.587 §47; repealed by 1977 c.842 §27 and 1977 c.886 §42]

691.990 [Amended by 1967 c.587 §52; repealed by 1977 c.842 §27 and 1977 c.886 §42]

(4)

OREGON ADMINISTRATIVE RULES

BOARD OF BARBERS AND HAIRDRESSERS

CHAPTER 817

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DIVISION 1

PROCEDURAL RULES

817-01-000 **NOTICE OF PROPOSED RULE**

"Prior to the adoption, amendment, or repeal of any rule, the State Board of Barbers and Hairdressers shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least fifteen (15) days prior to the effective date.

(2) By mailing a copy of the notice to persons on the State Board of Barbers and Hairdressers official mailing list established pursuant to ORS 335(6).

(3) By mailing a copy of the notice to the following organizations or publications:

(a) United Press International and Associated Press

(b) Oregon Hairdressers and Cosmetologists Association, Inc.

(c) Oregon Beauty Schools Association

(d) Professional Hair Industry Association, Inc.

(e) Oregon Barbers and Beauticians Association [Barbers, Beauticians Allied Industries International Association]

(f) Oregon State Board of Education"

817-01-005 **MODEL RULES OF PROCEDURE**

"The Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act effective November 25, 1977, are by this reference adopted as the rules and procedures of the Board of Barbers and Hairdressers and shall be controlling except as otherwise required by statute or rule."

817-01-010 **REQUIRING AN ANSWER TO CHARGES AS PART OF NOTICES TO PARTIES IN CONTESTED CASES**

In addition to the notice requirements under the Attorney General's Model Rules of Procedure adopted under OAR 817-01-005, the notice to parties in contested cases may include the statement that an answer to the assertions of charges will be required and, if so, the consequence of failure to answer. A statement of the consequences of failure to answer may be satisfied by enclosing a copy of rule 817-01-015 with the notice.

817-01-015 **HEARING REQUEST AND ANSWER: CONSEQUENCE OF FAILURE TO ANSWER**

(1) A hearing request, and answer when required, shall be made in writing to the Board by the party or his attorney and an answer shall include the following:

(a) An admission or denial of each factual matter alleged in the notice;

(b) A short and plain statement of each relevant affirmative defense the party may have.

(2) Except for good cause:

(a) Factual matters alleged in the notice and not denied in the answer shall be considered a waiver of such defense;

(b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;

(c) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency; and

(d) Evidence shall not be taken on any issue not raised in the notice and the answer.

DIVISION 10

SANITARY AND SAFETY RULES

817-10-002 **DEFINITIONS** as used in OAR 817-10-002 through 817-50-005

(1) **ACCEPTABLE** means fulfilling the needs or requirements.

(2) **ADEQUATE VENTILATION** means ventilation by natural or mechanical means must be provided capable of providing at least two air changes per hour.

(3) **APPROVED** means accepted by the State Board of Barbers and Hairdressers.

(4) **BARBER/HAIRDRESSER** means a person certified and registered to practce Hair Design.

(5) **BOARD** means the State Board of Barbers and Hairdressers.

(6) **CERTIFICATE** means an authorization of the holder to practice Hair Design (barbering, hairdressing), Cosmetology or Manicure.

(7) **CLEAN** means the absence of soil or dirt, or the removal of soil or dirt by washing, sweeping, clearing away, or any method appropriate to the material at hand.

(8) **DISPENSARY** means that area or room where chemicals are mixed and tools and implements are washed and sanitized.

(9) **DISPOSABLE TOWELS** means disposable paper towels or the roller-type cloth towel furnished by laundries.

(10) **EASILY ACCESSIBLE** means easy to approach or enter.

(11) **EQUIPMENT** means those items usually considered stationary, e.g., waiting chairs, barber or style chairs, shampoo chairs, cabinets, sinks, shampoo bowls, stationary dryers, manicuring table and stool, and those items required to open a shop for business.

(12) **HAIR DESIGN** means the practice of barbering and hairdressing.

(13) **LICENSE** means a license to operate a shop.

(14) **MATERIAL AND SUPPLIES** means those items which complement the use of tools, e.g., towels, hair tints, bleaches, permanent wave solutions, tonics, hair oils, shampoos, rinses, disinfectants, chemicals and other such items not mentioned that are used accordingly.

(15) **NON-ABSORBENT** means incapable of absorbing, sucking up, or taking in water or other liquid.

(16) **PERMIT** means authorization by the Board which allows a licensed person from another state to practice, demonstrate and teach the acts of Hair Design, Cosmetology or Manicure or perform any one or more of such functions temporarily and primarily for educational purposes for a limited time not to exceed ten (10) days. (Authorizes the person.)

(17) **PRACTITIONER** means any person certified and registered with the Board.

(18) **PREMISES** means the entire area of the shop which is licensed by the Board and so designated as a shop.

(19) **SANITARY** means free from agents of infection, disease, or infestation by insects and vermin; and free of soil, dust, or foreign material.

(20) **SANITIZED** means rendered free of soil, dust, foreign material, and agents of disease or infestation from insects or vermin by effective cleaning and disinfecting processes.

(21) **SCHOOL** means an establishment licensed by Chapter 345 to teach Hair Design, Cosmetology or Manicure, or any combination thereof.

(22) **SHOP** means a licensed establishment wherein acts of Hair Design or Cosmetology or Manicure, or any combination thereof, are performed by certified and registered practitioners.

(23) **STERILIZER, WATER SANITIZER or PAN** means the container holding the solution which is large and deep enough to submerge the tool or implement to be disinfected.

(24) **TEMPORARY PREMISES LICENSE** means authorization by the Board which allows a person(s) to temporarily operate a premises for teaching Hair Design, Cosmetology, or Manicure for a limited time, not to exceed five (5) days. (Authorizes the place.)

(25) **TOOLS and/or IMPLEMENTS** means all portable tools and implements that can be carried in by the practitioner for use upon patrons, e.g., combs, shears, clippers, yoyettes and any other item used on the individual patron. Statutory Authority: ORS 690.205

817-10-007 **COMPLIANCE WITH ALL APPLICABLE REGULATIONS**

Practitioners and shop owners shall observe and be subject to all state and Health Division regulations pertaining to public health and safety. Compliance with state fire, plumbing and electrical regulations is required. Statutory Authority: ORS 690.055

817-10-011 **LIGHTING**

All shops shall have adequate and sufficient artificial or natural lighting or, in lieu of natural lighting, at least 10 foot candle light at all work stations and work tables. Statutory Authority: ORS 690.205

817-10-016 **WATER SUPPLY STANDARDS**

All shops shall have a supply of both hot and cold running water with a minimum of 15 pounds pressure per square inch in accordance with the State Plumbing Code. The Water Supply Standard section requires the quality and construction to meet ORS 448 and the Health Division rules, OAR 333-42-200 thru 333-42-245. Statutory Authority: ORS 690.205

817-10-021 **TOILETS**

(1) An adequate and easily accessible toilet facility for the shop shall be provided. A public toilet facility in a public building may be acceptable.

(2) Toilet facilities shall be kept clean and sanitary without offensive odor and in working order at all times. Soap, disposable towels and hand washing facilities shall be provided. Statutory Authority: ORS 690.205

817-10-026 **WATER DISPOSAL**

All shop liquid waste from toilets and lavatories shall be discharged into a public sewer; or, in the absence of a sewer, by a method meeting the requirements of ORS 454.405 (septic tank and drain field requirements). Statutory Authority: ORS 690.205

817-10-030 **USE OF ELECTRICAL APPLIANCES FOR PREPARATION OF FOOD**

Stoves or electrical appliances used for the preparation of food shall be allowed within a shop only when located and used in an entirely separate room for use by employes only and not used for the practice of Hair Design, Cosmetology, Manicure or for the storage of supplies by the shop.

Statutory Authority: ORS 690.205

817-10-035 **TOWELS**

(1) Clean towels shall be used for each patron.

(2) Separate closed compartment(s) shall be provided for all clean linen. Packages furnished by the laundry shall not be acceptable as storage for clean linen.

(3) Closeable container(s) or hamper(s) large enough and sturdy enough to store all soiled linen shall be provided by the shop.

(4) All soiled linen shall be immediately placed in a closed, covered container(s) or hamper(s).

(5) Laundry bags shall not be used for storage of soiled linen. Statutory Authority: ORS 690.205

817-10-040 **ARTICLES IN CONTACT WITH PATRON**

(1) A neckstrip or towel shall be placed around the neck of the patron so that the hair cloth or cape does not come in contact with the skin.

(2) A common powder puff, sponge, lump alum or styptic pencil shall not be used.

(3) A sanitized neck duster may be used.

(4) If a vacuum is used in lieu of a sanitized neck duster, the attachment head of the vacuum shall be wiped clean with a towel, cloth or tissue dipped in the approved disinfecting solution after use on each patron.

Statutory Authority: ORS 690.205

817-10-045 **HEADRESTS**

The headrest of any operating chair shall be covered with fresh linen or paper for each patron.

Statutory Authority: ORS 690.205

817-10-050 **LINENS**

Clean linen shall be stored in a separate closed compartment. Statutory Authority: ORS 690.205

817-10-055 **MATERIALS IN CONTACT WITH PATRON**

(1) Powder shall be dispensed from a shaker-top receptacle.

(2) Wave solutions shall be dispensed from a suitable container in a manner which will prevent contamination of the unused fluid.

(3) Creams and semi-solid substances shall be dipped from the containers with a clean spatula or disposable tissue.

Statutory Authority: ORS 690.205

817-10-060 **REFUSE AND WASTE MATERIAL**

(1) Refuse and all dry waste material shall be stored in a fly-tight container and frequently disposed of in a sanitary manner.

(2) All waste disposal cans shall be large enough to accommodate refuse until it is picked up.

(3) All waste disposal cans shall have a fly-tight cover which shall be kept in place.

(4) Waste disposal cans shall be kept clean to prevent odor.

(5) Cardboard boxes shall not be used for the storage of waste. Statutory Authority: ORS 690.205

817-10-065 **SANITIZING SOLUTIONS**

(1) The sanitizing solution shall be made up at all times the shop is in operation. It shall be kept in a covered pan or container large enough to hold the sanitizing solution for complete immersion of the object to be sanitized.

(2) After each patron, all tools and implements (including steel manicuring equipment) which comes in direct contact with the patron (except hair clippers and emery boards) shall be cleansed of hair and other adherent foreign material, thoroughly washed with soap and other detergents in water, rinsed in clear water, and disinfected by complete immersion for at least 10 minutes in a solution containing 1600 parts per million (ppm) of a commercial quaternary ammonium compound or by complete immersion for at least 10 minutes at room temperature in a solution containing not less than 15,000 parts per million (ppm) aqueous dilution of a commercial phenol compound; rinsed again in clear water and wiped dry with clean absorbent material.

(3) Sanitizing solutions shall be kept clean and test to required strength at all times:

(a) Quaternary ammonium compounds shall test at least 1600 ppm.

(b) Phenol solutions shall test at least 15,000 ppm.

(4) After each use, steel tools having a fine cutting edge and steel manicuring equipment may be disinfected by saturating a cotton pad with 75% alcohol and rubbing the pad on the part of the tool to be disinfected. This can be used as an alternate method to 817-10-065(2).

(5) Electrical or mechanical hair clippers shall be cleansed after each individual patron by removal of hair and other adherent foreign material, operated for at least 15 seconds in a solution containing not less than 1% of a commercial alkyl phenol or of alkyl chlorophenols in hydrocarbon oil, followed by drainage for at least 10 minutes prior to wiping dry and storage for re-use on another patron.

Statutory Authority: ORS 690.205

817-10-070 **SANITIZED TOOLS AND IMPLEMENTS**

(1) All tools and implements shall be cleaned and sanitized prior to each use.

(2) If an emery board is used it shall be a fresh emery board and shall be discarded immediately. Statutory Authority: ORS 690.205

817-10-075 **STORAGE OF SANITIZED TOOLS AND IMPLEMENTS**

(1) All santized tools and implements shall be stored in a clean, dry, closed storage cabinet when not in use.

(2) Sanitized tools and implements shall be stored separately from all other.

(3) Sanitized combs and brushes spread out to dry shall be covered with a clean towel.

(4) Roller storage receptacles shall be clean and free of hair and any other adherent foreign material.

(5) Storage drawers for clean tools and implements shall be clean, free of hair and used only for said tools and implements.

(6) Storage cabinets throughout the entire shop shall be kept clean.

(7) Work stations and vanities shall be kept clean, neat and orderly. Work areas shall not be cluttered with useless, unnecessary articles such as newspapers, magazines, etc.

Statutory Authority: ORS 690.205

817-10-080 **STORAGE OF SOILED TOOLS AND IMPLEMENTS**

A receptacle, which is large and deep enough to hold soiled tools and implements shall be provided.

Statutory Authority: ORS 690.205

817-10-085 **HAIRPIECES**

When trying on a manufactured hairpiece, that portion of the head that comes in contact with the hairpiece shall be completely covered with a disposable cover. All used hair goods must be cleaned and sanitized before resale and marked as "Used."

Statutory Authority: ORS 690.205

817-10-090 **USE OF DRINKING CUPS**

(1) Disposable drinking cups shall be provided in the shop. A drinking fountain is acceptable.

(2) All drinks must be served in disposable drinking cups (patrons use) and disposed of immediately in a fly-tight covered container.

Statutory Authority: ORS 690.205

817-10-095 **PETS IN SHOPS**

No pets shall be permitted on the premises of a shop. This does not apply to a trained guide dog accompanied by a blind person.

Statutory Authority: ORS 690.205

817-10-101 **EQUIPMENT**

(1) The surface of all equipment, including backbars, within the shop for public use shall be a washable non-absorbent material and kept in a clean, orderly and sanitary condition.

(2) Shampoo bowls shall be clean of hair and free of residue. A clean towel shall be placed around the neck of each patron to protect the patron while in position at the shampoo bowl.

(3) All equipment (furniture) fabric shall be clean and in good repair. Badly spotted, torn or worn fabric shall be replaced.

Statutory Authority: ORS 690.205

817-10-106 **FLOOR SURFACE**

(1) Floor surfaces in a shop shall be of a washable, non-absorbent, material such as washable carpeting, nylon or acrylic fibers, tile or linoleum and kept in a clean, orderly and sanitary condition.

(2) Floor surfaces shall be kept clean and in good repair. Worn or broken floor coverings shall be replaced. Statutory Authority: ORS 690.205

817-10-110 **WALLS AND CEILINGS**

Walls and ceilings shall be clean and free of leak spots, mildew, condensate or peeling paint.

Statutory Authority: ORS 690.205

817-10-115 **WINDOWS AND MIRRORS**

Windows and mirrors shall be clean and free of dust, smoke, hairspray, etc.

Statutory Authority: ORS 690.205

817-10-120 **POSTING OF LICENSES, INSPECTION CERTIFICATES AND RULES**

(1) All shop licenses shall be posted in public view.

(2) All inspection certificates shall be posted in public view.

(3) Sanitiary and safety rules adopted by the Board shall be conspicuously displayed in public view. Statutory Authority: ORS 690.095

817-10-125 **COMMUNICABLE DISEASE**

A practitioner or employe suffering from a communicable disease in a communicable form shall not work in a shop. Statutory Authority: ORS 690.095

817-10-130 **TREATMENT OF DISEASE**

A practitioner or employe shall not undertake the treatment of any disease nor may he or she knowingly serve a patron suffering from a communicable disease of the hair, scalp or nails.

Statutory Authority: ORS 690.005

817-10-135 **SERVING PATRONS**

Each practitioner shall wash his or her hands with soap and water prior to serving each patron.

Statutory Authority: ORS 690.205

817-10-140 **DISPENSARY**

Dispensary sink and entire area shall be neat and clean. Dispensary area shall not be cluttered with trash, bottles or items which need to be discarded.

Statutory Authority: ORS 690.205

DIVISION 20

LICENSING AND OPERATION OF A SHOP

817-20-002 **VARIANCES**

(1) In the case of any shop licensed prior to the effective date of these rules, upon application to the Board, the Board may grant a variance from any rule relating to the physical requirements of the premises constituting a shop.

(2) The Board may grant a variance only when it finds that the requirements of the rule in question would render strict compliance unreasonably burdensome or impractical to the special physical condition.

(3) In granting a variance, the Board may impose certain conditions which it deems necessary to protect the health and safety of the public.

Statutory Authority: ORS 690.165

817-20-005 **ISSUANCE OF SHOP LICENSES**

The Administrator of the Board may issue a shop license if all sanitary and other regulations and statutes are met. Statutory Authority: ORS 690.205

817-20-011 **CRITERIA FOR A NEW SHOP**

Each applicant shall:

(1) Be at least 18 years of age.

(2) Make application on the form furnished by the Board.

(3) Pay the application fee.

(4) Comply with the rules of the Board concerning health, safety and sanitation pursuant to ORS 690.055(1), (6).

(5) The area within a home operated as a shop must be equipped with the facilities and equipment required for all shops.

Statutory Authority: ORS 690.055

817-20-015 **PURCHASING AN EXISTING SHOP**

You must:

Meet the requirements of a new shop; refer to 817-20-011. Statutory Authority: ORS 690.055

817-20-025 **MOVING AN EXISTING SHOP TO NEW LOCATION**

You must:

(1) Meet the requirements of a new shop; refer to 817-20-011.

(2) Shop licenses are not transferable from person to person or to a new location.

Statutory Authority: ORS 690.205

817-20-030 **CLOSING A SHOP**

You shall:

(1) Inform the Board office of the date you are to close the shop.

(2) If you reopen the shop, you are to inform the Board office. Statutory Authority: ORS 690.205

DIVISION 30

EXAMINATIONS

817-30-005 **HOW TO OBTAIN A CERTIFICATE AS A GRADUATED STUDENT FROM AN OREGON SCHOOL OF HAIR DESIGN, COSMETOLOGY OR MANICURE**

(1) To obtain an Oregon certificate as a Barber, Hairdresser, Cosmetologist and Manicurist, you must:

(a) Complete and pass all courses in a barber school or beauty school in the subjects in which you wish to become certified;

(b) Must pass written examination administered by the Board of Barbers and Hairdressers;

(c) Pay a $15 examination fee and a $15 certificate fee. Statutory Authority: ORS 690.035

817-30-010 **HOW TO OBTAIN A CERTIFICATE AS AN OUT-OF-STATE LICENSED APPLICANT**

(1) To obtain an Oregon certificate as a Barber, Hairdresser, Cosmetologist or Manicurist, you must:

(a) Furnish the Board of Barbers and Hairdressers with a copy of your *current* out-of-state certificate (license);

(b) Pass a written test administered by the Board of Barbers and Hairdressers;

(c) Pay a $15 examination fee and a $15 certificate fee.

(2) Out-of-state applicants may take their original examination in the Board office. This may be done any day of the week Monday thru Friday during regular business hours.

Statutory Authority: ORS 690.035

817-30-015 **HOW TO APPLY TO TAKE THE EXAMINATION**

(1) An applicant is not required to preregister. The applicant decides when and where he or she wants to take the test and goes to the exam site of his or her choice on the scheduled date and hours (refer to 817-30-030).

(2) Tests are given on a first-come, first-served basis. The applicant should allow enough time to finish the test by closing time.

(3) The only time an applicant would need to contact the Board of Barbers and Hairdressers before taking the test is if there are questions whether he or she is qualified to take the test. Statutory Authority: ORS 690.035

817-30-020 **WHAT TO BRING WITH YOU WHEN YOU TAKE THE EXAMINATION**

(1) Completed and signed application form;

(2) Oregon-graduated students must also have the school manager, instructor, or owner sign the application form to verify the completion of required courses to qualify to take the test;

(3) Bring identification with you to the exam site, such as a driver's license with your picture.

Statutory Authority: ORS 690.035

817-30-025 **WHAT AN APPLICANT CAN TAKE INTO THE EXAMINATION ROOM**

(1) An applicant will not be allowed to take notes, textbooks, or notebooks into the examination room;

(2) The applicant may use a translating dictionary in a foreign language, if needed. This must be a translating dictionary—not a definition dictionary. Before the applicant is allowed to use the dictionary it must be checked by the Examiner. Statutory Authority: ORS 690.205

817-30-030 **OTHER THINGS THE APPLICANT SHOULD KNOW BEFORE TAKING THE EXAMINATION**

(1) Applicant will be disqualified if he or she talks to another applicant during the test. If the applicant has questions, ask the Examiner;

(2) Applicant must obtain permission from the Examiner to leave the room during the examination;

(3) No one will be admitted to the examination room except those persons taking the test.

Statutory Authority: ORS 690.205

817-30-035 **EXAMINATION COST**

(1) Cost to take the test is $15. If the applicant passes the test he or she will need to pay another $15 for a certificate;

(2) Applicant must bring two (2) $15 checks to the exam site. If the applicant does not have a checking account, he or she should bring two (2) money orders or the exact amount of cash. Statutory Authority: ORS 690.235

817-30-040 **THE TYPE OF EXAMINATION THE APPLICANT WILL HAVE TO TAKE**

The examination is a written test. There is no practical examination. Statutory Authority: ORS 690.065

817-30-045 **SUBJECTS THAT WILL BE COVERED IN THE WRITTEN EXAMINATION**

(1) Test is divided into four sections:

(a) Safety and Sanitation

(b) Barbering/Hairdressing
(c) Cosmetology
(d) Manicuring

(2) An applicant must pass the Safety and Sanitation section of the test in order to qualify for a certificate.

(3) The applicant may choose which of the remaining sections he or she wants to take based on the type of certificate desired and courses which have been completed and passed.

(4) All four sections will test applicant on:
(a) The basic principles on safety and sanitation;
(b) The sanitary rules of the Board of Barbers and Hairdressers;
(c) Chemicals used;
(d) How to safely use the tools of the trade and how they are to be kept clean;
(e) Diseases and disorders.

(5) Questions for safety and sanitation in barbering and hairdressing are taken from both barber and cosmetology textbooks.

Statutory Authority: ORS 690.065

817-30-050 TIME LIMIT FOR FINISHING EXAMINATION

The test is scheduled to last 1½ hours.

Statutory Authority: ORS 690.065

817-30-055 LENGTH OF TIME BEFORE THE APPLICANT KNOWS IF HE/SHE PASSED THE EXAMINATION

The Examiner will grade the examination on site and give the applicant his or her scores.

Statutory Authority: ORS 690.205

817-30-060 PASSING SCORE

The applicant must have a score of 75 percent or more to pass. Statutory Authority: ORS 690.205

817-30-065 PROCEDURE TO BE FOLLOWED IF THE APPLICANT FAILS

(1) If the applicant does not pass all or part of the test and wants to take it again, he or she can do so the next month. The applicant is required to pay another $15 examination fee whether all or part of the test is taken. The applicant must bring the exam fee to the exam site of his or her choice.

(2) The applicant may review the exam sections failed by discussion with the Examiner.

Statutory Authority: ORS 690.205

817-30-070 OBTAINING A CERTIFICATE

(1) If the applicant passes the Safety and Sanitation portion of the test and at least one other portion, he or she will receive a temporary certificate as soon as the test is graded. This will allow the applicant to go to work immediately. The applicant is required to pay a $15 certificate fee; this is in addition to the $15 paid for the examination.

(2) The temporary certificate is good for 30 days or until the applicant receives his or her permanent certificate. The certificate is good for one (1) year from date the temporary certificate was issued. Statutory Authority: ORS 690.205

817-30-075 WHEN EXAMINATIONS ARE HELD

(1) Exams are given once a month at five different locations on five different dates.

(2) The times, places, and dates may be obtained from the Board office.

Statutory Authority: ORS 690.065

817-30-080 ORAL EXAMINATIONS

An oral examination may be requested by the applicant who has demonstrated his or her inability by failing to pass the original written test. An oral examination will be conducted in the office of the Board. Statutory Authority: ORS 690.065

817-30-085 ISSUANCE OF PRACTITIONER CERTIFICATE

The Administrator is authorized to grant a Certificate of Registration if the applicant successfully passes an examination. Statutory Authority: ORS 690.205

DIVISION 40
FEES

817-40-005 ORIGINAL CERTIFICATE AND LICENSE

(1) A fee of $15 shall be paid to the Board with each application for an original certificate as a practitioner;

(2) A fee of $50 shall be paid to the Board with each application for a shop license.

Statutory Authority: ORS 690.235

817-40-010 RENEWAL OF CERTIFICATE AND LICENSE

(1) A fee of $15 shall be paid to the Board as a requirement for annual renewal of certificate;

(2) A fee of $25 shall be paid to the Board as a requirement for annual renewal of a shop license. Statutory Authority: ORS 690.235

817-40-015 LATE FEE

A fee of $5 shall be paid to the Board as a requirement for renewal of an expired license or certificate which has not been renewed within 30 days following the expiration date.

Statutory Authority: ORS 690.235

817-40-020 DUPLICATE OR REPLACEMENT OF A CERTIFICATE OR LICENSE

A fee of $5 shall be paid to the Board as a requirement for a duplicate or replacement of any certificate, license or permit.

Statutory Authority: ORS 690.235

817-40-025 TEMPORARY PREMISES LICENSE

A fee of $25 shall be paid to the Board with each application for a Temporary Premises License.

Statutory Authority: ORS 690.235

817-40-030 **TEMPORARY PERMIT**

A fee of $5 shall be paid to the Board with each application for a Temporary Permit issued under ORS 690.105.

Statutory Authority: ORS 690.235

817-40-035 **EXAMINATION**

A fee of $15 shall be paid to the Board with each application for examination for a certificate as a practitioner. A $15 fee shall be paid by the applicant for each subsequent examination.

Statutory Authority: ORS 690.235

DIVISION 50

RENEWAL AND RESTORATION OF CERTIFICATE OR LICENSE

817-50-005 **RENEWAL FEES**

(1) "The one year" renewal fee under ORS 690.085(3) means the renewal fee for the year for which the certificate is to be issued.

(2) "The one year" license fee in advance under ORS 690.085(4) means the renewal fee for the year for which the certificate is to be issued.

Statutory Authority: ORS 690.085

Chapter 01. Centralized Licensing.

Section
10. Applicability of chapter
20. Board organization
25. Public members
30. Quorum
40. Transportation and per diem
50. Administrative duties of department
60. Application for license
70. Administrative duties of boards
80. Department regulations
87. Powers and duties of department
90. Applicability of the Administrative Procedure Act
100. License renewal, lapse and reinstatement
105. Penalty for improper payment
110. Definitions

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

(1) Board of Public Accountancy;

(2) Board of Barber Examiners;

(3) Repealed by § 6 ch 32 SLA 1971.

(4) Board of Chiropractic Examiners;

(5) Board of Hairdressing and Beauty Culture Examiners;

(6) Board of Dental Examiners;

(7) Board of Electrical Examiners;

(8) State Board of Registration for Architects, Engineers and Land Surveyors;

(9) State Medical Board;

(10) Board of Nursing;

(11) Board of Examiners in Optometry;

(12) Board of Pharmacy;

(13) Real Estate Commission;

(14) Board of Veterinary Examiners;

(15) Board of Psychologist and Psychological Associate Examiners;

(16) Collection Agency Board;

(17) Board of Welding Examiners;

(18) Board of Marine Pilots;

(19) Board of Dispensing Opticians;

(20) Guide Licensing and Control Board;

(21) State Physical Therapy Board. (§ 1 ch 59 SLA 1966; am § 2 ch 136 SLA 1967; am § 2 ch 101 SLA 1968; am § 2 ch 143 SLA 1968; am § 2 ch 151 SLA 1968; am § 1 ch 106 SLA 1970; am § 6 ch 32 SLA 1971; am § 4 ch 179 SLA 1972; am § 2 ch 45 SLA 1973; am § 14 ch 65 SLA 1973; am § 1 ch 43 SLA 1975; am § 1 ch 43 SLA 1977)

Effect of amendments. — The first 1973 amendment added paragraph (19).

The second 1973 amendment inserted "and Psychological Associate" in paragraph (15).

The 1975 amendment added paragraph (20).

The 1977 amendment added paragraph (21).

Editor's note. — Section 2, ch. 59, SLA 1966, provides: "The Department of Commerce shall provide for the orderly transfer of the service functions which are to be performed by the department under this chapter."

Section 4, ch. 59, SLA 1966, provides: "A provision in existing law which conflicts with this Act is superseded by this Act."

Legislative committee reports. — For report on ch. 143, SLA 1968 (HB 707), see 1968 House Journal, p. 836. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

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Sec. 08.01.020. Board organization. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members. (§ 1 ch 59 SLA 1966)

Sec. 08.01.025. Public members. No public member of a board may:

(1) be engaged in the occupation which the board regulates;

(2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or

(3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 258 SLA 1976)

Sec. 08.01.030. Quorum. A majority of the membership of a board constitutes a quorum unless otherwise provided. (§ 1 ch 59 SLA 1966)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (§ 1 ch 59 SLA 1966)

Sec. 08.01.050. Administrative duties of department. (a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;

(2) maintain records and files;

(3) issue and receive application forms;

(4) notify applicants of acceptance or rejection of applicants as determined by the board;

(5) designate dates examinations are to be held and notify applicants;

(6) publish notice of examination;

(7) arrange space for holding examinations;

(8) notify applicants of results of examinations;

(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;

(10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of $2;

(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;

(12) compile and maintain current a register of licenses;

(13) answer routine inquiries;

(14) maintain files relating to individual licensees;

(15) arrange for printing and advertising;

(16) purchase supplies;

(17) employ secretarial help when needed;

(18) perform other services which may be requested by the board;

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in § 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned. (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976)

Effect of amendments. -- The first 1976 amendment added paragraph (19) of present subsection (a).

The second 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the introductory paragraph of present subsection (a).

The third 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, substituted "department" for "Department of Commerce" and "when appropriate" for "for the boards" in the introductory language and inserted "by the licensee" in two places in paragraph (10). The amendment also added subsection (b).

While none of the amendments gave effect to the others, this section is set out as it appears in ch. 258, SLA 1976, with the inclusion of paragraph (19) of subsection (a) added by ch. 102, SLA 1976.

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law:

(1) keep minutes and records of all proceedings;

(2) hold a minimum of one meeting each year;

(3) hold at least one examination each year;

(4) request, through the department, investigation of violations of its laws and regulations;

(5) prepare and grade examinations;

(6) pass on qualifications of applicants for examination and license;

(7) forward minutes of meetings to the department within 20 days;

(8) forward results of examinations to the department;

(9) notify the department of meeting dates at least 15 days before meeting. (§ 1 ch 59 SLA 1966)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;

(2) what is contained in application forms;

(3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

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Sec. 08.01.087. Powers and duties of department. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by a board listed in § 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (§ 3 ch 258 SLA 1976)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (§ 1 ch 59 SLA 1966; am § 4 ch 258 SLA 1976)

Effect of amendment. — The 1976 amendment added "except those under AS 08.01.087(b)" to the end of the section.

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968)

Sec. 08.01.105. Penalty for improper payment. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (§ 3 ch 258 SLA 1976)

Sec. 08.01.110. Definitions. In this chapter

(1) "board" includes the boards and commissions listed in § 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in § 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in § 10 of this chapter. (§ 1 ch 59 SLA 1966; am § 40 ch 218 SLA 1976; am § 5 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

The second 1976 amendment added paragraphs (3) through (6).

Chapter 02. Miscellaneous Provisions.

Section
10. Professional designation requirements
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) A person licensed in the state as a chiropractor as defined in AS 08.20.220, a dentist as defined in AS 08.36.360, a medical practitioner or osteopath as defined in AS 08.64.380, a professional nurse as defined in AS 08.68.410, an optometrist as defined in AS 08.72.300(3), a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall professionally identify

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himself by the use of appropriate letters or a title after his name which represents his specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays his professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and identifies himself by using the letters "M.D." or the title "doctor" or "physician" or any other title which tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of his noncompliance by his appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, his noncompliance continues, the board may suspend or revoke his license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1973)

Sec. 08.02.020. Limitation of liability for members of licensing boards. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976)

Chapter 03. Termination, Continuation and Reestablishment of Regulatory Boards

Section

10. Termination, continuation and reestablishment of regulatory boards

Cross reference. — As to review of the activities of agencies, boards and commissions, see AS 44.66.010 et seq.

Editor's note. — Section 1, ch. 149, SLA 1977, provides: "The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government, and that there is need for an effective and regular system of scrutiny of the programs and activities of all agencies, boards and commissions. The legislature further finds that the establishment of a system for periodic review by the public and the executive and legislative branches of certain state agencies, boards and commissions will help the governor and the legislature to determine the need for the continued existence of each of the agencies, boards and commissions."

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Board of Chiropractic Examiners (AS 08.20.010);

(2) Board of Dental Examiners (AS 08.36.010);

(3) State Medical Board (AS 08.64.010);

(4) Board of Nursing (AS 08.68.010);

(5) Board of Dispensing Opticians (AS 08.71.010);

(6) Board of Examiners in Optometry (AS 08.72.010);

(7) Board of Pharmacy (AS 08.80.010);

(8) Board of Veterinary Examiners (AS 08.98.010);

(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);

(10) Board of Nursing Home Administrators (AS 08.70.010);

(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.010);

(2) Board of Barber Examiners (AS 08.12.010);

(3) Collection Agency Board (AS 08.24.011);

(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);

(5) Board of Electrical Examiners (AS 08.40.010);

(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);

(7) Guide Licensing and Control Board (AS 08.54.010);

(8) Board of Marine Pilots (AS 08.62.010);

(9) Real Estate Commission (AS 08.88.011);

(10) Board of Welding Examiners (AS 08.99.010);

(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

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CHAPTER 24. BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS

Section

10. Submission of application
20. Time of examination
30. Additional requirements for licenses
40. Requirements for licenses without examination
50. Apprenticeships
60. Duties of instructor-operator and student instructor
70. Location of shops in private residence
80. Prohibition against employment of unlicensed operators
90. Notification to board of sale, lease or transfer
100. Approval of school of hairdressing and beauty culture
110. Plan and equipment requirements of schools
120. Sanitary rules and regulations
130. Curriculum requirements of school of hairdressing and beauty culture
140. Inspection of schools

12 AAC 24.010. SUBMISSION OF APPLICATION. (a) All applications shall be made under oath and all documentary evidence in support of the application, such as diplomas and foreign license, shall be verified or certified.

(b) The required fee must be submitted with the application.

(c) Applicants shall apply in writing to the secretary of the Board of Hairdressing and Beauty Culture Examiners.

(d) The board reserves the right to require additional proof of qualifications. (In effect before 7/28/59; am 2/64, Reg. 14; am 5/27/66, Reg. 21)

Authority: AS 08.28.120

12 AAC 24.020. TIME OF EXAMINATION. (a) Examination of applicants for licenses shall be given quarterly.

(b) The board shall give public notice of the date, place and time at least 30 days prior to examination.

(c) Additional examinations may be held at the discretion of the board if there are five or more applicants. (In effect before 7/28/59; am 2/64, Reg. 14; am 5/27/66, Reg. 21)

Authority: AS 08.28.120

12 AAC 24.030. ADDITIONAL REQUIREMENTS FOR LICENSES. (a) No person may be licensed as a manager-operator unless

(1) he is a licensed cosmetologist; and

(2) he has had one year practical experience as a licensed cosmetologist immediately prior to application.

(b) No person may be licensed as an instructor-operator unless

(1) he has an Alaska cosmetology license;

(2) he has had one year's practical experience; and

(3) he has engaged in the active practice of hairdressing and beauty culture for at least five years, or has completed 600 hours of student instructor training.

(c) Except that a person may be licenesed as an instructor-operator by reciprocity if he holds a current instructor-operator license from a state whose requirements were substantially equal to those provided in AS 08.28.140 at the time the license was issued. (In effect before 7/28/59; am 2/64, Reg. 41; am 5/27/66, Reg. 21)

Authority: AS 08.28.040
AS 08.28.110
AS 08.28.180
AS 08.28.120

12 AAC 24.040. REQUIREMENTS FOR LICENSES WITHOUT EXAMINATION. (a) An applicant who has a current license from a board of cosmetology in another state with less than 2,000 hours of training in an approved school of beauty culture shall be allowed credit for practical shop experience. He may be licensed without examination as follows:

(1) the training and experience must have been immediately prior to date of application and

(A) he has 1,500 hours of training and one year's experience in a licensed beauty shop; or

(B) he has 1,000 hours of training and two years' experience in a licensed beauty shop.

(b) Proof of practical experience must accompany the application for license or be furnished at the request of the board.

(c) Special consideration may be given to an applicant who can furnish proof of training in an advanced beauty culture school. (In effect before 7/28/59; am 2/64, Reg. 14; am 5/27/66, Reg. 21)

Authority: AS 08.28.130
AS 08.28.140

12 AAC 24.050. APPRENTICESHIPS. Any hairdressing or beauty culture shop may train an apprentice in the art of hairdressing or beauty culture subject to the following conditions:

(1) All apprentices shall register with the secretary of the board;

(2) A shop may have one apprentice for each five operators or fraction thereof except that an apprentice who is training under the state office of Vocational Rehabilitation may train in any shop without regard to the quota imposed by this section;

(3) Apprentices shall be instructed in both theory and practical work. Theory shall be taught from a textbook or textbooks approved by the board;

(4) An apprentice shall complete 2,000 hours of instruction over a period not exceeding two years with not more than eight hours' instruction to be given in any single day;

(5) Upon completion of the prescribed course, the apprentice shall be eligible to take an examination given by the board. If the apprentice fails to pass the examination, he shall be eligible to take another examination;

(6) An apprentice shall complete his apprenticeship in the shop in which he was registered, except that the board may authorize an apprentice's transfer to another shop where good cause is shown;

(7) When an apprentice has interrupted his apprenticeship for a continuous period of one year, no credit will be allowed for apprenticeship instruction received prior to the interruption. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.090
AS 08.28.120

12 AAC 24.060. DUTIES OF INSTRUCTOR-OPERATOR AND STUDENT INSTRUCTOR. (a) No instructor-operator may (in connection with his duties as an instructor at a licensed school) practice hairdressing and beauty culture upon members of the public, except when the work pertains directly to the instruction of students.

(b) A student-instructor in cosmetology shall be registered with the board upon enrollment in a registered school.

(c) A student-instructor shall not be permitted to instruct without a licensed instructor on the premises. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

12 AAC 24.070. LOCATION OF SHOPS IN PRIVATE RESIDENCE. (a) No shop may be opened and maintained in a private residence unless the shop is located in a separate room apart from the living quarters.

(b) The shop shall be properly equipped and shall be subject to inspection by the board and by the Alaska Department of Health and Welfare. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

12 AAC 24.080. PROHIBITION AGAINST EMPLOYMENT OF UNLICENSED OPERATORS. No manager or any other person in a position of authority shall employ an unlicensed operator. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.100

12 AAC 24.090. NOTIFICATION TO BOARD OF SALE, LEASE OR TRANSFER. In the case of a sale, lease or transfer of any school or shop, the seller, lessor or transferor shall notify the board of the transaction within 30 days of the sale, lease or transfer. The notice shall contain the name and address of the buyer, lessee or transferee. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

12 AAC 24.100. APPROVAL OF SCHOOL OF HAIRDRESSING AND BEAUTY CULTURE. No school of hairdressing or beauty culture may be approved by the board unless the school employs at least two licensed instructors, and upon approval, the school must keep on duty at least one full-time, licensed instructor for each 10 students during school hours. After enrollment of the first 20 students, the school shall employ one additional instructor for every 25 students. In addition to the foregoing requirements, such school shall teach the following minimum required operations for each student during the 2,000 hours training:

(1) shampoos – 100

(2) color rinses – 50

(3) neck trims w/clippers – 50

(4) haircuts – 200

(5) manicures – 50

(6) tweezer arches – 10

(7) wax arches – 10

(8) fingerwaves (flat) – 100

(9) iron work – 150

(10) scalp treatments – 25

(11) facials (to be completed with make-up) – 25

(12) cold waves – 60

(13) heat permanents (blocking and wrapping) – 10

(14) henna packs – 5

(15) bleaches – 25

(16) hair tints – 25

(17) hairstyles – 300 (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

12 AAC 24.110. PLAN AND EQUIPMENT REQUIREMENTS OF SCHOOLS. (a) The plans for a proposed school shall be submitted to the board for approval. A representative of the board shall review the plans and inspect the premises for the purpose of determining:

(1) suitability of location

(2) suitability of school rooms including plumbing, ventilation, lighting and adequacy of floor space (basement rooms below ground level will not be approved);

(3) adequacy of layout;

(4) adequacy of equipment; and

(5) adequacy of provisions for licensed instructors.

(b) After all equipment has been installed the premises must be inspected by a representative of the board and thereafter approved by the board before a license will be issued.

(c) The minimum requirements for a school of beauty culture enrolling 25 students or less shall consist of the following items of equipment:

(1) 10 wefts;

(2) one vibrator;

(3) six curling heaters;

(4) eight block heads;

(5) one linen cabinet;

(6) four shampoo basins and trays

(7) 10 mirrors and 10 chairs;

(8) one blackboard, 4' x 4' or equivalent;

(9) eight sanitary receptacles;

(10) eight dryers;

(11) four facial chairs;

(12) four dry sterilizers (lamps or equivalent);

(13) one therapeutic lamp installed in such manner as to permit free use of operator's hands;

(14) one permanent wave machine, croquinole (two complete sets of 32 each of rods, clips and felts), cold wave (four sets each consisting of 32 rods);

(15) one tablet armchair or usable table for each student in theory class;

(16) one beauty culture textbook for each student (book of questions and answers are not considered textbooks);

(17) three types of iron (paper curl, marcel and straghtening comb).

(d) In addition to the items of equipment listed in (c) the school shall have such supplies as wave sets, shampoo creams, hair tint, cloth towels manicuring tables with proper lighting, chairs for at least five students, available books on anatomy, physiology and hygiene, charts 24" x 24" or equivalent, on skin, bones, muscles, nerves, and circulatory systems, and other necessary items for instruction that the board may require.

(e) The proper placement of this equipment shall require at least 1,000 square feet of floor space, excluding office, cloakroom and reception room space. In the event that the student enrollment of any school increases, additional space and equipment may be required by the board. The number of students taught in a school of beauty culture at any one time shall be limited to one for every 15 square feet of space contained in the school subject to the following limitations: space occupied by offices and lavatories shall not be used in computing maximum number of students taught.

(f) The following equipment shall be issued to each student:

(1) one shampoo cape;

(2) two brushes;

(3) one pair scissors;

(4) one pair thinning shears;

(5) one razor;

(6) six combs (four fingerwaves, one rattail, and one haircutting);

(7) one electric clipper (optional);

(8) complete tools for manicuring; cuticle oil, cuticle remover, polish, emery boards, nipper scissors, pusher and brush; and

(9) a carrying case of sufficient size to accomodate the materials used by the student. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180
AS 08.28.250

12 AAC 24.120. SANITARY RULES AND REGULATIONS. The rules and regulations of the Alaska Divison of Public Health, as set forth in Title 7, Alaska Administrative Code, Sections 1250 and 1257, are hereby adopted by reference and incorporated herein as a part of these rules and regulations. All licensees shall comply with such regulations. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.280

12 AAC 24.130. CURRICULUM REQUIREMENTS OF SCHOOL OF HAIRDRESSING AND BEAUTY CULTURE. (a) The school shall submit its proposed curriculum to the board, with the application for license. The curriculum must be approved by the board before the school is licensed. The curriculum shall provide for the use of a standard textbook approved by the board. The curriculum must include instructions on the statutes and regulations governing hairdressing and beauty culture in the State of Alaska.

(b) The curriculum shall provide for a course of at least 2,000 hours of instruction, with no more

than eight hours of instructions in any single day. The school shall, upon completion of the course by a student, issue a diploma and an academic achievement record. A copy of the academic record shall be transmitted to the board.

(c) All students shall register with the secretary of the board. It shall be the duty of the owner of each school to transmit in writing the name, age, address and the date of commencement of instructions of each student enrolled within 30 days after the student's enrollment. It shall also be the duty of the owner of each school to advise the secretary of the board, in writing, of the date of termination of instructions within 30 days after termination.

(d) There shall be a minimum requirement of 250 hours of theory study during the 2,000 hours.

(e) There shall be a minimum requirement of 350 hours of practice training.

(f) Schools must keep daily records of student attendance of all courses, and these records shall be open for inspection by any member of the Board of Hairdressing and Beauty Culture Examiners.

(g) Practice training shall consist of classwork and individual training in all subjects of each practice. All practice training shall be limited to actual practice by the student either on transformation or other devices, or on other students, for the purpose of acquiring the fundamentals and technique of such subjects.

(h) A school may make a reasonable charge for these services to persons other than student, but all services shall be of a clinical nature and under direct supervision of an instructor.

(i) School authorities shall give a student who leaves the school in good standing an "affidavit" indicating the number of hours of each type of instructions received. A student who wishes to transfer to another school must present the affidavit to the school authorities before credit may be given for past instructions.

(j) A student transferring from a school in another state may transfer his credits upon presentation of a certified affidavit of records from the state cosmetology board of the other state, or upon other proof acceptable by the board.

(k) Where a student has interrupted his schooling for a continuous period of three years, no credit will be allowed for instructions received prior to the interruption. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

12 AAC 24.140. INSPECTION OF SCHOOLS. Licensees shall permit any member of the board to inspect at any time during working hours. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

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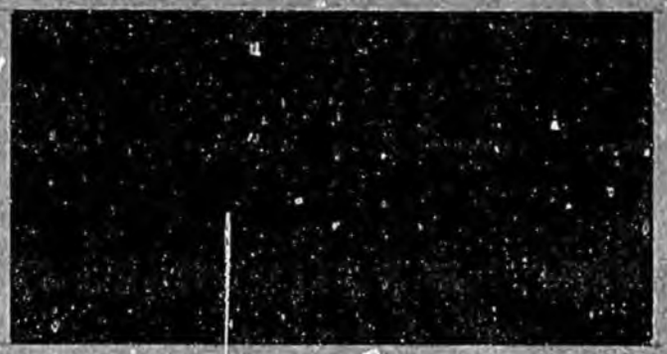
STATE OF ALASKA



DIVISION OF LEGISLATIVE AUDIT
Juneau, Alaska

STATE OF ALASKA

A PERFORMANCE REVIEW OF THE BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS

June 11, 1979

A PERFORMANCE REVIEW OF THE BOARD OF HAIRDRESSING AND BEAUTY CULTURE EXAMINERS

June 11, 1979

Commissioner of the Department of Commerce and Economic Development	Charles R. Webber
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Board of Hairdressing and Beauty Culture Examiners

President	Hester Pumphrey
Vice-President	J. Rae Maness
SEcretary	Ione M. Lambert
Member	Maria C. Dunham
Member	Dennis A. Millhouse

STATE OF ALASKA DIVISION OF LEGISLATIVE AUDIT

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

August 3, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
BOARD OF HAIRDRESSING
AND
BEAUTY CULTURE EXAMINERS

June 11, 1979

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Board of Hairdressing and Beauty Culture Examiners was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determing whether the Board of Hairdressing and Beauty Culture Examiners should be reestablished. The law currently specifies that this Board will terminate on June 30, 1980, but will continue until June 30, 1981 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statues and Board regulations;

(2) interviews with Board members and questionnaires sent to the Board;

(3) interviews with health agencies and professional associations;

(4) tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) interviews with OL employees;

(6) complaints filed with OL, the Ombudsman's Office Consumer Affairs Agency, and the Equal Employment Opportunity Office; and

(7) questionnaires sent to persons regulated by the Board.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090.

manpower problem ($)

(2) The Division of Occupational Licensing has not adequately collected, recorded and maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

The Board of Hairdressing and Beauty Culture Examiners was created by the 1957 Session Laws of Alaska to serve in a regulatory capacity under the provisions of AS 08.28. The Board is charged with exercising general control over the vocations of hairdressing and beauty culture within the State. To accomplish this, the five member Board has been given authority to examine applicants, issue licenses, inspect shops and schools, investigate complaints, suspend or revoke a license, and promulgate rules and regulation necessary to enforce statutes.

The Board regulates beauty schools, school owners, instructors, students, beauty shop owners, managers and operators, demonstrators and consultants, manicurists, and apprentices. Qualifications for licensure include educational or apprenticeship requirements and passing score on a practical examination as well as a national written test prepared and scored by the Psychological Corporation. Out-of-State applicants holding a current valid license from another state or country may be licensed by endorsement in Alaska if they also meet minimum education and experience requirements.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative oversight consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conslusion

The Board of Hairdressing and Beauty Culture Examiners (hereinafter referred to as the Board) was created by the 1957 Session Laws of Alaska to serve in a regulatory capacity under the provisions of AS 08.28. The Board is charged with exercising general control over the vocations of hairdressing and beauty culture within the State. To accomplish this, the five member Board has been given authority to examine applicants, issue licenses, inspect shops and schools, investigate complaints, suspend or revoke a license, and promulgate rules and regulations necessary to enforce statutes.

The primary purpose of a regulatory board is to protect the public. This is most often accomplished by licensure. In order to justify licensing of cosmetologists and hairdressers, it is necessary to determine if:

1. The unlicensed practice of cosmetology poses a serious threat to the health, safety, or economic well-being of the consuming public;

2. potential users can be expected to possess the knowledge needed to evaluate the qualifications of those offering the service; and

3. benefits to the public clearly outweigh any potential harmful effects, such as a decrease in the numbers of cosmetologists or higher cost of service, created by regulation.

Services rendered by cosmetologists include two areas of potential harm to the public:

1. Spread of infectious disease; and

2. improper use of chemicals.

The Commissioner of the Department of Health and Social Services (H & SS) is charged with promulgating rules and regulations establishing standards of cleanliness and sanitation in connection with the operation of any cosmetology establishment (AS 18.05.040). Under this authority, H & SS representatives inspect schools and shops to enforce sanitation requirements and control the spread of contagious diseases. Therefore, it is unnecessary for the Board to become involved in this area of public protection.

Chemicals used in cosmetological establishments vary from mild shampoos to stronger formulas for permanent waves and hair coloring. These products for professsional users are manufactured in states other than Alaska. Their sale and interstate distribution is controlled by the Department of Health, Education and Welfare, Public Health Service, Food and Drug Administration (FDA). The labeling of such products contains ingredients, instructions for use and precautions to be observed. Most manufacturers have persons on their staff, oftentimes entire departments, who specialize in product liability to ensure that their product labels comply with Federal regulations and can be read and understood by ordinary individuals. Thus, if a cosmetologist, licensed or unlicensed, followed the instructions and precautions on the label of professional cosmetics, the potential harm to the consumer would be minimal.

NOT TRUE w/ professional chemicals

In answer to our inquiry regarding complaints or investigations, the FDA, Seattle Field Office, replied that their infrequent needs for investigation reveal that, almost without exception, any adverse effects suffered would be due to sensitivity or allergy type reactions and that this is particularly true for products more commonly used in beauty salons, such as hair dyes and permanent wave products. Here again, products likely to cause sensitivity or allergic reactions caution the user to patch test the product on the consumer prior to application.

To further help resolve the question of whether or not the practice of hairdressing and beauty culture needs regulation, we examined the complaints filed with the Alaska Department of Commerce and Economic Development, Division of Occupational Licensing (OL). Since 1974, 94 complaints have been filed with OL; only 5% were consumer complaints and, of these, only one alleged physical injury. The majority of complaints (44%) were filed by licensed practitioners against others operating without a license; none of these alleged physical harm to customers of unlicensed practitioners. Thus, the nature of these complaints indicates that the unlicensed practice of cosmetology poses a minimal threat to the health, safety, or economic well-being of the consuming public.

There are alternative forms of regualtion other than licensure which are appropriate when the threat of life, health, safety and economic well-being is relatively small and other forms of legal redress are available to the public. These include registration without pre-entry screening, registration with minimum standards as a pre-requisite, and certification requiring minimum standards.

alternatives to the Board.

In summary, we conclude that the Board of Hairdressing and Beauty Culture Examiners should be allowed to terminate on June 30, 1980, and that licensure of cosmetologists and hairdressers be discontinued.

If the Board is not terminated and/or licensing is continued, then the following recommendations should be considered.

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 8 are addressed to the Board of Hairdressing and Beauty Culture Examiners. Finding and Recommendation No. 9 is addressed to the Division of Occupational Licensing (OL) and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978" issued under separate cover.

Recommendation No. 1

The Board should seek legislation to require that two of the five Board members be public members and to limit Board member service to not more than two consecutive three year terms.

AS 08.28 created a Board of Hairdressing and Beauty Culture Examiners composed of five members appointed by the Governor. Four members must have been licensed in the State for five years as an operator, manager-operator or owner-operator; one member must have been licensed for three years as an owner of, manager of, or instructor in a licensed beauty school. Members serve a term of three years and at the pleasure of the Governor; there is no limit on the number of terms a member may serve. Two of the present Board members have served more than two terms; one member has served more than three terms.

Although regulation of the practice of cosmetology was instituted to meet a public need, that is, to protect the health, safety and economic welfare of Alaskans, there is no member of the public represented on the Board. A review of the Board minutes since 1975 shows that no members of the public have been present at the meetings.

Limiting appointments to two consecutive terms and including public members in the Board make-up would permit a broader spectrum of professional background with increased opportunities for new members and ideas and would provide a point of view otherwise absent on a board composed solely of license holders.

Recommendation No. 2

The Board should inspect all licensed beauty schools on a regular basis; violations and complaints should be investigated promptly.

AS 08.28.040 provides that the Board may inspect schools to exercise general control over the vocations of hairdressing and beauty culture within the State.

There are four beauty schools licensed in Alaska; three are located in Anchorage, the fourth is in Fairbanks. The Board annually inspects the three schools in Anchorage, but the school in Fairbanks has not been inspected since 1976. The Board should consistently exercise its inspection prerogative.

Numerous complaints, both written and oral, against one particular school in Anchorage have been directed to the Board since 1972. Inspections by the Board have indicated that the majority of these complaints were valid and have revealed further violations by the school owner. Individual Board members have verbally requested investigations by the Division of Occupational Licensing (OL). OL has not acted upon these requests in a timely manner.

The Board should inspect all schools uniformly; and deficiencies noted should be referred to OL in writing.

Recommendation No. 3

The Board should allow apprenticeships in any hairdressing or beauty culture shop which meets the requirements of 12 AAC 24.050.

It is the policy of the present Board not to allow an apprentice to train in a shop which is located in a town where there is a beauty school. According to the minutes of the May, 1978 Board meeting, the policy exists "to protect (beauty) schools".

This policy violates the intent of the law and is discriminatory. It was adopted to protect a segment of the regulated occupation rather than to serve the best interest of the public. Furthermore, it may be construed as restricting entry into the practice of cosmetology.

Recommendation No. 4

The Board should revoke a previous resolution which amounts to invasion of privacy.

On May 17, 1978 the Board unanimously passed a motion instructing the Division of Occupational Licensing (OL) to send a copy of each student's examination results to the beauty school the student attended. OL subsequently complied with these instructions.

To send the beauty schools results of individual students' examination scores serves no useful purpose that could not be served as well by examination statistics without names.

To avoid violation of the students' privacy, the Board should revoke that resolution or amend it to the extent that examination statistics without names be made available to all the beauty schools. OL should not release individual scores without written permission of the student.

Recommendation No. 5

The Board should take formal action to authorize OL to issue licenses.

Between July 1, 1976 and December 31, 1978, OL issued 467 new licenses to cosmetologists and others regulated by AS 08.28 without formal approval of the Board as required by AS 08.01.050.

Since the Board has prescribed minimum licensing requirements, OL has followed the procedures of having a License Examiner approve the license application based on the pre-established requirements.

To comply with the intent of AS 08.01.050, the Board should pass a resolution authorizing OL to issue licenses to applicants meeting minimum requirements.

Recommendation No. 6

The Board should establish goals and quantifiable objectives which would permit performance evaluation by the legislative and executive branches.

In order to show how the Board has provided positive benefits to the public, the membership should establish objectives describing what the Board seeks to accomplish during a specific budget year. To be most effective, these objectives should be capable of measurement and include numerical targets which serve to measure actual accomplishments to stated target accomplishments.

A survey of the members showed that this Board, as a group, does not have a clear idea of its goals and objectives. The Division of Occupational Licensing (OL) established its own overall budget goals and objectives; however, the budget documents do not include goals or objectives for individual boards.

Alaska Statute 37.07.090 requires each agency, board or commission to submit a performance report no later than September 1 for the preceding fiscal year. OL has not, in the past, required the Board to comply with this statute. Without quantifiable objectives, the Board cannot comply with this statute. Without performance data, neither the Governor's Office nor the Legislature can evaluate the effectiveness of the Board.

Sec. 37.07.090. Performance reporting. (a) Each state agency shall submit a performance report to the division no later than September 1 for the preceding fiscal year. These reports shall be in the form prescribed by the division after consultation with the legislative finance division, and shall include

(1) an identification of the objectives intended for the program and the problem or need which the activities and operations of the board, commission or program is intended to address;

(2) an assessment of the degree to which the original objectives of the program have been achieved expressed in terms of performance, effects, or accomplishments of the program and of the program or need which it was intended to address;

(3) a statement of the performance and accomplishments of the program in each of the last four completed fiscal years and of the costs incurred in the operation of the program;

(4) a statement of the number and types of persons affected by operation of the program;

(5) a summary statement, for each of the last three completed fiscal years, of the number of personnel employed in carrying out the program and a summary of the cost of personnel employed under contract in carrying out the program;

(6) an assessment of the effect of the program on the economy of the state;

(7) an assessment of the degree to which the overall policies of the program, as expressed in regulations adopted by the agency, board or commission and its decisions, meet the objectives of the legislature in establishing the program; and

(8) an analysis of the services and performance estimated to be achieved if the life of the agency, board or commission were to be continued.

(b) The division shall summarize the performance reports and forward copies to each member of the legislature. (§ 1 ch 188 SLA 1970; am § 5 ch 95 SLA 1971; am § 6 ch 149 SLA 1977)

Effect of amendment. — The 1977 amendment deleted "statements concerning" following "legislative finance division, and shall include" in the second sentence of subsection (a) and substituted present paragraphs (1) through (8) for former paragraphs (1) through (4) in that sentence.

Editor's note. — Section 1, ch. 149, SLA 1977, provides: "The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government, and that there is need for an effective and regular system of scrutiny of the programs and activities of all agencies, boards and commissions. The legislature further finds that the establishment of a system for periodic review by the public and the executive and legislative branches of certain state agencies, boards and commissions will help the governor and the legislature to determine the need for the continued existence of each of the agencies, boards and commissions."

Recommendation No. 7

The Board should establish procedures for the conduct of its business.

During our review of Board proceedings we noted that:

A. Minutes were not always complete and had not been signed by the Board president; none of the minutes on file with OL were approved.

Minutes are the official public record of the proceedings of a Board meeting and the only means a Board has to formally state its actions. Therefore, it is essential that all minutes be accurate, properly signed and approved.

B. The Board does not observe parliamentary procedures for the conduct of meetings. Board meetings have been held without notifying all members and publishing agendas; and a single Board member has taken independent action for which the entire Board is responsible.

Meetings conducted without observing parliamentary procedures reduce the effectiveness of the Board. Independent action by a single Board member does not necessarily represent the will of a majority of the Board. Action for which the entire Board is responsible should be decided by a majority of the Board in compliance with the intent of AS 08.01.030.

The Board should (MUST) improve formal minutes and adopt standard parliamentary procedures for the conduct of meetings.

Recommendation No. 8

The Board should review existing statutes, rules and regulations and seek appropriate revision where necessary.

As a part of our examination we reviewed the statutes and regulations governing cosmetologists and hairdressing to determine if these laws were obsolete, vague, or unduly restrictive. We also reviewed the Board's activity concerning promulgation of rules and regulations.

Examples of findings follow:

A. Regulations do not define the minimum licensing requirements for school owner, owner-operator, shop operator only, demonstrator or consultant, and manicurist.

schooling for a continuous period of three years, no credit will be allowed for instructions received prior to the interruption. (In effect before 7/28/59; am 5/27/66, Reg. 21)

Authority: AS 08.28.180

B. AS 08.28.080 states that the Board shall adhere as closely as possible to rules, regulations and standards prescribed and recommended by the "Allied Cosmetology Council of State Board, Schools, and Shops". There is no such organization today; Board members and employees of the Division of Occupational Licensing (OL) were unaware of any such rules, regulations and standards.

C. The Board has been applying curriculum requirements of beauty schools, 12 AAC 24.130.(K) as a criteria to determine if applicants have 2,000 hours of schooling required by AS 08.28.110. The Attorney General recently rendered an opinion that 12 AAC 24.12.(k) is not applicable to operator licensing requirements.

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D. The Board approved some changes in its rules and regulations in May, 1978. OL subsequently prepared an initial draft of the revised regulations and forwarded them to the Board for action at the August meeting. No action was taken at the August or November meetings.

E. Hairdressing laws impose 22 categories of fees (including original license and biennial renewal). Nine categories have not been changed since they were established in 1957 (22 years); two categories haven't been increased for 20 years; and nine other categories haven't been increased for 11 years.

Based on 1977-78 figures, the annual cost to taxpayers for operating the Board was $15,000 over and above license revenue. The licensed profession should adequately contribute to the cost of operating their Board. The Board should review the existing license fees, determine to what extent the Board should be self-supporting, and seek legislation to increase fees in line with current economic conditions.

AS 08.28.040 provides that the Board shall exercise general control over the vocations of hairdressing and beauty culture within the State. This cannot be done effectively if the statutes or rules and regulations are obsolete, vague and can be inconsistently applied. Currently, applicants are unable to determine if they meet minimum qualifications and the potential exists for discrimination by the Board and/or OL. When the Board has reviewed and approved changes in statutes or rules and regulations, it should act promptly to seek the necessary legislation to effect these changes.

Recommendation No. 9

OL should maintain operating statistics in licensing, examinations, and related license examiner workload.

The Division needs relevant facts and statistics for evaluating the performance of its personnel and Board activity. Many past statistics have not been collected and maintained, such as:

1. Number of beauty schools, school owners, instructors, students, beauty shop owners, managers and operators, demonstrators or consultants, manicurists and apprentices licensed each year and in the past;

2. number of persons requesting applications and number of applicants denied licensure due to lack of qualification;

3. number of persons taking the practical and written examinations and number of applicants failing;

4. number of complaints against the Board or the regulated occupation received; number investigated and final disposition;

5. correspondence workload of license examiner; and

6. number of complaints or criticisms about the performance of OL support staff.

It is to the advantage of the Division to keep these records in order to support its budget request, evaluate its personnel and keep the Board informed of its progress. Feedback from the Board and the public should be encouraged to determine if staff performance is adequate.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicates both positive and negative aspects of Board activities as they relate to the public need factors defined in the "Sunset" law. This analysis is not intended to be comprehensive in nature, but addresses those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. The Board has promulgated rules and regulations to exercise general control over the vocations of hairdressing and beauty culture within the State. However, our review showed that some of these rules and regulations are vague, obsolete and can be inconsistently applied.

2. The Board does not allow apprenticeships in any town where a beauty school is located. This policy was adopted to protect a segment of the regulated occupation rather than to serve the best interest of the public.

3. The Board does not consistently exercise its inspection prerogative. One beauty school has not been inspected since 1976. In addition, the Department of Health and Social Services is charged with inspecting schools and shops to enforce sanitation requirements, so it is unnecessary for the Board to become involved in this area of public protection.

4. The Board has invaded the privacy of beauty school students by sending a copy of each student's examination results to the school he/she attended.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. The Division of Occupational Licensing (OL) has not provided investigative support to the Board, thereby rendering ineffective the Board's powers of revocation and suspension of licenses.

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II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. The Division of Occupational Licensing (OL) has not provided investigative support to the Board, thereby rendering ineffective the Board's powers of revocation and suspension of licenses.

2. The high turnover of License Examiners in OL has resulted in decreased efficiency in the administrative and licensing support furnished the Board.

3. The Board is not self-supporting; cost to taxpayers of operating the Board for FY 1978 was $15,059.

4. OL has not maintained updated records and statistics for Board use.

See page 12 of this audit.

5. The Bqard has not developed and reported program plans and performance information required by AS 37.07.090

6. The Board does not follow parliamentary procedures for the conduct of meetings. Formal Board minutes are not all approved and ratified.

7. The Office of the Governor has not made appointments and/or reappointments to the Board in a timely manner.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. As a result of the pipeline impact, the Board initiated action leading to legislation easing restrictions on licensed cosmetologists from other states to practice in Alaska.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. The Board has not established formal procedures to encourage reporting by interested persons.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. OL has not published notice of Board meetings and examinations 30 days in advance as required by AS 08.01.050 and 12 AAC 24.020. NOT REQUIRED

STATE OI

Sec. 08.01.050. Administrative duties of department. (a) The department shall provide the following administrative and budgetary

Sec. 08.01.050. Administrative duties of department. (a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;

(2) maintain records and files;

(3) issue and receive application forms;

(4) notify applicants of acceptance or rejection of applicants as determined by the board;

(5) designate dates examinations are to be held and notify applicants;

(6) publish notice of examination;

(7) arrange space for holding examinations;

(8) notify applicants of results of examinations;

(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;

(10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of $2;

(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;

(12) compile and maintain current a register of licenses;

(13) answer routine inquiries;

(14) maintain files relating to individual licensees;

(15) arrange for printing and advertising;

(16) purchase supplies;

(17) employ secretarial help when needed;

(18) perform other services which may be requested by the board;

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in § 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned. (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment added paragraph (19) of present subsection (a).

The second 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the introductory paragraph of present subsection (a).

The third 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, substituted "department" for "Department of Commerce" and "when appropriate" for "for the boards" in the introductory language and inserted "by the licensee" in two places in paragraph (10). The amendment also added subsection (b).

While none of the amendments gave effect to the others, this section is set out as it appears in ch. 258, SLA 1976, with the inclusion of paragraph (19) of subsection (a) added by ch. 102, SLA 1976.

2. The Board has no public members nor is there any documentation to indicate that members of the public attend Board meetings.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

(#) 1. OL does not provide adequate investigative support to the Board as required by AS 08.01.050.

(2) The Board and OL have not followed through on numerous complaints against one particular beauty school filed over a period of seven years.

which school (7)

3. Two complaints against the Board were filed with the Ombudsman, and were promptly investigated.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. The Board promulgated rules and regulations to permit licensure by endorsement with other states meeting the minimum requirements of Alaska.

2. The Board does not approve all licenses prior to issuance as required by AS 08.01.050.

(3) The Board administers a practical examination and a national written examination to candidates four times a year. However, OL has not adopted regulations describing how an examination is to be conducted (AS 08.01.080), nor have License Examiners been present to proctor all examinations.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. The Department of Administration, Division of Equal Employment Opportunity (EEO), has not established affirmative action requirements for boards and commissions in the State of Alaska.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

1. Please refer to the previous section, Findings and Recommendations.

APPENDIX A

BOARD OF HAIRDRESSING AND
BEAUTY CULTURE EXAMINERS
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Revenues (See Schedule 1 and Note 1)	$ 21,907
Expenditures (See Note 2)	(36,966)
Deficit of Revenues Over Expenditures	$(15,059)

Schedule 1
Types of Revenue

Revenues	Amount	Collection Time
Schools:		
Registration and initial license fee	$500	With application for license
Biennial renewal	$200	Biennially
School Owner, Instructor-Operator, and Demonstrator or Consultant:		
Registration and initial license fee	$ 40	With application for license
Biennial renewal	$ 30	Biennially
Operator and Manicurist:		
Registration and initial license fee	$ 15	With application for license
Biennial renewal	$ 10	Biennially
Owner Only-Beauty Shop, Owner-Operator and Manager Only:		
Registration and initial license fee	$ 25	With application for license
Biennial renewal	$ 20	Biennially
Apprentice or Student:		
Registration and one year permit fee	$ 5	With Student Enrollment Certificate
Annual renewal	$ 3	Annually

Schedule 1 (Continued)
Types of Revenue

Revenues	Amount	Collection Time
Examination Fee	$ 15	10 days prior to examination
Investigation Fee	$ 25	With application for licensure by endorsement

Note 1

A significant portion of the revenue is license renewal fees due June 30 of odd numbered years. This causes revenue collections to be unequal from year to year. Therefore, we calculated an average of the revenues collected in fiscal years 1977 and 1978 to report a more accurate representation of annual revenues compared with annual expenditures for Fiscal Year 1978.

Note 2

Expenditures include those made by Board members, such as per diem and travel, plus an allocated percentage (estimated) of the total administrative cost of OL. Expenditures do not include those which other departments, such as the Department of Law, may have incurred in assisting the Board or OL.

APPENDIX B

ADMINISTRATIVE STATISTICS (Note 1)

Current Licenses At October 1978 (Note 2)

Operator	1,139
Owner-Operator	229
Manager Operator	219
Instructor-Operator	39
Owner Only-Beauty Shop	18
Manicurist	13
Operator-Instructor-Owner	12
Operator-Instructor-Manager	3
Owner-Demonstrator	1
Operator-Owner-Manager	1
Operator-Owner-Demonstrator	1
Operator-Manager-Demonstrator	1
School Owner Only	1
School Owner-Operator-Instructor	1
Total Current Licenses, per Directory	1,678

New Licenses Issued in Calendar Years 1977 and 1978 (Note 3)

	1977	1978
Operator	153	204
Manager-Operator	21	16
Owner-Operator	5	5
Owner Only-Beauty Shop	5	8
Manicurist	3	9
Instructor-Operator	6	1

New Licenses Issued in Calendar Years 1977 and 1978 (Note 3)(Cont'd)

	1977	1978
Demonstrator	2	-0-
School Owner	1	-0-
Total New Licenses Issued	196	243

Two hundred and forty-one of the above licenses were issued by endorsement from other states or countries.

Board Meetings - Calendar Years 1976, 1977, 1978

Number of Meetings held	12
Average Number of Meetings per year	4

Examinations - Calendar Years 1976, 1977, 1978

Number of examinations administered	12
Average number of examinations per year	4

Note 1

There are no current statistics available for students taking examination and pass/fail ratio nor for number of licenses renewed.

Note 2

This data was summarized from the Board of Hairdressing and Beauty Culture Examiners Directory published by OL in October, 1978.

Note 3

This data was obtained from a log of new licenses issued maintained by OL.

APPENDIX C

QUESTIONNAIRE SENT TO BOARD MEMBERS

See Note 1
Number of Responses

1. What are the goals and objectives of the Board?

   a. *To better the hairdresser and cosmetology profession.* — 2

   b. *To better the testing.* — 2

   c. *To monitor internal practices of the profession in order to safequard public interests.* — 1

   d. *To update statutes.* — 1

   e. *To see that students are wel. trained.* — 1

   f. *To promote continuing education.* — 1

2. How does the Board measure its progress in meeting its goals and objectives?

   a. *By input from members of the profession and the public.* — 1

   b. *By the well trained students we examine.* — 1

   c. *By improvements seen in grades on written and practical examinations.* — 1

   d. *By examining complaints.* — 1

   e. *By reevaluating past decisions and reviewing post actions.* — 1

   f. *By reviewing the actions of other Boards.* — 1

   g. *By conducting public interviews.* — 1

		Number of Responses		
		Yes	No	No Opinion
3.	Do you believe the Board's meetings are conducted in a professional, business-like manner?	2	2	-0-

Please comment:

		Number of Responses
a.	*No. We need a good set of guidelines.*	1
b.	*No. Many members do not follow parliamentary procedures to advance their views.*	1
c.	*Yes. Except when a member does not follow parliamentary procedures.*	1
d.	*Yes. No comment.*	1

		Number of Responses		
		Yes	No	No Opinion
4.	Should the taxpayers help pay for the Board through appropriations from the State?	2	2	-0-

Please comment:

		Number of Responses
a.	*No. Board should be self-supporting*	2
b.	*Yes. We as a Board, are used primarily to test (applicants), thereby protecting the consumer.*	1
c.	*Yes. No comment.*	1

5. What are your general duties and responsibilities as a Board member?

a.	*Administer examinations.*	4
b.	*Inspect schools.*	3
c.	*Consider changes in the field, including laws and regulations.*	2

		Number of Responses
d.	*Hold meetings.*	2
e.	*Help out-of-state operators obtain licenses.*	1
f.	*Check complaints from students and operators.*	1
g.	*Inspect shops.*	1
h.	*Answer inquiries.*	1

6. What are the limits of your authority?

a.	*As outlined in State statutes.*	3
b.	*The authority of the Board is restricted because procedures for the conduct of meetings have not been established.*	1

7. What do you feel should be part of the code of conduct for Board members?

a.	*Act in a professional manner at all times.*	1
b.	*Set an example (as a leader) for everyone connected with or interested in hairdressing.*	1
c.	*Maintain high standards and remember that he/she represents the State.*	1
d.	*Maintain professional objectivity and eliminate personal bias and prejudice.*	1
e.	*No comment.*	1

	Number of Responses		
	Yes	No	No Opinion
8. Do you feel that the support you get from the Division of Occupational Licensing (OL) is adequate?	4	-0-	-0-

Why or Why not?

	Number of Responses
a. *Yes. But OL should have more authority.*	1
b. *Yes. They proctor exams, answer questions and send supplies.*	1
c. *Yes. But if License Examiner position were upgraded, maybe the turnover wouldn't be so frequent and our paperwork would be done.*	1
d. *Yes. No comment.*	1

	Number of Responses		
	Yes	No	No Opinion
9. Should the number of years a Board member may serve on the Board be limited?	1	3	-0-

If yes, how many years for 1 term? 3

How many terms? 2

	Number of Responses
10. Why were you selected to serve on the Board?	
a. *Qualified and available to serve.*	3
b. *No comment.*	1
11. What are the differences between barbering and hairdressing or cosmetology?	
a. *Cosmetology is a much more technical, intensive area.*	1
b. *Barber schools do not teach all the subjects taught in beauty schools and do not require as many hours.*	1
c. *Hairdressers have more training in chemical work, sets, and comb-outs.*	1
d. *Hairdressers use chemicals.*	1
12. What are the similarities between barbering and hairdressing or cosmetology?	
a. *Serving personal appearance.*	1

		Number of Responses
b.	*Meeting the public and cutting hair.*	1
c.	*Haircutting and skin care.*	1
d.	*Haircutting and health regulation.*	1

	Number of Responses		
	Yes	No	No Opinion
13. Could the Board of Barber Examiners be effectively combined with the Board of Hairdressing and Beauty Culture Examiners?	2	2	-0-

Why or why not?

		Number of Responses
a.	*No. Responsibilities and training of each group are so different.*	1
b.	*No. Barbers need more training in basic hairdressing and chemical work; hairdressers need training in shaving.*	1
c.	*Yes. It would be to the advantage of both professions.*	1
d.	*Yes. But, only if barbers could upgrade to hairdressing requirments.*	1

	Four Responses			
	#1	#2	#3	#4
14. If combination of the two boards is considered, how should such a combined Board be made up?				
For example:				
A. How many members?	5	7	5	No Opinion
B. How many hairdressers?	3	3	3	No Opinion
C. How many barbers?	1	3	2	No Opinion
D. How many members from the public?	1	1	No Opinion	None

Other comments:

		Number of Responses
a.	*No barber is qualified to examine a hairdresser or cosmetology student.*	1
b.	*Laws would have to be changed.*	1
c.	*No comments.*	2

		Number of Responses		
		Yes	No	No Opinion
15.	Should a person having any ownership in a beauty school or barber school be allowed to serve as a Board member?	3	1	-0-

Why or why not?

		Number of Responses
a.	*Yes. They are often the most experienced persons available.*	1
b.	*Yes. To act as liaison between schools and Board.*	1
c.	*Yes. School owners have a great interest in the profession.*	1
d.	*No. There is a great chance that a school owner would consider his/her own best interest rather than the profession as a whole.*	1

		Number of Responses		
		Yes	No	No Opinion
16.	Do you know of any instance where a patron was physically harmed because of an error made by a hairdresser?	3	1	-0-

Please explain (no names need be mentioned):

		Number of Responses
a.	*Yes. Hair was burned off by chemicals.*	1
b.	*Yes. Two patrons lost all their hair by bleach; one patron sued because of an infected finger.*	1
c.	*Yes. Several instances of chemical burns and similar accidents noted.*	1

	Number of Responses
d. *No, not physically. A hairdresser did not have enough study in chemicals, mixed wrong products which caused breakage of hair. Patron was furnished with a wig.*	*1*

	Number of Responses		
	Yes	*No*	*No Response*
17. Have you ever directed any complaints to an agency such as:			
A. Division of Occupational Licensing, Department of Commerce and Economic Development?	*4*	*-0-*	*-0-*
B. Alaska's Ombudsman?	*-0-*	*1*	*3*
C. Alaska's Attorney General's Office?	*1*	*1*	*2*
D. Consumer Affairs Offices?	*-0-*	*-0-*	*4*
E. Better Business Bureau or similar agency?	*1*	*-0-*	*3*
F. Member of Board of Hairdressing and Beauty Culture Examiners?	*2*	*-0-*	*2*
G. Other (please specify)? Human Rights Commission	*1*	*-0-*	*3*

18. What was the final disposition of your complaint (please indicate agency handling your complaint)?

Agency	*Disposition*	*Number of Responses*
Division of Occupational Licensing	*unresolved*	*2*
Board	*unresolved*	*1*

	Number of Responses		
	Yes	*No*	*No Opinion*
19. Do you feel that any changes should be made in the way complaints are handled?	*3*	*1*	*-0-*

Please explain:

	Number of Responses
a. *Yes. Occupational Licensing should be more involved.*	1
b. *Yes. Let the Board member know the disposition, because the complainant wants to know.*	1
c. *Yes. We need more help for the Investigative Unit (in OL) so they can follow through on complaints.*	1
d. *No. No comment.*	1

	Number of Responses		
	Yes	No	No Opinion
20. Does the Board in any way influence the prices charged for services?	-0-	4	-0-

How? *No comments or comments not relevant.*

	Number of Responses		
	Yes	No	No Opinion
21. Are you aware of any discriminatory practices involving licensing or investigations by the Board?	1	3	-0-

If so, please explain:

	Number of Responses
a. *Yes. There are too many to list.*	1
b. *No. No comment.*	3

	Number of Responses		
	Yes	No	No Response
22. Should apprenticeships be allowed in areas where beauty schools are located?	1	3	-0-

Why or why not?

	Number of Response
a. *No. Apprenticeship amounts to slave labor, without the benefit to the student of qualified instruction.*	1
b. *No. It would hurt the beauty schools. Apprenticeship should be allowed in outlying areas where there are no beauty schools.*	1

	Number of Responses
c. *No. It's good for students to learn with other students. However, we should have apprenticeships in outlying areas since Alaska is a large State with only 4 beauty schools, making it hard for some to attend.*	1
d. *Yes. As long as they're properly educated, it doesn't matter where.*	1

23. If an applicant can pass both the written and practical examinations, why is it necessary to have other training?

	Number of Responses
a. *Examinations are merely back-up spot checks in addition to the lengthy supervized course of study that is required for a truly competent operator.*	1
b. *Students need 2000 hours for a good start, but for more advancement an operator must continue training and study.*	1
c. *To keep up on new products, methods and styles; to protect the consumer.*	1
d. *It is necessary for an educated person to show an uneducated person what to do.*	1

	Number of Responses		
	Yes	No	No Opinion
24. Would the public suffer harm if hairdressers were not required to have a license?	4	-0-	-0-

Please discuss:

	Number of Responses
a. *Helps to insure proper training and competence.*	1
b. *Many people, ex-students or ex-operators, without proper training would do beauty work in their homes and the public would suffer.*	1
c. *Some students would do only the portion (of cosmetology) he/she liked and wouldn't have a rounded education. This would not help the consumer when he/she needs a service.*	1

	Number of Responses
d. You must be educated to handle the chemicals used in cosmetology.	*1*

	Number or Responses		
	Yes	No	No Opinion
25. Is the written examination a fair test of what a hairdresser should know to be a competent practitioner?	*3*	*-0-*	*1*

Please explain:

Comments were a positive restatement of question.

26. Should a hairdresser be required to keep current with the profession by:

A. Continuing education courses?	*4*	*-0-*	*-0-*
B. Periodic reexamination?	*-0-*	*2*	*2*

Please comment:

	Number of Responses
a. Hairdressers and operators should be required to have continuing education to renew license.	*2*
b. Continuing education is needed because products and techniques are constantly changing.	*1*
c. Continuing education is to the advantage of both hairdresser and consumer.	*1*

	Number of Responses		
	Yes	No	No Opinion
27. Are the rules and regulations adopted for conduct of practice adequate in the area of (please answer yes or no and add your comments):	*3*	*1*	*-0-*

A. Licensing?

	Number of Responses
a. No. Rules and regulations need revision.	*1*

MARINE PILOTS

GUS NORWOOD, FORMER ADMINISTRATOR, ALASKA POWER ADMINISTRATION

FRED SLOAN, BIA - ANEC

FELIX J. GEARY, PRESIDENT ARECA

ROBERT L. HOFFMAN, SECRETARY-TREASURE ARECA

BOTH C/O GOLDEN VALLEY ELECTRIC ASSOCIATION, INC
758 ILLINOIS
FAIRBANKS 99701

BOARD OF MARINE PILOTS

Key to References

(Y) - (yellow cover) - State of Alaska Sunset Review, 1979. Prepared by the Division of Occupational Licensing

(B) - (blue cover) - Division of Legislative Audit Performance Review

(W) - (white cover) - Senate Commerce Committee Public Hearing Testimony, December 10, 1979

1. Examinations - Statutory elimination of the Coast Guard exam as a prerequisite to the State Exam. Redundant.
(Y) - p 5, last paragraph; p 6, first paragraph
(B) - p 5, paragraph 4; p 7
(W) - p 2, paragraph 3; p 3, paragraph 1; p 4; p 5, paragraph 4

2. Increase the biennial license fee to $300 (presently $200) and the application fee to $50 (presently $10).
(Y) - p 3; p 11, paragraphs 2 and 3
(B) - p 25
(W) - page 16; page 18

3. ~~Repeal~~ Sec. 08.62.040 (2)(4) which gives the board the power to regulate pilotage fees. I suggest that this power be given to an existing regulation body, such as the Alaska Transportation Commission, which already has a rate structure within it.
(Y) - p 7, last paragraph; p 8
(B) - p 6; p 7, last paragraph; p 12
(W) - p 6 (Capt. Ed Murphy); p 28, paragraph 1; p 30

4. The Board of Marine Pilots should be continued for four more years.
(Y) - p 1
(B) - p 7, paragraph 2
(W) - p 2, paragraph 3; p 6, paragraph 2

5. Repeal Sec. 08.62.110 (AS 30.10 was repealed in 1970) and the portion of Sec. 08.62.120 which states "A license issued under AS 30.10 lapses at the end of calendar year 1970."
(Y) - p 11; p 13 (obsolete)

6. AS 08.62.040(a(3) - repeal vessels in section.
(a) The board shall:
(3) Keep a register of licensed pilots, [vessels], [operators], agents, and [managers]
(Y) - This is a suggestion by OL and Elaine Garrett may wish to comment on this. Evidently there is no way OL is able to keep a register on all vessels. They are performing this function for the Board of Marine Pilots.

7. Members of the Board may be appointed to serve no more than two ~~full~~ terms.

7. Section 08.62.150 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.

8. In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.040(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.

BOARD OF MARINE PILOTS

1. Section 08.62.040(4) should be amended to read:

The Board shall:

(4) regulate pilotage fees and consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), justifying the setting of these fees.

The cost of Audits required by regulation to carry out this section shall be the responsibility of the board.

OR

The Board shall:

(4) regulate pilotage fees and develop specific regulations to substantiate these fees.

(a) the Board shall establish regulations for input by marine pilots, industry, and public in the setting of these fees.

2. AS 08.62.040 (a) (3) Repeal [vessels] [operators] and [managers] in section.

(a) The Board shall:

(3) Keep a register of licensed pilots and agents. Evidently, vessels with over 1600 gross tons of cargo, or those vessels which carry dangerous cargo (chemicals, etc.) must give 24-hour notice to the Coast Guard before their arrival to the Captain of the particular port. (Registry, etc.)

Operators and managers are not proper terms.

3. Agents who represent ships subject to the state pilotage Act shall pay a biennial registration fee of $100.00.

The agents are not paying any registration fee at this time and by doing so they would be more likely to register. There is evidently a large number of agents who are not registered at this time and this suggestion could help eleviate this problem.
The pilots are required to pay a fee so the agents should also. This would also give the general fund more monies which might allow more than one meeting a year by the Board of Marine Pilots.

BOARD OF MARINE PILOTS

For the Committee's information see attached letter from the Department of Transportation, State of Washington, regarding the procedures in establishing their pilotage fees.

STATE OF WASHINGTON
Dixy Lee Ray
Governor

DEPARTMENT OF TRANSPORTATION
Washington State Ferries, Seattle Ferry Terminal
Seattle, Washington 98104 206/464-7800
BOARD OF PILOTAGE COMMISSIONERS

October 23, 1979

Ms. Elaine Garrett
Department of Commerce & Economic
Development
Division of Occupational Licensing
Pouch D
Juneau, AK 99811

Dear Ms. Elaine Garrett:

This letter responds to your telephone inquiry as to how pilotage tariffs are set in Washington State.

The Board of Pilotage Commissioners is charged with the annual setting of pilotage fees (RCW 88.16.035(4)). A copy of the current pilotage act is attached. For many years it has been the practice that the pilots associations, and the Puget Sound Steamship Operators Association (their pilotage committee) will negotiate a level of fees to which both sides ultimately come to an agreement. With previous communication, as the negotiations progress, the Board will set a hearing date to hear testimony and ask questions of the two sides as to how the agreement was reached. Because of the agreement between the parties, the Board is usually inclined to adopt the rates as proposed. The rate hearings are therefore usually very short in duration and when completed the usual monthly meeting is commenced (the hearing is set on the day of the regular meeting).

Last year the Grays Harbor pilots received a 7% increase; the Puget Sound pilots received a rate increase of 8.3%, covering an 18 months period. Negotiations are commencing now for the next round.

As you can see the Board spends very little time in the actual tariff making process. We feel this is better handled by the parties directly involved, i.e., the ones providing the services and the ones paying the bills.

Copies of the two current tariffs are attached along with copies of minutes of the two hearings at which they were adopted.

We hope this information will be of assistance to you in your efforts to establish your next set of tariff changes. If any members of the Commission or your staff are interested, our Board meetings are held the second Thursday of each month. We would be delighted to have you attend so as to exchange matters of mutual interest and concern.

Please let us know if we can be of further assistance.

Sincerely,

BOARD OF PILOTAGE COMMISSIONERS

Richard A. Berg
Chairman

RAB:. ht
enc.

MARINE PILOTING

Chris

Southeastern Alaska Pilots' Association

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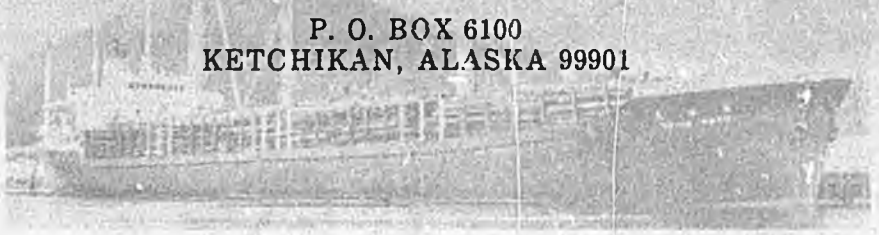

SOUTHEASTERN ALASKA PILOTS' ASSOCIATION
Testimony (Teleconference)
Senate Commerce Committee
December 10, 1979

Good afternoon Mr. Chairman. My name is Eugene Richards and I am a marine pilot living in Ketchikan. I represent the Southeastern Alaska Pilots' Association as their Association president.

Our Association recommends that the Board of Marine Pilots be retained. We firmly believe that the State should not relinquish any further jurisdiction of our state waters to the Federal Government.

Furthermore, the Commandant of the U.S. Coast Guard has already stated his policy regarding state pilotage in his letter to Captain Pat Neely, President of the American Pilot Association. The complete letter was forwarded previously to your audit board.

I would like to quote one paragraph as follows:

> "The first issue is with respect to the position of the Coast Guard on state pilot organizations. On this issue I would like to set the record straight, once and for all. The Coast Guard has no intent or desire to supplant or replace the state pilots organizations with a federal pilot scheme. State pilots have played and will continue to play a major role in United States pilotage."

This concludes my testimony and I wish to thank you for this opportunity.

Eugene W. Richards

Capt. Eugene W. Richards
President

EWR/cjp

AMERICAN INSTITUTE OF MERCHANT SHIPPING

Testimony Before

ALASKA HOUSE COMMERCE COMMITTEE

SUNSET HEARINGS ON ALASKA BOARD OF MARINE PILOTS

January 30, 1980

By D. J. Paul, Jr.

West Coast Fleet Manager

Exxon Co., USA

My name is Dan Paul, West Coast Fleet Manager, Exxon Co., USA. Today I represent the American Institiute of Merchant Shipping (AIMS), a national trade association comprised of 28 companies who own, operate or charter the majority of United States flag tankers, liquefied gas carriers and other bulk carriers, aggregating nine (9) million deadweight tons.

AIMS acts as a voice for many activities in our industry, one of which pertains to marine pilotage. Within AIMS' structure we have a number of committees that interface with U.S. delegations participating in deliberations with the Intergovernmental Maritime Consultative Organization (IMCO). IMCO's main objective is to facilitate cooperation among governments on technical matters affecting international shipping, in order to achieve the highest practicable standards of maritime safety and navigation.

Our Pilotage Committee philosophy embodies this concept as we are concerned with qualifications, training and licensing; the master-pilot relationship and other matters which follow the objective of maritime pilotage which, as I think you will agree, is the enhancement of safety.

AIMS' National Pilotage committee and its subcommittees include among its membership a substantial percentage of the users of pilotage services rendered by Alaska State Pilots. I would like to thank you for the opportunity to express AIMS' views regarding the Alaska Board of Marine Pilots.

AIMS concurs with the Division of Legislative Audit's report that the Board of Marine pilots should continue to regulate and license Marine pilots for the State of Alaska. The report highlighted several key issues which AIMS agrees deserve the legislature's attention. I would like to focus your attention on a few of the more important of these in my testimony today.

Licensing State Pilots

AIMS is dedicated to the establishment and maintenance of high levels of pilotage performance and believes that this can best be achieved through the development and acceptance of universally applicable standards which should be established by a

national pilotage authority.

Under the U.S. Constitution, pilotage legislation falls withing the purview of the Federal Government as part of its authority to regulate commerce. However, the first Congress delegated to the states the right to control pilotage for vessels "until further provision is made by Congress." Congress has since exempted U.S. Flag vessels operating under enrollment from state pilotage and returned them to Federal control.

The U.S. Coast Guard is charged with the responsibility to insure that federally licensed pilots possess the requisite knowledge and skills and is the logical choice to play the lead role in establishing proper uniform standards for pilotage, both state and federal. When these standards are developed, they can provide guidelines for the coast Guard as well as state and local authorities in establishing necessary training and certification programs. Until this long range goal can be accomplished, AIMS urges the State of Alaska to establish active liaison with the U.S. Coast Guard to accomplish the following:

1) Continue to require federal pilotage endorsements as a prerequisite to state pilotage.
2) Eliminate those state license examination requirements which duplicate federal pilotage examinations.
3) Seek active U.S. Coast Guard liaison on the Board of Marine Pilots.

Pilot Recertification

AIMS agrees with the state that recertification procedures are required to insure that pilot qualification is maintained. However, the recertification procedures are too vague to assure that the intent of the regulation is met. AIMS would be happy to assist the Board in developing realistic recertification procedures which insure pilot competency in each port area. In this regard, I understand that the USCG will, in the near future, initiate new procedures for recertification of federal pilots. We would encourage the Board's thorough evaluation of these procedures.

Pilot Discipline

Implicit in the authority to certify a pilot is the responsibility and authority to investigate casualties and take disciplinary action. Alaska has recognized this responsibility by allowing the Board to take action against a pilot who "is incompetent in the performance of his pilotage duties" or "is guilty of misconduct during the course of his employment." However, AIMS agrees with the Legislative Audit report that these terms are too vague and need to be clarified and suggests seeking the advice of the Coast Guard, the pilots and the industry in doing so. We also agree that provisions should be made for revocation or suspension of a state license if corresponding action is taken against the pilot's federal license by the USCG.

Regulation of Fees

The Board is currently directed by statute to regulate pilotage fees. Because of the monopoly situation created by state pilot associations with respect to Foreign Flag Vessels and U.S. Flag Vessels under registry, AIMS agrees with the Legislative Audit report that it is in the public interest for the Board to continue this responsibility. AIMS is pleased with the Board's increased interest and more active involvement in regulating fees, because we believe the Board provides a proper forum for public debate of the complex issues involved in establishing fair and equitable rates. In fact, we believe that active involvement of the Board in establishing pilot tariffs is the only viable mechanism currently available to the pilots and industry to debate the issues and would strongly object to any reduction in the Board's involvement.

As evidence of the Board's responsiveness to this need, it recently adopted standards for the review of pilotage rate proposals. AIMS commends the Board for moving in this direction, but proposes once again that the more detailed standards which AIMS recommended to the Board in December would provide a more suitable framework within which to fully consider the pertinent issues associated with changes

in pilotage rates. These issues include, among others, individual pilot income, workload, time off, benefits, travel and standby time, expenses and equitable distribution of costs to users by pilotage ground and vessel size.

As a matter of good business practice, AIMS strongly recommends that state pilot associations be required to have their financial records audited annually by a certified public accountant. This will also insure that consistent records are available when required for consideration of a rate increase.

Board Administration

AIMS supports the Legislative Audit report's recommendation that the Board prepare a procedures manual to govern its activities and to improve its efficiency.

Board Composition

Since the start up of the trans-Alaska Pipeline System, the tanker industry has become a significant user of Alaskan State Pilotage. Because of the increased importance of this industry as a user group and because of the significant contribution it could make to the Board through its resources and experience, AIMS recommends that the tanker industry be represented on the Board.

Regulation of Enrolled Vessels

As stated earlier in my testimony, regulation of enrolled vessels was returned to federal control sometime ago by Congress. However, in 1977 Alaska enacted a statute which established certain pilotage requirements for enrolled tankers. The Legislative Audit report points out in Section III.2 on Page 20 that the state has no jurisdiction over these vessels because of federal law. AIMS shares this view and strongly recommends that the legislature take steps to repeal those sections of the statute (AS 08.62) as required to conform to federal law. As I indicated earlier, the vessels affected by this statute are already required to be under federal pilotage, and it is AIMS' view that the welfare of the State would not be compromised by this action.

In closing, let me thank you again for permitting me to express AIMS' views on these issues. I will be happy to try to answer any question you may have.

MARINE PILOTING

Southeastern Alaska Pilots' Association

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January 28, 1980

T E S T I M O N Y

Good morning Mr. Chairman, members of the committee. I am Harley Clough and I live in Juneau. I am an active pilot and am President of the Southeast Alaska Pilots Association. I am here to testify in support of retaining the Board of Marine Pilots, essentially in its' present form. In reading and studying the Performance Review of the Board of Marine Pilots, I feel the Division of Legislative Audit has failed to grasp and understand the state pilotage system and I have several comments on this subject.

The report states the State Pilot exam duplicates the C.G. exam and recommends eliminating the state exam. Here, the legislative audit has completely missed the mark. I will agree there are some duplications which perhaps should be changed but the exams do not duplicate each other. The state exam concentrates on the daily gut work of a pilot; his detailed knowledge of Alaskan waters and his ability to maneuver large ships in and out of ports under Alaskan conditions. These things are not learned from a book and are the foundation of a pilot's job.

The Coast Guard exam is an academic exercise based on texts and federal government publications. You could purchase this information in any city in the country, and if the CG would permit, take and pass the Coast Guard test without ever seeing Alaska. There is no way an applicant can pass the oral and written state pilot exam without really knowing the Alaskan ports and really knowing how to handle ships. For Alaskan Pilotage, a far better argument would be to eliminate the CG exam and expand the State Pilot test.

Throughout this report, legislative audit has attributed the Coast Guard with a capability and an expertise they do not possess. In Alaskan pilotage, we are concerned in a through knowledge of Alaskan waters and with mainly handling of large ships. The Coast Guard has no large ships and have little experience in this area. Similarly, military rotation and other policies severely limit the sea-going experience of any CG officer in Alaskan waters. The degree of practical experience of the Coast Guard in Alaskan pilotage matters is almost non-existant. Believe me, the State Board of Marine Pilots is a far more experienced and competent regulatory body to supervise Alaskan pilotage matters than the United State Coast Guard.

Also, as a long time Alaskan resident, I strongly object to any suggestion which invites a federal regulatory agency to assume an interest in state affairs.

The legislative audit report states the Board of Marine Pilots takes little interest in tariff matters and has been a rubber stamp for previously arranged pilot-industry agreements. This simply is not true. I have appeared before the Board on a number of occasions to discuss tariff matters. The Board has always taken a high degree of interest in the tariff. Several years ago the Commissioner of Commerce suggested the pilots and agents get together and work out a preliminary tariff for the Board. This duplicated a long established precedent used in Washington state. This was done on only one occasion and the Board has subsequently rejected this procedure. In Southeast Alaska 98% of pilot tariffs are paid by foreign ship owners. The U.S. agents have been deligent in protecting the foreign interests. There have been no tariff give-aways. Indeed, I have been often dismayed at the length the Board and the State have gone to secure and protect these foreign business interests.

On Page 41 of the Performance Report there is a ship owners and agents comment which states "We have no control of a pilot, we hire through an Association". Now this comment would appear to be a legitimate criticism of the Pilotage system and I'm sure that the legislative audit specifically included it in the report for this reason. A casual reader of the report might also agree that their critical remark has merit. However, he would be wrong to do so - completely and absolutely dead wrong. A state licensed pilot is not supposed to be under control of the ship owner. A pilot's main responsibility is for the safety of the ship - not financial interest of a Greek owner of a Liberian ship sailing with a Chinese captain and mixed nationality crew. A pilots first responsiblity is to protect the lives and property of Alaskans and the Alaskan environment - not adhere to some oil company's shipping schedules. This is what the state pilotage system is all about.

In conclusion, Mr. Chairman, I want to commend the Board of Marine Pilots to the committee. The Board has done a good job during the ten years of its existance. Board members have put in many hours of work without remuneration. The Board has cost the state virtually nothing to operate during the period. Indeed, much of legislative audit criticism is directly due to the lack of necessary funds for the Board to conduct its business. Again, I say the Board has done a good job for the State, for the citizens of Alaska, and for the marine industry.

I appreciate the opportunity to testify before this committee and I want to thank the committee and its staff for the hearing arrangements they have provided.

Harley Clough

Harley Clough
President
Southeast Alaska Pilots

AIMS

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Telex: 89-424 AIMSHIP WSH

February 29, 1980

Honorable W. E. Bradley
Chairman, Senate Commerce Committee
State of Alaska
State Capitol
Pouch V - Mail Stop 3100
Juneau, Alaska 99811

Dear Senator Bradley:

At the January 30, 1980, Sunset Hearings on the Board of Marine Pilots held by the House Commerce Committee in Juneau, I presented testimony on behalf of the American Institute of Merchant Shipping (AIMS). During discussions following my prepared testimony, I was requested to categorize AIMS' recommendations into statutory and regulatory proposals. I am pleased to respond at this time to that request, and would also like to take this opportunity to offer further comment on other issues not fully explored during the Hearing which may have a bearing on your deliberations.

With respect to categorizing AIMS' recommendations into statutory or regulatory proposals, I offer the following:

Licensing State Pilots

1. Continue to require Federal pilotage endorsements as a prerequisite to State pilotage.

   No action is requested. This requirement is included under 12 AAC 56.030(2).

2. Eliminate those State license examination requirements which duplicate Federal pilotage examinations.

   It is recommended that language be added to AS 08.62.-040(2) permitting elimination of examination requirements

3. Seek active USCG liaison with the Board of Marine Pilots.

It is recommended that the Board of Marine Pilots be encouraged to solicit active liaison with the U. S. Coast Guard regarding establishment of appropriate guidelines for pilot qualification, examination, recertification and discipline. In this regard, we encourage the State to request such a U. S. Coast Guard representative to be stationed in, or be in close contact with, U. S. Coast Guard Headquarters in Washington. This will ensure uniformity of application nationwide.

Pilot Recertification

As indicated in AIMS' Testimony, recertification procedures are too vague to assure that the intent of the legislature is met. In addition, the USCG will, in the near future, issue new procedures for recertification of Federal pilots. AIMS proposes that a committee of interested parties, including the pilots, industry, USCG and Board of Members be established to identify and recommend statutory or regulatory changes to strengthen this most important area.

Pilot Discipline

1. Clarify the terms "incompetent" and "misconduct."

This subject should be included in the scope of the previously recommended Committee's work.

2. Suggest Alaska standards for revocation or suspension of State pilot licenses be established similar to USCG standards and procedures for revocation or suspension of Federal pilot licenses.

AIMS proposes Section 08.62.150 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.

Regulation of Fees

1. Provide more detailed criteria for evaluating pilotage rate changes.

Section 08.62.040(4) should be amended to require that

individual pilot compensation must be adequate, but not excessive, to assure that qualified personnel are attracted to the service, and that consideration must be given to difficulty of pilotage, length of time on the job, hours on standby, area standards of living, ratio of time off to time worked, benefits, necessary expenses, including pilot boat cost if required, and equitable distribution of these costs to the users of the pilotage service.

2. Require annual financial audit of pilot associations by state auditors with the audit available to the public.

In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.040(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.

Board Composition

1. Provide for tanker industry representation on the Board.

It is proposed that AS 08.62.101 be amended to specify that one industry member of the Board be a representative of the tanker industry. This member could make a significant contribution to the Board through the industry's resources and experience. In order to assure that a person of sufficient experience and knowledge is available for service to the Board, the State residency requirement for that representative should also be expanded to permit any U.S. citizen to qualify for appointment.

Regulation of Enrolled Vessels

1. Eliminate those Sections of State Statute AS 08.62 added by passage of HB 510 in 1977 because they conflict with Federal law.

AS 08.62.185 should be repealed in its entirety for reasons already presented in AIMS' testimony.

In addition to clarifying AIMS' proposals to the Committee, I would like to discuss more fully two statements which were made by others during the Hearings which were inaccurate.

The first was that pilots assume responsibility for the safe navigation of the vessel when piloting. This statement is not consistent with the widely recognized master/pilot relationship which, by Federal and international law, holds the master fully and ultimately responsible for the safe navigation of the vessel at all times except when transiting the Panama Canal. The pilot, whether required by law or not, acts as an advisor to the master with respect to local conditions. Any orders which the pilot may give to the helmsman are given under the direct supervision of the master and with his approval. The master has the responsibility and authority to countermand any order given by the pilot, or to relieve the pilot if he believes the safety of the ship is being jeopardized.

A second statement was made that Federal, or employee, pilots are influenced by the vessel owner to "maintain schedule or move the vessel with unacceptable margins of safety," and therefore the State pilot "places a higher priority on the protection of life, property and the environment." This argument is obviously without merit when one considers the owner's investment in his ship, its cargo and crew and the social and financial consequences which would result from a vessel casualty. No one has more to lose than the U.S. ship owner when safety is not the paramount consideration in vessel operation.

Furthermore, it is not necessary for a Federal pilot to be an employee of the shipowner or operator. Independent Federal pilot services are available at many U.S. ports and provide both channel navigation and docking pilot services.

In closing, let me thank you again for the opportunity to express AIMS' views on this most important matter. I will be happy to try to provide you and other members of the Committee with any further information you may request.

Very truly yours,

Mark R. Johnson
Assitant to the Director
of Marine Affairs

/for/ Daniel J. Paul, Jr.

cc: Honorable Fred Brown
✓Honorable Arliss Sturgulewski
Honorable Tim Kelley
Honorable Frank R. Ferguson
Honorable Terry Stimson
Honorable Joyce Munson
Honorable Hugh Malone
Honorable Alvin Osterback
Honorable Robert Bettisworth
Honorable Richard Halford
Honorable Richard Randolph
Commissioner Charles Webber, Chairman, Board of Marine Pilots

TESTIMONY FOR SUNSET LEGISLATION

ON STATE PILOT BOARD

The term pilot can be described in a couple of different ways.

The federally or Coast Guard licensed pilot is subject to the selection and control of the shipowner. The Coast Guard license can be obtained by getting between 5 and 20 observation trips and then sitting for an examination. This by law qualifies any person to pilot enrolled vessels with no demonstration of abilities.

Secondly, the term pilot means a State licensed pilot who is not subject to the selection and control of the shipowner. To obtain a license in the State of Alaska one is required to make 20 dockings and 20 undockings under the supervision of State licensed pilots, with no more than 5 dockings and undockings with any one pilot. The applicant must also take a written examination that is made up by professional pilots. Also the applicant must already have the Coast Guard pilotage endorsement and a 500 ton Masters License before applying for the State endorsement.

It is obvious that the State of Alaska has a much more effective means of licensing than the Coast Guard in that the State requires a demonstration of abilities.

However, some of the companies with the largest investments in ships and docks seemed to think that both the federal and State requirements are not adequate.

For example, in order to dock a ship at the Drift River terminal, each pilot must be observed several times by the shoreside personnel while he

is actually docking the ship. Then a letter must be submitted to the Cook Inlet Pipeline Marine Committee and they must make the final approval.

Also before a pilot can handle the LNG ships into the Phillips dock at Nikiski he must comply with the following requirements as set up by Phillips and Marathon:

1. Removed any tonnage limitation from his pilotage endorsements
2. Completed the Association training program and has been approved by the Association Board of Directors to handle all tonnages at the T.A.P.S. terminal at Valdez.
3. Been approved by the Cook Inlet Pipeline Company Marine Committee to dock and undock vessels at the Drift River platform.
4. Operated in Cook Inlet under ice conditions for at least 2 winters previously.
5. Made at least 3 observer trips to and from the LNG dock at Nikiski in Cook Inlet on the LNG vessels, two of which shall have been under heavy ice conditions.
6. Been approved by the Association Board of Directors to pilot the LNG vessels.

Southwest Alaska Pilots Association agrees that the requirements by both the Coast Guard and State are not adequate. Before we turn a pilot loose in Valdez he first has to become a proficient pilot in the remainder of the territory that the Southwest Alaska Pilots Association cover. This in itself is a tremendous recommendation based on performance. Also we require that each pilot, at our expense, attends the ship handling school in Grenoble, France.

So within the piloting community there are pilots and professional pilots. The companies with the largest investments in ships and docks insist upon letting only the most experienced of the professional pilots

handle their investments during the most critical part of the ships operation.

The Southwest Alaska Pilots Association recognizes the need for higher professional standards and we are presently re-evaluating our training program to increase these standards. We recognized this as a fact of life because the only thing we have marketable is a service, and if that service is not totally professional then we no longer have anything to offer. Because customarily pilots do not work under contracts and at any time the companies or agents can stop using our service.

If the State of Alaska decides to eliminate the State Pilot Board, they relinquish all regulatory control over the quality of pilots that handle the largest ships in the United States within Alaskan waters. Southwest Alaska Pilots Association believes there is a need for even higher standards within the State framework, but with the State Pilot Board, the mechanism for increasing these standards is there.

Also if there is no compulsory pilotage within the State framework, then the shipowner has the right of selection and control over his employees in the performance of their duties. Future employment will be dependant upon how well the employee satisfies the demands of his employer. However with the State compulsory pilotage system the shipowner draws their pilot from a pool of pilots and therefore each pilot can operate to serve the States superior interest and is relatively insulated from the demands and pressures that can be placed on an ordinary employee to compromise the margins of safety.

Let me ask the State of Alaska whether they would like a voice in choosing which pilots shall handle the ships plying the environmentally sensitive waters of this great state.

There is no doubt that the State Pilot Board is absolutely necessary to ensure the highest degree of professionalism among pilots.

JAMES HURD PRESIDENT S.W. AK. PILOTS ASSN

P. O. Box 1171
Juneau, Alaska 99802
December 20, 1979

T E S T I M O N Y

Sunset Hearing - Marine Pilot Board

Mr. Chairman, I am Harley Clough and live in Juneau, Alaska. I am an active pilot member of the Southeastern Alaska Pilots' Association.

I have several comments concerning the legislative audit performance review of the Board of Marine Pilots. The report states the State Pilot exam duplicates the C.G. exam and recommends eliminating the state exam. Here, the legislative audit has completely missed the mark. I will agree there are some duplications which perhaps should be changed but the exams do not duplicate each other. The state exam concentrates on the daily gut work of a pilot; his detailed knowledge of Alaskan waters and his ability to maneuver large ships in and out of ports under Alaskan conditions. These things are not learned from a book and are the foundation of a pilot's job.

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Throughout this report, legislative audit has attributed the Coast Guard with a capability and an expertise they do not possess. In Alaskan pilotage, we are concerned in a thorough knowledge of Alaskan waters and with mainly handling of large ships. The Coast Guard has no large ships and have no practical experience in this area. Similarly, military rotation and other policies severely limit the sea-going experience of any CG officer in Alaska waters. The degree of practical experience of the Coast Guard in Alaskan pilotage matters is almost non-existant. Believe me, the State Board of Marine Pilots is a far more experienced and competent regulatory body to supervise Alaskan pilotage matters than the United States Coast Guard.

Also, as a long time Alaska resident, I strongly object to any suggestion which invites a federal regulatory agency to assume an interest in state affairs. Although the Coast Guard

may need the knowledge and experience of the Board of Marine Pilots on occasion; the Board of Marine Pilots has little need for the advise of the CG on piloting matters.

The legislative audit report states the Board of Marine Pilots takes little interest in tariff matters and has been a rubber stamp for previously arranged pilot-industry agreements. This simply is not true. I have appeared before the Board on a number of occasions to discuss tariff matters. The Board has always taken a high degree of interest in the tariff. Several years ago the Commissioner of Commerce suggested the pilots and agents get together and work out a preliminary tariff for the Board. This duplicated a long established precedent used in Washington state. This was done on only one occasion and the Board has subsequently rejected this procedure now. In Southeast Alaska 98% of pilot tariffs are paid by foreign ship owners. The U.S. agents of these owners have been very deligent in protecting the foreign interests. There have been no tariff give-aways. Indeed, I have been often been dismayed at the length the Board and the State have gone to secure and protect these foreign business interests.

I appreciate the opportunity to testify before this committee and I want to thank the committee and its staff for the extensive hearing arrangements they have provided.

Thank You.

Capt. A. Harley Clough

AHC/cjp
CC: Senate Commerce / House Commerce

CHARTER MEMBERS:
CAPT. F. W. BUCKLER
CAPT. W. L. JOHNSON
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ASSOCIATION OF ALASKA MARINE PILOTS

LICENSED MASTER MARINER PILOTS FOR ALASKAN PORTS
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RADIO CALL LETTERS: SSB-WKD34 AND VHF-KTE21

15 December 1979

Mr. Christian Basler
Administrative Assistant
Senate Commerce Committee
1016 West Sixth Ave., Suite 201
Anchorage, AK 99501

Dear Mr. Basler:

Thank you for your letter of 7 December 1979 with enclosed copy of the "Performance Review of the Board of Marine Pilots" and the opportunity to submit comment.

I am in agreement with recommendations submitted and also with the majority opinions generated by questionnaires to pilots, agents, and board members.

Discontinuance of the board and its functions, I strongly feel will be destructive to the State Pilotage System in Alaska. The State Pilotage System has been found a very necessary adjunct to the maritime commerce of the coastal States. The history of development and accomplishmnets of these systems has been well documented by the American Pilots Association. Problems cited giving rise to this audit I believe are "growing pains" no doubt somewhat simular to those encountered by like organizations in the lower forty eight.

In my opinion this Review has generated the necessary attention of those concerned to an element of the State's commercial maturization having growing import.

Thank you again for your reply.

Sincerely yours,

Roger W. Swett

Roger W. Swett

address;

453 Klickitat Drive
La Conner, WA 98257

MARINE PILOTS REPORT:
TOUR SHIPS

By Ron E. Whitcraft
Legislative Assistant
to the
Interim Committee on Transportation

September 22, 1978

1. Introduction

It is a very well known fact that one of the main industries of Southeast and Southcentral Alaskan port cities is tourism. It was, therefore, the desire of the Interim Committee on Transportation to look into the problems of bringing the big tour ships into Alaskan ports. Tourism is an ever increasing industry in Alaska and it was brought to the Committee's attention that the pilots, who bring the tour ships into port, have legitimate problems.

2. Southeastern Alaskan Pilots Association

The Committee pursued the problems by going to the Southeastern Alaskan Pilots Association. The Pilots Association is located in Ketchikan and assigns duty to its licensed pilot members. A member is assigned to each of the tour ships while it is in Alaskan waters and must safely take the tour ship into and out of Alaskan ports of call. The Committee did all of its interviewing and research while tour ships were in port at Juneau.

With hopes of getting a cross reference of views, the Committee recorded five of the pilots and has entered those interviews in this report. Several problems, pointed out by the pilots, were reoccuring during the interviews and a couple of other problems were brought out.

3. Pilots Problems Summary

Problems that were discussed often were problems relating to docking facilities. Most of the pilots in this report felt many of the docking facilities in Southeast Alaska are not strong enough to handle the large

tour ships. Particularly mentioned was the tour ship docking facility at Skagway. The pilots, who discussed the Skagway dock, said that dock was not only weak but also in a bad structural state.

The Alaska Steamship dock was mentioned as a problem because of its shallow docking area. It was discussed that this dock is in an excellent location at Juneau's downtown. As things are currently, only two or three of the tour ships can dock there. There were at least ten tour ships going into Juneau this summer.

It was brought out that often times there are too many fishing boats tying up to the docking facilities. Pilots said maneuverability was cut way down in docking the ships and sometimes there was no mooring area at all.

A problem that came up was that areas that should be lighted, by the Coast Guard, were in fact not lighted. This problem creates a hazard and, unless the pilot is a veteran of Southeast waters, could be a serious problem to the tour ship.

A need for more powerful tugs for the large tour ships was discussed in this report. Pilots felt much in-port time was lost just getting the ship into place at the docks. Some tour ships have a short tie-up time. It was realized, at the same time, that this problem is of a private enterprise nature.

A definite grievance was entered into this report over the large number of fishing vessels in the corridors of tour ships. It was explicit that the

tour ships must travel in a corridor and has little maneuverability. It was felt that these fishing vessels must be made aware of the tour ship corridor.

One other priority problem that stemmed from this inquiry was that the National Oceanic and Atmospheric Administration is not making available much of the needed charting information for Alaskan waters. The tour ships are larger vessels than those vessels utilized by the Alaskan Marine Highway System. The pilots need to know where they can take the tour ships.

4. Interviews With Pilots

The following are the interviews with pilots who bring tour ships into Alaskan waters. These pilots, once again, are members of the Southeastern Alaskan Pilots Association.

INTERVIEW WITH PILOT FROM THE UNIVERSE

Ron Whitcraft: Are there any problems that you see, any complaints that you see right now, that pilots are enduring to bring these tour ships into Alaska? Is there anything that can be upgraded or something that can be looked at?

Pilot: I don't have any complaints but there are some factors that can be upgraded, particularly the conditions of the docks. One example would be to request to bring the Rotterdam into the dock in Juneau, and the size of the ship, the dock is not suitable for that size ship unless improvements or extentions are made on it. We have a similar problem in Skagway that's being resolved, hopefully tomorrow. But we're out to take the Fairsea into the dock in Skagway next year. Prior to doing this we wrote to the port captain and advised him that the condition of the dock is deteriorating, particular at the south end and in case of adverse winds, if any strain was put on the dock we wouldn't be able to check the ships motion. There are other moorings there such as the one over ashore, but the longshoremen won't handle lines off the dock, and so it means that we have to get the ship into the dock before you can actually run these lines. So it's after the fact and they really didn't help you under adverse conditions. Another factor that we reported to them is the fact that we don't have adequate size tugs up there. As a matter of fact the tugs we're using here are doing the job and they're the same tugs we used in Skagway last year and we got by. It would be preferable to have a little bit more horsepower if we could, but you have to use what's available and we can't expect a company that has large tugs to just assign one to that area. Not enough traffic to warrant it. So we try to do the best we can with what we have available. Another condition of Skagway is the fact that they load container ships up there for White Pass and they're changing those over to barges here shortly. So there will always be a barge at the dock. These things we can live with if we can improve the dock structure itself, the mooring facilities. What we had proposed to do was bring an additional tug from Juneau up to Skagway. We have two small tugs there. Captain _____ who is a port captain will be in Skagway tomorrow and Captain _____ will be on a ship that is due in there, the Pacific Princess. They plan to discuss. Here in Juneau we have a situation where there's a shoal up at the head of the old Alaska Steam Dock. Some of the larger ships are restricted from mooring there because of the shoal at the head of the dock. Also they're restricted because of small boat traffic. The cold storage has got to survive too. You can't expect them to stop fishing. This is something that we can live with, but it would be helpful if they could do some dredging and make that dock more

useful. Ketchikan, it seems like there's a movement away from Ketchikan as far as tour ships are concerned and I think it's basically because of the lack of tourist attractions compared to Glacier Bay and what you have to offer here in Juneau. Everyone seems to be going to the seven day schedule so they have to eliminate something. And the tendency has been to eliminate Ketchikan, I think.

Ron Whitcraft: How's Sitka?

Pilot: Sitka, of course, is strictly an anchorage. We have no dock. We can anchor three ships there in suitable anchorage at a time and we have another inner-anchorage which is a little marginal under adverse weather conditions. It can be used as long as conditions are good. So there hasn't been too much of a serious problem there. As far as the tour ships are concerned they might not appreciate it too much to have a longer trip with us. As far as we're concerned, I don't see any problems.

Ron Whitcraft: How about Wrangell and Petersburg?

Pilot: Wrangell has a dock there for the ships we're taking in. It's a new dock. It has a little current action there but this we can live with. It's a little bit better oriented than the dock that we used to use. There was some comment about the Rotterdam going into Wrangell. But the thought there was that they would just go to anchor. The Rotterdam was mentioned to replace the Prinsendam. I think this is probably two years off.

Ron Whitcraft: How about bringing the ships up the Inside Passage? Are you having any problems with the passageway through the channels? Any problems with markers at all or anything like that?

Pilot: Well, we're usually able to resolve those with the Coast Guard. We've asked for a few aids here and there. And generally, within reasonable time, we get the cooperation. They always have a budgeting problem. We can ask for something they'd like to give us, but it takes a while for them to get the money in their budget in order to do this. That's the case with Snow Pass. We asked for a buoy down there. They were trying to put it in their budget and this year they found it in their budget. It's supposed to go in sometime this week or next week. So they've been quite cooperative. You asked me about Petersburg. We really don't have too many ships of this size that go into Petersburg. We used to take vessels through Wrangell Narrows which were comparable to the size of the ferries. The possibility of large tour ships calling at Petersburg is probably rather remote. We had one situation come up this year that we'd like to try and resolve with the navy. In past years on the Fourth of July the navy has come in with destroyer type vessels up here and they're always able to moor at the government facilities here or Ketchikan. This year was quite a change in that they

sent relatively large ships up here. We had an ammunition ship anchor in Ketchikan and an oiler anchored here in Juneau. It's rather restricted swinging room. It worked out here all right, in Juneau, moving around a little bit. And in Ketchikan we had to anchor two vessels in an area that we normally put one. The thought was, and I discussed it with the Coast Guard, that possibly if we were to contact the navy and point out to them that a smaller vessel...we want the navy to come. We're not trying to drive them out. But if they were to send smaller vessels it would probably be less interruptions to commercial trade of tourism.

Ron Whitcraft: Were there two ships more in Juneau's harbor this weekend? Or was it just that navy ship?

Pilot: There was the Veendam I believe at that time. But we have anchored two ships here in Juneau but when you anchor two large ships in Juneau they really get tight. What people don't stop and think about is not just the length of the ship involved but you have to put out enough chain so that you have adequate support to hold the vessel. So we put out considerable chain and they have quite a swinging radius. Actually, those are some of the reasons we're bored with....handle the ship under those conditions. But anytime we can eliminate a problem before it arises we like to do that too.

Ron Whitcraft: I know you have a designated corridor you follow when the tour ships come into the Inside Passage. Do you have any problems with fishermen getting into that corridor and dodging them when necessary?

Pilot: I think what you probably have reference to is the gill netters. They're more of a problem than any other type fishing vessel. We from time to time have crossing situations with fishing vessels when we're even in the wide channels. But where the critical situations arise is south of Haines it's a very narrow channel. And when Fish and Game opened this area for gill netting, it's very difficult to get some of these ships through that narrow passage, also an area where they're doing extensive gill net fishing. This year has been relatively easy because there hasn't been too much fishing in that area. The area they're fishing in has been off to the side of the channel. But later as the seasons open up then possibly they'll be fishing... The main thing as far as we're concerned is we have to slow down and when you slow down you lose a certain amount of maneuverability. Particularly some of these large ships like the Veendam, the Fairsea, they won't hardly turn unless you're going six to eight knots. You have to have enough speed to get the action on the rudders. But this year, as I say, we haven't had much problem with the gill netting because of the nature of the openings. They haven't been in the areas where we've had to transit.

Ron Whitcraft: Any other situations that have occurred that you would like to present?

Pilot: One thing that we try to do at any pertinent facility, and this would include places like the pulp mill, or Metlekatla, the lumber mill, we try to obtain adequate charting data there that we can safely moor the ships there. Since I was formally with...an agency that's responsible for charting, has been able to get their assistance in providing this data to us in a timely manner. Either that or surveys at Skagway, we've asked for surveys at Ketchikan, Wrangell, and I'm in the process now of probably requesting a survey at Ketchikan pulp mill. There seems to be a shoaling there and some of the ships are starting to rest on the bottom when they're loading on the side. This is federal program that can be used to the benefit of the state for improved navigation. And some one keeps putting this information in they'll respond to it. If we don't get any input we don't respond to it. They have their other programs which are maybe a five year program or something like that or maybe high priority. They routinely work on whatever's highest priority. So if we don't say anything about inadequate charts in our harbor we don't get anything out of it. But so far anytime I've asked for anything I've been able to get it. We have now adequate charting information of Glacier Bay and Tracy Arm, Endicott Arm. Those surveys, not so much Glacier Bay, but Tracy Arm and Endicott Arm, were done primarily at the request of the Southeast Alaska Pilots Association.

Ron Whitcraft: What are you proposing here?

Pilot: I'm saying that sometimes it's better for the Southeast Alaska Pilots requesting surveys, it would have more emphasis if it came from your office or something like that. I'm thinking about this problem here locally, this shoal at the end of the dock. I've already discussed it on the telephone with them and they said they expected to have a ship here later this summer, probably late September, that could be assigned to that, if desirable. I talked to one of the city engineers and they seemed to be interested in getting the information. But it all depends on how much emphasis.

Ron Whitcraft: This is with the NOAA?

Pilot: Right. I'm requesting a survey down at Ward Cove and you probably could request this for the same time. But I have to bear in mind that they have other things that may be higher priority. And they may or may not succeed in getting it done. So I think probably that's one area that you could assist all the maritime industry

here. We have at Metlekatla requests for taking larger and larger ships into there. Of course the dock is only so long and we can extend the bow beyond it if there wasn't a shoal there, but that would be a shoal. The more information we have, give us more information about what size ship we can bring in there.

Ron Whitcraft: You don't have information on that?

Pilot: Not too good information. We have some that we obtained from their prior survey. And even a survey might not solve the problem. It may say that there's something there and then it's up to the corps of engineers or industry to dredge it out. There's an awful lot of dredging done up here in Alaska. One other problem we have which is not related to your tour ships, is violation of state pilot laws. Some of these, particularly the smaller fishing vessels that come in, of course they are not always too knowledgeable to what the requirements are. So the Department of Commerce does have an investigation team. When there is a violation they follow up on it.

Ron Whitcraft: There is a set of regulations for all those fishing ships out there right?

Pilot: Any foreign vessel...there are certain exceptions in Southeast Alaska. Chatham Straights of course is an exception and also the pilot stations are exceptions. They go through the pilot stations and request a pilot, then they're not in violation. But they take a devious route and go into pilot waters without a pilot, then they are in violation. We've had two of those situations occur just recently.

Ron Whitcraft: What do you do to them when you catch them violating?

Pilot: We don't do anything. It's up to the Department of Commerce, the Occupational Licensing Division. They follow it up.

Ron Whitcraft: How do they check that? How do they check to see if the pilot's on there or not?

Pilot: First of all, they're supposed to be flying a pilot flag. We see them and call them on the radio, they're supposed to maintain a radio. If they don't answer the radio then you board it and find out whether they do have a pilot on board. We have a list of all the state pilots. So you could go through that list of pilots and contact each one of them. Kind of a roundabout way of doing it. But most of those pilots from that list either belong to Southeastern Alaska Pilots or Southwestern Alaska Pilots Association. Of course the associations know whether or not any of these people are aboard. There are a few free lance pilots. The list that we used to have gave their license limitations. In other words told what portions they were licensed to work in.

I think that pretty well covers it. I think it's important maritime industry get as much as they can from federal charting agencies. You don't tell them what we need and they don't know.

Ron Whitcraft: Thank you very much for your time.

INTERVIEW WITH PILOT FROM THE PACIFIC PRINCESS

Ron Whitcraft: Are there any particular problems in bringing these ships, first of all, into Southeast that bother you?

Pilot: No. I can't truthfully think of anything right now. During the ten years I've been here I've noticed quite an improvement generally, I'd say particularly in Juneau. I think perhaps there's been a little closer surveillance by the Coast Guard. None of this is in the form of criticism. As you know, as the years go by the ships have a tendency to get a little bit larger. I guess at some point they'll reach a point above which they can grow any bigger. Some of these harbors are limited in their capability of the size of the ship, for instance Juneau harbor. If you put a couple of these over 600 feet in here you have a little bit of a problem. This occasionally happens. That's just a simple reality that we have to face.

Ron Whitcraft: How about the docking facilities throughout Southeast? Are you noticing any problems with them? I understand Skagway has got a problem up there. How do you feel about that?

Pilot: There again, in past years, we have had occasions where we've had to stick a rather large cruise ship behind the Klondike or the Canadian bore vessels. This is a touchy manuever in certain weather conditions. I would think maybe that the White Pass and the Yukon dock could stand a little bit of repair, particularly in the southern end. I'm sure a surveyor could assess that. The simple business of getting over some good stern lines in a heavy southerly wind is bound to occur and eventually become a real problem. Recently, I believe, one of the cruise ships destined for Skagway had to cancel that call because of severe weather a couple of weeks ago.

Ron Whitcraft: By severe weather you mean the winds?

Pilot: Yes, southerly winds on docking prevented the Royal Viking Sky from calling there about two or three weeks ago. Actually, this may be something that no one could have any control over.

Ron Whitcraft: That's what I wanted to know. Is that fault with the docks?

Pilot: That's questionable, but the fact is that had they managed to get alongside, they might have been in some jeopardy while they were there during the visit, had the winds increased. I'm concerned about adequate

Pacific Princess - Continued

mooring facilities for large vessels, 20,000 tons and over.

Ron Whitcraft: How big is the Pacific Princess?

Pilot: She's about 21,000 tons. I think we have about four ships that size coming here. I believe there's talk of perhaps a larger one next year.

Ron Whitcraft: This is in Skagway?

Pilot: Yes. That is something that perhaps something could be done about. We can't enlarge, say, the harbor of Juneau. That's pretty well established. Maybe just by scheduling we can avoid having two of the larger vessels at anchor at once. Sitka is an anchorage program there. I think there's nothing you can really do about that, unless Sitka decides to build one, berthing facility for cruise ships.

Ron Whitcraft: By anchorage program, does that mean that they cannot dock? They have to anchor out away from Sitka?

Pilot: All cruise ships anchor there. That's kind of accepted as part of the visit to Sitka. But it's worthy of thought. Are the cruise ships here to stay, and if so would it be worthwhile to consider a berthing facility in Sitka?

Ron Whitcraft: What about the current ferry terminal they have there? Is it just not deep enough to pull one in there? It's not strong enough to dock up next to it?

Pilot: It wouldn't be adequate for the size cruise ships. Furthermore, it's not quite that accessible to the city and most of the cruise ships are on limited time. It's get in there, get the people ashore, let them visit a few hours, and move on, and it'll always be that way. So the facility has to be pretty close to the area they're going to visit. I believe that might rule out, among other things, it's not accessible to the open ocean very well.

Ron Whitcraft: How about lighting situations, lighted passes, all the way up here?

Pilot: Navigation aids. I have no criticism. I think they're pretty well serviced and pretty ideally located really.

Ron Whitcraft: I had a complaint by one of the pilots several weeks ago on the fact that there are alot of fishermen in the path of the tour ships. That is the fishermen could essentially go where he wants to go but the tour ship could only go

Pacific Princess - Continued

so far and that's it.

Pilot: I'm afraid this is a reality that I feel we have to live with. The fishermen are involved in earning the livelihood and I think it's a rare occasion when they deliberately create a hazard. That would be my feeling. The waterways in Southeast Alaska have fishermen in them like the fields have farmers. So I'm not sure I'm able to really contribute anything. I'm happy to be a part of it. It's an interesting business and I'm glad to see you at least checking into the realities that we have to contend with, from my point of view. I think the relationship with the shipmasters and the companies and the pilots has been very good. As you can see I'm pretty comfortable here. That's about really all I can think of.

Ron Whitcraft: Very good. I appreciate it.

INTERVIEW WITH PILOTS FROM THE ISLAND PRINCESS

Pilot 1: Well, they could build a bunch of new docks that are stronger, but I don't think the state could afford that. We'd like to see stronger docks with the bigger ships coming all the time. Maybe a little bit more rapport with the fishing associations, or communications. We have trouble with the fishermen. They obstruct the main ship channels continually. Of course, this is a Fish and Game problem but perhaps through your good officers we might somehow be able to exclude from the fishing waters safe passage for these vessels without constantly having to worry about it. There is plenty of water in Southeast Alaska for all the fishermen. I should think that they'd find some way to be able to have a free fareway of which we could go with these large commercial vessels without being obstructed. I think that's only fair. This is particularly a bad place because fishing is so heavy. The fishermen present quite a strong and vocal political problem. They can fish almost anywhere in the waters yet we can't go anywhere with these ships. That's what it boils down to. We're very restricted.

Pilot 2: As far as facilities in the state are concerned, I think I'll mention that we get by, but most of the facilities are really marginal.

Ron Whitcraft: How about the depths of this particular harbor coming in here (Juneau)?

Pilot 2: The depth at the head of the other dock (Alaska Steamship Dock), and the size of the dock itself, the only ship we take in there is the Sun Princess because we only run our lines on that dock and not over at the cold storage dock, so that's the biggest ship we get in there. At a low minus tide the bow of that ship will touch the bottom at the head of that dock. That's really not much of a problem, we can't take anything bigger in there.

Pilot 1: See, actually most of the facilities in Southeast are privately owned. This is a city dock. There really aren't any state docks as such as there are in so many of the other states where they operate state port authorities. There just isn't anything here. The state doesn't operate. It's all private.

Pilot 2: It would appear to be private enterprise to better the facilities, make the docks stronger, larger. We could use some bigger tug boats, stronger tug boats. That's all a matter of the dollar.

Island Princess - Continued

Pilot 1: Business is so seasonal. I'm sure you're aware of the problem with the shipping industry in Southeast, that it is very seasonal. Until, I suppose, you develop a year round economy in this type of business, there's really not much we can do. And unfortunately, I do not see a twelve month situation developing here for quite a long time. If it was, then we'd have a lot to talk about.

Pilot 2: You could probably help tourism by building some better facilities. This new ramp that they've put up here (at Alaska Steamship Dock) is a step in the right direction. Things like that make the tourists feel like they're welcome here. You keep them coming and it's a profit not only for the steamship companies, but for the state as well, longshoremen and everybody else.

Pilot 1: It seems to me this tourist business here, certainly in Southeast, is quite a large business, although seasonal. But it seems to be encouraged only on a local level. I don't, as an individual, see the state really participating in trying to improve facilities. Anything that's done seems to be on a local level in Sitka, Skagway, Juneau or Ketchikan. It just seems to be a community activity. We really don't see too much encouragement or assistance from the state.

Pilot 2: What we're talking about is like in Wrangell a little high school band composed of about twelve people come down every time a ship comes in there and the band plays on the dock. The people that come from the tour ships, the paying customers, feel like they really want us to come. Shows a little flair for a little town and all the townspeople are doing it for nothing just to encourage the ships to come. It's that sort of thing that means the most to the paying passengers.

Pilot 1: We're only repeating comments that we have heard from passengers and so forth.

Ron Whitcraft: Thank you very much for your time.

INTERVIEW WITH PILOT FROM THE SUN PRINCESS

Pilot: I'm just summertime. I'm not up here full year. Of course most of the things we complain about is when you're bringing a tour ship in alongside a dock there's usually, during the fishing season, too many fishing boats tied up abreast and it makes it difficult for a ship this size to get in. Here at this dock (Alaska Steamship Dock), especially when you've got this ebb tide, it's real difficult. And there's a shoal spot right up at the head of the dock that ought to be thinned out a little bit and made a little deeper.

Ron Whitcraft: How about the docking facilities throughout Southeast?

Pilot: Well, everybody on the dock is waiting for the ship to knock something down. So there would be more ships tied up alongside the dock if people weren't so hard pressed to get people to repair the docks for them. Just like Skagway, now that's getting to be in real sad shape and a lot of the ships won't come in. When we came into Skagway on the Fourth of July, Frank H. Brown was in there and he said he would move ahead but the wind was blowing and the ship won't move it in, so the second ship behind him can't tie up because the dock is so rotten. He said he would move, but he never moved. Of course those ships are going to be laid up in March so they don't care what the tour ships do. And I think a lot of the ships, with the condition the docks are getting in, will soon bypass Skagway. Sitka, of course there's all anchorage, so there's no problem there. They've made arrangements there so they can anchor up three ships. Seven or eight years ago they were talking about putting a dock in there in Jamestown. I don't know whatever happened to that. So, as I say, Sitka is strictly anchorage.

The fellows that are up here year round would know more about other conditions that have to do with a yearly basis than I would. I'm strictly on the passenger ships, the tour ships, and I really can't give you a lot of information.

Ron Whitcraft: Any problems coming up through the channels?

Pilot: No, not as far as I'm concerned. But I've been coming up here for 33 years and all these places could use a few more lights, but that comes under Coast Guard. You sit down and argue with them and it seems to work out more where the ferrys want a light, they'll put a light for the ferry but they won't put it for the other ships.

Sun Princess - Continued

Ron Whitcraft: How about the other docks down south - Wrangell, Petersburg, Ketchikan?

Pilot: Of course Montgomery's Dock is getting old. They have the new dock off the Stikine, and they rebuilt a nice new dock in Ketchikan so that's a step in the right direction. It used to be just a hunk of empty pilings. Now that's utilized. Petersburg, nobody ever goes in there. Once in a while a smaller ship used to go in there, but outside of that, it's just a little too touch and go with the current and the dock in Petersburg. So, Petersburg, you might as well forget that, except the egg boats that are coming up here. So you just got Skagway, Juneau, Wrangell and Ketchikan and that's it.

Ron Whitcraft: How about Haines?

Pilot: Well, that dock is not too hot a shape either in the town itself. You can go up to Lutak Inlet and that's a good solid dock but it's not a dock for passengers when you've got logs dumped all over the place. Last time I was in there it should have been fixed up. A lot of passengers wouldn't go ashore because of the condition on the face of the dock itself.

It seems like everybody is out for the buck. Juneau used to give a lot of information. They'd come down and meet the ships when they'd come in. Right now they just get the ships in and get them in the stores and get them out. Ketchikan is no better. The ships want to keep the passengers aboard and the merchants want to get them ashore.

There's really not the room for the passenger ships here. Everybody keeps crowding in and crowding in. Just like this little ramp up ahead here now...it makes it touch...if you've got three fishing boats - wide back out there, why it's pretty hard. You've got a mechanical favor. And it seems like, with this environmental stuff coming on, every town is out to get the ship everyday. You've gotta blow tubes once in a while or some of them, just when they manuever, put out smoke and before the guy can get to the next port he's got a fine on him. It's not very cooperative to those guys when they're trying to bring in money and the state, the city and business themselves that want the money are the first ones to fine them.

Ron Whitcraft: Do you think there should be more lights along your routes?

Sun Princess - Continued

Pilot: Well, there are places where there are shoal spots that should have a buoy on it.

Ron Whitcraft: Can you think of anyplace in particular?

Pilot: Well, there's one they're trying to get one on coming out of Snow Pass. It's only got four and a half fathoms and it should have a buoy on it. And there's other places where there's beacons, like coming out of Sitka. That light could be more powerful and Cape Edgecombe, that's an ocean-going light and yet you've gotta be right on top of it to see it. And now the ships are coming up seaward and going into Sitka, they could have a little brighter light there.

Ron Whitcraft: What would the one at Cape Edgecombe take?

Pilot: Well, I think it's only got a visibility of about nine miles - and that's on a clear night with a clear atmosphere. You get four miles off it sometimes and you have to look through glasses to find it. And there's another one down there in Dixon entrance and Port Cornwallis and even Cape Chacon which is the main light down there. That power should be increased. I'm not saying it should be like Guard Island which is also an aerial beacon, and even then they cut that down. But there's places where they can have intensive lights for poor visibility without problem. A lot of these ships come up here with radar on. Of course they've got their electronic experts on there that can fix it. But there's others that don't. And you've got a mixed crew on there with nationalities. On some we have a problem with language barriers. So we have to watch ourselves, too, and not get ourselves in a bind because if something does happen, the Coast Guard's on our necks. We're the only branch in the United States that's under military rule you might say. If the Coast Guard doesn't get you the income tax will. So we have to be careful. Once they suspend your license or take it away you can't work anywhere. We have to watch everything. A lot of things that you have no control over. You could make a squawk about it but until you know the right channels to go through it doesn't do you a bit of good. Unless you can get a whole bunch of guys and get a lot of money to go up and start doing some lobbying, you don't get much satisfaction anyway. You just get the old runaround and nothing's ever done. And maybe in a month, maybe two months, maybe the next year, this thing you've squawked about happens and it costs a lot more than the deal you wanted to put in there or get fixed or something like that.

Sun Princess - Continued

A lot of the lights that we used to go by with Alaska Steam have disappeared and the lights have gone up for the ferrys' use. And you can't blame them because they are there every week or maybe every couple of days. So I could see where they could want lights. But there are places where they've taken them off where they would still come in handy. I don't see why they don't just increase the power of some of these lights so we could see.

Ron Whitcraft: Have you noticed lights gone in just recent years or has it been several years ago?

Pilot: It seems like, as things go, a period of years. A new regime will come in the Coast Guard and he's gonna make marks for himself, so some guy will make improvements and some guy will change things around. Like a lot of times they change lights so they'll all flash in six seconds. Well, if you miss one you might think the second light is the first one. And that's very confusing. Before you'd have one that would flash two and a half seconds, and maybe the next one would be four seconds, and maybe the next would be six seconds, and maybe you might have three in a row of six seconds. You have to keep up. It doesn't pay to be away too long. You can notice changes.

Ron Whitcraft: Thank you very much for your time.

CAPTAIN DONALD OLDOW

COMMITTEE TESTIMONY ON SUNSET

REVIEW OF THE BOARD OF MARINE PILOTS

Mr. Chairman and ladies and gentlemen of the committee, I wish to thank you for allowing me to testify in favor of retaining the Alaska Board of Marine Pilots. My name is Donald Oldow, representing the Board of Marine Pilots as the Southwest Alaska pilot member.

You are no doubt aware that the purpose of the Board of Marine Pilots is to provide for the maintenance of an effient and competent pilot service on all the inside waters of the State of Alaska to assure protection of shipping and the safety of human life and property. The Board is also charged with the responsibility to adopt regulations; establish qualifications, examine and issue licenses to qualified pilots; take disiplinary action against negligent or incompetent pilots; and regulate pilotage fees.

I would like to briefly review the somewhat complex subject of "pilotage". All maritime nations since ancient times have offered inducements for mariners to become pilots and maintain pilotage systems for the protection of shipping. It is probably the oldest regulated profession. Our Colonial Legislatures had pilotage laws in effect prior to our becoming a nation. The first Congress in 1789 quickly passed an Act that left pilotage under state control.

Pilotage remained exclusively a public service under state control until 1871 when Congress acted to provide for federal licensing of pilots of steam vessels engaged in the coastwise or interior commerce of the country. At that time steam engines were considered inherently dangerous and many laws were being passed to protect the public from this new threat. Since many state laws exempted ships engaged in strictly coastwise or interior commerce from the requirements of taking aboard a public pilot, Congress felt there was a need to insure that these new and dangerous steam vessels should employ someone familiar

with the waters being navigated.

This created a different catagory of pilot - a federally licensed pilot. So now, in the United States, the term "pilot" is used to describe two different sets of relationships.

The first, or original, "pilot" is the state licensed publicly regulated pilot who is not subject to the selection and control of the shipowner and whose terms and conditions of service are established by statute and not subject to negotiation. The relationship is created by compulsion of law and defined by the state compulsory pilotage statute and decided court cases applying principles of maritime law.

The other "pilot" is the federally licensed employee of the ship who is subject to the selection and control of the shipowner and whose terms and conditions of employment are determined by mutual agreement. The relationship is the common law one of employer and employee.

Simply stated the state licensed pilot is exercising a public function on publicly regulated terms and conditions and the federally licensed pilot is acting in a private capacity on privately agreed terms and conditions.

There is a vast difference in the training, experience, perceived duties and responsibilities, working relationships, legal relationships and attitudes that seperate the federally licensed employee pilot and the state licensed public pilot.

The federally licensed pilot is a common law employee of the shipowner serving in a private capacity. The shipowner has the right of selection and the right to exercise control over his employees in the performance of their duties. The terms and conditions of emploment are privately agreed to with the shipowner. The prospects of future employment are dependent upon how well the employee satisfies the demands placed upon him by his employer.

In contrast, compulsory pilotage is the creation of law, not of contract, and the pilot is not the employee, servant or agent of the shipowner, the ship or the master. He is placed aboard by the state with the conditions of his

service fixed by law. He is required to be accepted by the vessel and placed in charge of her navigation to serve the state's interest in protecting life and property - and in today's world, the environment - from the hazards of navigation. He sees his duty and obligation as being owed to local political authority and the public, rather than to the shipowner in the role of an employer. His fee is set by law and he can receive no increase in fee for accepting greater risks nor be penalized with a lesser fee for taking precautions in conflict with the owner's interests. His future employment does not depend upon satisfying the demands of the shipowner to maintain schedule or move the vessel with unacceptable margins of safety. He is free to exercise independent professional judgement as to the acceptability of the risks. The public nature of his role leads him to place a higher priority on the protection of life, property and the environment than the master who has to consider all decisions in the light of the owners commercial interest. The compulsory pilot's autonomy and independence are the single most important safeguard that exists in the shipping world.

This, then, is the decision that the legislature of the State of Alaska must make at this time. Whether to control pilotage in the State or return that control to the Federal Government and federally licensed pilots. In light of the large amount of oil tanker traffic and large foreign fishing and trading fleets operating in or near the waters of this state, I believe the best interests of the public and the State of Alaska are much better served by choosing, examining, licensing and otherwise controlling those persons who will be responsible to the State for the protection of the safety of those vessels, the public and the environment from the consequences of marine casualties.

With these thoughts in mind, I would like to turn briefly to the recommendation of the Division of Legislative Audit to delete the requirement of a written examination as a condition for obtaining a pilot's license. As one who assists in the preperation of the state licensing exam, I must respectfully

disagree with the statement that there is a duplication of the material that is on the federal pilot's exam, and that the state exams are out of date. The degree to which the state and federal exams overlap is not excessive and the state exams are not out of date, in fact they are being revised continually and examinations for fourteen new ports have been compiled within the past year and one-half to keep up with the ever changing patterns of shipping in the various ports of Alaska. The state examinations are more pilot orientated than the federal exams and deal with information that a practicing pilot should know and use while performing his duties. I believe maintaining the written examination is very important and necessary towards preserving the higher standards of state licensed pilots.

All state licensed pilots of my acquaintance state without reservation that qualifications and standards should, if possible, be increased rather than decreased to preserve the quality of state pilotage.

In conclusion, I would ask the committee to recommend the retention of the Alaska Board of Marine Pilots. Further, I would urge you to recommend that the high professional qualifications and standards be maintained to insure the safety of shipping in Alaska. Thank you.

JAMES F. PETERSEN
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(907) 586-3530

MASTER FILE COPY
HOUSE COMMERCE COMMITTEE

February 4, 1980

Mr. Allan Blume
Administrative Assistant
House Commerce Committee
The Honorable Fred Brown, Chairman
Pouch V
Juneau, AK 99811

RE: Marine Pilots Board Sunset Hearing

Dear Allen:

As we discussed after the meeting above-referenced was adjourned, I would like to submit a formal letter with some additional comments regarding the Legislative Audit recommendations for the Marine Pilot Board. These primarily emphasize the fact that, with the duties and obligations imposed upon the Board by both statute and voluntarily assumed by regulation, two meetings per year appear to be insufficient to accomplish those responsibilities and adequately rectify some of the misgivings which have, of late, been focused on the Board.

At the hearing of January 30, 1980, I specifically made reference to the problems that the Board will have in adopting regulations in accordance with the A.P.A., due to the notice requirements of the A.P.A. and the infrequent meetings of the Board of Marine Pilots. Similar restriction upon the Board's practical ability to exercise revocation and licensing censures exists because of the infrequency of Board meetings and/or an insufficient budget. In order that the Board retain its quasi-judicial function, it must, of course, remain impartial throughout the investigation process and the presentation of evidence. Consequently, when an incident is referred to the Board for investigation, it is necessary that, the Division of Occupational Licensing conduct that investigation, then under the A.P.A., the formal papers of Accusation would be filed through the Attorney General's Office and a hearing date would be set. If the full Board is to hear the revocation case, after due notice to the parties, it becomes obvious that the Board,

though having previously scheduled a one-day meeting, could end up sitting around listening to evidence for three or four days, depending upon how long the hearing takes. This is not practical in light of the limited number of Board meetings and the other substantial business which the Board must conduct. Consequently, it would seem that the most efficient way to handle this problem would be to allocate additional funds to the Board so that it might appoint independent hearing officers, who would conduct the actual hearing, write a proposed decision, and then submit the proposed decision for adoption, modification or rejection. Of course, the proposed decision would have to be served on all parties, and all parties would be present at the time the Board considers the proposed decision to make comments one way or the other. Notwithstanding the fact that all parties would be there, due to the pre-existence of a proposed decision, the matter would be greatly expedited and specific answers could be posed to the questions of the Board. However, with the limited funds which are now available, such a procedure does not seem feasible as a matter of course.

This very procedure has recently been employed by the Board in aid of its resolution of current tariff disputes. Governor Jay Hammond appointed Dick Edwards of Anchorage, an attorney, to act as hearing officer in the tariff rate dispute. Mr. Edwards will be holding a hearing sometime later this month, at which both the pilots and industry representatives will present evidence on what they feel are appropriate tariffs under the guidelines of the Marine Pilots Board statutes. Mr. Edwards will then write a proposed decision and the matter will be submitted to the Board for ultimate action. I anticipate that at that time, with the parties having previously received the proposed decision from the hearing officer, they will also attend and make their comments before the Board. Indeed, this is the most common manner in which serious evidenciary problems are handled by other boards and commissions.

Consequently, I would merely like to reinforce my testimony at the hearing, that the Board is looking at a substantial disability, considering its lack of funds and semi-annual meeting schedule. I would like this letter to be included

in the record of the House and Senate Commerce Committee hearings on the sunset review of the Board of Marine Pilots. I thank you so much for your cooperation.

Best regards,

DAVID V. GEORGE
Member, Board of Marine Pilots

DVG/law
cc: Anne Griggs
Division of Occupational Licensing

Alaska State Legislature

House of Representatives

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

February 20, 1980

David V. George, Associate
JAMES F. PETERSEN
Attorney & Counsellor at Law
319 Seward Street
Juneau, Alaska 99801

Dear Mr. George:

Thank you for your letter of February 4, 1980. Your letter will be included in the record of the House Commerce Committee hearings on the "Sunset" review of the Board of Marine pilots.

I shall also forward a copy to the Senate Commerce Committee.

Cordially,

Bob Aaron
Administrative Assistant
House Commerce Committee

BA:kfw

SOUTHWEST ALASKA PILOTS ASSOCIATION
P. O. Box 977 Telephone (907) 235-0783 Cable: Homerpilot Homer, Alaska 99603

CAPTAIN EDWARD MURPHY

COMMITTEE TESTIMONY ON SUNSET

REVIEW OF THE BOARD OF MARINE PILOTS

NOVEMBER 28, 1979 - DECEMBER 10, 1979

Mr. Chairman and ladies and gentlemen of the committee, thank you for this opportunity to testify in favor of retaining the Alaska Board of Marine Pilots. My name is Edward Murphy and I am appearing today as a representative and spokesman from the Southwest Alaska Pilots Association. Southwest Pilots is one of the two associations of state and federally licensed marine pilots in Alaska and provides state pilots to shipping from Cape Spencer north.

I would like to acknowledge the assistance of Captain George Quick and the American Pilots Association in the preparation of this testimony.

Before getting into the details of the report by the division of legislative audit, I would first like to describe the pilotage scene as it exists today for the benefit of those committee members who may not be familiar with the subject.

All maritime nations since ancient times have offered inducements for mariners to become pilots and maintain pilotage systems for the protection of shipping. We may not be the oldest profession but we are certainly the oldest regulated profession. The colonial legislatures had pilotage laws in effect prior to our becoming a nation. The first congress assembled after the adoption of the Constitution in 1789 realized that the delegation of the right to regulate interstate and foreign commerce granted to the federal government by the Constitution would interfere with pilotage systems and regulations in place in the various states and quickly passed an act that left pilotag under state control.

The state laws generally provided for a system of regulated public pilots who con-

ducted to and from the sea and whose terms and conditions of service were established by law. Pilotage remained exclusively a public service under state control until 1871 when congress acted to provide for the federal licensing of pilots on steam vessels engaged in coastwise or interior commerce of the country. At that time steam vessels were considered inherently dangerous and many laws were being passed to protect the public from this new threat created by the industrial revolution. Since many states exempted ships engaged in strictly coastwise or interior commerce from the requirement of taking aboard a public pilot, congress felt that there was a need to insure that these new and dangerous vessels driven by steam employ someone familiar with the waters over which the vessel was navigating.

This new act of congress by creating a different category of federally licensed pilots who were employees of the ship and who often were actually the master or other officer acting as pilot by virtue of additional endorsement on his license has caused confusion in defining the term pilot and in defining the role and function of a pilot.

The term pilot in the United States is used to describe two entirely different sets of relationships:

1) It can refer to a federally licensed employee of the ship who is subject to the selection and control of the ship owner and whose terms and conditions of employment are determined by mutual agreement. The relationship is the common law one of employer and employee.

2) It can refer to the state licensed publically regulated pilot who is not subject to the control and selection of the ship owner and whose terms and conditions of service are established by statute and not subject to negotiation. The relationship is created by compulsion of law and defined by the state compulsory pilotage statute and decided court cases applying principles of maritime law.

In simple terms, the federally licensed pilot is acting in a private capacity on privately agreed terms and conditions, and the state licensed pilot is exercising a public function on publically regulated terms and conditions.

The legal text writers and the court decisions attempt to avoid confusion by generally referring to the pilot acting in a private capacity as a voluntary pilot and referring to the pilot exercising a public function as a compulsory pilot.

In the voluntary pilot situation the employment contract is by mutual agreement between the ship owner and the employee pilot, even though the ship owner is naturally compelled to select his employee from among a class, i.e. federally licensed pilots. In the compulsory pilot situation the pilot is forced on the ship owner by compulsion of law and under terms and condtions established by law. The concept of compulsory pilotage excludes any right of the ship owner and pilot to mutually agree on the terms of their relationship. The right of selection and control, as well as the terms and conditions of service are not properly the subject of negotiations, they are established by the state to serve the state's superior interests.

There is a vast difference in the training, experience, perceived duties and responsibilities, working relationships, legal relationships and attitudes that separate the federally licensed employee pilot and the state licensed public pilot. An understanding of the differences is necessary.

The state licensed pilot is regulated by state statutes creating compulsory pilotage. His state license is both a certificate of competency and a franchise as a public servant requiring him to assume public obligations in maintaining pilot stations and operating a pilotage system. The rights, duties, and obligations of the owner, the ship, the master and the pilot are created by law and not by mutual agreement between the parties. Common law principles governing the usual employment contract have no application.

The general scheme in effect throughout most of the world is one in which a vessel approaching the coast with the intent of making port has a compulsory obligation to accept a local pilot skilled in navigating those waters and knowledgeable as to local hazards, place him in charge of the navigation of the ship, and pay the fee for his services prescribed by local law. The purpose is to protect the safety of shipping by

assuring a complement of pilots will be available when needed at designated locations (pilot stations) and placing navigational control of the ship in the hands of a qualified local expert when the ship is in a high risk area.

As part of their franchise as a public service it is compulsory for the pilot to maintain pilot boats on established stations known to all mariners, to keep a complement of qualified pilots available to render services as all times, to go to any ship needing his service without discrimination or choice and to provide his services under legally established terms and conditions, and for a fee prescribed by law and published in a tariff.

Compulsory pilotage is a creation of law, not a contract. It is regulated in much the same manner as a public service company and charged with the public responsibility of rendering pilotage services to vessels. The pilot is in no sense the employee or servant of the ship owner or the vessel he pilots. He is required to be accepted by the vessel and placed in charge of her navigation to serve the state's interest in protecting life and property - and in today's world, the environment - from the hazards of navigation. He sees his duty and obligation as being owed to local political authority and to the public, rather than to the ship owner in the role of an employer. The public nature and regulation of the terms and condition of his service protect and insulate him from the demand and pressures that can be placed on an ordinary employee to compromise the margins of safety.

In contrast the federally licensed pilot is a common law employee of the ship owner serving in a private capacity. The ship owner has the right of selection and the right to exercise control over his employees in the performance of their duties. The terms and conditions of employment are privately agreed to with the ship owner. The prospects of future employement are dependent on how well the employee satisfies the demands placed on him by his employer. The master and the federally licensed pilot work for and are answerable to the same employer and are licensed by the same federal agency, the Coast Guard. In some cases the master and pilot may in fact be the same person serving in a

dual capacity. This lack of independence and the absence of checks and balances should give the public cause for concern when they consider that the sea-going coastwise tankers are largely exempt from the protection of state compulsory pilotage laws. Many of them are navigated on our inland waters by company employee pilots or masters serving in the dual capacity of pilot.

So, compulsory state pilotage operating under the authority of the state Board of Marine Pilots functions to protect and insulate independent decision making affecting the safety of ships from commercial pressures by placing navigational control in high risk areas in charge of a compulsory public pilot who does not belong to the ship, i.e. free of the ship owner's interest and control.

I think the committee and the legislature will agree that these are compelling reasons for maintaining state licensed public pilots under the control of the Alaska Board of Marine Pilots.

I would like to turn now to report conclusions and recommendations made by the Division of Legislative Audit. The division recommended that the Board discontinue the requirement of a state administered examination because the State examination duplicates examinations given by the U.S. Coast Guard. This recommendation is misinformed and ill-advised. The State administered examination for an Alaska pilot's license is not duplicative and goes far beyond the Coast Guard written examination. Because the Coast Guard personnel who administer pilotage examinations have little, if any, local experience the written examination is necessarily taken from navigation publications and coast pilots. The state examination, on the other hand, contains questions of a practical and relevant nature which pilots operating in a particular area should be expected to know. The value of the state's examination is unquestioned among practicing state licensed pilots and it should be retained. The division's comment on the state examination being out of date does have relevance. However, in the past year the examinations for Southwest Alaska have been completely renewed and rewritten.

The division also recommended that the Board of Marine Pilots take a more active

role in regulating pilotage tariffs. Southwest Pilots would agree with the recommendation that the Board take a more active role, although we have no specific recommendations to make as to what that role should be. There is a pressing need for published guidelines to be followed by the pilot associations when they request a rate increase.

The other recommendations made by the division concerning the Board's lack of efficiency in processing requests for information, disciplinary action against pilots, and generally conducting it's affairs in a businesslike manner certainly hit the mark.

We believe that the Board's problems are largely the result of insufficient support from the Division of Occupational Licensing and the Attorney General's office. We are also convinced that two meetings a year are not enough to properly conduct the business of the Board. If the Board met quarterly and received proper support from the various state agencies it's efficiency would realize a quantum jump.

In conclusion, I would urge the committee to recommend the retention of the Alaska Board of Marine Pilots in it's present form. State pilotage in Alaska's waters is absolutely essential as any examination of the excellent safety record of shipping piloted by state licensed pilots will prove. That safety record is largely the result of the stringent professional standards which Alaska demands of it's pilots. Standards which are maintained and overseen by the Board of Marine Pilots. Thank you.

Christian Basler
Work Copy

STATE OF ALASKA

ROUGH DRAFT

CONFIDENTIAL

DIVISION OF LEGISLATIVE AUDIT
Juneau, Alaska

A PERFORMANCE REVIEW
OF THE
BOARD OF MARINE PILOTS

June 15, 1979

ROUGH DRAFT

A PERFORMANCE REVIEW
OF THE
BOARD OF MARINE PILOTS

June 15, 1979

ROUGH DRAFT

Commissioner of the Department of Commerce and Economic Development	Charles Webber
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram Wagnon

Members of the
Board of Marine Pilots

Comm. & Econ. Development

Chairperson	Charles Webber
Member	Captain Donald Oldow
Member	Captain Jack Maroni
Member	Charles Stover
Member	Marvin Taylor
Member	David Culbertson
Member	Kenneth Peavyhouse

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

June 30, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
BOARD OF MARINE PILOTS

June 15, 1979

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), an audit of the Board of Marine Pilots was conducted to review Board activities and accomplishments to determine if a public need for the Board exists, and if so, to determine if the Board has operated in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Marine Pilots should be reestablished. The law currently specifies that this Board will terminate on June 30, 1980, but will continue until June 30, 1981, for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) interviews with the Board members and questionnaires sent to the Board members;

(3) tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(4) interviews with OL employees;

(5) complaints filed with OL and the Attorney General's Office;

(6) questionnaires sent to the marine pilots currently licensed by the Board and to shipper's agents;

(7) interviews and correspondence with a national pilots association and local pilot associations; and

(8) interviews with personnel from the U.S. Coast Guard.

ORGANIZATION AND FUNCTION

Responsibility for the regulation of marine pilotage is shared by the federal government and state governments. The federal government, through the U.S. Coast Guard (CG), regulates pilotage on enrolled vessels, while the individual states are given the right, in the United States Code, to regulate pilotage on registered vessels. Enrolled vessels are vessels registered in the United States and engaged in commerce between American ports; registered vessels are those vessels engaged in foreign trade. The individual states have the right to regulate pilotage on vessels engaged in foreign trade.

The Alaska Board of Marine Pilots was created under Alaska Statute 08.62 to carry out the State of Alaska's responsibility of regulating pilotage on registered vessels. The Statute became effective in 1970.

The Board is made up of seven members - two marine pilots, two agents or managers of vessels, two public members and the Commissioner of the Department of Commerce and Economic Development. Per the Statutes (08.62), the purposes of the Board of Marine Pilots are to license qualified pilots; to take disciplinary action against negligent or incompetent pilots; and to regulate pilotage fees.

Once a marine pilot has received a license from the Board, he is authorized to pilot registered vessels within the established boundaries of inside waters of the state. The inside waters are defined by regulations as all of Southeastern Alaska, Prince William Sound, Cook Inlet and Resurrection Bay. Alaska Statute 08.62 requires registered vessels to carry State licensed pilots when inside these boundaries. It is the pilot's job to direct a vessel safely through the inside waters and dock and undock the vessel.

To obtain an unlimited pilot's license an applicant must first obtain both a pilot's license and a master's license issued by the U. S. Coast Guard. In addition, he must perform ten to twenty dockings and undockings and pass written and oral examinations administered by the Board.

The Board also issues limited pilot's licenses and channel pilot's licenses. The holders of limited pilot's licenses may pilot vessels of 2,000 gross tons or less. Channel pilots may pilot vessels in main ship channels only, and can perform dockings and undockings under the direct supervision of pilots holding unlimited pilot's licenses. Proof of dockings and undockings is not required to obtain these two classes of licenses. Applicants for any of the three licenses

can obtain temporary licenses by meeting all the licensure requirements and taking a temporary license examination. A second examination is required for permanent licensure.

To obtain license renewal, a pilot must show that he has worked at least two months in each area for which he holds a license. The two months' time must have been worked within four years prior to the renewal date. License renewal is required biennially.

The Board is assisted in performing its licensing and other administrative functions by staff support from the Division of Occupational Licensing (OL). OL processes applications, maintains files, answers correspondence dealing with the Board and provides other administrative support as needed by the Board. In addition, OL investigates any complaints or accident reports involving marine pilots.

(3) Another function of the Board is regulating fees for pilotage services. Any increases of the fees charged by pilots for their services must be approved by the Board.

There are currently 45 State licensed marine pilots. The majority of the pilots belong to a pilot's association. There are two associations - the Southeast Pilot's Association and the Southwest Pilot's Association. These associations act as dispatching and billing agencies for their pilot members.

Price Fixing

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our review of the Board of Marine Pilots. The final policy decisions affecting the operation of the Board are not within the scope of this review - they require legislative consideration. In debating these issues, the legislative oversight committees should consider the findings and recommendations presented in this report in reaching their decisions.

Report Conclusion

In our opinion, the Board of Marine Pilots should continue to regulate and license the marine pilotage profession. The regulation and licensing of marine pilots by a State agency is necessary to assure the protection of shipping, human life and property, and the environment from potential dangers caused by registered vessels sailing in Alaskan waters.

During our review we noted that at least one alternative to maintaining the State Board of Marine Pilots exists:

Under the Port and Tanker Safety Act of 1978, passed by the U.S. Congress in 1978, the Coast Guard has the authority to assume a state's pilotage responsibilities if the state relinquishes that right.

The personnel of the Seventeenth Coast Guard District feel that this is not a viable alternative in Alaska because it would place too heavy a burden on their present resources.

The legislative oversight committees should carefully consider the impact of relinquishing State jurisdictional authority to a federal agency.

We recommend the following changes be implemented if the Board of Marine Pilots is reestablished:

1. The Board should discontinue the requirement of a State-administered examination because the State examination duplicates examinations required for obtaining U.S. Coast Guard-issued officer's and pilot's licenses.

2. The requirements for license renewal should be reviewed by the Board members to determine if they are necessary and reasonable or if they are restrictive and should be changed.

3. The Board should establish criteria and describe terms to be used by the pilot associations and the shipping industry in proposing and opposing tariff increase requests. Also,

procedures prescribing the manner in which tariff increase hearings should be conducted should be established.

(4) Statutes or regulations which define licensing violations and also give pilots an indication of what their professional responsibilities are should be promulgated by the Board.

Finally, the Board and the State agencies which provide support services to it, OL and the Attorney General's office, should coordinate their efforts so that the Board can better achieve its purposes. Both need improvement.

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 4 are addressed to the Board of Marine Pilots, No. 5 is addressed to both the Board and the agencies which provide support services to the Board, and No. 6 and No. 7 are addressed to the Division of Occupational Licensing (OL), and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978".

Get from Elaine Cavett.

Recommendation No. 1

The Board of Marine Pilots should recommend statutory and regulatory changes to delete the requirement of a written examination as a condition for obtaining a pilot's license.

Alaska Statute 08.62.100(3) requires an applicant for a State-issued pilot's license to pass written and oral examinations given by the Board.

During our review of the Board of Marine Pilot's examination function, we noted two problem areas. The first problem area involves the administering of the examinations.

Portions of the Board's examinations and answer keys are out-of-date. Each time an examination is given, the Board informally checks the examinations over and makes corrections accordingly. However, it would be easy to miss a change that should be made using this procedure. Another problem we noted was that if an applicant had to be reexamined for some reason (i.e. either because the applicant failed an examination, or he applied and was tested for a temporary license first and then a permanent license), in many cases he was given the same examination both times.

A pilot applying for a State pilot's license for an area or port for which an examination is not made up is automatically granted a license for that area on the basis of his Coast Guard endorsement for the area without being tested. This points out an inconsistency in the importance placed on the examinations by the Board members.

The Board's oral examinations are not administered in compliance with the regulations. The regulations require an applicant to be tested by oral examination in the following subjects: knowledge of local harbor conditions and regulations; signals; and rules of the road. However, the oral examinations administered by the Board have been limited to questions about the applicants' safety records and seagoing backgrounds.

The second problem area we noted was the duplication of test material on the State and Coast Guard pilot's examinations. To obtain a Coast Guard pilot's license, which is required for State licensure, a pilot must pass an examination administered by the Coast Guard.

The material tested on the State Board's examination can be divided into three categories: 1) questions about the pilot's knowledge of the conditions of the geographical areas he is being tested for; 2) questions about the pilot's knowledge of navigation, ship handling, rules of the road, etc; and 3) questions about the State Marine Pilotage Act and the relationship between a master and pilot.

The Coast Guard pilot's examination consists of filling in blank chartlets (to show depth of water, landmarks, aids to navigation, danger areas, etc.) and answering local knowledge questions for each chartlet area (there are 45 chartlets for Southeast Alaska and 37 for the Southwest area). By these two means, the Coast Guard examination covers local knowledge extensively.

It is true that the local knowledge questions are asked in different forms on the State examination, however the questions on both examinations cover identical material.

The Coast Guard pilot's examination does not test the examinee on general navigation, ship handling or rules of the road. However, by the time a person has obtained a master's license issued by the Coast Guard, he has passed a number of tests which cover these subjects extensively. As an applicant for State pilotage must possess a master's license, he has been tested thoroughly on general navigation, ship handling and rules of the road.

The Coast Guard examination does not cover the subjects listed under number 3 above - the State Marine Pilotage Act and the relationship between the master and pilot. Per the Board's regulations, the Board may test examinees on these subjects.

However, in the recent past, the Board has chosen not to administer tests on these subjects.

We feel that because the State's pilot examination largely duplicates the Coast Guard examination the State exam serves little useful purpose. The usefulness of the State examination is further eroded by the first three problems noted above.

We therefore recommend that the Board of Marine Pilots drop its written examination and instead license State pilots on the basis of the other State licensing requirements. The

other licensing requirements combined with the various examinations administered by the Coast Guard are more than adequate to assure the public that a pilot is qualified to perform pilotage duties.

Recommendation No. 2

The Board of Marine Pilots should recommend regulatory changes to make the license renewal requirements less restrictive and vague.

The regulation which sets down the requirements for the renewal of a State pilot's license is vague and restrictive. Alaska Administrative Code (AAC) 12.56.080 requires applicants for the biennial renewal of their State pilots' licenses to submit proof of having worked at least two months in each area for which they are requesting renewal. The two months must have been worked in a licensed deck officer capacity during the four years prior to the date of renewal of the license. (Note: for the purposes of licensing the Board divides Alaska into two areas, Southeast and Southwest).

The regulation is vague in that the terms and phrases used are not defined. For example, "two months" can mean 60 days or 60 days less week-ends or one trip a week for eight weeks. "Licensed deck officer capacity" can mean any position from third mate to pilot. The regulation states the pilot must have worked "in the area for which he was licensed during the last biennial period." A person licensed for all of southeastern or southwestern Alaska could spend two months in only one of many ports in the area and still fulfill the "in the area" requirement.

The regulation is restrictive in that a pilot holding pilotage in both Southeastern and Southwestern Alaska faces a hardship in trying to make arrangements for two months worth of trips in both areas.

Of the persons who responded to the questionnaire we sent to the licensed marine pilots (see Appendix E), 69 per cent were of the opinion that the renewal requirements are too restrictive.

The intended purpose of the two-month requirement is to provide reasonable assurance that a pilot remains current in his knowledge of the areas he is licensed to pilot in. However, the requirement does not accomplish this purpose since a pilot could conceivably fulfill his two-month requirement by working out of one port in an area, thus obtaining no recent experience in all the other ports in the area.

We feel the Board of Marine Pilots should review AAC 12.56.080 to determine if less restrictive alternatives exist. We encourage the Board to solicit help from the pilotage profession and the shipping industry in exploring alternatives. Regulatory revisions should also be made to define terms used.

Recommendation No. 3

(3) Tariffs

The Board of Marine Pilots should take a more active role in regulating pilotage tariffs.

(3)* Alaska Statute 08.62.040(a) (4) states that the Board of Marine Pilots "...shall regulate pilotage fees". Until just recently, it has been Board policy to direct the two pilots' associations within the state to negotiate a tariff increase with representatives from the shipping industry. The rate agreed upon by the two parties was then automatically approved by the Board. As a result, the Board in the past has not analyzed or studied the tariff increase requests to determine the need for an increase and the impact of a tariff increase on commerce.

After repeated warnings by the Attorney General's Office that the Board was not fulfilling its statutory responsibility, the Board has decided to become more actively involved in regulating the tariffs. We encourage this action by the Board. However, some further changes to the Board's method of regulating tariffs should be made.

Presently, the Board has no criteria on which requests for * tariff increases are to be based. Also, the Board has not set down procedures describing how hearings for tariff increases should be conducted. Because of the lack of any criteria and procedures for the granting of tariff increases, the Board members and representatives from the shipping industry and the pilots associations have a difficult time communicating about what is being requested and why.

We recommend that the Board of Marine Pilots establish criteria to provide a basis for the pilots and shipping industry to follow when a tariff increase is being requested. The criteria should serve as a guide for the Board members in determining whether or not a tariff increase should be approved. The criteria should also list terms and definitions of the terms to be used by the pilot and industry groups in presenting their requests and rebuttals. An example of the terms that should be defined is "time in work status".

The Board should also establish procedures for how the tariff hearings should be conducted. Included in the procedures should be directions for the method and timing of notices of tariff increases to interested parties. The procedures should describe the proper conduct during the Board proceedings of those Board members who have a direct financial interest in a tariff increase. The procedures should also give directions to the parties involved, the pilot groups and the shippers, as to the documentation and information that will be required and the format and timing of proposals and rebuttals.

Recommendation No. 4

The Board of Marine Pilots, in conjunction with the Attorney General's Office, should promulgate statutes or regulations which define license violations.

Alaska Statute 08.62.150(a) outlines license violations which are grounds for the denial, revocation or suspension of a State-issued marine pilot's license. The statute allows the Board to take action against a marine pilot who "is incompetent in the performance of his pilotage duties" or "is guilty of misconduct during the course of his employment".

Nowhere in the Marine Pilotage Act or the regulations are "incompetent" and "misconduct" defined. These terms are too vague to give a marine pilot an indication of what his professional responsibilities as a marine pilot are.

In addition to these shortcomings, neither the statutes nor the regulations make express provisions to allow the Board to suspend or revoke the State-issued license of a pilot whose Coast Guard license has been suspended or revoked. Instead, since Administrative Code sections 12.56.030(2), 040 (b)(2) and 050(2), state that a pilot must possess a valid Coast Guard pilot's license in order to be licensed as a State pilot, it is implied that the suspension or revocation of a pilot's Coast Guard license makes his State license invalid.

We recommend that a provision be added to Alaska Statute 08.62.150(a) to allow the Board to revoke or suspend a license based on the revocation or suspension of a Coast Guard pilot's license. This would speed up disciplinary proceedings since the State would not have to prove that a pilot was negligent or imcompetent in his pilotage duties.

We further recommend that the statutes or regulations be amended to define ambiguous terms such as incompetent and misconduct.

Recommendation No. 5

The Board should establish formal procedures to conduct its business more effectively and promote better communication with supporting agencies.

During our review of the Board of Marine Pilots, we noted several problems which hinder the effectiveness of the Board. Those problems are as follows:

1) Complaints were made to us by representatives from the shipping industry, Coast Guard personnel and members of the pilotage profession about the

Board's failure to investigate complaints and accidents involving pilotage and its failure to take disciplinary action against negligent pilots.

2) We also received complaints from persons interested in State pilotage that the Board and/or the Division of Occupational Licensing is not responsive to requests for information.

3) It takes the Board as long as two or more years to implement changes.

4) In interviewing Coast Guard personnel, we found that there is little cooperation or communication between the Board and the U.S. Coast Guard. As a result, matters which require the concurrent attention of both entities take longer than necessary to resolve.

The slowness of the Board and its failure to make changes can be attributed to two factors:

a) The Board only meets twice a year - it is difficult to implement changes and take action on problems when six months elapse between discussions of the changes.

b) The Division of Occupational Licensing and the Department of Law (Attorney General's Office) have failed to follow through on requests for assistance and information made by the Board.

As a result of the above problems, the effectiveness of the Board is impaired because it is losing credibility with the persons it is attempting to regulate. The Board needs to take steps to improve its image among the marine pilotage profession and the other groups involved with pilotage.

We recommend that the Board of Marine Pilots and the two agencies which support it, the Division of Occupational Licensing and the Attorney General's Office, take steps to efficiently and effectively take action on issues facing the Board, so that the Board can achieve its purposes. We urge all entities involved to be more diligent in following up on the requests and needs of the Board.

Following are recommendations for some specific actions the Board and supporting agencies could take:

1. The Board members and the licensing examiner for the Board should work up a procedures manual to be used by the Board members and the examiner. Many misunderstandings betweer the licensing examiner

and the Board members can be cleared up this way. In addition, a procedures manual would provide continuity between licensing examiners - this would help alleviate the problems caused by the rapid turnover of license examiners. An example of the type of information that should be included in a procedures manual is the procedure for the approval of the Board's minutes.

2. It is a usual practice of the Division of Occupational Licensing to request opinions from the Attorney General's Office in writing. We approve of this practice and urge both the Division of Occupational Licensing and the Attorney General's Office to follow up on the Board's requests for legal advice as efficiently as possible. Responses to requests for assistance should be communicated to the Board members timely enough so that they can use the information during Board meetings.

3. The Board should consider requesting the Coast Guard to appoint one of its personnel to act as a liaison between the Board and the Coast Guard. This person could possibly act in an advisory capacity to the Board and attend the Board meetings in order to provide a means of communication between the two entities.

4. The problem of slow or nonexistent investigations of accidents and complaints and resultant disciplinary actions is recurrent among all the occupational licensing boards (as we explained in the performance audit of OL). The investigations unit within OL says that they do not have the manpower to give priority to cases, such as most marine pilot cases, which are not "life-threatening". Hopefully, now that the three investigator positions within the unit have been filled, this problem will be alleviated.

   Two recommendations for further decreasing the amount of time it takes to investigate complaints and take disciplinary actions are:

   a) The Board should maintain a register of vessels, operators, agents and managers of vessels subject to the Marine Pilotage Act as required by Alaska Statute 08.62.040(a) (3). The investigations unit personnel feel this register would be useful in doing their investigations of marine pilots cases.

   b) Disciplinary actions should be taken by the Board as soon as information needed is available. Disciplinary action is still pending on a marine accident which occurred in 1976. No

action had been taken on the case until February of 1979 because the investigations unit was waiting for the Coast Guard's final decision on an appeal filed by the licensee after the initial determination was handed down. Action could have been taken against the pilot's State license after the Coast Guard's initial determination was made.

Recommendation No. 6

The Board of Marine Pilots should establish formal goals, objectives and quantifiable measures which should be included in the OL's budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Wihout goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL establishes its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without each Board's goals and measures being identified or measured, both the Governor's Office and the Legislature cannot evaluate a Board's performance (see the OL Performance Audit Report).

Recommendation No. 7

The Division of Occupational Licensing should collect, record and maintain for five year periods, files and statistics of the licensing and testing of applicants and the related workload of the licensing examiner.

The Division needs relevant facts and statistics for evaluating the performance of its personnel and Board activity. Many past records have not been collected and maintained, such as:

1. Number of marine pilots licensed in past years;
2. records of those applicants failing the examination;
3. numbers of applicants denied the chance to take the examination due to lack of qualifications;
4. number of complaints and criticisms about the performance of the Board and its staff;

5. correspondence workload of license examiners; and

6. number of persons requesting applications.

It is to the advantage of the Division to keep these records in order to support its budget request, evaluate its personnel and keep the Board informed as to its progress. Also, feedback from the Board and the public should be encouraged to determine whether staff performance is adequate.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of Board activities relates to the public need factors defined in the "sunset" law. This analysis is not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. The Board of Marine Pilots has operated in the public interest by promulgating regulations which help assure that a State-licensed marine pilot has the experience, knowledge and skill required for safe pilotage. The qualifications required for licensure as a State pilot exceed the requirements for a Coast Guard issued pilot's license as follows:

   a. Applicant must possess a Coast Guard issued master's license;

   b. applicant must document having completed 10 to 20 dockings and undockings under the supervision of a State licensed pilot; and

   c. applicant must be at least 25 years old.

   We inquired of the pilotage profession, the shipping industry and the Coast Guard about whether or not they felt the additional requirements are necessary to assure a pilot's competency. All three groups were in favor of the extra requirements - their general concensus was that the extra requirements promote marine safety.

   However, the differences between the requirements for a Coast Guard pilot's license and a State pilot's license indicate one of two problems exist.

   a. Either the additional requirements for obtaining a State license are unnecessary, because the Coast Guard requirements are sufficient to assure that a pilot is competent; or

   b. those persons who possess only a Federal pilot's license, and thus are licensed

to pilot enrolled vessels, have not been required to sufficently demonstrate their ability to perform pilotage competently.

2. 18 per cent of the pilots licensed either did not possess or did not provide documentation that they possessed the qualifications necessary for licensure. Also, three out of 45 (or six per cent) of the licensees who received license renewals for 1979-1980, were renewed even though they did not provide documentation of the two-month requirement.

3. The Board is directed by statute to regulate pilotage tariffs. Because of the monopoly situation that is created by the two pilots associations, it is in the best interests of the public that the Board regulate the tariffs.

   In the past, the Board has not taken an active role in setting the tariffs. It has given its "rubber-stamp" approval to the tariff increases negotiated between the pilot's associations and the shipping industry (see Recommendation No. 3).

4. The Board is protecting the public by providing a mechanism to help assure the protection of shipping, human lives and property and the environment from the dangers posed by foreign vessels in Alaskan waters.

II. <u>The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters</u>.

1. Because the Governor's Office has not kept Board member appointments current, one of the Board's public member positions was unfilled for 14 months. Another Board member's term was lapsed for 16 months before he was reappointed.

2. The other public member on the Board, although his appointment was current, has attended only 50 per cent of the meetings. Thus, the Board has been operating with only five of its seven members.

3. The Division of Occupational Licensing has not provided the Board with adequate investigative services. Because of this, many complaints made to the Board have gone uninvestigated or, if an investigation was done, it was not timely (see Recommendation No. 5).

4. Because of the high turnover of licensing examiners within the Division of Occupational Licensing, the administrative services to the Board have lacked continuity. We received complaints in response to the questionnaires we sent out that the service provided by OL was either very slow or non-existent.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. During the 1979 Legislative session, a bill was passed that increased the maximum fine payable by violators of the statute which required pilots aboard registered vessels from $1,000 to $5,000. This is in the public's best interest because it should have more of a deterrent effect on potential violators than the $1,000 maximum penalty did.

2. In 1977, a section was added to the statutes which required any oil tankers, whether registered or enrolled, to either pick up a State-licensed pilot or carry a federally-licensed pilot during its entire voyage. It is in the public's best interest to take extra precautions to regulate oil tankers. However, the Board has endeavored to regulate enrolled vessels, in spite of the fact that the State has no jurisdiction over these vessels because of federal laws.

3. In 1976, two public members were added to the Board of Marine Pilots by statutory amendment.

4. In 1978, a change was made to the Administrative Code (AAC 12.56.060(c)) which made the process of obtaining an extension of route easier. We believe this was a sensible change made by the Board, because it eliminated redundant paperwork.

5. Also in 1978, another section was added to the Administrative Code (AAC 12.56.080(b)(3)) which gave the Board the authority to restrict a pilot from piloting in a certain area if he

has not worked in that area for two biennial periods. The restriction remains in effect until the Board determines that the pilot has sufficient knowledge and experience to resume pilotage in that area. Testimony against the regulation was received by the Board from several marine pilots. Their major complaint against the regulation was that it would cause the independent pilots to lose one of the two areas (southeast and southwest) they had previously been licensed for, thus benefiting the associations since competition would be lessened (see Recommendation No. 2).

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, and availability of service which it has provided.

1. The public is invited, by notices in the four major newspapers throughout the State, to the Board's meetings. However, in many cases, the notices are not published timely enough to allow a person interested in attending a meeting time to prepare for the meeting.

2. At each of the last three meetings of the Board, there have been at least four persons, other than the Board members or support staff, in attendence at the meetings.

3. From the responses to the questionnaires we sent to the licensed pilots and the agents and in talking to other persons such as representatives from the pilots' associations, we heard a number of complaints about the service provided by the Board. For example, requests had been made for copies of Board minutes and notification of changes in statutes and regulations. However, no response was received from the Board or the Division of Occupational Licensing.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. Until the January, 1979, the pilots' associations and the shipping industry were very involved in the Board's decision making, since they negotiated the tariff increases before they were approved by the Board. Input from

the associations and the shippers will still be welcome; however, in the future, the Board plans to take a more active role in approving tariff increases (see Recommedation No. 3).

2. As stated in Criteria IV, number 1, the public is invited to the Board of Marine Pilots meetings to give input about Board business.

3. The public also has a chance to give input about proposed regulations, since proposed regulations have to be published in the newspapers before they can become effective. In the public notices, the public is invited to make testimony on the proposed regulations.

4. One area where the public is not given notice of impending changes is with the tariff increases. Proposed tariff increases are not published in newspapers.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. Per Number 3 under Criteria II and Recommendation No. 5, the Division of Occupational Licensing has not provided the Board with efficient investigative services on complaints made involving marine pilots. As a result, the Board has been critized by the U.S. Coast Guard, the shipping industry and other licensed pilots because it does not properly police the State marine pilots. Since the complaints have been made repeatedly, they apparently have not been efficiently processed and resolved.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. Based on the requirements for licensure as a State marine pilot, the applicants should be qualified to pilot vessels in the inside waters of Alaska.

2. As stated in Number 2 under Criteria I, 18 per cent of the licensees either did not possess or did not show documentation of

possessing all of the qualifications required for licensure. Also, six per cent of the persons whose licenses were renewed, had not submitted documentation of having fulfilled the two-month requirement.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. Applicants for a State pilot's license must by regulation be at least 25 years old. Age restrictions such as this have been found by the Alaska Legislature to be illegal and unnecessary.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

1. See Recommendations No. 1 through No. 7.

APPENDIXES

APPENDIX A

BOARD OF MARINE PILOTS
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Revenues (see Schedule 1 and Note 1)	$ 6,451
Expenditures (see Note 2)	16,988
Excess of Expenditures over Revenues	$(10,537)

Schedule 1
Types of Revenue

Revenues	Amount	Time of Collection
Application and Examination Fee	$ 10	With submittal of application
Temporary License Fee	$ 50	With submittal of application
License Fee	$200	Biennially

Note 1

Most of the revenues collected by this Board are comprised of license renewal fees. These fees ($200) are collected once every two years, which causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, the revenue figure reported above is an average of the revenues collected in fiscal years 1977 and 1978, in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures includes those made by Board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for the efforts of other departments, such as the Department of Law, in assisting the Board and OL.

APPENDIX B

ADMINISTRATIVE STATISTICS

Licensed Marine Pilots	As of May 1, 1979
Number of pilots living in-State	31
Number of pilots living in other states	16
Total - Licensed Pilots	47
Number of pilots licensed to pilot in Southeastern Alaska	20
Number of pilots licensed to pilot in Southwestern Alaska	18
Number of pilots holding licenses for both areas	9
Total - Licensed Pilots	47

Number of Board Meetings	
Number of Board meetings in calendar years 1976-1978	6
Number of Board meetings in calendar year 1979 (as of May 1, 1979)	2
Average number of Board meetings per calendar year	2

Note 1

Statistics on the number of exams given by the Board have not been kept, and therefore are not available.

APPENDIX C

SCHEDULE OF AVERAGE PILOTS' INCOMES

1978 Income of a member of the Southeast Pilot's Association	$ 58,518[1]
Average annual income of a member of the Southwest Pilot's Association	120,713[2]
Average annual income for a member of the Puget Sound Pilots' Association	76,000[3]

Note 1

This figure was taken from a tariff increase request proposal submitted to the Board by the Southeast Pilots' Association in September, 1978. The tariff increase request proposed that the Southeast tariffs be increased enough, over a two-year period, to bring the members' salaries up to $93,041 annually.

Note 2

This figure came from a staff report prepared for the Board of Marine Pilots by a tariff analyst employed by the Department of Law. The report was prepared to study the Southwest Pilots' Association's tariff increase proposal, which estimated average earnings at $95,000 annually.

Note 3

This figure was taken from a supplement to the staff report prepared by the Department of Law, as described in 2 above.

APPENDIX D

QUESTIONNAIRE SENT TO BOARD MEMBERS
(see Note 1)

1. What do you believe to be the goals and objectives of the Board of Marine Pilots?

Responses

To provide for the maintenance of efficient and competent pilot service on all the waters of the State of Alaska to assure the protection of shipping, commerce and the environment and the safety of human life and property.

State regulation of pilotage.

Mediating between pilots and shippers.

Making, giving and grading exams.

2. Do you feel the Board is achieving its goals as you perceive them in question number 1? Please explain how the goals and objectives are or are not being achieved.

Responses

The goals are being met by regulating the qualifications and licensing of Marine Pilots.

The goals are being met by requesting the investigation of violations of the Marine Pilot statutes and regulations.

The goals are being met by regulating pilotage fees.

The Board moves too slowly on most matters. One of the items on the 1-30-79 agenda was at least 18 months old.

3. Do you feel more emphasis should be placed on some goals and less on others? Please explain.

Responses

All the goals are being adequately pursued except the investigation of violations, which if not improved, could lead to the erosion of credibility concerning the Marine Pilot Statute, harm to commerce and the marine environment of Alaska.

More emphasis should be put on safety.

The Board should be more efficient.

4. Do you feel that the absence of State regulations for marine pilots would be detrimental to the public's best interests? Please specify your reasons.

Responses

Yes! High standards for Marine Pilots must be maintained to protect the orderly marine commerce of the State whether it be freight, seafoods, forest products or crude oil as well as protection of the marine environment from pollution from tanker or other vessels navigational accidents.

Yes. It would be a jungle without regulation!

Yes. The U.S. Coast Guard regulations do not cover vessels under registry. Without State regulations there would be no pilotage requirements for foreign vessels.

Yes. The Coast Guard could cover things but it would be in the State's best interest to have some control in the intra-state coastal commerce.

5. Are the skills required of a pilot holding only a Coast Guard pilot's license the same as the skills required of a pilot with a State pilot's license? Please explain.

Responses

No. Qualifications for a State license require proof of shiphandling capability in addition to a Coast Guard pilot's license which does not require other than observation of the area or route.

The skills are largely the same, however some of the State regulations are more specific.

Not sure on exactness, but they are similar.

6. Why is it necessary for the State Board of Marine Pilots to require an examination for a State marine pilot's license in addition to the examination required for a Coast Guard marine pilot's license?

Responses

Questions of a nature more pertinent to actual piloting of a vessel in an area are asked in a State examination in addition to those pertaining to the physical features of the area as are generally asked in a Coast Guard examination. The questions are asked by practicing marine pilots while the U.S. Coast Guard and its personel are not versed in piloting vessels.

6. (Cont'd.)

The State exam concentrates more on local ports and conditions.

The State exam has more details that need to be known on it.

7. Do you think the State requirements for licensure as a marine pilot - i.e. requirement for a master's license, number of required dockings, and examination requirements - are reasonable? Too restrictive? Too loose? Please discuss your answer.

Responses

Reasonable, any less restrictive and it would lead to erosion of the high professional standards required by marine pilots in the state of Alaska to protect its rich resources and the environment as well as commerce and safety of human life. These higher professional standards are needed in this State due to the more harsh and extreme conditions under which all commerce must operate in comparison to other areas.

Too restrictive - the Coast Guard license should be sufficient so far as written examinations are concerned. Ten dockings and undockings under AAC 12.56.030(5) (A) are more than necessary - three dockings and undockings should be sufficient. Twenty dockings and undockings under AAC 12.56.030(5)(B) could be made less restrictive. Perhaps some of the dockings and undockings could be supervised by individuals holding only a Coast Guard pilot's license for the area.

The requirements are reasonable.

8. Do you think continuing education or reexamination should be required for the renewal of a State marine pilot's license? Please discuss your answer.

Responses

Continuing education is always necessary and it is required by marine pilots in this State by submitting proof of experience or having worked in an area for license renewal. Experience is the best teacher in pilotage. Most pilot groups, in addition to on-the-job training for junior pilots, have programs for additional training including super tanker training at Grenoble, France and the simulators in New York.

No. The problem of discontinuing the license of an incompetent pilot exists, but the problem is not simple. The Coast Guard faces the same problem and there is no need for the State to duplicate their activities. The Coast Guard has more staff and budget to do this.

Yes. Some as any licensed pilot needs to have up-dated knowledge.

9. Alaska Statute 08.62.040(a)(4) states that the Board of Marine Pilots shall regulate pilotage fees. Why do you think setting the tariffs should be a Board function?

Responses

So that rates will be sufficient to support and attract highly qualified and competent marine pilots of a sufficient number to provide adequate marine pilotage services to all areas of the State where required by industry and commerce.

The basic function in rate regulation is to establish fair and equal rates. The State tariff should help control the "monopoly" situation created by the pilots' associations.

The Board is composed of the two groups who are directly concerned with tariffs - ships' agents and pilots.

10. Is the staff of Occupational Licensing and/or other State agencies adequate to handle the administrative and enforcement needs of the Board? What staff support services are provided adequately? Inadequately?

Responses

The staff of Occupational licensing should be adequate to handle the administrative needs of the Board. Personnel turnover and continual "new" people have made administration rather chaotic at times but hopefully that is being resolved. The enforcement of violations has been very poor due to lack of investigative officers and some cases slow down when the cases are finally passed on to the Attorney General's office.

We need continuity - there is too much turnover of the staff.

Reasonably adequate.

The support services are adequately provided, but the investigative services are inadequate.

11. Are there any statutes or regulations that you believe are too obsolete, vague, unduly restrictive and/or inadequate to allow the Board to carry out its purposes? Please cite specific statutes and their weaknesses.

Responses

Any statutes or regulations that are in this category, I believe, are being reviewed and changed by the Board.

11. (Cont'd.)

AAC 12.56.030(5)(A) and (B) - dockings and undockings must be supervised by a State licensed pilot should be changed so that a pilot holding only a Coast Guard license can also do the supervising. AAC 12.56.030(5)(C) which requi es the applicant to have done his dockings within two years prior to the date of application should be deleted - it is covered adequately by Coast Guard requirements.

AAC 12.56.030(6) - requirement for a physical exam should be deleted. It also is adequately covered by Coast Guard requirements.

AAC 12.56.030(7) - requirement that applicant be at least 25 years old should also be deleted. It may be unconstitutional.

The same requirements should be deleted from AAC 12.50.040 and 050.

12. What changes could be made to the Board which would improve its service to the public?

Responses

I believe the Board is adequate to serve and protect the public if it gets proper assistance in upholding the statutes and regulations.

The public members have not been active.

The Board needs to take faster action on its decisions.

13. Please add any other comments or suggestions that you believe would enable us to better evaluate the public need for the Board. Thank you for your cooperation!

Responses

If the Board of Marine Pilots is abolished the State Pilotage Statutes would be meaningless and the effect would be chaotic on the commerce of the State of Alaska. Foreign vessels would come and go as they please having no concern for the environment and the safety of life and property within the State and answerable to no State agency. The high standards of qualification for marine pilots would erode if not governed and their rates regulated by the Board.

Note 1

At the time this questionnaire was mailed to the Board members there were six members on the Board. Of the six questionnaires we sent out, we received four responses. The responses are summarized above.

APPENDIX E

QUESTIONNAIRE SENT TO THE LICENSED MARINE PILOTS

The following questionnaire was sent to the licensed marine pilots. For each question on the questionnaire, we have indicated the percentage of yes or no responses. We have also included examples of typical written comments for each question as compiled from the questionnaires (see also Note 1).

	Percent of Response (See Note 1)		
	Yes	No	No Opinion
1. Do you feel that the absence of the State Board of Marine Pilots would be detrimental to the public's best interests? Please discuss.	92	8	0
2. Do you believe the Board of Marine Pilots is operating in the public's best interests? If no, please explain.	92	8	0
3. How would you classify the present Board requirements for determining that an applicant has acquired the skill and knowledge necessary to function as a marine pilot (i.e. requirements for a Coast Guard master's and pilot's license, number of dockings required, and the examination requirements)?			
a. too restrictive	19		
b. reasonable	69		4
c. not restrictive enough	8		

Please discuss the reasons for your answer.

- *The Board is needed to assure that only qualified pilots are licensed.*

- *The Board is needed to protect Alaskan waters from the risks posed by foreign vessels.*

- *Licensing pilots and investigating accidents is in the public's best interests.*

- *The exam should be done away with because the Coast Guard exam is sufficient.*

		Percent of Responses (See Note 1) Yes	No	No Opinion
3.	(Cont'd.)			
	- *The docking requirements are good - they require a pilot to demonstrate practical ship-handling experience.*			
	- *Dockings requirement is too restrictive because of a lack of ships in an area.*			
4.	Do you feel the Board has permitted all qualified applicants to obtain licensure as a marine pilot?	69	27	4
	Please explain:			
	- *The Board has simply followed the letter of the laws in licensing.*			
	- *Applicants unwilling to play the political game have been discriminated against.*			
5.	Do you feel it is necessary for the Board to require applicants for a State marine pilot's license to take a State examination in addition to the examination required for a Coast Guard license?	77	23	0
	Why or why not?			
	- *The State exam goes into more detail about local knowledge and shiphandling than the Coast Guard exam does - the exam should be kept.*			
	- *The State exam is an unnecessary duplication of the Coast Guard exam.*			
6.	In your opinion, is the State examination required for licensure as a marine pilot a fair and reasonable test of the skills and knowledge an applicant should possess in order to function as a marine pilot?	77	23	0
	Please comment.			
	- *The exam is somewhat out-dated regarding lights, radio call signs, etc.*			

		Percent of Responses (See Note 1)		
		Yes	No	No Opinion
7.	Do you have any suggestions for improving the exam or exam procedures?	*Not applicable*		
	- *The exam should be done away with - applicants should be licensed on the basis of their Coast Guard exams.*			
	- *The exam questions should be updated.*			
8.	Do you feel the procedure for obtaining an extension of route is reasonable?	*69*	*23*	*8*
	Can you think of any improvements that could be made to the present system of obtaining an extension of route?			
	- *The exams for extensions of route should only cover local knowledge applicable to the route being applied for.*			
9.	AAC 12.56.080(b) requires a pilot to have worked in a licensed deck officer capacity for two months in the area in which he was licensed during the last biennial period in order to get a State pilot's license renewed. The two months must have been worked within the last two biennial periods.			
	Do you think this requirement is:			
	a. too restrictive	*69*		
	b. reasonable	*23*		
	c. not restrictive enough	*8*		
	Please explain further.			
	- *The requirement is much too restrictive. A pilot may not be able to find sufficient work in an area to meet the requirement.*			
	- *A pilot should stay familiar with an area. Frequency trips are important.*			
	- *One orientation trip into an area should be sufficient to keep a pilot familiar with an area.*			

		Percent of Respons		
		Yes	No	No Opinio
9.	(Cont'd.)			
	- *The terms "area" and "licensed deck officer capacity" are too hard to define.*			
10.	Do you think continuing education or re-examination should be required for the renewal of a marine pilot's license?	23	77	0
	Why or why not?			
	- *Reexamination should not be necessary as a pilot should keep himself knowledgeable in the areas for which he is licensed.*			
	- *Everytime a pilot goes aboard a ship he is continuing his education.*			
11.	Do you believe it should be the Board of Marine Pilots' job to regulate the tariffs marine pilots can charge for their services?	88	8	4
	Why or why not?			
	- *By regulating tariffs, the Board eliminates competition.*			
	- *If the Board didn't set the rates, one of two things would happen: a) pilots would charge unreasonable rates, or b) the shipowners would work pilots against each other, causing rivalry and chaos.*			
12.	Are the skills required of a pilot holding only a Coast Guard pilot's license the same as the skills required of a pilot with a State pilot's license?	38	58	4
	Please explain.			
	- *To obtain a State pilot's license, a pilot must demonstrate his shiphandling, local knowledge and practical navigation experience, wheras a pilot could get a Coast Guard license without ever having handled a ship.*			

	Percent of Response		
	Yes	No	No Opinion
13. Are you aware of any discriminatory practices involving the licensing of minority groups (i.e. race, sex, religion, age, etc.)?	8	92	0
14. Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce and Economic Development?	42	58	0

If so, please describe.

- *no comments.*

Please discuss.

- *The Division does not send notices of new tariffs and other pertinent information to all the licensed pilots.*
- *Because of the high turnover of licensing examiners, there is no continuity in the work produced by the Division.*
- *The Division makes administrative error after error.*
- *The Division does not pursue reports of violations and marine accidents.*
- *Generally, the service seems fairly efficient!*

15. What improvements do you feel are needed for the Board of Marine Pilots, and its statutes and regulations? Also, please make any other comments you have here. *Not applicable*

Thank you for your cooperation!

- *There should not be so much political influence on the operations of the Board.*
- *Improvements should be made by the State agencies responsible for providing services to the Board (such as investigations). This would make the Board much more effective.*
- *The Board should give out more information and let the pilots know what is going on.*

Note 1

Number of questionnaires sent to State licensed Marine Pilots	54
Number of Marine Pilots who responded	26
Response Rate.	48%

APPENDIX F

QUESTIONNAIRE SENT TO AGENTS

The following questionnaire was sent to nine shipper's agents who represent ship owners within the State of Alaska. Six of the agents responded (response rate of 67 per cent). For each question on the questionnaire we have indicated the number of yes or no responses. We have also shown the most typical written comments for each question as compiled from the questionnaires.

	Number of Responses		
	Yes	*No*	*No Opinion*
1. In your opinion, are marine pilots necessary to assure the safety of human life and property on board vessels within the inside waters of Alaska?	*6*	*0*	*0*

Please explain.

- *A vessel takes aboard a pilot to gain the benefit of his personal knowledge and experience as it relates to local waters and their hazards.*

2. Do you think it is necessary for the State to regulate pilotage of those vessels which come under State jurisdiction?	*5*	*1*	*0*

Please explain.

- *The State should regulate pilotage aboard registered vessels because the Coast Guard doesn't regulate registered vessels, and they should be regulated by someone.*

3. If the State Pilotage Act was repealed, would those shippers previously subject to the State Act continue to employ marine pilots?	*5*	*1*	*0*

Why or why not?

- *A majority of foreign vessels would continue to employ pilots. Whether a U.S. vessel under registry would employ a pilot would depend on the experience and local knowledge of the vessel's master.*

			Number of Responses		
			Yes	No	No Opinion
4.	a)	Do you think the State Board of Marine Pilots should be setting the tariffs marine pilots charge for their services?	4	2	0
	b)	Do you think marine pilotage fees should be decided upon by the shipper (or agent) and the marine pilot, leaving the Board of Marine Pilots out of the decision?	2	4	0
	c)	Please explain your answers to the above questions.			

- *The Board should regulate tariffs because there appears to be a monopoly operation of pilotage in Alaska, which must be regulated by a government agency.*

- *The time spent by the Board in analyzing tariff increases has not been adequate.*

- *Each district should set its own tariff fees based on the difficulty factors of the area.*

5.	a)	In your opinion, is the present system of negotiating tariff increases (i.e. setting up an industry-pilot association negotiating team which then makes its recommendation to the Board) an adequate system?	4	2	0
	b)	Do you have any suggestions for improving the system?			

- *Let the pilots and industry negotiate tariff increases but keep the State out of it.*

- *The present system is the only fair approach.*

		Number of Response		
		Yes	No	No Opinio
6.	Do you find that employing pilots through a pilots' association is an advantage or a disadvantage to your business?			
	a. advantage	2		
	b. disadvantage	1		1
	c. both	2		

Please explain.

- *We prefer to have the same pilot handle our vessels because he is completely familiar with the vessels' handling characteristics.*

- *We do not have control of a pilot hired through an association.*

- *An association provides an efficient dispatching service.*

- *Because of the associations, competition is non-existent.*

- *The associations have too much control over future potential pilot applicants.*

- *Independent pilots have little input into rate and other regulatory matters.*

7. Are there any other comments you would like to make about the Board or its activities? Thank you for your cooperation in filling out this questionnaire!

- *There is no enforcement or investigation of accidents or violations.*

- *In general, the Board has failed to take an active part in the pilotage problem.*

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A.N.P. SHIPPING CO.

P.O. BOX 1300
ANCHORAGE, ALASKA 99510
TELEPHONE (907) 272-6145 272-1192 • CABLE: NORTHSHIP • TELEX: 26646

Sept. 24, 1979

State of Alaska
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Gentlemen:

The following is my response to the Legislative Audits preliminary report, "A Performance Review of the Board of Marine Pilots - June 15, 1979".

In general, I agree with the report conclusion: The board should continue to regulate and license the marine pilotage profession.

I disagree with the recommendation to discontinue the requirement for State - administered examinations. I think testing rules of the road is a duplication of Coast Guard testing and should be discontinued. I think the number of examination questions should be reduced to cover certain items usually not covered by the Coast Guard exams. I think the oral examinations should be continued.

I do not particularly disagree with the other recommendations.

I think the docking and undocking requirements by state law are to restrictive and should be changed somewhat. This is one important point and I feel that the audit report touched too lightly on this subject. This matter deserves further investigation by the audit division.

Very truly yours,

C. D. Stover

Charles D. Stover
Board Member

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Letter obtaining info
from Am. Pilot Association.

George A. Quick
President
Ass. of Maryland Pilot

ASSOCIATION OF MARYLAND PILOTS

1316 SOUTH BAYLIS STREET

TELEPHONE 342-6013

BALTIMORE, MARYLAND 21224

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October 26, 1979

To The Trustees and Members of the American Pilot Association

Re: The Role and Function of a Pilot

The enclosed paper was presented at a recent symposium held in Washington D.C. in September of 1979.

Since it represents a departure from commonly held views, some explanation of the circumstances and reasons for the position taken in the paper should be offered.

Pilotage is coming under greater scrutiny by the political institutions than at any previous time. On the Congressional level we've had recent moves to place licensing under Coast Guard control, and a current GAO report to Congress recommends such action. On the State level we have Sunset Laws in many states that cause the compulsory pilotage laws to self-destruct periodically and place the burden on the pilot to prove that his continued existence and state protection serve the public interest. On the International level we have IMCO considering international standards on the training, qualification and operational procedures for pilots; and the International Association of Ports and Harbours defining the role and function of the pilot.

With the emphasis in government today on the creation of a society completely free of risk, we can expect continued scrutiny and examination of the pilot's role in protecting the safety of the ship, the public and the environment from the consequences of marine casualties.

If we must stand in the glare of the public spotlight periodically and undergo a political "physical exam" we should make it clear that we exist to serve the public interest, that we are aware of our public responsibilities and that we are deserving of the protection of the State.

Acceptance of shipping management's definition of the role and function of the pilot as "a servant of the vessel" who "advises the master" places us in the untenable position of justifying our protected status under State laws on the basis of satisfying the

private interests of the shipowner. If our official position before the public in a political forum, such as Congress or a State Legislature, is as the advisor and servant of the ship filling a purely private interest need of the owner to expedite the ship's schedule for commercial reasons, we will have little claim to public protection. Unless our public role is emphasized to a greater degree there is a very good possibility that the public, i.e. the political institutions, will see our disputes with an antagonistic shipping management as purely a labor/management struggle. When the issues of sunset review, pilotage rates, regulatory boards and other matters affecting pilots arise we must be prepared to show that the public has a stake in protecting the pilot from the domination and control of shipping management. Past experience has shown that shipping management invariably attempts to exploit any weakness or failing on our part to denigrate the role and function of the pilot in order to gain the upper hand in rates, regulation, licensing or control over our profession.

Acceptance of a definition of a pilot in terms that characterize him as a servant who advises the master creates a very weak and misleading public image that does not reflect the actual situation on the bridge of a ship. In order for a pilot who has the conn to be described as an "advisor" requires construing the term in a manner quite different from its commonly understood meaning. It conjures up a picture in the average layman's mind of a master actually maneuvering his vessel with a pilot sitting in the background and available for comment or consultation on local conditions. This is th image frequently offered by the opposition when pilotage rates or regulations are being discussed and the image creates an obstacle to the recognition of our true worth.

There has been a reluctance in the past to assert ourselves on the issue of the pilot's role and function. This has probably been due, in part, to a hope that the advisor designation might offer some protection from liability after a casualty. It is clear from reviewing the court cases dealing with pilot liability that it makes little difference whether the pilot contends that he is in control of the navigation or merely serving as an advisor, if a casualty occurs because of his negligent actions, be they orders or advise, he is liable for the damages.

It would seem that there is no benefit in accepting management's characterization of our role and function aboard ship. We should develop our own view of the part we play in the industry and the interests we serve and protect, and that position should be readily

understandable to the layman and justifiable to the political establishment.

The paper and recommendations attached represent a personal viewpoint and policy based on the experience in Maryland--- other pilots with different experiences may hold different viewpoints.

As a trustee of the American Pilot Association I would like the views expressed to serve as a starting point for discussion between us leading to the development of a national policy on pilotage matters. If we don't take the initiative in defining our own goals and role, we may find the AIMS position paper prevailing by default.

I would greatly appreciate your comments.

Fraternally,

George A. Quick
President
Association of Maryland Pilots

NATIONAL ACADEMY OF SCIENCES

SYMPOSIUM ON PILOTING AND VESSEL TRAFFIC SYSTEMS

SEPTEMBER 12-13, 1979

PILOTAGE

by George A. Quick, President

Association of Maryland Pilots

PILOTAGE

by George A. Quick

I've been given 40 minutes and the promise that I was free to express my views on maritime pilotage in the United States with emphasis on problem areas and possible solutions. Since it is my belief that one of the major problems is a lack of understanding of the role and function of a pilot, even among many pilots, I am going to seize this opportunity to discuss pilotage as an institution from my viewpoint.[1] Knowing that my views won't be shared by everyone, I've attached references or annotations to explain or support the basis of my beliefs.

Before we can get into the finer points that require discussion, I should first describe the pilotage scene as it exists in the United States today for the benefit of those in the audience who aren't familiar with the subject.

All maritime nations since ancient times have offered inducements for mariners to become pilots and maintain pilotage systems for the protection of shipping.[2] We may not be the oldest profession

but we are certainly the oldest regulated profession.[3] The Colonial Legislatures had pilotage laws in effect prior to our becoming a nation.[4] The first Congress assembled after the adoption of the Constitution in 1789 realized that the delegation of the right to regulate interstate and foreign commerce granted to the Federal Government by the Constitution would interfere with the pilotage systems and regulations in place in the various states and quickly passed an Act that left pilotage under state control.[5]

The state laws generally provided for a system of regulated public pilots who conducted ocean-going ships to and from the sea and whose terms and conditions of service were established by law.[6] Pilotage remained exclusively a public service under state control until 1871 when Congress acted to provide for the federal licensing of pilots on steam vessels engaged in the coastwise or interior commerce of the country.[7] At that time steam engines were considered inherently dangerous and many laws were being passed to protect the public from this new threat created by the Industrial Revolution. Since many state laws exempted ships engaged in strictly coastwise or interior commerce from the requirement of taking aboard a public pilot, Congress felt there was a need to insure

that these new and dangerous vessels driven by steam employ someone familiar with the waters over which the vessel was navigating.

This new Act of Congress by creating a different category of federally licensed "pilots" who were employees of the ship and who often were actually the master or other officer acting as "pilot" by virtue of an additional endorsement on his license has caused confusion in defining the term "pilot" and in defining the role and function of a pilot.

The term "pilot" in the United States is used to describe two entirely different sets of relationships:

1.) It can refer to a federally licensed employee of the ship who is subject to the selection and control of the shipowner and whose terms and conditions of employment are determined by mutual agreement. The relationship is the common law one of employer and employee.

2.) It can refer to the state licensed publicly regulated pilot who is not subject to the selection and control of the shipowner and whose terms and conditions of service are established by statute and not subject to negotiation.[8] The relationship is created by compulsion of law and defined by the state compulsory pilotage statute and decided court

cases applying principles of maritime law.

In simple terms, the federally licensed "pilot" is acting in a private capacity on privately agreed terms and conditions, and the state licensed "pilot" is exercising a public function on publicly regulated terms and conditions.[9]

The legal text writers and the court decisions attempt to avoid confusion by generally referring to the pilot acting in a private capacity as a "voluntary" pilot and referring to the pilot exercising a public function as a "compulsory" pilot although the distinction still becomes blurred in some contexts.[10]

In a sense the coastwise seagoing vessel is compelled under the 1871 statute to employ a federally licensed pilot in the same manner as it is compelled to employ a specified complement of licensed officers and engineers or certified seamen, but that is not the type of compulsion referred to in the distinction between "voluntary" and "compulsory" pilotage. In the "voluntary pilot" situation the employment contract is by mutual agreement between the shipowner and the employee pilot, even though the shipowner is naturally compelled to select his employee from among a class i.e. federally licensed pilots. In the "compulsory pilot" situation the pilot is forced

on the shipowner by compulsion of law and under terms and conditions established by law. The concept of "compulsory pilotage" excludes any right of the shipowner and pilot to mutually agree on the terms of their relationship. The right of selection and control, as well as the terms and conditions of service are not properly the subject of negotiations, they are established by the state to serve the state's superior interests.

The British and Canadian practice is to avoid the confusion by legally defining a "pilot" in the following terms:

"'pilot' means any person not belonging to the ship who has the conduct there"

Canada, Pilotage Act, Sec. 2(i), (1971)

Great Britain, Merchant Shipping Act of 1894, sec. 742, amended by Pilotage Act of 1913.

Under their definition employees of the ship who navigate the vessel in pilotage waters are not considered to be, nor licensed as, pilots.

Under British and Canadian practice an employee comparable to our federally licensed pilot would be granted a pilotage certificate, as distinguished from a license, exempting the vessel on which he serves from the obligation of taking on board a licensed public pilot. The pilotage certificate is issued

for a one year period on the basis of relatively limited experience, probably obtained only on the ship employing the certificate holder, and is restricted to the ship named on the certificate. The issuance of a license as pilot is limited to those who undertake piloting as a distinct profession, with substantially higher standards similar to our state licensing procedures, and whose terms and conditions of employment are the subject of public regulation.

It seems to me that this avoids the unhappy situation where no distinction is made between the professional pilot with broad experience exercising a public responsibility and the company employee with relatively limited experience who works for the shipowner in a private capacity.

There is a vast difference in the training, experience, perceived duties and responsibilities, working relationships, legal relationships and attitudes that separate the federally licensed employee pilot and the state licensed public pilot. An understanding of the differences is necessary if we are to progress further in our discussion of the pilotage scene.

The state licensed pilot is regulated by state statutes creating "compulsory" pilotage. His state license is both a certificate of competency and a

franchise as a public service requiring him to assume public obligations in maintaining pilot stations and operating a pilotage system. The rights, duties and obligations of the owner, the ship, the master and the pilot are created by law and not by mutual agreement between the parties. Common law principles governing the usual employment contract have no application.

The general scheme in effect throughout most of the world is one in which a vessel approaching the coast with the intent of making port has a compulsory obligation to accept a local pilot skilled in navigating those waters and knowledgeable as to local hazards, place him in charge of the navigation of the ship, and pay the fee for his services prescribed by local law.[11] The purpose is to protect the safety of shipping by assuring a complement of pilots will be available when needed at designated locations (pilot stations) and by placing navigational control of the ship in the hands of a qualified local expert when the ship is in a high risk area.[12]

As part of their franchise as a public service it is compulsory for the pilots to maintain pilot boats on established stations known to all mariners, to keep a complement of qualified pilots available to render services at all times, to go to any ship needing his services without discrimination or choice and to provide his services under legally established terms and conditions, and for a fee prescribed by law and published in a tariff.

In order to comply with his obligations under a compulsory pilotage statute, the individual pilot has to devote a considerable part of his early years to education and training to develop professional expertise,[13] he has to invest his capital in his share of pilot station vessels, launches, offices, shore stations, communications equipment, automobiles and all the other equipment and facilities needed to maintain and operate an essential service to shipping within his pilotage district, he has

to be responsible for and employ on his pilot station vessels a considerable work force of masters, watch officers, engineers, launch operators, seamen and stewards, as well as an office staff of dispatchers, drivers and administrative personnel needed to operate a pilotage system at a major port. He undertakes these obligations on speculation as to the future needs of shipping at the port he serves and with no guarantees or contractual obligations from the shipping industry to protect his investment or future income.

Compulsory pilotage is the creation of law, not of contract. It is regulated in much the same manner as a public service company and charged with the public responsibility of rendering pilotage services to vessels. The pilot is in no sense the employee or servant of the shipowner or the vessel he pilots. The shipowner is not personally liable for the acts or negligence of the public pilot,[14] although the ship is liable "in rem" under American law. He is required to be accepted by the vessel and placed in charge of her navigation to serve the state's interest in protecting life and property - and in today's world, the environment - from the hazards of navigation.[15] He sees his duty and obligation as being owed to local political authority and the public, rather

than to the shipowner in the role of an employer. The public nature and regulation of the terms and condition of his service protect and insulate him from the demands and pressures that can be placed on an ordinary employee to compromise the margins of safety.

In contrast the federally licensed pilot is a common law employee of the shipowner serving in a private capacity. The shipowner has the right of selection and the right to exercise control over his employees in the performance of their duties.[16] The terms and conditions of employment are privately agreed to with the shipowner. The prospects of future employment are dependent upon how well the employee satisfies the demands placed upon him by his employer. The master and the federally licensed pilot work for and are answerable to the same employer and are licensed by the same federal agency, the Coast Guard. In some cases the master and pilot may in fact be the same person serving in a dual capacity. This lack of independence and the absence of checks and balances should give the public cause for concern when they consider that the sea-going coastwise tankers are exempt from the protection of state compulsory pilotage laws. The majority of them are navigated on our inland waters by company employee pilots or masters serving in the dual capacity of pilot.

The 1971 collision of the ARIZONA STANDARD and OREGON STANDARD under the Golden Gate Bridge in San Francisco is a good illustration of the consequences of exempting coastwise tankers from state compulsory pilotage laws. Both tankers were under the sole control of masters attempting to perform as pilots on the basis of a Coast Guard endorsement, and under pressure to move their ships in spite of the unacceptable visibility and limited experience they possessed. The resulting oil pollution and national publicity was one of the driving forces behind the Coast Guard's move to establish Vessel Traffic Systems. As an alternative to a massive effort to install expensive and sophisticated electronic systems of doubtful effectiveness, wouldn't it have been wiser to consider efforts to insure the competency of personnel handling ships by increasing the amount of experience and recency of service requirements for licensing; and if the vessel is large enough or carrying oil or hazardous cargoes, so as to present a threat to the environment or the public, her movement be under compulsory pilotage so as to insulate the pilot from

commercial pressures? Both the legislatures of California and Washington attempted to do just that, as a response to the threat of oil pollution in their waters, by attempting to pass state legislation placing large oil tankers in coastwise trade under state compulsory pilotage laws. Both attempts failed, the Washington effort going all the way to the U.S. Supreme Court, because of pre-emption of the field by the Congressional Act of 1871, which places exclusive regulation in the Coast Guard.

I've spent a fair amount of time discussing the contrasting roles of the federal and state licensed pilots, and I am afraid this may create the erroneous impression that federal licensed employee pilots are a major factor in the piloting of large ocean-going ships. They are not. Their employment is limited to a very small number of sea-going ships engaged in the coastwise trade. To put the situation in numerical perspective there are about 1200 compulsory pilots nationwide and there are probably less than 50 federally licensed employee pilots working regularly, primarily employed on coastwise tankers of the major oil companies. The vast majority, probably well over 95%, of ocean-going ships moving on the inland waterways are under the control of state licensed public pilots operating in a compulsory pilotage

system.

I believe there is not sufficient understanding or appreciation of the concepts underlying compulsory pilotage and how it functions to protect and insulate independent decision making effecting the safety of the ship from commercial pressures by placing navigational control in high risk areas in charge of a compulsory public pilot who does not "belong to the ship," i.e. free of the shipowner's interest and control.

Although compulsory pilots hold licenses issued by the state, they also hold federal pilot licenses as that is generally one of the first steps in beginning a career as a professional pilot. I have experience in serving in both the "voluntary" private employee pilot and the "compulsory" public pilot capacities. Keeping the foregoing in mind, I would like to express my views on some aspects of piloting.

THE COMPULSORY PILOT AND MASTER RELATIONSHIP

The personal relationship between the master and the pilot is invariably a friendly one, based on mutual respect and a common heritage as professional seamen regardless of nationality. They both have the same goal, a safe and expeditious transit of the ship over the pilotage route. Their interests seldom conflict and I doubt if either gives much thought to the finer points of their legal relationship.[17]

Custom, history and tradition dictate the practical working arrangement worldwide as shipping is international in character and the relationship has to be uniform and standardized regardless of the flag the ship flies or the differences in nationality of the pilot, the master and the crew. The relationship is not a subject matter for discussion between them, it is known and understood from long experience and cannot vary from ship to ship because the pilot, the master or shipping management would personally prefer some other relationship.[18] To permit any variation would cause great confusion as to the role and function of both the master and pilot, and the rights and obligations each owes the other.

The law governing the relationship reflects general shipboard practice and can be found in the works of legal text writers and the court decisions that define the duties and obligations.[19] They are the result of centuries of maritime history and tradition that have developed the basic principles.[20]

The first and most important legal principle is that the compulsory pilot is not the employee, servant, or agent of the shipowner, the ship, or the master. He is placed aboard by the state with the conditions of his service fixed by

law. The shipowner or master has no right of selection or control over him. The compulsory pilotage statute insulates him from the commercial interests of the shipowner and protects him from coercion. His fee is set by law and he can receive no increase in fee for accepting greater risks nor be penalized with a lesser fee for taking precautions in conflict with the owner's interests. His future employment does not depend upon satisfying the demands of the shipowner to maintain schedule or move the vessel with unacceptable margins of safety. He is free to exercise independent professional judgement as to the acceptability of the risks. The public nature of his role leads him to place a higher priority on the protection of life, property and the environment than the master who has to consider all decisions in the light of the owners commercial interest. The compulsory pilot's autonomy and independence are, I believe, the single most important safeguard that exists in the shipping world.

Unfortunately most of the management people we deal with on a day to day basis generally do not have a background that includes shipboard experience and they don't fully understand the pressures and responsibilities placed on the master and how the master/pilot relationship functions as a buffer against

shoreside management pressure. The usual shore personnel we encounter have a strong background in traffic, terminal operations, stevedoring, freight solicitation or other related job categories that have a heavy emphasis on cost effectiveness, competitive advantage, and maintenance of schedule. These attitudes unfortunately impact on the master and he may rightly believe that his future employment may depend upon how well he handles the conflicting demands of ship safety and the shipowner's commercial interest. In a recent survey of ship masters, 40% indicated that maintaining schedule was the prime criterion in judging their job performance, and 50% indicated that there was strong pressure to meet schedules even under poor conditions.[21] It is not unusual to have an apprehensive master faced with a risk he sees as unacceptable to seek shelter from his owners under the compulsory pilot's cloak of insulation by indicating diplomatically that it would be appreciated if the pilot accepted the responsibility for the decision not to attempt the transit under the existing conditions. It is clear that, considering the exposure to risk that large ocean-going ships are subjected to in confined pilotage waters, the casualty rate would be far higher if it were not for the freedom of compulsory pilots to exercise their own best judgement without fear of management retaliation.

The second principle is that the pilots pay a price for the independence and insulation from shipowner

control that they derive from compulsory pilotage statutes.

If the control over navigation is taken away from the shipowner and the master and placed in the hands of the compulsory pilot under operation of law, with no right of selection and control, the shipowner and master are released from personal liability for the acts of the pilot - as he is not their employee or servant.[22] The pilot stands alone and a leading text on Admiralty law states it rather succinctly:

> "He so far is in charge of the ship that his errors expose him to appalling consequences....If he injures the vessel which employs him he is liable for the damages. If through her he injures other property, he is liable for that as well, and if the vessel employing him is by his act exposed to liability to the other vessel, he is liable over to her."
>
> Robinson on Admiralty, p. 697

The potential personal exposure to liability that the pilot has when he assumes responsibility for a multi-million dollar ship is for all practical purposes uninsurable as the premiums would approach or possibly exceed the pilotage charges. If he attempted to have the cost of insurance included in the pilotage tariff it would be met with strong shipowner opposition as the owner's basic insurance already covers the owner for the acts of the pilot, and if the pilotage charges also included the cost of liability insurance, the owner would in effect be required to pay for the same

coverage twice. If he attempted to negotiate an exculpatory contract or indemnification agreement with the shipowner, as is common with voluntary pilots acting as docking masters, it would probably fail as his relationship with the shipowner is not a contractual one subject to negotiated terms.[23] The end result is that the compulsory pilot steps on the bridge of a ship and takes charge with a horrendous uninsured personal liability hanging over his head. Management frequently belittles that risk by claiming the owner's recourse against the pilot is financially unreal, as the pilot does not have the resources to pay for the damages he could incur. That makes little difference to the pilot. he is liable for all he owns and faces the possibility of bankruptcy if harm comes to the ship through his error. The fact that pilots are not sued more frequently and placed in bankruptcy is an act of compassion on the part of Admiralty lawyers and insurance companies.

The potential liability has always colored the pilot's attitude. He will not share responsibility or become involved in navigation by committee. He will demand having effective and absolute control over the ship, if there is any intentional or substantial interference by the master with his control he will probably consider himself displaced and leave the bridge

so there will be no question of who was in charge when the casualty occurs. It should be remembered that the relationship of the pilot to the ship is that of a stranger and in the event of a casualty it may be difficult for the pilot to prove the actual circumstances, be it intentional interference, delay in carrying out orders or error on the part of the ship's personnel. The compulsory pilot has far more than action against his license and a suspension at risk when he takes charge of a ship.

The third principle is that the pilot does not serve in an advisory capacity.

The "Report of the Royal Commission on Pilotage"[24] contains a detailed analysis of the British and Canadian statutory definition of the term:

> "'pilot' means any person not belonging to a ship who has the conduct thereof."

The Royal Commission decided that to conduct means:

> "to have charge and control of navigation; in other words, of the movement of the vessel," and "Similarly, if anyone is merely used as an advisor and not entrusted with the navigation of the ship, he is not the pilot of that ship."[25]

The Royal Commission, after reviewing the actual practices followed aboard ship concluded:

> "The pilot does not act as an advisor to the Master but actually navigates the ship. In point of fact the Master is then, to a certain extent, an advisor to the pilot when he points out the peculiarities of the ship. ....This factual situation which corresponds to the legal definition of 'pilot' is, in fact, the only realistic solution because, if pilots were used merely as advisors, navigation would be very hazardous and, at times, it would be impossible to proceed safely..... The first course a ship is committed to is frequently the last. If bad judgement has been used, the result is inevitable and swift.... ....The legislation of most countries recognize the realistic situation that there is not time for advice, consultation and deliberation between the pilot and Master and that the pilot must navigate the vessel himself. How this situation is covered in legislation is a question of semantics,..."[26]

The authoritative legal text "Corpus Juris Secundum" states the law as derived from the American Court decisions to be:

> "Generally, while exercising his functions, a pilot is in sole control of the navigation of the ship and his orders must be obeyed as in effect orders of the master. While a pilot who is in charge of a vessel supersedes the master in so far as the navigation of the vessel is concerned, the master does not surrender his vessel to the pilot and the pilot is not the master; the master is still in command of the vessel, notwithstanding the presence of a pilot. There are occasions when the master may and should interfere and even displace the pilot. Thus, the master may properly displace an obviously incompetent or intoxicated pilot, and the circumstances may be such

> as to require the master to displace a compulsory pilot because of incompetency or physical incapacity. If, however, the master does not observe that a compulsory pilot is incompetent or physically incapacitated, the master is justified in relying on the pilot, but not blindly. In order to be justified in displacing a pilot, the master should be sure that the pilot is for some reason incompetent, and the master or other officer is not bound to interfere with, or to displace, the pilot, if the pilot is not making an obvious mistake, or danger from his acts is not imminent. The view has been expressed that, even where the master deems a compulsory pilot incompetent, the master is not under an absolute duty to displace the pilot."[27]

The American court decisions have dealt in broad terms with the relationship between the master and the pilot, and the right or duty of the master to displace a pilot.[28] But, they have not explored the finer points of the division of control between the master and the pilot to the same extent as the British courts. Prior to 1913, British law held both the owner and the ship free of all liability for acts of compulsory pilots, so many cases arose determining the role and duties of a pilot and whether the action causing the damage was properly within the duty of the master or the pilot. Since limitation was only granted on the basis of sole fault of the pilot, the cases generally attempted to include the master's lack of vigilance as contributing to the accident

so as to avoid the injured party being forced to look only to the pilot. For a discussion of the problem see THE CHINA, 7 Wall. (U.S.) 67, (1868.) Due to the International nature of maritime law and pilotage, and in the absence of American cases holding to the contrary, the British decisions are applicable to the division of control between the master and the pilot on ships engaged in foreign trade in United States' waters, the compulsory pilot situation.

G.K. Geen, the author of "The Law of Pilotage" includes in his excellent work a review of the British case law on the division of control between the master and pilot.[29] He has concluded:

> "The attitude of the courts to the master-pilot relationship is based on precedents created more than a century ago, the guiding principle of which has been throughout that the paramount danger to a ship under pilotage is that created by a 'divided authority.' Attention was drawn to this danger on innumerable occasions, but was perhaps put most succinctly by Dr. Lushington in the case of THE PEERLESS in 1860:-
>
> 'There may be occasions on which the master of a ship is justified in interfering with the pilot in charge but they are very rare. If we encourage such interfering, we should have a double authority on board, a divisum imperium, the parent of all confusion, from which many accidents and much mischief would probably ensue. If

the pilot is intoxicated, or is steering a course to the certain destruction of the vessel, the master no doubt may interfere and ought to interfere, but it is only in urgent cases.'

It would appear, however, from what has been deduced so far, that the legal relationship between the master and the pilot is based on principles which are contradictory:-

(i) that division of authority is inimical to the safety of navigation.

(ii) that the pilot, by definition, has the conduct of the ship.

(iii) that the master, by definition, has command or charge of the ship, a definition which specifically excludes the pilot.

In order to reconcile these apparent inconsistencies it becomes necessary to:-

(i) differentiate between the expressions 'to conduct a ship' and 'to be in command of a ship'; and

(ii) draw up a code of procedure for vessels under pilotage based upon legal decisions, which defines the respective duties of the master and the pilot.

With regard to the first of these requirements it is evident that confusion as to the difference in meaning between these two terms is not confined to the layman. The words of Bargreave Deane, J., for example, in the case of THE NORD would indicate that he considered the two expressions to be synonymous when he said:-'I think the word 'conducted' means that the pilot is in charge...he is in command.' The Canadian Royal Commission,

however, drew a very careful distinction between the two expressions thus:-

> ''To conduct a ship' must not be confused with being 'in command of a ship.' The first expression refers to an action, to a personal service being performed; the second to a power. The question whether a pilot has control of navigation is a question of fact and not of law. The fact that a pilot has been given control of the ship for navigational purposes does not mean that the pilot has superseded the Master. The Master is, and remains, in command; he is the authority aboard. He may, and does, delegate part of his authority to subordinates and to outside assistants whom he employs to navigate his ship, i.e., pilots. A delegation of power is not an abandonment of authority, but one way of exercising authority.''
>
> With regard to the second requirement, having established that both the pilot and the master have active roles to play, it becomes essential that the duties of both should be clearly defined in order to minimise the dangers which are inherent in the 'divided authority' situation."

G.K. Geen then goes on to analyze and cite British cases pertaining to the general duties of the master and pilot,[30] the legal meaning of interference,[31] keeping a lookout,[32] observance of collision regulations, sound signals, private sound signals,[33] whether to proceed,[34] anchoring, speed,[35] and the use of radar.[36]

From his analysis it is apparent that the British and American law respecting the role and function of a

compulsory pilot are consistent.

He is to be placed in navigational control of the ship and give all orders effecting the navigation of the ship, i.e. rudder orders, courses, speed, anchoring, weighing anchor, whistle signals, and the like. He is entitled to the cooperation of the master and crew and they are to see that his orders are carried out and are not to interfere with his control of the navigation unless the pilot is manifestly incapacitated, incompetent, or placing the ship in clear and imminent danger.

In the "voluntary" pilot situation where the pilot's status is one of an employee the law states that the vessel shall "be under the control and direction of pilots" licensed by the Coast Guard. (The Act of 1871, now found in 46 USC §364). On the surface it would appear he has nearly the same role to play in navigating the ship as a compulsory pilot, but his employee status and relationship with the master interfere with his insistence on effect control. After all, the employee pilot thinks, he and the master are employed by the same shipowner and answerable to the same licensing authority, the Coast Guard. Rightly or wrongly, he feels the master is a fellow employee in a supervisory capacity with the right to interfere with or control his actions and the right to overrule his decisions. The employee has to accept interference and control cheerfully or risk loss of

employment or being banned or refused by that company's ships in the future. There is a tendency to be reluctantly seduced or coerced into situations that wouldn't be tolerated on ships under compulsory pilotage - where the pilot's responsibilities are clear and his role is protected.

THE COMPULSORY PILOT AND MANAGEMENT RELATIONSHIP

On a policy making level, our contacts are limited to national trade associations representing companies that own and operate ships and local trade associations that purportedly represent the shipowner's interests, but in actual fact are representing local port business interests, i.e. stevedoring, terminal operations, warehousing, freight forwarding, ship agencies. etc.

It appears to us that the trade associations see their role as limited to an adversary one. the national association being primarily interested in fostering legislation or governmental regulatory policies that favor their shipowner members and the local associations focusing on competitive costs that may enhance their local businesses. The unfortunate result is that much of the dialogue between representatives of industry and pilots occur over the issues of control

over or cost of pilotage services in an antagonistic climate. The lack of a forum to discuss mutual problems and concerns on a co-operative basis leads to many misunderstandings. The differing perceptions of the role and function of a pilot further compounds the problem.

The pilot sees his role as one of serving a mixture of both private and public interests. His role in expediting the movement of the ship to make schedules, avoiding lost shoreside labor commitments, carrying the optimum cargo capacity through the available channel depths, and protecting the safety of the ship he is aboard are basically serving private industry needs. His role in maintaining a compulsory pilotage system as a public service with public responsibilities has already been discussed.

Not unnaturally, industry representatives place greater emphasis on the private role of the pilot in discussions and tend to perceive the pilot as a quasi-employee of the ship serving a private interest objective. This view leads to a developing trend to speak of the pilot as "a servant of the ship" who functions as "an advisor to the master," and "utilizing" the pilot in

a "team effort" in the navigation of the ship. Such terminology re-enforces the perception of the pilot as serving private needs at the expense of his public responsibilities. The terms convey an impression of the pilot's role and function that is not found in maritime law or in actual shipboard practice.

Our concern over attempts to depict the pilot as an "advisor" to the master is twofold--the first and obvious one is that any attempt to discount our real responsibilities will diminish our standing in the maritime community and weaken our claim to adequate remuneration for our training and responsibilities. Secondly, and of more importance to the public, if the pilot's role can be downgraded to an "advisor" to the team, what happens to his right and duty to refuse to move a ship when the circumstances are unsafe due to inadequate keel clearance, reduced visibility, deficient equipment or crew or any other reasons?

It should be borne in mind that about 80% of the ocean-going ships transiting our inland waters are foreign flag with masters and officers licensed by foreign nations.[37] The control over their conduct and license rests abroad in the governments of Liberia, Panama, Singapore, Korea, Russia, Poland, Turkey, Cyprus and other traditional maritime nations. The only American presence aboard with a sense of obligation

and responsibility to the local community and its political institution is the pilot. When a vessel is under pilotage it may be appropriate for the master to represent the shipowner's private commercial interest and give them high priority. Efforts by shipping management to also claim the pilot's primary loyalty as well should be resisted as inconsistent with his public role. Compulsory pilotage should provide a system of checks and balances between the pilot and the master, between public and private responsibilities, between local and foreign allegiances, that should not be blurred by loose language in discussions of the pilot's role and function.

Another area of potential problems in pilotage, and pilot/management relations, arises from past efforts of management to bring local state pilot licensing under federal, i.e. Coast Guard, control.

Our concern is that the present Coast Guard licensing system is one of "voluntary" pilotage with the pilot in an employee relationship to the shipowner. Federal legislation bringing pilots on ships engaged in foreign trade under the same Coast Guard licensing procedures as "voluntary" pilots on coastwise ships could pre-empt the right of states to license and regulate pilots in a compulsory pilotage system. It could result in pilots on all vessels being reduced to the category

of employee "voluntary" pilots with right of selection and terms and conditions of employment being subject to negotiation with performance, i.e. a higher priority on the owner's economic interests, being a factor. The United States would then become the only major maritime nation without a true compulsory pilotage system where the selection, control, terms and conditions governing pilotage shifts from the state to the shipowner.

Since our investment in pilot stations, our livelihoods, our pensions, our standards of training and professionalism, and the orderly administration of a pilotage system depend upon stability in state regulation; we are disturbed by past efforts of management to upset that stability.

There is a need for a constructive dialogue with shipping management, and it should begin with a discussion of the basic issue of the role and function of the pilot and his traditional status in the maritime community.

LICENSING, TRAINING AND QUALIFICATIONS OF PILOTS

There are three basic routes for becoming a compulsory state licensed pilot:

1.) Straight apprenticeship where the candidate serves his entire time on pilot station vessels and as an apprentice pilot on ships transiting the pilotage district and receives instruction in basic nautical skills and piloting under senior pilots. It is generally a process requiring 5 to 10 years of increasing responsibility before reaching senior pilot status.

2.) Service as a master or employee pilot on inland vessels, such as tugs or river craft, followed by selection and training as a pilot on ocean-going ships for a period of time.

3.) Service as a master or deck officer on ocean-going ships, followed by selection and training as a pilot for a period of time.

Each geographical area seems to have a preference toward one or the other methods of selection and training. Some areas combine methods. The preference is the result of opinion on the best way to learn the peculiarities of the local area and is probably also colored somewhat by the background of the pilots in the area who believe that the best future pilots are those cast in their own image. My state association requires a college degree, preferably a maritime academy education followed by service at sea as an officer, and after selection for training a period of 4 to 6

years of apprenticeship depending on license and experience on entry.

Our selection process includes an eye exam whose standards for uncorrected vision are higher than the Coast Guard permits with the aid of glasses, and an extensive physical exam with any abnormality of any nature or tendency to obesity not being a cause for rejection, it is automatic rejection. Selection includes an interview by a committee of 15 senior pilots with emphasis on control under pressure, motivation, and quality of past experience and performance. Selection is generally based on a combination of age and license held with only those who have raised their license and sought advancement as quickly as possible being considered. Our goal is to recruit the hard driving, aggressive, ambitious young officer who is already on the fast track of advancement in the industry. About one out every 20 candidates interviewed is accepted.

Each method of training has one thing in common, heavy emphasis on "hands on" experience under the guidance and observation of a senior pilot on all types of vessels under a wide variety of conditions and with incremental steps in size of vessel and responsibilities assumed. Federal pilot licensing

by the Coast Guard is accomplished either before entering training or in the early stages of training and is not given much weight as an indication of competency. We require far more observation, training and experience than possession of a Coast Guard license would indicate before we consider an individual pilot qualified to serve without restrictions.

Actual training and licensing consists of intensive exposure to the pilotage environment. The apprentice is scheduled for about 100 hours a week on duty with approximately 50 hours a week on the bridge of ships. He's lucky if he sleeps two nights a week in his own bed, and the divorce rate among married apprentices is high. The routine is purposely exhausting to serve both as a training method and a test of motivation and commitment. After a very short indoctrination the apprentice is expected to actually do the piloting with a senior pilot offering guidance, instructing, and observing how the apprentice handles various situations and stepping in if the apprentice seems to be headed for trouble. The senior pilots compare opinions on the performance of the apprentice and their collective opinion determines if the apprentice is continued in the training program and eventually licensed. If his performance is unacceptable he can be dropped at the sole discretion of the officers

of the association without the need to show cause or offer explanation. If he is licensed it is on the basis of his having actually performed satisfactorily as a pilot under a wide variety of conditions for a number of years under senior pilot observation.

In marked contrast are the Coast Guard federal licensing requirements. Licensing is based on a written examination that the candidate is qualified to "sit for" after a relatively limited number of trips over the route as an observer without provision for "hands on" experience and evaluation by a qualified pilot.

I believe the differing approaches to selection, training and licensing leads to differing views between the state authorities and the Coast Guard on the handling of pilot discipline and accountability.

It appears to us that the Coast Guard approach is to issue a federal license as pilot on the basis of very scanty experience and training with the knowledge that the license holder can only work under his federal license in an employee category and they expect or hope that his employer will act responsibly to screen or determine the actual competency of the newly employed pilot. In the event an employee pilot proves by virtue of a casualty that he is actually incompetent,

the Coast Guard attempts to spur him to greater effort or remove him from the system by suspension or revocation proceedings against his license. It seems to us the emphasis to screen out incompetent personnel occurs after the fact, when it should occur before the fact in more stringent standards on experience and training required for initial licensing.

In our state system licensing is based on observable and proven competency under actual conditions. Every pilot licensed by the State of Maryland has proven without question that he is a competent professional pilot. If a casualty occurs it is the result of "competent error" by a well trained and qualified expert who for some reason couldn't cope with an extraordinary situation. "Incompetent error" caused by lack of training, skills or experience rarely occurs. Under our system, state pilotage authorities are slow to penalize competent error as most cases involve professional judgement and there is a proper reluctance to substitute the local authorities' judgement for the judgement of a competent professional who was on the scene and performing under unknowable pressures.

Of course, if a casualty occurs because of wilful misconduct or inattention to duty, penalties will

follow. But if the casualty results in spite of the pilot's conscientious best efforts penalties will probably not be imposed. Adding a minor additional burden in the form of a suspension will have little effect on the attitude of a pilot already burdened with the fear of financial liability and possible bankruptcy, and looking forward with dread to years of litigation on the issue of fault in the courts. Months will be devoted to analyzing the actions he was forced to take in minutes or seconds.

Competent pilots can, and do, occasionally become incompetent pilots due to physical deterioration or infirmities, alcoholism or other causes. In that event they are, quite frankly, coerced into accepting a disability or retirement pension, hopefully before rather than after a casualty, and their removal from the system should be considered a legitimate cost of a pilotage system.

For the reasons discussed, the statistics on actions taken against pilots by state authorities are not impressive in the Coast Guard's view. As with most professional groups we have an aversion to public executions, and we are ever mindful that actions finding minor fault against a pilot that result in minor penalties can prejudice lawsuits between

shipowners and companies involving many millions. For these reasons I would suggest that compiling a public record of disciplinary actions against pilots is not high on our list of priorities, and the public record is deceptive with more pilots being removed from the system than the record would indicate.

While state standards generally are far higher than the federal pilot standards administered by the Coast Guard, the Coast Guard standards are nevertheless important, as they constitute a minimum standard for state licensing and the only standard for federal licensed "voluntary" pilots on coastwise ships.

The present Coast Guard standards are far too low in terms of experience over the route and recency of service required to obtain and maintain a pilot license, if the license is to be taken at face value as qualifying the holder as a professional pilot of any ship under any conditions. The problem stems from the Coast Guard being required to license under one uniform national regulation "pilots" on Great Lakes vessels; the vessels employed in the vast inland river transportation system; tugs and inland vessels navigating bays, sounds and harbors of the country; masters and officers acting in a collateral role as pilots of their own coastwise ships; and pilots boarding

ocean-going vessels solely to perform pilotage services. The standards applicable for permitting a member of the vessel's permanent complement to navigate his own vessel, where he has an intimate knowledge of the characteristics of the vessel and her crew, are not the standards that should be applied to the professional pilot who boards as a stranger and has to be qualified to take charge of any vessel under any conditions.

Unfortunately, the Coast Guard's licensing procedures don't recognize this distinction, and licensing requirements are set low enough and broad enough to encompass all categories under the same regulation. Because of this least common denominator principle, possession of a Coast Guard pilot license endorsement really says very little about the holder's experience or training.

Compulsory state pilots nationwide are extremely reluctant to have the Coast Guard sit in judgement on their actions. Since the Ports and Waterways Safety Act greatly expanded their role the Coast Guard has been brought into far greater contact with pilots and other ship's personnel, and the demands on their personnel resources have forced the Coast Guard to place greater and larger responsibilities on lower

ranks and enlisted ratings, many of them with very little practical experience and few, if any of them, with merchant ship experience. The net result is that Coast Guard personnel have lost credibility in the industry as competent maritime professionals. The generally held feeling is how can personnel without the education, training and experience of ocean-going merchant ship officers and pilots regulate an industry effectively and knowledgeably? What forms the basis of their judgements and decisions?

There is an understandable resentment of these inexperienced people with vast authority having control over the license of a professional pilot who has decades of education, training and experience in his field. It is universally believed that the appropriateness of sanctions against his license for professional errors will be more a matter of chance than justice.

RECOMMENDATIONS

1. COAST GUARD - LICENSING STANDARDS

Consideration should be given to adopting the British and Canadian practice of distinguishing between a master or other officers employed aboard a ship with collateral duties as pilot of that ship and the professional pilot who boards solely to provide pilotage services over a specific route. This could be accomplished by retaining the term first class pilot for the former and designating the latter as senior pilot. The present Coast Guard written examination for issuance of a pilot license is adequate, but the standards of experience and recency of service requirements should be substantially increased.

In order to qualify and sit for a license as senior pilot the applicant should have instruction and experience obtained by actually acting as pilot under the supervision of a qualified pilot. The number hours of such instruction and experience should depend upon the license the applicant holds. I would suggest the following schedule is not unreasonable:

Master/Chief Officer	1,000 hours
Second Officer	1,500 hours
Third Officer	2,000 hours
Unlicensed	3,000 hours

At least 25% of the hours should be during the hours of darkness.

The experience should include at least 50 round trips over each route for which licensing is sought with at least 25% of the trips occurring during the hours of darkness.

Initial licensing should be limited to vessels of restricted length overall, possibly 600-650 feet L.O.A. On successful completion of at least 1000 hours as pilot of vessels restricted to that length the limitation should be increased to vessels of possibly 750-800 feet in L.O.A. After successful completion of an additional 2000 hours as pilot of vessels limited to this category an unlimited license should be issued.

These standards are below the established practice in my State, and I do not believe them to be too high for a professional pilot. Of course, local conditions, particularly in ports with low traffic volume, may make attainment of these standards impractical. But, they should be considered as the general goal for licensing of professional pilots at major ports with high traffic density.

Vessel length should be the basis for limitation of licenses rather than gross tonnage as length is an immutable indicator of the actual physical size of the ship, while gross tonnage is a measure of the internal volume of the ship and astute naval architects can vary the gross tonnage of vessels of identical dimension with uncanny ability.

2. COAST GUARD - RECENCY OF SERVICE REQUIREMENT

In order to maintain the validity of any class of pilot license, the holder should have recent experience over the pilotage route. If the pilot has not made a trip over the route within the past year he should be required to qualify by making at least one trip over the route as an observer before being permitted to act as pilot in charge of the navigation of a ship. The provision could be self-regulated with a substantial fine if violations come to light after a casualty or from spot checks. Of course, this again has to be a general goal and might only be practical at ports with a reasonable volume of traffic.

3. PERMITTING STATE ACTION ON OIL OR HAZARDOUS CARGO

The law placing exclusive jurisdiction in

the Coast Guard for the licensing of pilots on sea-going coastwise ships found in 46 USC § 364 should be amended to permit states to have concurrent jurisdiction over the licensing of pilots on this category of ship if they are carrying oil or hazardous cargoes that threaten the environment. This would permit the states to protect themselves against the actions of company employee federal pilots who can be coerced into imprudent action, by placing these ships under the protection of state regulated compulsory pilotage.

4. PERIODIC TRAINING

The industry and pilots should arrange for periodic training, not in shiphandling skills that pilots practice daily, but in the areas of understanding the role and function of a pilot, environmental awareness, the impact of new regulations or Colregs, pilotage law, new developments in equipment, etc. Such training requires the support of management to agree to pilotage charges that are needed to maintain a facility and provide for additional pilot complement needed to allow for training time.

5. MASTER-PILOT RELATIONSHIP

The master-pilot relationship on the bridge of a ship underway in pilotage waters is rarely, if ever, the subject of discussion or dispute between the master and the pilot. It seems to arise only in discussions with management ashore in the context of pilot remuneration or who has the responsibility for action, the master or the pilot?

On the bridge the master and the pilot each feel responsible for the safety of the ship. There is undoubtedly some element of ambiguity in their feelings about who will be held responsible if a casualty occurs. I wonder if the interests of safety are not best served by leaving it that way? There is sufficient grief for both if a casualty occurs, and I question if it is in the public interest to define their respective duties so precisely as to relieve either from the necessity of eternal vigilance.

It may be in the public interest to assure safety by spelling out in law or regulation that neither has the sole authority to order the vessel to undertake a passage or continue a passage without the concurrence of the other. As a

practical matter, this is what normally occurs. But with the industry attempting to redefine the role of the pilot as advisory, it might be wise to assure that checks and balances remain in place. If conditions are unacceptable and the margin of safety is questionable, both the master and the pilot should have the right to veto the decision of the other to attempt or continue a passage, and a passage should only be attempted when both have agreed that it is safe and reasonable to do so.

We should avoid discussions or rhetoric from management about ultimate responsibility or authority. Each is ultimately responsible for his own actions to different authorities and with differing consequences. What we should be concerned with is concurrent responsibility and concurrent opinion as to the acceptability of contemplated actions.

6. NATIONAL ACCREDITATION BOARD

If it is felt that an effort should be made to improve the standards of pilotage service on ocean-going vessels entering the inland waters of the United States, consideration should be given to the establishment of a

National Accreditation Board, possibly with representatives such as management, maritime labor, pilots, insurance companies, admiralty attorneys, environmentalists, and the Coast Guard.

The Board could continually review,and when necessary increase,the standards for accreditation as a pilot in any locality on the basis of local conditions. This would recognize that it is difficult to apply a general uniform high standard nationwide, but would allow for the highest practical standards for any locality, and permit increasing those standards periodically, possibly on a "phased in" or scheduled basis.

The standards could include:

1.) Selection and qualifications for entry into training.

2.) Training standards and experience for initial license.

3.) Appropriate limitations on initial licensing and provision for appropriate incremental increases in the limits imposed until unlimited status is attained.

4.) Recency of service requirements and provisions for requalification after an absence from active piloting.

5.) Provision for periodic training courses to expose pilots to new developments in regulations, laws or equipment.

Failure to attain or loss of accreditation could result in sanctions being imposed, i.e. lack of support or opposition to increases or revisions in pilotage rates at hearings before state legislatures or regulatory bodies; or support of the National Board for state action that impose acceptable standards.

Suspension or revocation of accreditation for an individual pilot might follow a casualty in which it can be shown he was incompetent or negligent. The Board might utilize a hearing examiner to determine the facts with the Coast Guard findings of facts being made a part of the record. On the basis of all the evidence, including the opinions of other pilots on the standard of care required under the circumstances, the hearing examiner could submit a recommendation to the Board. If the Board suspends or revokes the accreditation of an

individual pilot and the state regulatory agency or pilot association permits him to act as pilot during the suspension, the association could lose its accrediation with appropriate sanctions being imposed.

Individual state regulatory agencies could make accreditation a prerequisite for acting as pilot on a state license, and would then in effect be adopting the actions of the National Board as their own actions.

While the Coast Guard may be a proper participant in a National Accreditation Board, along with other interests that have a degree of professional expertise, under no circumstances should the Coast Guard be permitted to have sole licensing authority with the power to determine fault after a casualty.

There is a serious conflict of interest between the licensing authority and the various other roles the Coast Guard performs. The Coast Guard maintains and services the aids to navigation that, unfortunately, are sometimes improperly or negligently maintained or serviced in a manner contributing to a vessel casualty. The pilot

is then in the unhappy position of having the Coast Guard proceeding against his license to prove it was the pilot's sole fault and not the fault of the Coast Guard. The Coast Guard has a strong financial interest in succeeding against the pilot for if they fail, the Coast Guard could be held liable for the damages sustained by the ship due to the defective aid to navigation. (see UNIVERSE TANKSHIPS v. U.S., 336 F. Supp. 282 (1972))

The Coast Guard is operating vessels that have collisions with vessels under the control of compulsory pilots. (see the USCG WHITE ALDER and S.S. HELENA collision in the Mississippi River on 7 December 1968 with the loss of 17 lives; and the USCG CUYAHOGA and M.V. SANTA CRUZ collision in the Chesapeake Bay on 20 October 1978 with the loss of 11 lives.) The appearance of a conflict of interest in the Coast Guard sitting in judgement on the cause of collisions to which they are a party, with the right to determine negligence on the part of the pilot that could effect the outcome of substantial lawsuits against the Coast Guard for their own negligence, gives us great concern.

The Coast Guard is operating Vessel Traffic Systems in which they can order vessels to comply with their instructions or issue advice that a pilot can only ignore at his peril. Into the traditional master-pilot relationship a new element has been introduced. The decision making process on the bridge now has to include the unseen, but vocal, disembodied presence of the Coast Guard represented by a junior officer or enlisted rating with little experience but an active participant by virtue of a radio link and the legal authority of the Coast Guard to command compliance with their instructions. When casualties occur in which the Coast Guard VTS personnel may be at fault, the Coast Guard will have a strong self interest in placing the blame elsewhere, probably on the pilot, to avoid the consequences and lawsuits resulting from their own possible negligence.

7. OPERATIONAL PROCEDURES

Operational procedures should not be discussed under the same heading as training and qualifications of pilots, as found in the U.S. proposal to IMCO. The latter refer to the capability of the pilot as an individual, the former refer to interaction with ship's

personnel over whom the pilot has no operational control, indeed, they are strangers to him. Experience has shown us that the best interests of safety are served by the pilot being cooperative with the master and bridge personnel, but he should rely on them as little as possible. If the circumstances permit he should personally assure himself that every order he gives is followed out as given. He should check every course, every rudder order, every engine order on the telegraph and the response of the engines on the tachometer. If the master or bridge personnel wish to maintain a track line, independently determine the ship's position, check all orders given, etc., the pilot will welcome the monitoring and support effort as a back-up to his efforts and as a check against error. But this should not be considered as, or described as "team effort" navigation. The pilot will not find this type of operational procedure in effect on the average ship, he has no right to insist upon it, and should not be held accountable for the failure of the ship's personnel to follow the mandate of either the British or U.S. regulations requiring it. If he does find it, and depends upon it, it loses

its purpose as an independent check. Any requirement placing such duties on ship's personnel should not properly be included in discussions of training and qualifications of pilots as it implies that the pilot might be justified in relying on ship's personnel or might be responsible for the inactions of ship's personnel and both conclusions are clearly erroneous.

REFERENCE NOTES AND ANNOTATIONS

(1) 1.1 In a case where a shipowner stubbornly refused to acknowledge the effect of pilotage laws, a federal court judge was moved to comment:

"To be sure, state compulsory pilotage is not a body of law familiar to most legal practioners, much less one at the forefront of public attention. Yet it is not a particularly difficult body of law. Indeed, unlike the state of flux that characterizes many areas of contemporary law, pilotage law is remarkably straightforward and firmly established."

Jackson v. Marine Exploration Co. Inc., 583 F.2d 1350 (1978)

(2) 2.1 In a case discussing state pilotage laws the Supreme Court of Oregon stated:

"It appears from the report to Parliament that some form of control over pilotage had existed in England and other European countries since about the 14th century.

In the United States, Massachusetts adopted laws regulating pilotage as early as 1783. Some of the other states adopted regulatory laws shortly after Congress, in 1789, specifically provided that the states should exercise control over most of the forms of pilotage."

Powell v. State, 355 P.2d 227 (1960)

2:2 In a British decision the court stated:

"This doctrine of compulsory pilotage is an enacted doctrine no doubt. It was not enacted for the protection only of ships; it was enacted for the protection of ports; of commercial ports in particular because if a vessel is wrecked and lost and sunk near to the entrance, or within the entrance of a commercial port, she is not only lost herself, but she is a great danger and obstruction to the port and to other vessels, and would interfere with the commercial business of the port."

The Charlton, 8 Asp. M.L.C. 29 at p. 29 (1895)

2.3 In a general discussion of the law of pilotage a leading legal encyclopedia states:

"The various states of this country possessing harbors have enacted laws requiring vessels approaching their ports, with certain exceptions, to take on board pilots duly licensed under the local law, or in case of refusal, to pay pilotage fees, as if the service had been received and rendered, to the qualified pilot who first tenders his services.....

The purpose of these laws is to insure at all times a due supply of men well qualified by skill, knowledge, and experience to protect vessels entering ports and harbors from the dangers of navigation, by holding out to such men sufficient inducements to prepare themselves for the discharge of their duties and to pursue a business attended with so much of peril and hardship."

70 Am Jur 2d, Shipping, §61

(3) 3.1 "The profession or employment of pilot has existed from the earliest times, and laws have been enacted in every nation engaged in commerce regulating and protecting pilots. Such laws are to be classed under the head of maritime law, pilotage being a subrodinate but highly useful branch thereof; and statutory provisions with relation thereto are entitled to a liberal construction in order to give full efficiency to laws especially designed to promote the interest of commerce, and to protect the lives and property of the citizens engaged in it."

70 Am Jur 2d, Shipping, §54

(4) 4.1 An early Supreme Court decision commented:

"When the government of the Union was brought into existence it found a system for the regulations of its pilots in full force in every state."

Gibbons v. Ogden, 9 Wheat, 207

(5) 5.1 In one of the first Supreme Court decisions on the effect of the commerce clause of the Constitution it was found:

"The act of 1789 contains a clear and authoritative declaration by the first congress that the nature of this subject is such that until congress should find it necessary to exert its powers, it should be left to the legislation of the states; that it is local and not national; that it is likely to be the best provided for, not by one system or plan of regulations, but by as many as the legislative discretion of the several states should deem applicable to the local peculiarities of the ports within their limits."

Cooley v. Board of Wardens, 12 HOW (US) 299, 13 L.Ed. 996

5.2 In discussing the constitutionality of state pilotage the general law has been stated as:

"When the Constitution of the United States was adopted, each state had its own regulations of pilotage, and instead of superseding these in the exercise of its supreme power over the subject, Congress has provided that all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the states respectively wherein such pilots may be, or with such laws as the states may respectively enact for the purpose until further legislative provision shall be made by Congress. It has been stated that this statute adopts the existing state systems, giving them the same validity as if their respective provisions had been specially enacted by Congress, and it leaves to the several states and territories of the United States the power to legislate in the future upon this subject, and to prescribe rules for the licensing and government of pilots, the collection of their fees, and such other incidental matters as the nature of their services in the particular localities may require. The statute was passed in recognition of the propriety of local action in respect of pilotage because of the local necessities of navigation, and it operates not as a congressional grant of power to the states, but as a mere legislative recognition of their

concurrent authority to regulate pilotage until Congress shall act. In general, state pilotage laws have not been superseded by the passage of the various federal statutes regulating shipping, even though these contain certain provisions relating to pilots. However, it should be noted that the Ports and Waterways Safety Act of 1972 provides, inter alia, that the Secretary of the Department in which the Coast Guard is operating (presently the Secretary of Transportation) may require pilots on self-propelled vessels engaged in the foreign trade in areas and under circumstances where a pilot is not otherwise required by state law to be on board, until the state having jurisdiction of an area involved establishes the requirement for a pilot in that area or under the circumstances involved."

70 Am Jur 2d, Shipping, §56

5.3 The Act of Aug. 7, 1789 is now contained in 46 USC §211:

"Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or with such laws as the States may respectively enact for the purpose."

(6) 6.1 The Federal Court for the Southern District of Florida stated:

"Since the organization of the state government no less than 25 acts have been passed upon this subject, and by a large majority of these local boards have been given full and complete powers to make rules and regulations, establish rates and change the same, as deemed best; and under them full power in regard to compensation has been claimed and exercised. In no case has the right to fix rates been held to be separate from the question of compulsory pilotage, nor has either question been passed upon or treated separately."

The Chase, 14 F. 857 (1882)

(7) 7.1 The Act of Feb. 28, 1871 is now contained in 46 USC §364:

"...and every coastwise sea-going steam-vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the inspectors of steamboats (Commandant of the Coast Guard or Commissioner of Customs)."

(8) 8.1 In a case concerning a suit against a pilot for damages a shipowner had to pay due to the acts of the pilot it was said:

"A licensed pilot, enjoying the emoluments of compulsory pilotage, is quite in a different class from an ordinary employee. He assumes to have a skill and a knowledge in respect to navigation in the particular waters over which his license extends superior to and more to be trusted than that of the master, and from the moment he begins his duty he takes command and supersedes the master in respect to the navigation. His remuneration is fixed by law, and is proportionate to his responsibility, and his liability for neglect or want of skill must be in a similar proportion."

Guy v. Donald, 157 F. 530 (1907)

(9) 9.1 "In some jurisdictions, on a consideration of pertinent statutes, a pilot has been regarded as a public officer, that is to say, as a state officer, whose office is created by the legislature in the exercise of the police power for the general welfare. In other jurisdictions the view has been taken that a pilot is not a public officer. In any event the office of a pilot is so far public as to be subject to regulations.

The rights, privileges, and powers which are vested by law in a pilot are franchises."

70 C.J.S. Pilots, §1(b)

9.2 "The liabilities and rights as between the pilot and the vessel are determined by the sort of pilot the man is. The federally licensed pilot is ordinarily an employee of the coasting ship and the rights and liabilities between him and the owner are those applicable to a member of her ship's company.

The state pilot is usually paid on a fee basis and he has the owner's liability in personam, and also a lien on the ship, for his fees.

The local pilot is entitled to the fees which the state statutes give him. They may be considerable. The federal pilot is usually a salaried man."

Robinson on Admiralty, p. 694

9.3 "Since 1805 Louisiana pilots have been State officers whose work has been controlled by the State.

Thus in Louisiana, as elsewhere, it seems to have been accepted at an early date that in pilotage, unlike other occupations, competition for appointment, for the opportunity to serve particular ships and for fees, adversely affects the public interest in pilotage."

Kotch v. Pilot Comm'rs., 330 US 560 (1947)

9.4 In discussing the justification of compulsory pilotage the Royal Commission commented:

"From the service point of view, pilotage has been defined as the ultimate means to enhance safe and speedy transit of ships through confined waters. It is a public service in the full sense of the word when it is controlled, maintained or provided primarily to serve the superior interests of the State; it is a private service when its main purpose is to serve private needs, but safety remains the principal aim in both cases: in the former, "safety or navigation" through Canadian waterways; in the latter, "safety of the ship", including safety of privately owned port installations."

Canada, Report of Royal Commission on Pilotage, Part 1, p 473 (1968)

(10) 10.1 "The coastwise steamer pilot is ordinarily one of the ship's officers. He is not "compulsory" in the sense that the state pilot has been held to be in several cases where the status of the state pilot has been fought over. In these the owner seeks to establish that he was "compulsory" and insists that as he was "compulsory" there is no respondeat superior and the ship owner is not personally liable. The courts have agreed with the conclusion once the "compulsory" character is found."

Robinson on Admiralty, p. 702

(11) 11.1 "If the pilot charges seem heavy the pilot's responsibilities are great, and it must also be recalled that his job is often one of great hazard. Come wind come weather he boards incoming ships at sea and he leaves outgoing vessels outside the shelter of harbors. And he does both by small boats."

Robinson on Admiralty, P. 695

(12) 12.1 In considering the status of pilots in a landmark decision, the U.S. Supreme Court stated:

"Studies of the long history of pilotage reveal that it is a unique institution and must be judged as such. In order to avoid invisible hazards vessels approaching and leaving ports must be conducted from and to open waters by persons intimately familiar with the local waters. The pilot's job generally requires that he go outside the harbor's entrance in a small boat to meet incoming ships, board them and direct their course from open water to the port. The same service is performed for vessels leaving the port. Pilots are thus indispensable cogs in the transportation system of every maritime economy. Their work prevents traffic congestion and accidents which would impair navigation in and to the ports. It affects the safety of lives and cargo, the cost and time expended in port calls, and, in some measure, the competitive attractiveness of particular ports. Thus, for the same reasons that governments of most maritime communities have subsidized, regulated, or have themselves operated docks and other harbor facilities and sought to improve the approaches to their ports, they have closely regulated and often operated their ports' pilotage systems.

The object of the entire pilotage law, as we have pointed out, is to secure for the State and others interested the safest and most efficiently operated pilotage system practicable."

Kotch v. Pilot Comm'rs., 330 US 557 (1947)

12.2 In a case where the ship struck a dike a federal court stated:

"The purpose of requiring a vessel to take a pilot is to have her in charge of a competent person, familiar with particular waters. When on board he is temporarily in charge of her whole navigation, including the duty of determining her course and speed, and the time, place, and manner of anchoring her. The master is not entirely absolved of responsibility when a pilot is in charge, but before he is justified in displacing him he should be sure that the pilot is for some reason incompetent.....the navigation of the ship was primarily in charge of the pilot, and, while the master had the right, if he deemed him incompetent and circumstances warranted it, to displace him, he was not under the absolute duty to do so, but was entitled to exercise his sound discretion. Whether he should have displaced him, on the facts shown, was not a matter of law for the court, but was a question to be determined by the jury on all the facts and circumstances of the case."

Dampskibsselskabet Atalanta A/S et al v. U.S. 31 F. 2d 962 (1929)

12.3 In a case where a ship attempted a transit without a pilot and a casualty resulted, the federal court found:

"There are very few published decisions on the question of whether a local pilot is necessary to complete the proper manning of a vessel when she leaves port. This is probably because pilotage is so universally customary and so generally compulsory at all ports of any importance throughout the world that very few vessels enter or leave a harbor without taking a pilot. The rule announced by the text-writers and supported by some earlier decisions, in substance, is this: Where pilotage is customary at a port, a pilot is available, and the nature of the navigation requires one, it is a breach of the warranty of seaworthiness if a pilot is not taken..... The rule is supported by sound reason. A pilot is employed because he is presumed to have

knowledge of the tides and currents and their effects upon the ship and of all other dangers affecting the safety of the vessel due to local conditions. The master, however competent he might be to navigate his ship in the open waters of the ocean, would not be expected to have this knowledge. It is apparent that it would be as hazardous for a ship to attempt to follow a dangerous channel to sea without a competent hand on the tiller as it would be if the steering gear was defective."

The Framlington Court 69 F2d 304 (1934)

12.4 "A study of foreign pilotage legislation will show that compulsory pilotage in many countries exists broadly for one of the following reasons:

(i) for the protection of life and property on board ships, and of harbour entrances and port installations. In such cases it is a statutory offence not to take a pilot and in some cases it is such an offence to interfere with the pilot, as for example in certain parts of Germany.

(ii) for the financial support of the pilotage service, as for example in Holland."

The Law of Pilotage p. 32

(13) 13.1 In a suit against a pilot for damages sustained by the ship he was piloting, the federal court found:

"He was charged with the safety of the vessel, and bound to use due diligence and care and reasonable skill in the exercise of his important functions. He is answerable if the vessel suffered damage through his negligence or want of skill while she was under his control..... The skill required of a pilot is the ordinary care of an expert in his profession. When in charge of navigation, he supersedes the master, and is liable for negligence."

The Dora Allison 213 F. 646 (1914)

(14) 14.1 In a case where the ship struck a bridge the federal court commented on the pilot-shipowner relationship as follows:

"There is no dispute that the ship's use of the pilot in our pending case was compulsory. It is well settled that the owner of a vessel is not liable, personally, for the negligence of a compulsory pilot because the element of compulsion eliminates the 'respondeat superior nexus' which would normally serve as a basis for imputing a pilot's negligence to the ship owner.

However, it has also been held, since the Supreme Court's decision in The China, 7 Wall (U.S.) 67 that, notwithstanding personal non-liability of the ship owner in such a case, the ship itself remains liable 'in rem' for damages arising out of a collision due to the pilot's negligence-even though the use of the pilot is compulsory.

Harrison v. Hughes, 125 F. 860, citing The China and its progeny, succinctly states its rule and the theory upon which it is based:

> '. . .It is admitted that, at common law, no action can be maintained against the owner of a vessel, for the fault of a compulsorily taken pilot, as, in such case, the pilot is in no sense the agent or servant of the owner; but, although the same doctrine holds in England, both at common law and in admiralty, a different view of the liability of the ship is taken in admiralty cases in this country.
>
> . . .The theory of the admiralty law in this country in such cases, is that the collision impressed upon the wrongdoing vessel a maritime lien, which the vessel carries with it into whosesoever hands it may come. The vessel is treated, according to this theory, as the guilty thing. It is the res, to which fault is imputable, and which is held to respond in damages. The responsibility of the owners, as owners, and the law of agency, as applicable to the employment of a pilot, do not come into consideration.'"

Calif. v. M. V. Ilice, 534 F. 2d 841 (1976)

(15) 15.1 In an early Supreme Court case testing the validity of compulsory pilotage laws the court stated:

"Like other laws they are framed to meet the most usual cases, 'quae frequentius accidant'; they rest upon the propriety of securing lives and property exposed to the perils of a dangerous navigation, by taking on board a person peculiarly skilled to encounter or avoid them; upon the policy of discouraging the commanders of vessels from refusing to receive such persons on board at the proper times and places; and upon the expediency, and even intrinsic justice, of not suffering those who have incurred labor, and expense, and danger, to place themselves in a position to render important service generally necessary, to go unrewarded because the master of a particular vessel either rashly refuses their proffered assistance, or, contrary to the general experience does not need it."

Cooley v. Board of Wardens, 12 How. (U.S.) 299, 13 L Ed. 996 (1851)

(16) 16.1 In a case involving a "voluntary" pilot the federal court stated:

"The pilot was placed in charge of the Seekonk by the master and not by the law. and the rights and obligations of the parties must be determined by reference to the relation thus established."

Los Angeles v. Standard Transp. Co., 32 F. 2d 990 (1929)

(17) 17.1 In an excellent legal opinion prepared by a Coast Guard legal officer it states:

"Because of this delicate balance between the authority of the master and the liability of the owner, the case law dealing with the relationship between the master and the pilot is often confusing and sometimes appears contradictory. As a general rule, it may be stated that it is discretionary with the master whether to remove the pilot. The

master has the same power to remove the pilot that he has to remove any subordinate officer and this power becomes a duty to interfere in a case of the pilots intoxication or manifest incapacity, in cases of danger unforeseen by the pilot, or in cases of great necessity. The China, 74 U.S. (7 How.) 53, 19 L. Ed. 67 (1868) But the pilot is more than a mere subordinate to the master and, while on his pilotage grounds, is a temporary master, for the time being in command of the navigation of the ship and his orders must be obeyed in all manners connected with her navigation. The Oregon, 158 US 186, 39 L Ed. 948; Ralli v. Troope, 157 U.S. 386, 39 L. Ed. 742; Cooley v. Board of Wardens, 53 U.S. (12 How.)299, 13 L. Ed.996 (1851) He is, in a sense, a master pro hac vice and gives all orders and directions as to speed, course, stopping, and other matters regarding vessel navigation. Guy v. Donald, 157 F. 527, although a master may relieve a pilot, he does so at his peril and with regard to certain matters within the peculiar province of the pilot he must not interfere unless the master sees that the pilot is plainly misgoverning the situation. Union Shipping and Trading Company v. U.S., 127 F. 2d 771 (2nd Circuit 1942). The exercise of the masters power to relieve the pilot rests within his sound discretion and is determined by the factual situation. U.S. v. Westervelt, 135 F. Supp. 596 (SDNY 1956) Further, the master, in waters unfamiliar to him, is entitled to rely on the knowledge and skill of a pilot and is not bound to overrule him. The master should not substitute his judgment for that of the pilot except in cases of clear and obvious danger. Waterman Steamship Company v. U. S. 304 F. Supp. 401 (W.D. Washington 1969); Barbey Packing Corp. v. Stavros, 169 F.Supp. 897 (O. Oregon 1959) It has been repeatedly held that a ships officer is not negligent in failing to intervene unless the pilot is doing something obviously dangerous. Park Steamship Co. v. City Services Oil Co., 188 F. 2nd 804 (2nd Circuit)(1951).

This principle is particularly well settled and of long standing with regard to matters based on the special knowledge of the pilot regarding local conditions. The pilot has sole direction of the vessel in those respects where his local knowledge is presumably required such as the course, speed, and manuevering of the vessel. Baron Parke in The Christina, 7 Moore, Privy Concil 160, 172 (1850) cited in

Union Shipping and Trading Company v. U. S. Supra at 1775). In some cases, the masters "power" to relieve the pilot has been severly circumscribed and it has been stated that the master has no right to interfere with the pilot without ample justification, the navigation of the ship being taken out of the hands of the master and transferred to the pilot. The Oregon, 158 U.S. 186 39 L. Ed. (1943).

It is thus apparent that the popular misconception that a pilot is a "mere advisor" to the master is without substantial foundation in the law. While the master is still the master and in overall command of the ship, and does have the power to relieve the pilot, he may do so only at the substantial peril of exposing himself and the owner of the vessel to far ranging liability. For purposes of administering the Ports and Waterways Safety Act, it is readily apparent that the pilot is indeed in control of the operation and navigation of a vessel both in practice and under admiralty law. It is significant to note, that while a master has been found negligent in many cases for acting improperly to relieve a pilot, for acting improperly after relieving a pilot, or for failure to relieve a pilot, pilots themselves have been held almost universally accountable for their own improper actions. Attempts to relieve themselves of liability by alleging that they were not actually in control and that the sole responsibility for the navigation of the vessel rested with the master have been of no avail."

U. S. Coast Guard Legal Memorandum, P. E. Versaw, 13th Coast Guard District Legal Officer, 13 April, 1977

(18) 18.1 In a rare state court case involving maritime law the New York Supreme Court wrote the following excellent description of the duties of the pilot and master:

"Where a compulsory pilot is in charge of a ship, the master being required to permit him to navigate it, if the master observes that the pilot is incompetent or physically incapable, then it is the duty of the master to refuse to permit the pilot to act. But if no such reasons are present, then the master is justified in relying upon the pilot, but not blindly. Under the circumstances of this case, if a situation arose

where the master, exercising that reasonable vigilance which the master of a ship should exercise, observed, or should have observed, that the pilot was so navigating the vessel that she was going, or was likely to go, into danger, and there was in the exercise of reasonable care and vigilance an opportunity for the master to intervene so as to save the ship from danger, the master should have acted accordingly. Of course, where danger is suddenly sensed, too late for action by the master, the master's failure to act cannot be charged against the ship. Whether a particular situation calls for action rests in sound judgment, for on some occasions to interfere might be more dangerous than noninterference, or there might be justifiable expectation that the pilot, through his own capacity and superior skill and knowledge, would be able to draw the ship away from the danger zone. These are questions of fact for a jury."

Hinman v. Moran, 268 N.Y.S. 410 (1934)

18.2 "Generally speaking, the pilot supersedes the master for the time being in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation. He becomes the master pro hac vice, and should give all directions as to speed, course, stopping and reversing, anchoring, towing, and the like."

70 Am Jur 2d, Shipping, § 191

(19) 19.1 The Supreme Court in discussing the pilots role in maritime commerce stated:

"Now, a pilot, so far as respects the navigation of the vessel in that part of the voyage which is his pilotage-ground, is the temporary master charged with the safety of the vessel and cargo, and of the lives of those on board, and intrusted with the command of the crew. He is not only one of the persons engaged in navigation, but he occupies a most important and responsible place among those thus engaged."

Cooley v. Board of Wardens, 12 HOW (US) 299 13 L Ed. 996 (1851)

19.2 In a later Supreme Court decision the role of the pilot was affirmed:

"To the pilot, therefore, temporarily belongs the whole conduct of the navigation of the ship, including the duty of determining her course and speed, and the time, place and manner of anchoring her....But the master still has the duty of seeing to the safety of the ship, and to the proper stowage of the cargo. For instance, the duty to keep a good lookout rests upon the master and crew."

Ralli v. Troop, 157 US 386, 15 S. Ct. 657 (1894)

19.3 In a case involving the role of the pilot the Supreme Court of Washington commented:

"A pilot while in charge of a ship supersedes the master, in so far as the navigation of the vessel is concerned, but the master is at all times in command, and may and should advise with the pilot, and can displace him in case of intoxication or manifest incompetence. Any power of command exercised by the pilot is limited to the navigation of the ship.... 'While exercising his functions a pilot is in sole control of the navigation of the ship, and his orders must be obeyed as in effect orders of the master. But the master is still in command of the vessel, as distinguished from its navigation, and may properly displace an obviously incompetent or intoxicated pilot, although he is not bound to do so unless the pilot is making an obvious mistake.' ...As to the relative duties of the pilot and the master, it is the law that the pilot does not assume command of the ship. 'No ship is large enough for two captains.' Hughes on Admiralty (2d Ed.) p.36. The pilot becomes navigating officer, and the master should not interfere unless it is plain that the pilot is reckless or incompetent; but the pilot is not in command in the sense that he supersedes the master.... 'In one respect the decisions in relation to pilots run counter to common law ideas on the subject of agency. It is a principle of the law of agency that the foundation of the master's responsibility for the acts of his agent is the right of selection and control. Yet the American courts hold that a vessel is responsible to third parties for unjuries arising from the negligence of the pilot, though he came on board against the will of the master under a state statue of compulsory pilotage... 'The reason why the vessel is held liable is that

admiralty looks on the vessel itself as a responsible thing, and that under the ancient laws relating to pilots the responsibility was one which attached to the vessel itself, irrespective of ownership, it being thought unjust to require injured third parties to look beyond the offending thing to questions of ownership or control."

Grays Harbor v. The Brimanger, 18 P. 2d 29 (1933)

19.4 A leading authority on Admiralty law wrote:

"The pilot when he takes over his duties aboard the vessel supersedes the master, for the time being, in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation. The master is not wholly absolved from his duties while the pilot is on board and may advise with him and even displace him in case he is intoxicated or manifestly incompetent. The master is still in command of the vessel, except so far as her navigation is concerned, and is bound to see that there is a sufficient watch on deck and that the men are attentive to their duties.

The master has the same power to displace the pilot that he has to remove any insubordinate officer of the vessel. He may exercise it or not, according to his discretion."

The Law of Seaman, 3rd Edition, §532, Martin J. Norris, The Lawyers Co-Operative Publishing Co.

(20) 20.1 Judge Lerned Hand discussed the history of the role of the pilot:

"It is of course true that a master does not surrender his ship to a pilot and that there remain occasions when he must interfere and even displace him. The first case, so far as we know, came up in England in 1847, soon after the compulsory pilotage act was passed. The Gipsey King, 2 W. Roginson 537. It chanced to concern the proper catting of an anchor on a vessel in charge of a pilot, and Dr. Lushington, in excusing the owner because the catting was the pilot's spoke as follows (p. 547): 'It is, I apprehend,

an established principle of law that the mode, the time, and place of bringing a vessel to ar anchor, is within the peculiar province of the pilot who is in charge.' Only three years later the Privy Council, speaking through Baron Parke (The Christiana, 7 Moore P.C. 160, 172), said of a compulsory pilot: 'It was his sole duty to select the proper anchorage-place, the mode of anchoring and preparing to anchor.' And still earlier on the same page: 'The Pilot has, unquestionably, the sole direction of the vessel in those respects where his local knowledge is presumably required; the direction, the course, the manoeuvres of the vessel, when sailing, belong to him.' In 1857 Dr. Lushington in The Argo, Swabey, 462, announced the limitation upon this which is generally accepted and which the Supreme Court recognized obiter in The China; and again in somewhat truncated form in The Oregon. It was this: 'a master has no right to interfere with the pilot, except in cases of the pilot's intoxication or manifest incapacity, or in cases of danger which the pilot does not foresee, or in cases of great necessity.' He said further. 'The navigation of the ship is taken out of the hands of the master and transferred to the pilot.'

Union Shipping v. U.S., 127 F. 2d 775 (1942)

20.2 In a suit against the pilot brought by a shipowner for damages sustained when his vessel struck a dock while attempting to berth, a Federal court discussed the duties of the pilot and master in the following terms:

"Having found that the pilot placed the vessel in such a position as to constitute an immediate threat of danger both to herself and to the Barbey Dock, and having determined that the subsequent harm done was a result of the pilot's action, does this of itself fasten liability upon the pilot and absolve the vessel? It is settled law that the fact that a pilot was on board the vessel does not release the ship's master from his duties. The master still remains in command of his vessel and retains the authority to control the actions of the pilot to assure the safety of his ship and to avoid any imminent danger.... The courts have held that the master not only retained the power, but had the duty to interfere in all cases of necessity or danger and to displace the pilot.... The earlier cases,

in speaking of the master removing the pilot, were concerned only with situations where it appeared the pilot was intoxicated or manifestly incompetent.... Later cases have appeared to hold the master to a higher degree of responsibility than the earlier courts contemplated....The master's duty to relieve the pilot rests within the master's sound discretion, and can only be viewed in light of the surrounding factual situation....In light of the obvious confusion that would exist on a vessel if, on his slightest whim, the master would countermand the pilot's order, the master to insure the safety of his command should exercise his power to remove the pilot discriminately. The master ought not to substitute his judgment for that of the pilot except in cases of obvious danger, or where danger is apparent and avoidable."

Barbey Packing v. The Stavros, 169 F. Supp. 901 (1959)

20.3 In speaking of the problems for the master under established pilotage law a leading Admiralty authority stated:

"The relation of pilot and master is an unhappy one for the master. He must see that the pilot's orders are carried out. If he does not check the pilot he forfeits his owner's 'compulsory pilot' defenses. But if he interferes so far that it can be said that he removes the pilot he exposes his owner to whatever liability there would be, in the circumstances, if no pilot were on board."

Robinson on Admiralty, p. 696

(21) 21.1 In discussing human factors and their impact on ship casualties Mr. W. O. Gray of Exxon Corporation stated:

"High Level of Calculated Risk - Calculated risk is defined for this report as knowing acceptance of risk in operational situations to meet personal or corporate priorities. The acceptance of risk was found by the Panel to be a significant causal factor in merchant marine casualties.

The in-depth survey provided several instances where risk taking contributed to a casualty or near-casualty. For instance, when asked to select among 12 criteria used by companies for grading a captain's performance, 40% of those responding to the question

indicated that making schedules was the prime criterion. When asked how companies feel about meeting schedules in poor conditions, 50% of those responding said that there was strong pressure to meet schedules. Almost all of those responding reported sailing on a ship that they personally knew to be unseaworthy.

Perhaps the most revealing disclosure from the interviews was that of a company that in 1969 dropped a safety program that offered a good bonus to tugs and crews with the least accident claims, because the program resulted in decreased productivity and a slowdown in task completion."

Oil Companies International Marine Forum, Safe Navigation Symposium, Session 2, Paper No. 3, Human Factors by W. O. Gray. Presented at Washington, D. C. 17 - 18 January, 1978

(22) 22.1 In another Supreme Court decision relating to the role of the pilot it was held:

"The liability of the owner at common law for the act of a pilot on his vessel is well stated by Mr. Justice Story in his Treatise on Agency, 2d ed. § 456a: 'The master of a ship, and the owner also, is liable for any injury done by the negligence of the crew employed in the ship. The same doctrine will apply to the case of a pilot employed by the master or owner, by whose negligence any injury happens to a third person or his property; as, for example by a collision with another ship, occasioned by his negligence. And it will make no difference in the case that the pilot, if any is employed, is required to be a licensed pilot; provided the master is at liberty to take a pilot, or not, at his pleasure; for in such a case the master acts voluntarily, although he is necessarily required to select from a particular class. On the other hand, if it is compulsive upon themaster to take a pilot, and a fortiori, if he is bound to do so under a penalty, then, and in such case, neither he nor the owner will be liable for injuries occasioned by the negligence of the pilot; for in such a case the pilot cannot be deemed properly the servant of the master or the owner, but is forced upon them, and the maxim, 'Qui facit per alium facit

per se', does not apply.'

The answer to the second question must therefore be that in an action at common law the shipowner is not liable for injuries inflicted exclusively by negligence of a pilot accepted by a vessel compulsorily."

Homer Ramsdell v. La Compagnie Generale Transatlantique, 182 US 1161 (1901)

22.2 In a recent case where the ship struck a dry dock the court absolved the master and crew in the following language:

"We also uphold the District Court's finding that 'the Captain and crew of the Hong Kong Clipper were not guilty of any negligence contributing proximately to the collision,' since the ship was under the sole command of Pilot Jenkins throughout the period with which we are concerned here."

Latex Construction Co. v. Jacksonville Shipyards, Inc., 442 F. 2d 452 (1971)

(23) 23.1 In a case involving damages caused by the acts of a "voluntary" pilot a federal court held:

"The first question is whether Aultman was a noncompulsory pilot. If so, he was in much the same position as one of the ship's officers. Under the ordinary rules of respondeat superior, the shipowner would be responsible for Aultman's actions. If, on the other hand, the district court had concluded that pilotage was compulsory, the respondeat superior nexus would have been broken, and APL would not be personally liable for the results of the pilot's negligence.... Because of the voluntary nature of the pilotage, and the availability of trip insurance at a nominal cost, the provisions of the tariff of the Port of Long Beach exculpating the pilot and his employers from liability are valid and enforceable."

U.S. v. S.S. President Van Buren, 490 F. 2d 506, 509 (1974)

23.2 In discussing the effect of exculpatory agreements a legal authority on the subject has written:

"The pilot associations in Oregon (which has voluntary pilotage only, i.e., either the master or the owner of the vessel is privileged to pilot the vessel and need not hire a pilot), have adopted an ingenious system which has been sanctioned, insofar as it is legally permissible to do so, by the Oregon State Legislature. The system adopted is on the theory that state pilotage rates must directly reflect the cost to the pilots of doing business; consequently, if they must pay rather high premiums to procure adequate insurance to protect themselves against a high degree of liability, the pilotage rates would necessarily have to be increased. Since all vessel owners carry P & I insurance on their vessels, which insurance protects the vessel owner with respect to negligenee of the pilot aboard it, if the pilots likewise carry liability insurance, the vessel owner is paying for his liability coverage twice-first in connection with the P & I premium and second in paying an increment in the pilotage fee to reflect the cost of liability insurance for the pilot."

Law of Tug, Tow and Pilotage, p. 484

23.3 "Aside from moral considerations which should preclude a shipowner from attempting to disavow a contract freely entered into by which he consents to accepting as his own employe a harbor pilot who is 'loaned' to him, there are highly presuasive economic reasons why shipowners should, in their own enlightened self-interest, concede the validity of pilotage clauses and proceed with caution in attempting to have them declared invalid or inapplicable.

For example:

(1) It must be remembered that literally every ship being piloted has already procured P & I insurance insuring the liability of its owner to third parties for negligent acts of its master, crew and pilots. If the 'loaned employe' status of the harbor pilot is to be ignored, then the tug company, both with respect to its assisting tugs and its 'loaned'harbor pilot, must procure insurance in an amount equal to the full value of the largest vessel handled and her cargo. The cost of such insurance necessarily must be included in the ship assistance rates charged, in which case vessel

owners will be paying twice for insurance against the same risks."

(24) Canada, Report of the Royal Commission on Pilotage, Part 1, p. 22

(25) 25.1 Ibid, p. 23 and 24

25.2 A legal reference defines "conduct" as follows:

"Conduct (verb): A regulation having statutory force which provides that a ship is to be conducted by a pilot does not mean that she is to be navigated under his advice; it means that she must be conducted by him, and that makes pilotage compulsory"

Words and Phrases Legally Defined, Second Edition, Saunders

(26) Canada, Report of the Royal Commission on Pilotage, p. 30 and 31

(27) 70 C.J.S., Pilots § 14

(28) 28.1 In a case where the master and officers left the bridge to the pilot to retire and the only ship's personnel on watch were unlicensed seaman assisting the pilot the Supreme Court stated:

"Nor are we satisfied with the conduct of the master in leaving the pilot in sole charge of the vessel. While the pilot doubtless supersedes the master for the time being in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation, the master is not wholly absolved from his duties while the pilot is on board, and may advise with him, and even displace him in case he is intoxicated or manifestly incompetent. He is still in command of the vessel, except so far as her navigation is concerned, and bound to see that there is a sufficient watch on deck, and the men are attentive to their duties. The Iona, R. 1. P.C. 426.

In The Batavier, 1 Spinks, 378, 383, it was said by Dr. Lushington: 'There are many cases in which I should hold that, notwithstanding the pilot has charge, it is the duty of the master to prevent accidents, and not to abandon the vessel entirely to the pilot; but that there are certain duties he has to discharge (notwithstanding there is a pilot on board) for the benefit of the owners.' In an official report made by a maritime commission in 1874, the Elder Brethren of Trinity House are said to have expressed the opinion 'that in well-conducted ships the master does not regard the presence of a duly licensed pilot in compulsory pilot waters as freeing him from every obligation to attend to the safety of the vessel, but

that, while the master sees that his officers and crew duly attend to the pilot's orders, he himself is bound to keep a vigilant eye on the navigation of the vessel, and, when exceptional circumstances exist, not only to urge upon the pilot to use every precaution, but to insist upon such being taken.' Marsden on Collisions."

The Oregon, 158 US 194 (1894)

(28) 28.2 "The rule stated in the case of Homer Ramsdell Co. v. Com. Gen. Trans., to the effect that in actions at common law the shipowner is not liable for injuries inflicted exclusively by negligence of a pilot accepted by a vessel compulsorily, does not exempt the shipowner from liability where negligence of the vessel's master proximately contributed to the injury complained of in such an action....We are of opinion that the evidence mentioned tended to prove conduct of the pilot, known to the master, giving rise to a case of danger or great necessity, calling for the intervention of the master. A master of a vessel is not without fault in acquiescing in conduct of a pilot which involves apparent and avoidable danger, whether such danger is to the vessel upon which the pilot is, or to another vessel, or persons or property thereon or on shore...as to whether the negligence shown was exclusively that of the pilot, and as to whether negligence of the master proximately contributed to the injury, should have been submitted to the jury under appropriate instructions."

Jure v. United Fruit Co.,6 F. 2d 7 (1925)

28.3 "The responsibility for the safety of the ship rests upon the master. The pilot, because of his superior knowledge of the depth of water and location of the channel, has charge of the navigation of the vessel, but even then the master is not absolved from his duties, but may advise the pilot, and even displace him in case of manifest incompetency....We recognize the rule contended for by defendant that the master ought not to substitute his judgment for that of the pilot except in cases of obvious danger, or as expressed in the Jure Case, where danger is apparent and avoidable. But we think a proper case for the master's assertion of

authority for the safety of his ship presents itself where it is obvious or apparent that danger from some cause is imminent, though the particular cause of danger may not be appreciated."

Charente S. S. Co. v. U.S., 12 F. 2d 413 (1926)

28.4 "The master is not merely entitled but bound to point out to the compulsory pilot that he may be mistaken in an opinion he has formed (The Tactician (1907) P. 244). He is also entitled, in order to avoid immediate peril, to take the navigation out of the hands of the pilot, but if he does so he must be prepared to show justification...'...if the master sees fit to take the navigation out of the hands of the pilot and countermands his orders, he must satisfy the court that he was justified in so doing, and that the action which he took was at all events more calculated to avoid a collision than the manoeuvre which he countermanded.'"

British, Tower Field v. Dock Board, Ll.L. Rep. 233, p. 259 (1950)

(29) The Law of Pilotage, Chapter Seven, Division of Control Between Master and Pilot, p. 58

(30) 30.1 GENERAL DUTIES

Per Baron Parke in The Christiana (1850), 13 E.R. 841 P.C.

"The duties of the master and the pilot in many respects are clearly defined. Although the pilot has charge of the ship, the owners are most clearly responsible to third persons for the sufficiencies of the ship and her equipments, the competency of the master and crew, and their obedience to the orders of the pilot in everything that concerns his duty, and under ordinary circumstances we think that his commands are to be implicitly obeyed. To him belongs the whole conduct of the navigation of the ship, to the safety of which it is important that the chief direction should be vested in one only."

Per Brett, L.J. in The Guy Mannering (1882), 4 Asp. M.L.C. 553:

"The duty of a pilot in England is too well known and too universally applied to require any enactment

with regard to it at all. It is to regulate the navigation of the ship, and to conduct it so far as the course of the ship is concerned. He has no other power on board the ship; he has no power over the discipline of the ship, he has no power over the cargo on board; he has no power with regard to the various matters which are necessary to enable him to perform his duty; he cannot place a man on the look-out, or regulate the place at which the look-out man shall be on board the ship. He has nothing to do but to control the navigation."

Per Lord Alverstone, C.J. in The Tactician (1907), 10 Asp. M.L.C. 534:

"I think the cardinal principle to be borne in mind in these cases...is that the pilot is in sole charge of the ship, and that all directions as to speed, course, stopping and reversing and everything of that kind are for the pilot...But side by side with that principle is the other principle that the pilot is entitled to the fullest assistance of a competent crew, of a competent look out, and a well-found ship."

Per Bargreave Deane, J. in The Ape (1914), 12 Asp. M.L.C. 487:

"I have to...lay down what I think is the true principle as to the duty of ship's officers and crew towards the pilot, and...unless the man is incompetent in the sense of being ill or the worse for drink, or something of that sort which justifies force majeure, the officers of the vessel have no right to take control of the navigation out of the hands of the pilot, yet he is entitled to every assistance which can be rendered to him by those on board the ship."

Sir Samuel Evans said in The Umsinga (1912), 12 Asp. M.L.C. 1

"It is easy to conceive cases in which...a master must be on the bridge before it can be rightly said that all the assistance which the law requires to be given to the pilot by the master and the crew is given, and in which his absence might be evidence of negligence or default...But, in my opinion, it cannot be held as a matter of law, or as an inflexible rule of good navigation that the master must be there, or that his absence amounts to default for which his owners are liable, when he provides a competent officer, or where there are no special circumstances of difficulty, or no special matters within his knowledge of which he ought to be ready to inform the pilot...'It is beside the question to inquire whether the master, if on the bridge, might...have caused the pilot to avoid

the collision. If he is not there, and is not bound by the law, or by the rules of good navigation to be there, the court cannot surmise what he would have done if he was there.'"

Ibid, p. 61

(31) 31.1 INTERFERENCE

Dr. Lushington defined "interference" as follows:

"I should never go to the length of saying that the mere suggesting to the pilot on the part of the master to take in this sail, or otherwise to keep as near the South Sand light, and vice versa, or to bring the ship up, was interfering, in the legal acceptation of the term, with the duties of the pilot; illegal interference is of a different description. If, for example, in this case the boatswain had called out to the men below to starboard the helm, or if the master had called out to port the helm, it would be interference; but it would not be interference to consult the pilot, or to suggest to him the measures pursued were not proper, or that other measures would in all probability be attended with greater success.

The Lochlibo, 166 E.R. 978 (1850)

Thus, in the case of The Oakfield where the pilot gave, at the suggestion of the master, an improper order which brought about a collision with a vessel at anchor, it was held that the master's intervention did not transfer the responsibility of the pilot to the master. The Judge justified his decision as follows:

'There is a conflict as to how this order to starboard came to be given, but the pilot admits that the words proceeded from his lips. To excuse himself he says he was merely carrying out the captain's order, and that it was not his order at all. I cannot accept that explanation. I feel convinced that the true solution of the case is, that when the Duchess of Albany was first seen there was no doubt as to whether she was or was not at anchor, that the captain very likely did strongly express an opinion that it would be safe and proper to starboard and go across her bows, that the pilot adopted that view and gave the order which brought about the collision.'"

The Oakfield, 5 Asp. M.L.C. 575 (1886)

Ibid, p. 62

(32) 32.1 LOOKOUT

"In circumstances which called for the greatest care and fullest assistance he (the pilot) was left to his own observation. It is obvious from his own explanation that he was not fully aware of the position and intentions of both these vessels at the time of the collision. It may be (though I am not satisfied on this point) that he ought to have been aware, but a pilot's duty is that of controlling the navigation of the ship and his attention must at times be concentrated on some particular fact. He is entitled to have the assistance of a look-out and timely reports of material incidents."

The Alexander Shukoff, 15 Asp. M.L.C. 122 (1920)

32.2 "In the same case Lord Molton said:

'The defendants say that the pilot ought to have found these things for himself and that therefore, they are excused for having omitted to report them to him. Now it must be remembered that the pilot has many things to think of, especially where...he is leaving port in company with other vessels and new incidents may at any moment arise. He needs, therefore, to be in a position of feeling that he can give his whole attention to his duties of management secure that all relevant occurrences will be duly reported to him.'"

32.3 '"...He must have been from his own observation, perfectly aware of the torpedo-boat and her movements at all material times. Under these circumstances it is not easy to see how, even if there had been an omission on the part of the lookout...to report the torpedo-boat, this omission could have contributed to the accident, as the pilot was throughout in full possession of all the facts himself."'

The Kamouraska, (H.L.) 2L1.L Rep. 125, 299 at p.300(1920)

The Law of Pilotage, p. 64

(33) 33.1 COLLISION REGULATIONS

'"I have said on many occasions...that a master, has no right to interfere with the pilot, except in cases of the pilot's intoxication or manifest incapability, or in cases of danger which the pilot does not forsee, or in cases of great necessity. The master of the Argo says 'It is not my province to take notice of the ship, or on what shore she is navigating. She may be taken here or there, while she is in charge of the pilot, without my knowing the cause; there may be reason under water why the pilot does it. All my duty is, to take care that all the pilot's orders are promptly and properly obeyed'; and I think he says so rightly."'

The Argo, 166 E.R. 1217 (1859)

(34) 34.1 WHETHER TO PROCEED

"Thus in a case where the court had to decide upon the wisdom of taking a vessel through the Downs in bad weather, the Judge said:

'...It would be very dangerous to hold, that there can be any divided authority in the ship with reference to the same subject, and whether the ship was to anchor or to proceed was a matter which we think belonged exclusively to the pilot to decide.'"

Pollock V. M'Alpin, 13 E.R. 945 (1851)

34.2 "Similarly, in the case of The Oakfield, which was involved in a collision with a vessel at anchor in the River Mersey in poor visibility, Sir James Hannen said:

'I think if there was such a state of obscurity owing to fog as would give rise to a plain prospect of danger, the master could in those circumstances throw the whole responsibility on the pilot if he ordered the vessel to get underwway. But in this case it is said that the circumstances did not give rise to such a plain prospect of danger, for although the weather was admittedly foggy, yet vessels might be

seen at such a distance as that, then it is a question for the pilot to determine whether it was wise to weigh anchor, and the master would be relieved from responsibility. The pilot knows all the local dangers and knows as it were by instinct where he may go and where he may not go. It is therefore obvious that the master would leave it to the pilot to judge whether it would be safe to proceed in such a state of weather.'"

The Oakfield, 5 Asp. M.L.C. 575 (1886)

The Law of Pilotage, p. 66

(35) 35.1 SPEED

"It would appear from reported cases that the speed at which a vessel should proceed is within the province of the pilot. In The Maria, for example, Dr. Lushington said:

'...it would be a most dangerous doctrine to hold, except under most extraordinary circumstances, that the master could be justified in interfering with the pilot in his proper vocation...If no order was given to ease the steamer, the fault was in the pilot, not in the master.'"

The Maria, 166 E.R. 508 (1839)

The Law of Pilotage, p. 68

(36) 36.1 USE OF RADAR

Quoting from the Canadian Royal Commission:

"With the aid of various electronic instruments, the pilot is now provided with means which are constantly being improved to 'see' when visual means fail but this electronic 'sight' has its limitations, and the images and information provided differ from what is seen by the naked eye. Therefore, to take advantage of these technical developments, pilots must acquire the necessary knowledge and skill to understand and use these instruments. The strange images that

appear on the radar screen should be as familiar to the pilot as the land features in time of clear visibility and such local knowledge must form part of the qualifications of pilots today."

Ibid, p. 69

(37) 37.1 Port of Baltimore Vessel Traffic, 1978, attached

PORT OF BALTIMORE VESSEL TRAFFIC, 1978

Source: Baltimore Maritime Exchange Monthly Reports

Total Arrivals	4,295
U. S.	831
Foreign Flag	3,464
Liberia	568
Greece	364
W. Germany	328
United Kingdom	202
Norway	233
U.S.S.R.	156
Denmark	135
Japan	130
Panama	118
Italy	100
Sweden	94
Singapore	82
Netherlands	78
France	73
Spain	63
Poland	56
Yugoslavia	46
Brazil	45
Argentina	39
India	34
Colombia	31
Venezuela	30
South Africa	26
Belgium	25
Chile	25
Finland	25
Iran	20
Taiwan	20
South Korea	20
Peru	19
Turkey	19
Iceland	18
Philippines	16
Cyprus	15
Egypt	15
Indonesia	14
Kuwait	13
Ecuador	10
Pakistan	10
Honduras	9
Canada	7
Israel	7
Algeria	5
Bangladesh	4
Portugal	4
Switzerland	4
Netherlands Antilles	3
Libya	2
Malaysia	2
Austria	1
Nigeria	1

Prepared by the Great Lakes Commission

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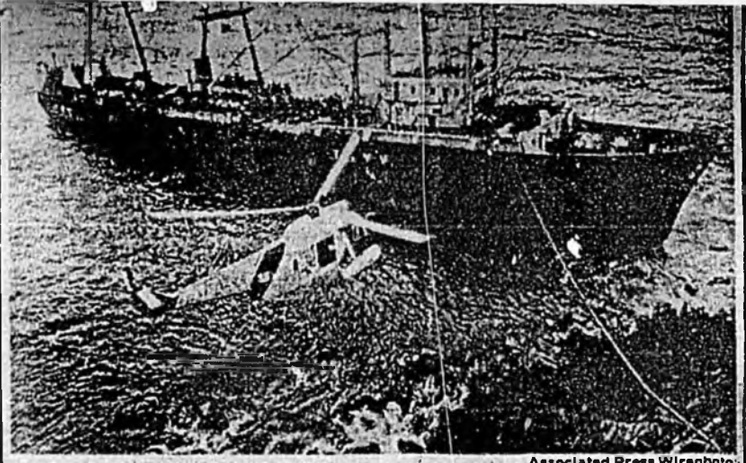
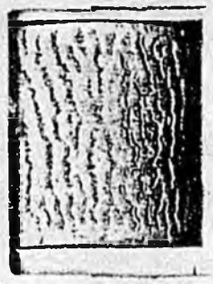


Associated Press Wirephoto

The bow of the Japanese ship Ryuyo Maru No. 2 is hard agound on St. Paul Island in the Pribilof Islands, since the fisheries factory vessel hit the rocks on Friday. Some 100,000 gallons of diesel oil has spilled from her ruptured fuel tanks into the Bering Sea. This Coast Guard photo was taken from atop cliffs on the island.

Anchorage News

15 Nov 1979



State queries why ship had no licensed pilot

By BILL WILSON
Daily News reporter

There was no licensed pilot aboard the Ryuyo Maru No. 2 Friday night when a Japanese fishing vessel crashed into the wildlife-rich rocks of St. Paul Island and began spilling oil, state and federal officials said Wednesday.

The absence of a such a pilot may have been a violation of state law.

Alaska law requires state-licensed pilots be at the helm when large vessels ply so-called "inland waterways." Generally the pilots board vessels as they approach Alaska waters.

Whether or not the seas surrounding the Pribilof Islands are among those requiring an Alaskan pilot is presently being investigated by the Alaska Department of Commerce.

The Ryuyo's captain was at the helm Friday night when the 324-foot Japanese bottomfishing

vessel ran aground, according to Sally Towers, a U.S. government monitor aboard the craft. Towers boarded the Ryoyo in Japan to keep an eye on harvest logs, and was being taken to St. Paul so she could visit an ailing member of her family in Seattle at the time of the grounding.

One source within the commerce department said the penalties following a finding that a pilot was needed, "would be very, very heavy," but declined to say how big they might be.

While state law specifically identifies certain territory requiring a licensed pilot — such as the inside passage in Southeastern and much of Cook Inlet — it addresses much of the water surrounding Alaska in rather vague terms, according to marine attorneys. Hence the uncertainty over the Ryuyo.

The piloting of the vessel is also part of the U.S. Coast Guard's investigation, according to Lt. Cmdr. Mike Macie, the local Marine Safety Officer, who declined to elaborate.

Meanwhile, the mop-up effort continued into the night Wednesday in the face of worsening weather. Although the 35-knot winds and and 20-foot waves that have helped evaporate the 60,000 to 100,000 gallons of diesel fuel that spewed from the ill-fated vessel's tanks, they hamper speedy collection of remaining oil. The weather forecast for St. Paul calls for 60-knot winds and 30-foot waves today and tomorrow.

About 2 miles of beach are now covered with varying amounts of oil, officials say.

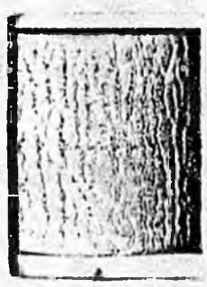
The oil has killed dozens of waterfowl and possibly is responsible for the death of a handful of seal pups, but overall, damage to the St. Paul ecosystem appears to be relatively light — at least so far, according to Coast Guard officials.

However, Salt Lagoon, a stop ping point for thousands of migrating ducks and other water birds, is suffering from the spill as the tide deposits more and more diesel.

The lagoon, near the village of St. Paul, is fed by a narrow channel. The 80 cleanup workers on the scene are building a sandbag dam across the lagoon in an effort to keep the sheen away. A boom designed to block the flow of the oil was in place Wednesday. It had broken loose earlier in the cleanup effort.

While the current bird population of the lagoon is small, Coast Guard spill experts say a

See Back Page, STATE QUERIES



State queries ship's lack of licensed pilot

Continued

wave of migrating Elder ducks is expected soon. Much of the cleanup activity is presently centered around collecting oil-poisoned crustaceans so they may not be eaten by birds.

The creatures upon which the Elders and other birds feed include small shrimp-like animals.

"Our problem now is that several food species are being affected adversely," said Macie. "In other words, they are being killed."

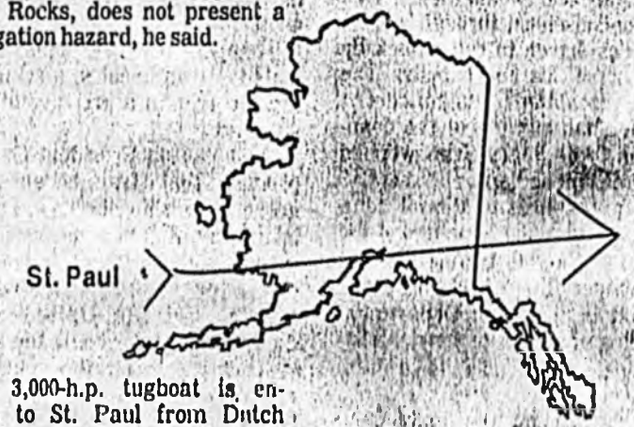
The cleanup crew faces lethal ammonia gas which is thought to have escaped from the vessel's refrigeration system. Also, a deadly hydrogen and sulfur mix is sometimes created when ammonia blends with organic matter, says the Coast Guard. Whether or not that has happened was not known Wednesday as much of the freezing equipment was underwater and could not be reached.

Macie said the oil remaining in the Ryuyo will be removed via three-inch vents on deck, a process he says requires "lots of muscle power and lots of patience."

Macie, who visited St. Paul over the weekend to watch the

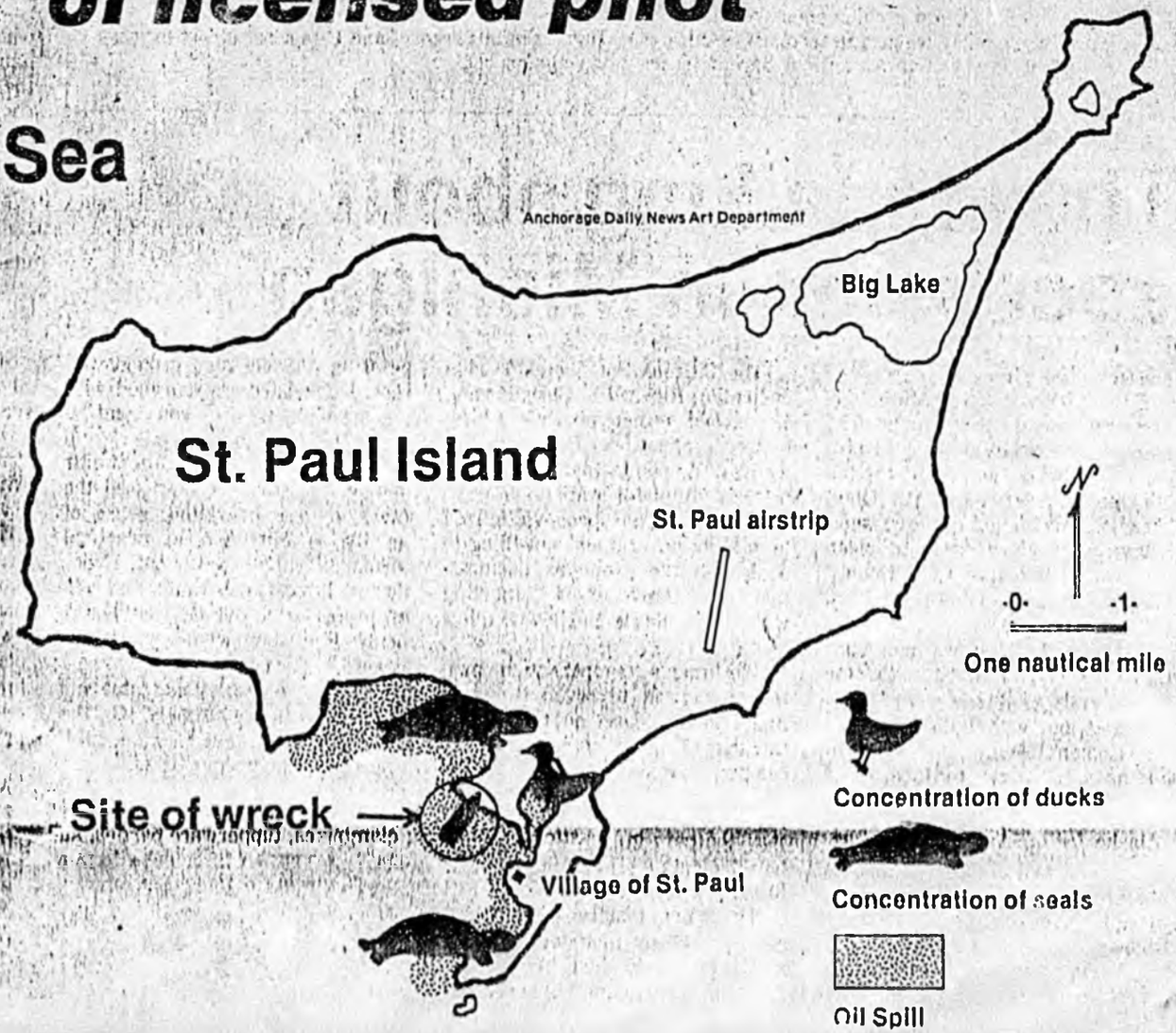
of whether or not to salvage the Ryuyo has not been made. "If you want to pay the money, you could salvage it," he said. "There's no repair facility here, and anywhere you want to take it, it's going to be an ocean voyage. It's either Japan or Seattle."

The ship, which appears to be solidly placed on the ragged St. Paul Rocks, does not present a navigation hazard, he said.



A 3,000-h.p. tugboat is enroute to St. Paul from Dutch Harbor to help anchor and or remove the Ryuro. Also, a seal expert is headed there to assess the damage to the estimated 100,000 seals on the island, which make up the backbone of St. Paul's economy.

Diesel oil, while hardly easy to clean up from sandy beaches, poses a less serious threat than heavier crude oil.



Mailed 11 Dec 1979

file copy

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

FOR FURTHER INFORMATION CONTACT: Senator Brad Bradley, Chairman
Senate Commerce Committee
1016 West Sixth Avenue, Suite 201
Anchorage, AK 99501
(907) 278-1581/1582

PUBLIC SERVICE ANNOUNCEMENT

The Senate Commerce Committee will convene at 1:00 p.m. (Alaska Standard Time) on Monday, December 10, 1979, for the purpose of holding a public "Sunset" hearing on the Board of Marine Pilots. The hearing is open to the public and will be held in Anchorage at 1016 West Sixth Avenue, Suite 201. The hearing will also be teleconferenced to Fairbanks, Soldotna, Ketchikan and Juneau.

Fairbanks will hold its hearing at the Legislative Information Office, 101 College Road, Building F, Room 252, Fairbanks.

The Soldotna hearing will be held at the Legislative Information Office, Cordova Building, Spur Highway, Soldotna.

The hearings in Juneau and Ketchikan will begin at 3:00 p.m. (Pacific Standard Time). Juneau will hold its hearing in Room 124 of the Capitol Building, Juneau. The Ketchikan hearing will be held at the Legislative Information Office, 415 Main Street, Room 301, Ketchikan.

A copy of the performance review of the Board of Marine Pilots is available for public use at the local Legislative Information Offices.

For further information, please contact the Senate Commerce Committee at 1016 West Sixth Avenue, Suite 201, Anchorage, AK 99501, telephone: 278-1581 or 278-1582.

-end-

Roster

MARINE PILOTS

November 1, 1979

AA 0066	Bradley, John R.	PO Box 1273	Homer	AK	99603
AA 0036	Brastad, Erling	10505 15th N.W.	Seattle	WA	98177
AA 0013	Buckler, Franklin	4901 30th St. N.E.	Tacoma	WA	98422
AA 0057	Bullard, William	PO Box 7132	Ketchikan	AK	99901
AA 0062	Christy, Timothy	PO Box 552	Homer	AK	99603
AA 0031	Clark, John E.	13528 91 Pl. N.E.	Kirkland	WA	98033
AA 0035	Clough, A. Harley	PO Box 1171	Juneau	AK	99802
AA 0010	Collar, Oliver K.	2580 Nathaniel Court	Anchorage	AK	99503
AA 0070	Collins, Dale O.	PO Box 5997	Ketchikan	AK	99901
AA 0059	Cray, John J.	PO Box 6100	Ketchikan	AK	99901
AA 0042	Creasey, E. H.	740 Maple St.	Edmonds	WA	98020
AA 0041	Cunningham, John T.	PO Box 568	Homer	AK	99603
AA 0054	Davis, Veymond	PO Box 807	Douglas	AK	99824
AA 0068	Elde, Kaare Per	6413 Colgate Drive	Anchorage	AK	99504
AA 0050	Elsensohn, Harold K.	PO Box 6100	Ketchikan	AK	99901
AA 0007	Falconer, Charles P.	4650 Blank Road	Sebastopol	CA	95472
AA 0065	Gavin, Michael T.	8020 240th S.W.	Edmonds	WA	98020
AA 0069	Hendricks, Robert L.	Box 977	Homer	AK	99603
AA 0049	Hodgman, James A.	PO Box 6100	Ketchikan	AK	99901
AA 0043	Hofstad, Richard T.	505 7th Ave., Box 66	Seward	AK	99664
AA 0047	Hurd, James M.	PO Box 678	Homer	AK	99603
AA 0074	Johnson, Arthur L.	2408 2nd Ave.	Ketchikan	AK	99901
AA 0037	Johnson, Robert C.	4111 S.W. Frontenac	Seattle	WA	98136
AA 0027	Johnson, Robert M.	605 Tower Road	Ketchikan	AK	99901
AA 0002	Johnson, William L.	PO Drawer A	Lk. Havasu Cy	AZ	86403
AA 0032	Jorgensen, F. Baker	50 Porto Bello Drive	San Rafael	CA	94901
AA 0006	Maroni, Jack	PO Box 6100	Ketchikan	AK	99901
AA 0033	McReynolds, George	PO Box 7544	Ketchikan	AK	99901
AA 0055	Mitchell, William W.	1304 Millar St.	Ketchikan	AK	99901
AA 0051	Murphy, William E.	PO Box 597	Homer	AK	99603
AA 0072	O'Hara, Michael J.	PO Box 1443	Palmer	AK	99645
AA 0012	Oldow, Donald J.	PO Box 881	Seward	AK	99664
AA 0014	Payne, Harold	PO Box 70	Greeland	WA	98249
AA 0040	Pedersen, Theodore	Bear Cove, Box 113	Homer	AK	996[illegible]3
AA 0061	Petke, Lyle R.	Rt. 1, Box 393-A	Ketchikan	AK	99901
AA 0017	Recser, Maynard L.	Box 492	Petersburg	AK	99833
AA 0039	Richards, Eugene	PO Box 8324	Ketchikan	AK	99901
AA 0052	Robinson, Gerald B.	344 Beverly Garden Dr.	Metairie	LA	70001
AA 0019	Rosenquest, Bill R.	19353 2nd Ave. N.E.	Seattle	WA	98177
AA 0022	Sande, James W.	910 Jackson St.	Ketchikan	AK	99901
AA 0071	Schubert, Walter L.	3701 Eureka #44B	Anchorage	AK	99503
AA 0030	Shelton, William M.	175 Lucas Park Dr.	San Rafael	CA	94903
AA 0025	Smith, Robert W.	PO Box 542	Juneau	AK	99801
AA 0005	Starkweather, Dan D.	2712 Second Ave.	Ketchikan	AK	99901
AA 0044	Subcleff, Andrew C.	PO Box 1471	Homer	AK	99603
AA 0004	Swett, Roger W.	453 Klickitat Dr.	Lake Conner	WA	98257
AA 0008	Thornton, Donald A.	9014 45th S.W., Apt. 28	Seattle	WA	98136
AA 0003	Tingley, William A.	PO Box 1237	Homer	AK	99603
AA 0048	Walker, Willard E.	PO Box 6100	Ketchikan	AK	99901
AA 0056	Webb, John Martin	PO Box 1070	Homer	AK	99603
AA 0067	Wright, James	Box 1225	Homer	AK	99603
AA 0038	Wyatt, Vernon H.	St Rt Box 168	Mesa	WA	88343

Board of Marine Pilots 10/18/79

Please note change of address for your files:

William L. Johnson License #2
2617 39th Ave. West
Seattle, Washington 98199

Telephone: (206) 282-3702

BOARD OF MARINE PILOTS
(AS 08.62.010; 2 pilots and 2 agents and 2 public members or managers appointed by the governor and confirmed by the legislature; 4-year term.)

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles D. Stover P. O. Box 2019 Anchorage, Alaska 99510		76/06/17	80/06/01
Captain Donald J. Oldow P. O. Box 881 Seward, Alaska 99664		76/11/05	80/06/01
Mr. Jack Maroni P. O. Box 6100 Ketchikan, Alaska 99901		75/10/07	79/06/01
Mr. Marvin Taylor P. O. Box 436 Skagway, Alaska 99840		75/10/07	79/06/01
~~Mr. David Culbertson~~ ~~801 42 Airport Heights Road~~ ~~Anchorage, Alaska 99504~~	New: David George R.R. #5 Box 5575-A Juneau, AK 99803	76/10/29	80/06/01
Mr. Kenneth E. Peavyhouse P. O. Box 628 Valdez, Alaska 99686 (Public)		79/01/00	83/06/01

Commissioner Hamman Weber
Commerce and Economic Development
Pouch D
Juneau, Alaska 99811

Capt. Richards
Southeastern Alaska Pilots Association
P.O. Box 6100
Ketchican, Ak 99901
225-9696

Capt. James M. Hurd
Southwest Alaska Pilots Association
P.O. Box 977
Homer, Alaska 99603
(907)235-8783

CONTACT AGENCY:
Division of Occupational Licensing
Commerce and Economic Development
(465-2535)
ID #60

President Capt. Murphy
S.W. Alaska Pilot's Assn.
P.O. Box 977
Homer, Ak. 99603

President Capt. Richards
S.E. Alaska Pilot's Assn.
P.O. Box 6100
Ketchikan, Ak. 99901

Mel Chambers
Chevron Shipping Co.
P.O. Box 125
Edmonds, Wa. 98020

James S. Gilmour
Attorney for Marine Pilots
360 K Street, Suite 300
Anchorage, Ak. 99501

Mr. David Enroth
Alaska Maritime Agencies, Inc.
2101 4th Avenue, Suite 1410
Seattle, Wa. 98121

Mr. Bob Berto
Southeast Stevedoring Corp.
P.O. Box 8080
Ketchikan, Ak. 99901

NAME OF WITNESS	ADDRESS	TELEPHONE	BILL TO TESTIFY ON
✓ JAMES HURD	P. O. BOX 678 HOMER, AK. 99603	235-8606	MARINE PILOTS
✓ JACK MARONI	P. O. BOX 6100 KETCHIKAN, AK 99901	225-9696	Marine Board Member
✓ DONALD OLDOW	BOX 881 SEWARD, AK. 99664	224-3664	MARINE PILOTS
✓ Ken Pearyhouse	1913 BEAVER PL. ANCHORAGE 99504	333-4861	"
✓ W.E. Murphy	P.O. Box 597 Homer AK 9960	235-8271	Marine Pilots
✓ Harley Clough	Juneau, AK		
✓ Eugene Richards	Ketchikan AK		

FROM: DANIEL J. PAUL

AMERICAN INSTITUTE OF MERCHANT SHIPPING
1625 K Street, N.W., Suite 1000, Washington, D.C. 20006
Telephone 202/783-5449
Telex: 89-424 AIMSHIP WSH

February 29, 1980

Honorable W. E. Bradley
Chairman, Senate Commerce Committee
State of Alaska
State Capitol
Pouch V — Mail Stop 3100
Juneau, Alaska 99811

Dear Senator Bradley:

At the January 30, 1980, Sunset Hearings on the Board of Marine Pilots held by the House Commerce Committee in Juneau, I presented testimony on behalf of the American Institute of Merchant Shipping (AIMS). During discussions following my prepared testimony, I was requested to categorize AIMS' recommendations into statutory and regulatory proposals. I am pleased to respond at this time to that request, and would also like to take this opportunity to offer further comment on other issues not fully explored during the Hearing which may have a bearing on your deliberations.

With respect to categorizing AIMS' recommendations into statutory or regulatory proposals, I offer the following:

Licensing State Pilots

1. Continue to require Federal pilotage endorsements as a prerequisite to State pilotage.

No action is requested. This requirement is included under 12 AAC 56.030(2).

2. Eliminate those State license examination requirements which duplicate Federal pilotage examinations.

It is recommended that language be added to AS 08.62.040(2) permitting elimination of examination requirements

1 of 5

3. Seek active USCG liaison with the Board of Marine Pilots.

It is recommended that the Board of Marine Pilots be encouraged to solicit active liaison with the U. S. Coast Guard regarding establishment of appropriate guidelines for pilot qualification, examination, recertification and discipline. In this regard, we encourage the State to request such a U. S. Coast Guard representative to be stationed in, or be in close contact with, U. S. Coast Guard Headquarters in Washington. This will ensure uniformity of application nationwide.

Pilot Recertification

As indicated in AIMS' Testimony, recertification procedures are too vague to assure that the intent of the legislature is met. In addition, the USCG will, in the near future, issue new procedures for recertification of Federal pilots. AIMS proposes that a committee of interested parties, including the pilots, industry, USCG and Board of Members be established to identify and recommend statutory or regulatory changes to strengthen this most important area.

Pilot Discipline

1. Clarify the terms "incompetent" and "misconduct."

This subject should be included in the scope of the previously recommended Committee's work.

2. Suggest Alaska standards for revocation or suspension of State pilot licenses be established similar to USCG standards and procedures for revocation or suspension of Federal pilot licenses.

AIMS proposes Section 08.62.160 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.

Regulation of Fees

1. Provide more detailed criteria for evaluating pilotage rate changes.

Section 08.62.040(4) should be amended to require that

individual pilot compensation must be adequate, but not excessive, to assure that qualified personnel are attracted to the service, and that consideration must be given to difficulty of pilotage, length of time on the job, hours on standby, area standards of living, ratio of time off to time worked, benefits, necessary expenses, including pilot boat cost if required, and equitable distribution of these costs to the users of the pilotage service.

2. Require annual financial audit of pilot associations by state auditors with the audit available to the public.

In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.060(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.

Board Composition

(1.) Provide for tanker industry representation on the Board.

It is proposed that AS 08.62.101 be amended to specify that one industry member of the Board be a representative of the tanker industry. This member could make a significant contribution to the Board through the industry's resources and experience. In order to assure that a person of sufficient experience and knowledge is available for service to the Board, the State residency requirement for that representative should also be expanded to permit any U.S. citizen to qualify for appointment.

Regulation of Enrolled Vessels

(1.) Eliminate those Sections of State Statute AS 08.62 added by passage of HB 510 in 1977 because they conflict with federal law.

AS 08.62.185 should be repealed in its entirety for reasons already presented in AIMS' testimony.

3 of 5

In addition to clarifying AIMS' proposals to the Committee, I would like to discuss more fully two statements which were made by others during the Hearings which were inaccurate.

The first was that pilots assume responsibility for the safe navigation of the vessel when piloting. This statement is not consistent with the widely recognized master/pilot relationship which, by Federal and international law, holds the master fully and ultimately responsible for the safe navigation of the vessel at all times except when transiting the Panama Canal. The pilot, whether required by law or not, acts as an advisor to the master with respect to local conditions. Any orders which the pilot may give to the helmsman are given under the direct supervision of the master and with his approval. The master has the responsibility and authority to countermand any order given by the pilot, or to relieve the pilot if he believes the safety of the ship is being jeopardized.

A second statement was made that Federal, or employee, pilots are influenced by the vessel owner to "maintain schedule or move the vessel with unacceptable margins of safety," and therefore the State pilot "places a higher priority on the protection of life, property and the environment." This argument is obviously without merit when one considers the owner's investment in his ship, its cargo and crew and the social and financial consequences which would result from a vessel casualty. No one has more to lose than the U.S. ship owner when safety is not the paramount consideration in vessel operation.

Furthermore, it is not necessary for a Federal pilot to be an employee of the shipowner or operator. Independent Federal pilot services are available at many U.S. ports and provide both channel navigation and docking pilot services.

In closing, let me thank you again for the opportunity to express AIMS' views on this most important matter. I will be happy to try to provide you and other members of the Committee with any further information you may request.

Very truly yours,

Mark R. Johnson
Assitant to the Director
of Marine Affairs

/for/ Daniel J. Paul, Jr.

4 of 5

SB
573

COMMITTEE REPORT

SENATE

4/22/80 FURTHER: None

Date: April 24, 1980

Mr. President:

The Committee on COMMERCE has had SB 573 continuing the existence of the Board of Marine Pilots

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[✓] reports it back without individual recommendations

[✓] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Tim Kell

[illegible]

[illegible]

Brad Bradley

MEMBERS HAVING OTHER RECOMMENDATIONS:

Brad Bradley
CHAIRMAN

S 60 (Rev. 12/78)

SENATE BILL 573

BOARD OF MARINE PILOTS

MR. PRESIDENT, I MOVE THE ADOPTION OF SENATE BILL 573, WHICH IS IDENTICAL, AT THIS POINT, TO THE HOUSE BILL FOR THE SAME BOARD. WE HAVE WORKED JOINTLY TO TRY TO PREVENT AN UNNECESSARY AND OFTEN TIME-CONSUMING FREE CONFERENCE COMMITTEE.

(SEC. 08.62.020)
P. 1, LS 16-18

SECTION 1 IS CHANGED TO FORBID A BOARD MEMBER FROM SERVING MORE THAN TWO CONSECUTIVE TERMS, BUT DOES NOT LIMIT THE TOTAL NUMBER OF TERMS WHICH A PERSON MAY SERVE. THE COMMISSIONER OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT OR HIS DESIGNEE IS A MEMBER OF THE BOARD, AND THIS PROVISION DOES NOT APPLY TO HIM. THIS WAS DONE TO ALLOW MORE TURNOVER ON THE BOARD CREATING MORE DIVERSITY.

why?

(SEC. 08.62.040(A)(3)
P. 1, LS. 20-21

SECTION 2 IS AMENDED TO STATE THAT THE BOARD MUST KEEP A REGISTER OF LICENSED PILOTS AND AGENTS, BUT IS NO LONGER REQUIRED TO KEEP A REGISTER OF VESSELS, OPERATORS, AND MANAGERS. "OPERATORS" IS AN UNDEFINABLE TERM IN SEA-GOING LANGUAGE. ANY VESSEL FROM ALL OVER THE WORLD CAN BE IN OUR WATERS AND THE COMPILING OF A LIST IS VIRTUALLY IMPOSSIBLE. LLOYDS OF LONDON COMPILED SUCH A LIST AND IT COMPRISED VOLUMES.

Why not define reason for managers being excluded.

(SEC. 08.62.040(A)(4))
P. 1, LS. 23-26

SECTION 3 REQUIRES THE BOARD TO ADOPT REGULATIONS ESTABLISHING STANDARDS BY WHICH FEES MAY BE SET AND TO PAY FOR AUDITS IF AN AUDIT IS NEEDED TO COLLECT INFORMATION REQUIRED IN

ORDER TO APPLY THE STANDARDS IN THE [redacted]ONS. THERE HAS BEEN A NEED FOR SUBSTANTIATING THE SETTING OF THE FEES.

(SEC. 08.62.140)
P. 2, LS. 1-3

SECTION 4 INCREASES THE FEES PROVIDED FOR UNDER EXISTING LAW. AN ADDITIONAL BIENNIAL REGISTRATION FOR AGENTS IS ADDED. AGENTS HAVE NOT BEEN REGISTERING AND BY ATTACHING A FEE TO THE REGISTRATION IT IS BELIEVED THAT REGISTRATION FOR AGENTS WOULD SEEM MORE IMPORTANT AND HENCE MORE AGENTS WOULD REGISTER. REGISTRATION TAKES ON MORE VALUE WHEN A FEE IS ATTACHED.

(SEC. 08.62.150(A))
P. 2, LS. 4-5

SECTION 5. UNDER CERTAIN SPECIFIED CONDITIONS THE BOARD MAY IMPOSE A DISCIPLINARY SANCTION ON A PERSON. SECTION 5 ADDS, AS A CONDITION WHICH WOULD ALLOW THE BOARD TO DENY A LICENSE, REVOKE A LICENSE, OR SUSPEND A LICENSE, THE REVOCATION OF A FEDERAL PILOTS LICENSE HELD BY A PERSON LICENSED OR SEEKING A LICENSE UNDER THIS CHAPTER. IT IS FELT THAT ONE LOOSING HIS FEDERAL LICENSE IS GROUNDS FOR REVOCATION OF THE STATE LICENSE.

(SEC. 08.62.187)
P. 2, LS. 7-9

SECTION 6 IS A NEW PROVISIONS REQUIRING A PERSON TO HAVE HIS NAME ON THE REGISTER OF AGENTS BEFORE HE MAY ACT AS THE AGENT OF A VESSEL. THIS ENABLES GREATER CONTROL OF AGENTS.

(SEC. 08.03.010(c))
P. 2, Ls. 10-11

SECTION 7 PROVIDES THE TERMINATION DATE FOR THE BOARD OF MARINE PILOTS IS JUNE 30, 1983.

(SEC. 08.03.010(B)(8))
P. 2, L. 12

SECTION 8 REPEALS THE EXISTING TERMINATION DATE, JUNE 30, 1980, FOR THE BOARD OF MARINE PILOTS.

P. 2, L. 13

SECTION 9 THE EFFECTIVE DATE OF THIS ACT IS JUNE 30, 1980, THE DATE UPON WHICH THE BOARD OF MARINE PILOTS IS SCHEDULED TO TERMINATE.

08.62.020

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (sec 2 ch 106 SLA 1970)

Sec. 08.62.030. MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (sec 2 ch 106 SLA 1970)

08.62.040

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;

(2) consistent with the law, adopt regulatons, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots, vessels, operators, agents and manager;

(4) regulate pilotage fees; and

(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (sec 2 ch 106 SLA 1970)

08.62.140

Sec. 08.62.140. FEES. The following fees shall be imposed under this chapter when applicable:

(1) application fee..... $ 10
(2) biannial license fee..... $200
(sec 2 ch 106 SLA 1970)

08.62.150

Sec. 08.62.150. DENIAL, REVOCATION OR SUSPENSION. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

(1) is incompetent in the performance of his pilotage duties;

(2) is habitually intoxicated;

(3) illegally uses or sells narcotic or hallucinogenic drugs;

(4) makes a false statement to obtain a license;

(5) violates a provision of this chapter or a regulation adopted under it; or

(6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

(1) the reason for the license denial, revocation or suspension has been remedied; and

(2) the period of suspension has been served and all fines imposed under this chapter have been paid. (sec 2 ch 106 SLA 1970)

08.03.010.

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Board of Chiropractic Examiners (AS 08.20.010);
(2) Board of Dental Examiners (AS 08.36.010);
(3) State Medical Board (AS 08.64.010);
(4) Board of Nursing (AS 08.68.010);
(5) Board of Dispensing Opticians (AS 08.71.010);
(6) Board of Examiners in Optometry (AS 08.72.010);
(7) Board of Pharmacy (AS 08.80.010);
(8) Board of Veterinary Examiners (AS 08.98.010);
(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
(10) Board of Nursing Home Administrators (AS 08.70.010);
(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.010);
(2) Board of Barber Examiners (AS 08.12.010);
(3) Collection Agency Board (AS 08.24.011);
(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);
(5) Board of Electrical Examiners (AS 08.40.010);
(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
(7) Guide Licensing and Control Board (AS 08.54.010);
(8) Board of Marine Pilots (AS 08.62.010);
(9) Real Estate Commission (AS 08.88.011);
(10) Board of Welding Examiners (AS 08.99.010);
(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

Sec. 08.01.100. LICENSE RENEWAL, LAPSE AND REINSTATEMENT. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees fo reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

Sec. 08.01.105. PENALTY FOR IMPROPER PAYMENT. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor.

Sec. 08.01.110. DEFINITIONS. In this chapter

(1) "board" includes the boards and commissions listed in sec. 10 of this chapter;
(2) "department" means the Department of Commerce and Economic Development;
(3) "commissioner" means the commissioner of commerce and economic development;
(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in sec. 10 of this chapter;
(5) "licensee" means any person who holds a license;
(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in sec. 10 of this chapter.

CHAPTER 62. MARINE PILOTS

Article
1. Board of Marine Pilots (secs 08.62.010 - 08.62.040)
2. Licensing (secs 08.62.080 - 08.62.150)
3. General Provisions (secs 08.62.160 - 08.62.200)

Revisor's note (1970) -
In ch. 106, SLA 1970, AS 08.62 was incorrectly designated AS 08.87.

ARTICLE 1. BOARD OF MARINE PILOTS

Section
10. Creation and membership of board
20. Appointment and term of office
30. Meetings
40. Powers and duties

Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Marine Pilots. It consists of two pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, two agents of managers of vessels subject to this chapter, two public members in accordance with AS 08.01.025, and the commissioner or his designee. Not more than one pilot and one agent or manager

shall be from any one judicial district. All members of the board shall be residents of the state. (sec 2 ch 106 SLA 1970; am sec 8 ch 258 SLA 1976) (Eff. of amendment. The 1976 amendment inserted "two public members in accordance with AS 08.01.025" in the second sentence.)

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (sec 2 ch 106 SLA 1970)

Sec. 08.62.030. MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (sec 2 ch 106 SLA 1970)

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;
(2) consistent with the law, adopt regulatons, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;
(3) keep a register of licensed pilots, vessels, operators, agents and manager;
(4) regulate pilotage fees; and
(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (sec 2 ch 106 SLA 1970)

ARTICLE 2. LICENSING

Section
80. License requirement
90. Application
100. Qualifications
110. Previous licensure
120. Duration, renewal
130. Lapsed license
140. Fees
150. Denial, revocation or suspension

Sec. 08.62.080. LICENSE REQUIREMENT. No person may pilot a vessel subject to this chapter unless he is licensed under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.090. APPLICATION. (a) A person who desires to be licensed under this chpater shall apply in writing to the department.

(b) The application shall provide the information and be made on a form prescribed by the board. (sec 2 ch 106 SLA 1970)

Sec. 08.62.100. QUALIFICATIONS. A person is entitled to a license under this chapter if he

(1) is of good moral character;
(2) is a citizen of the United States;
(3) passes the examination given by the board; and
(4) qualifies under the regulations adopted under section 40(a)(2) and (b) of this chapter. (sec 2 ch 107 SLA 1970)

Sec. 08.62.110. PREVIOUS LICENSURE. A license that was issued under AS 30.10 is considered as having been issued under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.120. DURATION, RENEWAL. A license issued under this chapter shall be renewed biennially on dates set by the department. A license issued under AS 30.10 lapses at the end of calendar year 1970. A license issued between May 7, 1970 and the end of 1570 shall be issued for a fee of $100. A license shall be renewed without examination upon the payment of the biennial license fee. (sec 2 ch 106 SLA 1970)

Sec. 08.62.130. LAPSED LICENSE. A lapsed license may be reinstated without examination if it has not remained lapsed for more than two years. However, if the license is lapsed for less than two years and the board has reason to believe that the person applying for reinstatement of his license in incapable or incompetent to carry out the duties of a licensed marine pilot, the board may require the applicant to take and pass the examination given by the board. (sec 2 ch 106 SLA 1970; am sec 1 ch 22 SLA 1973)

Sec. 08.62.140. FEES. The following fees shall be imposed under this chapter when applicable:

(1) application fee..... $ 10
(2) biennial license fee..... $200
(sec 2 ch 106 SLA 1970)

Sec. 08.62.150. DENIAL, REVOCATION OR SUSPENSION. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

(1) is incompetent in the performance of his pilotage duties;
(2) is habitually intoxicated;
(3) illegally uses or sells narcotic or hallucinogenic drugs;
(4) makes a false statement to obtain a license;
(5) violates a provision of this chapter or a regulation adopted under it; or
(6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

(1) the reason for the license denial, revocation or suspension has been remedied; and
(2) the period of suspension has been served and all fines imposed under this chapter have been paid. (sec 2 ch 106 SLA 1970)

ARTICLE 3. GENERAL PROVISIONS

Section
160. Mandatory employment of licensed pilots
170. Pilot's lien for compensation
180. Exemptions
190. Penalty
200. Definitions

Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel subject to this chapter navigating the inside coastal waters of Alaska as determined by regulations shall employ a pilot holding a valid license under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.170. PILOT'S LIEN FOR COMPENSATION. Each vessel, its tackle, apparel and furniture and the owner of the vessel are jointly and severally liable for the compensation of a pilot employed on the vessel and the pilot has a lien on the vessel, her tackle, apparel and furniture for his compensation. (sec 2 ch 106 SLA 1970)

Sec. 08.62.180. EXEMPTIONS. This chapter does no apply to

(1) vessels under enrollment;
(2) fishing vessels registered in the United States or in British Columbia, Canada;
(3) motorboats as defined in sec. 1 of the Federal Motorboat Act of 1940 (54 Stat. 163; 46 U.S.C., sec. 526 et seq.);
(4) vessels of United States registry of less than 300 gross tons and tow boats of United States registry and vessels owned by the State of Alaska, engaged exclusively
(A) on the rivers of Alaska; or
(B) in the coastwise trade on the west coast of the United States including Alaska, Hawaii, and British Columbia, Canada;
(5) vessels of Canada, including Canadian cruiseships, engaged in frequent trade between British Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those of United States registry; and
(6) pleasure craft. (sec 2 ch 106 SLA 1970; am sec 1 ch 43 SLA 1972)

Effect of amendment-1972 amendment inserted "of United States registry of less than 300 gross tons" after "vessels in (4) and added "or" in (A).

Sec. 08.62.190. PENALTY. A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $1,000 nor more than $5,000. A person who violates any other provision of this chapter or a regulation adopted under it is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $500 nor more than $1,000. (sec 1 ch 34 SLA 1979)

Sec. 08.62.200. DEFINITIONS. In this chapter

(1) "board" means the Board of Marine Pilots;
(2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;
(3) "department" means the Department of Commerce and Economic Development;
(4) "vessel" means all vessels not exempt under 180 of this chapter. (sec 2 ch 106 SLA 1970; am sec 48 ch 218 SLA 1976)

Effect of amendment.-The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraphs (2) and (3).

THE BOARD OF MARINE PILOTS

STATUTES

08.62.020

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (sec 2 ch 106 SLA 1970)

Sec. 08.62.030. MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (sec 2 ch 106 SLA 1970)

08.62.040

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;

(2) consistent with the law, adopt regulatons, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots, vessels, operators, agents and manager;

(4) regulate pilotage fees; and

(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (sec 2 ch 106 SLA 1970)

08.62.140

Sec. 08.62.140. FEES. The following fees shall be imposed under this chapter when applicable:

(1) application fee..... $ 10
(2) biennial license fee..... $200
(sec 2 ch 106 SLA 1970)

08.62.150

Sec. 08.62.150. DENIAL, REVOCATION OR SUSPENSION. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

(1) is incompetent in the performance of his pilotage duties;

(2) is habitually intoxicated;

(3) illegally uses or sells narcotic or hallucinogenic drugs;

(4) makes a false statement to obtain a license;

(5) violates a provision of this chapter or a regulation adopted under it; or

(6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

(1) the reason for the license denial, revocation or suspension has been remedied; and

(2) the period of suspension has been served and all fines imposed under this chapter have been paid. (sec 2 ch 106 SLA 1970)

08.03.010.

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Board of Chiropractic Examiners (AS 08.20.010);

(2) Board of Dental Examiners (AS 08.36.010);

(3) State Medical Board (AS 08.64.010);

(4) Board of Nursing (AS 08.68.010);

(5) Board of Dispensing Opticians (AS 08.71.010);

(6) Board of Examiners in Optometry (AS 08.72.010);

(7) Board of Pharmacy (AS 08.80.010);

(8) Board of Veterinary Examiners (AS 08.98.010);

(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);

(10) Board of Nursing Home Administrators (AS 08.70.010);

(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.010);

(2) Board of Barber Examiners (AS 08.12.010);

(3) Collection Agency Board (AS 08.24.011);

(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);

(5) Board of Electrical Examiners (AS 08.40.010);

(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);

(7) Guide Licensing and Control Board (AS 08.54.010);

(8) Board of Marine Pilots (AS 08.62.010);

(9) Real Estate Commission (AS 08.88.011);

(10) Board of Welding Examiners (AS 08.99.010);

(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 28, 1980

SUBJECT: Section-by-section analysis of SB 573 dealing with the Board of Marine Pilots (Work Order Number 8525)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have requested a section-by-section analysis of Senate Bill 573 entitled: "An Act continuing the existence of the Board of Marine Pilots and amending the law relating to its powers and responsibilities, and providing for an effective date."

(P.1, lines 16-18) Sec 1, AS 08.62.020.

(1) ~~Section 1~~. This change forbids a board member from serving more than two consecutive terms, but does not limit the total number of terms which a person may serve. The commissioner of the Department of Commerce and Economic Development or his designee is a member of the board, and this provision does not apply to him. This was done to allow more turnover on the board creating more diversity.

(P.1, lines 20-21) (Sec. 2, AS 08.62.040(a)(3):

(2) ~~Section 2~~. The board must keep a register of licensed pilots and agents, but is no longer required to keep a register of vessels, operators, and managers. Operators is an undefinable term in sea-going language. Any vessels from all over the world can be in our -

(3) Section 3. Under existing law the board has the duty to regulate pilotage fees. This section requires the board to adopt regulations establishing standards by which fees may be set and to pay for audits if an audit is needed to collect information required in order to apply the standards in the regulations. There has been a need for substantiating the setting of the fees.

(P1, lines 23-26) Sec 3, AS 08.62.040(a)

(4) ~~Section 4~~. The fees provided for under existing law are increased. An additional biennial registration fee for agents is added. Agents have not been registering + by attaching a fee to the registration it is believed that registration for agents would seem more important + hence more agents would register. Registration takes on more value when a fee is attached.

(P2, line 1-3)

(P 2, line 4-5) Sec 5, AS 08.62.150(a).

~~Section~~ 5. Under certain specified conditions the board may impose a disciplinary sanction on a person. This section adds, as a condition which would allow the board to deny a license, revoke a license, or suspend a license, the revocation of a federal pilots license held by a person licensed or seeking a license under this chapter. It is felt that one losing his federal license is grounds for revocation of the state license.

(P2, line 7-9) Section 6. This is a new provision requiring a person to have his name on the register of agents before he may act as the agent of a vessel. This enables quicker control of agents.

~~Sec~~. Sec. 6, AS 08.62.187.

(P2, line 10-11) AS 08.03.010(c) Section 7. June 30, 1983 is the termination date for the Board of Marine Pilots.

→ AS 08.03.010(6)(8) -

(P2, line 12) Section 8. This section repeals the existing termination date, June 30, 1980, for the Board of Marine Pilots.

(P2, line 13) Section 9. The effective date of this act is June 30, 1980, the date upon which the Board of Marine Pilots is scheduled to terminate.

If you have any further questions regarding this matter, please contact me.

TBC:ljb

ORDER TO APPLY THE STANDARDS IN THE REGULATIONS. THERE HAS BEEN A NEED FOR SUBSTANTIATING THE SETTING OF THE FEES.

(SEC. 08.62.140)
P. 2, Ls. 1-3

SECTION 4 INCREASES THE FEES PROVIDED FOR UNDER EXISTING LAW. AN ADDITIONAL BIENNIAL REGISTRATION FOR AGENTS IS ADDED. AGENTS HAVE NOT BEEN REGISTERING AND BY ATTACHING A FEE TO THE REGISTRATION IT IS BELIEVED THAT REGISTRATION FOR AGENTS WOULD SEEM MORE IMPORTANT AND HENCE MORE AGENTS WOULD REGISTER. REGISTRATION TAKES ON MORE VALUE WHEN A FEE IS ATTACHED.

(SEC. 08.62.150(A))
P. 2, Ls. 4-5

SECTION 5. UNDER CERTAIN SPECIFIED CONDITIONS THE BOARD MAY IMPOSE A DISCIPLINARY SANCTION ON A PERSON. SECTION 5 ADDS, AS A CONDITION WHICH WOULD ALLOW THE BOARD TO DENY A LICENSE, REVOKE A LICENSE, OR SUSPEND A LICENSE, THE REVOCATION OF A FEDERAL PILOTS LICENSE HELD BY A PERSON LICENSED OR SEEKING A LICENSE UNDER THIS CHAPTER. IT IS FELT THAT ONE LOOSING HIS FEDERAL LICENSE IS GROUNDS FOR REVOCATION OF THE STATE LICENSE.

(SEC. 08.62.187)
P. 2, Ls. 7-9

SECTION 6 IS A NEW PROVISIONS REQUIRING A PERSON TO HAVE HIS NAME ON THE REGISTER OF AGENTS BEFORE HE MAY ACT AS THE AGENT OF A VESSEL. THIS ENABLES GREATER CONTROL OF AGENTS.

SENATE BILL 573

BOARD OF MARINE PILOTS

MR. PRESIDENT, I MOVE THE ADOPTION OF SENATE BILL 573, WHICH IS IDENTICAL, AT THIS POINT, TO THE HOUSE BILL FOR THE SAME BOARD. WE HAVE WORKED JOINTLY TO TRY TO PREVENT AN UNNECESSARY AND OFTEN TIME-CONSUMING FREE CONFERENCE COMMITTEE.

(SEC. 08.62.020)
P. 1, LS 16-18

SECTION 1 IS CHANGED TO FORBID A BOARD MEMBER FROM SERVING MORE THAN TWO CONSECUTIVE TERMS, BUT DOES NOT LIMIT THE TOTAL NUMBER OF TERMS WHICH A PERSON MAY SERVE. THE COMMISSIONER OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT OR HIS DESIGNEE IS A MEMBER OF THE BOARD, AND THIS PROVISION DOES NOT APPLY TO HIM. THIS WAS DONE TO ALLOW MORE TURNOVER ON THE BOARD CREATING MORE DIVERSITY.

why?

(SEC. 08.62.040(A)(3)
P. 1, LS. 20-21

SECTION 2 IS AMENDED TO STATE THAT THE BOARD MUST KEEP A REGISTER OF LICENSED PILOTS AND AGENTS, BUT IS NO LONGER REQUIRED TO KEEP A REGISTER OF VESSELS, OPERATORS, AND MANAGERS. "OPERATORS" IS AN UNDEFINABLE TERM IN SEA-GOING LANGUAGE. ANY VESSEL FROM ALL OVER THE WORLD CAN BE IN OUR WATERS AND THE COMPILING OF A LIST IS VIRTUALLY IMPOSSIBLE. LLOYDS OF LONDON COMPILED SUCH A LIST AND IT COMPRISED VOLUMES.

why not define reason for managers being excluded.

(SEC. 08.62.040(A)(4))
P. 1, LS. 23-26

SECTION 3 REQUIRES THE BOARD TO ADOPT REGULATIONS ESTABLISHING STANDARDS BY WHICH FEES MAY BE SET AND TO PAY FOR AUDITS IF AN AUDIT IS NEEDED TO COLLECT INFORMATION REQUIRED IN

Introduced: 4/22/80
Referred: Commerce

IN THE SENATE BY THE COMMERCE COMMITTEE

SENATE BILL NO. 573

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act continuing the existence of the Board of Marine Pilots and amending the law relating to its powers and responsibilities; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.62.020 is amended to read:

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the pilot and agent [or manager] members of the board, subject to confirmation by a majority of the members of the legislature in joint session, for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. No person, with the exception of the commissioner or his designee, may be appointed to the board for more than two consecutive terms.

* Sec. 2. AS 08.62.040(a)(3) is amended to read:

(3) keep a register of licensed pilots, and [VESSELS, OPERATORS,] agents [, AND MANAGERS];

* Sec. 3. AS 08.62.040(a)(4) is repealed and re-enacted to read:

(4) adopt regulations under the Administrative Procedure Act (AS 44.62) establishing standards by which pilotage fees may be established, and pay for audits whenever an audit is necessary to collect information needed to apply the standards in the regulations;

* Sec. 4. AS 08.62.140 is amended to read:

Sec. 08.62.140. FEES. The following fees shall be imposed under this chapter when applicable:

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill 573 - An Act continuing the existence of the Board of Marine Pilots and amending the law relating to its powers and responsibilities; and providing for an effective date.
Title
Requested by Commerce Committee Date 4/29/80

II. FISCAL DETAIL
Agency Affected Commerce and Economic Development
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected Regulation and Licensing of Professions
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200	TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400	COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500	EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600	LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No fiscal impact is associated with passage of this bill.

It is also felt that the audits necessary to collect information for the establishment of pilotage fees would not be very large and could be absorbed by the division.

IV. DATE 4/29/80 PREPARED BY Ann Griggs, Director
AGENCY Occupational Licensing
PHONE 465-2534

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Commerce & Economic Development	Commerce Committee	SB 573

DEPARTMENT POSITION

Support

DIVISION DIRECTOR	DATE	Deputy COMMISSIONER	DATE
Occupational Licensing	4/29/80	Bertram L. Wagnon	

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING) HB 1025

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unknown	Unknown

(3) PROGRAM EFFECTS OF BILL

(4) FISCAL IMPACT: ☐ NONE ☒ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

The Department of Commerce & Economic Development, Division of Occupational Licensing supports SB 573.

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

BOARD OF MARINE PILOTS

HB 205
"Oil Spill Liability"

Key to References

(Y) - (yellow cover) - State of Alaska Sunset Review, 1979. Prepared by the Division of Occupational Licensing

(B) - (blue cover) - Division of Legislative Audit Performance Review

(W) - (white cover) - Senate Commerce Committee Public Hearing Testimony, December 10, 1979

1. Examinations - Statutory elimination of the Coast Guard exam as a prerequisite to the State Exam. ~~Redundant.~~ Need both exams
(Y) - p 5, last paragraph; p 6, first paragraph
(B) - p 5, paragraph 4; p 7
(W) - p 2, paragraph 3; p 3, paragraph 1; p 4; p 5, paragraph 4

2. Increase the biennial license fee~~l~~ to $300 (presently $200) and the application fee to $50 (presently $10).
(Y) - p 3; p 11, paragraphs 2 and 3
(B) - p 25
(W) - page 16; page 18

3. Repeal Sec. 08.62.040 (2)(4) which gives the board the power to regulate pilotage fees. I suggest that this power be given to an existing regulation body, such as the Alaska Transportation Commission, which already has a rate structure within it.
(Y) - p 7, last paragraph; p 8
(B) - p 6; p 7, last paragraph; p 12
(W) - p 6 (Capt. Ed Murphy); p 28, paragraph 1; p 30

4. The Board of Marine Pilots should be continued for four more years.
(Y) - p 1
(B) - p 7, paragraph 2
(W) - p 2, paragraph 3; p 6, paragraph 2

5. Repeal Sec. 08.62.110 (AS 30.10 was repealed in 1970) and the portion of Sec. 08.62.120 which states "A license issued under AS 30.10 lapses at the end of calendar year 1970."
(Y) - p 11; p 13 (obsolete)

6. AS 08.62.040(a(3) - repeal vessels in section.
(a) The board shall:
(3) Keep a register of licensed pilots, [vessels], Shippers ~~operators,~~ agents, ~~and managers~~
(Y) - This is a suggestion by OL and Elaine Garrett may wish to comment on this. Evidently there is no way OL is able to keep a register on all vessels. They are performing this function for the Board of Marine Pilots.

7. Members of the Board may be appointed to serve no ~~more~~ more than two consecutive full terms, excluding the Commissioner.

7. Section 08.62.150 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.

8. In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.040(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.

BOARD OF MARINE PILOTS

1. Section 08.62.040(4) should be amended to read:

The Board shall:

(4) regulate pilotage fees and consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), justifying the setting of these fees. audits ~~required~~ by regulation to carry out this section will be paid for by the Board.

OR

The Board shall:

(4) regulate pilotage fees and develop specific regulations to substantiate these fees.

(a) the Board shall establish regulations for input by marine pilots, industry, and public in the setting of these fees.

2. AS 08.62.040 (a) (3) Repeal [vessels] [operators] and [managers] in section.

(a) The Board shall:

(3) Keep a register of licensed pilots and agents. Evidently, vessels with over 1600 gross tons of cargo, or those vessels which carry dangerous cargo (chemicals, etc.) must give 24-hour notice to the Coast Guard before their arrival to the Captain of the particular port. (Registry, etc.)

Operators and managers are not proper terms.

3. Agents who represent ships subject to the state pilotage Act shall pay a biennial registration fee of $100.00.

The agents are not paying any registration fee at this time and by doing so they would be more likely to register. There is evidently a large number of agents who are not registered at this time and this suggestion could help eleviate this problem.
The pilots are required to pay a fee so the agents should also. This would also give the general fund more monies which might allow more than one meeting a year by the Board of Marine Pilots.

BOARD OF MARINE PILOTS

For the Committee's information see attached letter from the Department of Transportation, State of Washington, regarding the procedures in establishing their pilotage fees.

STATE OF WASHINGTON
Dixy Lee Ray
Governor

DEPARTMENT OF TRANSPORTATION
Washington State Ferries, Seattle Ferry Terminal
Seattle, Washington 98104 206/464-7800
BOARD OF PILOTAGE COMMISSIONERS

October 23, 1979

Ms. Elaine Garrett
Department of Commerce & Economic
Development
Division of Occupational Licensing
Pouch D
Juneau, AK 99811

Dear Ms. Elaine Garrett:

This letter responds to your telephone inquiry as to how pilotage tariffs are set in Washington State.

The Board of Pilotage Commissioners is charged with the annual setting of pilotage fees (RCW 88.16.035(4)). A copy of the current pilotage act is attached. For many years it has been the practice that the pilots associations, and the Puget Sound Steamship Operators Association (their pilotage committee) will negotiate a level of fees to which both sides ultimately come to an agreement. With previous communication, as the negotiations progress, the Board will set a hearing date to hear testimony and ask questions of the two sides as to how the agreement was reached. Because of the agreement between the parties, the Board is usually inclined to adopt the rates as proposed. The rate hearings are therefore usually very short in duration and when completed the usual monthly meeting is commenced (the hearing is set on the day of the regular meeting).

Last year the Grays Harbor pilots received a 7% increase; the Puget Sound pilots received a rate increase of 8.3%, covering an 18 months period. Negotiations are commencing now for the next round.

As you can see the Board spends very little time in the actual tariff making process. We feel this is better handled by the parties directly involved, i.e., the ones providing the services and the ones paying the bills.

Copies of the two current tariffs are attached along with copies of minutes of the two hearings at which they were adopted.

We hope this information will be of assistance to you in your efforts to establish your next set of tariff changes. If any members of the Commission or your staff are interested, our Board meetings are held the second Thursday of each month. We would be delighted to have you attend so as to exchange matters of mutual interest and concern.

Please let us know if we can be of further assistance.

Sincerely,

BOARD OF PILOTAGE COMMISSIONERS

Richard A. Berg
Chairman

RAB:. ht
enc.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K—STATE CAPITOL
JUNEAU 99811

September 5, 1975

H. Phillip Hubbard
Deputy Commissioner
Department of Commerce
Pouch D
Juneau, Alaska 99811

Re: Tariffs for licensed pilots on enrolled ships (AS 08.62.040, AS 08.62.180, 12 AAC 56.160(j))

Dear Deputy Commissioner Hubbard:

You have requested an opinion from the Attorney General whether or not the Board of Marine Pilots has statutory authority to regulate tariffs charged by licensed pilots employed on enrolled ships. It is the opinion of this department that the board does have such authority. The rationale for this conclusion is set out below.

The powers and duties of the board are set out in AS 08.62.040(a), which reads in part as follows:

> (1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;
>
> # # # # * *
>
> (4) regulate pilotage fees; . . . .

This statute then gives the board authority to regulate services by licensed pilots on specified waterways to assure protection of shipping, the safety of human life and property, and to regulate tariffs charged by licensed pilots for their services.

Under As 08.62.180(1), "vessels under enrollment" are explicitly excepted from the requirements of AS 08.62. However, the board has promulgated regulation 12 AAC 56.160(j) which reads as follows:

> When a pilot licensed under AS 08.62 is employed on an enrolled ship, the same regulations [as for ships not excepted from the requirements of AS 08.62] apply.

It is generally held that an express exception in a statute "comprises the only limitation on the operation of the statute and no other exception will be implied." 1/ In the matter at hand, the fact that AS 08.62.180(1) provides an express exception for enrolled vessels does not require an implied exception from the board's tariff regulations for licensed pilots employed on those vessels.

The enrolled ship exception in AS 08.62.180(1) does not expressly extend to licensed pilots employed on such vessels. That is, the board is authorized and has the duty to establish qualifications of licensed pilots to provide for examination of pilots and their licensing, and to provide for efficient and competent pilot service, as well as, to regulate pilotage fees for licensed pilots regardless of whether the vessel in question is enrolled. One might at first view this result as indirect regulation of the enrolled vessels themselves, in violation of AS 08.62.180(1). However, owners of enrolled vessels are not required to take on licensed pilots while in Alaskan waters. These owners are free to go elsewhere for pilotage advice.

Therefore, it is the opinion of this department that the board is authorized under AS 08.62.040 to regulate tariffs charged by licensed pilots employed on enrolled ships. And so, 12 AAC 56.160(j) is a valid regulation pursuant to this authority.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Wilson Condon
Deputy Attorney General

WC:chp

1/ 2 A Sutherland Statutory Construction §47.11 (4th ed.)

FROM: DANIEL J. PAUL

AMERICAN INSTITUTE OF MERCHANT SHIPPING
1625 K Street, N.W., Suite 1000, Washington, D.C. 20006
Telephone 202/783-6449
Telex: 89-424 AIMSHIP WSH

February 29, 1980

Honorable W. E. Bradley
Chairman, Senate Commerce Committee
State of Alaska
State Capitol
Pouch V — Mail Stop 3100
Juneau, Alaska 99811

Dear Senator Bradley:

At the January 30, 1980, Sunset Hearings on the Board of Marine Pilots held by the House Commerce Committee in Juneau, I presented testimony on behalf of the American Institute of Merchant Shipping (AIMS). During discussions following my prepared testimony, I was requested to categorize AIMS' recommendations into statutory and regulatory proposals. I am pleased to respond at this time to that request, and would also like to take this opportunity to offer further comment on other issues not fully explored during the Hearing which may have a bearing on your deliberations.

With respect to categorizing AIMS' recommendations into statutory or regulatory proposals, I offer the following:

Licensing State Pilots

1. Continue to require Federal pilotage endorsements as a prerequisite to State pilotage.

   No action is requested. This requirement is included under 12 AAC 56.030(2).

2. Eliminate those State license examination requirements which duplicate Federal pilotage examinations.

   It is recommended that language be added to AS 08.62.040(2) permitting elimination of examination requirements

3. Seek active USCG liaison with the Board of Marine Pilots.

It is recommended that the Board of Marine Pilots be encouraged to solicit active liaison with the U. S. Coast Guard regarding establishment of appropriate guidelines for pilot qualification, examination, recertification and discipline. In this regard, we encourage the State to request such a U. S. Coast Guard representative to be stationed in, or be in close contact with, U. S. Coast Guard Headquarters in Washington. This will ensure uniformity of application nationwide.

Pilot Recertification

As indicated in AIMS' Testimony, recertification procedures are too vague to assure that the intent of the legislature is met. In addition, the USCG will, in the near future, issue new procedures for recertification of Federal pilots. AIMS proposes that a committee of interested parties, including the pilots, industry, USCG and Board of Members be established to identify and recommend statutory or regulatory changes to strengthen this most important area.

Pilot Discipline

1. Clarify the terms "incompetent" and "misconduct."

This subject should be included in the scope of the previously recommended Committee's work.

(2.) Suggest Alaska standards for revocation or suspension of State pilot licenses be established similar to USCG standards and procedures for revocation or suspension of Federal pilot licenses.

AIMS proposes Section 08.62.160 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.

Regulation of Fees

1. Provide more detailed criteria for evaluating pilotage rate changes.

Section 08.62.040(4) should be amended to require that

individual pilot compensation must be adequate, but not excessive, to assure that qualified personnel are attracted to the service, and that consideration must be given to difficulty of pilotage, length of time on the job, hours on standby, area standards of living, ratio of time off to time worked, benefits, necessary expenses, including pilot boat cost if required, and equitable distribution of these costs to the users of the pilotage service.

2. Require annual financial audit of pilot associations by state auditors with the audit available to the public.

In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.040(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.

Board Composition

(1.) Provide for tanker industry representation on the Board.

It is proposed that AS 08.62.101 be amended to specify that one industry member of the Board be a representative of the tanker industry. This member could make a significant contribution to the Board through the industry's resources and experience. In order to assure that a person of sufficient experience and knowledge is available for service to the Board, the State residency requirement for that representative should also be expanded to permit any U.S. citizen to qualify for appointment.

Regulation of Enrolled Vessels

(1.) Eliminate those Sections of State Statute AS 08.62 added by passage of HB 510 in 1977 because they conflict with Federal law.

AS 08.62.185 should be repealed in its entirety for reasons already presented in AIMS' testimony.

In addition to clarifying AIMS' proposals to the Committee, I would like to discuss more fully two statements which were made by others during the Hearings which were inaccurate.

The first was that pilots assume responsibility for the safe navigation of the vessel when piloting. This statement is not consistent with the widely recognized master/pilot relationship which, by Federal and international law, holds the master fully and ultimately responsible for the safe navigation of the vessel at all times except when transiting the Panama Canal. The pilot, whether required by law or not, acts as an advisor to the master with respect to local conditions. Any orders which the pilot may give to the helmsman are given under the direct supervision of the master and with his approval. The master has the responsibility and authority to countermand any order given by the pilot, or to relieve the pilot if he believes the safety of the ship is being jeopardized.

A second statement was made that Federal, or employee, pilots are influenced by the vessel owner to "maintain schedule or move the vessel with unacceptable margins of safety," and therefore the State pilot "places a higher priority on the protection of life, property and the environment." This argument is obviously without merit when one considers the owner's investment in his ship, its cargo and crew and the social and financial consequences which would result from a vessel casualty. No one has more to lose than the U.S. ship owner when safety is not the paramount consideration in vessel operation.

Furthermore, it is not necessary for a Federal pilot to be an employee of the shipowner or operator. Independent Federal pilot services are available at many U.S. ports and provide both channel navigation and docking pilot services.

In closing, let me thank you again for the opportunity to express AIMS' views on this most important matter. I will be happy to try to provide you and other members of the Committee with any further information you may request.

Very truly yours,

Mark R. Johnson
Assitant to the Director
of Marine Affairs

/for/ Daniel J. Paul, Jr.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 28, 1980

SUBJECT: Section-by-section analysis of SB 573 dealing with the Board of Marine Pilots (Work Order Number 8525)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have requested a section-by-section analysis of Senate Bill 573 entitled: "An Act continuing the existence of the Board of Marine Pilots and amending the law relating to its powers and responsibilities; and providing for an effective date."

Section 1. This change forbids a board member from serving more than two consecutive terms, but does not limit the total number of terms which a person may serve. The commissioner of the Department of Commerce and Economic Development or his designee is a member of the board, and this provision does not apply to him.

Section 2. The board must keep a register of licensed pilots and agents, but is no longer required to keep a register of vessels, operators, and managers.

Section 3. Under existing law the board has the duty to regulate pilotage fees. This section requires the board to adopt regulations establishing standards by which fees may be set and to pay for audits if an audit is needed to collect information required in order to apply the standards in the regulations.

Section 4. The fees provided for under existing law are increased. An additional biennial registration fee is added.

Section 5. Under certain specified conditions the board may impose a disciplinary sanction on a person. This section adds, as a condition which would allow the board to deny a license, revoke a license, or suspend a license, the revocation of a federal pilots license held by a person licensed or seeking a license under this chapter.

Section 6. This is a new provision requiring a person to have his name on the register of agents before he may act as the agent of a vessel.

Section 7. June 30, 1983 is the termination date for the Board of Marine Pilots.

Section 8. This section repeals the existing termination date, June 30, 1980, for the Board of Marine Pilots.

Section 9. The effective date of this act is June 30, 1980, the date upon which the Board of Marine Pilots is scheduled to terminate.

If you have any further questions regarding this matter, please contact me.

TBC:ljb

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 13, 1980

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Your Senate Commerce Committee has had under consideration for "Sunset" review the Board of Marine Pilots pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, members of the board testified in person or by teleconference. The Committee considered the proposed budget of the board for FY 1981 and particularly examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

Guided, in part, by the report prepared by the Legislative Audit Division the Committee took into consideration the factors required to be considered under AS 44.66.050(c).

The Committee feels it has adequately addressed the recommendations and categories required under AS 44.66.050(d), and recommends that the Board of Marine Pilots be continued for another four years, that is, that the repealer with regard to the activities of the board be amended to read June 30, 1984.

A bill will be introduced by the Commerce Committee to implement the recommendations in this report.

Respectfully submitted,

Brad Bradley

Senator Brad Bradley
Chairman
Senate Commerce Committee

BB/bm

08.62.020

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (sec 2 ch 106 SLA 1970)

Sec. 08.62.030. MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (sec 2 ch 106 SLA 1970)

08.62.040

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;

(2) consistent with the law, adopt regulatons, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots, vessels, operators, agents and manager;

(4) regulate pilotage fees; and

(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (sec 2 ch 106 SLA 1970)

08.62.140

Sec. 08.62.140. FEES. The following fees shall be imposed under this chapter when applicable:

(1) application fee..... $ 10
(2) biennial license fee..... $200
(sec 2 ch 106 SLA 1970)

08.62.150

Sec. 08.62.150. DENIAL, REVOCATION OR SUSPENSION. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

(1) is incompetent in the performance of his pilotage duties;

(2) is habitually intoxicated;

(3) illegally uses or sells narcotic or hallucinogenic drugs;

(4) makes a false statement to obtain a license;

(5) violates a provision of this chapter or a regulation adopted under it; or

(6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

(1) the reason for the license denial, revocation or suspension has been remedied; and

(2) the period of suspension has been served and all fines imposed under this chapter have been paid. (sec 2 ch 106 SLA 1970)

THE BOARD OF MARINE PILOTS STATUTES

08.03.010.

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Board of Chiropractic Examiners (AS 08.20.010);
(2) Board of Dental Examiners (AS 08.36.010);
(3) State Medical Board (AS 08.64.010);
(4) Board of Nursing (AS 08.68.010);
(5) Board of Dispensing Opticians (AS 08.71.010);
(6) Board of Examiners in Optometry (AS 08.72.010);
(7) Board of Pharmacy (AS 08.80.010);
(8) Board of Veterinary Examiners (AS 08.98.010);
(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
(10) Board of Nursing Home Administrators (AS 08.70.010);
(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.010);
(2) Board of Barber Examiners (AS 08.12.010);
(3) Collection Agency Board (AS 08.24.011);
(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);
(5) Board of Electrical Examiners (AS 08.40.010);
(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
(7) Guide Licensing and Control Board (AS 08.54.010);
(8) Board of Marine Pilots (AS 08.62.010);
(9) Real Estate Commission (AS 08.88.011);
(10) Board of Welding Examiners (AS 08.99.010);
(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

Sec. 08.01.100. LICENSE RENEWAL, LAPSE AND REINSTATEMENT. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

Sec. 08.01.105. PENALTY FOR IMPROPER PAYMENT. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor.

Sec. 08.01.110. DEFINITIONS. In this chapter

(1) "board" includes the boards and commissions listed in sec. 10 of this chapter;
(2) "department" means the Department of Commerce and Economic Development;
(3) "commissioner" means the commissioner of commerce and economic development;
(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in sec. 10 of this chapter;
(5) "licensee" means any person who holds a license;
(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in sec. 10 of this chapter.

CHAPTER 62. MARINE PILOTS

Article
1. Board of Marine Pilots (secs 08.62.010 - 08.62.040)
2. Licensing (secs 08.62.080 - 08.62.150)
3. General Provisions (secs 08.62.160 - 08.62.200)

Revisor's note (1970) - In ch. 106, SLA 1970, AS 08.62 was incorrectly designated AS 08.87.

ARTICLE 1. BOARD OF MARINE PILOTS

Section
10. Creation and membership of board
20. Appointment and term of office
30. Meetings
40. Powers and duties

Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Marine Pilots. It consists of two pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, two agents of managers of vessels subject to this chapter, two public members in accordance with AS 08.01.025, and the commissioner or his designee. Not more than one pilot and one agent or manager

shall be from any one judicial district. All members of the board shall be residents of the state. (sec 2 ch 106 SLA 1970; am sec 8 ch 258 SLA 1976) (Eff. of amendment. The 1976 amendment inserted "two public members in accordance with AS 08.01.025" in the second sentence.)

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (sec 2 ch 106 SLA 1970)

Sec. 08.62.030. MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (sec 2 ch 106 SLA 1970)

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;
(2) consistent with the law, adopt regulatons, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;
(3) keep a registor of licensed pilots, vessels, operators, agents and manager;
(4) regulate pilotage fees; and
(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (sec 2 ch 106 SLA 1970)

ARTICLE 2. LICENSING

Section
80. License requirement
90. Application
100. Qualifications
110. Previous licensure
120. Duration, renewal
130. Lapsed license
140. Fees
150. Denial, revocation or suspension

Sec. 08.62.080. LICENSE REQUIREMENT. No person may pilot a vessel subject to this chapter unless he is licensed under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.090. APPLICATION. (a) A person who desires to be licensed under this chpater shall apply in writing to the department.

(b) The application shall provide the information and be made on a form prescribed by the board. (sec 2 ch 106 SLA 1970)

Sec. 08.62.100. QUALIFICATIONS. A person is entitled to a license under this chapter if he

(1) is of good moral character;
(2) is a citizen of the United States;
(3) passes the examination given by the board; and
(4) qualifies under the regulations adopted under section 40(a)(2) and (b) of this chapter. (sec 2 ch 107 SLA 1970)

Sec. 08.62.110. PREVIOUS LICENSURE. A license that was issued under AS 30.10 is considered as having been issued under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.120. DURATION, RENEWAL. A license issued under this chapter shall be renewed biennially on dates set by the department. A license issued under AS 30.10 lapses at the end of calendar year 1970. A license issued between May 7, 1970 and the end of 1970 shall be issued for a fee of $100. A license shall be renewed without examination upon the payment of the biennial license fee. (sec 2 ch 106 SLA 1970)

Sec. 08.62.130. LAPSED LICENSE. A lapsed license may be reinstated without examination if it has not remained lapsed for more than two years. However, if the license is lapsed for less than two years and the board has reason to believe that the person applying for reinstatement of his license in incapable or incompetent to carry out the duties of a licensed marine pilot, the board may require the applicant to take and pass the examination given by the board. (sec 2 ch 106 SLA 1970; am sec 1 ch 22 SLA 1973)

Sec. 08.62.140. FEES. The following fees shall be imposed under this chapter when applicable:

(1) application fee..... $ 10
(2) biennial license fee..... $200
(sec 2 ch 106 SLA 1970)

Sec. 08.62.150. DENIAL, REVOCATION OR SUSPENSION. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

(1) is incompetent in the performance of his pilotage duties;
(2) is habitually intoxicated;
(3) illegally uses or sells narcotic or hallucinogenic drugs;
(4) makes a false statement to obtain a license;
(5) violates a provision of this chapter or a regulation adopted under it; or
(6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

(1) the reason for the license denial, revocation or suspension has been remedied; and
(2) the period of suspension has been served and all fines imposed under this chapter have been paid. (sec 2 ch 106 SLA 1970)

ARTICLE 3. GENERAL PROVISIONS

Section
160. Mandatory employment of licensed pilots
170. Pilot's lien for compensation
180. Exemptions
190. Penalty
200. Definitions

Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel subject to this chapter navigating the inside coastal waters of Alaska as determined by regulations shall employ a pilot holding a valid license under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.170. PILOT'S LIEN FOR COMPENSATION. Each vessel, its tackle, apparel and furniture and the owner of the vessel are jointly and severally liable for the compensation of a pilot employed on the vessel and the pilot has a lien on the vessel, her tackle, apparel and furniture for his compensation. (sec 2 ch 106 SLA 1970)

Sec. 08.62.180. EXEMPTIONS. This chapter does no apply to

(1) vessels under enrollment;
(2) fishing vessels registered in the United States or in British Columbia, Canada;
(3) motorboats as defined in sec. 1 of the Federal Motorboat Act of 1940 (54 Stat. 163; 46 U.S.C., sec. 526 et seq.);
(4) vessels of United States registry of less than 300 gross tons and tow boats of United States registry and vessels owned by the State of Alaska, engaged exclusively

(A) on the rivers of Alaska; or
(B) in the coastwise trade on the west coast of the United States including Alaska, Hawaii, and British Columbia, Canada;

(5) vessels of Canada, including Canadian cruiseships, engaged in frequent trade between British Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those of United States registry; and
(6) pleasure craft. (sec 2 ch 106 SLA 1970; am sec 1 ch 43 SLA 1972)

Effect of amendment-The 1972 amendment inserted "of United States registry of less than 300 gross tons" after "vessels in (4) and added "or" in (A).

Sec. 08.62.190. PENALTY. A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $1,000 nor more than $5,000. A person who violates any other provision of this chapter or a regulation adopted under it is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $500 nor more than $1,000. (sec 1 ch 34 SLA 1979)

Sec. 08.62.200. DEFINITIONS. In this chapter

(1) "board" means the Board of Marine Pilots;
(2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;
(3) "department" means the Department of Commerce and Economic Development;
(4) "vessel" means all vessels not exempt under 180 of this chapter. (sec 2 ch 106 SLA 1970; am sec 48 ch 218 SLA 1976)

Effect of amendment.-The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraphs (2) and (3).

S T A T E O F A L A S K A

JAY S. HAMMOND

GOVERNOR

BOARD OF MARINE PILOTS

CENTRALIZED LICENSING STATUTE, AS 08.01.

MARINE PILOT STATUTE 08.62.010

MARINE PILOT REGULATIONS 12 AAC 56.010

****

Printed: September 1979

S T A T E O F A L A S K A

JAY S. HAMMOND

GOVERNOR

BOARD OF MARINE PILOTS

CENTRALIZED LICENSING STATUTE, AS 08.01.

MARINE PILOT STATUTE 08.62.010

MARINE PILOT REGULATIONS 12 AAC 56.010

****

Printed: September 1979

BOARD OF PUBLIC ACCOUNT.

WORK ORDER REQUEST FORM

No 8235

KEYWORDS: Sunset

Boards and Commissions

ASSIGNED TO Cook

REQUEST FOR: BILL [XX] RESOLUTION [ ] RESEARCH [ ] OTHER [ ]

SUBJECT Board of Public Accountancy

REQUESTED FOR Senate Commerce BY Bob Aaron EXT. 3834

* DELIVER TO Atta: Christian Basler/Senate Commerce TAKEN BY Cook

INSTRUCTIONS, EXPLANATIONS Senate duplicate of WO 8375 relating to sunset report recommendations on Board of Public Accountancy.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ]

AUTHORIZED TO CONFER WITH

RETURN

TO REQUESTER

APPROVED: BGB Director, Legal Services

Director, Research

REVIEWED

IN 4/1 DUE

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

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LA-L 10

How shoplifting is draining the economy

Bank robbers have been grabbing headlines since the days of Jesse James. Last year they made off with nearly $25 million in cash and negotiable securities. But that is all small potatoes compared with a less glamorous but far more costly crime that is draining upwards of $8 billion a year from U. S. merchants—and which no one has been able to do much about so far.

The crime is shoplifting, and, according to experts, it contributes to productivity losses, saps the vitality of many retail businesses, and redistributes a significant amount of wealth from stores to thieves and fences—which adds up to higher costs for most consumer goods. Merchandise losses and extra security costs, in fact, add an average of 2% to 3% to everything sold by major department stores and grocery and drug chains, speeding up an already overheated inflationary spiral.

In fact, shoplifting appears to be growing faster than most segments of the economy, including the inflation rate. For as prices rise, many consumers are taking out their frustration and anger on the person along the business chain who is closest at hand: the retail merchant. And as such pilferage gains increasing acceptance among many Americans, it is accelerating the growth of a subterranean economy in the U. S., which some economists claim reached a mind-numbing $195 billion in 1977—or about 10% of the recorded gross national product (BW—Mar. 13, 1978).

Even the Internal Revenue Service has belatedly acknowledged the existence of an underground economy where some $100 billion worth of income from legal sources goes unreported—as well as $35 billion from drug peddling, illegal gambling, and prostitution on which no income tax is paid. So far, the IRS has been unable to estimate the tax loss from such white-collar crimes as shoplifting.

Bankruptcies. For the bigger retailers, all this has become an unpleasant fact of doing business. But for smaller merchants, who can afford neither the losses nor the security to keep them in line, shoplifting can mean financial ruin. According to some estimates, one out of three small-business bankruptcies are the direct result of thefts by employees and customers.

Unlike many other social scientists, economists view such crimes as shoplifting as rational acts in which the thief carefully weighs the personal costs and benefits involved. And according to economist William E. Cobb of the West Virginia College of Graduate Studies, who spent a year talking to fences and surveying shoppers in metropolitan Washington, all the benefits are on the side of the shoplifter. Cobb found that the average veteran shoplifter in 1971 was walking off with more than $30,000 worth of merchandise annually. At 1979 prices, a skilled shoplifter could thus be clearing $53,000 a year. "I'd say that's a pretty good occupation," says Cobb, who also found that only 1 out of 1,250 shoplifters ever sees the inside of a jail cell. And for those who do, almost none ends up behind bars for the act of shoplifting alone. Instead, they are sentenced for such crimes as illegally possessing drugs or weapons when caught by the store detective.

Losses add at least 2% to the prices of most goods. Productivity feels the pinch

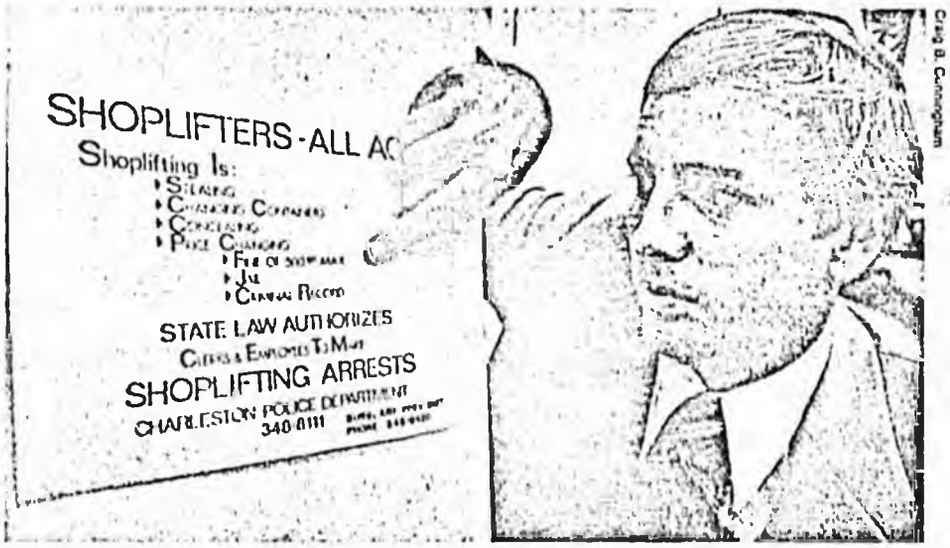
In fact, a good part of the reason why the benefits are all on the side of the shoplifter is that judges are reluctant to imprison them. Many companies in turn, are reluctant to spend time and money prosecuting shoplifters when the courts put them right back on the street. But Cobb and most security experts stress that stores must become tough on thieves. Evidence shows that amateurs, once nabbed, are discouraged from shoplifting again, and that even repeat shoplifters are deterred by being fingerprinted and formally arrested.

But shoplifters prey not just on stores but on the economy as a whole. Edward F. Denison, one of the nation's foremost experts on economic growth and an associate director of the Commerce Dept.'s Bureau of Economic Analysis, says that retail crime takes a significant slice out of U. S. productivity. Extra security means that stores are using money to pay guards and buy electronic equipment that could be spent on adding more consumer goods to the economy. "You are basically adding lots of people and no output," he maintains. And theft means that goods purchased as inventory have disappeared from the store's books and thus, in a sense, from the nation's measurable output.

Compounded losses. Moreover, fences traditionally purchase stolen merchandise for about 25% of its actual value and resell it illegally to stores that are willing to ask few questions in order to buy something at discount. Thus a very real part of the value of the nation's output has been destroyed.

Professional shoplifters often compound the loss still further by returning their stolen goods for a 100% refund to the very stores from which they were taken. And the toll can be even higher—many thousands of times the actual value of the merchandise—because many professional thieves shoplift not to walk off with the store's wares but with an eye to a civil lawsuit for false arrest. Says James J. Kerin, former security director at Macy's New York and now president of security consultant Kerin, Duffy & Hellerer Inc.: "There's no question that a professional shoplifter can kill you [financially]."

As shoplifting has increased, so has the number of professionals living off it. In 1977 police in New York and other



Economist Cobb: Stores have to get tough on shoplifters by prosecuting all thefts.

major U. S. cities reported that members of organized gangs were each netting as much as $1,000 a day stealing better men's and women's clothes. According to Glen R. Dornfeld, who recently retired as security director at Minneapolis-based Dayton's department stores, the professionals today are far more brazen and more violent than any he has ever seen.

Made to order. At Southern California's Von's Grocery Co., C. R. Gresswell, the chain's loss prevention manager, says that he is seeing both more professional shoplifters and more of them carrying weapons. In fact, grocery stores are finding themselves even bigger prey to organized rings, where such easily resold items as meat, cigarettes, and liquor are often shoplifted to order for fences or well-to-do clients.

Economists stress that the only real solution is to change the actual—as well as the perceived—costs of such thefts. West Virginia's Cobb says that stores should redirect the amount they are currently spending on fancy electronic equipment and put their dollars to work in the following areas:

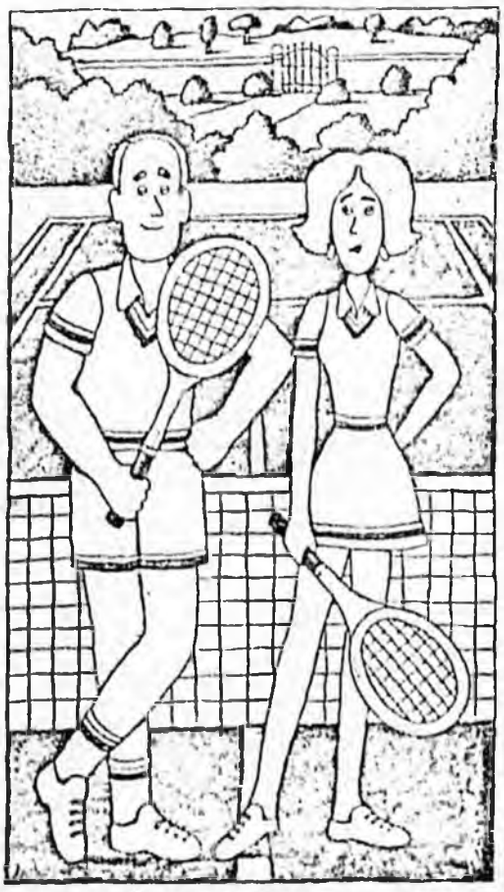
- Prosecuting all shoplifters they catch. Instead, most stores ask apprehended thieves to return the stolen goods and sign a statement admitting the crime and agreeing not to set foot in the store again.
- Advertising the fact that both uniformed and plainclothes detectives are on the watch for potential shoplifters. The idea, Cobb says, is to give thieves the feeling that they can never be sure when they are being observed.
- Mounting dummy cameras and large signs promising dire consequences to shoplifters who are caught—even though such threats may not be valid.
- Hiring actors to pose as shoplifters and periodically staging fake, calm arrests, so that potential thieves get the idea that their misdeeds will be detected. Cobb points out that such ploys have been effective in reducing thefts by employees at major retail chains.

Skilled shoplifters can clear $50,000 a year. Few ever see a jail cell

Dallas-based Zale Corp. claims quite a bit of success using some of these methods, plus some more traditional ones. The company has started a special program to train employees in spotting common shoplifting tricks, has installed a network of closed-circuit cameras, and is busy redesigning its 1,723 stores to eliminate any blind spots where thieves could go to hide merchandise under their clothes or in dummy gift boxes. But most important, says Harry D. Johnson, vice-president for loss prevention, Zale now has a company-wide policy of prosecuting all shoplifters. "Everything has to be done," he says, "to make it difficult for the shoplifter to operate in private."

The big dilemma with all programs aimed at discouraging shoplifters, of course, is that they tend to discourage legitimate shoppers as well. With uniformed guards, ominous-sounding posters, and all kinds of electronic spy equipment around, "people begin to think they are in an armed camp," warns Leonard F. Smith, executive director of the American Management Assn.'s Crimes Against Business Project. Thus, retail stores—particularly those with a wealthier clientele—are constantly faced with the trade-off of more surveillance and less theft or less surveillance and more sales.

But far more significant than this trade-off is the one affecting the cost-benefit ratio for shoplifting itself. Unless repeat shoplifters are treated more like house burglars or bank robbers, and unless the courts and society stop dismissing shoplifting as penny-ante stuff, the toll on inflation and U. S. productivity will just keep mounting. ■



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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 3, 1980

SUBJECT: A bill continuing the existence of the Board of Public Accountancy (Work Order No. 8435)

TO: Senate Commerce Committee
Attn: Christian Basler, A.A.

FROM: Tamara Brandt Cook TBC
Legislative Counsel

Here is the bill you requested continuing the existence of the Board of Public Accountancy. The House Commerce Committee considered this board for "sunset" review in House Journal Supplement No. 29. The committee recommended that the changes suggested in the Performance Review of the Board of Public Accountancy dated October 1, 1979 be made, and that, with these changes, the Board be continued.

I have attempted to incorporate the recommendations of this report into the enclosed act. However, several of the changes recommended cannot be appropriately or adequately dealt with in a bill which deals specifically with the Board of Public Accountancy. I suggest that the following recommended changes be incorporated into another bill dealing with the Department of Commerce and Economic Development, rather than with any one particular board.

(1) Recommendation No. 2 suggests that board members be appointed in a timely fashion. I have amended a provision in the enclosed act to require that members of the Board of Public Accountancy be appointed within 60 days of a vacancy; however, a section requiring the governor to make board appointments is currently in the chapter dealing with the department as a whole, and this could be amended to affirmatively require that appointments of all the board members be made within 60 days or within some other reasonable period of time.

(2) Recommendation No. 4 suggests that the board be required to tape record its meetings and that the department be required to keep these tapes on file as public records for 2 years. In the enclosed bill, I have provided that the board shall tape record its meetings and turn these tapes over to the department; however, a statute requiring the department to maintain the tapes for 2 years is probably in order.

(3) Recommendation No. 7 is addressed specifically to problems with record keeping procedures which exist in the Department of Commerce and Economic Development. Requirements as to how the department shall maintain and update records for all boards ought to be contained in a bill specifically directed at the department.

(4) Recommendation No. 8 is also addressed specifically towards the department. It recommends that the department handle investigations in a more comprehensive, efficient and timely manner. In the enclosed act, I provided that the department will handle investigations for the board of public accountancy; but any requirement dealing with how the department will perform this function ought to be incorporated into legislation directed specifically at the department, rather than at this particular board.

If it is your desire that recommended changes to the Department of Commerce and Economic Development be made as a condition to continuing the existence of the Board of Public Accountancy, the effective date of the enclosed act ought to be tied to the effective date of a bill incorporating the recommended changes to the department. If I can be of any assistance in this matter, please contact me.

TBC:jdn

Enclosure

STATE OF ALASKA

BOARD OF PUBLIC ACCOUNTANCY
STATUTES
AND
REGULATIONS

PRINTED: SEPTEMBER 1979

Alaska Statutes

Title 8. Business and Professions.

Chapter

01. Centralized Licensing (§§ 08.01.010 — 08.01.110)
02. Miscellaneous Provisions (§§ 08.02.010 — 08.02.020)
03. Termination, Continuation and Reestablishment of Regulatory Boards (§ 08.03.010)
04. Accountancy Act of 1960 (§§ 08.04.010 — 08.04.690)
08. Alaska Integrated Bar Act (§§ 08.08.010 — 08.08.250)
12. Barbers (§§ 08.12.010 — 08.12.280)
16. Basic Sciences (Repealed)
18. Construction Contractors (§§ 08.18.011 — 08.18.171)
20. Chiropractors (§§ 08.20.010 — 08.20.220)
24. Collection Agencies (§§ 08.24.011 — 08.24.380)
28. Cosmetologists and Hairdressers (§§ 08.28.010 — 08.28.320)
32. Dental Hygienists (§§ 08.32.010 — 08.32.190)
36. Dentistry (§§ 08.36.010 — 08.36.360)
40. Electrical Administrators (§§ 08.40.005 — 08.40.200)
42. Morticians (§§ 08.42.010 — 08.42.130)
44. Embalmers (Repealed)
48. Architects, Engineers and Land Surveyors (§§ 08.48.011 — 08.48.351)
52. Explosives Handlers (§§ 08.52.010 — 08.52.080)
54. Guides (§§ 08.54.010 — 08.54.240)
56. Hotels and Boardinghouses (§§ 08.56.010 — 08.56.070)
60. Junk Dealers and Metal Scrappers (§§ 08.60.010 — 08.60.100)
62. Marine Pilots (§§ 08.62.010 — 08.62.200)
64. Medicine (§§ 08.64.010 — 08.64.380)
66. Motor Vehicle Dealers (§§ 08.66.010 — 08.66.090)
68. Nursing (§§ 08.68.010 — 08.68.410)
70. Nursing Home Administrators (§§ 08.70.010 — 08.70.190)
71. Dispensing Opticians (§§ 08.71.010 — 08.71.240)
72. Optometry Law (§§ 08.72.010 — 08.72.310)
76. Pawnbrokers and Secondhand Dealers (§§ 08.76.010 — 08.76.030)
80. Pharmacy Act (§§ 08.80.010 — 08.80.490)
84. Physical Therapists Practice Act (§§ 08.84.010 — 08.84.200)
86. Psychologists and Psychological Associates (§§ 08.86.010 — 08.86.230)
88. Real Estate Brokers and Salesmen (§§ 08.88.011 — 08.88.431)
92. Concert Promoters (§§ 08.92.010 — 08.92.090)
98. Veterinarians (§§ 08.98.010 — 08.98.250)
99. Board of Welding Examiners (§§ 08.99.010 — 08.99.120)

A PERFORMANCE REVIEW OF THE ALASKA STATE BOARD OF PUBLIC ACCOUNTANCY

Conducted By
R.W. Pavitt and Associates, Inc.

Recommendations p. 7 →

A PERFORMANCE REVIEW OF THE ALASKA STATE BOARD OF PUBLIC ACCOUNTANCY

Conducted By
R.W. Pavitt and Associates, Inc.
and
Homan-McDowell Associates

October 1, 1979

Commissioner, Department of Commerce and Economic Development	Charles Webber
Deputy Commissioner, Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the Alaska State Board of Public Accountancy

President	Charlotte H. Stuart
Member	James Dieringer
Member	L. Pete Hogan
Member	Vernon R. Johnson
Member	Roxanne Kemp
Member	Vacant
Member	Vacant

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

November 2, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the Division of Legislative Audit was mandated to perform a "Sunset" review of the Alaska State Board of Public Accountancy.

As many staff members of the Division hold Certified Public Accountant certificates, and are subjected to regulation by that Board, the Division lacked the apparent independence necessary to perform the review.

The Division contracted with R.W. Pavitt and Associates, Inc. and Homan-McDowell Associates (joint venture) to perform this review. Both firms are reputable management consultant businesses that have been in operation for several years.

Due to legal ramifications surrounding the confidentiality of investigative records maintained in the Division of Occupational Licensing, the Division of Legislative Audit excluded the investigative effort from the contractor's audit scope and performed the review of confidential records at the direction of the contractor. Except for the investigative aspects of this report, the content represents only the findings and conclusions of the contractor.

We feel this report discharges our responsibility, mandated under Title 24 and 44. The report is submitted for your review.

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

3 01LH

R. W. PAVITT AND ASSOCIATES, INC.
AND
HOMAN-McDOWELL ASSOCIATES

September 28, 1979

Legislative Audit Division
State of Alaska
Pouch W
Juneau, Alaska 99811

Attention: Merle R. Jenson, Deputy Legislative Auditor

Dear Mr. Jenson:

In accordance with the Contract for Services between the Legislative Audit Division and our firm, we have completed a performance review of the Alaska State Board of Public Accountancy using guidelines and standards established in Alaska Statutes for such "sunset" audits.

The report, entitled A PERFORMANCE REVIEW OF THE ALASKA STATE BOARD OF PUBLIC ACCOUNTANCY, is hereby submitted.

Respectfully,

R. W. Pavitt, AICP
President
R. W. Pavitt and Associates, Inc.

Frank M. Homan
Partner
Homan-McDowell Associates

130 SEWARD STREET • ROOM 205
JUNEAU, ALASKA 99801 • (907) 586-2066

A PERFORMANCE REVIEW OF THE ALASKA STATE BOARD OF PUBLIC ACCOUNTANCY

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (Sunset legislation), a review of the Board of Public Accountancy was conducted to examine Board activities, operations, policies and accomplishments. The purpose of the review is to determine if the Board has operated in a fair, effective, efficient and economical manner in the performance of its statutory functions, duties and responsibilities.

As required by AS 44.66.050, this report shall be considered during the legislative oversight procedure in determining whether the Board of Public Accountancy should be continued or reestablished. The law currently specifies that this Board will terminate on June 30, 1980, but will continue until June 30, 1981 for the purpose of concluding its affairs.

Scope

The major areas studied were the Board's operations, policies, procedures and its examination, licensing, administration, complaint and affirmative action responsibilities. Our review consisted of research, analysis and evaluation of the following:

(1) Applicable Alaska Statutes and Alaska Administrative Code regulations;

(2) Observation of the Board during its August 1 and 2, 1979 meeting in Fairbanks;

(3) Interviews with Board members;

(4) Records and documents of the Board and the Division of Occupational Licensing, Alaska Department of Commerce and Economic Development;

(5) Licensing requirements of other states;

(6) Survey questionnaires sent to 222 resident State licensed accountants;

(7) Interviews conducted with personnel of:

Division of Occupational Licensing
Consumer Affairs Agency (Department of Law)
Human Rights Commission (Office of the Governor)
Office of the Ombudsman
Division of Equal Employment Opportunity (Dept. of Admin.)
Division of Budget and Management (Office of the Governor)
Legislative Finance Division

(8) Complaints filed with:

Division of Occupational Licensing
Consumer Affairs Agency
Human Rights Commission
Division of Equal Employment Opportunity
Office of the Ombudsman

Constraints

This review was constrained by the following limiting factors:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050, nor has it developed and reported performance information with respect to its effectiveness and accomplishments as required by AS 37.07.090.

(2) The Division of Occupational Licensing (hereafter DOL) has not adequately organized or maintained statistics and files relating to the Board to effectively carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

Although regulation of the profession of public accountancy in Alaska dates back to 1949, the Alaska State Board of Public Accountancy was established by the First Alaska Legislature when it adopted the Accountancy Act of 1960 (AS 08.04). An amendment to the Act in 1976 added two public members to the Board, bringing its total membership to seven. (Chapter 258 SLA 1976).

The Accountancy Act of 1960 establishes the Alaska State Board of Public Accountancy and assigns to the Board the following major responsibilities:

1. the promulgation and amendment of rules to "establish and maintain a high standard of integrity and dignity in the profession of public accountancy" (AS 08.04.080)
2. granting of certificates of "Certified Public Accountant" to persons meeting the specified requirements (AS 08.04.100)
3. administering the Uniform CPA examination prepared and graded by the Board of Examiners of the American Institute of Certified Public Accountants (AS 08.04.130)
4. consideration of the qualifications of applicants holding certificates in other states or foreign countries (AS 08.04.220)
5. registration of partnerships and corporations engaged in the practice of public accountancy (AS 08.04.240)
6. granting of licenses as "Public Accountant" to persons meeting the specified requirements (AS 08.04.270)
7. prescribing requirements for continuing education as a prerequisite to renewal of permits to practice (AS 08.04.425)
8. consideration of revocation or suspension of a certificate or license for a cause specified in the Act (AS 08.04.450)
9. consideration of reinstatement of a revoked or suspended certificate or license (AS 08.04.490)
10. consideration of application to the appropriate court for an order enjoining certain unlawful acts (AS 08.04.630)

Except for the exemptions specified in AS 08.04.570, the Accountancy Act of 1960 prohibits the practice of public accountancy by any individual, firm, partnership or corporation not holding a currently valid certificate, license and/or permit to practice in the State of Alaska. (AS 08.04.500 et seq.)

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. Policy decisions affecting these practices are not within the scope of this review, but will require legislative consideration. In debating these issues, the legislative oversight committees should consider the findings and alternatives presented in this report in reaching their decisions.

Report Conclusion

In our opinion, the Alaska State Board of Public Accountancy should be continued. Protection of the public interest is a basic tenet of society and an important responsibility of state government. We believe that state regulation and licensing of the profession of public accountancy is necessary and desirable for the continued protection of the citizens of Alaska.

That conclusion is supported by the following rationale:

- Financial statements, audited and attested by certified public accountants are relied on by many persons required to make judgements on important financial and business transactions. Users of such financial statements cannot reasonably be expected to investigate the individual qualifications and competency of every accountant who performs the attest function.
- State licensing and regulation protects the public from incompetent and fraudulent practitioners.
- State licensing and regulation assures the public that only individuals who have proven themselves skilled and knowledgeable of technical accounting principles and procedures may perform the attest (or audit) function.

- The public interest is advanced when individuals, financial institutions, businesses and government agencies are able to identify and rely on public accountants who have demonstrated professional skill and competence.

Fifty four jurisdictions in the United States including all fifty states, Guam, Puerto Rico, the Virgin Islands and the District of Columbia require that a person must pass the Uniform CPA Examination in order to qualify for a CPA license. Every jurisdiction has found it in the public interest to pass laws regulating public accountancy, and each has established a board of accountancy to administer and enforce the law.

A review of these laws indicates that the experience, educational, age, citizenship and residency requirements vary somewhat from one jurisdiction to another. The requirements of the Alaska Accountancy Act of 1960, as amended, appear reasonable and prudent when reviewed along with the accountancy laws of other jurisdictions.

The Alaska Statute governing public accountancy is clearly designed to set apart those who have met certain qualifications for a license and to restrict the use of the titles of "Certified Public Accountant" and "Public Accountant" to those who have so qualified. The policies and practices of the Alaska State Board of Public Accountancy observed in the conduct of this review appear to be consistent with that objective.

While this report concludes that the Board should continue to regulate the profession of public accountancy and to license practitioners, certain changes need to be implemented in order for the Board to more effectively serve the public. *

The statutory make-up of the Board should be reviewed and amended to provide better representation of the accounting profession and the general public (see Recommendation No. 1).

Appointments should be made in a timely manner to assure that the Board has its full complement of qualified members (see Recommendation No. 2).

The licensing of new applicants as Public Accountants (PA) should be discontinued (see Recommendation No. 3).

Electronic recordings of all Board meetings should be required, and the tapes maintained for two years (see Recommendation No. 4).

The Board should consider and adopt a formal statement of its goals, objectives and policies; and should prepare an annual report of its activities (see Recommendation No. 5).

The statute setting forth qualifications for public members of boards (AS 08.01.025) should be clarified (see Recommendation No. 6)

The Division of Occupational Licensing should establish, implement and maintain improved statistical record-keeping methods and procedures (see Recommendation No. 7).

The Division of Occupational Licensing should handle investigations of complaints related to public accountancy in a more comprehensive, efficient and timely manner (see Recommendation No. 8).

*

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

* The qualifications and conditions of Board membership (AS 08.04.020) should be amended to specify five certified public accountants or public accountants, and two public members.

The statutory structure of the Board presently specifies that "three members shall be certified public accountants, two members shall be public members in accordance with AS 08.01.025, and the remaining members shall be public accountants." (emphasis added)

As of September, 1979, DOL reported the valid individual license count to include 495 certified public accountants (CPA) and only eight public accountants (PA).

It is noted that two of the eight PA's are current Board members who are also CPA's of long standing in Alaska. Board minutes indicate that these persons sought and received their PA licenses for the sole purpose of meeting the statutory requirement that the Board must include two PA's in its membership. Other than these cases (which occurred only after all Alaska PA's had declined invitations to serve on the Board), no new PA license has been issued for many years.

Because there are so few PA's in Alaska, it has become increasingly difficult to fill Board vacancies in this category. While the active PA's currently make up less than 1% of the professional accountants in Alaska, the statute as presently written requires that they constitute 40% of the professional representation on the Board.

Recommendation No. 2

* The Board of Public Accountancy should be brought to its full complement of seven members, and maintained at that strength by means of timely appointments of qualified professional and public members.

Implementation of Alaska's public disclosure law occasioned the resignation of many persons who, because of the confidential nature of their professional relationships, were unwilling to divulge the identity of their clients. The Board of Public Accountancy was no exception, and for a time in the mid-1970s, ceased to function as a duly constituted board.

The combination of resignations, membership requirements (addressed in Recommendation No. 1), slow appointment procedures, and the statutory addition of two public members, created a lack of continuity that has made it difficult for the Board to operate at peak efficiency. The Board is currently two members short of its full complement of seven members.

Board minutes examined indicate that meetings typically extend over a full two day period, and require many hours of diligent concentration and substantial travel of the members. The charge to "establish and maintain a high standard of integrity and dignity in the profession of public accountancy" is taken seriously by the Board. The State as well as the people of Alaska benefit from the many hours of unpaid and dedicated service contributed by members of the Board.

The Board of Public Accountancy is missing valuable input from the accounting profession and the public by not having a full complement of members. We recommend that the Office of the Governor expeditiously appoint qualified new members to the two vacant Board seats, and continue to make appointments or reappointments to this Board in a timely manner.

Target licensing PA's - only CPA's.

Recommendation No. 3

Without affecting the rights and privileges of presently-licensed Public Accountants, the Accountancy Law should be amended to discontinue the licensing of new applicants as Public Accountants.

In litigation involving state regulation of public accountancy, courts throughout the United States have held that only the auditing or attest function (the expression of an independent opinion on the fairness with which a financial statement presents a financial position in conformity with generally accepted accounting principles) is imbued with sufficient public interest to justify regulation by legislation.

Alaska's Accountancy Law establishes two classes of accountants, certified public accountants (CPA) and public accountants (PA). The experience and educational requirements for achieving PA status are substantially less stringent than those for certification as a CPA. Yet, the attest function can be performed by either class of accountant.

Of the 54 jurisdictions regulating public accountancy in the U.S., only 10 (including Alaska) continue to license PA's to perform the attest function under requirements lower than those applicable to certified public accountants. 40 jurisdictions either license only CPA's, or continue to license present PA's as a "dying class". The remaining four boards license PA's on a continuing basis, but do not permit them the attest function. The Comptroller General of the U.S. has established a policy for the General Accounting Office (GAO) which limits qualifications to audit federal programs to CPA's and those PA's who were licensed as of December 31, 1975.

Licensing two classes of professionals on the basis of different standards to perform identical services is neither logical nor does it serve the public interest. Without affecting the status of the five presently active PA's, the statute should be reviewed with the objective of discontinuing the licensing of new applicants as Public Accountants.

Recommendation No. 4

* Electronic recordings should be made of all Board meetings, and the tapes retained by DOL for two years.

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Following acceptance of the minutes of a meeting, the tapes have been re-used or destroyed.

Turnover in Board membership and DOL personnel make such an informal system of record-keeping less than desirable in light of the highly technical and quasi-legal matters with which the Board regularly deals.

Our review of Board meeting minutes for the past five years indicates that the quality and detail of the written and approved minutes varies substantially according to the familiarity of the Licensing Examiner assigned to the Board with its duties, responsibilities, terminology and subject matter. Maintenance of recorded tapes from which transcriptions can be made regarding details of subject matter not covered in the summary minutes would be of value to the Board in the case of defending a particular action, and would lessen concerns regarding the quality or completeness of the written minutes.

Recommendation No. 5

* The Board should adopt a formal statement of goals, objectives and policies; and should prepare an annual report of its activities.

Under sunset legislation, the Board will have the burden of demonstrating a public need for its continued operation. The Board will be expected to develop and adopt formal goals, objectives, policies and programs which provide quantifiable measures. Without identifiable and measurable objectives, neither the Legislature, the Executive branch nor the Board itself can effectively evaluate performance.

The Annual Report of the Board of Public Accountancy should include:

1. The Board's purpose and goal;
2. Objectives and program for the year;
3. Statistics related to Board operations; (number of applicants, pass/fail rate, certificates issued, complaints processed, etc.)
4. Significant developments or Board concerns;
5. Amendments offered to Regulations or Statutes;
6. Board member participation and appointment status;
7. Receipts and disbursements related to Board operations.

The following recommendation is addressed to the legislative committee responsible for reviewing the performance of the Board of Public Accountancy.

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AS 08.01.025 should be amended to state more clearly legislative intent with respect to the qualifications of public members of boards.

> Sec. 08.01.025. Public member. No public member of a board may:
> (1) be engaged in the occupation which the board regulates;
> (2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
> (3) have a direct financial interest in the occupation which the board regulates. (ch 258 SLA 1976)

In a letter dated February 13, 1979, Governor Hammond asked the Legislature to confirm a public member of the Board of Public Accountancy appointed by him to a three year term in July, 1978. The Legislature confirmed the appointment on April 11, 1979.

The person appointed and confirmed as a public member of the Board of Public Accountancy is employed by a CPA firm on a full-time basis in a secretarial capacity.

The question of whether being an employee of a professional practitioner constitutes having a "direct financial interest" in the regulated occupation is not within the scope of this review. Assuming that the legislative committee of reference was made aware of the nominee's employment and yet opted to recommend confirmation, one must assume that no conflict was seen by the Legislature in the matter.

Two respondents to the survey questionnaire (see Appendix D) questioned the propriety of public members being employed by a regulated CPA firm.

Simplification of the legal language contained in Sec. 08.01.025 would, we believe, be in the best interests of the Governor, the Legislature and all professional licensing boards by clearly and unequivocally stating

who may and who may not be appointed and confirmed as public members to these boards.

N.B. The preceding finding and recommendation is not intended to be in any way critical of the Board member involved who, from all records and our personal observation, has been a diligent, sincere and dedicated member of the Board of Public Accountancy.

The following recommendations are addressed to the Division of Occupational Licensing (DOL), and should be read in conjunction with " A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development" October 30, 1978.

Recommendation No. 7

* DOL should develop improved statistical record-keeping methods and procedures.

In our review of the Board of Public Accountancy, DOL personnel were found to be helpful, courteous and cooperative in providing information with respect to the Board's operations and procedures. The essential statistics, records and files relating to the administration of the Board's affairs, however, were found to be confusing, difficult to retrieve, and deficient in systematic organization. Inaccurate input of data into the computer in the past has further complicated an already confused statistical picture.

The roster of licensed individuals and firms printed in May, 1978 (Directory of Public Accountancy) along with supplements printed May, 1978; October, 1978; January, 1979 and April, 1979 contains numerous errors and redundancies. The identification numbers assigned to individuals (CPA's and PA's), partnerships, resident and non-resident corporations are all preceded with the "alpha" designation AA or II, indicating active or inactive status. This inefficient system produces, for example, the issuance of No. AA 0048 to an active resident corporation in Anchorage as well as to an individual CPA in Juneau who has no connection with that corporation.

Statistics on renewals, deaths, lapsed licenses, licensed individuals leaving Alaska, etc. are difficult to retrieve, as is information on geographic distribution of certificate holders, pass/fail rate and other data regarding the Board's area of responsibility.

No systematic record appears to exist regarding annual work-load of the Board or the License Examiner assigned to the Board. Such data as number of applicants for examination, record of applicants sitting for parts of the exam previously failed, License Examiner time devoted to processing applicant files, breakdown of receipts by fee types, number of applicants certified by reciprocity with other states or nations, etc. once organized and established, is simple to maintain, and is extremely helpful in the preparation of Board and Division annual reports and budget requests, as well as providing the Board with information useful in establishing its needs and priorities.

Recommendation No. 8

DOL should handle investigations in a more comprehensive, efficient and timely manner.

Board minutes back to 1975 indicate a high level of frustration with the performance of DOL's investigative unit with respect to the investigation of complaints submitted regarding the field of public accountancy.

Investigative files have been closed on matters that have never been brought to the attention of the Board. Reports of cases pending and matters under investigation are promised at nearly every meeting to be presented "at the next Board meeting", but no such comprehensive investigative report has yet been forthcoming.

As independent contractors, we were not privy to the confidential files of the DOL investigative unit. Consequently, the statistical

data contained in Appendix B was developed by personnel of the Legislative Audit Division.

From Board minutes, the statistical summary of investigative activity and interviews with Board members, public accountants, DOL personnel and others, we conclude that DOL's investigative performance is a weak link in the State of Alaska's chain of public protection from abuses in the field of public accountancy. *

*

ANALYSIS OF PUBLIC NEED

The following analysis of Board activities relates to the public need factors defined in AS 44.66.050(c). This analysis addresses those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or agency has operated in the public interest.

1. The Board of Public Accountancy has established criteria and composed regulations setting forth the standards which an individual must satisfy in order to practice public accountancy in Alaska.

2. The Board has established regulations requiring evidence of continuing professional education (CPE) as a condition of license renewal.

3. The Board has held an average of three meetings per year for the past four years, and conducts examinations twice a year in Anchorage, Fairbanks and Juneau.

II. The extent to which the operation of the board, commission or agency program has been impeded or enhanced by existing statutes, procedures and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. The Division of Occupational Licensing (DOL) has not maintained adequate statistics, records and files for Board use (see Recommendation No. 7)

2. Investigations of complaints regarding public accountancy matters have not been conducted in a timely manner by the investigative unit of DOL (see Appendix B, Recommendation No. 8 and the DOL Performance Audit Report).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. The Board recommended amendments to AS 08.04.020 and AS 08.04.420 as well as deletion of AS 08.04.260. None of these recommended statutory revisions has yet been enacted.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. Individuals who contact Board members or the Licensing Examiner who wish to present information, ask questions or register complaints are invited and encouraged to attend Board meetings.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. Board meetings are held at least three times annually, and are advertised in a timely manner by DOL in Anchorage, Fairbanks and Juneau newspapers.

2. In accordance with the Administrative Procedures Act, the Board has invited interested persons and groups to offer testimony in regard to proposed changes in regulations, and has held advertised public hearings to receive testimony.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which the board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. In the past four years, one complaint concerning the Board's activities was filed with the Ombudsman's Office. The case involved a delay in granting a certificate by reciprocity, and was expeditiously resolved to the Ombudsman's satisfaction

2. No complaints regarding the Board's practices or activities have been recorded by the Division of Occupational Licensing, the Human Rights Commission or the Equal Employment Opportunity Office.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. Complaints against licensed accountants are indications of the quality of practice in the State. In the past five years, only seven complaints were filed with DOL charging licensed professionals with unethical, incompetent or unprofessional conduct.

2. The Board has proposed and adopted regulations and standards with respect to acceptable experience necessary for certification.

3. The Board has proposed and adopted regulations for continuing professional education (CPE) as a requisite for license renewal.

4. The Board exercises diligence to assure that only those individuals who fully comply with the requirements of the statute and regulations are certificated to practice public accountancy.

5. The Board has instituted a "critique program" to assist applicants in meeting the high standards of the profession.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. The application forms for examination and certification do not inquire as to race or sex, nor do they require photos.

2. No evidence has been presented that the Board has discriminated against anyone on the basis of age, race or sex.

Recommendation No. 2

The Board of Public Accountancy should be brought to its full complement of seven members, and maintained at that strength by means of timely appointments of qualified professional and public members.

Implementation of Alaska's public disclosure law occasioned the resignation of many persons who, because of the confidential nature of their professional relationships, were unwilling to divulge the identity of their clients. The Board of Public Accountancy was no exception, and for a time in the mid-1970s, ceased to function as a duly constituted board.

The combination of resignations, membership requirements (addressed in Recommendation No. 1), slow appointment procedures, and the statutory addition of two public members, created a lack of continuity that has made it difficult for the Board to operate at peak efficiency. The Board is currently two members short of its full complement of seven members.

Board minutes examined indicate that meetings typically extend over a full two day period, and require many hours of diligent concentration and substantial travel of the members. The charge to "establish and maintain a high standard of integrity and dignity in the profession of public accountancy" is taken seriously by the Board. The State as well as the people of Alaska benefit from the many hours of unpaid and dedicated service contributed by members of the Board.

The Board of Public Accountancy is missing valuable input from the accounting profession and the public by not having a full complement of members. We recommend that the Office of the Governor expeditiously appoint qualified new members to the two vacant Board seats, and continue to make appointments or reappointments to this Board in a timely manner.

Recommendation No. 3

Without affecting the rights and privileges of presently-licensed Public Accountants, the Accountancy Law should be amended to discontinue the licensing of new applicants as Public Accountants.

In litigation involving state regulation of public accountancy, courts throughout the United States have held that only the auditing or attest function (the expression of an independent opinion on the fairness with which a financial statement presents a financial position in conformity with generally accepted accounting principles) is imbued with sufficient public interest to justify regulation by legislation.

Alaska's Accountancy Law establishes two classes of accountants, certified public accountants (CPA) and public accountants (PA). The experience and educational requirements for achieving PA status are substantially less stringent than those for certification as a CPA. Yet, the attest function can be performed by either class of accountant.

Of the 54 jurisdictions regulating public accountancy in the U.S., only 10 (including Alaska) continue to license PA's to perform the attest function under requirements lower than those applicable to certified public accountants. 40 jurisdictions either license only CPA's, or continue to license present PA's as a "dying class". The remaining four boards license PA's on a continuing basis, but do not permit them the attest function. The Comptroller General of the U.S. has established a policy for the General Accounting Office (GAO) which limits qualifications to audit federal programs to CPA's and those PA's who were licensed as of December 31, 1975.

Licensing two classes of professionals on the basis of different standards to perform identical services is neither logical nor does it serve the public interest. Without affecting the status of the five presently active PA's, the statute should be reviewed with the objective of discontinuing the licensing of new applicants as Public Accountants.

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5. The Board has instituted a "critique program" to assist applicants in meeting the high standards of the profession.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. The application forms for examination and certification do not inquire as to race or sex, nor do they require photos.

2. No evidence has been presented that the Board has discrimminated against anyone on the basis of age, race or sex.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

*

APPENDIX A

BOARD OF PUBLIC ACCOUNTANCY

REVENUE COMPARED WITH EXPENDITURES

Fiscal Years 1969 - 1979
(Unaudited)

Fiscal Year	Revenue[1/]	Expenditures	Difference
1969	$ 2,131	$ 2,289	$- 158
1970	8,865	3,584	+ 5,281
1971	5,605	4,565	+ 1,040
1972	9,605	7,029	+ 2,576
1973	4,585	5,766	- 1,181
1974	14,115	6,108	+ 8,007
1975	6,710	8,388	- 1,678
1976	20,777[2/]	8,243	+12,534
1977	15,135	11,961	+ 3,174
1978	38,700	15,115	+23,585
1979	21,186	19,922	+ 1,264

Note 1

Renewal registration fees are collected once every two years and cause revenues collected in the first year to be significantly greater than revenues collected in the next year.

Note 2

Fees were increased in 1976 and have not been increased since that time. Current fees are presented in Schedule 1.

Note 3

Expenditures include those made by Board members such as travel, per diem and some general support services such as telephone, postage, and examination expenses. They do not include that portion of the D.O.L. administrative expense allocated to the Board of Public Accountancy or of expenditures of other departments such as Department of Law, that may be assisting the Board and D.O.L.

Source: Alaska Division of Occupational Licensing and Annual Reports of the Department of Commerce and Economic Development.

SCHEDULE 1

STATE BOARD OF PUBLIC ACCOUNTANCY

VARIOUS FEES:

Uniform CPA Examination - $50.00 each sitting (fee is not prorated by number of parts taken)

Licensing and Certification Fees - (fees are the same for original certification and for biennial renewals)

Active CPA or PA	-	$ 60.00
Inactive CPA or PA	-	$ 20.00
Resident Partnership	-	$ 60.00
Resident Corporation	-	$ 60.00
Non-Res Partnership	-	$200.00
Non-Res Corporation	-	$200.00
Non-Res Permit (Individual)	-	$200.00

Registration of Office - No Fee

PA Partnerships, Change in Partners - $5.00

* All delinquent renewal fees (60 days past deadline) are subject to a $10.00 penalty fee.

Duplicate license fee - $ 2.00

Duplicate certificate fee - $10.00

APPENDIX B

INVESTIGATION STATISTICS

N.B. -- The scope of this Performance Review required that an analysis be made of complaints received by D.O.L. regarding public accountancy, and the disposition of any investigations conducted. Because the files maintained by the Investigative Section of D.O.L. are considered confidential in nature, the contractor was not allowed access. It was necessary for the contractor to seek assistance from Division of Legislative Audit personnel who have the authority to review confidential files of the various agencies. Personnel from the Division of Legislative Audit prepared a statistical analysis of the complaints received without divulging any confidential information on specific individuals. That analysis is included in this report and forms the basis for conclusions regarding the investigative unit.

The letter on the following page indicates the information requested from the Division of Legislative Audit by the contractor.

In response to this letter, the contractor was supplied the following report from the Division of Legislative Audit:

* * * * *

DEPARTMENT OF COMMERCE - OCCUPATIONAL LICENSING

State Board of Accountancy - Complaints/Investigations

Purpose, Scope & Conclusion - F.Y. 1980

Purpose

To provide R.W. Pavitt & Associates, Inc., and Homan-McDowell Associates with statistical information regarding complaints and investigations filed with the Department of Commerce and Economic Development, State Board of Accountancy.

August 8, 1979

Legislative Audit Division
State of Alaska
Pouch W
Juneau, Alaska 99811

Attention: Merle R. Jenson, Deputy Legislative Auditor

Dear Mr. Jenson:

We have reached a point in the conduct of the Performance Review of the Alaska State Board of Public Accountancy where information is needed with respect to complaints and investigations regarding the practice of public accountancy.

As you know, we do not have access to confidential files, and the available statistical information on investigations is not in a format that is of use to us in our review.

We request your assistance, therefore, in providing us with the following information pertaining to the responsibilities of the Board of Public Accountancy:

1. Number of complaints, 1975-present, by year.

2. Source of complaint...(member of public, Consumer Protection Agency, Board, board member, licensee, etc.)

3. Nature of complaint...(unlicensed practitioner, incompetent performance, overcharging for services, fraudulent or unlawful practices, criminal activity, etc.)

4. Action taken on complaint...(date received by DOL, investigative assignment, time devoted to investigation, etc.)

5. Disposition of complaint...(reported to Board, referred to AG's Office, investigation continued, investigation dropped [reason], investigation closed)

To be of maximum value in the development of review findings, this information should be received no later than August 31, 1979.

Yours truly,

R. W. Pavitt, AICP
President

RWP/bp

Scope

We will review the complaint files provided to us by the Department of Commerce and Economic Development for the period beginning 1975 to present.

Summary of Field Work

Following are statistics compiled from the case files provided to the auditor by the Investigative Unit of the Department of Commerce and Economic Development:

Case files reviewed	38
Duplicate files	(3)
Total Cases	35
Source of Complaints	
Public	15
Consumer Protection	0
Board	5
Licensee	2
Other (& unknown)	13
Total	35
Nature of Complaint	
Unlicensed	14
Incompetent	5
Overcharged	3
Fraud	2
Criminal Activity	6
Other (& unknown)	8
Total	38
Disposition of Complaints	
Reported to Board	6
Pending next Board Meeting	20
Referred to A.G.	2
Investigation Cont.	10
Investigation Closed	25

There are three investigators who work on complaints for the whole Department. Two of these are in Anchorage and one is in Juneau.

Once a complaint is filed ideally a control card is established. The original and fourth copy are kept in Juneau and the duplicate and triplicate are sent to Anchorage. Ideally, copies of complaints for the Anchorage/Juneau area are sent within one week to the appropriate investigator.

Prior to July 1978 all complaints were either kept in alphabetical order or in the licensee's file.

In September 1978 an inventory was taken of those complaints. Old cases were renumbered beginning with 5,000. However, because there are numerous licensee files, it is believed that not all complaints were included in this inventory. Thus, the exact number of complaint files provided for review is questionable.

Numerous cases were closed because of age after the inventory was taken. Additionally, if any cases were marked closed and no documentation existed in the file, it could be because an investigator called from Anchorage informing the Juneau office that the case was investigated and closed.

When cases are assigned the information is placed on the control card.

Information Source: DC&ED, Occ. Lic., Dick Long, Chief Investigator and Sue O'Brien, Adm. Support Tech I.

Comments

The following conditions existed:

1. Cases marked "closed" with the closure dated 9/78 still, one year later, had not gone before the Board.

2. The "unknown" listed cases are the result of lack of documentation in the file to extract such information; and

3. The files contained duplicate copies of documents and/or undecipherable notes on scraps of paper. Dick Long, Chief Investigator was on annual leave during the testing and thus was not available for comments or explanation.

Furthermore we were informed that the possibility existed that additional complaints had been filed other than what we were provided. We were informed that these complaints were in the licensee's file if they existed.

* * * END * * *

The preceding concludes the Division of Legislative Audit report. The following comments are those of the contractor:

A review of Alaska State Board of Accountancy minutes for the past two years shows the continuing difficulty of the Board in acquiring adequate information regarding complaints and investigations.

Date of Board Meeting	Remarks Regarding Investigations and Complaints
September 23, 1977	"The board would like a detailed report from Richard Long, Violations Officer, of the pending investigations on file for the next meeting."
October 17, 1977	No Report
December 2, 1977	No Report
March 17-18, 1978	No Report
August 21, 1978	No Report

September 28-29, 1978	Report by Richard Long, Violations Officer on five cases. Don Hostak, D.O.L. Director "reported that 23 of the 33 pending cases involving the Public Accountancy Board were in the process of being closed. The Board will be asked to approve these actions at a future meeting."
November 30-December 1, 1978	No Report
January 12, 1979	No Report
March 23-24, 1979	"Frank Moore reported on the division's investigations and reports of violations regarding public accounts." "He reported on cases pending and informed the board that there were no cases ready for closure at this time."
August 1-2, 1979	No Report

Further analysis of the information furnished by the Legislative Research Division shows that the 38 cases found in the investigative files of D.O.L. represented cases opened in the following years.

Year	No. Cases Opened
1973	1
1974	0
1975	2
1976	18
1977	3
1978	4
1979	10
Total	38

This seems to be in conflict with a September 12, 1978 letter from the Chief Investigator of D.O.L. to the Division of Legislative Audit which states that (1) there were three complaints filed between July 1, 1977 and June 30, 1978; (2) there was one complaint closed between July 1, 1977 and June 30, 1979; and (3) there were fourteen total number of cases in the file.

Three main problems are evident in this analysis, (1) there is a lack of proper procedure and documentation involving the investigation of complaints and (2) there is a lack of follow-through on closing out cases that have been investigated and presenting them to the Board of Public Accountancy, and (3) complaint cases are not handled in a timely manner since more than half are older than four years.

APPENDIX C

BOARD OF PUBLIC ACCOUNTANCY

STATISTICAL INFORMATION

SCHEDULE 1

Certificates Issued by Year by Type

Fiscal Year	Number Issued	By Examination	By Reciprocity
1961	16	4	12
1963	10	7	3
1965	12	6	6
1967	15	7	8
1969	18	9	9
1970	4	3	1
1971	48	20	28
1972	25	14	11
1973	37	20	17
1974	27	16	11
1975	37	11	26
1976	37	9	28
1977	66	33	33
1978	67	36	31
1979	79	46	33

Note 1

As of August 1979 there were 629 CPA certificates issued.

Source: Files of Licensing Examiner, Division of Occupational Licensing.

SCHEDULE 2

CPA Examination Statistics for
November 1977, May 1978, November 1978, May 1979

ALASKA CANDIDATES: CPA Test Results

	May 1979		November 1978		May 1978		November 1977	
	N	%	N	%	N	%	N	%
Total sitting	141	100%	120	100%	116	100%	112	100%
Total sitting first time	39		27		37		30	
Total taking all four parts	72		64		53		57	
Passed all four parts	6		1		4		1	
Completed test	23		20		20		18	
Total	29	21%	21	17.5	24	21	19	17
Conditioned								
First time	7		7		9		8	
Repeat of all four	8		9		4		5	
First time taking less than four parts	2		1		1		1	
Repeat, taking less than four parts	4		3		2		4	
	21	15%	20	17	16	13	18	16
Added parts to prior conditioning	12	8%	10	8	10	9	8	7
Failed								
First time	22		19		17		20	
Repeat all four	29		28		19		23	
First time-taking less than four parts	5		2		6		1	
Repeat-taking less than four parts	13		6		4		2	
To add parts to a prior condition	10		14		20		21	
	79	56%	69	57.5	66	57	67	60
	141	100%	120	100%	116	100%	112	100%

ALASKA: CPA Test Results

		May 1979		November 1978		May 1978		November 1977	
Auditing:	Pass	31	29%	23	24%	25	29%	22	25%
	Fail	77		73		62		67	
	Total	108		96		87		89	
Theory:	Pass	40	37%	18	21%	22	28%	22	26%
	Fail	68		69		56		64	
	Total	108		87		78		86	
Practice:	Pass	24	25%	20	25%	23	33%	21	29%
	Fail	71		60		47		52	
	Total	95		80		70		73	
Law:	Pass	33	30%	24	26%	29	32%	17	20%
	Fail	76		69		63		69	
	Total	109		93		92		86	

(%) Percentage of students who passed.

Note 1 For more detailed statistics for the years 1973-1978 see: A Profile of Alaskan Certified Public Accounting Candidates, by Charlotte Stuart.

Source: Statistics compiled by Charlotte Stuart, Board of Public Accountancy President

SCHEDULE 3

CURRENT CERTIFICATES AND LICENSES

Individual CPA Certificates	
Active	395
Inactive	97
Chartered Accountants	
(United Kingdom)	2[1/]
Individual PA Licenses	
Active	7[2/]
Inactive	1
Resident Partnerships	
Active	27
Non-Resident Partnerships	
Active	10
Corporations	
Active	16

Note 1

Includes one who also holds a CPA Certificate.

Note 2

Includes two who also hold a CPA Certificate.

Source: Division of Occupational Licensing, Department of Commerce and Economic Development. September 1979.

APPENDIX D

SURVEY QUESTIONNAIRE SENT TO ACCOUNTANTS

A questionnaire and explanatory letter was sent to a randomly-selected "universe" of resident active and inactive CPA's and PA's. 222 questionnaires were mailed with the expectation that approximately 200 would reach the intended recipients. (We assumed that about 10% would prove undeliverable by reason of poor address, moved, left Alaska, died, etc.)

The questionnaires were mailed from Juneau on August 22, 1979. As of September 21, we had received 123 completed responses, and 22 were returned as undeliverable by the Post Office. Assuming that 200 questionnaires reached their destination, our actual response rate was a remarkable 61.5%, indicating that professional accountants in Alaska take the possible effects of "Sunset" on their profession quite seriously.

Of the 123 respondents, 84 (or 68%) indicated that they are in the public practice of accountancy; 19 (16%) practice private accounting; 10 (8%) are governmental accountants; 3 (2%) teach accounting, while 7 (6%) are employed outside the accounting profession. Geographic breakdown of the respondents was as follows:

LOCATION	NUMBER OF RESPONDENTS	% OF TOTAL RESPONSE
Anchorage	90	73.4 %
Fairbanks	9	7.3
Juneau	9	7.3
Ketchikan	2	1.6
Kenai	2	1.6
Soldotna	2	1.6
Kodiak	2	1.6
Bethel	1	.8
Gustavus	1	.8
Valdez	1	.8
Wasilla	1	.8
Unknown (no postmark)	3	2.4
	123	100.0 %

Only 6 respondents (4.8%) feel that State regulation of public accountancy is unnecessary, while 97.5% feel that Alaska should continue to license accountants.

91.8% disagreed with the statement that "Public Accountants (PA's) should be permitted to perform the audit (attest) function" (see Recommendation No. 3 in the FINDINGS AND RECOMMENDATIONS section of this report).

66.6 % of the respondents feel that the education and experience requirements for licensing in Alaska are "just about right". 15.4% think they are too low while 13.8% believe them to be too high. (4% expressed no opinion).

A surprising 76.4% agreed with the requirement for continuing professional education as a requisite for license renewal, while 20.3% don't feel it is necessary. 55.3% believe that an "open-book" ethics exam should be a condition of licensure, while 31.7% oppose such an action.

41 (33.3%) of the respondents accepted the invitation to make additional comments on subjects concerning the present method of regulating public accountancy in Alaska. Comments offered ranged from the penning of a few critical lines to a typewritten two-page letter accompanying the completed questionnaire. All of the completed questionnaires along with the added comments have been submitted with the working papers of this report to the Legislative Audit Division, where they are presently filed.

The comments are grouped and summarized as follows:

comments on the Board

- the Board is necessary and should be continued. (4 comments)
- all CPA's on the Board should be in public practice (3 comments)

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The comments are grouped and summarized as follows:

comments on the Board

- the Board is necessary and should be continued. (4 comments)
- all CPA's on the Board should be in public practice (3 comments)

- DOL is inefficient.
- Policing of profession is almost non-existent. (2 comments)
- Investigation of complaints needs more attention. (2 comments)
- Proposed ethics exam should be "closed-book", and made part of the Uniform CPA examination.

The following pages include the explanatory letter sent out with the questionnaires, and the questionnaire itself, tabulated totally, with breakdowns of each responsorial group following:

Page - 37 - letter accompanying survey questionnaires

Page - 38 - tabulation of all responses

Page - 39 - tabulation of responses from accountants in public practice

Page - 40 - tabulation of responses from accountants in private practice

Page - 41 - tabulation of responses from accountants in governmental accounting

Page - 42 - tabulation of responses from accountants engaged in the teaching of accountancy

Page - 43 - tabulation of responses from accountants engaged in employment outside the accounting profession

August 22, 1979

Dear Alaskan Accountant:

Under the State's "Sunset Law" (AS 44.66), the Alaska State Board of Public Accountancy will terminate on June 30, 1980 unless the Legislature takes positive action to continue it beyond that date.

The Legislative Audit Division, which is charged by law with conducting in-depth performance reviews of each board, commission or agency named in the sunset legislation, has determined that in the case of the Board of Public Accountancy, independence and objectivity would be better served by contracting the review to a qualified management consulting firm than by performing the audit in-house. R. W. Pavitt and Associates, Inc. and Homan-McDowell Associates have been selected to conduct the review, and must complete the report by October 1, 1979.

Our major effort in this study has been to seek answers to several questions that we feel are basic to the issue (which the Legislature must face) of continuing the Board or allowing it to terminate:

(1) Is State regulation of public accountancy in the public interest?

(2) Do the statutes and regulations presently in force in Alaska assure the public of competent and qualified practitioners?

(3) Does the Alaska State Board of Public Accountancy (as presently constituted) provide the most appropriate and effective method of regulating these professional services?

In connection with our review, we request that you take a few minutes to complete the enclosed questionnaire and mail it back. Our "universe" for the recipients of the questionnaire consists of the roster of resident active and inactive Certified Public Accountants and Public Accountants, and the "sample" used amounts to 33.3% (every 3rd name) of that roster.

Your response to the questionnaire will be anonymous, and we hope that you will feel free to add any comments you may have regarding the present method of regulating public accountancy in Alaska.

In order to be tabulated, questionnaires must be received no later than September 10, 1979. Thank you for your cooperation in this matter.

Sincerely,

Bob Pavitt

R. W. Pavitt, AICP
President
R. W. PAVITT & ASSOCIATES, INC.

Frank M. Homan

Frank M. Homan
Partner
HOMAN-McDOWELL ASSOCIATES

130 SEWARD STREET • ROOM 205
JUNEAU, ALASKA 99801 • (907) 586-2066

Tabulation - TOTALS

QUESTIONNAIRE - BPA

Please indicate your agreement or disagreement with the following statements

	AGREE	DISAGREE	NO OPINION
1. The State of Alaska should continue to license accountants.	120	2	1
2. The State should continue to license a class of accountants in addition to CPA's --i.e. Public Accountants (PA's)	40	79	4
3. Public Accountants (PA's) should be permitted to perform the audit (attest) function.	9	113	1
4. Applications and renewals are handled efficiently by the Division of Occupational Licensing (DOL).	80	14	29
5. Complaints regarding public accountancy services are investigated efficiently by DOL.	18	25	80
6. The current license renewal fees are too high.	19	83	21
7. The Board of Public Accountancy is doing a good job of presenting competent and qualified accountants to serve the public need.	83	20	20
8. The education and experience requirements for licensure in Alaska are:			
(a) too high	17	—	—
(b) just about right	82	—	5
(c) too low	19	—	—
9. Documentation of continuing professional education (CPE) should be a requirement of license renewal.	94	25	1
10. An "open-book" ethics examination should be required before licensure.	68	39	16
11. State regulation of public accountancy is unnecessary.	6	113	4

I am presently engaged:

in the public practice of accounting	84
in the private practice of accounting	19
in governmental accounting	10
in the teaching of accountancy	3
outside of the accounting profession	7

Please feel free to comment on the reverse side. THANK YOU FOR YOUR HELP

QUESTIONNAIRE - BPA

Please indicate your agreement or disagreement with the following statements

	AGREE	DISAGREE	NO OPINION
1. The State of Alaska should continue to license accountants.	82	1	1
2. The State should continue to license a class of accountants in addition to CPA's --i.e. Public Accountants (PA's)	24	59	1
3. Public Accountants (PA's) should be permitted to perform the audit (attest) function.	7	77	-
4. Applications and renewals are handled efficiently by the Division of Occupational Licensing (DOL).	59	8	17
5. Complaints regarding public accountancy services are investigated efficiently by DOL.	10	20	54
6. The current license renewal fees are too high.	9	63	12
7. The Board of Public Accountancy is doing a good job of presenting competent and qualified accountants to serve the public need.	60	15	9
8. The education and experience requirements for licensure in Alaska are:			
(a) too high	13		
(b) just about right	56		
(c) too low	14		
9. Documentation of continuing professional education (CPE) should be a requirement of license renewal.	70	14	-
10. An "open-book" ethics examination should be required before licensure.	50	24	10
11. State regulation of public accountancy is unnecessary.	3	78	3

I am presently engaged:

in the public practice of accounting	84
in the private practice of accounting	
in governmental accounting	
in the teaching of accountancy	
outside of the accounting profession	

Please feel free to comment on the reverse side. THANK YOU FOR YOUR HELP

QUESTIONNAIRE - BPA

Please indicate your agreement or disagreement with the following statements

	AGREE	DISAGREE	NO OPINION
1. The State of Alaska should continue to license accountants.	19	-	-
2. The State should continue to license a class of accountants in addition to CPA's --i.e. Public Accountants (PA's)	10	9	-
3. Public Accountants (PA's) should be permitted to perform the audit (attest) function.	1	18	-
4. Applications and renewals are handled efficiently by the Division of Occupational Licensing (DOL).	10	1	8
5. Complaints regarding public accountancy services are investigated efficiently by DOL.	5	1	13
6. The current license renewal fees are too high.	4	10	5
7. The Board of Public Accountancy is doing a good job of presenting competent and qualified accountants to serve the public need.	13	1	5
8. The education and experience requirements for licensure in Alaska are:			
(a) too high	2		
(b) just about right	13		1
(c) too low	3		
9. Documentation of continuing professional education (CPE) should be a requirement of license renewal.	13	5	1
10. An "open-book" ethics examination should be required before licensure.	8	8	3
11. State regulation of public accountancy is unnecessary.	1	18	-

I am presently engaged:

in the public practice of accounting	
in the private practice of accounting	19
in governmental accounting	
in the teaching of accountancy	
outside of the accounting profession	

Please feel free to comment on the reverse side. THANK YOU FOR YOUR HELP

QUESTIONNAIRE - BPA

Please indicate your agreement or disagreement with the following statements

	AGREE	DISAGREE	NO OPINION
1. The State of Alaska should continue to license accountants.	9	1	-
2. The State should continue to license a class of accountants in addition to CPA's --i.e. Public Accountants (PA's)	2	6	2
3. Public Accountants (PA's) should be permitted to perform the audit (attest) function.	-	10	-
4. Applications and renewals are handled efficiently by the Division of Occupational Licensing (DOL).	4	2	4
5. Complaints regarding public accountancy services are investigated efficiently by DOL.	-	3	7
6. The current license renewal fees are too high.	4	3	3
7. The Board of Public Accountancy is doing a good job of presenting competent and qualified accountants to serve the public need.	5	2	3
8. The education and experience requirements for licensure in Alaska are:			
(a) too high	1		
(b) just about right	8		1
(c) too low	-		
9. Documentation of continuing professional education (CPE) should be a requirement of license renewal.	6	3	1
10. An "open-book" ethics examination should be required before licensure.	3	3	4
11. State regulation of public accountancy is unnecessary.	2	8	-

I am presently engaged:

in the public practice of accounting	
in the private practice of accounting	
in governmental accounting	10
in the teaching of accountancy	
outside of the accounting profession	

Please feel free to comment on the reverse side. THANK YOU FOR YOUR HELP

QUESTIONNAIRE - BPA

Please indicate your agreement or disagreement with the following statements

	AGREE	DISAGREE	NO OPINION
1. The State of Alaska should continue to license accountants.	3	-	-
2. The State should continue to license a class of accountants in addition to CPA's --i.e. Public Accountants (PA's)	1	2	-
3. Public Accountants (PA's) should be permitted to perform the audit (attest) function.	-	3	-
4. Applications and renewals are handled efficiently by the Division of Occupational Licensing (DOL).	2	1	-
5. Complaints regarding public accountancy services are investigated efficiently by DOL.	-	1	2
6. The current license renewal fees are too high.	-	3	-
7. The Board of Public Accountancy is doing a good job of presenting competent and qualified accountants to serve the public need.	2	1	-
8. The education and experience requirements for licensure in Alaska are:			
(a) too high	1		
(b) just about right	1		
(c) too low	1		
9. Documentation of continuing professional education (CPE) should be a requirement of license renewal.	2	1	-
10. An "open-book" ethics examination should be required before licensure.	2	1	-
11. State regulation of public accountancy is unnecessary.	-	3	-

I am presently engaged:

in the public practice of accounting	
in the private practice of accounting	
in governmental accounting	
in the teaching of accountancy	3
outside of the accounting profession	

Please feel free to comment on the reverse side. THANK YOU FOR YOUR HELP

QUESTIONNAIRE - BPA

Please indicate your agreement or disagreement with the following statements

	AGREE	DISAGREE	NO OPINION
1. The State of Alaska should continue to license accountants.	7	-	-
2. The State should continue to license a class of accountants in addition to CPA's --i.e. Public Accountants (PA's)	3	3	1
3. Public Accountants (PA's) should be permitted to perform the audit (attest) function.	2	4	1
4. Applications and renewals are handled efficiently by the Division of Occupational Licensing (DOL).	4	1	2
5. Complaints regarding public accountancy services are investigated efficiently by DOL.	2	-	5
6. The current license renewal fees are too high.	2	4	1
7. The Board of Public Accountancy is doing a good job of presenting competent and qualified accountants to serve the public need.	3	1	3
8. The education and experience requirements for licensure in Alaska are:			
(a) too high	-		
(b) just about right	4		
(c) too low	1		2
9. Documentation of continuing professional education (CPE) should be a requirement of license renewal.	5	2	-
10. An "open-book" ethics examination should be required before licensure.	4	2	1
11. State regulation of public accountancy is unnecessary.	-	7	-

I am presently engaged:

in the public practice of accounting	
in the private practice of accounting	
in governmental accounting	
in the teaching of accountancy	
outside of the accounting profession	7

Please feel free to comment on the reverse side. THANK YOU FOR YOUR HELP

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 4, 1979

RECEIVED
DEC 5 1979
LEGISLATIVE AUDIT

Mr. Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed the enclosed agency responses to your preliminary report entitled:

"A Performance Review of the Alaska State Board of Public Accounting"

The Office of the Governor recognizes the importance of keeping appointments up-to-date with qualified professional and public members. Please be assured that every effort is being made to comply with your Recommendation No. 2.

While the agency responses make certain references to or allude to budget restrictions which limit the capacity of the Board and Division of Occupational Licensing, it has been well recognized that most or all budgets for State functions have been similarly restricted. Therefore, anticipated progress in implementing your recommended enhancements would appear subject to current and future fundings.

Otherwise those responses appear adequate and self-explanatory.

Sincerely,

Richard A. Smith

Richard A. Smith
State Internal Auditor

RAS/PJA/mjc
Enclosures

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

November 29, 1979

RECEIVED
DEC 5 1979
LEGISLATIVE AUDIT

Mr. Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Alaska Office Building
Juneau, Alaska 99811

Dear Mr. Wilkerson:

I have reviewed the preliminary audit report on "A Performance Review of the Alaska State Board of Public Accountancy October 1, 1979". On behalf of the Alaska State Board of Public Accountancy the following comments related to that report are submitted:

Recommendation 1:

The qualification and conditions of Board membership (AS 08.04.020) should be amended to specify five certified public accountants or public accounts and two public members.

Response:

We concur with the concept of this recommendation. The Governor at the request of the Alaska State Board of Public Accountancy introduced during the last session of the Legislature a bill changing the makeup of the State Board of Accountancy in a manner similar to that which is recommended. The proposed legislation (Committee Substitute for Senate Bill No. 185) amends AS 08.04.020 to read as follows: "Appointment and qualifications of Board. The Board consists of seven members appointed by the Governor. Each member shall be a resident of this state for at least one year. Three members shall be certified public accountants, two members shall be public members in accordance with AS 08.01.025, and the remaining members shall be individuals licensed under this chapter." Committee Substitutes for Senate Bill No. 185 has passed the State Senate and currently is being held by the House Commerce Committee. We strongly urge that the House Commerce Committee act favorably on this bill early in the next session of the Legislature.

8-H8LH

Recommendation 2:

The Board of Public Accountancy should be brought to its full complement of seven members, and maintained at that strength by means of timely appointments of qualified professional and public members.

Response:

The Board concurs with this recommendation. On January 11, 1979 Roxanne Kemp, a public member, and I met with Jessie Dodson of the Governor's staff to discuss appointments to the vacancies on the State Board. We requested the filling of these vacancies as soon as possible. The meeting with the Governor's staff is covered in the March 23-24, 1979 minutes of the State Board of Accountancy. The Board was notified that the Governor appointed an additional member to the Board on October 31, 1979. After this appointment one vacancy for an unlicensed member remains.

Recommendation 3:

Without effecting the rights and privileges of presently licensed public accountants, the accountancy laws should be amended to discontinue the licensing of new applicants as public accountants.

Response:

We concur with this recommendation. The need for a comprehensive review and revision of the State Accountancy Act has been scheduled for discussion during the Board's meeting on December 6 and 7, 1979.

Recommendation 4:

Electronic recordings should be made of all board meetings, and the tapes retained by DOL for two years.

Response:

The State Board of Accountancy has no objection to this recommendation. In the past we have cooperated with the Division of Occupational Licensing policy regarding the retention of tape recordings of Board meetings.

Recommendation 5:

The Board should adopt a formal statement of goals, objectives and policies; and should prepare an annual report of it's activities.

Response:

We concur with this recommendation. The Board has taken some steps to comply with this recommendation. The steps taken are as follows:

1. The Board's proposed budget for the year ending June 30, 1981 contains narrative in support of the Board's goals for 1981 and the associated costs to obtain those goals. This budget was adopted during the Board's March 23-24, 1979 meeting and submitted to the Department of Commerce.

2. During the March 23-24, 1979 meeting a listing of Board policies was derived from prior Board minutes. This listing was distributed to each Board member for review. These policies were formally adopted during the October 1-2, 1979 Board meeting.

3. Board goals and objectives were established and adopted during the August 1-2, 1979 meeting.

4. The State Board of Accountancy prepared a report of its actions for the year ending June 30, 1979. This report was approved during the August 1-2, 1979 Board meeting and submitted to the Division of Occupational Licensing.

It is our understanding that the Board has no statutory requirement for an annual report (calendar year report) but the Board does have a statutory requirement for a yearly performance report (year ending June 30). Therefore we interpret Recommendation 5 to relate to the performance report rather than an annual report.

Recommendation 6:

AS 08.01.025 should be amended to state more clearly legislative intent with respect to the qualification of public members of the Board.

Response:

We have no objection to this recommendation. It should be noted that the possible conflict referred to in this recommendation was made known during the confirmation hearings of the current unlicensed board member.

Recommendation 7:

DOL should develope improved statistical record keeping methods and procedures.

Response:

We concur with this recommendation. A board member, Charlotte Stuart, has prepared significant statistical data regarding Alaska CPA examination results. Part of Mrs. Stuart's work is contained as pages 30 and 31 of the Performance Review of the Alaska State Board of Public Accountancy. It would be helpful if DOL could prepare statistical data for Board use.

Recommendation 8:

DOL should handle investigations in a more comprehensive, efficient and timely manner.

Response:

We strongly endorse this recommendation. A DOL investigator met with the Board during its October 1-2, 1979 meeting and discussed thirty-seven (37) cases. As a result of this meeting twenty-four (24) cases were closed. The Board requested additional data on ten (10) cases be presented at its December 6-7, 1979 meeting. The three (3) remaining cases are still being investigated by DOL. This is the first comprehensive report we have received from DOL.

Two provisions of AS 44.66.050 (c) are as follows:

1. "The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest."

2. "The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection."

In addition to the Board's activity related to provision one (1) above, (page 17 of the audit report) the State Board of Accountancy has opposed statutory changes to AS 08.04 which were not generally of benefit to the public interest.

The Board believes that the following budgetary changes are necessary for it to comply with provision two (2) above: (page 19 of the audit report)

1. The State should provide adequate money for the Board to fulfill its duties. Examples of inadequate monies for the year ending June 30, 1980 are:

   - Monies for only three (3) Board meetings were appropriated. The Board should have four (4) meetings per year. Estimated additional cost - $2,800.

   - No monies were appropriated for the Board to appear before the Legislature on Sunset hearings. Estimated additional cost - $1,700.

   - No monies were appropriated for Board members to attend meetings of the National Association of State Boards of Accountancy. Yet Board members are expected to be proficient in administration and policing of accountancy in Alaska.

     The National Association of State Boards of Public Accountancy, of which Alaska is a member, has several ongoing programs which affect Alaska. Some of these programs are:

     - Entry Level Licensing - This program develops standards for entry into the profession to insure that the examination content, procedures for administering the examination, security of the examination content and grading the examination are proper. The accounting profession is unique in that the Uniform CPA Examination is recognized by all 50 states, the District of Columbia and three territories as the examination which properly measures a person's accounting abilities. This program also develops proper experience level requirements for entry into the profession.

     - Reciprocity and Temporary Practice - This program reviews existing statutes and regulations on accounting in the various states and the development of model statutes and regulations which promote licensure reciprocity amoung the states while providing adequate public protection.

     - Relicensing and Reentry - This program develops standards for evaluation of competence of an individual with an inactive license to upgrade to an active license or to relicense an individual whose license has lapsed for some reason.

o Practice Surveillance and Enforcement - This program assists state boards of accountancy in developing and establishing procedures to monitor activities of licensees on an ongoing basis and develop criteria for sanctions and penalties.

Participation by members of the Alaska State Board of Accountancy insures knowledge of what other states are doing, which impact Alaska. Two of Alaska's board members have been named to serve on NASBA committees.

Entry Level Licensing - C. Stewart
Practice Surveillance and Enforcement - V. Johnson

These Board members were not able to participate in committee activities because no monies were available for travel. Estimated additional costs - $4,800.

The estimated additional costs of the foregoing items is $11,000. The financial data contained on page 20 of the Performance Review indicates that sufficient monies are collected by the State from Board activities to finance these necessary Board functions.

These activities are included in the Board's 1980-1981 budget request which was submitted to DOL in March 1979. Similar activities were included in the Board's 1979-1980 budget but were deleted prior to the submission of the State Budget to the Legislature. We request that appropriations for these activities be included in the 1980-1981 State Budget.

2. The State Board of Public Accountancy believes that it needs to establish a positive enforcement program to monitor the activities of licensed accountants. At present, the only monitoring of a licensed individual's activity occurs when a complaint is filed against the licensee. The State Board of Accountancy believes that it should, on a sampling basis, review the work of licensed persons for substandard practices. A review of this type increases the chances of detecting unacceptable activities prior to the time they become so serious that a complaint is filed against the licensee.

The detection of substandard practices would:

- o Increase public protection by identifying marginal licensees before someone suffers injury; and
- o Provide the licensed individual an opportunity to take corrective measures prescribed by the state board with minimum disruption to their occupation.

In the three states, Florida, Colorado and Arizona, where this type of positive enforcement program has been undertaken, 30 percent of the investigations revealed substantial substandard practices by licensed individuals.
Estimated additional costs - $20,000

The Board's 1980-1981 Budget Request includes this new program.

* * * * *

We wish to acknowledge the courtesy and proficiency with which the Performance Review of the Alaska State Board Public Accountancy has been conducted. Should you desire additional comment or desire to discuss the Board's response to this review, please contact the Board.

Very truly yours,

ALASKA STATE BOARD OF
PUBLIC ACCOUNTANCY

Vernon R. Johnson
Presiding Officer

VRJ:bkk

cc: Members of Alaska State Board of Public Accountancy
Commissioner, Department of Commerce and Economic Development
Deputy Commissioner, Department of Commerce and Economic Development
Division of Occupational Licensing
State Internal Auditor

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811

November 19, 1979

RECEIVED
DEC 5 1979
LEGISLATIVE
AUDIT

Gerald Wilkerson, CPA
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are offered in response to the Performance Review of the Board of Public Accountancy, as submitted by the Division of Legislative Audit.

Recommendation No. 1: We would have no objection to your recommendation but would suggest that consideration be given to comprising the board of three certified public accountants and two public members.

Recommendation No. 2: Agree.

Recommendation No. 3: We agree that such amendments would reduce unnecessary regulation while still serving the public interest and maintaining professional integrity.

Recommendation No. 4: Agreed. The board has discussed this matter and is complying with the recommendation.

Recommendation No. 5: Agreed. The board did submit goals and objectives for the FY '81 budget, and its performance report for FY '79.

Recommendation No. 6: Agreed.

Recommendation No. 7: Agreed. The Division is in the process of collecting data concerning the number of licensees, examination statistics, complaint information, correspondence work load and number of requests. Monthly reports are prepared by the examiners in addition to interim activity reports which detail activity between scheduled board meetings.

Recommendation No. 8: Agreed. Complaints received against all regulated professions should be handled on a timely basis.

I appreciate the time and efforts expended on this review and the opportunity to provide these comments.

Sincerely,

Bertram L. Wagnon
Deputy Commissioner

CRW/kkk5/9

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 13, 1980

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Your Senate Commerce Committee has had under consideration for "Sunset" review the Board of Public Accountancy pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, at which written and oral testimony was received. Members of the board testified in person or by teleconference. The Committee considered the proposed budget of the board for FY 1981 and particularly examined the performance audit of the activities of the board conducted by R. W. Pavitt and Associates, Inc. and Homan-McDowell Associates under contract to the Division of Legislative Audit.

Guided, in part, by this performance review the Committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings: The Committee concurs in the eight findings and recommendations as they appear on pages 7 through 15 of the Performance Review of the Board of Public Accountancy dated October 1, 1979 which is hereby incorporated by reference as though fully set out herein.

The Committee further recommends that the board use its powers in the granting of licenses, in acceptance of experience in the public and private sectors, and in cases involving reciprocity in a more judicious and evenhanded manner.

The Committee feels that it has adequately addressed the recommendations and categories required under AS 44.66.050(d), and recommends that with the changes stated in this report

the Board of Public Accountancy be continued for another four years, that is, that the repealer with regard to the activities of the board be amended to read June 30, 1984.

A bill will be introduced by the Commerce Committee facilitating the changes and recommendations in this report.

Respectfully submitted,

Brad A Bradley

Senator Brad Bradley
Chairman
Senate Commerce Committee

BB/bm

February 28, 1980

Senator Brad Bradley, Chairman
Senate Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

I attended the teleconference hearing in Anchorage on Tuesday, February 26, 1980 concerning the sunset review of the State Board of Accountancy. Unfortunately, due to other commitments I was unable to stay for that portion of the hearing. Consequently, I am submitting my testimony in written form.

I have read the performance review of the State Board of Accountancy and concur with all of its recommendations. With the enactment of the Foreign Corrupt Practices Act and the increasing surveillance of the accounting profession by Congress and the Securities and Exchange Commission, the State must do its part to protect the public interest and insure the competence of those individuals who desire to offer their services to the public as accountants. It is therefore extremely important to continue the State Board of Accountancy, implement the eight recommendations contained in the report and fund the activities of the Board at a level at which they can operate effectively.

I am a Certified Public Accountant, but am not in public practice. I am responsible for issuing financial statements and constantly refer to the financial statements of other companies in my work. It is extremely important for these statements to be consistent and reliable so that investors, creditors and other users like me can make proper decisions based on them. The only way to accomplish this in Alaska is to insure a strong State Board of Accountancy.

Very truly yours,

Edward R. Geiger

cc: Senator Arliss Sturgulewski
Senator Tim Kelly
Senator Frank Ferguson
Senator Terry Stimson
Mr. Vern Johnson, Chairman, State Board of Public Accountancy

REPORT FROM STATE BOARD OF ACCOUNTANCY FOR FY '79

The problem that has been before the Board of Public Accountancy for several years is work experience before the CPA certification is issued. It is our responsibility in protecting the public to see that the persons who hold themselves out to be CPAs have had some experience in performing the audit (attest) function. This continues to be the only difference between accountants that are licensed and the non-licensed accountant or bookkeeper.

Our goal was accomplished with the adopting of final regulations in December 1978 that refined and clarified the type of experience necessary before the CPA certificate would be issued. Formal hearings were held in Juneau and an informal hearing held in Anchorage regarding the proposed changes in regulations. After they were cleared by the Department of Law on May 25, 1979, a certified mailing was done to all holders of CPA certificates issued by the State of Alaska to comply with Section 08.04.080 of the Accountancy Act.

We continued our efforts to help the unsuccessful CPA candidate by participating in the CPA critique program offered by the National State Board of Accountancy. The program has been held in Anchorage and a total of 36 CPA candidates have participated. We will expand and offer the program in both Anchorage and Fairbanks in the fall of 1979.

The number of candidates for the CPA examination continues to climb and a suitable place to hold the examination became a problem in Anchorage. A new location was secured for the November exam and used for the May exam. There was a noise problem at the May exam and we may be looking for other accommodations in November. Fairbanks and Juneau are also having an increase in candidates and will be suffering from inadequate facilities in FY '80.

The Board continues to be short of the required number of members. This presents a problem in securing a quorum for at least the summer meeting. We would urge the Governor to appoint the other public members as soon as possible.

The Board is scheduled for Sunset review in FY '80 and Pete Hogan, a Board member from Southeast, is working on a history of Board Activities since its creation. This should be ready for review and approval at our summer Board meeting.

Vern Johnson and Roxana Klemp are the legislative commitee for the Board. They worked with the Department of Commerce and Economic Development and the Governor's Office in introducing legislation in the spring of 1979 regarding changes in the current Accountancy Act.

Charlotte Stuart worked with the AICPA Advisory Grading Service for six weeks in 1978 while the grading of the May 1978 CPA examination was taking place. As the result of this experience, the Board had a report regarding the grading process and reaffirms the opinion that the CPA examination is fair and equitable. A study done on Alaska first-time candidates for the years 1973, 1974, 1975 showed that over 80% pass the examination within three years if they continue to take and retake it.

Many changes are taking place in the accounting profession and the Board continues to request funds for beginning a practice review program. At the present time, the Board does not have a method of monitoring a person's performance once they have received a CPA certificate and a permit to practice. We react to complaints rather than being able to take the initiative to see that the public is not harmed in the first place. This will be our main goal for the FY '80 year.

The Board has not had adequate funding for travel to Regional or Annual meetings of the National Association of State Boards of Accountancy. Two board members were asked to serve on National Committees. After a half promise that funding would be available from the State, Charlotte Stuart accepted a committee appointment to entry-level licensing and Vern Johnson was appointed to the practice review committee. Charlotte attended her committee meeting in Dallas and gave the committee report at the regional meeting in Hawaii. Both of these meetings were at her own expense since travel funds were not provided by the State.

Vern Johnson and Charlotte Stuart also attended the annual meeting of NASBA held in the fall of 1978 at their own expense. The State did provide travel for one member to attend the meeting and the Board voted to send our public member, Margaret Baker, so that she might gain some additional insight into the problems being confronted by all State Boards.

A problem that is facing all State Boards of Accountancies is recognition of foreign certificates. As the result of a lawsuit against one State Board, a joint committee was appointed by NASBA and the AICPA to do a review and evaluation of foreign examiations used as a basis for certification in various countries. The committee held public hearings in California in August of 1978. After the hearings, the following items were formulated:

1. The type of information required to assess the comparability of foreign licensing examination (i.e., preparation, security of examination, grading process).

2. Methodology for review.

3. Countries to be included were: Australia, Canada, England and Wales, India, Ireland, New Zealand, the Philippines, Scotland, and South Africa.

4. The time period to be covered would be from 1960 through 1977.

A report given at the Regional meeting on this committee confirms the opinion of the Alaska Board that it is impossible to measure the comparability of the foreign examinations as they relate to the Uniform CPA examination. Therefore, our Board continues to require all applicants for the CPA certificate to pass the entire Uniform CPA examination, since we have not been able to determine that the foreign examinations are equivalent to ours.

The Board held four meetings in FY '79. A one-day meeting in Fairbanks, one two-day meeting in Juneau and two two-day meetings in Anchorage. The Board continues to review each new candidate's application for the CPA examination and as the number of applicants increases, so does the workload of the Board.

The following is a statistical report on candidate applications:

New candidates approved for the CPA examinations:

November 1978 - 46
May 1979 - 51

Actual candidates scheduled for examinations:

November 1978 - 134
May 1979 - 152

No shows for the examinations:

November 1978 - 14
May 1979 - 18

Certificates issued by reciprocity: 33

Original Certificates issued: 46

Complaints filed with violations officer and brought to the Board: 4

The Board had a change of licensing officers again this year and this continues to be a problem. With the increase in salary grade level given the licensing officers, it is hoped the turnover will decrease.

Prepared by Charlotte H. Stuart, Chairman

REAL ESTATE COMM.

Alaska Statutes and Regulations

Relating to

REAL ESTATE BROKERS AND SALESMEN

Issued by

DIVISION OF OCCUPATIONAL LICENSING
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

Reprinted from the Alaska Statutes and the 1976 Cumulative Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1977

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alaska coastal
real estate
195 south franklin street juneau, alaska 99801 (907) 586-1212

Christian,

I have enclosed the summary you requested. It is not final typed but I assume it for your use and not publication.

I also enclosed a copy of the explanations for the original SB212 prepared by Jim Magown our executive secretary. You may already have a copy of this document and it can be used to ~~for~~ explain some of the incoporated paragraphs and sections.

Also enclosed is a copy of his explanation of our budget request. I know that you are not envolved with this aspect but should someone ask, it may be of assistance.

Steve

EXPLANATORY COMMENTS REGARDING CSSB 212

March 28, 1980

Prepared by James L. Magowan

Executive Secretary Alaska Real Estate Commission

Overview Comments: This bill: (1) clears up or clarifies much of the language of the present statutes making them clearer and more understandable; (2) eliminates ambiguities and/or contradictions in the current statutes that arose as certain sections were amended or repealed without appropriate changes being made in related sections or which arose through related changes in other chapters or titles being made without appropriate changes in the real estate licensing statutes; (3) sets forth new procedures for examination and issuance of licenses which eliminate duplication of effort and cost in these processes and should improve the service to the applicant; (4) eliminates the present anomaly in the statute that permits a licensee to operate even when claims against the licensee have been paid from the surety fund and the public no longer has the full protection of the surety fund; (5) eliminates the technical requirement that resident property managers be licensed - this requirement is currently very difficult to enforce and is probably not in the public interest; (6) clarifies and broadens within the intent of the statute the regulation making authority of the Commission; (7) replaces an out moded section for license reciprocity with other states with an effective means of licensure by endorsement.

In the following commentary, I will at times refer to the above numbers with respect to specific sections in CSSB 212.

Section 1. AS 8.88.041(b). This is a clean-up section related to items (1) and (2) above and brings the statute in line with changes which occurred when public members were added to the board.

Section 2. AS 8.88.071(a). The law currently is silent with regard to how a broker's affairs should be wound up when the broker/proprietor of a real estate business dies. This section remedies that particular problem. It should be noted that this is a problem that the Real Estate Commission has faced on a number of occasions in the past.

Section 3. AS 8.88.081. This section is explained by Item 6 above. It should be noted that because of the ambiguity of the current section, the Real Estate Commission has received differing interpretations of its authority from successive Assistant Attorney Generals who are assigned to assist the Commission in the regulation writing process.

Section 4. AS 8.88.091. Education. Most violations and problems encountered by the public are due to ignorance and lack of training rather than willful intent to injure or defraud the public. Educated licensees is the obvious answer to this problem. The current statute is such that, as a part of its educational activities, the Real Estate Commission is barred from publicizing even an informational newsletter to licensees on a periodic basis in order to keep them abreast of the real estate license law, changes that occur in the law and information on common violations encountered by the Commission where those violations may be a result of ignorance. This section slightly broadens the Commission's permitted educational activities and will enable the Commission to better inform licensees of their obligations and responsibilities to the public and to the Commission itself.

Section 5. AS 8.88.171. This section relates to Items (1), (2), (3) and (4) as set forth above. This is basically a housekeeping measure. It does eliminate the 90-day residency requirement for licensure which has apparently served no useful purpose and by reference and cross-reference eliminates some of the situations described in the numbered items above including a licensee being able to remain licensed and renew a license even though claims have been paid out of the surety fund and have not been repaid. Amendments to Section 171 and Section 211 and cross-references between those sections also permits procedural changes in the handling and processing of license applications and examinations for licensure which should cut down duplication of our effort, cost to the Division of Occupational Licensing or the State and which should also facilitate issuance of license to the licensee.

Section 8. AS 8.88.181(a). The amendment to this section is technical and clarifying in nature. The proposed changes broaden and allow for better coverage of real estate topics on the real estate examination.

Section 9. AS 8.88.191. Administration of Examination. This section deals with the physical administration of the examination and provides for examination applications to be handled directly by the testing service. This eliminates the redundant step which we currently must follow whereby applicants apply to the Division of Occupational Licensing which in turn forwards the applications to Educational Testing Service and receipts the application and funds received. The receipting of applications and the forwarding of applications to ETS involves a considerable amount of paperwork on the part of the license examiner. The paperwork is basically nonproductive work and eliminating it will be a net savings to the State. This section also clarifies the examinees' rights if they feel that their examination has been improperly graded. There have been occasions when examinees have requested that they be permitted to review the actual examination after they have failed it. Since

Alaska uses a national examination which is copyrighted and portions of it are used throughout the nation, it is extremely unlikely that the examination itself will be faulty, and if there is a fault with the examination this can be determined by the Commission reviewing the examination. For security purposes, therefore, it is deemed inappropriate for applicants to examine their actual examinations. In a remote possibility that an examination is improperly scored by the ETS computers, on request, any applicant may have an examination hand scored. This has been the practice in the past, and, to date, there have been no examination results which have been changed as a result of hand scoring. The computers in this situation are remarkably reliable. It should be noted that changing the application procedure from applications going to the license examiner to having applications going directly to Educational Testing Service will mean that the full $50.00 application fee will not be collected from those who fail the examination. Only those who pass the examination will submit applications for complete examination of their qualifications to the license examiner and will be required to pay the balance of the $50.00 examination fee.

All applicants who apply for the examination will send Educational Testing Service the fee for the written test. This fee is currently $12.50 and will probably go to $13.00 or $14.00 in the near future.

It is felt that the loss of revenue by not collecting the full $50.00 from applicants who fail is more than offset by the decreased workload on the license examiner in handling those applications. It is not felt that additional fees are justified if this process can be handled at no cost to the State and at less cost to the applicant.

The Commission could not justify handling applications simply for the purpose of collecting additional application fees.

Section 10. AS 08.88.211. This section has already been referenced.

This is a change in application procedures and processing whereby the Commission treats examination for licensure as having two parts; a written test which must be passed before an applicant's total qualifications are examined and the examination or review of the applicant's total qualifications are the two portions of licensure examination. Splitting the qualifications in this manner makes it possible for applicants to apply directly to Educational Testing Service for the written portion of the examination and eliminates the question of additional fees from applicants who failed the examination.

The statute, as currently written, talks about qualifications for examination and actually imposes qualifications on an applicant who wishes to take the written examination. The Real Estate Commission

feels that this is not necessary and that those who are otherwise eligible should take the written examination and then have their qualifications for licensure examined.

There have been some rewording changes in section 211 in order to clarify the types of offenses which would warrant denying an applicant a real estate license for previous convictions; and the wording of the statute has been or is being brought to conformity with the specific wordings used in the revised Alaska Criminal Code. This section and previously referenced sections, therefore, have the effect of permitting applicants to apply directly to ETS, take and pass the examination, then apply to the Real Estate Commission for examination for licensure rather than following the current procedure of applying to Occupational Licensing for the written examination and then applying for licensure, thereby duplicating effort.

Section 11. AS 08.88.221(c). This section adds a fee for transferring a license. License transfers are a heavy workload on the Occupational Licensing staff and it is appropriate that licensees pay for the service. This section also raises the fee from $2.00 to $5.00. This is more in line with the actual cost of handling this type of transaction.

Section 12. AS 08.88.221. This section is related to section 211 and, basically provides that when persons pay the examination fee directly to ETS, they shall be credited with the fee paid to ETS when they apply for licensure. Currently they pay their application fee to the State and the State is billed by ETS. This aspect of the bill will have no fiscal impact on the State other than to cut down the personnel required to handle applications. Instead of the fee coming to the State and then going to ETS, it goes directly to ETS, thereby improving the efficiency of the process.

Section 13. AS 08.88.241. Reinstatement of lapsed license. Licensees are required to keep the department informed of their employment and their address or location. When licensees fail to do this, at the end of the license year their licenses lapse. In essence, a lapsed license is the result of a licensee not conforming with the statutes. The way the law is currently written, it could be enforced in such a way that a lapsed licensee gains an economic advantage over a licensee who complies with the statute because the lapsed licensee does not pay inactive license fees; and lapsed licenses are currently treated the same as inactive licenses for purposes of renewal.

In order to eliminate this inequity, this section provides that a licensee whose license lapses for more than six months (a reasonable time for a person who inadvertently overlooks a renewal period) to lose the license until they again complete the examination requirements for licensure.

It should also be noted that a person who fails to comply with the law is probably a suitable subject for reexamination, since they obviously don't understand the law which regulates their business activities.

Section 14. AS 08.88.251(b). The changes in this section are simply for clarification. The section is self-explanatory.

Section 15. AS 08.88.251(c). The procedure described in the previous sub (c) of this section were cumbersome and ineffective and, basically, not followed by the division; this section simply spells out procedures which have already been developed and found to be more effective by the Division of Occupational Licensing.

Section 16. AS 08.88.263. License by Endorsement. Reciprocity is no longer practical due to varying license requirements, particularly educational requirements in different states. Alaska has no education requirement. Endorsement is the simplest way of assuring that licensees coming from other states will be licensed in Alaska with a minimum of hindrance, but at the same time providing for full protection of the public as well as other licensees in the state. Since state laws vary from state to state, it is felt appropriate that anyone practicing real estate in Alaska should be familiar with Alaska Real Estate Licensing Law. License by endorsement provides that anyone holding a license outside of the State who moves to Alaska can obtain an Alaska real estate license by simply demonstrating a knowledge of the Alaska Real Estate License Law. We recognize the fact that all states examine persons for real estate licenses and general real estate knowledge is transferrable from state to state.

Also Bill Section 16. AS 08.88.276. Suspension of License. This section provides for the suspension of a license whenever a claim is paid out of the surety fund against a licensee and is in effect until the licensee repays the fund. This is not a disciplinary action, and should not require the costly time consuming procedures of a hearing. It is simply recognition of the fact that as long as a claim has not been repaid to the fund, the public does not have the full protection of the surety fund which they are entitled to have. If the Commission fails to take disciplinary action and the licensee repays the fund they can immediately be issued a license under this section. There is no violation of the licensee's right to due process under this section. The licensee can defend themselves against payment from the surety fund in court and payments from the surety fund are ordered only after judgement. Therefore the licensee's rights are protected by the full judicial system. The licensee can be relicensed provided that no disciplinary action has occurred subsequent to the suspension for payment of the surety fund and the surety fund is repaid (the public then has full surety fund protection).

Section 17. AS 08.88.361. When commission is earned. Modern real estate practice involves more than a listing and selling of real property. The current statute could jeopardize a broker's right to collect a fee or commission for a service which does not involve a listing but does involve a written contract between the broker and the client. This revision of the wording simply makes the broker's right to compensation enforceable on written agreements other than listing agreements when listing agreement is not the appropriate instrument to be used.

Section 18. AS 08.88.421(1). This section of the bill provides for exception to the requirement to be licensed. There has been a great deal of confusion on the part of licensees who read the statute as it is currently written and believe that they are not required to have transactions on their own account processed through their employing broker. This is not correct even under the current statute because there is a more specific section in the statute which states that all transactions by a licensee must go through the broker even if they are for the licensee's own account. In addition, the wording about land defined in AS 34.55.046 which is not in Alaska clarifies the licensee's absolute responsibility to process transactions through his broker and eliminates confusion by persons reading the statute. The addition of the final words, "which is not in Alaska;" was necessitated by a legislative change in AS 34.55.044(6) which changed that section from defining only land located outside the State of Alaska to defining all subdivided land in the State of Alaska. When that statute was changed 421(1), by reference to that section, technically prohibited an Alaska subdivider of Alaska land from selling his own property without the services of a broker. This is clearly in violation of his constitutional rights. This wording clarifies that.

Section 19. AS 08.88.421(9). This section has been a source of great confusion. The basic intent of the section as spelled out in an Attorney General's opinion and enforced by the Commission over the years has been that no person may, as a regular vocation, sell real estate for another person whether on a salary or for compensation. The reason for this ruling by the Commission is that when a person purchases real estate from someone other than the owner of the real estate, they are entitled to have the full protection of competency and the surety fund provided by licensing. Additionally, no person may transact even one real estate transaction for a fee dependent upon the value or proportional to the value of the property sold even if the transaction is an isolated or single incident, because selling real estate for a fee even one time would require a license. The general exception applies to persons who are employed by corporations or partnerships for purposes other than the selling of real estate, but who in the course of their day to day activities might be called upon to dispose of excess property or property interests held by the corporation. The traditional example used by

the commission would be if a food chain were to determine that it had one store too many it might ask the manager of that store to handle the sale and disposition of the store. During the time of the sale, he would also be responsible for any other management activities, and would not be paid for disposing of excess or surplus company property in the course of his normal duties as manager of a store.

A confusing phrase in the statute has been the statement that a person may not perform these acts as a vocation or for compensation. Most people think that those two qualifications go together. The Commission has inserted the word "either" so that it reads..." either as a vocation or for compensation if the compensation is dependent upon and directly related to the value of the real estate." Performing real estate transaction as a vocation requires a license, performing real estate transactions for a commission requires a license. Again, it should be noted that the changes do not necessarily affect the statute itself or the way in which the statute has been or will be enforced but simply makes it clearer to those involved.

The other changes in this section are simply for clarification of meaning.

Section 20. AS 08.88.421. This is a new section. This section has already been referenced in the numbered items at the beginning of this document; specifically, item 5, eliminating the technical requirement for property managers to be licensed.

Section 21. AS 45.85.010. Real Estate Surety Fund. The surety fund as it is currently established by the statute is virtually impossible to manage in a manner which is equitable and acceptable to the licensees, the Commission, and the department. The statute provides that the fund shall build until it reaches $250,000. This has happened. The statute further provides that the fund may not go over $300,000. In the event that the fund is over $300,000 at the end of any fiscal year, the excess reverts to the General Fund. When the fund goes over $250,000 the Commissioner may, by regulation, adjust the surety fees to maintain the fund between $250,000 and $300,000. The cash flow to and from the fund is such that the $50,000 margin between $250,000 and $300,000 does not permit sufficient leeway for the Commissioner to adopt regulations in a timely fashion so that money is not lost to the General Fund, that appropriations may be made for educational purposes, and that claims can be determined prior to lowering fees. For example, in November of 1979, the fund paid out approximately $40,000. If the fund were at $250,000 at the beginning of November 1979, and the Commissioner were to then adopt regulations for the license year 1980 through 1981 reducing the fees because it was anticipated that the fund would continue to build, by the time we started collecting the new

fees the fund would have already dropped to $210,000. If, in addition to reducing the fees, an educational appropriation were made, such as was the case last year for $75,000, the fund would actually be down to $135,000 prior to the new license year. In addition to that, one or two more months like November of 1979 could totally deplete the fund, while, at the same time, the Commissioner was lowering fees and the Real Estate Commission was planning on using appropriation for educational programs.

Now that the fund has been in effect for four years, the use of the fund has dramatically increased and, at the same time, the predictability of the fund over a six month period has dramatically decreased. The Commission feels that it is necessary to broaden the margin between the mandatory minimum and the mandatory maximum limits of the fund so that appropriations and judgements can be made which will not result in the fund being depleted and the public going for some period of time without adequate protection under the fund.

It should be noted that a complicating factor in adjusting the fees is the fact that licenses are renewed every two years on the first of January. If adjustments are not made by the first of January of the license year, it would be manifestly inequitable to make an adjustment at mid-year. Therefore, it has been determined that adjustments will be made at the beginning of license years. Fiscal years, on the other hand, occur every twelve months at mid-calendar year and it is impossible to correlate surety fund adjustments with fiscal years in order to avoid having surety fund money revert to the General Fund. The licensees are understandably upset about such practice since they would view this as an additional and unjustified taxation of the licensees; a taxation which is discriminatory.

The Real Estate Commission is particularly concerned that the Real Estate Surety Fund be well managed since this is an item which can be controversial with respect to the licensees. Licensees are, in effect, self-insuring themselves against malpractitioners and, as such, are very sensitive about the use of the funds, and any excess funds being taken into the State General Treasury.

A new section has been added to AS 08.88.431 and, basically, this is a sub(5) defining resident manager as a person who resides on real property and manages for the benefit of another person. This definition is necessary to clarify the meaning of the change in Section 421 which exempts resident property managers from the licensing requirement. Without this definition it might be difficult to enforce any kind of regulation over property managers. This would manifestly endanger the public as can be seen by the fact that one of the largest frauds the Commision has encountered in recent years did involve a huge amount of money handled in

property management accounts. The Commission charged with protecting the public, and the realtors are charged with improving the industry. Both have reached a high degree of agreement on these changes to the statute and this is an indication of the need for the adoption of these changes. When the regulators and the regulatees are both acting conscientiously on behalf of their respective constituencies and are in agreement, it is highly likely that the changes they request are to the benefit of all concerned, including the public.

James L. Magowan

May 2, 1980

EXPLANATION OF THE PROPOSED BUDGET TO SUPPORT THE ALASKA REAL ESTATE COMMISSION CREATED UNDER HOUSE BILL ~~1004~~ SB 212

The proposed budget was developed through a simplified process of PPBS (Policy Program Budgeting System). The goals and objectives of the Real Estate Commission were identified. These represent the projected policies of the Commission. The functions and activities necessary to carry out those policies were determined as clearly as possible with current information. Commission policies cover enforcement. A policy for purposes of budgeting would include a goal stating how much enforcement is to be performed and the results expected. To carry out this policy through a program it is necessary to determine specific activities (program). For instance, complaints must be received cataloged , filed and tracked within the system. When it appears there may have been a violation, the violation must be investigated. The investigation must be scheduled and developed. The results must be prepared for prosecution through the Attorney General's Office. The Attorney General's Office must process the results of the Real Estate Commission investigations through its system. That system is beyond the direct control of the Real Estate Commission and therefore does not enter into the system except that the budget includes a specific allocation for a half-time attorney, which will assure a minimum level of A.G. support.

The specific activities of investigators, clerks, typists and other personnel in terms of processing the investigation and its results constitute the program which is instituted to achieve the policy goal.

Once the program has been determined the budget is axiomatic. A budget change changes the program which in turn changes the policies or goals.

It is estimated that a single investigation requires 20 to 30 hours of clerk-typist support if it is carried through the complete hearing and revocation, suspension or exoneration process.

If we accept a figure of two hearings per month as a reasonable policy goal at this stage of the Commission's development (two hearings per month is not enough to keep up with all valid complaints that could result in successful prosecutions but is a reasonable goal in view of the fact that the past year and a half has seen one hearing completed and one other hearing in process.) In this example, we then have an investigator who will be averaging two (2) completed investigations per month after the initial start up. That means one investigator will be producing between 40 & 60 hours per month of typing and clerical work for the support staff, on those two investigations alone. Additionally the investigator will also be responsible for the initial complaint handling, sending out letters, gathering initial responses, making reports of cases closed or not accepted for investigation and preparing periodic summary reports of all investigations, open, closed or in progress for the Commission. The investigator should be expected to utilize anywhere from 75 to 100% of one clerk-typist's time per month, if the investigator is to operate at an adequate level.

The investigator with clerical support will be responsible for keeping track of and keeping current records of the 150 to 200 complaints that

are anticipated over the next year, plus all cases currently on file and not completed. To do this with the number of personnel available requires adequate word processing equipment. The word processing equipment is part of the policy program budget system. Word processing equipment enables the investigator to achieve the operational goals set with the amount of time and clerical support available to him. A lack of adequate equipment can also effect basic policy goal achievement because it will delay the work of the investigator. Lack of proper equipment or management produces a syndrome which is usually manifest as a demand for more personnel.

The heart of PPB is that the budget is designed to achieve goals not simply to pay for positions or maintain a function which may or may not be in line with the goals. The budget is tied to the goals and the program is designed to achieve goals not to fit within the budget. Or to put it another way, the budgeting process is often backwards, programs are established or budget is established and then programs are developed out of the budget. In this system, the program is established and then the budget is derived from the program.

The fact that adequate personnel and equipment are required in order to achieve the policy goals set out and that all of these items are interrelated and that a change in one will effect the other components brings out the systems nature of this approach. This approach is a systems approach and is a means of budgeting systems to achieve goals.

In addition to enforcement the Real Estate Commission has a primary responsibility seeing to it that applicants are examined and licensed with a minimum of red tape or bureaucratic hassling and also that licenses

are issued in a prompt and expeditious manner. Real Estate licensees are a highly mobile population in terms of locus of employment. They frequently change employing brokers and brokers frequently move locations. It is essential to keep track of these movements because when complaints or inquiries come in about various licensees it is essential to know who is responsible for a given licensee. The issuing of licenses, the recording and tracking of changes and transfers, the processing of applicants for license, the review of applicants qualifications and so on are all what might be termed paper work intensive activities. Whenever an activity is what we will call paper work intensive it requires either a very high input of labor or it requires sophisticated paper work processing equipment to get the job done in a reasonable time. We have budgeted for word processing equipment, which will maximize the paper work handling capability of a relativly few personnel.

By using word processing equipment, for example, that has filing, indexing and retrival capability the license examiner will not have to maintain duplicate hand typed files for every licensee and every licensee location. By, using this type of equipment, when a change such as when a licensee, changes from one broker to another broker and also changes their license status from salesman to associate broker, the changes for can be accomplished in one operation by the license examiner. Additionally, if it is needed to send out a new license, a new license can be prepared automatically from the one entry which the examiner made into the system. When it is necessary to track an individual licensees employment or employment history this can be retrived from the system, automatically, by a

single operation. None of these things are currently possible with either the record-keeping or the word processing equipment available to the Real Estate Commission. The claim that the equipment saves man-hours or personnel costs is always met with the question,"How many people then are being eliminated?" In this situation, what we are proposing is starting with the minimum number of people. The word processing equipment is expanding the capability of those on the payroll to meet both current work load and a large portion if not the total portion of anticipated increase in work load in the immediate future.

It should be noted, that currently the routine issuing of licenses and maintaining the files is so under-equiped that we still have Real Estate licensees who have not received their licenses, renewal for which was sent months ago. This situation could be corrected under the current system by the addition of one or two license examiners or the installation of adequate word processing equipment. We are proposing word processing equipment. It should be noted that currently word processing equipment while costly, is nowhere near as costly as personnel.

A large part of the Real Estate Commission's current goals rest in the area of education or more accurately information. The Commission wishes to keep the licensees informed and the responsibilities and obligations that licensees must live up to in order to adequately serve and protect the public. One means of doing this would be through a periodic newsletter direct mailed to all licensees. The cost of the newletter itself and the mailing may be covered by the Real Estate Surety Fund Educational Program, however, the equipment necessary to produce the newsletter

and permit it to be written, edited and composed with an absolute minimum of clerk-typist and other personnel time being used requires adequate word processing equipment. One of the major benefits of word processing equipment is that it increases many-fold the output of the typist in terms of both quanity and quality.

The Real Estate Commission currently provides informational and informative articles to a number of publications including the Anchorage Realtor News Magazine, which goes to all members of the Anchorage Board of Realtors, Building Alaska magazine, which is distributed to many organizations including contractors and organizations involved in activities related to contracting and building industries in Alaska. Also local newspapers including the Fairbanks Daily News Minor, The Southeast Alaska Empire in Juneau and the Anchorage Daily News publish articles produced by the Commission. These articles are tailored to the various audiences at which the publications are directed. Daily News articles are aimed at increasing public awareness and ability to effectively work with Real Estate licencees and understand real estate transactions. Articles for Realtor News are designed specifically toward alerting the licensees to the requirements and obligations imposed by the Alaska Licensing Statute and advising licensees when areas of the Statutes appear to be subject to wide-spread mis-interpretation, hence violation. Articles written for Building Alaska magazine are aimed at both licensees and contractors with specific emphasis on the relationship between the licensee and the builder/contractor whom the licensee represents in a real estate transaction with emphasis on the obligation of both the contractor and the licensee to protect

the public. All articles and information released by, through or about the Real Estate Commission, particularly those that deal with licensee obligations and/or potential violations of the law by acts of licensees must be very carefully written, must be extensively edited and often re-written in order to avoid the possiblity of giving erroneous advice or slipping into the area of giving legal advice rather than advice and interpretation of the license law itself. Word Processing equipment improves the capability of the Commission staff to write, develop, edit and correct information for publication with a minimum use of clerical time. Basically, what we are looking at here is cost effectiveness in preparing printed information.

Using the PPB approach, we have examined the type and amount of publication involved, we have budgeted for the raw materials and we have also, budgeted for adequate personnel assuming the presence of adequate equipment and adequate personnel. Past experience has indicated that the Executive Secretary of the Real Estate Commission produces a volume of written work including correspondence and public information as well as notification to licensees, communications to the Real Estate Commission, to the public, to professional organizations, such as the Board of Realtors and articles as mentioned previously, which is sufficient to occupy a clerk-typist for at least 3/4's of the time therefore, with just the Executive Director and the Real Estate Investigator the Real Estate Commission would require approximately 1-1/4 clerk-typist simply to keep up the current level activity of the Executive Director and to support a reasonable level of investigations.

In addition to the typing, already mentioned there is further typing and

routine correspondence which currently is handled out of Juneau and is processed by either the License Examiner or clerk-typist in the Juneau office of the Division of Occupational Licensing which support the License Examiner on a when needed basis. Under 1004, the Real Estate Commission would not have access to these additional personnel even on an occassional basis, therefore the clerk-typist requested would also be utilized in some instances, to support the License Examiner with some of the non-technical aspects of his job, including the preparation of routine forms, documents and requests for information which must be sent out on a regular and continued basis.

Telephone

Both the Anchorage Field Office of Occupational Licensing and the Juneau office specifically the Real Estate License Examiner's desk currently receive a high volume of telephone calls. The Anchorage Field office receptionist spends approximately 1/2 to 3/4's of her time answering the telephone and receiving calls for the Real Estate Commission, specifically for the Executive Secretary. It is anticipated that the telephone call load, so to speak, will continue to increase because the number of licensees and the assistance required by licensees has increased constantly over the past 4 to 5 years. A clerk-typist, who is responsible for answering telephones produces relatively little typing because of the constant erratic and unpredictable interruptions of the telephone. The propose budget includes one clerk-typist for telephones who can supplement the typing support provided by the second clerk-typist.

Under House Bill 1004, the Real Estate Commission will be responsible for hearing claims for payment from the Real Estate Surety Fund and making

determinations and awards from the Surety Fund to aggrieved members of the public. This will involve notices, communications, summarizing complaints and preparing documents for the Real Estate Commission which up until this time neither the Real Estate Commission nor Occupational Licensing has had the responsibility for and therefore the work load for this activity must be estimated. Our estimates are if anything, conservative. It is anticipated that this would add at least another 1/4 to 1/2 person typing load. This is the weakest point in the budget because it could prove to be considerably more work anticipated due to it being a new activity of the Commission.

Travel

The Commission travel budget of $20,000 includes Commission meetings, Surety Fund hearings, investigations and attendance by the Executive Director at National Assoication of Real Estate License Law Officals conferences. The nature of the Commission's functions make the travel budget virtually self-explanatory.

The two clerical positions on the word processing equipment will be used to support one Executive Director, one investigator both of whom shall be considered the executive level positions as far as the type and volume of work they produce. Also one Licensing Examiner whose position should be considered a semi-executive level position in that the Licensing Examiner does require some clerical level support for some of the routine filing and entry that has to be performed particularly the Licensing Examiner is heavily involved in the technical examination of applicants

qualifications.

In addition a point overlooked with respect to a body such as the Real Estate Commission is that when you have seven (7) active volunteers as we should consider the Real Estate Commission, the clerical staff is in effect supporting these volunteers also. The seven members of the commission do generate work for the clerical staff. While individually they may not generate as much direct paperwork as say the Executive Director or the Investigator, they generate a considerable amount of work in view of the fact that they are active and this must also be supported by the same clerical staff as supports the Executive position of the Commission. What we have designed here is a set of policies, carried out by a program-budget which will achieve the goals of the Real Estate Commission and the legislature as expressed during the Sunset Hearings on Real Estate Commission and as implied in the letters from the House Commerce Committee and the Senate Commerce committee to the respect to House and Senate.

Those goals generally stated are:

1. Effective prosecution of those willfully injuring the public.
2. Effective education of thos who wish to provide service to the public.
3. Eliminate delays and confusion in the licensing of and tracking of Real Estate licensees.
4. Improve public awareness of the complexity of Real Estate transactions and the role of licensees so they may better utilize the services of licensees.

5. Better inform the public about the Real Estate Commission so that they know how and where to turn when they have a problem with a license.

6. Provide day to day answers to licensees who need them to voluntarily comly with the law and protect the public.

May 22, 1980

Christian,

Per your request I have outlined the sections of SB 212 with a brief explanation as follows:

Sec. 1 - 031: Changes the title of the Executive Secretary to Executive Director and gives the Commission the power to appoint and direct this position rather than the Commissioner of Commerce.

Sec. 2 - 034: Provides for the appointment by the Executive Director of a full-time investigator or auditor.

037: This section gives the Commission it's own powers for investigations and injunctions. In essence it is transferring the powers now held by the Commissioner of Commerce for investigations and cease and desist to the Commission and states the authority the Executive Director has WITH a majority of the Commission's approval.

Sec. 3 - 041(b): This change, which is part of the original SB212 passed by the Senate, simply prevents the appointment of a Commission that might have most of the Broker members from only one district. It assures that, if available, each district will have a Broker member.

Sec. 4 - 061: Deletes the approval of the Commissioner of Commerce from the Commission's authority to employ assistants.

Sec. 5 - 071(a): This was a portion of the original SB 212. The death of a sole-proprietor broker creates problems since the license is suspended upon death. It merely gives the Commission the power to appoint someone to handle the affairs of the office for the purpose of winding up the estate. The House Commerce Committee added the wording about having the Commission's appointee approved by a representative of the estate.

Sec. 6 - 071(b): This is simply a rewording of the current statute to clarify and reference appropriate statutes in SB212 if adopted.

Sec. 7 - 081: This section clarifies the intent of the statute and the regulation making authority of the Commission.

Sec. 8 - 091: Under the current statute the Commission is barred from publishing such items as a news letter to the licensees. This change would allow the Commission to better inform the licensees of the obligations and responsibilities.

Sec. 9 - 101: Changes the authority of the administrative duties from the Department of Commerce to the Commission.

Sec. 10 - 111: Changes Department to Commission.

Sec. 11 - 121: Changes Department to Commission.

Sec. 12 - 171(a): Under the Commissions current and future operating procedures Educational Testing Service (or any other testing service) provides the examinations and handles all of the testing centers and applications. The Commission will simply examine for licensing which will include the applicant presenting a certificate stating that he has passed the examination required for the license. Previously 08.88.211 was the section which stated who could be examined. In SB212 before you we have deleted 211 and placed those items which were appropriate under 171(a).

House Commerce Committee did change the length of time after conviction for a felony, etc. that one must wait before being licensed.

Simply put, anyone can apply to ETS and take the examination. To get licensed they must pass the qualifications of 171(a) by making application to the Commission and one of these qualifications is that they have passed the appropriate examination.

Sec. 13 - 171(b): Same as 171(a) except it applies to Associate Brokers.

Sec. 14 - 171 (c): Same as 171(a) except it applies to Salesmen.

Sec. 15 - 171(d): Changes Department to Commission.

Sec. 16 - 181(a): Due to ETS and other national testing procedures there are two sections for the exams, general and state. The Commission does not control the questions in the general section and therefore the change in this sections states the exam questions "may include" rather than "must include."

Sec. 18-221(c): Merely raises the fee for transferring or ammending licenses from $2 to $5.

Sec. 17 - 191: These changes are to conform with the current procedures for having the exams contracted out to a national testing service. Such items as having one-half of the examination fee returned if the applicant did not show up for the test are impractical under the new system.

Sec. 20 - 231: Changes Department to Commission.

Sec. 21 - 241: Changes the period a lapsed licensee may go before having to be re-examined from three to two years. In this instance it refers to someone who has not renewed his license.

Sec. 22 - 251(a): Changes Department to Commission.

Sec. 23 - 251(b): Changes are simply for clarity.

Sec. 24 - 251(c): Changes Department to Commission and corrects to current procedures. As an example, we no longer issue an inactive license certificate.

Sec. 25 - 263: Most states are now going to this procedure. If a licensee from another state comes to Alaska we will only require him to take the State portion of the examination and meet the requirements of 08.88.171. The reference to 08.88.211 could be deleted since it is being repealed at the end of this bill.

Sec. 26 - 291: Changes Department to Commission.

Sec. 27 - 301: Changes Department to Commission.

Sec. 28 - 361: There are many types of "listing" contracts used by the real estate industry and not all have to do with selling a property. Other would be leasing, management, etc. This section clarifies and corrects the previous statute.

Sec. 29 - 421(1): This section of the bill provides for exception to the requirement to be licensed. There has been a great deal of confusion on the part of licensees who read the current statute and believe they are not required to have transaction to their own account processed through their employing broker. The addition of the final words, "which is not in Alaska;" was necessitated by a legislative change in AS 34. 55.044(6) which changed that section from defining only land located outside of the State of Alaska to defining all subdivided land in the State of Alaska. When the statute was changed 421(1), by reference to that section, technically prohibited an Alaska subdivider from selling his own property without the services of a Broker. This is clearly a violation of his constitutional rights. This wording clarifies that.

Sec. 30 - 421(9): There has been great confusion in interpreting the current law. The changes in this section hopefully clarifies the interpretation of vocation and comensation.

Sec. 31 - 421: Resident managers have technically been required to be licensed under the existing statutes. This has been unreasonable and the addition of this section will allow certain types of resident managers not to be licensed.

Sec. 32 - 431: Defines resident manager.

Sec. 33 - 010: Due to the narrow window of the surety fund limits, $250,000 to $300,000 before excess funds revert to the general fund, the Commission and licensees have been lossing funds that they have paid. By increasing this window to $500,000 we will eliminate this problem.

One argument has been that the surety fund fees will not be reduced. The Commission may still lower the fees if appropriate provided the fund does not go below $250,000. It might be pointed out that the licensee is now receiving a $50,000 "bond" per year for a cost of, in the case of brokers, $62.50. Under the old bonding method this coverage would cost approximately $200 per year.

Sec. 34 - 020: Changes Commissioner to Commission.

Sec. 35 - 031: This section spells out the procedures one must use when making a claim to the Commission for payment from the surety fund.

Sec. 35 - 041: Lays out the procedures for the Commission for considering payment from the surety fund.

Sec. 35 - 051: Lays out how the Commission shall make payment upon findings from the surety fund.

Sec. 36 - 070: Changes Commissioner to Commission.

Sec. 37 - 080: Changes Commissioner to Commission.

Sec. 38 - 090: Changes Commissioner to Commission.

Sec. 39 - 120: Defines Commission

Sec. 40 - 010(c): Establishes a new sunset date for the Commission. The intent of the legislature has been to set the Commission up as an "experiment" and this establishes legislative review in two years rather than four.

Sec. 41 - : Repeallers.

Sec. 42 - : Effective date of the bill.

One additional comment. In the fiscal note we are requesting a budget for FY 81 of $278,300.00. According to Occupational Licensing's fiqures licensees have paid $428,294 into the general fund in FY78 and FY79. The yearly average is $214,147 or $64,153 short of the requested budget. Of the $278,300, $12,500 is for one-time cost of furniture, etc.

We are anticipating the excess amount to be approximately $14.00 per licensee.

If you have any questions, please call me at anytime. It is my opinion that this is an excellent and workable bill.

Lance Youngquist
Chairman, Alaska Real Estate Commission

586-1212

SECTIONAL ANALYSIS FOR HCSCS SB 212
May 27, 1980

(Sec. 08.88.031) P.1, L.11

Section 1 changes the title of the Executive Secretary to Executive Director and gives the Commission the power to appoint and direct this position rather than the Commissioner of Commerce. Essentially this removes the administrative support function of the Real Estate Commission from the Division of Occupational Licensing and places this function within the Real Estate Commission.

(Sec. 08.88.034) P.1, L.17

Section 2 provides for the appointment by the Executive Director of a full-time investigator auditor.

(Sec. 08.88.037) P.1, L.21

This position of Section 2 gives the Commission its own powers for investigations and injunctions and transfers the power now held by the Commissioner of Commerce for investigations and cease and desist to the Commission and states the authority the Executive Director has with a majority of the Commission's approval.

(Sec. 08.88.041(b)) P.2, L.25

Section 3 prevents the appointment of a Commission whose members are from only one district. It assures that, if available, each district will have a broker member. There is already a provision for two public members.

(SEC. 08.88.061) P.3, L.6 — SECTION 4 DELETES THE APPROVAL OF THE COMMISSIONER OF COMMERCE FROM THE COMMISSION'S AUTHORITY TO EMPLOY ASSISTANTS.

(SEC. 08.88.071(A) P.3, L.12 — SECTION 5 GIVES THE COMMISSION THE POWER TO APPOINT SOMEONE TO HANDLE THE OFFICE AFFAIRS OF A DECEASED SOLE-PROPRIETOR BROKER, FOR THE PURPOSE OF CLOSING THE ESTATE.

(SEC. 08.88.071(B)) P.3, L.18 — SECTION 6 GUARANTEES REPAYMENT INTO THE REAL ESTATE SURETY FUND IF A CLAIM HAS BEEN AWARDED UNDER AS 45.85.

(SEC. 08.88.08L) P.4, L.2 — SECTION 7 CLARIFIES THE INTENT OF THE EXISTING STATUTE REGARDING THE REGULATION MAKING AUTHORITY OF THE COMMISSION.

(SEC. 08.88.091) P.4, L.6 — SECTION 8 WILL ALLOW THE COMMISSION TO PUBLISH INFORMATIONAL MATERIAL TO BETTER INFORM THE LICENSEES OF THEIR OBLIGATIONS AND RESPONSIBILITIES.

(SEC. 08.88.101) P.4, L.15 — SECTION 9 CHANGES THE AUTHORITY OF THE ADMINISTRATIVE DUTIES FROM THE DEPARTMENT OF COMMERCE (DOC) TO THE COMMISSION.

(SEC. 08.88.111) P.5, L.14 — SECTION 10 CHANGES DEPARTMENT OF COMMISSION.

(SEC. 08.88.121) P.5, L.20 — SECTION 11 CHANGES DEPARTMENT TO COMMISSION.

(SEC. 08.88.171(A)) P.5, L.27 — SECTION 12 STIPULATES THAT A STATE RESIDENT CAN APPLY FOR THE EDUCATIONAL TESTING SERVICE. FOR LICENSURE AN APPLICANT MUST PASS THE QUALIFICATIONS OF THIS SECTION.

(SEC. 08.88.171(B)) P.6, L.26 — SECTION 13 IS THE SAME AS SECTION 12 EXCEPT IT APPLIES TO ASSOCIATE BROKERS.

(SEC. 08.88.171(C)) P.7, L.20 — SECTION 14 IS THE SAME AS SECTION 12 EXCEPT IT APPLIES TO SALESMEN.

(SEC. 08.88.171(D)) P.8, L.8 — SECTION 15 CHANGES DEPARTMENT TO COMMISSION.

(SEC. 08.88.181(A)) P.8, L.12 — SECTION 16 STATES THE EXAM QUESTIONS "MAY INCLUDE" RATHER THAN "MUST INCLUDE" SINCE THE COMMISSION DOES NOT CONTROL THE QUESTIONS IN THE GENERAL SECTION OF THE NATIONAL EDUCATIONAL TESTING SERVICE.

(SEC. 08.88.191) P.8, L.19 — SECTION 17 CHANGES ARE TO CONFORM WITH THE CURRENT PROCEDURES FOR HAVING THE EXAMS CONTRACTED OUT TO A NATIONAL TESTING SERVICE.

(SEC. 08.88.221(C)) P.9, L.8 — SECTION 18 RAISES THE FEE FOR TRANSFERRING OR AMENDING LICENSES FROM $2 TO $5.

(SEC. 08.88.221) P.9, L.10 — SECTION 19 COMPENSATES AN APPLICANT BY REDUCING HIS EXAMINATION FEE BY THE AMOUNT PAID TO THE NATIONAL TESTING SERVICE.

(SEC. 08.88.23L) P.9, L.17 — SECTION 20 CHANGES DEPARTMENT TO COMMISSION.

(SEC. 08.88.241) P.9, L.21 — SECTION 21 CHANGES THE PERIOD A LAPSED LICENSEE MAY GO BEFORE HAVING TO BE RE-EXAMINED FROM THREE TO TWO YEARS.

(SEC. 08.88.251(A)) P.9, L.26 — SECTION 22 CHANGES DEPARTMENT TO COMMISSION.

(SEC. 08.88.251(B)) P.10, L.4 — SECTION 23 CLARIFIES EXISTING STATUTES CONCERNING INACTIVE LICENSEES.

(SEC. 08.88.251(C)) P.10, L.7 — SECTION 24 CHANGES DEPARTMENT TO COMMISSION AND OUTLINES THE PROCEDURE BY WHICH AN INACTIVE LICENSEE CAN AGAIN BECOME ACTIVE.

(SEC. 08.88.263(P.10, L.19 — SECTION 25 GUARANTEES RECIPROCITY WITH OUT-OF-STATE LICENSES PROVIDED THE APPLICANT HAS PASSED THE PORTION OF THE REAL ESTATE EXAMINATION WHICH EXAMINES ON ALASKA LAW.

(SEC. 08.88.291) P.10, L.26 — SECTION 26 CHANGES DEPARTMENT TO COMMISSION.

(SEC. 08.88.301) P.11, L.7 — SECTION 27 CHANGES DEPARTMENT TO COMMISSION.

(SEC. 08.88.361) P.11, L.11 — SECTION 28 CLARIFIES AND CORRECTS THE CURRENT STATUTE. THERE ARE NUMEROUS TYPES OF "LISTING" CONTRACTS USED BY THE REAL ESTATE INDUSTRY AND NOT ALL ARE INVOLVED WITH SELLING A PROPERTY. (I.E., LEASING, MANAGEMENT, ETC.)

(SEC. 08.88.421(1)) P.11, L.18 — SECTION 29 PROVIDES FOR EXCEPTION TO THE REQUIREMENTS TO BE LICENSED. SPECIFICALLY, TRANSACTIONS ON A BROKER'S OWN ACCOUNT MUST BE PROCESSED THROUGH THEIR EMPLOYING BROKER.

(SEC. 08.88.421(9)) P.11, L.23 SECTION 30 CLARIFIES THE INTERPRETATION OF THE WORD VOCATION WITH RESPECT TO COMPENSATION.

(SEC. 08.88.421) P.12, L.9 SECTION 31 ALLOWS CERTAIN TYPES OF RESIDENT MANAGERS NOT TO BE LICENSED. RESIDENT MANAGERS HAVE TECHNICALLY BEEN REQUIRED TO BE LICENSED UNDER THE EXISTING STATUTES.

(SEC. 08.88.431) P.12, L.16 SECTION 32 DEFINES RESIDENT MANAGER.

(SEC. 45.85.010) P.12, L.19 SECTION 33 RAISES THE AMOUNT FROM $300,000 TO $500,000 BEFORE EXCESS OF THE SECURITY FUND FUNDS REVERT TO THE GENERAL FUND. THE COMMISSION AND LICENSEES HAVE BEEN LOOSING FUNDS THAT THEY HAVE PAID IN.

(SEC. 45.85.020) P.12, L.27 — SECTION 34 CHANGES COMMISSIONER TO COMMISSION.

(SEC. 45.85.031) P.13, L.14 — SECTION 35 SPELLS OUT THE PROCEDURES ONE MUST USE WHEN MAKING A CLAIM TO THE COMMISSION FOR PAYMENT FROM THE SURETY FUND AND LAYS OUT HOW THE COMMISSION SHALL MAKE PAYMENT UPON FINDINGS FROM THE SURETY FUND.

(SEC. 45.85.070) P.15, L.20 — SECTION 36 CHANGES COMMISSIONER TO COMMISSION.

(SEC. 45.85.080) P.15, L.28 — SECTION 37 CHANGES COMMISSIONER TO COMMISSION.

(SEC. 45.85.090) P.16, L.6 — SECTION 38 CHANGES COMMISSIONER TO COMMISSION.

(SEC. 45.85.120) P.16, L.16 — SECTION 39 DEFINES COMMISSION.

(SEC. 08.03.010(c)) P.16, L.19 — SECTION 40 ESTABLISHES A NEW SUNSET DATE OF JUNE 30, 1982, FOR THE COMMISSION. THE INTENT OF THE LEGISLATURE IS TO ESTABLISH THE COMMISSION AS AN "EXPERIMENT" AND LEGISLATIVE REVIEW WILL BE IN TWO YEARS RATHER THAN FOUR.

SECTION 41. REPEALERS.

08.01.010(13) REMOVES THE REAL ESTATE COMMISSION FROM CENTRALIZED LICENSING.

08.03.010(B)(9) TERMINATION DATE OF JUNE 30, 1980

08.88.211 QUALIFICATION FOR EXAMINATION

08.88.431(3) REMOVED "DEPARTMENT" FROM DEFINITIONS

08.85.030 REMOVES APPLICATION FOR PAYMENT FOR THE SURETY FUND FROM THE DEPARTMENT OF COMMERCE.

45.85.040 REMOVES PAYMENT FROM THE SURETY FUND FROM THE DEPARTMENT OF COMMERCE.

45.85.050 REMOVES THE COMMISSIONER OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FROM THE RESPONSIBILITY OF DISPENSING MONIES FROM THE SECURITY FUND. THIS FUNCTION WILL BE ADMINISTERED BY THE REAL ESTATE COMMISSION.

SECTION 42 IS THE EFFECTIVE DATE CLAUSE: JUNE 30, 1980.

3/04/80 3:00PM

Real Estate Commission

Lance Youngquist Chairman of Real Estate Board

Written testemoney submitted.

Robert Rogers Licensed Broker from ANC

Rec #2. A form of arbitration

Rec #4. Continued Education is good but some limitations exist.

James McGowen - Executive Secretary of Real Estate Commission.

Rec #2 Arbitration difficult due to ↓ funds.

need A.G's office help. } ☆→

" Hearing officer }

☆ → (Elaine) Get Copy of the Register

George Oliver - Ch. Reg. Committee Board of Realtors.

Do not sunset this board

Protects Public Interest for transactions.

☆ → Ken Cain - Written testimoney

→ SB-212 Educational Up grading. dropped out of the bill.

(H) 745-4441

Robert Berrie (Wasilla)

Assurity fund should not be used for education of the Public -- 45.85.010

Carol Masser on the Board

↳ Opinion: Ignored By the At. G's office

A.G not investigating complaints.

↳ Eliminate the commission.

↳ Banking & Securities can handle it.

↳ Consumer Protection can handle complaints.

↳ Educational Requirements good.

→ If >$ is put into loan programs many would sell and leave Ak. Now they can't leave because they can't sell!

Mr. Bob Rogers

Ann Griggs

- Lance Gunggunst } Juneau
- [illegible]ert T. Rogers }

Give REC some teeth. Need a special investigator for real estate.

Recomd. #2

See Atty Gen. - about settling claims - Set up arbitration Board

Recomd #3

Recomd #4 Estab ed hours - not mandatory. Gen. Jud. Comm. working up a bill - Make sure it is referred to Commerce first, then Judiciary. Not mandatory education to maintain license!

Recomd. #5

- James McGowan

Need access to word-processing equipment between Anchorage + Juneau.

- George Oliver -

- Karen Morris - Observer

- Robert Barry - Pres. of the Mat. Valley Bd of Realtors

Do not use Surety Fund for education of the pub licen

745-4441 (Home)

- Carol Moser - Member of REC

AG has ignored the REC - they chose not investigate + prosecute.

If REC is not more effective, then it should be disestablished. REC pays its own way - Consumer Protection Office could do the REC job.

- Ann Griggs – Surety Fund Educational Program is not just public ed. Open to public seminars but not just for them –
- Jim McGowan – RE licences in regard to investment analysis –

SUNSET REVIEW PREPARED STATEMENT

BY

THE ALASKA REAL ESTATE COMMISSION

THURSDAY, JANUARY 24, 1980

JUNEAU, ALASKA

SUNSET REVIEW PREPARED STATEMENT BY THE ALASKA REAL ESTATE COMMISSION

THURSDAY, JANUARY 24, 1980

JUNEAU, ALASKA

Mr. Chairman and members of the House Commerce Committee. For the record, my name is Lance Youngquist and I am chairman of the Alaska Real Estate Commission. In attendance with me this morning are the six other real estate commissioners for Alaska, broker members Carol Maser of Anchorage, Gail Glad of Kenai, Karen Morris of Fairbanks, Ken Calhoun of Anchorage, and our two public members, Frank Austin of Anchorage and Gary Wilken of Fairbanks. We would like to thank the committee for the opportunity to make a presentation this morning.

Our statement is designed to achieve several objectives. We will provide you with comments on several aspects of the reports prepared for you by the Legislative Budget and Audit staff and the staff of the Department of Occupational Licensing and we will comment on our suggestions regarding possible legislative actions which would provide the tools needed to carry out the various responsibilities assigned to the Commission. I would like to add our thanks to the Legislative Audit and Occupational Licensing staffs for the opportunities they provided us with for input into their reports.

Because the document, "A Performance Review of the Alaska Real Estate Commission", prepared by Legislative Budget and Audit staff, is the primary

document being used by the committee, I would like to present the Commission's opinions as to the recommendations that were made in that document.

The first recommendation deals with investigative procedures and, specifically, potential conflicts of interest by the Commission's Executive Secretary. Under the investigative procedure that was developed between Occupational Licensing and the Commission approximately one year ago, item II.B. states, "The Executive Secretary will not receipt, review or retain any complaints concerning possible conflicts of interest, i.e., complaints concerning the Executive Secretary or a Commission member or their relatives or business partners, past or present, or any matter involving unlicensed activity. These complaints will be immediately referred to the investigative section. The Executive Secretary will not be involved with these complaints." The Commission is in total agreement with this statement and insists on its adherance.

As you know, there are a number of ways for an individual to enter a complaint into the system without going through the Executive Secretary, including direct contact with the investigative unit, through any Commission member, Occupational Licensing, the Attorney General's Office, and the Ombudsman. We feel the existing procedures that are now being used are adequate to deal with the potential conflicts.

Recommendation No. 2 deals with the real estate surety bond and the establishment of legislation to allow the commission to determine monetary settlements. The Real Estate Surety Fund was established through the strong efforts of the State's realtor organizations in an attempt to create a

more equitable program for loss recovery than the prior method of individual bonding. It was felt that having the courts determine the validity and amount of claims would be the most appropriate method as the legal questions, etc., are under the purview of the courts. While the recommendation by Legislative Audit is not rejected outright by the Commission, we must look at it from a practical point of view.

The Legislative Audit report states that five settlements have been made from the fund. As of this week, we have made eleven settlements, totalling $87,564.83. It must be understood that it takes time to go through the courts for a judgment and that many persons counseling potential claimants were not aware of the Surety Fund for many months. We are now beginning to see judgments from suits filed as long as two years ago and, also, an increasing awareness of the Fund by the public. In fact, the Commission is concerned that the Fund may not be adequate as currently structured.

We feel that for the Commission to take on the responsibility of handling claims would require several full-time commissioners, staff members and attorneys, plus clerical help, simply to hear the cases. The monetary cost would be tremendous. If the Commission were to hear the claims there would be a drastic increase in workload due to the minor disputes over such items as earnest moneys. Small claims and other similar courts currently provide adequate protection for most of these claims. The larger claims are being handled judicially by the higher courts.

The report suggested that the Surety Fund could be patterned after the Alaska Bar Association's Client Security Fund, which would allow "cheaper, easier and possibly quicker remed(ies) to damaged individuals. The Bar Association's Fund provides virtually unlimited coverage for very narrowly-based security claims while the Surety Fund provides limited coverage for a broad range of claims. I might add that, as of September 1979 there has never been a claim against the Bar Association's Security Fund. Our recommendations for changes in the Surety Fund are made later in this report.

Recommendation No. 3. As you are aware, Legislative Audit's recommendation to move the licensing investigative unit from Occupational Licensing to Public Safety will be implemented on February 15, according to the information we have received. Though the Commission has opposed this transfer, the objective now, assuming the transfer will be made, is to make the change work. Let me state what the Commission feels has been the real problem with investigations of real estate complaints.

The Real Estate Commission is charged with protecting the public from dishonesty and incompetence of real estate licensees. To do this, we must have adequate legal, investigative, and clerical support. We have dealt with two agencies, and now must deal with three agencies, for that support: Occupational Licensing for clerical and other support services, the Attorney General's Office for legal services, and now Public Safety for the investigative procedures.

In the past we have had one investigator to handle medical boards and the Real Estate Commission. The investigator has more cases from any one of these boards than can be well investigated by a single person. All cases, therefore, must be prioritized. Real estate cases are prioritized vis a vis medical cases. No real estate case can have top priority because brokers do not kill people with their malpractice as physicians might. The Attorney General's Office does not have anywhere near the staff needed and assigned to Occupational Licensing to handle all or even the most pressing cases. Again, prioritization occurs and, again, real estate cases rank below medical cases in danger to "life and limb".

We cannot disagree with the prioritization by the Attorney General's Office and the investigative unit of "life and limb" cases over "money" cases. We are not faulting them for not doing things; rather, we are faulting the system that forces them into this procedure.

The Legislative Audit observations on improper filing systems and record keeping are concurred with by the Commission. There are corrective procedures that can help this situation but, again, it boils down to clerk-typist assistance and word-processing equipment. Though there have been recent improvements in the clerk-typist area, word-processing is still in dire need.

The Legislative Audit report states that the average time for investigating real estate complaints is 11.4 weeks. That is the time it takes to process

a complaint in which little or no further investigation is necessary to close the complaint without license action. 11.4 months to go from a complaint to a hearing would be more reasonable and, in most instances, we are forced to advise complainants that prosecution takes 18 to 24 months or longer, if it gets done at all.

The result of all these problems is lack of enforcement and what amounts to voluntary compliance by some and violation with impunity by others. Our enforcement is more effective against the small offices and minor offenders simply because these licensees are often concerned with what the "Commission" thinks about them, and because they cannot afford expensive litigation.

Legislative Audit Recommendation No. 4 requests consideration of legislation to establish real estate courses before licensing. The has been a matter of considerable debate not only amongst the Commission members, but also with other licensees and the State's realtor organizations. As you may be aware, the Commission introduced a bill through Senator Bennett last year, SB 212, in which we request authority to establish mandatory educational requirements by regulation. The bill was amended through efforts of the State Association of Realtors who felt that precise hours and effective dates should be spelled out by statute.

The subject of mandatory education is a complicated one. We object to Legislative Audit's implication that because 41 other states have it, we should have it. In fact, some states are beginning to rescind previously adopted requirements.

SB 212 originally submitted by the Commission was permissive towards mandatory education but would have provided time and flexibility in introducing requirements and evaluating needs of the public and the industry. The Commission is on record as supporting this concept, as introduced in the original SB 212.

It is our feeling that we should establish sound programs and procedures first rather than last, then measure them for effectiveness and need. At that point, if desired and workable, they could be required to be mandatory. We feel this will insure their success and effectiveness. We are attempting this first step now with recent contracts using our excess Surety Fund moneys, as I will explain in a moment.

Recommendation No 5., to provide program objectives for Occupational Licensing's budget has a simple answer. We have, we do, and they are meaningless and very difficult to measure in quantitative terms since the budgeting structure has been so vague. We do not feel this is a fault of Occupational Licensing and, in general, we have been very pleased with the services they have provided for us. Our licensing examiner, Brent Long, has done an excellent job, and the regulations specialist, investigators and others have provided us with reasoned, conscientious, and available support. It is our opinion that our Executive Secretary, James Magowan, has taken a difficult position and molded it into one of top quality service to the Commission and the public. The Commission particularly takes note of the professional approach taken by the Director of Occupational Licensing, Ann Griggs, and we appreciate her support of the Commission with the limited resources available to her.

While these are our responses to Legislative Audit's recommendations, let me add some further observations on the Commission's activities. We will not dwell on the need of the Commission to demonstrate its need as required by Sunset statutes, as this is answered in the various reports that have been submitted to the Committee. However, we did feel that, assuming the need is there, we have been trying very hard to meet that need.

1. Over the pas few years we have completely rewritten all of our regulations and these became effective in August 1979. We have conscientiously reviewed our regulations on a continuing basis and we are presently in the public notice stage for additional changes.

2. While it is our opinion that our statutes need major overhauling, a subject I shall address in a moment, we have continually introduced legislation for statute changes, the most recent being SB 212.

3. We have fought long and hard for additional educational programs and, finally, with the Legislature's granting of a $75,000 appropriation from our Surety Fund last year, we have been able to assist the University of Alaska in establishing an Alaskan center for real estate education, and a continuing educational program which is currently being developed and should begin in about two months. This program, in addition to ongoing courses, will provide two-day seminars ten times per year in Anchorage, four times in Fairbanks, twice in Juneau, Homer and Kenai, and

once in Seward and Kodiak. We also plan to hold seminars in some of the more remote communities including Nome, Barrow, Bethel and Kotzebue where there is a growing need for real estate competence.

These seminars will provide top quality instructors and distinguished speakers, using University facilities, and are designed to update the licensees and the public in such areas as the law. They will also provide training in areas identified as major risk to the public, such as trust accounts.

We have also contracted to have a law manual prepared to assist the public and practitioners in further understanding of the real estate laws, and these manuals will be used as texts for some of the seminar programs.

4. Our Executive Secretary is currently writing and publishing many articles which are distributed through magazines and periodicals throughout the State. In addition, he provides 52 newspaper columns per year which are published in the Anchorage Daily News, Southeast Alaska Empire, and the Fairbanks Daily News-Miner. This has been done in addition to his many other duties and responsibilities.

5. We have not only instituted a new testing program for licensees through Educational Test Service but, as of this month, have established a new procedure whereby ETS will be taking full

responsibility for the examinations. Our past procedure was to have an individual who wanted to take the real estate exam apply directly to the State. Occupational Licensing would then take all of the applications, set up the exam centers, request the appropriate number of exams from ETS, do the testing, return the exams to ETS for grading, send the results to the examinees, receive the applications for licenses from those who had passed and, finally, license the individual. Under the new system, all applications will be made to ETS directly and they will have the total responsibility for the exam centers, monitors, testing, grading, etc. Only after ETS has notified the examinee of a passing grade will Occupational Licensing become involved by examining the applicant's other qualifications and issue the license. The Commission will maintain control over ETS for the tests and procedures. It becomes obvious that the man hours saved by the State through this procedure will be tremendous and the efficiency greatly increased. The additional cost for this service is merely $2.00 per exam and, in fact, will not cost the applicants any additional money.

6. We have broadened our testing program and are now giving exams not only in Anchorage, Fairbanks and Juneau, but also in Ketchikan, Kodiak, Nome, Bethel and Kenai/Soldotna.

In concluding these remarks, we would like to present our recommendations regarding what should be done to better perform our mandated function of serving the licensees and protecting the public. These recommendations are our request for assistance from you. We trust you will give careful consideration to them and we hope you will implement the procedures suggested.

Though you have heard the story many times that "we put more money into the system than we get out of it", this is a true statement when it comes from real estate licensees. Current figures show that the real estate licensing function over the past four years has provided revenues of $726.323, while expenses have equaled $601,803. The expense figures are from Occupational Licensing's method of dividing their total licensees by their total expenses. The revenue totals average $181,580 per year, which we feel should be totally used for the real estate function.

Considering that we are providing sufficient funds, we would request the following changes in the Real Estate Commission be implemented.

We request that the real estate licensing and enforcement functions be immediately set up as a separate "section" under the Department of Occupational Licensing and the Commission. It should have its own budget and be staffed with an administrator, investigator, auditor and license examiner, with sufficient clerical assistance to support their functions. In addition, a full time attorney should be assigned to the section by the Attorney General's Office. Full-time funding is already being provided for the administrator, in the form of our Executive Secretary, and the license examiner. Partial funding for the other positions, except for the auditor,

is provided through the time these positions now devote to the Commission.

A special comment should be made on the auditor position. Many of the problems we now encounter are related to trust account misuse and fiduciary responsibilities. With auditing capability, the Commission feels it can eliminate many of these problems before they occur. The preventive benefits to the public will far outweigh the cost.

The rapid growth of the real estate industry indicates a proportionate increase in the problems in the future. Rather than compound these problems by continually trying to use and improve old procedures, let us take one bold step, establish a "real estate section", and provide services at the levels required.

In addition to a "real estate section", we would also request the following:

1. Provide legislation that would raise the ceiling on the Surety Fund from $300,000 to $500,000. The Commission will be introducing this change as an amendment to SB 212.

2. Grant an appropriation or other support to the Commission to allow for a complete rewriting of the current real estate statutes. We estimate a cost of approximately $15,000.

3. Assist us in the immediate passage of SB 212, as introduced by the Commission, with appropriate amendments that we shall recommend.

We trust that these recommendations are not unreasonable, but practical, and that the service that licensees provide to the consumer and the State justifies their recognition by the State as an important and necessary element. The Commission is impressed by the high character and standard of our real estate industry and only asks that you allow us the tools to even better serve the public and the licensees. This is your responsibility. Ours is to do the best job we can in the areas assigned to us. We ask you to encourage continued improvement in our industry by your support.

The Real Estate Commission appreciates this opportunity to be heard and we are available for any questions you may have.

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 13, 1980

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Your Senate Commerce Committee has had under consideration for "Sunset" review the Real Estate Commission pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this commission, at which written and oral testimony was received. Members of the commission testified in person or by teleconference. The Committee considered the proposed budget of the commission for FY 1981 and particularly examined the performance audit of the activities of the commission conducted by the Division of Legislative Audit.

Guided, in part, by this performance review the Committee took into consideration the factors required to be considered under AS 44.66.050(c).

Your Commerce Committee thereby makes the following findings: The Committee concurs only in recommendation number two and does not concur in recomendations one, three, four, and five as they appear on pages 10 through 13 of the Performance Review of the Real Estate Commission dated May 7, 1979, which is hereby incorporated by reference as though fully set out herein.

We agree with testimony provided by members of the commission that the commission could do a better job if it had its own investigator or auditor, or both. Therefore, legislation will be introduced which will remove the Real Estate Commission from the umbrella of the Division of Occupational Licensing (except for minor and administrative support) allowing the commission a separate budget, including

at least one full-time investigator or auditor. The Committee believes that minimum requirements for licensing of real estate brokers and real estate salesmen should be set by statute.

The Committee feels that it has adequately addressed the recommendations and categories required under AS 44.66.050(d), and recommends that with the changes stated in this report the Real Estate Commission be continued for another two years, that is, that the repealer with regard to the activities of the board be amended to read June 30, 1982.

We have recommended a two-year extension to allow review by the Legislature of this new structure before the running of a full four-year "Sunset" term.

A bill will be introduced by the Commerce Committee facilitating the changes and recommendations in this report.

Respectfully submitted,

Brad Bradley

Senator Brad Bradley
Chairman
Senate Commerce Committee

BB:jss

A PERFORMANCE REVIEW OF THE REAL ESTATE COMMISSION

MAY 7, 1979

A PERFORMANCE REVIEW
OF THE
REAL ESTATE COMMISSION

MAY 7, 1979

Commissioner of the Department of Commerce and Economic Development	Charles Webber
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Real Estate Commission

Chairperson	Lance Youngquist
Member	Karen Morris
Member	Carol Maser
Member	Frank Austin
Member	Gary Wilken
Member	Ken Calhoon
Member	Gail Glad

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

June 27, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
REAL ESTATE COMMISSION

May 7, 1979

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), an audit of the Real Estate Commission was conducted to review Commission activities and accomplishments to determine if the Commission has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Real Estate Commission should be reestablished. The law currently specifies that this Commission will terminate on June 30, 1980, but will continue until June 30, 1981 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Commission's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) applicable statutes and Commission regulations;

(2) interviews with Commission members and questionnaires sent to the Commission;

(3) interviews with real estate agents and professional association representatives;

(4) tests of records and documents of the Commission and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) interviews with OL employees;

(6) complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency, and the Equal Employment Opportunity Office;

(7) questionnaires sent to Alaska licensed real estate brokers, associate brokers and salespersons; and

(8) review of other states' licensing requirements.

Scope Constraints

This review was hampered by the following constraints:

(1) The Commission has not established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090.

(2) OL has not adequately collected, recorded or maintained pertinent files and statistics relating to the Commission to effectively and efficiently carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

The Real Estate Commission (REC) was established and operates under Title 8, Chapter 88 of the Alaska statutes. It is a regulatory commission composed of five real estate brokers, or associate brokers, and two public members.

The Commission regulates licensed real estate agents (brokers, associate brokers, and salespersons) by:

1. examining and issuing licenses to qualified applicants;

2. establishing or amending rules and regulations necessary to enforce State statutes;

3. holding hearings to revoke or suspend the license of a person violating real estate statutes or regulations;

4. prosecuting through the Department of Law, violators of real estate statutes and regulations.

The REC is also authorized to conduct real estate clinics, meetings, or educational institutes for the purpose of raising the standards of the real estate business and the competency of licensees.

Real estate brokers and associate brokers must pass an examination, be a resident of the State, have had 24 months of experience as a real estate salesperson, and not have engaged in conduct demonstrating their unfitness to be a broker. A broker differs from an associate broker in that a broker must be an owner of a real estate business or employed as a broker by a corporation. An associate broker has met the statutory qualifications of a broker, but is employed by a real estate broker.

A real estate salesperson must pass an examination, be a resident of the State, be employed by the owner of a real estate brokerage and not have engaged in conduct demonstrating unfitness to be a salesperson.

Real estate agents must pay a bond fee when obtaining or renewing their licenses. These fees are deposited in the Real Estate Surety Fund and are to be used for making settlements to victims of fraud, misrepresentation, and deceit by real estate agents. Settlements to damaged parties are only paid upon a court order. If the Surety Fund balance reaches above $250,000, the excess may be appropriated for educational programs put on by the REC.

The Commission has staff support from the Division of Occupation Licensing (OL). The Division is required to maintain license files, process applications, and provide other administrative support to the Commission. Also an executive secretary is assigned to perform investigative and other administrative services for the REC.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these issues the legislative oversight committees should consider the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Real Estate Commission (REC) should continue to regulate and license real estate professionals. The regulation and licensing of the profession is necessary because of the potential for substantial economic loss resulting from the business practices of unqualified, incompetent, or dishonest real estate practitioners.

However, in order for the REC to perform more effectively and efficiently, several changes need to be made. For instance, investigative procedures need to be changed to correct any potential for a conflict of interest by the executive secretary. The executive secretary has investigated complaints against real estate agents for REC and has been placed in potential conflict of interest situations (see Recommendation No. 1).

Also legislation needs to be introduced which would assign the responsibility to REC of whether and to what extent monetary settlements should be made from the Real Estate Security Fund to persons damaged by licensed real estate agents. In order for individuals to be granted damages, they must obtain a court order. This has only been done five times since the Fund was created in 1976 (see Recommendation No. 2).

The complaint filing system is incomplete and inadequate to show that investigations are properly conducted. Therefore investigative procedures for real estate complaints should be revised to develop an accurate and efficient system for handling complaints (see Recommendation No. 3).

In addition, there are no educational requirements for licensing of real estate agents. Forty other states require some type of education for agents and responses from a Division of Legislative Audit questionnaire indicate, a need for additional education (see Recommendation No. 4).

And finally, the REC should develop program objectives to be included in the Division of Occupational Licensing's budget documents that specifically state what can be accomplished in quantitative terms (see Recommendation No. 5).

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 4 are addressed to the Real Estate Commission. Finding and Recommendation No. 5 is addressed to the Division of Occupational Licensing (OL), and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978".

Recommendation No. 1

The Real Estate Commission (REC) in conjunction with the Division of Occupational Licensing (OL) should change and revise their investigative procedures to correct any potential conflict of interest by the executive secretary.

For the last few years, the executive secretary of the REC has been investigating complaints against real estate agents. Presently the executive secretary's wife is a real estate broker which places the executive secretary in a potential conflict of interest situation.

During our review, we noted several cases where a potential conflict of interest occured. One case resulted in a complaint against the executive secretary being filed with the Ombudsman's office. In another case, the complainant stressed that she hesitated to file a complaint because of the executive secretary's position.

We suggest that all incoming complaints be filed with the investigative unit of OL. The executive secretary should be allowed to attempt to settle minor complaints which do not involve relatives or commission members. However, all other complaints should be controlled and investigated by the investigative unit of OL.

If this system is implemented, the executive secretary should have more time to devote to other activities because of the decrease in investigative duties. This extra time could for example be available for planning and organizing future educational programs conducted by the Commission.

Recommendation No. 2

Legislation should be introduced to assign the REC responsibility for determining monetary settlements from the Real Estate Surety Fund.

The Real Estate Surety Fund is for public protection against fraudulent actions by licensed real estate agents. The statutes currently require that an individual obtain a court order before being granted a settlement from the Fund. Each settlement is limited statutorily to $10,000 or less. Persons with claims $2,000 or less could collect in small claims court. However, persons with claims greater than $2,000, may find it economically infeasible to obtain a court order because of the time and expense involved in litigation.

Since the Surety Fund's inception in 1976, there have been five settlements paid from the Fund. There have been about 400 real estate complaints filed with OL. Currently the Alaska Bar Rules assign the responsibility of controlling the Client Security Fund, which was created to protect consumers from fraudulent actions by lawyers, to the Board of Governors of the Alaska Bar Association.

We suggest that introduced legislation should be similar to the Alaska Bar Rules. This would allow cheaper, easier, and possibly quicker remedy to damaged individuals.

Recommendation No. 3

Investigation procedures for real estate complaints should be changed and revised to develop an accurate and proper system for handling complaints.

good

We found that Commission members were being informed as to the facts and opinions of investigations of potential license violations. In addition, a Commission member completed an investigation of a very sensitive complaint instead of the executive secretary, who normally handles investigations. Although the complaint has been closed, some questions about the case have not been fully investigated and answered.

In the Disciplinary Action Manual for Occupational Licensing Boards, the National Association of Attorney Generals has stressed that boards and commissions should refrain from involvement in investigations and that their primary role is decision maker.

We also reviewed the files of complaints against real estate agents to determine if investigations were properly completed. In an analysis of 100 complaints, we found:

a. twenty-one files contained inadequate or incomplete information; and

b. eighteen files either contained no documents or were only requests for information.

In addition, we found eight complaints listed and discussed in the Commission's meetings, which had no files. Consequently, there is no audit trail for the investigators or supervisors to determine what action to take, because the status of some complaints is unknown.

We recommended in "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Ecomomic Developement", dated October 30, 1978, that OL's investigative unit should be transferred to the Department of Public Safety. If this recommendation is not implemented, we suggest that new investigative procedures for real estate complaints be implemented and include:

a. documentation identifying the reasons for starting an investigation;

b. progress reports for each investigation;

c. final action decided by REC;

d. number, substance, and disposition of any informally handled complaints; and

e. procedures for all investigations, except those assigned to the executive secretary, to be conducted and reviewed by the investigation section including those previously examined by Commission members.

Recommendation No. 4

Legislation should be considered which would require real estate agents to have completed real estate courses before being licensed.

Currently Alaska Statutes do not require education as an entrance requirement for real estate agents. Forty-one states require that applicants have some type of education for brokers and forty states require education for sales persons.

In addition, we received the following responses to a Division of Legislative Audit questionnaire from 98 licensed real estate agents.

a. Seventy-two percent know of real estate agents who lack a fundamental knowledge of proper practices, laws, and regulations.

b. Seventy percent believe that applicants should be required to have taken real estate courses before they are licensed.

c. Seventy-five percent believe that if the requirements for a real estate license were more difficult, there would be fewer agents entering the real estate profession. However, 65% believe agents would be more competent than they are now.

The REC has sent proposed statutory changes to OL to submit for legislative consideration. Our recommendation was included in the Commission's proposals.

Recommendation No. 5

The Real Estate Commission should develop program objectives to be included in OL's budget documents that specifically state what can be accomplished in quantitative terms.

Program objectives describe what a commission or agency is seeking to accomplish and can accomplish during a specific fiscal year. Well formulated objectives are capable of measurement and should include numeric targets so that actual accomplishments can be compared with stated targets.

Although OL has not included any of the individual boards or commission's goals in their budget documents, the Real Estate Commission has established its own objectives. Many of the Commission's objectives are worthy; however, they are not stated in quantitative terms nor are they objectives which the Commission has responsibility or control over. For instance, the following objectives are from their objectives listed in the minutes from March 16 - 17, 1977:

a. to produce a semi-annual roster of licensees; and

b. to develop consistent forms for licensees and applicants.

Both of these objectives are the responsibility of the Division of Occupational Licensing.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of Commission activities relates to the public need factors defined in the "Sunset" law. This analysis is not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. The Real Estate Commission (REC) has legally implemented several regulations concerning the:

   a. suspension, revocation, and issuance of licenses;

   b. prohibited conduct, by real estate agents;

   c. accounting for trust accounts by real estate agents.

2. According to OL's files, REC met five times last year; gave eleven examinations in Anchorage and four examinations in Fairbanks, Kenai, and Juneau; and held four hearings for proposed changes in regulations.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. Based on a review of 100 filed complaints, we found the average investigating time for real estate complaints is 11.4 weeks.

2. The complaint filing system is incomplete and inadequate to insure that investigations are properly conducted (see Recommendation No. 3).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. REC has submitted proposed statutory changes to OL for legislative consideration. Those which were sent for consideration include upgrading the licensing statutes (see Recommendation No. 4), defining the authority of the Commission to issue a temporary permit, and allowing reciprocity. We believe these recommendations are in the publics' best interest.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. The Commission has held part of their meetings to specifically meet with interested persons.

2. The executive secretary produces a column describing Commission business for the Realtor News, a publication of the Anchorage Board of Realtors. In addition, he has also written informative articles in local papers about real estate practices.

V. The extent to which the board, commission or or agency has encouraged public participation in the making of its regulations and decisions.

1. REC, through OL, advertises in newspapers to encourage public participation and also sends notices to interested associations. During the last three years, approximately one advertisement was published per newspaper for meetings, examinations, and hearings. These advertisements were limited to papers published in Juneau, Anchorage, Fairbanks, Ketchikan and Kenai. However one examination and two meetings were not advertised, which is in violation of the Administrative Procedures Act.

2. During the past three years, twenty-eight persons other than Commission members and State employees were present during meetings as recorded by Commission minutes.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. There have been seven complaints sent to the Ombudsman's Office up to November, 1978. Two of these dealt with investigations, two were caused by the failure of a licensee to receive a license, one had to do with testing facilities, one concerned a license delay, and one was caused by OL refusing to release investigative files. Two were marked justified and they were about testing facilities and the lack of investigation of a complaint.

VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

1. OL has collected 444 real estate complaint files for the last six years. We analyzed 100 of the files and found that 18 were not complaints and also found that eight complaints did not have files (see Recommendation No. 3).

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. Examination and license renewal forms contain questions on date of birth, height, weight, sex, color of hair and eyes, and/or place of birth. This may be a violation of Equal Employment Opportunity requirements (see the "Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development" dated October 30, 1978).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

REAL ESTATE COMMISSION
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Average Revenue (See Schedule 1 and Note 1)	$202,584
Expenditures (See Note 2)	169,633
Excess of Revenues Over Expenditures	$ 32,951

Schedule 1

Types of Revenues

Revenues	Amount	Collection Time
Brokers and Associate Brokers		
Initial License Fee	$100	With issuance of license
Biennial Renewal - Active License	$100	Biennially
Biennial Renewal - Inactive License	$ 25	Biennially
Examination Fee	$ 50	With taking examination
Reciprocity Fee	$ 50	With granting of license through reciprocity
Fee for Amending a License	$ 2	With licensee filing to amend license
Salespersons		
Initial License Fee	$ 50	With issuance of license
Biennial Renewal - Active License	$ 50	Biennially
Biennial Renewal - Inactive License	$ 25	Biennially
Examination	$ 50	With taking examination

Revenues	Amount	Collection Time
Reciprocity Fee	$ 50	With granting of license through reciprocity
Fee for Amending a License	$ 2	With licensee filing to amend license

Note 1

Most of the real estate revenues are composed of renewal registration fees. These fees are collected once every two years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Year 1977 and 1978 in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures include those made by Commission members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Commission and OL.

APPENDIX B

EXAMINATION AND ADMINISTRATIVE STATISTICS

Schedule 1

Examination Statistics

	1978	1977
Brokers and Associate Brokers		
Number of Examinees	243	261
Number of Fails	93	68
Number of Passes	150	193
Percentage Pass Rate	62%	74%
Salesperson		
Number of Examinees	1536	1370
Number of Fails	728	554
Number of Passes	808	816
Percentage Pass Rate	53%	60%

Schedule 2

Administrative Statistics

	1978	1977
Licenses Issued Per Calender Year		
Brokers	46	34
Associate Brokers	33	59
Salespersons	843	632
Total	922	725

Active Licenses	As of January 24, 1979
Associate Brokers	294
Salesperson	1,812
Total	2,516

Inactive License	As of January 24, 1979
Brokers	31
Associate Brokers	24
Salepersons	476
Total	531

Schedule 3

Number of Licensees Per 1000 Population (Estimates)
(See Note 1)

Alaska	8.0
California	16.0
Idaho	7.5
Montana	5.0
Oregon	9.0
Washington	85.0

Note 1

These figures were obtained from the 1979 NARELLO Annual Report by the National Association of Real Estate License Law Officals.

APPENDIX C

QUESTIONNAIRE SENT TO COMMISSION MEMBERS

1. What do you believe to be the goals and objectives of the Real Estate Commission?

Description	*Number of Commission Members' Responses (See Note 1 and 2)*
To protect consumers.	*3*
To oversee actions of licensee.	*2*
To develop programs to help educate public and licensee.	*4*
To be a liaison between public, industry, and governing agency.	*3*
To carry out statutory duties and help provide public with assurance and confidence.	*3*
To obtain sufficient staff to handle investigations and audits in an expedient and accurate manner.	*1*
To establish a division for incorporating real estate licensing, securities, subdivisions, appraisers, title insurance, and other related industries and laws.	*1*

2. How does the Commission measure its progress in meeting its goals and objectives?

Description	*Number of Commission Members' Responses*
Have not developed self-critique program.	*1*
Failing to assume competency because of lack of cooperation with administration that oversees Commission.	*1*
Quantity and quality of complaint caseload.	*2*
Industry and public feedback.	*1*
Time in bringing complaints to hearing.	*1*

2. (Cont'd.)

Description	Number of Commission Members' Responses
Delay caused by workload in Attorney General's Office.	*1*
Commissions goals and objectives reviewed almost every meeting.	*1*

3. Is the staff from the Department of Commerce and/or other departments adequate to perform and enforce all laws and regulations relating to the Real Estate Commission? What staff support services are provided adequately/inadequately? Are investigations performed adequately/inadequately? Please give examples of inadequate service.

Description	Number of Commission Members' Responses
Licensing and examination staff is adequate.	*3*
Licensing and examination staff is inadequate.	*2*
Investigation staff is inadequate.	*4*
Investigations are generally good.	*1*
Too much turnover in the licensing examiner position.	*2*
Prefer to have a Real Estate Division handle this.	*1*
Need to have an auditor - investigator.	*2*

4. What evidence exists demonstrating that the absence of regulations and/or the commission would be detrimental to the public's best interest?

Description	Number of Commission Members' Responses
Not aware of documented evidence.	*1*
The number of complaints against unlicensed people.	*1*
Obvious that this industry with its fiduciary characteristics requires state-wide regulations.	*3*

5. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restrictive, and/or inadequate to provide the Commission with the responsibility and power to properly govern the purpose and activities of the Commission? Please list and explain.

Description	*Number of Commission Members' Responses*
Statutes are incomprehensible and obsolete. Need to be re-written.	*3*
No regulations for property management.	*3*
No statute unduly restrictive.	*1*
No control over unlicensed activity.	*1*
Commission's goal to review and re-write statutes has not been accomplished.	*2*

6. Has the Commission recommended any statutory changes which are generally in the public's best interest?

Description	*Number of Commission Members' Responses*
Yes. Most recent is pre-licensing education and continuing education for licensees.	*5*

7. What changes need to be made which would improve the Commission's service to the public?

Description	*Number of Commission Members' Responses*
Need investigator and auditor.	*1*
Need to institute educational programs for the public and licensee.	*3*
Need to overall streamline statutes.	*1*
Need to establish a real estate division.	*2*

8. What do you believe is the underlying reason for many of the complaints against real estate practitioners (i.e. lack of knowledge of real estate laws, incompetence, unethical, or others)?

Description	Number of Commission Members' Responses
Lack of knowledge and concern for the law by those licensed.	4
Unethical practitioners.	2
Vague statutes.	2
Nature of transactions are cause of more chance for error.	1
Misunderstandings and unintentional violations.	2

9. Do you think continuing education requirements for license renewal would be in the public's best interest?

Description	Number of Commission Members' Responses
Yes. Both continuing education and pre-licensing requirements are a must.	3
Not necessarily, but it could.	1
Logistics problems of mandatory continuing education do not warrant establishment of this program now.	1

10. What do you believe is the reason for the low pass rate by applicants taking Alaska's (Educational Testing Services) examination for brokers and sales persons?

Description	Number of Commission Members' Responses
Not low when compared to others using the Educational Testing Service, but is quite normal.	3

10. (Cont'd.)

Description	*Number of Commission Members' Responses*
Combination of:	
a. State portion is a difficult test which has proven itself statistically; this portion, however, should not be made less difficult for the sake sake of increasing the pass rate.	*1*
b. The statutes and regulations are difficult to study and assimilate.	*1*
No reply.	*1*

Note 1

The questionnaire was sent to six Commission members and one prior Commission member. We received replies to our questions from five members therefore the response rate is 71%.

Note 2

Each Commission member responded to each question with several answers. Therefore total responses for each question may exceed the number of Commission members.

APPENDIX D

QUESTIONNAIRE SENT TO REAL ESTATE AGENTS

		(See Note 1) % Responses		
		Yes	No	No Opinion
1.	Do you believe that it is in the public's best interest that the following professions be licensed?			
	a) Brokers	99%	1%	0%
	b) Associate Brokers	97%	2%	1%
	c) Salespersons	98%	1%	1%
2.	Do you believe that applicants for real estate licenses should be required to have taken real estate courses before they are licensed?	70%	30%	0%
3.	Do you believe that continuing education should be required for the following to renew their licenses?			
	a) Brokers	66%	29	5%
	b) Associate Brokers	63%	30%	7%
	c) Salespersons	58%	37%	5%
4.	Do you believe that the Real Estate Commission has operated in the public's best interest?	65%	10%	25%
5.	Do you know of real estate agents (brokers, salespersons) who lack a fundamental knowledge of proper practices, laws and regulations?	72%	24%	4%

		(See Note 1) % Responses		
		Yes	No	No Opinion
6.	Does the license examination cover material which is not relevant to actual practice?	46%	37%	17%
	If yes, please comment: *The most prevalent answer was that the exam asked irrelevant questions.*			
7.	Have Division of Occupational Licensing investigators, who you have contacted or have knowledge of, been thorough?	25%	1%	74%
8.	Has the Commission handled complaints fairly?	29%	3%	68%
9.	If the requirements for a license as a real estate agent were more difficult, what would happen (check each response that you think is true)?			
	a) There would be fewer agents entering the real estate profession	75%		
	b) Fees charged by agents would probably go up	6%		
	c) Agents would be more competent than they are now	65%		
	d) Probably no significant change	20%		
	e) Other (please explain): *The most prevalent answer was that there is need to weed out incompetent agents.*	19%		

08-H2LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER / POUCH D – JUNEAU 99811

July 31, 1979

RECEIVED

AUG 3 1979

LEGISLATIVE AUDIT

Mr. Gerald Wilkerson, CPA
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Real Estate Commission, as submitted by the Division of Legislative Audit.

Recommendation No. 1: Agree. The division has implemented procedures which are designed to avoid any possibility of conflicting interest potential. We will continue to update any procedures relating to this recommendation as well as to the entire investigative effort.

Recommendation No. 2: Agree. We believe that the public would best be served by a procedure which would allow pursuit of claims through the Commission rather than through the courts. Claimants would thus be able to present their case before a board with expertise in real estate; such a procedure should expedite settlement and avoid court costs.

Recommendation No. 3: Agree. Implementation of recent investigative procedure policies and continued efforts in this area will further this recommendation.

Recommendation No. 4: Agree. Other methods of upgrading the profession could also be considered, such as possible improvements to the examination. This will be discussed with the board at its August meeting.

Recommendation No. 5: Agree. The division has requested information on goals and objectives from all boards and commissions for inclusion in the FY '81 budget. We do feel that boards should be able to establish their own priorities. Such priorities, however, should be discussed with an attempt to resolve them in a spirit of mutual respect and cooperation.

Thank you for this opportunity to comment on the review and for the time and effort expended by you and your staff.

Sincerely,

Charles R. Webber
Commissioner

CRW/tlp2/12

August 1, 1979

RECEIVED
AUG 3 1979
LEGISLATIVE
AUDIT

Mr. Richard A. Smith
State Internal Auditor
Office of the Governor
Department of Administration
Pouch A
Juneau, Alaska 99811

Mr. Smith,

It has come to my attention that the Legislative Budget and Audit Committee may be meeting in regards to Sunset Legislation o. the Alaska Real Estate Commission during the interim legislative session here in Juneau. I would appreciate your passing on to the Committee that should they desire I would be available to appear before them and attempt to answer any questions they might have. If that is their desire I would appreciate your informing me of the time and location.

Sincerely,

Lance Youngquist
Chairman, Alaska Real Estate Commission

July 30, 1979

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AUG 3 1979
LEGISLATIVE
AUDIT

Mr. Richard A. Smith
State Internal Auditor
Office of the Governor
Department of Administration
Pouch A
Juneau, Alaska 99811

Mr. Smith,

At the July meeting of the Alaska Real Estate Commission in Fairbanks, Alaska, it was decided that each commissioner would respond individually to the preliminary report, "A Performance Review of the Alaska Real Estate Commission." The following are my responses to the findings.

Recommendation No. 1: During the last six months the Alaska Real Estate Commission in conjunction with the Department of Licensing has instigated a new investigative procedure which I believe has satisfactorily answered all of the questions in this recommendation. In addition we have published a complaint bulletin which explains the procedures one could use in filing a complaint showing that complaints can be filed with others and not just the Executive Secretary.

Recommendation No. 2: While I am not adverse to this reccommendation I feel it would be imparative that the mechanics of such a program be looked into thoroughly. The repercussions on the licensee when a payment is made from the surety fund are severe and I feel it is extremely important that the Commission's authority be unquestioned when making a recommendation.

One of the reasons for the infrequent payments from this fund in the past is the lack of information on the program in the hands of those seeking settlements. Recently there have been instigated many more requests from the fund and I feel this will continue as more people are aware of this form of recourse.

Recommendation No. 3: Again, this procedure has been changed within the last six months and I feel we are now conforming to this recommendation in regards to the Commissions involvement in cases.

Investigations are still not being done in a timely manner and it is my opinion that the sole problem is one of man power. The Deptartment of Licensing has only three investigators to handle all of the boards and commissions and this is an impossible task. The nature of many of the real estate complaints are severe enough that immediate actions should be taken. This has been a physical impossibility.

In reference to transferring investigations to the Department of

Public Safety, I am totally opposed. The function is a proper one for the Department of Licensing provided they are given the manpower to handle the job.

Recommendation No. 4: We are in concurrence with this recommendation provided the procedure is correctly set up. Many states are recinding previously instituted requirements after finding that their procedures have not worked. By learning from other states mistakes I feel we can institute a good a proper program for Alaska.

Recommendation No. 5: This recommendation has been met through new procedures instituted by the Commission.

In summary I feel that the Alaska Real Estate Commission has corrected all of the deficiencies mentioned in the report that are within the Commission's power. The Commission, by statute, has been given a monumental task and with the continuing rapid number of new licensees, this task increases. Our principal downfall at the present time is in investigation and enforcement, a probelm that can only be corrected with more manpower in this area. I highly urge that the Commission be given a full-time investigator and a full time auditor at which point we would meet the intent legislatively mandated upon us.

Sincerely,

Lance Youngquist
Chairman

CAROL MASER REAL ESTATE

RECEIVE

JUL 30 1979

LEGISLATIVE AUDIT

July 25 8979

Dear Mr. Wilkerson,

In reply to your recent letter on the Preliminary Audit Report for the real estate commission, I offer the following.

Rec.# 1 I believe we have tried to correct the situation by our new method whereby copies of all complaints go to investigations also but I feel all initial complaints should come thro either the Exec. Sec., the individual commission members or OL with copies to above.

Paragraph 3 Wholeheartedly agree with Exec. Sec. being allowed to settle minor complaints but would also include his authority to screen those which have no basis for us to act upon. The commission can only act on License Violations so if a complaint does not fit this category it should be so noted by the Exec Sec and the Commission with copies to OL and then it should go no farther. We are already experiencing a slow down in investigation of complaints since using this new system and I feel the Exec. Sec. and commission members should be the ones to decide which should be investigated and which have no case authority.

Paragraph 4 The Exec. Sec. would have time to spare now if he didn't spend so much time trying to educate real estate licensees and the public in what He sees as the problems with the industry. I do not feel this is one of his functions, however, I agree with his using the time to plan and organize programs conducted by REC.

Rec. #2 In full favor and agreement. I would go even farther and suggest that we intorduce legislation allowing REC to fine and/or suspend a licensee for various violations. At present we have little authority to do more than reprimand and this is not particularly effective We also need to have cases handled promptly by the AG's office when a violation of a serious nature is found. In my opinion that office is probably one of the most ineffective in the entire state government structure and that is a sad state of affairs.

Rec. # 3 I agree there are problems with the system of handling complaints, we noted in Rec. # 1. We've hopefully changed to speed up the process from our end but perhaps, again as I memtioned earlier, we may need to determine what is a valid complaint and what does not come under a license law violation. Hopefully, education of the public and licensees by phamplets and perhaps the media can reduce this.

REALTOR®

308 G St., Suite 225, Anchorage, Alaska 99501 (907) 274-6324

We are no longer involved in the early process of a complaint. We only become involved and then only on an individual basis, when a complaint case is recommended for closure. This does help considerably in keeping us from involvement in investigations. I disagree with the recommendation for transferring investigations to Public Safety. I do agree with the new suggestions for establishing better investigative procedures and will so move at our meeting in Fairbanks.

Rec. # 4 Again I agree wholeheartedly. I would take it one step farther and require continuing education in at least some areas where changes occur on a continual basis, before re-licensure of both Brokers and Salesmen. As you noted we have proposed this and will continue to work toward its implementation.

Rec. # 5 We are trying to improve in this area--most of us feel we are not well enough informed as to just what you are suggesting, i.e. what can be accomplished in quantitative terms--perhaps you could give us some more positive example. I would disagree with you as to a. and b. not being our responsibility. If OL doesn't do it, then it does become our reponsibility and I feel people in the business know better what is needed than an "overview department" since we work with the problems on a daily basis.

I feel there is one area you did not consider which could have added greatly to your report. The real estate industry by and large pays it's way for it's regulations and I believe a better job of serving the public could be done if we were served by a seperate departmentof real estate rather than under the present umbrella of OL.

I do appreciate the work you have done on this report and feel it has helped us in re-evaluating some areas and has certainly caused all of us on REC to think about what our role as a member should be.

One final thought on our status in OL - perhaps operating under Banking & Securities ~~we~~ would be more appropriate if a seperate department Carol Maser isn't acceptable.

REALTOR®

2526 Glenwood
~~308 G St., Suite 225~~, Anchorage, Alaska 99501 (907) 274-6324

Gary Wilken
P.O. Box 485
Fairbanks, AK 99707
July 26, 1979

RECEIVED
AUG 3 1979
LEGISLATIVE AUDIT

Commissioner of Administration
State of Alaska
Juneau, AK 99811

Dear Sir:

In response to your request for comment on the preliminary audit report on the Alaska Real Estate Commission, I submit the following.

Recommendation # 1

At the outset it should be realized that the executive secretary is the only employee of the State that was hired to be, and is expected to be, knowledgeable in the real estate industry. Therefore, I am most adamant in keeping the executive secretary position as the primary contact for problems which, in the public's view, arise in dealing with this industry.

If the complaints are entered with the O.L. Investigative Section three consequences will result. They are:

1) Most importantly, contact will be lost by the general public with that one person that should be representing the State of Alaska's interests in the real estate industry.
2) The efficiency of the system will suffer due to complaints being lodged by the public through someone not entirely familiar with the industry, therefore a screening process will be eliminated which at present acts to resolve many complaints before they actually become formal cases.
3) It follows that the caseload will increase due to the lack of a screening process by a thoroughly knowledgeable individual.

The conflict of interest situation is not a great problem considering, if one wishes to register a complaint and feels there may be a conflict, there are other avenues to where we may turn to enter the complaint. He may enter the complaint with the Ombudsman, any Commission member in the State, Consumer Protection Agency, or directly to the O.L.'s investigative section. He is not required to deal at all times with the Executive Secretary.

In brief, if the complaint entering is changed to the O.L.'s Investigative Section, the harm done to the public in their frequent dealings with the State in regard to real estate problems far outweighs the benefits, which are only to eliminate a possible, and very infrequent, conflict situation which may easily be circumvented in other ways.

I urge you to continue to see that the public's complaints are entered through the Executive Secretary with a copy of the original complaints being sent to the investigative section, as is currently being done.

Recommendation # 2

I agree with the recommendation as modeled after the Alaska Bar rules.

Recommendation # 3

Action has been taken to eliminate prior knowledge, on the part of the Commission as a whole of those complaints which are entered.

More accurate record keeping is perhaps desireable however not what I would consider a priority item except in those cases of meaningful importance.

Recommendation # 4

I agree with the recommendation, however (1) given the information which the Commission is able to obtain from the State, (2) the infrequency which we meet as a group and, (3) the changing attitudes on the part of the interfacing state agencies(ie. the Attorney General's office),to first quantify and then obtain will be very difficult yet none the less worth the attempt.

If I can comment further on the Preliminary Review of the Real Estate Commission or on the Commission itself, please advise.

Sincerely yours,

Gary Wilken
Member
Real Estate Commission

GW/sd

Century 21
HERITAGE HOMES & INVESTMENTS, INC.
207 E. Northern Lights Boulevard
Anchorage, Alaska 99503
Bus. (907) 276-1333

D. Smith Review + recommend WA

RECEIVED
AUG 3 1979
LEGISLATIVE AUDIT

July 18, 1979

Commissioner of Administration
B. B. Allen, Commissioner
Pouch C
Juneau, Alaska 99811

Dear Commissioner Allen:

I have reviewed your legislative audit of the Real Estate Commission in accordance with the intent of Alaska Statutes 24.20.271 (1) and 44.66.050 (Sunset Legislation). Enclosed are my personal responses to your findings and recommedations.

Recommendation No. 1:

Agree in part.
Disagree in part.
Already implemented.

Currently, the Real Estate Commission through the Executive Secretary receives many complaints that have little relevance to Administrative Law. Most of these complaints are handled by a phone call to parties involved or an informal meeting between the complaintant and the other parties is scheduled and the problems are solved without being turned over to the investigators.

One of the major reasons that the Executive Secretary tries to settle as many complaints as possible is due to the limited time and service that the Real Estate Commission receives from the investagators of Occupational Licensing. The general public does not benefit when complaints are not investigated by O.L. and remain as open cases for months.

Suggestion: A full time investigator from O.L. should be assigned to the Real Estate Commission to handle real estate related matters.

Recommendation No. 2:

Agree.

Recommendation No. 3:

Agree in part.
Disagree in part.

Your examples of inadequate files or files that contain no documents could be eliminated by an investigator who understands real estate and is not concentrating on medical cases.

Since my appointment to the Real Estate Commission I have noticed a lack of services both from the Attorney General's Office for failure to prosecute cases, and from the investigators in O.L. claiming other priorities and lack of staff. To compensate for this lack of services the Real Estate Commission has utilized its own resources to determine the validity of cases which we felt were important for the protection of the general public. Procedures have now been adapted which coincide with your recommendation.

Recommendation No. 4:

Totally agree.

Legislation was introduced SB 212 last session to implement your recommendation. Perhaps if the administration would introduce this legislation rather then the Real Estate Commission it might have a better chance of passing.

Recommendation No. 5:

Agree with explanation.

Perhaps the Real Estate Commission would not need to include in their goals and objectives a semi-annual roster or consistent forms if O.L. would have included or implemented these two items. I agree that these two objectives are the responsibility of O.L., however O.L. has failed to provide this service to the Real Estate Commission consequently it was included as one of the goals of the Real Estate Commission.

Responses to Analysis of Public Need:

I. Agree.

II. 1) It is ridiculous for an investigation to take 11.4 weeks. If the Real Estate Commission was given their own investigator this would be reduced substantially.

2) The complaint filing system has already been changed to comply with your recommendations.

III. Agree.

IV. Agree both 1 & 2.

V. 1) O.L. is responsible for providing services to the Real Estate Commission and if an advertisement of a Real Estate Commission meeting was not published it was certainly not intentional.

VI. 1) I would also complain about the lack of investigation of a complaint to the Ombudsman's office,and unless the investigators spend more time and attention to the real estate complaints I expect that the Ombudsman's office will receive more complaints.

VII. 1) Talk to the investigators. The Real Estate Commission does not investigate complaints.

VIII. 1) To my knowledge there have been no complaints filed concerning the license renewal forms. If you think they should be changed because they ask questions regarding the color of hair and eyes and place of birth then please get a ruling from the Attorney General's Office. If they think it should be changed it will be done. I think there are many more priorities that a legislative audit could be doing then to investigate license renewal forms.

Overall Review

These opinions are my personal views, and perhaps not the opinions of the Real Estate Commission. I am the most recent appointment to the Real Estate Commission and perhaps not as knowlegable as other members. I have only attended two meetings, but I have drawn some conclusions about the Real Estate Commission in general which I would like to express.

1) The members of the Real Estate Commission are totally dissatisified with the services they have been receiving from O.L., especially in the area of investigations. I realize

there must be priorities, however, we are totally frustrated with the time it takes to get a complaint investigated. Even after it is investigated the time expended getting someone with the Attorney General's Office to file an action is tremendous. In one instance we have been waiting a year for some clarified regulations from the Attorney General's Office. Much too long. Real Estate is big business. Presently there are 1884 active salesman, 331 active associate brokers, 436 active brokers, 643 inactive salesman, 33 inactive associate brokers and 37 inactive brokers. Each month the O.L. license 157 new salesman. Last year O.L. received $130,000 from the real estate industry. This money came from licenses, transfers, and exams. Next year the figure will be in excess of $300,000 and will be nearly 30% of the total funding of O.L. These funds received by O.L. are not being utilized to the fullest.

Solution: Eliminate my job. Create a Real Estate Department within the Department of Commerce consisting of a Real Estate Commissioner, an Executive Secretary, a License Examiner, a full-time investigator to handle real estate complaints, an Assistant Attorney General who will give priority to real estate matters, and two clerical personnel -- one in Anchorage and one in Juneau. This department should, and could, be funded by increasing the license fees collected by O.L. from real estate licenses (totalling 3,364). One of our problems is that the Real Estate Commission is all voluntary and meets only four times a year for two days each time. You can only accomplish so much with this type of procedure. A Real Estate Commissioner would be appointed by the Governor and would have the responsibility for his department. This concept works well in other states and I think it would work better then the system we are now operating under. A continuing problem in bureaucracy is that the buck does not stop anyplace. The Real Estate Commission blames the investigators; the investigators say their problem is priorities set by O.L.; O.L. passes the buck to limited appropriation of the Legislature; the Legislature says no one is doing anything, so they pass Sunset and then we all spend thousands of man hours justifing our commissions, boards, and departments. Someone must take the responsibility for the performance of his department and I think that by eliminating the Real Estate Commission, and forming a Real Estate Department, it would streamline the system.

This response will probably be filed in the archives in a basement in Juneau somewhere never to be seen again. However, I do appreciate whoever reads this response for taking the time to wade through it.

Sincerely,

Ken Calhoon
Real Estate Commissioner

/jg

Enclosure

WORK ORDER REQUEST FORM

Nº 8491

KEYWORDS: Real Estate
Boards and Commissions

ASSIGNED TO Guthrie

REQUEST FOR: BILL ☒ RESOLUTION ☐ RESEARCH ☐ OTHER ☐

SUBJECT Real Estate Commission

REQUESTED FOR Senate Commerce BY Christian EXT.

* DELIVER TO Senate Commerce TAKEN BY Guthrie

INSTRUCTIONS, EXPLANATIONS Senate duplicate of HB 1004.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED ☐

AUTHORIZED TO CONFER WITH

RETURN

TO REQUESTER

APPROVED: BGD Director, Legal Services

Director, Research

REVIEWED

IN 4/16 DUE

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT ☐ FINAL ☐

LA-L 10

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHB 1004 - An Act continuing the existence of the Real Estate Commission and amending its powers and duties; and providing for an effective date.
Title
Requested by Commerce Committee Date 5/7/80

II. FISCAL DETAIL
Agency Affected Department of Commerce & Economic Development
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected Regulations and Licensing of Professions
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	-0-	180.8	193.5	207.0	221.5	237.0
200 TRAVEL	-0-	23.8	22.3	23.9	25.6	27.4
300 CONTRACTUAL	-0-	48.6	52.0	55.6	59.5	63.7
400 COMMODITIES	-0-	6.2	6.6	7.0	7.5	8.0
500 EQUIPMENT	-0-	9.5	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	9.4	10.1	10.8	11.6	12.4
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	278.3	284.5	304.3	325.7	248.5

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	278.3	284.5	304.3	325.7	348.5
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	5	5	5	5	5
PART TIME (1/2 time)	-0-	1	1	1	1	1
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III) *This Fiscal Note assumes no reduction from the Division of Occupational Licensing's budget for FY'81.

Personal Services (7% inflation factor used)

1 Executive Director - Range 22A	$ 49,443.00
1 Investigator/Auditor - Range 18A	37,186.44
1 Licensing Examiner I - Range 12C	26,651.04
2 Clerk III's - Range 8A ($19,995.24 ea.)	39,990.48
Assistant Attorney General - 1/2 Time	27,500.00
Total	$180,770.96

(Continued on next page. . . .)

IV. DATE 5/7/80 PREPARED BY Ann Griggs
AGENCY Division of Occupational Licensing
PHONE 465-2534

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Travel

	Travel	Per Diem
Investigator Executive Director Commission Members - 6 meetings per year	$8,932.00	$11,236.00
Narello Convention registration fees (2)	190.00	
One time expense moving Licensing Examiner from Juneau to Anchorage	3,000.00	
Totals	$12,122.00	$11.236.00

(The Division of Occupational Licensing would transfer over from its budget whatever travel was requested for the Real Estate Commission for the FY'81 budget).

Contractual

Hearing Costs at $1300 per hearing x 12	15,600.00
Dues & fees for organizations	1,500.00
Word Processor equipment lease	8,500.00
Property law digest subscription	200.00
Phone hook up	1,800.00
Long Distance phone	6,000.00
Automobile lease & maintenance	5,136.00
Copier rental, etc.	1,000.00
Postage meter	1,000.00
Exam application packets, etc.	5,000.00
Publications (various)	2,000.00
Total	$48,656.00

Commodities

Tapes for Lanier	180.00
Postage	4,000.00
Paper stock	2,000.00
Total	$6,180.00

Equipment - One time expense in FY'81

1 desk, single pedestal	237.24	2 tables(72"x30")	354.54
4 desks, standard	1,559.52	3 brief cases	180.00
2 typewriter tables	121.86	2 file tubs	363.00
2 mats	70.92	1 Lanier	1,000.00
2 typewriters	2.000.00	mail baskets	30.00
3 chairs. desk	380.49	waste baskets	45.00
6 side chairs	795.30	form racks	150.00
2 swivel chair	400.00		
9 4/drawer file cabinets	1,636.38	Total	$9,505.91
3 bookcases	231.66		

Land Lease

Space for all positions $1.25 per square foot (Each position gets 125 sq. ft.)	$9.450.00

REALTOR®

ALASKA ASSOCIATION OF REALTORS®
1818 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8016

March 4, 1980

Mr. Jon Mathison
Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

RE: Sunset Legislation on the Alaska Real Estate Commission

Dear Jon:

As we discussed yesterday, I will be unable to attend the Tele-Conference Hearing on the Sunset Legislation. However, the Alaska Association of Realtors has carefully followed this issue on the House side and several weeks ago I sent a letter to Representative Fred Brown commenting on the issue and reacting to written testimony provided by the Alaska Real Estate Commission. I have been advised by Lance Youngquist, Chairman of the Alaska Real Estate Commission, that he will present the same written testimony to your Committee. Therefore, I believe that my response to Representative Brown is still adequate. I have, therefore, enclosed a copy of my letter to Representative Brown, herewith.

Thank you for notifying me of this hearing and I will appreciate it if you will keep me advised of any further happenings.

Sincerely,

ALASKA ASSOCIATION OF REALTORS

Kenneth Jay Gain, MAI, SRPA, SRS, CCIM
Legislative Chairman

Enclosure

cc: Lance Youngquist
Ed Foster
Jeff Cook

KJG:lbk

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February 20, 1980

Representative Fred Brown
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

RE: Sunset Legislation Concerning the Real Estate Commission

Dear Representative Brown:

As discussed with Mr. Bob Aaron of your staff while I was in Juneau two weeks ago, I would like to offer several comments on behalf of the Alaska Association of Realtors concerning the Sunset Review of the Alaska Real Estate Commission. We have reviewed the Performance Review prepared by the Division of Legislative Audit dated May 7, 1979, and have reviewed the written transcript of the testimony submitted by the Real Estate Commission on Thursday, January 24, 1980.

The Alaska Association of Realtors is generally in support of the statements and conclusions made by Mr. Lance Youngquist, speaking on behalf of the Alaska Real Estate Commission. We concur with the Commission's reply in regard to Legislative Audit Recommendation No. 2 and also believe that the present method of handling Surety Fund Claims is in the best public interest. We have no strong feeling in regard to Recommendation No. 3 but do believe that it is necessary that a greater emphasis be put on investigating existing complaints.

In reference to Legislative Audit Recommendation No. 4, please be advised that it is the position of the Alaska Association of Realtors to oppose any required real estate courses. This is not to be construed to mean that the Alaska Association of Realtors opposes advanced real estate education. We are, in fact, the largest provider of such education and have on our staff a full-time Director of Education (who holds two Master Degrees in education) who will be responsible for sponsoring 25 to 30 educational offerings during 1980 at which we expect an attendance of 500 to 600 persons. At the time of this writing, 140 of our members are attending the 3 courses sponsored by the Alaska Association of Realtors Institute. We strongly encourage education as a necessity for survival in a very competitive and fast changing business. In response to our educational efforts, over 200 of our members have obtained professional desig-

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nations in the real estate field. The standards for these designations greatly exceed anything that would likely be enacted into license law.

Our basic objection to mandatory education is that we have seen what has happened in many other States with such requirements. In every State in which such mandatory education has been enacted, it has been supported by the State Association of Realtors. However, in a number of States, the Associations are now regretting their support due to the fact that what often starts off as a well-meaning program becomes something quite different when it has been convoluted through the bureaucratic process. While a recent poll of our membership, in which 238 members participated, found that most feel that there should be some educational requirements for new licensees, there was no consensus on the matter of continuing education requirements. It is, of course, only typical that someone who already has a license, would like to see the requirements more difficult for those who have not achieved a license. The unfortunate fact is that to require enough education to be truly meaningful would have the effect of excluding a number of people from the business.

Anyone who survives in our profession beyond their first biennial renewal, has probably acquired more education and spent more time studying than could possibly be required by law. The problem with mandatory education is that most States have adopted a compromise program to appeal to all of the various disciplines within the industry. As a result, nobody in any of the specialized fields is getting the full degree of specialized education required. For example, a licensed broker specializing in commercial sales, is not likely to increase his competence by taking a basic course in residential financing.

We believe that the freedom of choice and free market competition will provide more competent licensees than a new law. While of course it is easy to point to the fact that there are a number of incompetent people in the business, it must recognized that we have only had a full-scaled educational program and an educational director for one year. If in three years the same problem exists, then we would be willing to reconsider our position. In the meantime, we must oppose all mandatory education as a prerequisite for or as a requirement to renew a license and ask that you give the free market and freedom of choice an opportunity to work.

We support the recommendation of the Real Estate commission that a "real estate section" be established within the Department of

Commerce. Likewise, we concur in raising the ceiling on the Surety Fund to $500,000 and that an appropriation should be made to completely rewrite the statutes. Because we realize that it will take time to rewrite the statutes, we are cooperating with the Commission in urging passage of SB 212.

Thank you for the opportunity to express our opinion.

Sincerely,

ALASKA ASSOCIATION OF REALTORS

Kenneth Jay Gain, MAI, SRPA, SRS, CCIM
Legislative Chairman

cc: Lance Youngquist, Juneau
Edward Foster, Auke Bay

KJG:lbk

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

FOR FURTHER INFORMATION:

Senate Commerce Committee
Jon Mathison, AA
Assembly Building, Room 303
Juneau, Alaska 99811
(907) 465-3748/3783

FEBRUARY 11, 1980

PUBLIC SERVICE ANNOUNCEMENT

The Senate Commerce Committee will convene at 3:00 p.m. (Juneau time) on March 4, 1980 for the purpose of holding a public hearing on The Real Estate Commission. The hearing will be held in Juneau in the Beltz Room, Room 209 of the Capitol Building, and will be teleconferenced to the following cities:

Anchorage - 1:00 p.m. - Legislative Information Office
1024 West Sixth Avenue
Anchorage, Alaska 99501

Fairbanks - 1:00 p.m. Legislative Information Office
101 College Road, Building F, Room 252
Fairbanks, Alaska 99701

Public participation is invited and any written testimony or comments may be submitted to the Senate Commerce Committee, Pouch V, Mail Stop 3100, Juneau, Alaska 99811.

Brad Bradley
SENATOR BRAD BRADLEY, CHAIRMAN
SENATE COMMERCE COMMITTEE

Notified by Phone

~~Mr Carol M~~ Barbra Hill
276-7909

John E. Benson, Broker
Dorothy M. Benson, Assoc. Broker

Telephone 907-225-9651
Evening 907-247-8197

CAPITAL INVESTMENT REALTY
P.O. Box 7076
KETCHIKAN, ALASKA 99901

March 26, 1980

The Honorable W. E. Bradley
Chairman, Commerce Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator:

Re: Senate Bill #518
"An Act Relating to the regulation of real estate brokers and salesman"

I am writing because the above bill is discrimatory to people desiring to obtain a Real Estate Broker or Real Estate Salesman License who live in rural areas.

Presently the real estate courses are given in Anchorage and Fairbanks and a three day stay-over in either of these cities is very restrictive to us in Southeastern or any of the people living in other communities.

However, I am in favor of the educational requirements but would stress that they be offered in all communities either through correspondence courses or through the local community colleges. This should be addressed in the above numbered bill.

Your consideration of this addition to the bill will be appreciated.

Sincerely,

Dorothy M. Benson

Dorothy M. Benson
Assoc. Broker

WELDING EXAM.

SB 533

COMMITTEE REPORT

SENATE

FURTHER: None

4/9/80

Date: April 17, 1980 H.E.B.

Mr. President:

The Committee on COMMERCE has had SB 553 continuing the existence of the Board of Welding Examiners

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for SB 553 [✓] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[✓] reports it back without recommendations H.E.B.

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
Brad Bradley	
Jerry D. Stevens	
Arthur Sturgulewski	

Brad Bradley
CHAIRMAN

S 60 (Rev. 12/78)

LEGAL SERVICES
PLUMBERS & STEAMFITTERS, LOCAL 375
3568 GER GHTY STREET
FAIRBANKS, ALASKA 99701

PHONES — AREA CODE 907
479-6221 & 479-4154

ARTHUR L. ROBSON
ADMINISTRATOR

For Sen. Bradley's file

November 8, 1979.

Representative T. R. Martin
3960 Reka Drive B 6
Anchorage AK. 99504

RE: Questions raised at Senate Commerce Committee Hearing

Dear Representative Martin,

I attended the Senate Commerce Committee Hearing on the potential sunset of the Board of Welding Examiners. Early in that hearing you raised two questions which (had I been able to stay until the end) I could have answered for you. My boss, Lenny Arsenault and I, testified before the House Labor and Management Committee on these specific points last week.

Your questions were: 1. Do we have enough Alaskan welders today, to be able to construct a large project such as the Gas Pipeline?

2. If we do not, how do we protect ourselves from an "invasion" by Tulsa, Local 798, or some other such group?

3. When we do have another major job in Alaska, how will we go about getting quality welders for that job?

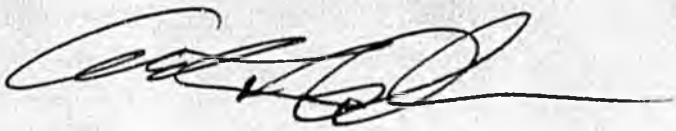
There are not enough Alaskan welders who have the necessary skills to do much of any pipeline work at all. In all of Alaska, we would probably have thirty such people with the necessary skills and the inclination, and the time, etc. to work on a pipeline. This means that welders will have to be imported from out of State for jobs such as the Gas Pipeline, as well as for the many, many miles of gathering lines, the water flood project etc. starting this summer. Getting to the answer of your third question: we will be training the pipefitters, and we can train the welders helpers, but this next summer alone we will start on a four year project which will require about 600 welders on the North Slope. The "beadmen" and welders, for these crews will almost all be expected to come from the Lower 48. There are a number of Institutions throughout the State teaching welding, almost none of them are concerned with pipeline welding. Local 375, has a brand new, Million Dollar Apprentice School, in which we do teach pipeline welding. Because work is scarce right now, we have little income for our Apprenticeship program and hence we are training very, very few welders, and the number will stay small until we have the income from North Slope work, or some other source to increase that number.

With respect to the "798 invasion", all pipeline jurisdiction north of the 63rd parallel, has been transfered from Tulsa, Local 798 to Fairbanks Local 375, with the exception of the large pipe (over 30 inches and under 52 inches). This main line jurisdiction remains with Local 798. This is however, a relatively small portion of all of the work. Because the work will be handled through Local 375,

whose Officers are entirely elected locally, Local 375 people and then others throughout the State of Alaska, will have an absolute first preference on reference to the jobs. Other welders with the necessary expertise will be brought in from the Lower 48, but they will not be in a group organised as any non-Alaska group, and their actions should all be suject to policing by Local 375. Any "invasion" should be limited to a small group of mainline pipefitters and welders.

If I can answer any further questions along these lines, or provide you with the specifics of statistics on predicted work, please feel free to call upon me.

Very truly yours,



ARTHUR L. ROBSON, Administrator
Prepaid Legal Services.

ALR/sew

Faulty wiring, welding not unusual, panel told

8 November 1979
Fairbanks News Miner

By SUSAN FISHER
Staff Writer

A $96,000 home in University Heights subdivision was found to have about a third of its electrical wiring installed with common lamp cord. Its mortgage is held by the state.

Inadequate welding jobs can pose a danger to the public and workers themselves, and without a state examining board, welding jobs would not be inspected.

Shoddy workmanship can spell life or death for electrical and welding workers and consumers, the Senate Commerce Committee was told Wednesday during a "sunset" review hearing on state examining boards.

The purpose of the review is to determine whether the state boards should continue in operation.

One of the most blatant examples of disregard for electrical standards was given by Terry Duszynski, inspector for the Interior Alaska Dwelling Inspection Council.

Duszynski, in teleconference testimony to the committee in Anchorage, told senators he inspected the University Heights home after it was sold.

It was appraised at $96,000 by a local real estate agent, and financing was arranged by a local bank. It is insured for 80 per cent of its value and its mortgage is held by Alaska Housing Finance Corp., Duszynski said.

But at least one-third of the home's wiring is in Zipcord, or common lamp cord, which had been used to wire switches and power for lights, and to wire a humidifier attached to a forced-air furnace. The main feeder cable was spliced using a split bolt connector and black tape.

Zipcord goes into the junction boxes, and is "sandwiched between studs and crushed under the furnace."

"This house was unsafe for habitation and it was still handled just like any other. The purchase occurred last April. This house is a fire waiting to happen," Duszynski said.

He also testified that the building the Fairbanks Legislative Information Office is in is improperly wired, and that two homes built for State Troopers in villages were wired by unlicensed electricians.

Duszynski testified that the inspection council has checked 45 homes

(See WIRING, page 3)

WIRING . . .

(Continued from page 1)

since it began in 1977. Of those, nine were found to have deficiencies, either electrical or otherwise, and five of those were inspected because of lawsuits between the owner and builder or seller.

He described in detail some of those flaws, and told the committee it will be "open season on the residents of this state" if the Legislature disbands the state Board of Electrical Examiners.

"If these unsafe conditions have persisted (with the board), can you imagine what will go on if there is no test to qualify the electrical contractor," he asked.

The council Duszynski works for performs inspection upon request. There is a fee for the inspections.

At one point in testimony on the electrical and welding examining boards, State Sen. Arliss Sturgulewski, R-Anchorage, asked why concerned persons did not approach their borough assemblies for requirements.

Robert Mellon, a Fairbanks electrician, said the borough does not have an inspection department, and another local man told the News-Miner that the borough may not have the constitutional authority to do inspections.

Phil Davis, a Fairbanks welder, described the collapse of structures due to improper welding, and said such dangers threaten workers and consumers alike.

The American Welders Society gives a written test for licenses, but does not require experience or a skills test.

Paul Lott, another Fairbanks welder, said there is confusion over the state board's role, and the lack of public information means some companies are being over-inspected while other jobs are going uninspected.

Lott said he would like to see a representative of Alyeska, Arco or another big company on the board. "It's always the big companies that observe the law, but have very little representation," he said.

STATE OF ALASKA

BOARD OF WELDING EXAMINERS

Centralized Licensing, AS 08.01.
Miscellaneous Provisions, AS 08.02.
Termination, Continuation and Reestablishment of Regulatory Boards, AS 08.03.
Board of Welding Examiners' Statutes, AS 08.99.
Board of Welding Examiners' Regulations, 12 AAC 72.

Department of Commerce

Division of Occupational Licensing

Pouch D

Juneau, Alaska 99811

Chapter 01. Centralized Licensing.

Section		Section	
10.	Applicability of chapter	80.	Department regulations
20.	Board organization	87.	Powers and duties of department
25.	Public members	90.	Applicability of the Administrative Procedure Act
30.	Quorum	100.	License renewal, lapse and reinstatement
40.	Transportation and per diem	105.	Penalty for improper payment
50.	Administrative duties of department	110.	Definitions
60.	Application for license		
70.	Administrative duties of boards		

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

(1) Board of Public Accountancy;

(2) Board of Barber Examiners;

(3) Repealed by § 6 ch 32 SLA 1971.

(4) Board of Chiropractic Examiners;

(5) Board of Hairdressing and Beauty Culture Examiners;

(6) Board of Dental Examiners;

(7) Board of Electrical Examiners;

(8) State Board of Registration for Architects, Engineers and Land Surveyors;

(9) State Medical Board;

(10) Board of Nursing;

(11) Board of Examiners in Optometry;

(12) Board of Pharmacy;

(13) Real Estate Commission;

(14) Board of Veterinary Examiners;

(15) Board of Psychologist and Psychological Associate Examiners;

(16) Collection Agency Board;

(17) Board of Welding Examiners;

(18) Board of Marine Pilots;

(19) Board of Dispensing Opticians;

(20) Guide Licensing and Control Board;

(21) State Physical Therapy Board. (§ 1 ch 59 SLA 1966; am § 2 ch 136 SLA 1967; am § 2 ch 101 SLA 1968; am § 2 ch 143 SLA 1968; am § 2 ch 151 SLA 1968; am § 1 ch 106 SLA 1970; am § 6 ch 32 SLA 1971; am § 4 ch 179 SLA 1972; am § 2 ch 45 SLA 1973; am § 14 ch 65 SLA 1973; am § 1 ch 43 SLA 1975; am § 1 ch 43 SLA 1977)

Effect of amendments. — The first 1973 amendment added paragraph (19).

The second 1973 amendment inserted "and Psychological Associate" in paragraph (15).

The 1975 amendment added paragraph (20).

The 1977 amendment added paragraph (21).

Editor's note. — Section 2, ch. 59, SLA 1966, provides: "The Department of Commerce shall provide for the orderly transfer of the service functions which are to be performed by the department under this chapter."

Section 4, ch. 59, SLA 1966, provides: "A provision in existing law which conflicts with this Act is superseded by this Act."

Legislative committee reports. — For report on ch. 143, SLA 1968 (HB 707), see 1968 House Journal, p. 836. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 08.01.020. Board organization. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members. (§ 1 ch 59 SLA 1966)

Sec. 08.01.025. Public members. No public member of a board may:

(1) be engaged in the occupation which the board regulates;

(2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or

(3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 258 SLA 1976)

Sec. 08.01.030. Quorum. A majority of the membership of a board constitutes a quorum unless otherwise provided. (§ 1 ch 59 SLA 1966)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (§ 1 ch 59 SLA 1966)

Sec. 08.01.050. Administrative duties of department. (a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;

(2) maintain records and files;

(3) issue and receive application forms;

(4) notify applicants of acceptance or rejection of applicants as determined by the board;

(5) designate dates examinations are to be held and notify applicants;

(6) publish notice of examination;

(7) arrange space for holding examinations;

(8) notify applicants of results of examinations;

(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;

(10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of $2;

(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;

(12) compile and maintain current a register of licenses;

(13) answer routine inquiries;

(14) maintain files relating to individual licensees;

(15) arrange for printing and advertising;

(16) purchase supplies;

(17) employ secretarial help when needed;

(18) perform other services which may be requested by the board;

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 63, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in § 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned. (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment added paragraph (19) of present subsection (a).

The second 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the introductory paragraph of present subsection (a).

The third 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, substituted "department" for "Department of Commerce" and "when appropriate" for "for the boards" in the introductory language and inserted "by the licensee" in two places in paragraph (10). The amendment also added subsection (b).

While none of the amendments gave effect to the others, this section is set out as it appears in ch. 258, SLA 1976, with the inclusion of paragraph (19) of subsection (a) added by ch. 102, SLA 1976.

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law:

(1) keep minutes and records of all proceedings;

(2) hold a minimum of one meeting each year;

(3) hold at least one examination each year;

(4) request, through the department, investigation of violations of its laws and regulations;

(5) prepare and grade examinations;

(6) pass on qualifications of applicants for examination and license;

(7) forward minutes of meetings to the department within 20 days;

(8) forward results of examinations to the department;

(9) notify the department of meeting dates at least 15 days before meeting. (§ 1 ch 59 SLA 1966)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;

(2) what is contained in application forms;

(3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

Sec. 08.01.087. Powers and duties of department. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by a board listed in § 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (§ 3 ch 258 SLA 1976)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (§ 1 ch 59 SLA 1966; am § 4 ch 258 SLA 1976)

Effect of amendment. — The 1976 amendment added "except those under AS 08.01.087(b)" to the end of the section.

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968)

Sec. 08.01.105. Penalty for improper payment. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (§ 3 ch 258 SLA 1976)

Sec. 08.01.110. Definitions. In this chapter

(1) "board" includes the boards and commissions listed in § 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in § 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in § 10 of this chapter. (§ 1 ch 59 SLA 1966; am § 40 ch 218 SLA 1976; am § 5 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

The second 1976 amendment added paragraphs (3) through (6).

Chapter 02. Miscellaneous Provisions.

Section
10. Professional designation requirements
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) A person licensed in the state as a chiropractor as defined in AS 08.20.220, a dentist as defined in AS 08.36.360, a medical practitioner or osteopath as defined in AS 08.64.380, a professional nurse as defined in AS 08.68.410, an optometrist as defined in AS 08.72.300(3), a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall professionally identify

himself by the use of appropriate letters or a title after his name which represents his specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays his professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and identifies himself by using the letters "M.D." or the title "doctor" or "physician" or any other title which tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of his noncompliance by his appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, his noncompliance continues, the board may suspend or revoke his license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1979)

Sec. 08.02.020. Limitation of liability for members of licensing boards. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976)

Chapter 03. Termination, Continuation and Reestablishment of Regulatory Boards

Section

10. Termination, continuation and reestablishment of regulatory boards

Cross reference. — As to review of the activities of agencies, boards and commissions, see AS 44.66.010 et seq.

Editor's note. — Section 1, ch. 149, SLA 1977, provides: "The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government, and that there is need for an effective and regular system of scrutiny of the programs and activities of all agencies, boards and commissions. The legislature further finds that the establishment of a system for periodic review by the public and the executive and legislative branches of certain state agencies, boards and commissions will help the governor and the legislature to determine the need for the continued existence of each of the agencies, boards and commissions."

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Board of Chiropractic Examiners (AS 08.20.010);
(2) Board of Dental Examiners (AS 08.36.010);
(3) State Medical Board (AS 08.64.010);
(4) Board of Nursing (AS 08.68.010);
(5) Board of Dispensing Opticians (AS 08.71.010);
(6) Board of Examiners in Optometry (AS 08.72.010);
(7) Board of Pharmacy (AS 08.80.010);
(8) Board of Veterinary Examiners (AS 08.98.010);
(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
(10) Board of Nursing Home Administrators (AS 08.70.010);
(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.010);
(2) Board of Barber Examiners (AS 08.12.010);
(3) Collection Agency Board (AS 08.24.011);
(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.[illegible]010);
(5) Board of Electrical Examiners (AS 08.40.010);
(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
(7) Guide Licensing and Control Board (AS 08.54.010);
(8) Board of Marine Pilots (AS 08.62.010);
(9) Real Estate Commission (AS 08.88.011);
(10) Board of Welding Examiners (AS 08.99.010);
(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

Chapter 99. Board of Welding Examiners.

Section
10. Creation and membership of board
20. Term of office
30. Source of appointments
40. Removal from office
50. Qualifications of board members
60. Meetings
70. Quorum
80. Powers and duties of the board
90. Applicability of Administrative Procedure Act
100. Expenses
110. Codes
120. Penalty

Sec. 08.99.010. Creation and membership of board. There is created the Board of Welding Examiners, consisting of seven members appointed by the governor. (§ 1 ch 151 SLA 1968)

Sec. 08.99.020. Term of office. Board members serve a term of five year. However, of the members first appointed, one shall be appointed for a term of one year, one for two years, one for three years, one for four years, and three for terms of five years. (§ 1 ch 151 SLA 1968)

Sec. 08.99.030. Source of appointments. The governor shall appoint board members from a list of persons prepared by the Alaska Chapter of the American Welding Society and the Alaska Society of Professional Engineers and submitted at least 30 days before the expiration of a term and not more than 60 days after a vacancy occurs in an unexpired ter[illegible]. The list shall contain not less than two recommended candidates for each appointment. The governor shall make appointments within 30 days after receiving the list. (§ 1 ch 151 SLA 1968; am § 1 ch 151 SLA 1970)

Sec. 08.99.040. Removal from office. Each member holds office at the pleasure of the governor notwithstanding the member's term. (§ 1 ch 151 SLA 1968)

Sec. 08.99.050. Qualifications of board members. Each member of the board shall be a citizen of the United States and a resident of the state. At least three members shall be persons with engineering degrees or registration as an engineer and each engineer member shall have at least five years engineering experience. All members shall have extensive experience in welding. (§ 1 ch 151 SLA 1968; am § 2 ch 151 SLA 1970)

Sec. 08.99.060. Meetings. The board shall meet at least once a year. (§ 1 ch 151 SLA 1968)

Sec. 08.99.070. Quorum. A majority of the board constitutes a quorum. (§ 1 ch 151 SLA 1968)

Sec. 08.99.080. Powers and duties of the board. (a) The board shall

(1) establish and promulgate rules and regulations concerning certification of welders in the state;

(2) establish and define certification tests as they apply to various types and categories of work done in or for the state;

(3) work with federal and private agencies and specifying engineers to establish uniform testing and certifying methods for all welders throughout the state;

(4) work with federal agencies and the agencies of other states to establish reciprocity agreements;

(5) set up criteria and define experience and documentary requirements which may be accepted in lieu of physical certification tests in the state;

(6) set the fees for the welder certification tests;

(7) examine, certify, and renew the certification of qualified applicants;

(8) keep a record of its proceedings, and submit annual reports to the governor and the legislature;

(9) promulgate regulations concerning the quality of welds and qualifications of welders required in specific areas of industry and construction and designate reporting procedures necessary to certify compliance with these quality standards;

(10) designate and approve persons qualified to administer welding tests, and designate and approve shops, laboratories, or other establishments qualified for testing coupons and weldments.

(b) The board may request technical personnel from the Department of Labor for the purpose of reviewing and analyzing reports and may request field inspection by the department for the purpose of assuring compliance with, and enforcement of the regulations, rules and orders promulgated under §§ 10 — 110 of this chapter. (§ 1 ch 151 SLA 1968; am §§ 3 — 6 ch 151 SLA 1970)

Sec. 08.99.090. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62). (§ 1 ch 151 SLA 1968)

Sec. 08.99.100. Expenses. Members of the board are entitled to the per diem and travel expenses allowed by law. (§ 1 ch 151 SLA 1968)

Sec. 08.99.110. Codes. The United States of America Standards Institute Codes listed below are established as the piping codes for the state:

(1) B 31.1.0 — 1967 power piping;

(2) B 31.2 — 1968 fuel gas piping;

(3) B 31.8 — 1968 gas transmission and distribution piping system;

(4) B 31.3 — 1966 petroleum refining piping;

(5) B 31.4 — 1966 and B 31.4a — 1968 liquid petroleum transportation piping systems. (§ 6 ch 151 SLA 1970)

Revisor's note (1970). — For copies of the codes referred to in AS 08.99.110, write to the U.S.A. Standards Institute, Dept. PH 31, 10 East 40th Street, New York, New York 10016.

Sec. 08.99.120. Penalty. A person who violates a regulation adopted under §§ 10 — 110 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500. (§ 7 ch 151 SLA 1970)

CHAPTER 72.
BOARD OF WELDING EXAMINERS

Article
1. Codes
2. Welders
3. Welding Inspectors
4. General Provisions

ARTICLE 1.
CODES

Section
5. Rating
10. (Repealed)

12 AAC 72.005. RATING FOR WELDERS. Ratings for welders shall be governed by the code requirements in the job specifications. In the absence of code requirements, welders shall be certified in accordance with the applicable American Welding Society Code. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2) and (9)

12 AAC 72.010. CERTIFICATE REQUIRED. Repealed. (8/21/78, Reg. 67)

ARTICLE 2.
WELDERS

Section
15. Welder qualification certificate required
20. (Repealed)
25. Requirements for welder qualification certificate
30. (Repealed)
35. Welder qualification certificate issued
40. (Repealed)
45. Requirements for maintaining a current welder qualification certificate

12 AAC 72.015. WELDER QUALIFICATION CERTIFICATE REQUIRED. A person may not perform a welding operation in the state for compensation, in which weldment failure would involve hazard to life or property unless he or she holds a current, valid welder qualification certificate in the appropriate rating. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2),(5) and (9)

12 AAC 72.020. DURATION AND RENEWAL. Repealed. (8/21/78, Reg. 67)

12 AAC 72.025. REQUIREMENTS FOR WELDER QUALIFICATION CERTIFICATE. (a) Testing of welders shall be done under the direct supervision of a licensed welding inspector.

(b) An applicant for a welder qualification certificate or a company desiring to have a welder qualified shall

(1) submit to the welding inspector the welding procedure specifications or the welding performance specifications, or both when indicated, for the appropriate rating; and

(2) complete the welding test for the appropriate rating according to the terms of the welding procedure specifications or the welding performance specifications, or both when indicated.

(c) Prequalified procedure specifications may be used for test administration according to applicable codes. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2),(5) and (9)

12 AAC 72.030. TEST SELECTION. Repealed. (8/21/78, Reg. 67)

12 AAC 72.035. WELDER QUALIFICATION CERTIFICATE ISSUED. The welding inspector shall issue the welding qualification certificate in the appropriate rating to the applicant or company upon the applicant's successful completion of the examination. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(7) and (10)

12 AAC 72.040. QUALIFICATION. Repealed (8/21/78, Reg. 67)

12 AAC 72.045. REQUIREMENTS FOR MAINTAINING A CURRENT WELDER QUALIFICATION CERTIFICATE. (a) A welder qualification certificate is valid if

(1) it is kept current in compliance with the code under which it is issued unless stated otherwise in the job specification; and

(2) the welder has been continuously employed on the welding process for which he is certified.

(b) The expiration or revocation of one rating does not affect any remaining rating. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(5) and (10)

ARTICLE 3.
WELDING INSPECTORS

Section

50. (Repealed)
55. Welding inspector license required
60. (Repealed)
65. Requirements for welding inspector license
70. (Repealed)
75. Application for welding inspector license
80. (Repealed)
85. Examination for welding inspector license
90. (Repealed)
95. Welding inspector license issued
105. Welding inspector license expiration and renewal
115. Duties and responsibilities of welding inspector
125. Prohibited conduct of welding inspector

12 AAC 72.050. TEST FACILITIES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.055. WELDING INSPECTOR LICENSE REQUIRED. A person may not test a welder for the purpose of issuing a welder qualification certificate or inspect a welding operation in the state in which weldment failure would involve hazard to life or property unless he or she holds a current, valid welding inspector license. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7) and (10)

12 AAC 72.060. WELD QUALIFIER. Repealed. (8/21/78, Reg. 67)

12 AAC 72.065. REQUIREMENTS FOR WELDING INSPECTOR LICENSE. (a) An applicant for a welding inspector license must

(1) be a high school graduate or hold a state or military approved high school equivalency diploma;

(2) have no less than five years' experience at the technical level in an occupational function that directly involved

(A) design experience such as preparation of plans and drawings for weldment construction according to a code, standard or specification;

(B) construction experience such as actual construction or fabrication and erection of weldments in accordance with a code, standard, specification or drawing;

(C) maintenance experience such as detection and measurement of weld inadequacies or discontinuities in accordance with specified procedures, and

(D) repair experience such as repair or replacement of welds that were determined inadequate or defective by reference to a code, standard, specification or drawing;

(3) be familiar with and understand the fundamentals of shielded metal arc welding, stud arc welding, submerged arc welding, flux cored arc welding, gas metal arc welding, gas tungsten arc welding, electroslag welding, oxyfuel gas welding, brazing, thermal cutting and mechanical cutting;

(4) be capable of writing clear and concise reports and maintaining records;

(5) pass an eye examination to prove natural or corrected near distance acuity for reading J-1 letters at a distance of not less than 12 inches on Jaeger's standard test type chart for near vision, or equivalent test, and natural or corrected far distance acuity of 20/40 as evidenced by a written, signed statement from a physician or an optometrist;

(6) pass a closed book test on welding inspection fundamentals such as welding processes, nondestructive testing methods, and interpretation;

(7) pass an open book test on general code or standard requirements such as fabrication tolerances and preheat requirements;

(8) pass a demonstration of competency in the use of tools, gauges, and instruments pertaining to weld inspection; and

(9) submit evidence of having previously passed an all position welding qualification test in at least one welding process.

(b) The requirements of (a)(1) – (8) of this section will be waived for an applicant possessing a current welding inspector certificate issued by the American Welding Society in accordance with AWS QC 1-78 "Standard for Qualification and Certification of Welding Inspectors."

(c) An applicant may substitute up to two years of post-high-school education for two years of the five-year experience relevant to any of the functions covered by (a)(2) of this section and approved by the board. (Eff. 8/21/78, Reg. 67; am 7/22/79, Reg. 71)

Authority: AS 08.99.080(a)(5) and (10)

12 AAC 72.070. TEST FEES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.075. APPLICATION FOR WELDING INSPECTOR LICENSE. Application for a welding inspector license must be made to the department on a form provided by the department and must be accompanied by a fee of $25. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(6) and (10)

12 AAC 72.080. CODES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.085. EXAMINATION FOR WELDING INSPECTOR LICENSE. Examinations for welding inspector licenses will be conducted four times a year. Additional examinations may be conducted if the applicant furnishes all necessary facilities and pays all expenses incurred by the examiners. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2), (7) and (10)

12 AAC 71.090. DEFINITIONS. Repealed. (8/21/78, Reg. 67)

12 AAC 72.095. WELDING INSPECTOR LICENSE ISSUED. The department will issue a welding inspector license to an applicant who

meets the requirements of sec. 65 of this chapter. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7) and (10)

12 AAC 72.105. WELDING INSPECTOR LICENSE EXPIRATION AND RENEWAL. (a) A welding inspector license is valid until March 1 of each year unless revoked for reasons stated in sec. 125 of this chapter.

(b) Application for renewal of a welding inspector license must be made to the department on a form provided by the department no later than February first of each year and must be accompanied by a fee of $10.

(c) An application for renewal of a welding inspector license must contain

(1) evidence of compliance with the requirement of sec. 65(a)(5) of this chapter; and

(2) evidence of employment as a welding inspector in the form of

(A) a signed statement of an employer;

(B) payroll records indicating the position held; or

(C) affidavits of two fellow employees attesting to employment activity of the applicant.

(d) Application for renewal of a welding inspector license which has lapsed is considered a new application. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7) and (10)

12 AAC 72.115. DUTIES AND RESPONSIBILITIES OF A WELDING INSPECTOR. (a) A welding inspector shall, when applicable

(1) keep the department advised of his current address for the mailing of renewal notices;

(2) verify that the work inspected conforms to the requirements of the applicable codes, standards and job specifications;

(3) verify that the base materials and consumable welding materials conform to the specification requirements and that the specified welding filler metals are used on each base metal or combination of base metals;

(4) verify that the welding equipment to be used for the work is that which is specified in the welding procedure and has the capability to produce the specified welds;

(5) verify that the welding procedures are as specified, and are qualified and available to the welders for reference;

(6) verify that the welders have been properly qualified in accordance with the applicable codes and standards and that their qualification authorizes them to use the welding procedures specified for the work;

(7) observe the qualification tests when qualifying welders;

(8) verify that only specified and properly qualified welding procedures are used for the work;

(9) verify that the joint preparation and fit-up meets the requirements of the welding procedure and drawings;

(10) verify that the specified filler metals are used and that the filler metals are maintained in proper condition for use as specified;

(11) observe the technique and performance of each welder;

(12) examine the work for conformance to the requirements of the applicable codes, standards, specifications and drawings;

(13) identify the work inspected with specified marking methods or appropriate records;

(14) perform the necessary visual inspections;

(15) verify that the required visual and other nondestructive examinations have been performed by qualified personnel in the specified manner and review the resulting information to assure that the results are complete;

(16) perform nondestructive examinations that are specified, if he or she is qualified in accordance with the specified requirements;

(17) prepare clear and concise reports and keep necessary records of the welding procedure, the welding procedure qualifications, the welder qualifications, the control of welding materials and the results of inspections and tests;

(18) act with complete integrity in professional matters and be forthright and candid to the board or its representative on matters pertaining to this standard;

(19) to preserve the health and well-being of the public by performing the duties required of weld inspection in a conscientious and impartial manner to the full extent of his or her responsibilities and qualifications;

(20) undertake and perform assignments only when qualified by training, experience, and capability;

(21) be objective, thorough and factual in any written report, statement or testimony of the work and include all relevant or pertinent information in such communiques or testimonials;

(22) sign only for work that he or she has inspected, or for work over which he or she has personal knowledge through direct technical control; and

(23) conscientiously avoid conflict of interests with the employer or client and disclose any business association, interests, or circumstances that might be so considered.

(b) If there is evidence that the welder's work does not conform to the requirements of the applicable code, standard or specification, the welding inspector may require requalification of the welder. The welding inspector shall require a requalification of a welder if that person's qualification is not current by the requirements of the applicable codes, standards or specifications.

(c) If the welding inspector is to perform nondestructive examinations other than visual, and there are no specified qualification requirements, he or she must be qualified and certified in accordance with the Recommended Practice No. SNT-TC-1A, "Personnel Qualification and Certification for Nondestructive Testing," June 1975. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7),(9) and (10)

12 AAC 72.125. PROHIBITED CONDUCT OF WELDING INSPECTOR. (a) A welding inspector licensed under this chapter is prohibited from performing acts including

(1) signing a blank welder qualification certificate;

(2) issuing a welding qualification certificate to a welder not tested under his or her direct supervision;

(3) delegating his or her responsibility in testing of welders;

(4) paying, soliciting, or offering, directly or indirectly, any bribe or commission for professional employment with the exception of the usual commission required by employment agencies;

(5) falsifying, exaggerating, or indulging in the misrepresentation of personal academic and professional qualifications, past assignments, accomplishments, and responsibilities or those of his or her associates;

(6) issuing statements, criticisms, or arguments on weld inspection matters connected with public policy which are solicited or paid for by an interested party or parties, without first identifying the party and the speaker and disclosing any possible pecuniary interest;

(7) expressing an opinion on a weld inspection subject unless it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence pertinent to the subject and upon honest conviction of the accuracy and propriety of the statement;

(8) accepting compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties or their authorized agents;

(9) soliciting or accepting gratuities, directly or indirectly, from any party or parties dealing with the client or employer in connection with the welding inspector's work; and

(10) associating with or knowingly participating in a fraudulent or dishonest venture.

(b) The board will suspend, refuse renewal of or revoke the welding inspector's license, place the license holder on probation, or reprimand the holder, if he or she is found to have engaged in prohibited conduct. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7),(9) and (10)

ARTICLE 4.
GENERAL PROVISIONS

Section
899. Weld qualifier license
900. Definitions

12 AAC 72.899. WELD QUALIFIER LICENSE. A weld qualifier license issued under the authority of this chapter as it existed between August 2, 1973 and the effective date of this section is valid until six months after the effective date of this section and may not be renewed. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7)

12 AAC 72.900. DEFINITIONS. (a) In this chapter

(1) "appropriate rating" means that rating which is required by the specific code designated in the job specifications; when there is no job specification or a specific code is not designated in the job specification, appropriate rating is not less than the all-position certification issued in accordance with the current edition of the American Welding Society Code;

(2) "board" means the Board of Welding Examiners;

(3) "code" means nationally recognized welding, nondestructive testing or engineering principles or rules published as guides or requirements or both by societies or agencies charged with establishing such guidelines;

(4) "continuous employment" means employment without interruption of more than 90 consecutive days unless otherwise specified in the code under which the certificate is being renewed;

(5) "coupon" means a piece of metal cut and sectioned for testing;

(6) "cutting process" means a process in which the severing or removing of metals is effected;

(7) "department" means the Department of Commerce and Economic Development;

(8) "direct supervision" means being physically present at the work site and in personal charge of the work being performed;

(9) "job specifications" means the written document setting out the specific construction standards to be adhered to for the project;

(10) "rating" means a particular skill level in the art of welding;

(11) "responsibility" means being accountable to the board or its agents or both for one's action relating to the requirements of this chapter;

(12) "standards" means minimum acceptable guidelines established by societies or agencies or both charged with the responsibility for promulgating such guidelines;

(13) "technical level" means a level of work in welding using mathematics and science such as would require at least two years of post-high-school study at an accredited engineering school or technical institute or equivalent study;

(14) "valid" means having legal force and properly executed and binding under the law and is in compliance with the appropriate code, standard or specification;

(15) "weld testing methods" means the destructive or nondestructive means of evaluating the integrity of the weld metal or heat affected zone of the base material or both;

(16) "welder" means welder, welding operator and tacker;

(17) "welding" means the metal joining process used in making welds;

(18) "welding inspector" means a person meeting the requirements of secs. 55 – 125 of this chapter;

(19) "welding performance specification" means a document required before testing, setting the criteria for demonstration of a welder's ability to produce welds meeting prescribed standards;

(20) "welding procedure" means a written document specifying the essential variables as listed in the appropriate welding or engineering code or both;

(21) "welding procedure specification" means a document required before welding on any structure, specifying the parameters and requirements which control the quality of the welding for that structure;

(22) "welding process" means the method of application of heat or filler metal or both to complete the joining process;

(23) "welding qualification certificate" means a certificate issued under the authority of the board by a licensed welding inspector to a person verifying that he or she has successfully performed one or more of the specific welding tests required for a certification to a particular welding or engineering code;

(24) "weldment" means an assembly whose component parts are joined by welding.

(b) Terms not defined in this section shall be construed in accordance with American Welding Society A3.0-76, "Terms and Definitions." (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1) and (9)

STATE OF ALASKA

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF ELECTRICAL EXAMINERS

Notice is hereby given that the Department of Commerce and Economic Development, Board of Electrical Examiners, under authority vested by AS 08.40.045 proposes to amend regulations in Title 12 of the Alaska Administrative Code to implement AS 08.40 as follows:

12 AAC 32.011 and .090 are amended by adding a subsection which permits substitution of a degree in electrical engineering plus four years management experience to satisfy the requirements for an electrical administrator license in the outside linework and inside wiring categories.

12 AAC 32.210(a) is amended by deleting the word "percent."

12 AAC 32.900 is amended by adding provisions which place the licensed electrical administrator for an employing electrical contractor in "responsible charge" of electrical work performed by the employer and defines "responsible charge."

12 AAC 32.910(4) is amended by permitting a person who meets the requirements established by AS 18.62 for the issuance of a certificate of fitness but has not yet received the certificate to be included under the definition of "journeyman lineman" and/or "journeyman electrician."

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at the National Electrical Contractor's Association Building at 712 West 36th Avenue in Anchorage, Alaska, at 10:00 a.m., on Wednesday, November 14, 1979.

Copies of the proposed regulations may be obtained by writing to:

Department of Commerce and Economic Development
Board of Electrical Examiners - Regulations
Division of Occupational Licensing
Pouch D, Juneau, Alaska 99811

The Department of Commerce and Economic Development, Board of Electrical Examiners, upon it own motion or at the instance of any interested person, may, at the hearing or after it, adopt the proposals substantially as described above or may decide to take no action on them.

Charles R. Webber

Charles R. Webber, Commissioner

10/8/79

Date

STATE OF ALASKA
BOARD OF WELDING EXAMINERS
MINUTES OF MEETING
JULY 27, 1979

In accordance with AS 08.99.060 and AS 44.62.310, a scheduled meeting of the Board of Welding Examiners was held on the Anchorage Community College Campus, Room 104, Building G, located at 2533 Providence Avenue, Anchorage, Alaska, on July 27, 1979.

There were present, constituting a quorum of the board:

Don Lockman, Chairman
Peter Millar
J. C. Wingfield
George Fox

Members absent were:

Phil Davis
Don Delk
Tim Farrell

Also present was Carol Fredriksson, Licensing Examiner II, Division of Occupational Licensing.

The meeting was called to order by the chairman, Don Lockman, at 2:20 p.m.

OLD BUSINESS

Minutes: The minutes of the April 27, 1979 meeting were read by Carol Fredriksson. J. C. Wingfield moved that the minutes be approved as read, seconded by Pete Millar, and carried unanimously.

NEW BUSINESS

New Board Members: Don Lockman wished the minutes to reflect that there had been two new board member appointments. These new members, George Fox and Tim Farrell, replaced James Crippen and Rick Schneider (former chairman). By receipt of a letter from Governor Jay Hammond, Don Lockman was requested to act as Chairman for the State Welding Examiners Board. Don Lockman was, in the past, Secretary and asked for suggestions for a new secretary from the board members. It was moved by Pete Millar and seconded by J. C. Wingfield that Don Delk would be appointed Secretary. The motion was carried unanimously.

Travel Budget: Discussion was held regarding the new members on the board and transportation and per diem that would be required for them to attend future meetings. Carol Fredriksson advised that at the time she did the travel budget she was not aware of the new members and their place of residence. She said she would revise their travel budget letter and send them a revised copy.

STATE OF ALASKA
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
BOARD OF PUBLIC ACCOUNTANCY

Notice is hereby given that the Department of Commerce and Economic Development, Board of Public Accountancy, proposes to adopt, amend and repeal regulations in Title 12 of the Alaska Administrative Code to implement AS 08.04 as follows:

12 AAC .04 is amended by:

1. requiring that an applicant who successfully completes the Uniform Certified Public Accountant Examination take and pass, prior to licensure as a P.A. or a C.P.A., an open book ethics examination prepared and graded by the American Institute of Certified Public Accountants;

2. requiring that any applicant for a license as a P.A. or a C.P.A. by endorsement or reciprocity from any other jurisdiction have taken, and passed, the examination(s) required by this State and be capable of meeting the board established experience requirements of this State;

3. repealing 12 AAC 04.090, .120 and .170(b)

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held before the board at 8:00 a.m., on December 6, 1979 in the Executive Dining Room of the Campus Center of the University of Alaska at 2801 Providence Drive in Anchorage, Alaska.

Copies of the proposed regulations may be obtained by writing to:

Department of Commerce and Economic Development
Board of Public Accountancy - Regulations
Division of Occupational Licensing
Pouch D, Juneau, Alaska 99811

The Department of Commerce and Economic Development, Board of Public Accountancy, upon its own motion or at the instance of any interested person, may, at the hearing or after it, adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Charles R. Webber

Charles R. Webber, Commissioner

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Date

Sunset Legislation: Don Lockman read interim letter #1 to the Board of Welding Examiners from the Division of Legislative Audit dated June 20, 1979. This letter was to have been responded to by the board within fifteen working days. The board did not answer this letter due to the fact that they had not been able to meet as a board. They felt it was not proper of the Division of Legislative Audit to insist on a response by the board as they were not going to meet for two months. They felt that as individuals they should still answer the letter, even if the Division of Legislative Audit would not accept the responses. It was moved by George Fox and seconded by J. C. Wingfield that all board members shall respond to the interim letter, send their responses to Don Delk, who will then coordinate those responses and forward them to the proper channels. This motion was carried unanimously.

The board also requested the licensing examiner to have Elaine Garrett, Management Analyst, call them regarding future deadline dates and any other information she may have concerning the Sunset Legislation.

George Fox felt that if the board was terminated he would, in his personal opinion, expect that a Welding Bureau, like Canada's would be established which is very political. He felt their regulations were prompted by the tides of politics rather than technology. if sunsetted

Exam: It was discussed that six applicants would be taking the AWS exam on July 28, 1979 with Dr. Morgan of the University of Alaska proctoring the exam.

Test Proctors: Discussion was held on test proctors and how future exams were to be held. It was felt that AWS had decided to employ their own proctor for every exam and, with that in mind, the board MEMBERS felt their attendance at the exams was no longer necessary. They also felt that if AWS requests assistance at any exam, it is up to the division to send a licensing examiner to help them. It was noted that in past minutes Jane English had been established as the appointed administrator for AWS, along with two members from the board as proctors. J. C. Wingfield made a motion to reverse those previous decisions by the board and George Fox seconded the mtion, so that the board now resolves that AWS will conduct all future exams and if they request help from the division or the board, assistance will be given. The motion carried unanimously.

Welding Inspectors: The attached list of welding inspectors was presented to the board for their final approval of licensure. On motion made by J. C. Wingfield, seconded by Peter Millar, it was resolved to accept the list as presented and approved licensure of those applicants.

Board Meeting: The next board meeting will be October 26, and the next AWS exam will be October 27, 1979.

There being no further business the meeting adjourned at 4:05 p.m.

Respectfully Submitted

_____

Jane English
Licensing Examiner

bring an action in the superior court to enjoin the act and to enforce compliance with § 120 of this chapter. (§ 1 ch 91 SLA 1963)

Article 4. General Provisions.

Section
250. Definitions

Sec. 08.98.250. Definitions. In this chapter

(1) a person who practices veterinary medicine, surgery, or dentistry is one who does any of the following:

(A) appends to his name a title or abbreviation indicating to the public that he is a veterinarian;

(B) for compensation, diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(C) holds himself out to the public as one who diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(D) maintains premises for receiving, examining, and treating a domesticated animal for compensation;

(2) "board" means the Board of Veterinary Examiners;

(3) "department" means the Department of Commerce and Economic Development. (§ 1 ch 91 SLA 1963; am § 60 ch 218 SLA 1976)

Revisor's note (1973). — In light of the 1966 amendment of AS 08.98.010, "Veterinarian" has been changed to "Veterinary" in paragraph (2) of this section.

Effect of amendment. — The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (3).

Chapter 99. Board of Welding Examiners.

Section
10. Creation and membership of board
20. Term of office
30. Source of appointments
40. Removal from office
50. Qualifications of board members
60. Meetings
70. Quorum
80. Powers and duties of the board
90. Applicability of Administrative Procedure Act
100. Expenses
110. Codes
120. Penalty

Sec. 08.99.010. Creation and membership of board. There is created the Board of Welding Examiners, consisting of seven members appointed by the governor. (§ 1 ch 151 SLA 1968)

Sec. 08.99.020. Term of office. Board members serve a term of five years. However, of the members first appointed, one shall be appointed for a term of one year, one for two years, one for three years, one for four years, and three for terms of five years. (§ 1 ch 151 SLA 1968)

Sec. 08.99.030. Source of appointments. The governor shall appoint board members from a list of persons prepared by the Alaska Chapter

of the American Welding Society and the Alaska Society of Professional Engineers and submitted at least 30 days before the expiration of a term and not more than 60 days after a vacancy occurs in an unexpired term. The list shall contain not less than two recommended candidates for each appointment. The governor shall make appointments within 30 days after receiving the list. (§ 1 ch 151 SLA 1968; am § 1 ch 151 SLA 1970)

Sec. 08.99.040. Removal from office. Each member holds office at the pleasure of the governor notwithstanding the member's term. (§ 1 ch 151 SLA 1968)

Sec. 08.99.050. Qualifications of board members. Each member of the board shall be a citizen of the United States and a resident of the state. At least three members shall be persons with engineering degrees or registration as an engineer and each engineer member shall have at least five years engineering experience. All members shall have extensive experience in welding. (§ 1 ch 151 SLA 1968; am § 2 ch 151 SLA 1970)

Sec. 08.99.060. Meetings. The board shall meet at least once a year. (§ 1 ch 151 SLA 1968)

Sec. 08.99.070. Quorum. A majority of the board constitutes a quorum. (§ 1 ch 151 SLA 1968)

Sec. 08.99.080. Powers and duties of the board. (a) The board shall

(1) establish and promulgate rules and regulations concerning certification of welders in the state;

(2) establish and define certification tests as they apply to various types and categories of work done in or for the state;

(3) work with federal and private agencies and specifying engineers to establish uniform testing and certifying methods for all welders throughout the state;

(4) work with federal agencies and the agencies of other states to establish reciprocity agreements;

(5) set up criteria and define experience and documentary requirements which may be accepted in lieu of physical certification tests in the state;

Repealed (6) set the fees for the welder certification tests; By O.C

(7) examine, certify, and renew the certification of qualified applicants;

(8) keep a record of its proceedings, and submit annual reports to the governor and the legislature;

Repealed (9) promulgate regulations concerning the quality of welds and qualifications of welders required in specific areas of industry and construction and designate reporting procedures necessary to certify compliance with these quality standards;

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(10) designate and approve persons qualified to administer welding tests, and designate and approve shops, laboratories, or other establishments qualified for testing coupons and weldments.

(b) The board may request technical personnel from the Department of Labor for the purpose of reviewing and analyzing reports and may request field inspection by the department for the purpose of assuring compliance with, and enforcement of the regulations, rules and orders promulgated under §§ 10 — 110 of this chapter. (§ 1 ch 151 SLA 1968; am §§ 3 — 5 ch 151 SLA 1970)

Sec. 08.99.090. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62). (§ 1 ch 151 SLA 1968)

Sec. 08.99.100. Expenses. Members of the board are entitled to the per diem and travel expenses allowed by law. (§ 1 ch 151 SLA 1968)

Sec. 08.99.110. Codes. The United States of America Standards Institute Codes listed below are established as the piping codes for the state:

(1) B 31.1.0 — 1967 power piping;
(2) B 31.2 — 1968 fuel gas piping;
(3) B 31.8 — 1968 gas transmission and distribution piping system;
(4) B 31.3 — 1966 petroleum refining piping;
(5) B 31.4 — 1966 and B 31.4a — 1968 liquid petroleum transportation piping systems. (§ 6 ch 151 SLA 1970)

Revisor's note (1970). — For copies of the codes referred to in AS 08.99.110, write to the U.S.A. Standards Institute, Dept. PB 31, 10 East 40th Street, New York, New York 10016.

Sec. 08.99.120. Penalty. A person who violates a regulation adopted under §§ 10 — 110 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500. (§ 7 ch 151 SLA 1970)

CHAPTER 72.
BOARD OF WELDING EXAMINERS

Article
1. Codes
2. Welders
3. Welding Inspectors
4. General Provisions

ARTICLE 1.
CODES

Section
5. Rating
10. (Repealed)

12 AAC 72.005. RATING FOR WELDERS. Ratings for welders shall be governed by the code requirements in the job specifications. In the absence of code requirements, welders shall be certified in accordance with the applicable American Welding Society Code. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2) and (9)

12 AAC 72.010. CERTIFICATE REQUIRED. Repealed. (8/21/78, Reg. 67)

ARTICLE 2.
WELDERS

Section
15. Welder qualification certificate required
20. (Repealed)
25. Requirements for welder qualification certificate
30. (Repealed)
35. Welder qualification certificate issued
40. (Repealed)
45. Requirements for maintaining a current welder qualification certificate

12 AAC 72.015. WELDER QUALIFICATION CERTIFICATE REQUIRED. A person may not perform a welding operation in the state for compensation, in which weldment failure would involve hazard to life or property unless he or she holds a current, valid welder qualification certificate in the appropriate rating. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2),(5) and (9)

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12 AAC 72.020. DURATION AND RENEWAL. Repealed. (8/21/78, Reg. 67)

12 AAC 72.025. REQUIREMENTS FOR WELDER QUALIFICATION CERTIFICATE. (a) Testing of welders shall be done under the direct supervision of a licensed welding inspector.

(b) An applicant for a welder qualification certificate or a company desiring to have a welder qualified shall

(1) submit to the welding inspector the welding procedure specifications or the welding performance specifications, or both when indicated, for the appropriate rating; and

(2) complete the welding test for the appropriate rating according to the terms of the welding procedure specifications or the welding performance specifications, or both when indicated.

(c) Prequalified procedure specifications may be used for test administration according to applicable codes. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2),(5) and (9)

12 AAC 72.030. TEST SELECTION. Repealed. (8/21/78, Reg. 67)

12 AAC 72.035. WELDER QUALIFICATION CERTIFICATE ISSUED. The welding inspector shall issue the welding qualification certificate in the appropriate rating to the applicant or company upon the applicant's successful completion of the examination. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(7) and (10)

12 AAC 72.040. QUALIFICATION. Repealed (8/21/78, Reg. 67)

12 AAC 72.045. REQUIREMENTS FOR MAINTAINING A CURRENT WELDER QUALIFICATION CERTIFICATE. (a) A welder qualification certificate is valid if

(1) it is kept current in compliance with the code under which it is issued unless stated otherwise in the job specification; and

(2) the welder has been continuously employed on the welding process for which he is certified.

(b) The expiration or revocation of one rating does not affect any remaining rating. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(5) and (10)

ARTICLE 3.
WELDING INSPECTORS

Section

50. (Repealed)
55. Welding inspector license required
60. (Repealed)
65. Requirements for welding inspector license
70. (Repealed)
75. Application for welding inspector license
80. (Repealed)
85. Examination for welding inspector license
90. (Repealed)
95. Welding inspector license issued
105. Welding inspector license expiration and renewal
115. Duties and responsibilities of welding inspector
125. Prohibited conduct of welding inspector

12 AAC 72.050. TEST FACILITIES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.055. WELDING INSPECTOR LICENSE REQUIRED. A person may not test a welder for the purpose of issuing a welder qualification certificate or inspect a welding operation in the state in which weldment failure would involve hazard to life or property unless he or she holds a current, valid welding inspector license. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7) and (10)

12 AAC 72.060. WELD QUALIFIER. Repealed. (8/21/78, Reg. 67)

12 AAC 72.065. REQUIREMENTS FOR WELDINC INSPECTOR LICENSE. (a) An applicant for a welding inspector license must

(1) be a high school graduate or hold a state or military approved high school equivalency diploma;

(2) have no less than five years' experience at the technical level in an occupational function that directly involved

(A) design experience such as preparation of plans and drawings for weldment construction according to a code, standard or specification;

(B) construction experience such as actual construction or fabrication and erection of weldments in accordance with a code, standard, specification or drawing;

(C) maintenance experience such as detection and measurement of weld inadequacies or discontinuities in accordance with specified procedures; and

(D) repair experience such as repair or replacement of welds that were determined inadequate or defective by reference to a code, standard, specification or drawing;

(3) be familiar with and understand the fundamentals of shielded metal arc welding, stud arc welding, submerged arc welding, flux cored arc welding, gas metal arc welding, gas tungsten arc welding, electroslag welding, oxyfuel gas welding, brazing, thermal cutting and mechanical cutting;

(4) be capable of writing clear and concise reports and maintaining records;

(5) pass an eye examination to prove natural or corrected near distance acuity for reading J-1 letters at a distance of not less than 12 inches on Jaeger's standard test type chart for near vision, or equivalent test, and natural or corrected far distance acuity of 20/40 as evidenced by a written, signed statement from a physician or an optometrist;

(6) pass a closed book test on welding inspection fundamentals such as welding processes, nondestructive testing methods, and interpretation;

(7) pass an open book test on general code or standard requirements such as fabrication tolerances and preheat requirements;

(8) pass a demonstration of competency in the use of tools, gauges, and instruments pertaining to weld inspection; and

(9) submit evidence of having previously passed an all position welding qualification test in at least one welding process.

(b) The requirements of (a)(3) – (8) of this section will be waived for an applicant possessing a current welding inspector certificate issued by the American Welding Society in accordance with AWS QC 1-77, "Standard for Qualification and Certification of Welding Inspectors."

(c) An applicant may substitute up to two years of post-high-school education for two years of the five-year experience relevant to any of the functions covered by (a)(2) of this section and approved by the board. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(5) and (10)

12 AAC 72.070. TEST FEES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.075. APPLICATION FOR WELDING INSPECTOR LICENSE. Application for a welding inspector license must be made to the department on a form provided by the department and must be accompanied by a fee of $25. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(6) and (10)

12 AAC 72.080. CODES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.085. EXAMINATION FOR WELDING INSPECTOR LICENSE. Examinations for welding inspector licenses will be conducted four times a year. Additional examinations may be conducted if the applicant furnishes all necessary facilities and pays all expenses incurred by the examiners. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2), (7) and (10)

12 AAC 71.090. DEFINITIONS. Repealed. (8/21/78, Reg. 67)

12 AAC 72.095. WELDING INSPECTOR LICENSE ISSUED. The department will issue a welding inspector license to an applicant who

meets the requirements of sec. 65 of this chapter. (Eff. 8/21/78, Reg. 67)

Authority: AS 03.99.080(a)(7) and (10)

12 AAC 72.105. WELDING INSPECTOR LICENSE EXPIRATION AND RENEWAL. (a) A welding inspector license is valid until March 1 of each year unless revoked for reasons stated in sec. 125 of this chapter.

(b) Application for renewal of a welding inspector license must be made to the department on a form provided by the department no later than February first of each year and must be accompanied by a fee of $10.

(c) An application for renewal of a welding inspector license must contain

(1) evidence of compliance with the requirement of sec. 65(a)(5) of this chapter; and

(2) evidence of employment as a welding inspector in the form of

(A) a signed statement of an employer;

(B) payroll records indicating the position held; or

(C) affidavits of two fellow employees attesting to employment activity of the applicant.

(d) Application for renewal of a welding inspector license which has lapsed is considered a new application. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7) and (10)

12 AAC 72.115. DUTIES AND RESPONSIBILITIES OF A WELDING INSPECTOR. (a) A welding inspector shall, when applicable

(1) keep the department advised of his current address for the mailing of renewal notices;

(2) verify that the work inspected conforms to the requirements of the applicable codes, standards and job specifications;

(3) verify that the base materials and consumable welding materials conform to the specification requirements and that the specified welding filler metals are used on each base metal or combination of base metals;

(4) verify that the welding equipment to be used for the work is that which is specified in the welding procedure and has the capability to produce the specified welds;

(5) verify that the welding procedures are as specified, and are qualified and available to the welders for reference;

(6) verify that the welders have been properly qualified in accordance with the applicable codes and standards and that their qualification authorizes them to use the welding procedures specified for the work;

(7) observe the qualification tests when qualifying welders;

(8) verify that only specified and properly qualified welding procedures are used for the work;

(9) verify that the joint preparation and fit-up meets the requirements of the welding procedure and drawings;

(10) verify that the specified filler metals are used and that the filler metals are maintained in proper condition for use as specified;

(11) observe the technique and performance of each welder;

(12) examine the work for conformance to the requirements of the applicable codes, standards, specifications and drawings;

(13) identify the work inspected with specified marking methods or appropriate records;

(14) perform the necessary visual inspections;

(15) verify that the required visual and other nondestructive examinations have been performed by qualified personnel in the specified manner and review the resulting information to assure that the results are complete;

(16) perform nondestructive examinations that are specified, if he or she is qualified in accordance with the specified requirements;

(17) prepare clear and concise reports and keep necessary records of the welding procedure, the welding procedure qualifications, the welder qualifications, the control of welding materials and the results of inspections and tests;

(18) act with complete integrity in professional matters and be forthright and candid to the board or its representative on matters pertaining to this standard;

(19) to preserve the health and well-being of the public by performing the duties required of weld inspection in a conscientious and impartial manner to the full extent of his or her responsibilities and qualifications;

(20) undertake and perform assignments only when qualified by training, experience, and capability;

(21) be objective, thorough and factual in any written report, statement or testimony of the work and include all relevant or pertinent information in such communiques or testimonials;

(22) sign only for work that he or she has inspected, or for work over which he or she has personal knowledge through direct technical control; and

(23) conscientiously avoid conflict of interests with the employer or client and disclose any business association, interests, or circumstances that might be so considered.

(b) If there is evidence that the welder's work does not conform to the requirements of the applicable code, standard or specification, the welding inspector may require requalification of the welder. The welding inspector shall require a requalification of a welder if that person's qualification is not current by the requirements of the applicable codes, standards or specifications.

(c) If the welding inspector is to perform nondestructive examinations other than visual, and there are no specified qualification requirements, he or she must be qualified and certified in accordance with the Recommended Practice No. SNT-TC-1A, "Personnel Qualification and Certification for Nondestructive Testing," June 1975. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7),(9) and (10)

12 AAC 72.125. PROHIBITED CONDUCT OF WELDING INSPECTOR. (a) A welding inspector licensed under this chapter is prohibited from performing acts including

(1) signing a blank welder qualification certificate;

(2) issuing a welding qualification certificate to a welder not tested under his or her direct supervision;

(3) delegating his or her responsibility in testing of welders;

(4) paying, soliciting, or offering, directly or indirectly, any bribe or commission for professional employment with the exception of the usual commission required by employment agencies;

(5) falsifying, exaggerating, or indulging in the misrepresentation of personal academic and professional qualifications, past assignments, accomplishments, and responsibilities or those of his or her associates;

(6) issuing statements, criticisms, or arguments on weld inspection matters connected with public policy which are solicited or paid for by an interested party or parties, without first identifying the party and the speaker and disclosing any possible pecuniary interest;

(7) expressing an opinion on a weld inspection subject unless it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence pertinent to the subject and upon honest conviction of the accuracy and propriety of the statement;

(8) accepting compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties or their authorized agents;

(9) soliciting or accepting gratuities, directly or indirectly, from any party or parties dealing with the client or employer in connection with the welding inspector's work; and

(10) associating with or knowingly participating in a fraudulent or dishonest venture.

(b) The board will suspend, refuse renewal of or revoke the welding inspector's license, place the license holder on probation, or reprimand the holder, if he or she is found to have engaged in prohibited conduct. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7),(9) and (10)

ARTICLE 4.
GENERAL PROVISIONS

Section
899. Weld qualifier license
900. Definitions

12 AAC 72.899. WELD QUALIFIER LICENSE. A weld qualifier license issued under the authority of this chapter as it existed between August 2, 1973 and the effective date of this section is valid until six months after the effective date of this section and may not be renewed. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7)

12 AAC 72.900. DEFINITIONS. (a) In this chapter

(1) "appropriate rating" means that rating which is required by the specific code designated in the job specifications; when there is no job specification or a specific code is not designated in the job specification, appropriate rating is not less than the all-position certification issued in accordance with the current edition of the American Welding Society Code;

(2) "board" means the Board of Welding Examiners;

(3) "code" means nationally recognized welding, nondestructive testing or engineering principles or rules published as guides or requirements or both by societies or agencies charged with establishing such guidelines;

(4) "continuous employment" means employment without interruption of more than 90 consecutive days unless otherwise specified in the code under which the certificate is being renewed;

(5) "coupon" means a piece of metal cut and sectioned for testing;

(6) "cutting process" means a process in which the severing or removing of metals is effected;

(7) "department" means the Department of Commerce and Economic Development;

(8) "direct supervision" means being physically present at the work site and in personal charge of the work being performed;

(9) "job specifications" means the written document setting out the specific construction standards to be adhered to for the project;

(10) "rating" means a particular skill level in the art of welding;

(11) "responsibility" means being accountable to the board or its agents or both for one's action relating to the requirements of this chapter;

(12) "standards" means minimum acceptable guidelines established by societies or agencies or both charged with the responsibility for promulgating such guidelines;

(13) "technical level" means a level of work in welding using mathematics and science such as would require at least two years of post-high-school study at an accredited engineering school or technical institute or equivalent study;

(14) "valid" means having legal force and properly executed and binding under the law and is in compliance with the appropriate code, standard or specification;

(15) "weld testing methods" means the destructive or nondestructive means of evaluating the integrity of the weld metal or heat affected zone of the base material or both;

(16) "welder" means welder, welding operator and tacker;

(17) "welding" means the metal joining process used in making welds;

(18) "welding inspector" means a person meeting the requirements of secs. 55 – 125 of this chapter;

(19) "welding performance specification" means a document required before testing, setting the criteria for demonstration of a welder's ability to produce welds meeting prescribed standards;

(20) "welding procedure" means a written document specifying the essential variables as listed in the appropriate welding or engineering code or both;

(21) "welding procedure specification" means a document required before welding on any structure, specifying the parameters and requirements which control the quality of the welding for that structure;

(22) "welding process" means the method of application of heat or filler metal or both to complete the joining process;

(23) "welding qualification certificate" means a certificate issued under the authority of the board by a licensed welding inspector to a person verifying that he or she has successfully performed one or more of the specific welding tests required for a certification to a particular welding or engineering code;

(24) "weldment" means an assembly whose component parts are joined by welding.

(b) Terms not defined in this section shall be construed in accordance with American Welding Society A3.0-76, "Terms and Definitions." (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1) and (9)

Don Cather
4821 Becharof
Anchorage, AK 99507

April 25, 1980

RE: CS for HB 994

Senator Brad Bradley
Alaska State Legislature
Pouch V (MS 3100)
Juneua, AK 99811

Dear Senator Bradley:

In 1968, the idea for the Board of Welding Examiners was to develop methods that would help reduce costs for an employer to hire welders: 1) through knowing the welder's background, as each welder would be registered with the state and carry a card so stating his certification; and 2) so registered welders could be hired for specific welding jobs and if further testing was needed, the employer would know the applicant's elementary welding background thus eliminating many primary tests which are quite expensive.

The ensuing welding boards have changed directions several times. Until now, they have added at least two layers of cost to employers who use welders: 1) through government, which involves registration of welding Inspector/Examiners and enforcement of these inspections; and 2) through regulations where the employer must now contract for, or employ additional persons to, inspect welds and to qualify welders.

The additional costs, only to Alaskan employers, further reduces the chance of the smaller Alaskan welding companies to compete with outside companies for the limited amount of business available in the state.

It should also be noted that a welding inspector/qualifier does not inspect prefab buildings, muffler installations, trailer-hitch work, or other major welding work done by others before being shipped into the state, thus the greater part of any welding entering the state is not inspected.

I do not feel the board has served any useful purpose to date, even though it has been functional for 10 years. It should also be noted that any welding company in the state may have their welders tested at any of the test labs in the state, thus eliminating the additional expense for an in-house welding qualifier. Overall, it appears this is a well-organized drive by 37 weld inspector left over from the pipeline days, to continue in lucrative jobs.

Should you feel that the bill is needed, may I make several suggestions for it's betterment:

SECTION 4, 08.99.050. The 37 welding inspectors presently registered in the state apparently wish to monopolize this board as they wish to have two of their members on it. I feel the board would be more responsive to the public needs if the language remained as in past statutes: "all members shall have extensive experience in welding".

SECTION 5, 08.99.080. I would like to ask that the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code (ASME) be excluded from this law as these activities are covered in other statutes. The welding to boilers and pressure vessels is under the jurisdiction of competent National Board of Boiler & Pressure Vessel inspectors and they only inspect boilers and pressure vessels being fabricated in the ASME Code boiler and pressure vessel shops and oversee the repair to boilers and pressure vessels to assure it is done in a safe manner and in accordance to the ASME Code guidelines.

Should you have any questions, please do not hesitate to contact me at (907) 344-6809.

Regards,

Don Cather

cc: Commerce Committee
Senator A. Sturgulewski
Senator T. Kelly
Senator F. Ferguson
Senator T. Stimson

Welding Transcript

Larry Russell
3021 Davis Road
Fairbanks 99701

456-5962

11/17

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

December 18, 1979

Larry Russell
3021 Davis Road
Fairbanks, AK 99701

Dear Mr. Russell:

RE: BOARD OF ELECTRICAL EXAMINERS
BOARD OF WELDING EXAMINERS
PUBLIC HEARING HELD NOVEMBER 7, 1979

Enclosed please find a copy of the transcript of the above-captioned hearings held on November 7, 1979. If you should have any questions, please do not hesitate to contact our offices.

Sincerely,

Christian Basler
Administrative Assistant
Senate Commerce Committee

Enclosure

LEGISLATIVE PUBLIC HEARINGS

The Senate Commerce Committee will hold public hearings on Sunset Legislation pertaining to the following Boards and Commissions on the dates indicated:

WEDNESDAY, NOVEMBER 7, 1979

9:00 a.m. - 11:45 a.m. - A Performance Review of the Board of Electrical Examiners

1:30 p.m. - close - A Performance Review of the Board of Welding Examiners

Public hearings will be held in Anchorage - 1016 West Sixth Avenue, Suite 102

Hearings will be teleconferenced to Juneau and Fairbanks

6 November 1979
Anchorage Times

WIQC-79

Guide to AWS WELDING INSPECTOR QUALIFICATION & CERTIFICATION

including
AWS QC1-79
Standard for
Qualification and Certification
of Welding Inspectors

American Welding Society
2501 NW 7th St. Miami FL 33125

GUIDE TO AWS WELDING INSPECTOR QUALIFICATION & CERTIFICATION including AWS QC1-79, STANDARD FOR QUALIFICATION & CERTIFICATION OF WELDING INSPECTORS

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The Application Form is

in the centerfold

Introduction

Welding inspection has rightly been part of a quality assurance function in either the manufacture, regulation, or insurance of welded products or weldments. However, the increasing variety of welding processes, materials, codes and standards that are applied to these products makes it correspondingly more difficult to properly fulfill the inspection function, and to enforce or meet the design requirements. This simply means that welding inspectors have an increasingly important job and that this job must be done in a more uniform manner throughout the U.S. The American Welding Society's Committee on Qualification and Certification is working to help all concerned meet this challenge by offering a qualification and certification service that will standardize this job. The program is intended to serve the public, the welding industry, and the welding inspector equally.

This Guide provides information on how you can certify your qualifications as an inspector of weldments according to the AWS Standard for Qualification and Certification of Welding Inspectors*, and become registered with the American Welding Society.

The AWS is a nonprofit national organization that has gained world wide recognition for its contribution to the art and science of Welding. Its members receive such technical publications as the *Welding Handbook* and the monthly *Welding Journal*. If you would like more information on other benefits and on how to become a member, check the appropriate box when completing the attached application form.

*The AWS Standard for Qualification and Certification of Welding Inspectors is abbreviated in this Guide as the Standard.

In a Nutshell...

- You may qualify for the Certified Welding Inspector designation — CWI — if you meet the minimum requirements of AWS QC1-79, Standard for Qualification and Certification of Welding Inspectors.

- Certification requires a minimum of experience, education, and visual acuity, plus successful completion of a three part written examination.

- Nationwide examinations are offered on the last Saturday of April and October each year. Page 14 gives possible locations.

- Once certified, your name will be registered at AWS headquarters and published in a directory; also, you will receive a certificate and wallet card, documenting your qualification.

- Certification costs a total of $50 and is tax deductible.

- Recertification is required every three years.

Certification Questions and Answers

- *Why become certified?*
  Many welding personnel currently employed can measure themselves against standards for their occupation, but unfortunately they cannot provide documentation concerning their ability. Certification provides this documentation.

- *Does AWS certification signify anything else?*
  Yes. It signifies that there has been no action or ruling to refute his or her integrity or the character of his or her skills, practice, and conduct at welding inspection. Since proof of active practice or reexamination is required to recertify every 3 years, certification also signifies that the CWI is current with the state of the art.

- *Why was it decided to initiate the program with the Welding Inspector?*
  Because little, if anything, had been done to determine the competence of the Welding Inspector. Since that phase of the program is now operating successfully, a concerted effort is being made to establish certification standards for other categories of welding personnel.

- *Have standards for certification of the Welding Inspector been established?*
  Yes. The Standard for Qualification and Certification of Welding Inspectors, AWS QC1-79, begins on page 25 of this Guide.

- *Who established the standards for a Welding Inspector?*
  The AWS Qualification and Certification Committee, appointed by the President of the American Welding Society. This committee consists of members representing industry, consultants, educators, testing laboratories, an representatives from other technical societies.

- *What are the qualification requirements for certification?*
  The principal requirement is successful completion of a three part open and closed book examination. It is described along with the prerequisite education, experience, and visual acuity in Section 4 of the Standard, beginning on page 28.

- *Does a person have to pass an examination to recertify?*
  Not necessarily. If you satisfy the vision requirements and show proof of at least 2 years of qualifying experience during the three year period of your certification, you may recertify by paying the current recertification fee of $20.00 without reexamination. (See Section 9 of the Standard.)

- *Can a person become certified under a "Grandfather Clause?"*
  No. Only those who meet the qualification requirements will be certified.

- *Are the results of the qualification examination made public by AWS?*
  No. However, if you become certified, you will have passed the examination (among other requirements) and AWS will make it known in a directory. You alone will be notified if you fail, and any reference by AWS to that fact, from any inquiry, will be that you are not registered.

- *What is the total cost of certification?*
  The total cost for certification is $50.00. This consists of a $15.00 application fee, a $25.00 examination fee, and a $10.00 certification fee, all of which must be paid when you apply. (See page 10.)

- *Will I lose $50.00 if my application is turned down?*
  No. If you do not qualify to take the test, AWS will return your entire $50.00, your application, and an explanation of why you did not qualify. However, once your application is approved, the $15.00 application fee is nonrefundable.

- *If I am scheduled to take the test in the city of my choice and do not show up, can I get my money back?*
  No. Unless you notify AWS headquarters ON or BEFORE the test date that you will not be there, you will forfeit ALL fees. However, if you contact AWS by the 5th Monday preceding the test date, you may cancel and reschedule for the next examination at no additional charge. Alternatively, you may cancel by asking for a $35 refund, in which case, you must reapply and pay the full $50 if you later decide to take the test. If you cancel AFTER the 5th Monday, you may reschedule for an additional $25, or ask for a $10 refund.

- *If I take the test and fail, do I have to pay for another fee to take it again?*
  Yes. Unless you reschedule within one year of the most recent test you failed, you must submit a new application and pay all fees again. However, you may retake it for only $25 if you reschedule within that one year period.

- *Is the examination especially difficult?*
  It is difficult only to the extent that it presupposes knowledge of the fundamentals of basic welding processes and a good working knowledge and experience of welding inspection.

- *If I fail one part of the test do I have to retake the entire examination?*
  Yes. However, you should have no difficulty passing any part of the test you passed once because it will be made as equivalent in difficulty and content to the previous test as possible.

- *Does passing or failing the examination have any bearing on the candidate's status as a society member?*
  No.

- *When will I know how I did on the examination?*
  Within two months of the examination you will receive an official Test Score Report. It will give the passing score and your raw score on each part of the examination, plus your raw score on each subtopic of the closed book parts on fundamentals and practical applications. This will permit remedial study in any weak areas. For your privacy, test scores will not be discussed over the telephone.

- *Is there any text or study material that can be used to prepare for the test?*
  Yes. In addition to the codes and standards listed on pages 16-19, any of the following references and courses are recommended. Reference and course information may be obtained at the addresses shown on page 24.

AWS Publications:

1. *Certification Manual for Welding Inspectors*
2. *Welding Inspection*
3. *Symbols for Welding and Nondestructive Testing* AWS A2.4-79
4. Section 1-5 of the *Welding Handbook,* Sixth Edition
5. *Welding Handbook,* Volume One, Seventh Edition and Volume Two, Seventh Edition

Package courses available from AWS:

1. Current Welding Processes
2. Introductory Welding Metallurgy
3. Welding Inspection and quality Assurance

Homestudy and Extension Courses available from the American Society for Metals (ASM):

1. Course #35 — Weld Quality and Inspection

Homestudy and Extension Course available from the American Society for Nondestructive Testing (ASNT) and ASM:

2. Course #5 — Fundamentals of Nondestructive Testing

- *Are any of the above references available for loan?*
  The technical or reference sections of most public libraries keep the *Welding Handbook*, as well as other suitable references. You should check with your local library to see if they can be loaned. In addition, many AWS Sections maintain a library for AWS members. You should check with the Educational Committee Chairman of the local AWS Section for more information.

- *How often are the examinations given?*
  Nationwide examinations are given on the last Saturday of April and October each year. Test cities are listed on the application (in the centerfold).

- *Is it possible to take the examination at a time and place different than those of the nationwide examinations?*
  Yes. You may take the examination at AWS headquarters in Miami, Florida. However you must not have taken the test within the preceding 3 months. Applications and fees must be received in Miami at least two full weeks before the test date. Tests are offered on the first Friday of each March, June, September, and December; indicate your choice according to the asterisk in part 5A of the application form.

  Special examinations may also be arranged for dates and places different than those for the nationwide tests and the Miami tests. Detailed information may be obtained by contacting the Qualification-Certification Department in Miami.

- *Where can I obtain more information about the certification Program?*
  Write or call the Qualification & Certification Department, American Welding Society, 2501 Northwest 7th Street, Miami, Florida 33125; phone (305) 642-7090.

To become an AWS Certified Welding Inspector...

1. Fill out the application according to the instructions on page 11. Then, mail it with a $50 check or money order to the Q&C Department at AWS headquarters. Experience has shown that mail takes from 5 to 6 days to reach AWS, so DO NOT DELAY. Your application must be received in Miami by the 5th Monday preceding a scheduled nationwide examination, or 14 days prior to a special examination.
2. If your application is accepted, you will be sent the following:
   (1) your receipt for $50
   (2) your examination notice giving the test location, schedule, and instructions
   (3) your AWS eye examination form which must be completed, certified, and returned before your certificate is issued (if you pass the test). Your vision acuity may be validated from the results of vision tests made within a 7 month period preceding the welding inspector examination.
3. If you pass the examination and satisfy the vision requirements, you will then be registered and receive your certificate and wallet card.
4. If you fail the examination, you may retake it within one year of the first test for only $25. However, if you fail to reschedule during that period, you must submit a new application and pay all fees again.

The application deadline for the NATIONWIDE APRIL AND OCTOBER EXAMINATIONS IS THE FIFTH MONDAY PRECEDING EACH TEST DATE.

If you do not receive your exam notice at least one week before the test date, YOU should contact the Q&C Department in Miami immediately.

Make all fees payable to AWS and send check or money order with your application—DO NOT send CASH or PURCHASE ORDERS.

To fill out the application form...

READ the instructions that follow CAREFULLY and COMPLETELY; then, TYPE or PRINT clearly everything but your signature. Each item is keyed to the application for easy reference.

Part 1. PERSONAL

A. Spell your name exactly as it appears on your driver's license, or other suitable identification, and fill in your social security number. If you become certified, your name will appear on the certificate exactly as it is spelled on the form. Because of this, it is asked that you not use nicknames, unless you can be so identified.

B. List a COMPLETE mailing address which may be used to contact you at anytime on matters pertinent to your application, examination, certification and/or recertification.

C. List a phone number where AWS can contact you or leave a message that will reach you between the hours of 8 to 5, Monday thru Friday.

D. List your height, your weight, and the color of your eyes and hair.

E. List the month, day, and year you were born.

F. Mark "yes" or "no" as you choose. If yes, AWS will send you a brochure which outlines the benefits you could expect to receive by joining the American Welding Society. This brochure also contains an application for membership and lists the cities where you could participate in social, educational, and technical activities as a member.

G. If you have never taken an AWS test for Welding Inspectors, mark "no". If you have, mark "yes", and list the most recent date on which it was taken.

Part 2. OPEN BOOK TEST

A. Mark the box beside the ONE code or standard you want to use for the open book test. Choosing the one most familiar to you will be to your advantage. (See pages 16-19.)

Part 3. EDUCATIONAL BACKGROUND

A. Circle the numbers in Parts 3A1, 3A2, and 3A3 which indicate the highest grade or years you attended at each educational level. Note that if you do not hold a high school or equivalent diploma, you must document TEN or more years of qualifying experience (as defined in the following section) in Part 4 of your application.

B. Complete Parts 3B1 and 3B2 as indicated.

C. List post-high school education in Part 3C ONLY if you want to substitute it for experience. Please note that documentation of all claims must be submitted with your application (e.g. photocopied certificates, diplomas, transcripts). Education will be credited according to Section 4.1.3 of the Standard with proper documentation.

Part 4. QUALIFYING WORK EXPERIENCE

To comply with the five-year experience requirement in Section 4.1.2 of the Standard, you must show evidence of having performed the functions of a welding inspector or other job functions that require similar knowledge and ability. Periods of qualifying experience will be counted by the actual number of calendar months you were employed at specific JOBS (not employers). Those jobs which are considered to have a close relationship to the fabrication of weldments according to a code, standard, or specification, or consisted of welding inspection either periodically or full time, will be credited as qualifying experience.

To show this on your application, start with your present or most recent employer and CLEARLY, CONCISELY, AND ACCURATELY complete an entire box of items (4A thru 4D) for each employer. If you held more than one position with the same employer, list each one SEPARATELY in succeeding boxes, making sure to complete all other items that may have changed with each position under that employer, particularly your principal job duties.

Part 5. EXAMINATION SITES

A. Nationwide test cities or areas are listed below. Pick the city most convenient to you, and then circle the name where it appears on the application form. Note that the name and address of the test facility will normally not be known to you until about 10 days after the application deadline. Thus, you should make sure your travel arrangements will permit you to arrive at the test site in plenty of time on test day, particularly if you are not familiar with the area.

B. List the name of the test city and the test date if you have applied for a special examination. (See page 9.)

Nationwide Test Cities

Anchorage, AK
Birmingham, AL
Charlotte, NC
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas/Ft. Worth, TX
Denver, CO
Des Moines, IA
Great Falls, MT
Hartford, CT
Houston, TX
Jacksonville, FL
Kansas City, KS
Long Beach/Los Angeles, CA
Miami, FL
Minneapolis, MN
New Orleans, LA
Norfolk, VA
Oklahoma City/Tulsa, OK
Philadelphia, PA
Phoenix, AZ
Portland, OR
Rochester, NY
St. Louis, MO
Salt Lake City, UT
San Francisco, CA
Seattle, WA

Notes on the Examination

The examination consists of three parts: part A, part B, and part C. Part A is a closed book fundamentals test; part B, a closed book practical application test; and part C, an open book code/standard test. Although each test has a different purpose, all are practical in that they cover basic knowledge or operating principles of methods, materials, processes, procedures, and equipment that apply to fabrication and inspection of weldments. Typical questions and answers for each part are shown in the section on "Sample Questions," beginning on page 16.

What to Expect on Examination Day

- The examination will be conducted by authorized representatives of AWS.
- Each test will begin and end at the times designated by the proctor. You will have two hours to answer approximately 45 questions on part C, 1½ hours for approximately 130 questions on part A, and 1½ hours for approximately 100 questions on part B. Experience has shown that you should have ample time to finish well within these periods.
- All questions will be of the five-response multiple choice type. (See Sample questions.)
- Some basic arithmetic will be required on the practical application test and it is recommended that you bring a slide rule or self-powered calculator. All required data will be provided.
- Your open book test DOES NOT cover any code/standard ADDENDA or REVISIONS. All questions will be on the BASIC document.
- Exchange of reference material or conversation during any segment of the examination will not be permitted.
- As you complete each test, you must certify that you understood test instructions, that you neither gave nor received help on the test, and that you saw the authorized proctor seal the envelope containing your test booklet and answer sheet.

What to Bring to the Examination Site

- Identification such as your driver's license or social security card.
- The code or standard you have chosen to be tested on.
- Either a self-powered calculator or slide rule.
- Two or three No. 2 lead pencils (No. 2 or 2½) and erasers.
- A wrist watch or time piece.

What Not to Bring to the Examination Site

- Visitors
- Reference material other than the required code or standard.
- A calculator designed for metric conversion.

Open Book Code/Standard Test

The open book test is designed to measure your ability to use a code or standard — not necessarily your knowledge of one. In addition, it has no greater or lesser value than the other two parts of the examination. All have equal weight. In essence, this means that if certified, your certificate will not reflect the one particular code or standard you used to take the test. Note also, that all open book tests were developed from the BASIC code/standard DOCUMENT — none were developed from addenda or revisions published subsequent to the editions listed below. Typical questions and answers (dash) for each open book test offered are shown below with the name and edition of the applicable code or standard. You must choose ONE of these to take the examination (see page 11), and you must bring it to the examination for reference use.

Reference: ASME Boiler and Pressure Vessel Code — Section VIII, Div. 1 and Section IX-77

1. Postweld heat treatment may be accomplished by either heating the entire vessel in a furnace or heating the vessel in more than one heat. If the latter is used, the sections heated must overlap
   (1) 3 feet.
— (2) 5 feet.
   (3) 30 times wall thickness.
   (4) 60 times wall thickness.
   (5) None of the above.

2. A change in base metal for brazing procedure qualification shall be in accordance with
   (1) QB-402.1 and QB-402.2 only.
   (2) QB-403.1 and QB-403.2 only.
   (3) QB-407.1.
— (4) QB-402.
   (5) All of the above.

3. A linear indication revealed by liquid penetrant examination is considered relevant if its major dimension is greater than
   (1) 1/32 inch.
— (2) 1/16 inch.
   (3) 3/32 inch.
   (4) 1/8 inch.
   (5) None of the above.

4. Welders who are qualified for the 4F position are also qualified for
   (1) 3F position.
   (2) 2G position.
   (3) 3G position.
   (4) 4G position.
— (5) None of the above.

4. QUALIFYING WORK EXPERIENCE

NOTE: CLEARLY, CONCISELY, and ACCURATELY complete a box of items (4A thru 4D) for each employer, listing your present or most recent employer first. If you held more than one position with the same employer, list each one SEPARATELY in succeeding boxes, making sure to complete all other items that may have changed with each position.

A. Company Name: _____

Dept./Division: _____

Supervisor/Personnel Manager: _____ Tel. No.: _____

Box/Street No.: _____ City: _____

State/Province: _____ Zip: _____

B. Mo. Yr. Mo. Yr.

Job Title: _____ From _____ To _____

C. LIST your PRINCIPAL JOB DUTIES in each of the following areas:

1. Codes, Standards, Specifications _____

2. Welding Materials _____

3. Welding Equipment _____

4. Welding Procedures _____

5. Welder Qualifications _____

6. Visual Inspection and Quality Control _____

7. Nondestructive Examination _____

8. Reports and Records _____

APPLICATION for AWS Welding Inspector Examination

Be sure to READ WIQC-79 thoroughly BEFORE filling out this form — especially the section on how to fill it out* Please PRINT or TYPE

AWS USE ONLY

A _____ EF _____

B _____ TD _____

C _____

1. PERSONAL

A. Name _____ Social Security No. _____
(Last, First, Middle Initial)

B. Mailing Address: (List the address which may be used to contact you at anytime on matters pertinent to your application, examination, certification, and/or recertification.)

_____
Number Street

_____
City State/Province Zip

C. Tel. No. _____
Area Code Number

D. Height _____ Weight _____ Eyes _____ Hair _____

E. Date of Birth _____
Month Day Year

F. I would like more information about AWS membership Yes ☐ No ☐

G. Have you taken a previous AWS welding inspector examination? Yes ☐ No ☐

If yes, give month and year _____
Month Year

2. OPEN BOOK TEST

A. I would like to use the following reference for the open book test — CHECK ONE ONLY

AWS D1.1 ☐ API 1104 ☐ ANSI B31.1 & ASME Sec IX ☐ ASME Sec VIII Div 1 & Sec IX ☐

4. QUALIFYING WORK EXPERIENCE NOTE: CLEARLY, CONCISELY, and ACCURATELY complete a box of items (4A thru 4D) for each employer, listing your present or most recent employer first. If you held more than one position with the same employer, list each one SEPARATELY in succeeding boxes, making sure to complete all other items that may have changed with each position.

A. Company Name: _____

Dept./Division: _____

Supervisor/Personnel Manager: _____ Tel. No.: _____

Box/Street No.: _____ City: _____

State/Province: _____ Zip: _____

B. Mo. Yr. Mo. Yr.

Job Title: _____ From To

C. LIST your PRINCIPAL JOB DUTIES in each of the following areas:

1. Codes, Standards, Specifications: accepted & rejected welds in accordance with the Structural Welding Code
2. Welding Materials: verified correctness of numbers identifying base materials & welding consumables
3. Welding Equipment: verified correctness of setup of welding machines & welding fixtures
4. Welding Procedures: verified qualification & compliance
5. Welder Qualifications: observed technique & performance of welders
6. Visual Inspection and Quality Control: verified alignment & dimensions of work before, during, & after welding; marked defective welds
7. Nondestructive Examination: performed some MT & PT; reviewed & interpreted a few radiographs
8. Reports and Records: kept records & made reports of inspections

D. List any ADDITIONAL duties pertinent to weld inspection or weldment fabrication: None

SAMPLE ONLY

4. QUALIFYING WORK EXPERIENCE NOTE: CLEARLY, CONCISELY, and ACCURATELY complete a box of items (4A thru 4D) for each employer, listing your present or most recent employer first. If you held more than one position with the same employer, list each one SEPARATELY in succeeding boxes, making sure to complete all other items that may have changed with each position.

A. Company Name: _____

Dept./Division: _____

Supervisor/Personnel Manager: _____ Tel. No.: _____

Box/Street No.: _____ City: _____

State/Province: _____ Zip: _____

B. Mo. Yr. Mo. Yr.

Job Title: _____ From To

C. LIST your PRINCIPAL JOB DUTIES in each of the following areas:

1. Codes, Standards, Specifications
2. Welding Materials
3. Welding Equipment
4. Welding Procedures
5. Welder Qualifications
6. Visual Inspection and Quality Control
7. Nondestructive Examination
8. Reports and Records

D. List any ADDITIONAL duties pertinent to weld inspection or weldment fabrication:

5. EXAMINATION SITES

A. Circle the city of your choice for any nationwide examination:

Anchorage, AK	Hartford, CT	Philadelphia, PA
Birmingham, AL	Houston, TX	Phoenix, AZ
Charlotte, NC	Jacksonville, FL	Portland, OR
Chicago, IL	Kansas City, KS	Rochester, NY
Cincinnati, OH	Long Beach/Los Angeles, CA	St. Louis, MO
Cleveland, OH	Miami, FL*	Salt Lake City, UT
Dallas/Ft. Worth, TX	Minneapolis, MN	San Francisco, CA
Denver, CO	New Orleans, LA	Seattle, WA
Des Moines, IA	Norfolk, VA	
Great Falls, MT	Oklahoma City/Tulsa, OK	

B. Special Examination: City_____ Date_____

*Check one of the following ONLY if you are applying for a "Miami Special Test."

March ☐ June ☐ September ☐ December ☐

I hereby certify that the information I have included on this application is true; I give AWS permission to verify this information; I understand that any false statement or omission will nullify this application; I agree to comply with the provisions set forth in the Guide and the Standard concerning the administration of my examination and certification.

Signature _____ Date _____

NOTE: Before mailing this application, CHECK TO SEE that you have:

1. listed all required information
2. signed and dated it
3. enclosed your $50 check or money order
4. enclosed ALL NECESSARY DOCUMENTATION. See "To Fill Out the Application Form," in WIQC-79.

Rev. 7-79

3. EDUCATIONAL BACKGROUND

A. Circle below the highest grade or years attended at each level.

1. Grade and high school (including vocational) ..... 7 | 8 | 9 | 10 | 11 | 12
2. After high school: trade or technical (vocational) ..... 1 | 2 | 3 | 4
3. College ..... 1 | 2 | 3 | 4 | More than 4

B. Complete the following if you graduated high school or earned a high school equivalency diploma.

1. Date of graduation/issue: _____
2. Name of city and school/issuing agency: _____

C. List post-high school education below ONLY if you want to substitute it for experience.

Name and Address of Institution	Dates				Course of Study
	From		To		
	Mo.	Yr.	Mo.	Yr.	

*Incomplete or improperly completed forms will be returned

4. QUALIFYING WORK EXPERIENCE NOTE: CLEARLY, CONCISELY, and ACCURATELY complete a box of items (4A thru 4D) for each employer, listing your present or most recent employer first. If you held more than one position with the same employer, list each one SEPARATELY in succeeding boxes, making sure to complete all other items that may have changed with each position.

A. Company Name: _____

Dept./Division: _____

Supervisor/Personnel Manager: _____ Tel. No.: _____

Box/Street No.: _____ City: _____

State/Province: _____ Zip: _____

B. Mo. Yr. Mo. Yr.

Job Title: _____ From To

C. LIST your PRINCIPAL JOB DUTIES in each of the following areas:

1. Codes, Standards, Specifications _____

2. Welding Materials _____

3. Welding Equipment _____

4. Welding Procedures _____

5. Welder Qualifications _____

6. Visual Inspection and Quality Control _____

7. Nondestructive Examination _____

8. Reports and Records _____

D. List any ADDITIONAL duties pertinent to weld inspection or weldment fabrication:

4. QUALIFYING WORK EXPERIENCE NOTE: CLEARLY, CONCISELY, and ACCURATELY complete a box of items (4A thru 4D) for each employer, listing your present or most recent employer first. If you held more than one position with the same employer, list each one SEPARATELY in succeeding boxes, making sure to complete all other items that may have changed with each position.

A. Company Name: _____

Dept./Division: _____

Supervisor/Personnel Manager: _____ Tel. No.: _____

Box/Street No.: _____ City: _____

State/Province: _____ Zip: _____

B. Mo. Yr. Mo. Yr.

Job Title: _____ From To

C. LIST your PRINCIPAL JOB DUTIES in each of the following areas:

1. Codes, Standards, Specifications _____

2. Welding Materials _____

3. Welding Equipment _____

4. Welding Procedures _____

5. Welder Qualifications _____

6. Visual Inspection and Quality Control _____

7. Nondestructive Examination _____

8. Reports and Records _____

D. List any ADDITIONAL duties pertinent to weld inspection or weldment fabrication:

Reference: AWS D1.1-79—Structural Welding Code

5. Maximum root opening for a T-joint in 2 inch plate to be fillet welded is
   — (1) 3/16 inch.
   (2) 1/8 inch.
   (3) 5/32 inch.
   (4) 5/16 inch.
   (5) Not specified.

6. A welder qualified by making a horizontal position groove weld on one inch material, is also qualified to weld
   (1) flat and horizontal groove welds only.
   (2) flat and horizontal fillet welds only.
   — (3) both groove and fillet welds flat and horizontal.
   (4) one inch or less flat and horizontal groove welds.
   (5) Not specified.

7. If a crack is found in the weld metal the weld is acceptable if
   (1) the crack is less than 3/4 inch long.
   (2) the crack is removed and rewelded.
   — (3) the crack plus 2 inches of sound metal beyond the end of crack is removed and rewelded.
   (4) a piece of the metal containing the crack must be removed which has the width and length equal to the length of the crack followed by rewelding.
   (5) None of the above.

8. A welder qualified for SMAW using an E6012 electrode is also qualified to weld with
   (1) E7018.
   (2) E8016.
   (3) E6010.
   — (4) E7024.
   (5) Not specified.

Reference: API 1104-77, 14th Edition—Standard for Welding Pipelines and Related Facilities

9. For qualification of welding procedures the quality of the welds shall always be determined by
   — (1) destructive tests.
   (2) radiography.
   (3) ultrasonic inspection.
   (4) All of the above
   (5) None of the above

10. An established welding procedure must be re-established if there is a change in filler metal electrode from
    (1) E6010 to E6011.
    (2) E6010 to E7010.
    — (3) E7010 to E7016.
    (4) All of the above
    (5) None of the above

11. A 1/16 inch undercut on the inside of a 20 inch diameter, 1/2 inch wallpipe, is acceptable if its length does not exceed
    (1) 2 inches.
    (2) 4 inches.
    (3) 10.4 inches.
    (4) 20 inches.
    — (5) None of the above

12. For automatic production welding of pipe, which of the following changes in welding procedure require requalification?
    (1) Change in filler metal wire size from 1/16 inch to 3/32 inch
    (2) Change in shielding gas from argon to helium
    (3) Change in joint from V-groove to U-groove
    — (4) All of the above
    (5) Not specified

13. Groove weld tests made from P1 material by SMAW may be used for qualification of welder performance. Which of the following shall be used for evaluation?
    (1) Bend tests only.
    (2) Radiography only.
    (3) Radiography and bend tests.
    — (4) Either bend tests or radiography.
    (5) None of the above.

14. Backing rings are permitted in the fabrication of ferrous piping systems if they are the
    (1) consumable insert type.
    (2) removable ceramic type.
    (3) split band type.
    — (4) All of the above.
    (5) None of the above.

15. For a brazed joint to pass the peel test, the total of defective areas shall not exceed
    (1) 10% of any individual faying surface.
    (2) 20% of any individual faying surface.
    — (3) 30% of any individual faying surface.
    (4) 25% of the lap.
    (5) None of the above.

16. When local postheat treatment is required on non-boiler external piping, the minimum width of the band centered on the weld shall be the width of the weld plus
    — (1) 2 inches
    (2) 3 inches.
    (3) 4 inches.
    (4) 5 inches.
    (5) 6 inches.

Closed Book Fundamentals Test

The closed book test covers general technical and factual knowledge of welding inspection fundamentals. Its purpose is to measure your understanding of the basic principles and terminology of methods, materials, processes, and procedures that control weld quality. Typical questions and answers (dash) are as follows:

1. A 1/4 inch fillet weld has a nominal
   (1) throat dimension of 1/4 inch.
— (2) leg dimension of 1/4 inch.
   (3) area of 1/4 sq. inches.
   (4) volume of 1/4 cu. inches.
   (5) None of the above

2. Stress raisers in a weld are caused by
   (1) low impact strength of the weld metal.
   (2) low yield strength of the heat affected zone.
— (3) undercuts, incomplete penetration.
   (4) a smooth butt joint.
   (5) All of the above.

3. When using magnetic particle inspection, the nearer a discontinuity is to the surface,
   (1) the more diffuse becomes the powder pattern.
   (2) the less serious it is as a source of fatigue failure.
— (3) the more distinct becomes the powder pattern.
   (4) the less sharp becomes the flux leakage field.
   (5) None of these

4. Ultrasonic waves cannot be coupled to the test object effectively,
   (1) through a film of oil.
— (2) through a film of air.
   (3) through a layer of water.
   (4) through a layer of grease.
   (5) All of the above.

5. Inclusions in a weld will appear on a radiograph as
   (1) a dark spot.
   (2) a light spot.
   (3) a generalized gray area of varying contrast.
— (4) either a dark or light spot or area depending on the relative absorption ratio of the part material and the inclusion material.
   (5) None of the above

6. When oxy-fuel cutting is used, the inspector is most concerned for which of the following?
   (1) Travel speed too fast
   (2) Clean cutting tip
   (3) Kerf too wide
   — (4) Surface roughness of cut
   (5) None of these

7. The quality of a stud weld is best determined by
   (1) seeing if it is square.
   (2) checking for even fillet all around.
   — (3) hitting it to see if it will break or bend.
   (4) radiographic inspection.
   (5) None of these

8. A weld symbol referring to the arrow side of a joint appears
   (1) Above the reference line.
   — (2) Below the reference line.
   (3) At the end of the reference line.
   (4) On the arrow.
   (5) None of the above

9. Toughness may be defined briefly as the ability of a metal to
   (1) be hardened by heat treatment.
   (2) be easily deformed.
   — (3) absorb mechanical energy.
   (4) absorb heat energy.
   (5) None of the above

10. Steel has the best welding characteristics if the carbon content is
   — (1) 5 to 20 points.
   (2) 20 to 35 points.
   (3) 35 to 50 points.
   (4) 50 to 120 points.
   (5) 120 to 150 points.

Closed Book Practical Application Test

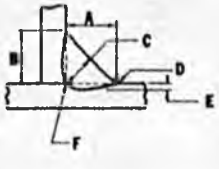
The practical application test covers topics which are more frequently encountered on the job. Its purpose is to measure your ability to make basic calculations and conversions; interpret test results, symbols, drawings, and procedures; and identify tools and processes.

Typical questions and answers (dash) are as follows:

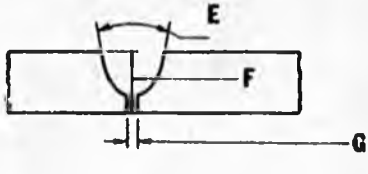
Property	U.S. customary units	SI units	
	To convert from	to	multiply by
tensile strength	pounds per square inch (psi)	pascal (Pa)	6894.757

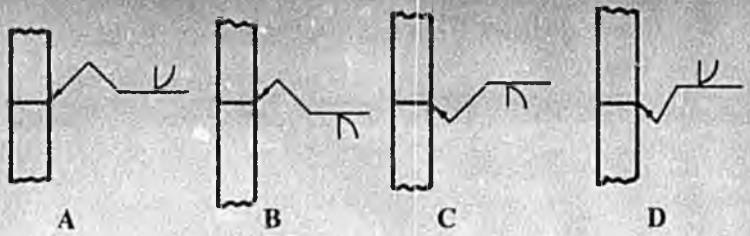
1. Using the above data, 60,000 psi is equivalent to which of the following?
   — (1) 413,685 kPa
   (2) 8,700 kPa
   (3) 41,360 kPa
   (4) 87,000 kPa
   (5) none of the above

2. For the fillet weld at right, F indicates the
   (1) leg
   (2) throat
   (3) face
   (4) toe
   — (5) root of weld



3. For the butt joint at right, F indicates the
   (1) shoulder
   (2) included angle
   — (3) effective throat
   (4) root opening
   (5) none of the above





4. Which of the welding symbols above correctly represents the welded joint shown below?
(1) A (2) B --(3) C (4) D (5) none of these

Film B

5. Film B shows evidence of
(1) slag inclusions
(2) porosity
— (3) tungsten inclusions
(4) undercut
(5) none of the above

Where to Send* for Reference Material

AWS

American Welding Society
2501 N.W. 7th St., Miami, FL. 33125
(305) 642-7090

ANSI

American National Standards Institute
1430 Broadway, New York, NY 10018
(212) 868-1220

API

American Petroleum Institute
1801 K Street NW, Washington, DC 20006
(202) 457-7000

ASM

American Society for Metals
Metals Park, OH 44073
(216) 338-5151

ASME

American Society of Mechanical Engineers, Inc.
345 E. 47th Street, New York, NY 10017
(212) 644-7500

ASNT

American Society for Nondestructive Testing, Inc.
3200 Riverside Dr., Columbus, OH 43221
(614) 488-7921

*NOTE: When ordering reference material, make sure you direct your order to the order department of the CORRECT agency. Note also, that publications are usually shipped by 4th class mail unless otherwise specified.

AWS QC1-79

Standard for Qualification and Certification of Welding Inspectors

Introduction

Although the methods and extent may vary, the primary purpose of weld inspection remains the same: to determine that the manufacturer's work meets the criteria of a specification. Preferably part of a written specification, these criteria usually contain references to an appropriate code or standard and detailed drawings that outline specific and general requirements of the work. In order to interpret the limitations and intent of these requirements, the Welding Inspector must be thoroughly familiar with the welding processes, welding procedures, welder qualifications, materials, and the limitations of weld testing along with the capability to read drawings, keep records, make reports and responsible judgments. Effective weld inspection makes use of such procedures and personnel, and is performed in a manner that is consistent with the specification requirements and the technical and ethical principles involved.

1. Application and Scope

1.1 This standard describes the Welding Inspector's basic technical functions, the requirements by which welding personnel may become qualified, and the principles of conduct and practice by which certification can be maintained. Certification applies to qualified personnel who inspect weldments.

1.2 This standard is intended to supplement any requirements of an employer, code, standard, or specification and shall not be construed as a preemption of the employer's responsibility for the work or for the performance of such work.

2. Definitions

2.1 Terms used in this document are defined as follows:

2.1.1 certificate. The document issued the applicant upon successful examination.

2.1.2 certification. Written testimony of qualification.

2.1.3 Committee. The AWS Qualification and Certification Committee.

2.1.4 Certified Welding Inspector. A person who has been qualified and certified to the requirements of this standard.

2.1.5 Qualification. Satisfactory compliance with the qualification requirements of this standard.

2.1.6 work. That portion of the product or weldment that specifically involves or affects the use of welding.

2.1.7 weldment. A welded assembly in which the bulk of the component parts are prepared and joined by any combination of the cutting and welding processes covered by 4.1.4.

2.2 Terms not defined herein shall be in accordance with the latest edition of AWS A3.0 Terms and Definitions.

3. Function

3.1 Primary

3.1.1 The Welding Inspector verifies that the work which he or she inspects conforms to the requirements of the applicable codes, standards and job specifications.

3.2 Detail

3.2.1 Inspection of Materials. The Welding Inspector verifies that the base materials and consumable welding materials conform to the specification requirements and that the specified welding filler metals are used on each base metal or combination of base metals.

3.2.2 Inspection of Welding Equipment. The Welding Inspector verifies that the welding equipment to be used for the work is that which is specified in the welding procedure and has the capability to produce the specified welds.

3.2.3 Inspection of Welding Procedures. The Welding Inspector verifies that the welding procedures are as specified, qualified and available to the welders for reference.

3.2.4 Verification of Welder, Welding Operator, and Tacker Performance Qualifications. The Welding Inspector verifies that the welders, welding operators and tackers have been properly qualified in accordance with the applicable codes and standards, and that their qualification authorizes them to use the welding procedures specified for the work.

3.2.4.1 If there is evidence that the welder's, welding operator's, or tacker's work does not conform to the requirements of the applicable code, standard, or specification, the Welding Inspector may require requalification of the welder, welding operator, or tacker.

3.2.4.2 The Welding Inspector shall require a requalification of a welder, welding operator, or tacker if that person's qualification is not current by the requirements of the applicable codes, standards, or specifications.

3.2.5 Qualification. When qualifying welders, welding operators, and tackers, the Welding Inspector should observe the qualification tests.

3.2.6 Inspection of Work

3.2.6.1 The Welding Inspector verifies that only specified and properly qualified welding procedures are used for the work.

3.2.6.2 The Welding Inspector verifies that the joint preparation and fit-up meets the requirements of the welding procedure, drawings, or contract documents.

3.2.6.3 The Welding Inspector verifies that the specified filler metals are used and that the filler metals are maintained in proper condition for use as specified.

3.2.6.4 The Welding Inspector observes the technique and performance of each welder, welding operator, and tacker.

3.2.6.5 The Welding Inspector examines the work for conformance to the requirements of the applicable codes, standards, specifications and drawings.

3.2.6.6 The Welding Inspector identifies the work he or she inspects with specified marking methods or appropriate records.

3.2.7 Nondestructive Examination

3.2.7.1 The Welding Inspector performs the necessary visual inspections.

3.2.7.2 The Welding Inspector verifies that the required visual and other nondestructive examinations have been performed by qualified personnel in the specified manner. He or she shall review the resulting information to assure that the results are complete.

3.2.7.3 The Welding Inspector may perform nondestructive examinations that are specified, providing he or she is qualified in accordance with the specified requirements.

3.2.7.4 If the Welding Inspector is to perform nondestructive examinations other than visual, and there are no specified qualification requirements, he or she shall be qualified and certified in accordance with the current Recommended Practice No. SNT-TC-1A, Personnel Qualification and Certification for Nondestructive Testing.

3.2.8 Records

3.2.8.1 The Welding Inspector prepares clear and concise reports and should keep necessary records of the welding procedure, the welding procedure qualifications, the welder, welding operator and tacker qualifications, the control of welding materials and the results of inspections and tests.

4. Qualification Requirements

4.1 Each applicant for certification:

4.1.1 Shall be a high school graduate or hold a state or military approved high school equivalency diploma.

4.1.2 Shall have no less than five years experience (except as allowed in 4.1.3 below) in an occupational function that had a close relationship to weldments fabricated to a code, standard, or specification, and directly involved one or more of the following:

4.1.2.1 Preparation of plans and drawings for weldment construction—design.

4.1.2.2 Planning and control of welding materials, welding procedures, and welding operations for weldment fabrication—production.

4.1.2.3 Fabrication and erection of weldments—construction.

4.1.2.4 Detection and measurement of weld discontinuities—inspection.

4.1.2.5 Repair of welds that were determined defective—repair.

4.1.3 May substitute up to two years of post high school education for two years of the five year experience requirement provided the studies are relevant to any of the functions covered by 4.1.2 and approved by the Q & C Committee. Other education and experience* may be substituted for the requirements covered in 4.1.1 or 4.1.2 where it is deemed appropriate by the Q & C Committee. Education will be credited for any one of the following with proper documentation: (1) two years maximum for an Associate or higher degree in engineering technology, engineering, physics, or sciences, (2) two years maximum for two years of courses successfully completed in an engineering or technical school curriculum that can be (or could have been) applied to any degree covered in (1) above, (3) one year maximum for the equivalent of one year of courses successfully completed in a trade or technical school curriculum or college curriculum that can be (or could have been) applied to ANY degree or certificate of completion, (4) one month for each Continuing Education Unit (CEU)** awarded, up to a total of 15 CEU, for completion of courses, seminars, or conferences pertinent to any of the following: weld quality, control and inspection; welding materials; welding processes; welding metallurgy; welding design; nondestructive examination of welds. (Credit for any one course will be limited to 4 CEU.)

4.1.4 Shall be familiar with and understand the fundamentals of the following processes:

shielded metal arc welding	electroslag welding
stud arc welding	oxyfuel gas welding
submerged arc welding	brazing
flux cored arc welding	thermal cutting
gas metal arc welding	mechanical cutting
gas tungsten arc welding	

Note: Cutting processes refer only to those processes that are applied to the fabrication and repair of weldments.

4.1.5 Shall be capable of writing clear and concise reports and maintaining records.

4.1.6 Shall pass an eye examination, with or without corrective lenses, to prove (1) near vision acuity on Jaegar's J1 letters at 12 inches, or equivalent, and (2) far vision acuity of 20/40, or better.

*Three years of relevant teaching experience may be substituted for three years of the five year experience requirement with proper documentation (e.g. photocopied summaries of subjects taught, teaching certificates, and letters of reference). Relevant experience will be considered on the following basis: teaching full time in a trade, area, or technical school, college or university, the occupational skill of welding or subjects related to welding; its application, control, materials, and processes.

**The CEU is a nationally recognized standard unit of measurement. It is awarded for participation in an organized continuing education experience which occurred under capable direction and qualified instruction. One unit, or one CEU, is awarded for every ten contact hours of participation.

4.1.7 Shall pass an open book test (on general code or standard requirements such as fabrication tolerances, preheat requirements, etc.)

4.1.8 Shall pass a closed book test (on fundamental principles of such topics as welding processes, NDT methods, mechanical properties of materials, heat treatment, and duties of the welding inspector).

4.1.9 Shall pass a written practical application test (on welding inspection fundamentals such as interpretation of weld discontinuities, symbols, welding procedures and drawings; and basic on-the-job arithmetic).

5. Certification

5.1 The American Welding Society will issue to each applicant successfully meeting the qualification requirements a certificate stating that the applicant has met the AWS certification requirements. The certificate shall be valid for three years unless revoked by the reasons defined in Section 6.6.1 and the authority of Section 7 of this standard.

6. Code of Ethics

Preamble. In order to safeguard the public's health and well-being and to maintain integrity and high standards of skills, practice, and conduct in the occupation of welding inspection, the AWS Certified Welding Inspector shall be cognizant of the following principles and the scope to which they apply with the understanding that any unauthorized practice is subject to the Committee's review and may result in suspension or revocation of certification.

Note: Cutting processes refer only to those processes that are applied to the fabrication and repair of weldments.

4.1.5 Shall be capable of writing clear and concise reports and maintaining records.

4.1.6 Shall pass an eye examination, with or without corrective lenses, to prove (1) near vision acuity on Jaegar's J1 letters at 12 inches, or equivalent, and (2) far vision acuity of 20/40, or better.

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6.1 Integrity. The Welding Inspector is obligated to act with complete integrity in professional matters and to be forthright and candid to the Committee or its representative on matters pertaining to this standard.

6.2 Responsibility to the Public. The Welding Inspector is obligated to preserve the health and well-being of the public by performing the duties required of weld inspection in a conscientious and impartial manner to the full extent of his or her moral and civic responsibilities and qualifications. Accordingly, the Welding Inspector shall:

6.2.1 Undertake and perform assignments only when qualified by training, experience, and capability.

6.2.2 Be completely objective, thorough, and factual in any written report, statement, or testimony of the work and include all relevant or pertinent information in such communiques or testimonials.

6.2.3 Sign only for work that he or she has inspected, or for work over which he or she has personal knowledge through direct technical control.

6.2.4 Neither associate with nor knowingly participate in a fraudulent or dishonest venture.

6.3 Public Statements

6.3.1 The Welding Inspector will issue no statements, criticisms or arguments on weld inspection matters connected with public policy which are inspired or paid for by an interested party, or parties, without first identifying the party, the speaker, and disclosing any possible pecuniary interest.

6.3.2 The Welding Inspector will publicly express no opinion on a weld inspection subject unless it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence pertinent to the subject, and upon honest conviction of the accuracy and propriety of the statement.

6.4 Conflict of Interest

6.4.1 The Welding Inspector shall conscientiously avoid conflict of interest with the employer or client and will disclose any business association, interests, or circumstances that might be so considered.

6.4.2 The Welding Inspector shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties or their authorized agents.

6.4.3 The Welding Inspector shall not solicit or accept gratuities, directly or indirectly, from any party, or parties, dealing with the client or employer in connection with the Welding Inspector's work.

6.4.4 The Welding Inspector shall neither inspect, review, nor approve any work on behalf of another party, or parties, while serving in the capacity of an elected, retained, or employed public official.

6.5 Solicitation of Employment

6.5.1 The Welding Inspector shall neither pay, solicit, nor offer, directly or indirectly, any bribe or commission for professional employment with the exception of the usual commission required from licensed employment agencies.

6.5.2 The Welding Inspector shall neither falsify, exaggerate, nor indulge in the misrepresentation of personal academic and professional qualifications, past assignments, accomplishments, and responsibilities, or those of his or her associates.

6.6 Unauthorized Practice

6.6.1 Any violation of any required standard of conduct prescribed by this Standard if related to a welding inspector's occupation, including any violation of the Code of Ethics contained in the Standard, shall constitute an unauthorized practice subject to the imposition of sanctions.

7. Revocation

7.1 The Committee shall have the power to suspend, refuse renewal, or revoke the Welding Inspector's certification, and the power to place on probation or to reprimand holder, if he or she is found guilty of an unauthorized practice in a proceeding conducted in accordance with the Administrative Procedures Manual which the Committee has adopted for the purpose of handling and disposing of complaints.

7.2 The Committee may apply to any court of competent jurisdiction for an enforcement of its administrative decisions and rulings.

8. Reinstatement

8.1 Reinstatement of a revoked certification will be allowed with no penalty or prejudice to the individual, provided the reason for such revocation has been rectified to the Committee's satisfaction.

9. Recertification

9.1 The Welding Inspector shall be recertified upon payment of the current recertification fee and successful reexamination every three years with the following exception.

> Renewal applicants who show proof of periodic or full-time activity in one of the occupational areas specified in 4.1.2 during two of the last three years and who recomply with Section 4.1.6 shall be recertified upon payment of the current recertification fee without reexamination.

9.2 Application for renewal of a certification that has expired will be considered a new application.

9.3 The Welding Inspector shall maintain a current address with the AWS Qualification & Certification Department for the mailing of correspondence relative to his or her application, examination, certification/recertification.

STATE OF ALASKA

A PERFORMANCE REVIEW OF THE BOARD OF WELDING EXAMINER

June 8, 1979

A PERFORMANCE REVIEW
OF THE
BOARD OF WELDING EXAMINERS

June 8, 1979

Commissioner of the Department of Commerce and Economic Development	Charles Webber
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Board of Welding Examiners

Chairman	Donald Lockman
Member	Tim Farrell
Member	Philip B. Davis
Member	Don Delk
Member	George Fox
Member	Peter Millar
Member	J.C. Wingfield

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

August 23, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
BOARD OF WELDING EXAMINERS

June 8, 1979

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Board of Welding Examiners was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board will be reestablished. The law currently specifies that this Board will terminate on June 30, 1980, but will continue until June 30, 1981 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) discussions with the Board and questionnaires sent to Board members;

(3) tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development, for the years 1976-1978;

(4) interviews with OL employees;

(5) complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency and the Human Rights Commission during the period 1976-1978;

(6) questionnaires sent to State licensed welding inspectors; and

(7) interviews with personnel and review of publications of the American Welding Society (AWS).

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported

performance information regarding its effectiveness and accomplishments as required by AS 37.07 .090 and AS 08.99.080(a)(8).

(2) OL has not adequately collected, recorded and maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

The Board of Welding Examiners was established by the 1968 Session Laws of Alaska. It is organized under the Department of Commerce and Economic Development, which provides administrative and investigative support through the Division of Occupational Licensing.

The Board consists of seven members with extensive experience in welding who are appointed by the Governor for staggered five year terms. At least three members must be engineers, i.e., with engineering degrees or registration as an engineer and at least five years engineering experience.

The functions of the Board are addressed in AS 08.99. Among the powers and duties cited, the statute directs the Board to: promulgate rules and regulations regarding the certification of welders; examine, certify and renew certification; define tests and certification methods; report annually to the Legislature and Governor.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these issues, the legislative oversight committees should consider the findings and alternatives presented in this report in reaching their decisions.

Report Conclusion

In our opinion, there is not a sufficient public need for continuing either the Board or State licensing of welding personnel.

Most consumers (e.g. engineers, construction and pipeline companies) of welding services possess adequate knowledge to properly evaluate the qualifications of those offering the service. To assist in identifying qualifications, the American Welding Society administers a certification program for welding inspectors, the only classification of welding personnel being licensed by the State. If it is determined that State regulation of welding is desirable, less restrictive alternatives--such as statutory requirements for welder, qualification certificates--are viable (see Recommendation No. 1).

In the event that the Board is reestablished by the Legislature, certain changes should be implemented in order for the Board to more effectively serve the public.

The Board should thoroughly review applications before licenses are issued (see Recommendation No. 2).

To better represent the public and the industry, statutory requirements for membership on the Board should be expedited (see Recommendation No. 3).

Statutes governing the Board should be reviewed and amended to clarify duties, enforcement responsibility, and the applicability of administrative adjudication procedures (see Recommendation No. 4).

Additional revision of Board regulations is needed to make them clear, reasonable and within the scope of the Board's purpose (see Recommendation No. 5).

The Board should develop formal objectives and report performance as required by AS 37.07.050 and AS 08.99.080 (see Recommendation No. 6).

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 6 are addressed to the Board of Welding Examiners, with Recommendation No. 3 also being addressed to the Office of the Governor.

Recommendation No. 1

We recommend that the Board of Welding Examiners be allowed to terminate June 30, 1980 and that State licensing of welding personnel be discontinued.

Under regulations which became effective in August, 1978, the Board of Welding Examiners is licensing "welding inspectors" (WI). Among the functions of the WI are testing weldments and issuing welder qualification certificates. Such certificates are required under the regulations for welders performing operations in which weldment failure would be hazardous to life or property.

Requirements for WI licensure are based on the American Welding Society (AWS) program for certification of WI's. The written examination required for licensure is administered by AWS. In addition to other requirements for AWS certification, an applicant for State WI licensure must have passed a welder qualification test, demonstrating practical skills.

In determining whether there is a continued public need for the Board of Welding Examiners, several factors should be considered.

The primary goal of regulating occupations is to protect the public. Licensing is desirable when:

1. The unlicensed practice of an occupation poses a serious risk to the life, safety, health or economic well-being of a relatively large number of consumers;

2. the consumers of a service are at a disadvantage in evaluating the qualifications of a provider; and

3. there is evidence of abuse, by providers of the service, to which the consumer has inadequate recourse through the general law.

Because of its relationship to the integrity of a structure, inferior welding has the potential of resulting in physical, economic or environmental harm. However, we believe the potential has a public impact only in cases of large-scale projects, such as public structures, commercial buildings, or ventures like the pipeline.

evidence of the required visual examination. Consequently, none of the licenses renewed in 1979 documented that this requirement had been met.

2. At the direction of the Board, the licensing examiner was issuing licenses to applicants prior to a review of qualifications by the Board. In August, 1978, the Board began licensing "welding inspectors" and discontinued licensing "weld qualifiers". The change produced a certain degree of confusion on the part of the licensees, as well as the examiner, regarding the qualifications for licensure. As a result, licenses were issued to 4 (out of 48 tested) applicants who did not submit adequate proof of meeting the qualifications of a welding inspector.

AS 08.01.070(6) requires licensing boards to pass on the qualifications of applicants for licensure. As evidenced by the above described findings, current review procedures are not effective. As a result, the public is not being protected from unqualified practitioners, which is the primary objective of occupational licensing. We therefore recommend that no license be issued until the Board has thoroughly reviewed the qualifications of an applicant and has determined that all requirements for licensure or renewal have been met.

Recommendation No. 3

To ensure adequate representation of the regulated occupation and the general public: (a) the composition, terms and sources of nomination for Board membership should be reviewed and amended; (b) the Office of the Governor should make appointments in compliance with statutory requirements and in a timely manner.

As provided in AS 08.99.010-.050, the Board of Welding Examiners consists of seven members with extensive welding experience, three of whom must be engineers. Members are appointed by the Governor for staggered five year terms from nominations submitted by the Alaska Chapter of the American Welding Society and the Alaska Society of Professional Engineers.

Board Composition and Nominations

Over 20% of the licensed Welding Inspectors, as well as one in five Board members, responding to Legislative Audit questionnaires felt that the statutory requirements do not ensure adequate representation of the occupation. Their comments included opinions that the present Board consists of too many persons involved with test labs and that more than one member from the same firm should not serve concurrently. It was suggested that the Board should represent the various areas of the occupation: engineers, test labs, construction, fabrication and petrochemicals.

Persons responsible for the construction of such projects, who are actually the "consumers" of welding services, can be expected to have the experience and knowledge needed to evaluate the qualifications of welding personnel. This is especially true now that the AWS certified WI program provides a means of identifying qualified inspectors. Furthermore, the AWS program includes a code of ethics and procedures for handling consumer complaints.

It should be noted that if an interstate gas pipeline is built, construction activities would be under the jurisdiction of the Federal Power Commission. The Board's authority to impose welding regulations over such a pipeline is doubtful.

Also noteworthy is: (a) AWS's lack of support for State licensure of welding personnel, and (b) that only one other state to date requires licensing of WI's.

We found no evidence that State licensing of WI's affords significant additional protection to consumers. Furthermore, of the few complaints filed with State agencies against the welding occupation, only one alleged inferior welding practices, the remainder concerned unlicensed practice of the occupation or problems encountered in obtaining a license.

If, as a result of the "sunset" process, the Legislature determines that regulation of welding is needed, less restrictive alternatives are, in our opinion, viable. Welder qualification certificates can be required by statute and, if desired, the AWS certification program for WI's could be adopted by reference.

While we recognize the time and effort contributed by Board members, we do not believe that a sufficient public need exists for continuing the present licensing and regulatory structure.

However, in the event that the Board is reestablished, we recommend the following changes be made in its operation.

Recommendation No. 2

The Board should assume a more active role in the licensing process.

During our test of licensing files we noted the following:

1. Application forms do not request all the information necessary to determine if requirements for licensure have been met. There is no provision for documenting qualifications for initial licensure (as defined in 12 AAC 72.065(a) 1-8), except through the submission of AWS QC-1 certificate. Applicants for renewal are not asked to provide

Furthermore, it was expressed that nominations should be accepted from the entire industry rather than two societies to which many qualified, interested persons are not known.

In addition to statute changes in Board membership suggested by licensees, in our opinion the Board should include at least one lay member, who has no direct financial interest in the regulated occupation. Although lay members lack technical expertise, they can and should contribute to policy formulation and enforcement decisions. The importance of a representative of the primary interest group, the public, should definitely be addressed.

Terms of Board members

Responses to licensee questionnaries also pointed to a significant opinion that Board member terms should be: (1) shorter (54% of those responding) and, (2) limited to no more than two consecutive terms (80% of those responding). The reason most frequently expressed was to create a more responsive, active Board.

Size of the Board

In addition, we believe that the Board is unnecessarily large when compared with other State boards and considering it currently licenses only 50 persons. We recommend a reduction in size to five members to increase operating efficiency and coordination with the Divison of Occupational Licensing (OL), and to reduce associated travel costs.

Appointments

Our examination of records in the Office of the Governor and the Division of Occupational Licensing (OL) showed that since 1973 the Board has had between 3 and 8 properly appointed members at a given time. In fact, it met the requirement for seven members for only nine months during the period reviewed. Of the "current" board, we finally determined--after receiving much conflicting information -- that three terms expired in December, 1978. In addition, only two of the seven members of the most recent board are engineers, as defined in the statutes.

In conclusion, we recommend that the Board seek changes in the statutes which will result in improved representation and efficiency of operation. Furthermore, as recommended in our October 30, 1978 performance review of OL, we urge the Office of the Governor to make more timely appointments to the occupational boards to ensure compliance with statutory requirements.

Recommendation No. 4

The Board should propose revisions to the statutes in order to clarify: (a) the intended powers and duties of the Board; (b) how welding regulations are to be enforced; and (c) the applicability of administrative adjudication procedures.

A. Authority for the Board of Welding Examiners is found in AS 08.99, which was last amended in 1970. Since that time, changes in Board membership, activities and regulations have occurred. As a result, several subsections of AS 08.99.080(a) no longer pertain to operations of the Board.

1. § 6 requires the Board to approve fees for welder certification tests. The Board no longer engages in this activity. However, this section was cited as the authority for charging fees for licensing welding inspectors.

2. § 10 states that the Board shall approve test facilities. The revised regulations omit this activity and instead address licensing of welding inspectors.

3. § 9 requires the Board to designate reporting procedures necessary to certify compliance with quality standards. No reporting methods are addressed in the regulations.

B. Statutes provide for the enforcement of welding regulations by both the Department of Labor (AS 08.99.080(b)) and the Department of Commerce and Economic Development (AS 08.01.087). The dual assignment of enforcement responsibility has resulted in confusion. The assignment of investigative duties needs clarification so that regulations are adequately enforced and consumer complaints are properly handled.

C. Although AS 08.01.090 states that the Administrative Procedures Act (AS 44.62) applies to proceedings held under the Centralized Licensing Chapter, the Board of Welding Examiners is excluded from a listing of agencies to which administrative adjudication procedures apply (AS 44.62.330). As a result of the omission, the applicability of the adjudication procedures is in doubt. The Board should be included in the listing in AS 44.62.330 through an amendment to the statutes.

Recommendation No. 5

The Board should continue its efforts in revising administrative regulations.

One of the primary activities of the Board over the past several years was the substantial revision of 12 AAC 72, the administrative regulations governing the occupation of welding in Alaska. The changes became effective August 21, 1978.

In the course of our review we noted several areas of 12 AAC 72 which merit further consideration, and possibly amendment.

1. Requirements for welder qualification (12 AAC 72.015) and welding inspector licensure (12 AAC 72.055) apply to all compensated welding operations in the State "in which weldment failure would involve hazard to life or property". The applicability of the regulations needs clarification to simplify interpretation and to make their enforcement manageable.

2. 12 AAC 72.045 requires "continuous employment" on a process (without interruption of more than 90 consecutive days) as a condition of maintaining a current welder qualification certificate. We believe this is unduly restrictive because:

   a. The regulations also require that a certificate be current under the code or job specifications under which it was issued.

   b. A welder qualified in several processes may be assigned by his employer to only one process for several months. Before he could be assigned to another process, additional time and expense would be requried for re-testing.

   c. The limited construction season in Alaska causes many welders to be without work for more than 90 day periods.

3. 12 AAC 72.105 requires an annual renewal of welding inspector licenses. This conflicts with AS 08.01.100 which requres biennial renewal of occupational licenses. It also creates additional administrative effort for both the Division of Occupational Licensing and the licensee, with no demonstrable benefit to the public.

4. 12 AAC 72.085 provides for quarterly examinations for welding inspector license. The provision,

which exceeds the regular semi-annual administration of the exam by the American Welding Society (AWS), was included to give sufficient opportunity to become licensed under the revised regulations. While we concur with the Board's reasoning, we feel they should review this policy in light of increased costs and the relatively small number (an average of 9) who take the exam each quarter.

In reviewing questionnaire responses from licensed WI's, we noted concern regarding the interpretation, acceptance and enforceability of the regulations. Doubts concerning the enforceability were likewise expressed by Board members who responded to a separate questionnaire: three believed they could not be enforced, expecially among small operators; two said they could be enforced if State funding for investigation was adequate.

We believe that the cited opinions of members of the occupation support our contention that additional revisions to the regulations are needed to make them clear, reasonable and within the scope of the Board's purpose.

Recommendation No. 6

With the assistance of the Division of Occupational Licensing (OL), the Board should develop procedures for defining its objectives and reporting its performance to the Governor and the Legislature.

As part of the "sunset" process of determining whether there is a continued public need for its existence, each Board must identify formal objectives. Where practical, these objectives should be quantifiable so that the Board's performance can be measured.

The budget process is the vehicle by which State agencies usually identify goals and objectives. While OL prep res such documents on a division-wide basis, objectives and measurements have not been developed for individual boards (see our October 30, 1978 performance review of (OL).

Furthermore, although required by AS 08.99.080(a)(8), the Board has not been submitting annual reports to the Governor and the Legislature. We recommend such reports be prepared and contain, at a minimum, the following information:

1. Board's purpose and objectives;

2. operating receipts and expenditues;

3. participation by Board members;

4. changes in statutes and regulations; and

5. significant activities and concerns.

The process of identifying objectives and reporting performance not only allows outside parties to evaluate the need for the Board, it also provides an important tool for the Board to evaluate itself and adjust its priorities for the most effecitve use of its resources.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of Board activities relates to the public need factors defined in the "sunset" law. This analysis is not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

A. The Board revised its regulations (effective August, 1978), incorporating a nationally recognized program for certifying welding inspectors. However, we found that the regulations: (1) duplicate efforts of the national organization; (2) are vague with regard to applicability; (3) difficult to enforce (see Recommendatons No. 1 and No. 5).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. Due to statutory membership requirements and appointment delays, neither the public nor the occupation is assured of adequate representation on the Board (see Recommendaton No. 3).

B. The responsibility for enforcement of Board regulations is not clearly defined (see Recommendation No. 4).

C. The Board has not developed written plans or reported achievements by which to evaluate its performance (see Recommendation No. 6).

D. The Division of Occupational Licensing (OL) has not maintained updated statistics for Board use (see the OL Performance Audit Report).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

A. Statutes governing the Board have not been revised since 1970. We noted several sections which have become obsolete, yet the Board has not proposed any changes (see Recommendation No. 4).

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, and availability of service which it has provided.

A. We found no documentation of Board efforts to encourage input on the effect of its regulations and decisions, except as noted in V below.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

A. In accordance with the Administrative Procedures Act, the Board solicited written and oral testimony from persons interested in its proposed regulation revisions.

B. Board meetings are held four times per year and are announced in Anchorage, Fairbanks, Juneau and Ketchikan newspapers. However, they are not advertised in a timely manner (see the OL Performance Audit Report).

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

A. No formal complaints concerning Board activities have been filed with OL.

B. Of the two complaints filed with the Ombudsman during the last three years, both were closed and considered rectified.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. The Board has not adequately reviewed applications for licensure. As a result licenses were issued to several persons whose qualifications were not adequately documented (see Recommendation No. 2).

B. Few complaints have been received against members of the regulated occupation. All but one dealt with unlicensed (rather than unethical or substandard) practice.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

A. We found no complaints or other evidence to indicate discriminatory practices by the Board. However, application forms request information on age. The question is of a potentially discriminatory nature and should be eliminated unless it is based on a bona fide occupational qualification.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

A. Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

BOARD OF WELDING EXAMINERS
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Revenue (See Note 1)	$ -0-
Expenditures (See Note 2)	(11,289)
Excess of Expenditures Over Revenues	$(11,289)

Note 1

Prior to the revision of its regulations in August, 1978, the Board did not assess any fees for licensure. Examination fees are remitted directly to the American Welding Society which administers the examination. Therefore no revenue was reported for the Board prior to the Fiscal Year 1979.

Note 2

Expenditures include those made by Board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board and OL.

APPENDIX B

ADMINISTRATIVE STATISTICS

Licensed Welding Inspectors as of 3/12/79 (see Note 1)	Number	As % of Total
Alaska residence	27	55%
Out-of-state residence	22	45%
Total	49	100%

American Welding Society Welding Inspector Examination	No. of Examinees at Anchorage Test Site (Unaudited - See Note 2)
Date	
Fall, 1976	14
Spring, 1977	19
Summer, 1977	3
Fall, 1977	8
Winter, 1978	3
Spring, 1978	6
Summer, 1978	11
Fall, 1978	9
Winter, 1979	8
Total No. Examined	81
Divided by No. of Examinations given	9
Average No. per exam	9

Board Meetings in Calendar Years 1976-1978	
Average Number of Meetings per calendar year (see Note 3)	4.7 meetings
Average Number of Board members per meeting	4.6 members

Note 1

We were unable to determine, from information on file with OL, the legal residence of licensees. The above figures reflect mailing addresses.

Note 2

Numbers of individuals taking examinations were provided by the American Welding Society.

Note 3

At its January 27, 1978 meeting, the Board adopted a policy to hold meetings four times per year, on Fridays preceeding examinations. All meetings have been held in Anchorage.

APPENDIX C

QUESTIONNAIRE SENT TO BOARD MEMBERS

1. What are the goals and objectives of the Board?

Description	*Number of Board Members' Responses (See Notes 1 and 2)*
Decrease hazards to public/environment by improving the quality of welded products.	*3*
Improve quality of welded products.	*1*
Should be quality control, but currenily involves self-protective business interests.	*1*

2. What are the past accomplishments and future plans of the Board for meeting its goals?

Description	*Number of Board Members' Responses*
Past accomplishments:	
Revised regulations to license welding inspectors, thereby improving welding in general.	*4*
Economic self-interest.	*1*
Future plans:	
Maintain quality of criteria.	*2*
Give technical advice to State departments.	*1*
Should support Bureau concept; too much ill will towards present Board.	*1*
Continue pre-joint activity.	*1*

3. In what ways would the absence of regulation of welding in Alaska be detrimental to the public interest?

Description	Number of Board Members' Responses
Quality of component inspection and welder certification would suffer; non-code work would increase to detriment of the public.	3
Not detrimental; profesisonal societies have certification programs; private industry monitors itself.	1
Left unmonitored, quality would be circumvented to increase profits.	2
Higher cost because weldment failure is more expensive after a product is operating.	1

4. What alternatives to Board regulation of welding exist? Are the alternatives viable? Why?

Description	Number of Board Members' Responses
Bureau such as introduced by SB121; not viable; too expensive, bureaucratic.	1
Require extensive insurance coverage, relying on insurance companies to enforce standards; too expensive.	1
Eliminate Board; let industry police itself:	
Viable.	1
Not viable; not effective in past; only some large companies have developed quality control programs.	2
Utilize procedures other than welding; not practical.	1

5. Are existing statutes (AS 08.01 and AS 08.99) obsolete, vague, unduly restrictive, and/or inadequate to provide the Board with the authority to meet its objectives? What changes would you suggest?

Description	*Number of Board Members' Responses*
Adequate; no changes suggested.	2
Inadequate; need Bureau to perform physical function.	1
Somewhat vague, restrictive; Board's authority is doubtful but interest in welding has increased.	1
Obsolete; should address licensing of inspectors rather than welders, test facilities and code writing.	1

6. Are the recently amended regulations:

	Number of Board Members' Responses
A. too restricitve; too lenient?	
No; satisfactory.	4
Yes.	1
B. easily interpreted?	
Yes.	4
No.	1
C. enforceable?	
No, especially among small operators	3
Yes, if State adequately funds investigations.	2
D. accepted by those being regulated?	
Yes.	2
Partially or generally.	2
Voluntary compliance.	1

7. What procedures are followed in the event a complaint against the Board or a licensee is received?

Description	Number of Board Members' Responses
Forward to OL for investigation; Board can act in advisory capacity.	1
Investigation; possible revocation of license.	1
No complaints reveived as yet against licensee.	2
Forward to Department of Labor to investigate.	1

8. In what ways, if any, could the Department of Commerce and Economic Development improve its service to the Board in the areas of administrative support and enforcement?

Description	Number of Board Members' Responses
No need for improvement.	2
OL does not understand Board function well enough to enforce.	1
Administrative support is excellent; Department of Labor is responsible for enforcement.	1
Need more funding for inspectors and to advertise regulations.	1

9. Should continuing education or re-examination be required for licensees? Why or why not?

Description	Number of Board Members' Responses
American Welding Society requires re-examination if licensee does not remain active in inspection. This requirement is sufficient for now.	5

10. Other comments to assist us in evaluating the need for the Board and its performance:

Description	*Number of Board Members' Responses*
Regulations are workable for large companies; small operators can not afford licensed inspector.	*1*
Create Bureau to perform Board's physical function; need internal regulations to prevent several Board members from one business from serving concurrently.	*1*
Board has been active in revising regulations; now responsible for maintaining standards.	*1*
Need additional funding for enforcement; should publicize regulations.	*1*

Note 1

Questionnaires were mailed to seven Board members. Replies were received from five.

Note 2

Because certain questions received several answers from Board members, total numbers of replies may exceed the number of Board members who responded.

APPENDIX D

QUESTIONNAIRE SENT TO LICENSED WELDING INSPECTORS

The following questions were sent to licensed welding inspectors (see Note 1). For each question we have noted the number of responses. We have also indicated the most typical written comments following each question as compiled from the questionnaire (see Note 2).

			Number of Licensees Responding		
			Yes	No	No Opinion
1.	(a)	Is certification of welding inspectors necessary to protect the public's health, safety and welfare?	35	2	0

Comments:

Yes--Quality of product is controlled establishing minimum qualifications for welding inspectors.

If inspections were not required, some contractors would use cheaper, unqualified welders.

No---Licensing does not ensure adequate protection;

Should not be limited to AWS-certified inspectors.

(b) If your reply to "a" was yes, which of the following methods of certification would be best:

	check one:
i. license issued by the Board	14
ii. license issued by the State	6
iii. only AWS certification	12
iv. other:	4

1. (Cont'd)

Comments:

Board - is better judge of qualifications due to knowledge of, and experience in welding; is flexible; can exercise closer control.

State - less likely to be prejudiced.

AWS - has expertise, good program; usable in all states; more efficient.

Other - Employer training program results in known abilty.

	Number of Licensees Responding		
	Yes	No	No Opinion
2. Are current requirements for obtaining a welding inspector license (education, experience, written and practical tests) fair and reasonable measures of technical knowledge and ability?	32	5	0

Comments:

Yes--Exam is fair test of knowledge; practical skill is necessary.

No---Qualification as welder is not necessary to inspect; need more specific practical experience; no proof of employment.

3.	Has the Board given sufficient notice to the public and/or the profession regarding:			
	a. exams?	26	5	6
	b. meetings?	20	10	7
	c. proposed regulation changes?	18	12	7

Comments:

Yes--the small number of licensees allows for adequate communication with Board
No---many are unaware of Board's existence; newspaper notices are not effective.

		Number of Licensees Responding		
		Yes	No	No Opinion
4.	Are the recently amended regulations of the Board (12 AAC 72):			
	a. too restrictive?	2	23	12
	b. too lenient?	3	20	14
	c. enforceable?	19	8	10
	d. easily interpreted?	23	3	11
	e. accepted by industry?	15	10	12

Comments:

Board not needed since firms must comply with codes.

Regulations are not being observed, especially by small contractors; are not enforceable.

Regulations are too general; need to clarify applicability.

Inadequate publicity on regulations; needed to protect public; industry more interested in profit than quality.

5.	In what ways can the Board assure the public of continued proficiency of licensed welding inspectors:			
	a. evidence of continued employment in the field?	33	1	3
	b. periodic re-examination of practical skills?	9	16	12
	c. periodic written re-examination?	3	20	14
	d. continuing education?	18	8	11
	e. Other?	6		31

		Number of Licensees Responding		
		Yes	No	No Opinion
5.	(Cont'd.)			
	Comments:			
	Re-examination is necessary only if there is a sustained absence from inspection.			
	Other ways include eye exams, inspection for compliance, maintenance of AWS certificate.			
6.	Are you aware of any discriminatory practices by the Board with regard to an individual's race, religion, color, national origin, age or sex?	1	35	1
7.	Do you feel the support provided by the Department of Commerce and Economic Development, Division of Occupational Licensing, has been adequate:			
	a. in the area of administrative services?	26	5	6
	b. in investigating complaints?	10	8	19
	Comments:			
	Not enough knowledge of welding.			
	Need funding for Department of Labor to enforce.			
	Not aware of support or complaints.			
	Need to inform affected parties.			
8.	By statute, the Board of Welding Examiners consists of seven members with extensive welding experience, three of whom must be engineers. Members are appointed for five year terms from nominations submitted by the Alaska Chapter of the American Welding Society and Alaska Society of Professional Engineers. Do you believe the Board:			
	a. is too large?	3	25	9
	b. is to small?	1	25	11

	Number of Licensees Responding		
	Yes	No	No Opinion
8. (Cont'd.)			
c. adequately represents the regulated profession?	25	7	5
d. members should have shorter terms?	14	12	11
e. members should serve a limited number of terms?	20	5	12
f. should be served by a public member, not directly involved in welding?	4	25	8

Comments:

Should represent various segments of industry, including active welders; too many on Board represent test labs.

Shorter terms would create a more responsive Board.

No more than one or two terms.

Board is working well under current structure; conscientious.

9. Other comments to assist us in evaluating the public need for the Board and/or its performance:

Comments:

Good regulations but problems in implementation and enforcement.

Dubious need for Board.

Board has improved quality of welding; unqualified people used in past.

Need to consider products fabricated outside of State, safety standards, reports on Board activity.

Reputable company training programs should be accepted in lieu of license.

Note 1

Number of questionnaires sent to licensees	44
Number of responses	37
Response rate	84%

Note 2

Comments were reviewed and considered in the performance of our audit and are briefly summarized in this appendix.

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED
SEP 28 1979
LEGISLATIVE AUDIT

September 28, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed the enclosed agency response to your preliminary report entitled:

"A Performance Peview of the Board of Welding Examiners - June 8, 1979"

Additionally, we have reviewed and are enclosing copies of responses by the following Board Members:

Donald M. Lockman
Don Delk
Peter A. Millar

We believe the Department of Commerce's response appropriately sets forth the position of the Executive Branch of State government affecting continued existence of the Board. Member responses attached for your information, provide additional insight and reaction to your report recommendation.

Sincerely,

Richard A. Smith

Richard A. Smith
State Internal Auditor

RAS/PJA/mjc
Enclosure

08-H2LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER / POUCH D – JUNEAU 99811

September 27, 1979

RECEIVED

SEP 28 1979

LEGISLATIVE AUDIT

Mr. Gerald Wilkerson, C.P.A.
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Board of Welding Examiners, as submitted by the Division of Legislative Audit.

The department is still evaluating the viability of alternative methods of regulation and reserves the right to make additional findings and conclusions which may affect the continued existence of this board. This information will be presented to the Legislature during sunset hearings.

Thank you for the opportunity to respond to this report and for the time and effort expended by you and your staff.

Sincerely,

Bertram L. Wagnon
Acting Commissioner

BLW/kb

8235 Endicott Street
Anchorage, Alaska 99501
September 17, 1979

Ms. Elaine Garrett
Management Analyst
Dept. of Commerce & Economic Dev.
Div. of Occupational Licensing
Pouch D
Juneau, Alaska 99811

RECEIVED
SEP 28 1979
LEGISLATIVE
AUDIT

Dear Ms. Garrett:

In response to the recently received Performance Review of the Board of Welding Examiners submitted by Gerald L. Wilkerson, CPA, Legislative Auditor, Division of Legislative Audit dated August 23, 1979, I submit the following statements.

In reviewing the aforementioned Audit Report, it is quite obvious that the Audit Committee lacks the welding knowledge to fully understand the needs of the public in reference to protection against hazards from poor or inadequate weldments within the State.

In the beginning of the Boards existence, the largest issue was addessed to the licensing of weldors within the State. It was recognized by the Board that a weldor licensing would be a monumental task that would require a tremendous personnel and monetary effort on the State's part. The personnel requiring the expertise in this profession would not be available to the State as persons of this level are sought after by the industry on a continuing basis. Besides the lack of qualified persons available, the funds for such a task was also not available. It was recognized by the Board that qualified people from industry could control the certification of weldors if these qualified people could be responsible by proving their qualifications as Welding Inspectors.

The Board of Welding Examiners then began formulating a program to examine the qualifications of Welding Inspectors, although funds were not available from the State to adequately put a program of this nature together. At this same time, unbeknown to the Board, the American Welding Society had recognized the same need for testing Welding Inspectors and had implemented a testing procedure. The Board then adopted the AWS Testing Program guideline and the licensing of Welding Inspectors was born within the State.

The State licensed Welding Inspector holds a responsibility to the public to certify weldors within the guidelines of the nationally recognized Welding Codes used in Alaska. This responsibility protects the public from gross negligence of improper weldments that could fail, but only to the extent of those weldors actually certified by the Welding Inspectors.

As this method of assurance is still in the infancy stage due to the newness of the application, it is immature to criticize the effectiveness of the program. As more Welding Inspectors are licensed within the State, the greater the public protection will become.

There have been many instances of weld failures of crane booms, trailer hitches, store awnings, fishing boat hulls, school playground equipment, recreational equipment as well as building structures and harbor facilities, all of which are hazardous to the general public. Only trained personnel can recognize a poor or inadequate weldment and determine the abilities of a certifiable weldor.

It has been proven over the years that industry does not generally control the quality of production, evidenced by the need of welding codes to guide the users to implace restrictions of fabricat.on to assure quality. This is also evidenced by the need of societies to indoctrinate testing programs and Alaska to create the Board of Welding Examiners.

The Board has made acknowledgeable strides in creating a regulation that closely fits the needs of public interests, although additional revisions and clarifications of the regulations are clearly recognized by the Board members. These Board members serve without payment for their services, so progress is naturally slower than paid employees would be, although the expertise of these members would be more costly than the State would care to absorb if they would be available for hire. The cost to the State is at a minimum and should be recognized by the Audit Committee.

The size of the Board should be enlarged to accommodate the availability of donated services and to expand the current expertise level needed to properly evaluate the publics needs and industry's acceptance to those safeguards. As Board member nominations are received from two societies, they are not restricted to the societies membership by any means.

The Board's future activities will be guided by the public's desires of creating more effective regulations that are enforceable pursuant to the public's needs. These goals are yet to be formalized and categorized to a general public need. With the forthcoming projects of the petrochemical industry in the State, a greater need will be emphasized for the Board's guidance in revising regulations to insure the Alaskan public will be protected from inadequate welding by assuring Welding Inspectors are properly tested and are qualified to pass judgement on the certification of weldors.

There has already been a Senate Bill proposed to create a welding bureau within the State which would be more of a bureaucratic administration of welding than a regulation, which if nothing else, emphasizes the need for the Board of Welding Examiners to create a better regulation guideline.

Sincerely,

Donald M. Lockman

Donald M. Lockman, Chairman
Board of Welding Examiners

/nl

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

BOARD OF WELDING EXAMINERS

September 25, 1979

RECEIVED

SEP 28 1979

LEGISLATIVE AUDIT

Mr. Don Lockman
Chairman
Board of Welding Examiners
8235 Endicott Street
Anchorage, Alaska 99501

Dear Mr. Lockman:

Enclosed are my responses to the preliminary audit report on the Board of Welding Examiners.

1. Report Conclusion

a. I concur that most consumers (e.g., engineers, construction and pipeline companies) of welding services possess adequate knowledge to properly evaluate the qualifications of those providing services.

b. However, from personal experience, it has been observed that those who have the knowledge are not the individuals out in the field doing inspection and quality assurance work. Examples: 1) the Ketchbaw-Alyeska controversy would, in all probability, not have occurred if the project was being adequately controlled by qualified welding inspection. I personally know senior managers on the project that had very limited knowledge of welding or inspection. I know of one inspector who was a used car salesman with no qualifications; 2) movies of the first pipeline run on the North side of Cook Inlet clearly show that pipeline inspection consisted of a truck mirror on a three-foot handle and a flashlight. Clearly inadequate; 3) the roof of the Bethel Hospital and the walkway between the campuses at Alaska Community College and the University of Alaska in Anchorage demonstrate a complete lack of inspection. Untold dollars were spent on correcting the projects to ensure safety to the public.

c. In short, millions of dollars have been spent to correct deficiencies that would not have occurred with adequate welding inspection. Also, hazards claiming lives have occurred within the State which could have been prevented if adequate inspection had been available to correct safety violations or defect code violations. Examples: Building 6-900 on Elmendorf burning in the 1960's and killing a welder and helper. A welder killed when working off of empty gasoline drums during construction of the parks highway.

d. I believe that the knowledge is possessed by the consumers but that it, in many cases, is not, or inadequately applied.

e. I agree that the AWS welding inspection program is the best thing since light bread, however, at this time, there is nothing that requires companies to use qualified inspectors (except 12 AAC 72), that has been the direction that the board has taken to provide higher quality inspection to welding projects, thereby saving the public untold dollars in rework and to increase the safety during welding operations and in the final product.

2. Recommendation No. 1

I admit that the board has problems that must be corrected. I, however, believe that the board is needed as shown in the preceding comments. I also feel that, for the last year, the board has made very little progress since almost all energy has been expended on Sunset Review. If we can ever get this review completed and get back to work on revising statutes, regulations and implement corrections to problems, we will make great strides toward protecting the public (our main job).

This audit has been very helpful in pointing out problem areas, but we must now have time to work in implementing the recommendations instead of continuing to prepare for the review.

Recommendation No. 2

1. The State does not need to look at visual examinations since it is virtually impossible to obtain or maintain an AWS QC-1 Certificate without the results of the exam being received by AWS. We do not need to increase the bureaucracy by requesting something that has already been requested and supplied.

2. I concur that the board should review qualifications prior to issuing licenses.

Recommendation No. 3

1. I agree. However, I consider myself a lay member since I work for the Federal Government as an aircraft maintenance officer. I have very little chance to gain monetarily from any actions of the board. I also am technically qualified to make good input to the board's operations. If appointments are made from the entire industry some method must be set up to solicit applications.

b. The Office of the Governor must respond in a timely manner in order to be effective.

Recommendation No. 4

a. Concur.

b. Concur.

c. Concur.

Recommendation No. 5

1. Concur.

2. This one is tough, but should be looked at.

3. Concur.

4. Concur.

Recommendation No. 6

1. Concur.

2. Concur.

3. Concur.

4. Concur.

5. Concur.

Additional Comments

I was asked for more information than I could supply simply because of one reason: time. It seems that every time a response is required from me by the Division of Legislative Audit, I am working 14-hour days and on my way out of State. Twenty days to respond is inadequate. If we could respond during the next scheduled board meeting, we could work for a couple of days and come up with the type of response that you are

looking for. All board members are busy and need additional time to meet together to comply with your wishes.

Appendix A

If the board has collected no revenues, the companies that have paid for test lab licenses in the past, as well as myself, paying for welder qualifier and welding inspector licenses are surely getting ripped off. I suggest homework should be done. I also feel that the expenditures by the board are insignificant for the amount of work that has been done by the board.

Appendix D

It appears to me that properly qualified welding inspectors (if not qualified they could not pass AWSQC-i), more or less support the board. Individuals who cannot qualify under AWS QC-i will not (for obvious reasons), support the board.

I appreciate the opportunity to reply to the Division of Legislative Audit, but, again, request more of the item that I have the least of, time.

Very truly yours,

Don Delk

Don H. Delk
Secretary

DHD/sa2/6

RECEIVED
SEP 28 1979
LEGISLATIVE
AUDIT

August 9, 1979

To: Don Delk
Secretary, Board of Welding Examiners

Re: Comments in regards to Judy White's letter of June 20, 1979 to the Board of Welding Examiners

In general the letter received by Judy White, Auditor Division of Legislative Audit, in regards to Sunset Legislation is very well written and pinpoints exactly many of the problems of the Board of Welding Examiners.

I would like to take exception, however, to the following points:

a) AWS's lack of support for State licensure: Robert Foxall, AWS National Chairman, 1978; John Moeller, AWS Chairman, 1977 and Ken Fordyce, AWS National Certification Chairman have been present at Anchorage AWS meetings and have spoken highly of the Board of Welding Examiners' work in regards to licensing inspectors.

b) It may be true that only one state requires licensing of Welding Inspectors, however the AWS certification program has only been in effect since 1976 and thus it is understandable that very few states have adopted the requirement of certification.

c) Certification of welders instead of inspectors was discussed previously by the board. It was felt that it is easier to monitor and license 100 welding inspectors than 2,000 welders. I do agree that monitoring either welding inspectors or welders by state agencies is not feasible, however I do believe many individual welding inspectors have vastly upgraded their knowledge and ability in meeting the state license requirment.

d) In regards to the state license files, there are discrepencies all of which are minor and easily corrected. I do believe that the public is being protected from "unqualified practitioners" to a greater extent than ever before.

e) In regards to the make up of the Board of Welding Examiners size, appointments, etc. I would agree that we need a more diverse group, however I would think that seven members is a workable number. Meetings of twice or once yearly I would think is a better solution for cutting costs than limiting the numbers of members to five. We may only affect 50 to 100 inspectors, however the regulations affect thousands of welders.

f) In regards to revising the statutes, revising administrative regulations, developing board objectives and document administrative procedures; many good points were brought up. I would like to see the Auditor, Judy White, attend our next meeting if possible in order that we might make some progress in these areas.

In conclusion, I would say that although the present statutes are probably unenforceable to a large extent they never the less have made a very positive impact in the area of welding in Alaska with many inspectors being licensed

through the American Welding Society. Personally I do not believe the Board should be terminated in 1980, however I do not feel that further regulation of the industry by government is necessary either.

Peter A. Millar, P.E.
Member of the Board of Welding Examiners

Legal Services
Plumbers & Steamfitters
Union Local 375
3568 Geraghty Street
Fairbanks, AK 99701

RECEIVED
OCT 9 1979
LEGISLATIVE
AUDIT

October 3, 1979

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch WF
Juneau, AK 99811

RE: A Performance Review of the Board of Welding Examiners, June 8, 1979.

Dear Mr. Wilkerson:

Your letter of September 10th has requested a reply within twenty (20) days. In order to meet this deadline, we two board members have had several meetings and discussions. We have not had time to get together with the entire board or to circulate a reply, so that all of the board could participate in this answer.

At the time of the Legislative committee hearing, the welding board contemplates "presenting its case." Our discussions indicate that this case will be in three parts:

1) an orientation in respect to welding

2) recommendations of prominent authorities throughout the United States with respect to State regulation of welding, and

3) a series of specific proposals including but not limited to those raised by the preliminary audit report.

By way of the requested written reply, to the findings and recommendations of the written audit report, we set forth the following:

1) Re: Recommendation No. 1. Termination of the Board. We disagree. The performance review sets forth good criteria to determine whether licensing is desirable. Essentially we agree that licensing is desirable when a) unlicensed practice poses a serious risk; b) consumers are at a disadvantage in evaluating the welder; and c) there has been abuse with inadequate recourse through the general law. Here the unlicensed practise can mean failure of the weld with the attendant sinking of the vessel, collapse of a structural steel member, bursting of a pipe, leakage of carbon monoxide from a muffler into the interior of an automobile, etc. It is safe to say that the general public does not know enough about welding and welders to be able to evaluate a person's qualifications as a welder. The sinking of barges, collapse of crane booms and leakage of pipelines and car mufflers, have resulted in loss of life and environmental damage; in addition to the structural damage and loss of time which can be compensated through the general law. Therefore, licensing is desirable.

Performance review is correct in indicating that the State of Alaska has not been in a financial position to regulate, by licensing, all welding personnel in the past. It is also correct in indicating that only one other State to date has elected the stop gap measure currently used by the Board of Welding examiners, of licensing welding inspectors. We respectfully suggest, that that time is at hand when public safety and environmental necessity merit the regulation of welding in a more thorough manner. We further suggest that the logical means to do this is through a State Board of Welding Examiners, who will be able to be more active than the Board has been allowed to be in the past.

2) Re: Recommendation No. 2. The Board more active in Licensing. We agree with this recommendation. The performance review makes excellent points in this regard and its suggestions together with others to be proposed by ourselves should be adopted within the next year. To implicate these will require action by the Board in promulgating regulations and a budget which will permit actual work in the field. It is to be hoped that both of these processes could be completed by the beginning of fiscal 1980-81.

3) Re: Recommendation No. 3. Assuring adequate representation on the Board. We concur with the bulk of this recommendation. The performance review is good as far as it goes, in reviewing the Board composition, terms, etc. We feel that there are additional factors which should be considered in the make-up of the Board and the terms to be served. This is a Legislative process and we will be presenting specific recommendations to the Legislature in this regard. Because it is the turn of the Welding Board for review under the sunset law it would be hoped that these matters could be completed by the Legislature at its next session. The harder portion of the recommendation to implicate, concerns the direction that the Governor act in a more timely manner in making appointments to the Board. The Board itself would be glad to participate as requested in screening and recommending appointments. It is beyond the ability of the Board to direct the Governor in the course of making appointments. We agree with the recommendation but are not in a political position to be able to implicate it.

4) Re: Recommendation No. 4. Board recommendation of statutory revisions. We concur with this recommendation. As mentioned above we feel that the time has come when the State no longer need use the Board of Welding Examiners as a stop-gap measure to "do the best it can", to protect public safety and environmental concern. We favor the review of powers and duties of the Board. The Board has long requested fiscal support for the enforcement of welding regulations, since it is obviously quite difficult to be a fierce tiger when you are toothless. We certainly have no objections to the applicability of the administrative procedures act. Implementation of this should be by Legislative action and it can be completed by the effective date of Legislation affecting the welding board during 1980.

This paper is not the place to present a series of detailed recommendations. These will be provided at the Legislative hearing.

5) Re: Recommendation No. 5. Continuing revision of administrative regulations. We concur with the recommendation although we may differ on some of the detailed suggestions. Once again these suggestions are good, they represent needs that should be met and that the Board has been endeavoring to meet over the past couple of years. We propose that the Board continue its process of review and address the specific points raised. This should be implicated by board action with a target date of July 1, 1980.

6) Re: Recommendation No. 6. Defining objectives and reporting to the Governor and Legislature. We concur with the recommendation, feeling that part of the defining of objectives is established by the Legislature, and that staff time will have to be provided to permit the requested reporting to be done. Because this recommendation is partially budgetary it will have to be accomplished through both board action and legislative action and would probably become effective July 1, 1980 when the new budget becomes effective. We hope that the presentation that we will be making to the Legislative committees as part of the "sunset" process, will be of considerable help in arriving at the implication of this recommendation.

We hope that we will be notified of the time of the Legislative committee hearing at the earliest possible date. A good presentation requires lead time to make people available and work concepts into shape. We look forward to cooperating with you in the future in this process.

Respectfully submitted,

J. C. WINGFIELD

PHIL DAVIS

October 26, 1979

State of Alaska
Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Juneau, Alaska 99803

RE: Board of Welding Examiners

SUBJECT: Board response to recommendations enclosed in Performance Review of the Board of Welding Examiners of June 8, 1979.

Recommendation #1:

We, the Board, feel the Board of Welding Examiners should be allowed to continue.

In addressing the primary goal of regulating occupations to protect the public:

1. An uncertified weldor or welding inspector can produce a product which impairs the life, safety, health and economic well being of all potential consumers. Many items of this nature can be addressed which are specific projects both State financed and privately funded.

2. Potentially, every resident in Alaska is a consumer of welding services. Only a small number of Alaskan residents possess the knowledge to evaluate the qualification of a provider of welding services. Almost every item constructed or repaired in the State has welding involved in some stage of construction or repair, ie: fuel oil tanks, bridges, aircraft, automobile fixtures, buildings, pipelines, etc. from very small items to large scale projects.

3. There is much evidence of abuse of welded components to which the consumers (which is the tax paying public) have no adequate recourse through the general laws. Instead, the consumer must depend on specialists such as qualified weldors and certified welding inspectors to protect their interests.

Rebuttal of Last Paragraph, Page 8:

The potential of public impact is not only addressed to large scale projects but more often to everyday usage of welded components such as trailer hitches, gas tanks, lawn mowers, and many small items used around the home. Imminent physical and economical harm can be brought upon the public due to inferior welding on these types of small scale projects.

Much public impact has been expended on large scale projects such as mentioned due to the economic impact of reworking inferior welding, many of which have been State funded projects which the public had already paid for.

First Paragraph, Page 9:

The statment that persons responsible for the construction of large projects are the consumers of welding services is erroneous as has been indicated above. Almost every resident of Alaska is a consumer of welding services.

Even the large companies do not always possess the adequate welding personnel to evaluate welding components, such has been experienced in the pipeline project.

We agree with the statement that "the AWS Certified Welding Inspector Program provides a means of identifying qualified inspectors", although the only requirement to this program is the State regulation 12AAC72.005 which was drafted and implimented by the State Board of Welding Examiners. The AWS Program is a voluntary program only.

Second Paragraph, Page 9:

Even though the interstate gas pipeline falls under the jurisdiction of the Federal Power Commission it is generally the Federal Government's policy to comply with the intent of State laws and regulations.

Third Paragraph, Page 9:

The AWS's support has largely influenced the State's regulations by providing a means for evaluating welding inspectors qualifications and has supported the intent of the Welding Board to impliment their program but has naturally desired to remain politically inactive.

The statement that "only one other State has required licensing of welding inspectors", has no influence on Alaska except to show that Alaska is a progressive State in protection of their consumers.

Fourth Paragraph, Page 9:

There is evidence of the State licensing of Welding Inspectors affording significant protection to consumers by a significant increase of welding knowledge in the State since the practice of licensing of welding inspectors was established.

Fifth Paragraph, Page 9:

The weldor qualification certificates could be required by statute if desired but the AWS Certification Program for Welding Inspectors could not be adopted by reference without a Board of Examiners to evaluate changes in the program or amending requirements due to the rapidly changing welding industry.

Sixth Paragraph, Page 9:

Sufficient public need does exist for continuing the present licensing and regulatory structure as evidenced by the welding inspectors who attempt to become licensed and found themselves not possessing an adequate knowledge of welding to successfully be licensed. This is illustrated by the audit committee in Recommendation #2, item #2.

Recommendation #2, Page 9:

Item #1, Page 9:

Application forms do request all information necessary to determine requirements for licensure by means of the initial AWS QC-1 Certificate which has documented items of compliance with 12 AAC 72.065 (a) 1-8. The State Board of Welding Examiners are knowledgeable of the AWS Documentation Program that insures the compliance with 12 AAC 72.065 (a) 1-8. No additional documentation is needed until the Board sees evidence that the AWS Program is not fulfilling the obligation set forth in the State's regulations. At such time that the AWS's Program is changed to a noncompliance of these regulations, the State Board will require additional documentation. Applicants for renewal need not be asked for evidence of a visual examination since the AWS renewal requires this proof of examination upon renewal.

Item #2, Page 9:

The Board of Welding Examiners agree with the intent of item #2, recommendation No. 2, as of October 26, 1979 will require all applicants to be reviewed by the Board prior to issuance of licenses.

Recommendation #3, Page 10:

Rebuttal, Last Paragraph, Page 10:

At the present time the Board is well rounded and represents the suggested areas of the occupation. For example:

(a) Two members are from test labs, one of which is diversified to construction activities.

(b) One member is from the petrochemical industry.

(c) One member is from a Federal Governmental Department.

(d) One member is from a labor organization.

(e) One member is from the welding craft.

(f) One member is from the nondestructive inspection field.

No two members are from the same company or corporation.

First Paragraph, Page 11:

Nominations are accepted from the entire industry through two societies who submit nominations to the governor. If the vehicle of these two societies are not used, the State will have to setup a program to accept nominations.

Most qualified interested persons are well aware of the existence of these two societies.

A person wishing to be nominated is not required to be a member of either Society and can be submitted if they possess the required knowledge and experience of the welding industry.

Second Paragraph, Page 11:

The Board would be receptive to including a lay member to the Board as the eighth member.

Terms of Board Members, Page 11:

The Board feels the term of five years is not excessive and agrees that no member should serve more than two consecutive terms.

Size of the Board, Page 11:

We do not feel the Board is unduly large due to the many facets of the industry to be addressed for public protection. If the Board number was reduced, a quorum could be too small to address the overall Board's responsibilities. The Board represents approximately 50 licensed welding inspectors and all certified weldors in the state numbering many thousands. As the licensing of welding inspectors is relatively new, the number of inspectors will be rapidly increasing as industry in the state increases.

Appointments, Page 11:

We agree, the Office of the Governor should make rapid appointments.

Recommendation #4, Page 12:

A. The Board feels an obligation to recommend changes in the statement AS08.99.080 that no longer pertains to the Board's activities. These statute recommendations are as follows:

Section 08.99.050, Qualifications of Board Members:
Add "except for one lay member".

Section 08.99.080, Qualifications of Board Members:
1. Change to read "Establish and promulgate rules and regulations concerning welding in the state."

2. Abolish.

3. Change to read "Work with federal and private agencies and specifying engineers to insure the Board is aware of the state of the art".

4. No change.

5. Insert after work accepted "for the licensing of welding inspectors". Omit existing words following the word accepted.

6. Change the wording to read "Set the fees for welding inspector licenses".

7. Change the wording to read "Examine, certify and renew the licenses of qualified applicants".

8. No change.

9. Abolish.

10. Change the wording to read "Designate and approve persons qualified to administer welding tests through the licensing of welding inspectors".

Renumber Item 10 (b) to 11

11. (a) Omit word "Technical".

(b) Omit "Department of Labor" and replace with "Department of Commerce and Economic Development".

(c) Omit reference following the words "promulgated under" XXXXXXXXXXXX leaving the words "this chapter".

(d) Omit reference after words "this chapter".

Section 08.99.110, Codes:

Change wording to read "The welding codes within the State will be governed by the job specification, in the absence of job specifications the minimum code requirement shall be the applicable AWS Code".

B. Page 12:

The recommended change to AS08.99.080 (b) deletes the Department of Labor.

C. Page 12:

The Board agrees with the audit statement and will require assistance from the department on this issue.

Recommendation #5, Page 13:

1. AAC 72.055 and AAC 72.015 - Add "or cause economic loss" following life or property.

2. AAC 72.045 - Omit from item (1) word "and". Omit all of item (2).

3. Change regulation 12 AAC 72.105 (a) to read:

   A welding inspector license is valid from the date of issuance or renewal through the expiration date of the inspector's American Welding Society's QC1 Certification submitted with the licensing application or renewal.

   Change regulation 12 AAC 72.105 (b) to read:

   Application for renewal of a welding inspector license must be made to the department on a form provided by the department and must be accompanied by a fee of $10.00.

Change Alaska Statue 08.01.100 to read:

(a) All licenses, except Welding Inspector licenses, shall be renewed biennially on the dates set by the department with the approval of the respective board. Welding Inspector licenses will be renewed upon application in conjunction with the renewal of the Welding Inspector's AWS QCI Certification renewal with the approval of the board.

4. The Board feels that the mandatory requirement of licensing requires a greater latitude for the availability of examination and therefore the requirement of four test dates are in order.

Second Paragraph, Page 14:

The Board feels that continuing revisions of the regulations are required if the Board is to remain viable.

Recommendation #6, Page 14:

The Board feels an annual report is in order and will do so with the assistance of the Department of Occupational Licensing.

The aforementioned statements and recommended changes to the Alaska Statutes Chapter 01. Centralized Licensing, Chapter 99. Board of Welding Examiners and Professional/Vocational Regulations Chapter 72 Board of Welding Examiners was approved by a Board quorum during the October 26, 1979 meeting of the Board of Welding Examiners.

Respectfully Submitted,

Donald M. Lockman

Donald M. Lockman, Chairman
Board of Welding Examiners

BOARD OF WELDING EXAMINERS
(AS 08.99.010-101) 7 members appointed by the governor from a list of persons prepared by the Alaska Chapter of the American Welding Society and the Alaska Society of Professional Engineers; confirmed by the legislature; 5-year term.

MEMBERS	REPLACING	APPT.	TERM
Mr. Phillip Davis 986 N. Copper Street Fairbanks, Alaska 99701	Long		82/12/16
Vacant	Richard Schneider		78/12/16
Mr. Donald Delk SRA Box 372-C Anchorage, Alaska 99507		75/12/05	80/12/16
Mr. Donald Lockman (Chairman) 8235 Endicott Street Anchorage, Alaska 99501		78/03/00	81/12/16
Mr. Peter Millar 2434 Colleen Circle Anchorage, Alaska 99501		76/12/05	79/12/16
Vacant	James W. Crippen		78/12/16
Mr. J. C. Wingfield 495 Sprucewood Road Fairbanks, Alaska 99701		78/03/00	79/12/16

CONTACT AGENCY:
Division of Occupational Licensing
Commerce & Economic Development
(465-2535)
ID #106

Agenda for Welding Board Meeting on Friday, October 26, 1979

1. Approval of the minutes for the meeting of July 27, 1979.

2. Welding Inspectors exam on Saturday, October 27, 1979 at 9:00 a.m., Room 103, Building G on the Anchorage Community College Campus, located at 2533 Providence Avenue, Anchorage, Alaska.

3. Approval of Welding Inspectors licensed for 1979-1980.

4. Discussion of Sunset Legislation.

5. Next Board meeting scheduling.

COMMITTEE REPORT

SENATE

FURTHER: None

4/17/80

Date: April 24, 1980

Mr. President:

The Committee on COMMERCE has had CSHB 994 am continuing the existence of the Board of Welding Examiners

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for CSHB 994 am [✓] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING DO PASS

Terry Stinson

Peter Stangelmaier

Brad Bradley

MEMBERS HAVING OTHER RECOMMENDATIONS:

Tom Kelly - None

Brad Bradley
CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 13, 1980

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Your Senate Commerce Committee has had under consideration for "Sunset" review the Board of Welding Examiners pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirements, a public hearing was held on the review of this board, at which written and oral testimony was received. Members of the board testified in person or by teleconference. The Committee considered the proposed budget of the board for FY 1981 and particularly examined the performance audit of the activities of the board conducted by the Division of Legislative Audit.

Guided, in part, by this performance review the Committee took into consideration the factors required to be considered under AS 44.66.050(c).

In considering the findings and recommendations of the Division of Legislative Audit as they appear on pages 8 through 15 of the Performance Review of the Board of Welding Examiners dated June 8, 1979, which is hereby incorporated by reference as though fully set out herein, the Committee makes the following recommendations:

> The Committee finds that it would be in the best interests of the people of the state of Alaska for the board to be continued and disagrees with Legislative Audit recommendation number 1 which recommends that State licensing of welding personnel be discontinued.

In general, we concur with findings 2 through 6. It appears that the Board of Welding Examiners will address these problems adequately through regulatory change. If it proceeds to do so, it will not be necessary for the Committee to address these problems by statute.

The Committee feels that it has adequately addressed the recommendations and categories required under AS 44.66.050(d), and recommends that with the changes stated in this report the Board of Welding Examiners be continued for another four years, that is, that the repealer with regard to the activities of the board be amended to read June 30, 1984.

A bill will be introduced by the Commerce Committee to implement the recommendations in this report.

Respectfully submitted,

Brad Bradley

Senator Brad Bradley
Chairman
Senate Commerce Committee

BB/bm

WORK ORDER REQUEST FORM

No. 8524

KEYWORDS: Professions

Boards and Commissions

ASSIGNED TO Guthrie

REQUEST FOR: BILL [ ] RESOLUTION [ ] RESEARCH [ ] OTHER [X] Analysis

SUBJECT SCS CSHB 994 Board of Welding Examiners

REQUESTED FOR Senate Commerce BY Christian EXT.

* DELIVER TO Senator Bradley TAKEN BY Noah

INSTRUCTIONS, EXPLANATIONS Section -by- section analysis of SCS CSHB 994.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ]

AUTHORIZED TO CONFER WITH

RETURN

TO REQUESTER

APPROVED: BGB Director, Legal Services

Director, Research

REVIEWED

IN 4/24 DUE

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT [ ] FINAL [ ]

LA-L 10

CORRESPONDENCE RE: THE CONTINUATION OF THE BOARD OF WELDING EXAMINERS
CSSB 553, SCSCSHB 994

Don Cather, Pressure Vessel Inspector with The Dept. of Labor
The board is not needed for it duplicates powers already in existence.

Mechanical Contractors of Fairbanks - The board is not needed. Duplication.

Veco Inc. of Anchorage - The board is not needed.

Bruce Stephens, Stephens Brother Plumbing - The board is not needed.

Ralph Eldrige, Mechanical Contractors of Anchorage - Opposed to the contimuation of the Board.

Don Lochman, Chairman, State Board of Welding Examiners - Opposes Sec. 9 which requires the board's budget to be determined by license fee income. This would require an increase in the license fee.

Brad: I also talked with Frank Lee who is a Welder and he indicated to me that the board should be terminated and that it does duplicate powers already in existence.

CORRESPONDENCE RE: THE CONTINUATION OF THE BOARD OF WELDING EXAMINERS
CSSB 553, SCSCSHB 994

Don Cather, Pressure Vessel Inspector with The Dept. of Labor
The board is not needed for it duplicates powers already in existence.

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APR 30 1980

Don Cather
4821 Becharof
Anchorage, Alaska 99507

H - 344-6809
O - 276-6516
Juneau 4870

April 28, 1980

RE: CS 553

Senator Mike Colletta
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Colletta:

In 1968, the idea for the Board of Welding Examiners was to develop methods that would help reduce costs for an employer to hire welders: 1) through knowing the welder's background, as each welder would be registered with the state and carry a card so stating his certification; and 2) so registered welders could be hired for specific welding jobs and if further testing was needed, the employer would know the applicant's elementary welding background thus eliminating many primary tests which are quite expensive.

The ensuing welding boards have changed directions several times. Until now, they have added at least two layers of cost to employers who use welders: 1) through government, which involves registration of welding Inspector/Examiners and enforcement of these inspections; and 2) through regulations where the employer must now contract for, or employ additional persons, to inspect welds and to qualify welders.

The additional costs, only to Alaskan employers, further reduces the chance of the smaller Alaskan welding companies to compete with outside companies for the limited amount of business available in the state.

It should also be noted that a welding inspector/qualifier does not inspect prefab buildings, muffler installations, trailer-hitch work, or other major welding work done by others before being shipped into the state, thus the greater part of any welding entering the state is not inspected.

I do not feel the board has served any useful purpose to date, even though it has been functional for 10 years. It should also be noted that any welding company in the state may have their welders tested at any of the test labs in the state, thus eliminating the additional expense for an in-house welding qualifier. Overall, it appears this is a well-organized drive by

37 weld inspectors left over from the pipeline days, to continue in lucrative jobs. As may be noted on the attachment of the 59 weld inspectors registered in Alaska, less than two-thirds are residents -- certainly not a good image for local hiring.

Should you feel that the bill is needed, may I make several suggestions for its betterment:

SECTION 4, 08.99.050. The 37 welding inspectors presently registered in the state apparently wish to monopolize this board as the new bill would have two of the members on it. I feel the board would be more responsive to the public needs if the language remained as in past statutes: "all members shall have extensive experience in welding."

SECTION 5, 08.99.080. I would like to ask that the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code (ASME) be excluded from this law as these activities are covered in other statutes. The welding to boilers and pressure vessels is under the jurisdiction of competent National Board of Boiler and Pressure Vessel inspectors and they only inspect boilers and pressure vessels being fabricated in the ASME Code boiler and pressure vessel shops and oversee the repair to boilers and pressure vessels to assure it is done in a safe manner and in accordance to the ASME Code guidelines.

Should you have any questions, please do not hesitate to contact me at (907) 344-6809.

Regards,

Don Cather

Don Cather

cc: Rules Committee
Senators Robert H. Ziegler, Sr.
Bill Sumner
George H. Hohman, Jr.
Clem V. Tillion

Attachments

WELDING INSPECTORS LICENSED FOR 1981

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#0115
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#0122
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#0085
Ronald C. Garrett
General Delivery
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#0130
James A. Schooley, Jr.
P.O. Box 1352
West Monroe, La. 71291

#0076
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#0061
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#0012
Glenn E. Seeber
Star Rt.
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#0113
William G. Brister
3021 Placer Circle
Eagle River, Alaska 99577

MECHANICAL CONTRACTORS

of Fairbanks, Inc.

MAY 20 1980

P. O. Box 534 ☆ Fairbanks, Alaska 99701

SB 553
welding

May 16, 1980

Senator Mike Colletta
Pouch V
Juneau, Alaska 99811

(Mail Stop Number 3100)

Dear Mr. Colletta:

HB 994
Re: Senate Bill No. 553

Every segment of industry has a stake in having the consumer associate receive its products and services within the concept of professionalism. This is especially important at a time when there is a prevalence among many to accept shoddy merchandise and workmanship from everyone. This is an unfortunate but inescapable way of life. Our industry, the Plumbing, Heating and Cooling Contractors, rejects this style of life.

We are governing ourselves with a system of self controls. Welding examiners and welding certification in our industry is already provided for by a Testing Board. Testing boards and labs are operated by private companies and service owners, architects and other agencies as required by the standards and specifications of the industry. These boards and labs follow regulations and standards of the American Welding Society and the Alaska Society of Professional Engineers.

We discussed the proposed legislation at our last regular meeting and feel we have enough regulation and proper controls. Re-establishing the Board of Welding Examiners and the creation of a five or seven member panel would provide little or no benefit to our industry. Regulations of this type should be aided by the experience and comments of the industry it intends to govern. This is unneeded regulation.

Board not necessary.

Please call or write to any of us for other personal comments concerning this or other regulations.

Sincerely,

MECHANICAL CONTRACTORS OF FAIRBANKS, INC.

Eugene Yurkovich

Eugene Yurkovich, Executive Secretary

EY/gg
Attachment - Membership Roster

MECHANICAL CONTRACTORS OF FAIRBANKS, INC.

Membership Roster

Don C. Chandler and Bill Sager
Chandler Plumbing & Heating, Inc.
P. O. Box 534
Fairbanks, Alaska 99707
456-5282

James Desmond and Bob Macomber
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452-1831

Vern Boyles and Gene Rutland
Tanana Mechanical
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Jess Whitney and Mike Whitney
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Tony Haas and Jerry Lajiness
Perfection Plumbing & Heating
2280 Standard
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456-7919

MAY 6 1980

SB 553
Brd. Welders

1980 MAY 5 AM 10 11

#

02322 NL ANCHORAGE ALASKA 54 05-05 850A ADT

PMS SEN MIKE COLLETTA

JUNEAU AK

IT IS OUR UNDERSTANDING THAT SB553 IS CURRENTLY IN THE RULES COMMITTEE AND IS NOT EXPECTED TO BE CONSIDERED FURTHER DURING THIS SESSION. IT IS OUR FEELING THAT THIS BILL JUST CREATES ANOTHER LEVEL OF UNNEEDED BUREAUCRACY WHICH WOULD BE IMPOSED ON MANY SMALL BUSINESSES WITHIN THE STATE OF ALASKA.

VECO INC.

5151 FAIRBANKS ST.

ANCHORAGE AK

TO: Senators Colletta, Ziegler, Sumner, Hohman, Tillion 5
FROM: Bruce A. Stephens, Stephens Brother Plumbing, 7339 Arctic Blvd., Anchorage 99502 349-1539

We are opposed to SB 553, which extends the life of the welding Bd. and urge you not to support its passage.

****

^^^

4/24 Telephone message from:

DON LOCKMAN, CHAIRMAN
STATE BOARD OF WELDING EXAMINERS
o 276-3440
h 243-4737

RE: HB 994 Welding Examiners (SB 553) CS ready →

Don is opposed to Sect 9 in original HB that requires brd budget be determined by license fee income. This would require an increase in the license fee.

The current initial licensing fee is $ 25 with a $10 annual renewal fee. The Board has discussed and agreed to a change to a 3 year renewal at $ 60, but this would have to be much higher to cover the costs of examinations more than once a year. This is seasonal work.

The Board is meeting at 2 PM Fiday, tomorrow, in Bldg. G, Rm 103
Anchorage Community College

is still in CS(Com.) reported out of Commerce Committee 4/24

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 553 - An Act continuing the existence of the
Title Board of Welding Examiners, and amending the statute relating to its powers and responsibilities and providing for an effective date.
Requested by Commerce Committee Date 4/17/80

II. FISCAL DETAIL
Agency Affected Commerce and Economic Development
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected Regulation and Licensing of Professions
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	-0-	37.2	39.8	42.6	45.5	48.7
200 TRAVEL	-0-	13.0	13.9	14.9	15.9	17.1
300 CONTRACTUAL	-0-	6.6	7.1	7.5	8.1	8.6
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	1.9	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	1.9	2.0	2.2	2.3	2.5
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	60.6	62.8	67.2	71.8	76.9

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	60.6	62.8	67.2	71.8	76.9
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	1	1	1	1	1
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Personnel Services
One Investigator at Range 18A located in Anchorage
(7% inflation factor used) $37,186.00

Travel (7% inflation factor used)
Travel for 5 board members to meet 4 times per year. As the board already meets 4 times per year, it is felt sufficient, however, the meetings for FY81 and each year thereafter would have to be increased to two days rather than one. All meetings are held in Anchorage. 300.00
The Licensing Examiner would now have an additional day per diem for the examination. 240.00
Investigation travel would be approximately 14 days per month at $60 per day allotement. 12,480.00
TOTAL TRAVEL $13,020.00

IV. DATE 4/17/80 PREPARED BY Ann Griggs, Director
AGENCY Occupational Licensing
PHONE 465-2534

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33--001 (Rev. 12/79)

Contractual (7% inflation factor used)
Contractual costs include figures for the leasing of one automobile and the costs incurred by it. $ 6,600.00

Equipment (This will be a one time cost in FY81)
Breakdown of equipment for the one position includes:

1 bookcase	$ 84.76	
1 four drawer file	181.80	
1 chair	126.83	
2 side chairs	121.52	
1 desk	389.38	
1 typewriter table	60.93	
1 mat	35.46	
1 typewriter	900.00	$ 1,900.78

Land and Structures (7% inflation factor used)
The Investigatot position will require approximately 126 square feet located in Anchorage at a costs of $1.25 per foot per month. $ 1,900.00

Don Cather
4821 Becharof
Anchorage, AK 99507

April 25, 1980

RE: CS for HB 994

Senator Brad Bradley
Alaska State Legislature
Pouch V (MS 3100)
Juneua, AK 99811

Dear Senator Bradley:

In 1968, the idea for the Board of Welding Examiners was to develop methods that would help reduce costs for an employer to hire welders: 1) through knowing the welder's background, as each welder would be registered with the state and carry a card so stating his certification; and 2) so registered welders could be hired for specific welding jobs and if further testing was needed, the employer would know the applicant's elementary welding background thus eliminating many primary tests which are quite expensive.

The ensuing welding boards have changed directions several times. Until now, they have added at least two layers of cost to employers who use welders: 1) through government, which involves registration of welding Inspector/Examiners and enforcement of these inspections; and 2) through regulations where the employer must now contract for, or employ additional persons to, inspect welds and to qualify welders.

The additional costs, only to Alaskan employers, further reduces the chance of the smaller Alaskan welding companies to compete with outside companies for the limited amount of business available in the state.

It should also be noted that a welding inspector/qualifier does not inspect prefab buildings, muffler installations, trailer-hitch work, or other major welding work done by others before being shipped into the state, thus the greater part of any welding entering the state is not inspected.

I do not feel the board has served any useful purpose to date, even though it has been functional for 10 years. It should also be noted that any welding company in the state may have their welders tested at any of the test labs in the state, thus eliminating the additional expense for an in-house welding qualifier. Overall, it appears this is a well-organized drive by 37 weld inspector left over from the pipeline days, to continue in lucrative jobs.

Should you feel that the bill is needed, may I make several suggestions for it's betterment:

SECTION 4, 08.99.050. The 37 welding inspectors presently registered in the state apparently wish to monopolize this board as they wish to have two of their members on it. I feel the board would be more responsive to the public needs if the language remained as in past statutes: "all members shall have extensive experience in welding".

SECTION 5, 08.99.080. I would like to ask that the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code (ASME) be excluded from this law as these activities are covered in other statutes. The welding to boilers and pressure vessels is under the jurisdiction of competent National Board of Boiler & Pressure Vessel inspectors and they only inspect boilers and pressure vessels being fabricated in the ASME Code boiler and pressure vessel shops and oversee the repair to boilers and pressure vessels to assure it is done in a safe manner and in accordance to the ASME Code guidelines.

Should you have any questions, please do not hesitate to contact me at (907) 344-6809.

Regards,

Don Cather

cc: Commerce Committee
Senator A. Sturgulewski
Senator T. Kelly
Senator F. Ferguson
Senator T. Stimson

SENATE CS FOR CS FOR HOUSE BILL NO. 994

(SAME BRIEFING FOR CS FOR SB 553)

MR. PRESIDENT, I MOVE THE ADOPTION OF CS FOR SB 553, WHICH IS IDENTICAL, AT THIS POINT, TO SCS FOR CSHB 994 FOR THE SAME BOARD. WE HAVE WORKED JOINTLY TO TRY TO PREVENT AN UNNECESSARY AND OFTEN TIME-CONSUMING FREE CONFERENCE COMMITTEE.

THIS BILL CONTINUES THE EXISTENCE OF THE BOARD OF WELDING EXAMINERS UNITL JUNE 30, 1984. (ANOTHER 4 YEARS). THE BOARD OF WELDING EXAMINERS AGREED TO MAKE CHANGES IN THEIR REGULATIONS AS DESIGNATED ON PAGE 4, LINES 6-27; AND WE AGREED TO EXTEND THEM.

(SEC. 08.99.010)
P. 1, LS. 12-14

SECTION 1 REDUCES THE MEMBERSHIP ON THE BOARD FROM (7) TO 5 MEMBERS. THE BOARD HAS BEEN TOO LARGE CONSIDERING THAT THERE ARE ONLY 65 WELDING LICENSEES IN THE STATE.

(SEC. 08.99.020)
P. 1, LS. 17-18

SECTION 2 LIMITS MEMBERSHIP ON THE BOARD TO TWO CONSECUTIVE TERMS TO ALLOW FRESH MEMBERS AND IDEAS. THIS SECTION ALSO DELETES THE PROVISION FOR STAGGERING TERMS OF MEMBERS BECAUSE THE CURRENT BOARD MEMBERS WILL COMPLETE THEIR TERMS, AND SINCE THE TERMS ARE STAGGERED, NEW TERMS ARE AUTOMATICALLY STAGGERED ALSO.

(SEC. 08.99.030)
PS. 1/2, LS. 22/2

SECTION 3 ALLOWS THE GOVERNOR TO APPOINT THREE OF THE BOARD MEMBERS FROM A LIST OF PERSONS PREPARED BY THE ALASKA CHAPTER OF THE AMERICAN WELDING SOCIETY AND THE ALASKA SOCIETY OF PROFESSIONAL ENGINEERS. THE GOVERNOR'S OFFICE HAS BEEN CHOOSING BOARD MEMBERS FROM

THIS LIST FOR YEARS NOW DUE TO THE FACT THAT THESE SOCIETIES HAVE A GREATER KNOWLEDGE OF WHO WOULD BE THE BEST CANDIDATES FOR MEMBERSHIP. SECTION 3 ALSO REDUCES THE NUMBER TO THREE IN ORDER TO ALLOW FOR TWO PUBLIC MEMBERS ON THE BOARD. ONE OF THE PUBLIC MEMBERS MUST HAVE GENERAL KNOWLEDGE OF WELDING AND THE TWO PUBLIC MEMBERS WILL PROVIDE GREATER CONSUMER PROTECTION AND PROVIDE FOR THE PUBLIC'S INTEREST.

(SEC. 08.99.050)
P. 2, Ls. 6-11

SECTION 4 REDUCES THE NUMBER OF MEMBERS WITH ENGINEERING DEGREES FROM (THREE) TO ONE MEMBER IN ORDER TO ADD TWO WELDING INSPECTORS CERTIFIED BY THE AMERICAN WELDING SOCIETY. THIS WILL MAKE THE BOARD MORE DIVERSIFIED AND COVERS ANOTHER AREA OF THE WELDING PROFESSION.

(SEC. 08.99.080(A)(1))
P. 2, Ls. 12-14

SECTION 5 IS AMENDED TO INCLUDE WELDING INSPECTORS SINCE THEY HAVE BEEN ADDED TO THE BOARD.

(SEC. 08.99.089(A)(2))
P. 2, Ls. 15-18

SECTION 6 IS AMENDED TO INCLUDE: OR FOR A POLITICAL SUBDIVISION OF THE STATE. THIS PROVIDES FOR SUCH PROJECTS AS THE UPCOMING GAS LINE WHICH MAY RUN OUTSIDE STATE BOUNDARIES.

(SEC. 08.99.080(A)(3))
P. 2, Ls. 20-22

SECTION 7 IS AMENDED TO EXCLUDE (FOR ALL WELDERS THROUGHOUT THE STATE) BECAUSE THE ESTABLISHMENT OF UNIFORM TESTING AND CERTIFYING METHODS IS TO APPLY ONLY TO THOSE WHERE IT IS REQUIRED -- ONLY

CERTAIN TYPES OF OPERATIONS AS SPELLED OUT IN THE REGULATIONS. THIS DOES NOT PERTAIN TO ALL WELDERS WITH GARAGE OPERATIONS, ETC. WHILE THE BOARD MUST STILL WORK WITH THESE GROUPS TO ESTABLISH TESTING AND CERTIFYING METHODS, THIS CHANGE PROVIDES THE BOARD WITH SOME FLEXIBILITY AS TO THE PARTICULAR WELDERS WHICH IT WILL CHOOSE TO REGULATE.

(SEC. 08.99.080(A)(9))
P. 2, Ls. 24-29

SECTION 8 IS AMENDED TO INCLUDE AND INSPECTION SINCE WELDING INSPECTORS ARE NOW INCLUDED ON THE BOARD AND THESE REGULATIONS MUST BE ESTABLISHED TO ENSURE CONSISTENT QUALITY OF WELDS. IT ALSO INCLUDES THE ADDITION: INCLUDING CONSTRUCTION BY OR ON BEHALF OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE. THIS AGAIN REFERS TO THE FACT THAT SUCH PROJECTS AS THE GAS LINE MAY INVOLVE AREAS AND DEPARTMENTS OUTSIDE THE STATE.

(SEC. 08.99.080(A))
P. 3, Ls. 2-5

SECTION 9 IS AMENDED BY ADDING PARAGRAPH 11: PREPARE AN ANNUAL BUDGET TO BE SUBMITTED TO THE LEGISLATURE AND REQUEST AN ANNUAL APPROPRIATION FROM THE GENERAL FUND TO COVER OPERATING EXPENSES OF THE BOARD, NOT TO EXCEED THE AMOUNT OF INCOME TO BE RECEIVED FROM FEES UNDER THIS CHAPTER FOR THE YEAR; THIS WAS PUT IN, IN ORDER TO MAKE THE BOARDS MORE FISCALLY AWARE AND HAVE A GREATER UNDERSTANDING OF THE MONIES THEY GENERATE AND SPEND. THE IDEA HERE IS TO HAVE

THE BOARDS PAY FOR THEMSELVES. THE HOUSE PUT THIS IN AND WE WENT ALONG WITH THIS TO AVOID A FREE CONFERENCE.

(SEC. 08.99.080(A))
P. 3, LS. 6-9

SECTION 9 ALSO ADDED THE FOLLOWING PARAGRAPH: THE BOARD SHALL ADOPT REGUALTIONS REQUIRING THE APPLICATION OF THE LATEST STANDARDS AND CODES ADOPTED BY THE AMERICAN WELDING SOCIETY IF A CONTRACT OR JOB SPECIFICATION FAILS TO DESIGNATE THE STANDARDS OR CODES TO BE APPLIED TO A PARTICULAR WELDMENT. THIS ADDITION SIMPLY SETS THE MINIMUM STANDARDS AS THOSE ADOPTED BY THE AMERICAN WELDING SOCEITY. THERE WAS A NEED HERE FOR MINIMUM STANDARDS WHERE A JOB OR CONTRACT FAILED TO SET THE STANDARDS.

(SEC. 08.99.080(B))
P. 3, LS. 11-16

SECTION 10 IS AMENDED SIMPLY TO MAKE ONLY THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT RESPONSIBLE FOR ANALYZING REPORTS AND PERFORMING FIELD INSPECTIONS INSTEAD OF BOTH THE DEPARTMENT OF LABOR AND THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT. IN THE PAST, BOTH DEPARTMENTS WERE RESPONSIBLE FOR THIS AND THIS AMENDMENT MAKES IT MUCH SIMPLER KEEPING THE RESPONSIBILITY WITHIN ONLY THE ONE DEPARTMENT.

(SEC. 08.99.080)
P. 3, LS. 17-19

SECTION 11 ADDS A SUBSECTION FOR THE BOARD TO ADOPT REGULATIONS TO PERMIT CERTIFIED WELDING INSPECTORS TO EXAMINE, CERTIFY, AND RENEW CERTIFICATIONS OF WELDERS. THIS IS BECAUSE

WELDING INSPECTORS HAVE BEEN ADDED TO THE BOARD AND THEY ARE CAPABLE OF ADOPTING SUCH REGULATIONS FOR GREATER INSPECTION CONSISTENCY AND QUALITY.

(SEC. 08.99)
P. 3, LS. 21-24

SECTION 12 ADDS A NEW SUBECTION ENTITLED: RENEWAL OF WELDING INSPECTOR CERTIFICATES BECAUSE WELDING INSPECTORS HAVE BEEN ADDED TO THE BOARD. A SECTION WAS ADDED TO CREATE AN EXEMPTION TO AS 08.01.100(A), WHICH REQUIRES THAT THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT ESTABLISH DATES FOR RENEWAL OF OCCUPATIONAL LICENSES. THIS WAS DONE SO THAT THE CERTIFICATE OF A WELDING INSPECTOR ISSUED UNDER THIS ACT EXPIRES ON THE DATE OF EXPIRATION OF THE WELDING INSPECTOR'S CERTIFICATION BY THE AMERICAN WELDING SOCIETY.

(SEC. 08.03.010(c))
P. 3, LS. 25-27

SECTION 13 IS AMENDED TO CONTINUE THE BOARD OF WELDING EXAMINERS FOR ANOTHER FOUR YEARS UNTIL JUNE 30, 1984.

(SEC. 08.99.110)
P. 3, L. 28

SECTION 14 IS REPEALED, WHICH ARE OUTDATED PIPING CODES. THESE TIE THE WELDERS TO OUTDATED CODES. NOW THE BILL STATES THE MINIMUM CODES AS THOSE OF THE AMERICAN WELDING SOCIETY UNLESS OTHERWISE STIPULATED IN A CONTRACT OR JOB. UNDER THIS BILL, THE BOARD IS NOW REQUIRED TO REINCORPORATE NEW UP-TO-DATE STANDARDS EVERY YEAR. THESE PIPING CODES ARE SIMPLY OUT OF DATE.

(SEC. 08.03.010(B)(10)) P. 3, L. 28

SECTION 14 IS REPEALED WHICH REMOVES THE BOARD OF WELDING EXAMINERS FROM THE LIST OF BOARDS WHICH HAD A TERMINATION DATE OF JUNE 30, 1980.

PS, 3/4, LS. 29/5

SECTION 15 KEEPS THE CURRENT MEMBERS OF THE BOARD OF WELDING EXAMINERS ON THE BOARD UNTIL THEIR TERMS EXPIRE AT WHICH TIME THE BOARD WILL BE RECONSTITUTED IN ACCORDANCE WITH SECTIONS 3 AND 4 OF THIS ACT. IN THE YEAR THAT THREE TERMS EXPIRE SIMULTANEOUSLY, TWO OF THOSE TERMS ARE ABOLISHED WHICH BRINGS THE TOTAL MEMBERSHIP OF THE BOARD TO FIVE WHICH THIS BILL STIPULATES.

P. 4, LS. 6-27

SECTION 16 SPELLS OUT WHICH REGULATIONS THE BOARD MUST ADOPT AT THEIR NEXT BOARD MEETING. WE ARE TAKING THE WELDERS OUT OF STATE CERTIFICATION IN THE AREAS WHERE IT IS NOT NEEDED. CERTIFICATION IS NEEDED ONLY IN AREAS OF CONTRACTORS, BUILDERS, AND PIPELINES. CERTIFICATION IS NOT NEEDED IN "HOME-GARAGE" OPERATIONS, ETC. THE REGULATIONS ARE AS FOLLOWS:

(1) PROVIDE THAT ONLY IF A JOB HAS BEEN ADVERTISED OR IS DONE PURSUANT TO A WRITTEN CONTRACT MUST THE WORK BE PERFORMED BY A CERTIFIED WELDER;

(2) REQUIRE THAT THE SIGNATURE AND LICENSE NUMBER OF THE WELDING INSPECTOR WHO ISSUES A WELDING QUALIFICATION CERTIFICATE TO APPEAR ON IT;

(3) PROVIDE THAT A WELDER NOT BE REQUIRED TO BE CONTINUOUSLY EMPLOYED USING THE WELDING PROCESS FOR WHICH HE IS CERTIFIED IN ORDER TO KEEP HIS CERTIFICATION VALID;

(4) PROVIDE THAT IF INSPECTION OF A WELDMENT IS REQUIRED, THE INSPECTION MUST BE PERFORMED ONLY BY A LICENSED WELDING INSPECTOR UNLESS EXEMPTED;

(5) PERMIT AN EXEMPTION TO (4) BY ALLOWING THE INSPECTION OF A WELDMENT IN A PUBLIC WORKS PROJECT BY AN ENGINEER IF A LICENSED WELDING INSPECTOR IS NOT AVAILABLE; HOWEVER, THE ENGINEER MUST BE APPROVED BY THE BOARD; THE INSPECTION MUST BE DONE UNDER THE GENERAL DIRECTION OF A LICENSED WELDING INSPECTOR, AND THIS SPECIAL EXEMPTION EXPIRES JANUARY 1, 1982

(6) INCLUDE ANY OTHER REGULATIONS NEEDED TO IMPLEMENT THIS ACT.

P. 4, Ls. 28-29

SECTION 7. THIS ACT TAKES EFFECT IMMEDIATELY IN ORDER TO ALLOW THE WELDERS TO ADOPT THE REGULATIONS AT THEIR NEXT BOARD MEETING.

Mr President, I move the adoption of CS for SB 553, which is identical, at this point, to SCS for CSHB 994 for the same board. We have worked jointly to try to prevent an unnecessary and often time-consuming Free Conference Committee -

SENATE CS FOR CS FOR HOUSE BILL NO. 994

(SAME BRIEFING FOR CS FOR SB 553)

LINE BY LINE ANALYSIS

1. THIS BILL CONTINUES THE EXISTENCE OF THE BOARD OF WELDING EXAMINERS UNITL JUNE 30, 1984. (ANOTHER 4 YEARS). THE BOARD OF WELDING EXAMINERS AGREED TO MAKE CHANGES IN THEIR REGULATIONS AS DESIGNATED ON PAGE 4, LINES 6-27; AND WE AGREED TO EXTEND THEM.

Sec 08.99.010 Sec 1.

2. (PAGE 1, LINES 12-14) ~~THIS BILL~~ REDUCES THE MEMBERSHIP ON THE BOARD FROM (7) TO 5 MEMBERS. THE BOARD HAS BEEN TOO LARGE CONSIDERING THAT THERE ARE ONLY 65 WELDING LICENSEES IN THE STATE.

Sec. 08.99.020 Sec 2

3. (PAGE 1, LINES 17 & 18) ~~THE BILL~~ LIMITS MEMBERSHIP ON THE BOARD TO TWO CONSECUTIVE TERMS TO ALLOW FRESH MEMBERS AND IDEAS. THIS SECTION ALSO DELETES THE PROVISION FOR STAGGERING TERMS OF MEMBERS BECAUSE THE CURRENT BOARD MEMBERS WILL COMPLETE THEIR TERMS, AND SINCE THE TERMS ARE STAGGERED, NEW TERMS ARE AUTOMATICALLY STAGGERED ALSO.

Sec. 08.99.030 (P1, lines 22-29, P2 line 1+2)

4. ~~THIS BILL~~ ALLOWS THE GOVERNOR TO APPOINT THREE OF THE BOARD MEMBERS FROM A LIST OF PERSONS PREPARED BY THE ALASKA CHAPTER OF THE AMERICAN WELDING SOCIETY AND THE ALASKA SOCIETY OF PROFESSIONAL ENGINEERS. THE GOVERNOR'S OFFICE HAS BEEN CHOOSING BOARD MEMBERS FROM THIS LIST FOR YEARS NOW DUE TO THE FACT THAT THESE SOCIETIES HAVE A GREATER KNOWLEDGE OF WHO WOULD BE THE BEST CANDIDATES FOR MEMBERSHIP, (~~PAGE 1, LINES 22-28~~). Sec 3 also ~~THE BILL~~ REDUCES THE NUMBER TO THREE IN ORDER TO ALLOW FOR TWO PUBLIC MEMBERS ON THE BOARD. (~~PAGE 1, LINE 29 AND PAGE 2, LINES 1 & 2~~). ONE OF THE PUBLIC MEMBERS MUST HAVE GENERAL KNOWLEDGE OF WELDING AND THE TWO PUBLIC MEMBERS WILL PROVIDE GREATER CONSUMER PROTECTION AND PROVIDE FOR THE PUBLIC'S INTERESTS.

Sec 08.99.050 Sec. 4

5. (PAGE 2, LINES 6-11) ~~THIS BILL~~ REDUCES THE NUMBER OF MEMBERS WITH ENGINEERING DEGREES FROM (THREE) TO ONE MEMBER IN ORDER TO ADD TWO WELDING INSPECTORS CERTIFIED BY THE AMERICAN WELDING SOCIETY. THIS WILL MAKE THE BOARD MORE DIVERSIFIED AND COVERS ANOTHER AREA OF THE WELDING PROFESSION.

Sec 8.99.080(a)(1)

6. (PAGE 2, LINES 12-14) SECTION 5, ~~AS 08.99.080(A)(1)~~ IS AMENDED TO INCLUDE WELDING INSPECTORS SINCE THEY HAVE BEEN ADDED TO THE BOARD.

Sec

7. (PAGE 2, LINES 15-18) SECTION 6, AS 08.99.089(A)(2) IS AMENDED TO INCLUDE: OR FOR A POLITICAL SUBDIVISION OF THE STATE. THIS PROVIDES FOR SUCH PROJECTS AS THE UPCOMING GAS LINE WHICH MAY RUN OUTSIDE STATE BOUNDARIES.

Sec

8. (PAGE 2, LINES 20-22) SECTION 7, AS 08.99.080(A)(3) IS AMENDED TO EXCLUDE (FOR ALL WELDERS THROUGHOUT THE STATE) BECAUSE THE ESTABLISHMENT OF UNIFORM TESTING AND CERTIFYING METHODS IS TO APPLY ONLY TO THOSE WHERE IT IS REQUIRED--ONLY CERTAIN TYPES OF OPERATIONS AS SPELLED OUT IN THE REGULATIONS. THIS DOES NOT PERTAIN TO ALL WELDERS WITH GARAGE OPERATIONS, ETC. WHILE THE BOARD MUST STILL WORK WITH THESE GROUPS TO ESTABLISH TESTING AND CERTIFYING METHODS, THIS CHANGE PROVIDES THE BOARD WITH SOME FLEXIBILITY AS TO THE PARTICULAR WELDERS WHICH IT WILL CHOOSE TO REGULATE.

Sec

9. (PAGE 2, LINES 24-29) SECTION 8, AS 08.99.080(A)(9) IS AMENDED TO INCLUDE AND INSPECTION SINCE WELDING INSPECTORS ARE NOW INCLUDED ON

THE BOARD AND THESE REGULATIONS MUST BE ESTABLISHED TO ENSURE CONSISTENT QUALITY OF WELDS. IT ALSO INCLUDES THE ADDITION: INCLUDING CONSTRUCTION BY OR ON BEHALF OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE. THIS AGAIN REFERS TO THE FACT THAT SUCH PROJECTS AS THE GAS LINE MAY INVOLVE AREAS AND DEPARTMENTS OUTSIDE OF THE STATE.

10. (PAGE 3, LINES 2-5) SECTION 9, ~~AS~~ Sec. 08.99.080(A) IS AMENDED BY ADDING PARAGRAPH 11: PREPARE AN ANNUAL BUDGET TO BE SUBMITTED TO THE LEGISLATURE AND REQUEST AN ANNUAL APPROPRIATION FROM THE GENERAL FUND TO COVER OPERATING EXPENSES OF THE BOARD, NOT TO EXCEED THE AMOUNT OF INCOME TO BE RECEIVED FROM FEES UNDER THIS CHAPTER FOR THE YEAR; THIS WAS PUT IN, IN ORDER TO MAKE THE BOARDS MORE FISCALLY AWARE AND HAVE A GREATER UNDERSTANDING OF THE MONIES THEY GENERATE AND SPEND. THE IDEA HERE IS TO HAVE THE BOARDS PAY FOR THEMSELVES. THE HOUSE PUT THIS IN AND WE WENT ALONG WITH THIS TO AVOID A FREE CONFERENCE.

11. (PAGE 3, LINES 6-9) SECTION 9, ~~AS~~ Sec. 08.99.080(A) ALSO ADDED THE FOLLOWING PARAGRAPH: THE BOARD SHALL ADOPT REGULATIONS REQUIRING THE APPLICATION OF THE LATEST STANDARDS AND CODES ADOPTED BY THE AMERICAN WELDING SOCIETY IF A CONTRACT OR JOB SPECIFICATION FAILS TO DESIGNATE THE STANDARDS OR CODES TO BE APPLIED TO A PARTICULAR WELDMENT. THIS ADDITION SIMPLY SETS THE MINIMUM STANDARDS AS THOSE ADOPTED BY THE AMERICAN WELDING SOCIETY. THERE WAS A NEED HERE FOR MINIMUM STANDARDS WHERE A JOB OR CONTRACT FAILED TO SET THE STANDARDS.

12. (PAGE 3, LINES 11-16) SECTION 10, ~~AS~~ Sec. 08.99.080(B) IS AMENDED SIMPLY TO MAKE ONLY THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

RESPONSIBLE FOR ANALYZING REPORTS AND PERFORMING FIELD INSPECTIONS INSTEAD OF BOTH THE DEPARTMENT OF LABOR AND THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT. IN THE PAST, BOTH DEPARTMENTS WERE RESPONSIBLE FOR THIS AND THIS AMENDMENT MAKES IT MUCH SIMPLER KEEPING THE RESPONSIBILITY WITHIN ONLY THE ONE DEPARTMENT.

13. (PAGE 3, LINES 17-19) SECTION 11, AS 08.99.080 ADDS A SUBSECTION FOR THE BOARD TO ADOPT REGULATIONS TO PERMIT CERTIFIED WELDING INSPECTORS TO EXAMINE, CERTIFY, AND RENEW CERTIFICATIONS OF WELDERS. THIS IS BECAUSE WELDING INSPECTORS HAVE BEEN ADDED TO THE BOARD AND THEY ARE CAPABLE OF ADOPTING SUCH REGULATIONS FOR GREATER INSPECTION CONSISTENCY AND QUALITY.

14. (PAGE 3, LINES 21-24) SECTION 12, AS 08.99 ADDS A NEW SUBSECTION ENTITLED: RENEWAL OF WELDING INSPECTOR CERTIFICATES BECAUSE WELDING INSPECTORS HAVE BEEN ADDED TO THE BOARD. A SECTION WAS ADDED TO CREATE AN EXEMPTION TO AS 08.01.1000(A), WHICH REQUIRES THAT THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT ESTABLISH DATES FOR RENEWAL OF OCCUPATIONAL LICENSES. THIS WAS DONE SO THAT THE CERTIFICATE OF A WELDING INSPECTOR ISSUED UNDER THIS ACT EXPIRES ON THE DATE OF EXPIRATION OF THE WELDING INSPECTOR'S CERTIFICATION BY THE AMERICAN WELDING SOCIETY.

15. (PAGE 3, LINES 25-27) SECTION 13, AS 08.03.010(C) IS AMENDED TO CONTINUE THE BOARD OF WELDING EXAMINERS FOR ANOTHER FOUR YEARS UNTIL JUNE 30, 1984.

16. (PAGE 3, LINE 28) SECTION 14, AS 08.99.110 IS REPEALED WHICH ARE OUTDATED PIPING CODES. THESE TIE THE WELDERS TO OUTDATED CODES. NOW

THE BILL STATES THE MINIMUM CODES AS THOSE OF THE AMERICAN WELDING SOCIETY UNLESS OTHERWISE STIPULATED IN A CONTRACT OR JOB. UNDER THIS BILL, THE BOARD IS NOW REQUIRED TO REINCORPORATE NEW UP-TO-DATE STANDARDS EVERY YEAR. THESE PIPING CODES ARE SIMPLY OUT OF DATE.

17. (PAGE 3, LINE 28) SECTION 14, Sec AS 08.03.010(B)(10) IS REPEALED WHICH REMOVES THE BOARD OF WELDING EXAMINERS FROM THE LIST OF BOARDS WHICH HAD A TERMINATION DATE OF JUNE 30, 1980.

18. (PAGE 3, LINE 29; PAGE 4, LINES 1-5) SECTION 15, KEEPS THE CURRENT MEMBERS OF THE BOARD OF WELDING EXAMINERS ON THE BOARD UNTIL THEIR TERMS EXPIRE AT WHICH TIME THE BOARD WILL BE RECONSTITUTED IN ACCORDANCE WITH SECTIONS 3 AND 4 OF THIS ACT. IN THE YEAR THAT THREE TERMS EXPIRE SIMULTANEOUSLY, TWO OF THOSE TERMS ARE ABOLISHED WHICH BRINGS THE TOTAL MEMBERSHIP OF THE BOARD TO FIVE WHICH THIS BILL STIPULATES.

19. (PAGE 4, LINES 6-27) SECTION 16, SPELLS OUT WHICH REGULATIONS THE BOARD MUST ADOPT AT THEIR NEXT BOARD MEETING. WE ARE TAKING THE WELDERS OUT OF STATE CERTIFICATION IN THE AREAS WHERE IT IS NOT NEEDED. CERTIFICATION IS NEEDED ONLY IN AREAS OF CONTRACTORS, BUILDERS, AND PIPELINES. CERTIFICATION IS NOT NEEDED IN "HOME-GARAGE" OPERATIONS, ETC. THE REGULATIONS ARE AS FOLLOWS:

(1) PROVIDE THAT ONLY IF A JOB HAS BEEN ADVERTISED OR IS DONE PURSUANT TO A WRITTEN CONTRACT MUST THE WORK BE PERFORMED BY A CERTIFIED WELDER;

(2) REQUIRE THE SIGNATURE AND LICENSE NUMBER OF THE WELDING INSPECTOR WHO ISSUES A WELDING QUALIFICATION CERTIFICATE TO APPEAR ON IT;

(3) PROVIDE THAT A WELDER NOT BE REQUIRED TO BE CONTINUOUSLY EMPLOYED USING THE WELDING PROCESS FOR WHICH HE IS CERTIFIED IN ORDER TO KEEP HIS CERTIFICATION VALID;

(4) PROVIDE THAT IF INSPECTION OF A WELDMENT IS REQUIRED, THE INSPECTION MUST BE PERFORMED ONLY BY A LICENSED WELDING INSPECTOR UNLESS EXEMPTED;

(5) PERMIT AN EXEMPTION TO (4) BY ALLOWING THE INSPECTION OF A WELDMENT IN A PUBLIC WORKS PROJECT BY AN ENGINEER IF A LICENSED WELDING INSPECTOR IS NOT AVAILABLE; HOWEVER, THE ENGINEER MUST BE APPROVED BY THE BOARD; THE INSPECTION MUST BE DONE UNDER THE GENERAL DIRECTION OF A LICENSED WELDING INSPECTOR, AND THIS SPECIAL EXEMPTION EXPIRES JANUARY 1, 1982;

(6) INCLUDE ANY OTHER REGULATIONS NEEDED TO IMPLEMENT THIS ACT.

20. (PAGE 4, LINES 28-29) SECTION 7, THIS ACT TAKES EFFECT IMMEDIATELY IN ORDER TO ALLOW THE WELDERS TO ADOPT THE REGULATIONS AT THEIR NEXT BOARD MEETING.

THE BOARD OF WELDING EXAMINERS
AS 08.99

Chapter 99. Board of Welding Examiners.

Section
10. Creation and membership of board
20. Term of office
30. Source of appointments
40. Removal from office
50. Qualifications of board members
60. Meetings
70. Quorum
80. Powers and duties of the board
90. Applicability of Administrative Procedure Act
100. Expenses
110. Codes
120. Penalty

Sec. 08.99.010. Creation and membership of board. There is created the Board of Welding Examiners, consisting of seven members appointed by the governor. (§ 1 ch 151 SLA 1968)

Sec. 08.99.020. Term of office. Board members serve a term of five years. However, of the members first appointed, one shall be appointed for a term of one year, one for two years, one for three years, one for four years, and three for terms of five years. (§ 1 ch 151 SLA 1968)

Sec. 08.99.030. Source of appointments. The governor shall appoint board members from a list of persons prepared by the Alaska Chapter of the American Welding Society and the Alaska Society of Professional Engineers and submitted at least 30 days before the expiration of a term and not more than 60 days after a vacancy occurs in an unexpired term. The list shall contain not less than two recommended candidates for each appointment. The governor shall make appointments within 30 days after receiving the list. (§ 1 ch 151 SLA 1968; am § 1 ch 151 SLA 1970)

Sec. 08.99.040. Removal from office. Each member holds office at the pleasure of the governor notwithstanding the member's term. (§ 1 ch 151 SLA 1968)

Sec. 08.99.050. Qualifications of board members. Each member of the board shall be a citizen of the United States and a resident of the state. At least three members shall be persons with engineering degrees or registration as an engineer and each engineer member shall have at least five years engineering experience. All members shall have extensive experience in welding. (§ 1 ch 151 SLA 1968; am § 2 ch 151 SLA 1970)

Sec. 08.99.060. Meetings. The board shall meet at least once a year. (§ 1 ch 151 SLA 1968)

Sec. 08.99.070. Quorum. A majority of the board constitutes a quorum. (§ 1 ch 151 SLA 1968)

Sec. 08.99.080. Powers and duties of the board. (a) The board shall

(1) establish and promulgate rules and regulations concerning certification of welders in the state;

(2) establish and define certification tests as they apply to various types and categories of work done in or for the state;

(3) work with federal and private agencies and specifying engineers to establish uniform testing and certifying methods for all welders throughout the state;

(4) work with federal agencies and the agencies of other states to establish reciprocity agreements;

(5) set up criteria and define experience and documentary requirements which may be accepted in lieu of physical certification tests in the state;

(6) set the fees for the welder certification tests;

(7) examine, certify, and renew the certification of qualified applicants;

(8) keep a record of its proceedings, and submit annual reports to the governor and the legislature;

(9) promulgate regulations concerning the quality of welds and qualifications of welders required in specific areas of industry and construction and designate reporting procedures necessary to certify compliance with these quality standards;

(10) designate and approve persons qualified to administer welding tests, and designate and approve shops, laboratories, or other establishments qualified for testing coupons and weldments.

(b) The board may request technical personnel from the Department of Labor for the purpose of reviewing and analyzing reports and may request field inspection by the department for the purpose of assuring compliance with, and enforcement of the regulations, rules and orders promulgated under §§ 10 — 110 of this chapter. (§ 1 ch 151 SLA 1968; am §§ 3 — 5 ch 151 SLA 1970)

Sec. 08.99.090. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62). (§ 1 ch 151 SLA 1968)

Sec. 08.99.100. Expenses. Members of the board are entitled to the per diem and travel expenses allowed by law. (§ 1 ch 151 SLA 1968)

Sec. 08.99.110. Codes. The United States of America Standards Institute Codes listed below are established as the piping codes for the state:

(1) B 31.1.0 — 1967 power piping;

(2) B 31.2 — 1968 fuel gas piping;

(3) B 31.8 — 1968 gas transmission and distribution piping system;

(4) B 31.3 — 1966 petroleum refining piping;

(5) B 31.4 — 1966 and B 31.4a — 1968 liquid petroleum transportation piping systems. (§ 6 ch 151 SLA 1970)

Revisor's note (1970). — For copies of the codes referred to in AS 08.99.110, write to the U.S.A. Standards Institute, Dept. PB 31, 10 East 40th Street, New York, New York 10016.

Sec. 08.99.120. Penalty. A person who violates a regulation adopted under §§ 10 — 110 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500. (§ 7 ch 151 SLA 1970)

STATUTES FOR
WELDING BOARD BILLS

08.01.100.

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968)

08.03.010.

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Board of Chiropractic Examiners (AS 08.20.010);
(2) Board of Dental Examiners (AS 08.36.010);
(3) State Medical Board (AS 08.64.010);
(4) Board of Nursing (AS 08.68.010);
(5) Board of Dispensing Opticians (AS 08.71.010);
(6) Board of Examiners in Optometry (AS 08.72.010);
(7) Board of Pharmacy (AS 08.80.010);
(8) Board of Veterinary Examiners (AS 08.98.010);
(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
(10) Board of Nursing Home Administrators (AS 08.70.010);
(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.010);
(2) Board of Barber Examiners (AS 08.12.010);
(3) Collection Agency Board (AS 08.24.011)
(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);
(5) Board of Electrical Examiners (AS 08.40.010);
(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
(7) Guide Licensing and Control Board (AS 08.54.010);
(8) Board of Marine Pilots (AS 08.62.010);
(9) Real Estate Commission (AS 08.88.011);
(10) Board of Welding Examiners (AS 08.99.010);
(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall he governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

44.62.250.

Sec. 44.62.250. Emergency regulations. A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts which constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of §§ 60 and 190 — 210 of this chapter do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and within five days after adoption the agency shall give notice of the adoption in accordance with § 190(a) (1) — (6) of this chapter. Failure to give the required notice by the end of the 10th day automatically repeals the regulation. (§ 2(2) art IV (ch 1) ch 143 SLA 1959; am § 2 ch 45 SLA 1969; am § 1 ch 46 SLA 1972)

Effect of amendment. — The 1972 amendment added the language beginning "however" in the second sentence, and added the last sentence.

Legislative committee reports. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414. For report on ch. 46, SLA 1972 (HB 108 am S), see 1972 House Journal, pp. 265, 512.

44.62.260.

Sec. 44.62.260. Limitation on effective period of emergency regulations. (a) No regulation adopted as an emergency regulation remains in effect more than 120 days unless the adopting agency complies with §§ 60 and 190 — 210 of this chapter either before submitting the regulation to the lieutenant governor or during the 120-day period.

(b) Before the expiration of the 120-day period, the agency shall transmit to the lieutenant governor for filing a certification that §§ 60 and 190 — 210 of this chapter were complied with before submitting the regulation to the lieutenant governor, or that the agency complied with those sections within the 120-day period. Failure to so certify repeals the emergency regulation; it may not be renewed or refiled as an emergency regulation. (§ 4 art IV (ch 1) ch 143 SLA 1959; am § 3 ch 45 SLA 1969)

01.10.070.

Sec. 01.10.070. Time statutes take effect. (a) All laws passed by the legislature become effective 90 days after enactment. The legislature may by concurrence of two-thirds of the membership of each house, provide for another effective date.

(b) The actual effective date of a bill having no effective date clause is determined by starting with the day after signature by the governor or the day on which he gives written notice that he is allowing it to become law without his signature, and counting 90 calendar days, the law becoming effective at 12:01 a.m., Pacific Standard time, on the 90th day.

(c) A law having an immediate effective date clause becomes law at 12:01 a.m., on the day after it is signed by the governor or on the day after he has given written notice that he is allowing the law to become effective without his approval.

(d) A law which specified a definite effective date becomes effective at 12:01 a.m., Pacific Standard time, on the date specified. (§ 5 ch 62 SLA 1962; am § 8 ch 126 SLA 1966)

Effect of amendment.—The 1966 amendment rewrote this section.

BOARD OF WELDING EXAMINERS

Key to References

(Y) - (yellow cover) - State of Alaska Sunset Review, 1979. Prepared by the Division of Occupational Licensing

(B) - (blue cover) - Division of Legislative Audit Performance Review

(W) - (white cover) - Senate Commerce Committee Public Hearing Testimony, October 23, 1979.

A. The Board of Welding Examiners should be discontinued.
(Y) - p 1; p 11, paragraph 3
(B) - p 7, paragraph 2; p 8, Recommendation 1
(W) - p 38, paragraph 4; p 39, paragraph 1

If the Board of Welding Examiners is to continue, the following changes are recommended:

1. To insure adequate representation of the regulated occupation and the general public, the sources of nomination for board membership should be accepted from the entire industry rather than only nominations by the Alaska Chapter of the American Welding Society and the Alaska Society of Professional Engineers. AS 08.99.030 should be amended as such.
(Y) - p 11, paragraph 4; p 13, paragraph 2
(B) - p 10
(W) - p 5 (written testimony by Donald Lockman, Chairman of the Board of Welding Examiners)

2. Reduce the number of board members from 7 to 5 members only. The board currently licenses only 50 persons. Amend AS 08.99.010
(Y) - p 11, paragraph 4; p 13, paragrapn 2
(B) - p 11, paragraph 4

3. Add one public member to the board if total number of board members is reduced to five (add two public members if total number remains at seven)
(Y) - p 13, paragraph 2; p 14, paragraph 3
(B) - p 11, paragraph 2
(W) - p 6 (written testimony by Donald Lockman, Chairman of the Board of Welding Examiners)

4. Limit the term of board members to no more than two consecutive terms which would create a more responsive, active board.
(Y) - p 11, paragraph 4
(B) - p 11, paragraph 3
(W) - p 4 (written testimony by Donald Lockman)

5. Increase application fee from $25 to $50 and increase biennial fee from $10 to $50
(Y) - p 16, paragraphs 2 and 3

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M April 28, 1980

SUBJECT: Section-by-section analysis of SCS CSHB 994 regarding the Board of Welding Examiners (Work Order Number 8524)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have requested a section-by section analysis of SCS for CSHB 994 entitled "An Act continuing the existence of the Board of Welding Examiners, and amending the statute relating to its powers and responsibilities; and providing for an effective date."

Section 1. The Board of Welding Examiners is reduced from seven members to five members.

Section 2. Board members may not serve more than two consecutive terms. No limit is placed on the number of terms one person may serve. This section also deletes the provision for staggering terms of members because the current board members will complete their terms, and, since the terms are staggered, new terms are automatically staggered also.

Section 3. This was amended to provide that the governor will appoint three members from the list of persons submitted by the Alaska Chapter of the American Welding Society and the Alaska Society of Professional Engineers. The remaining two board members shall be appointed from the general public, however, one of them must have knowledge of welding.

Section 4. One member of the board is required to be registered as an engineer with five years engineering experience or to hold an engineering degree and to have three years of experience in welding. Two members must be welding inspectors. The existing law provides for three board members who are engineers.

Section 5. The board must adopt regulations concerning certification of welding inspectors, as well as regulations concerning certification of welders.

Section 6. This section was amended so that certification tests required for work done for the state be also required for work done for a political subdivision of the state.

Section 7. A duty of the board is changed to eliminate the requirement that the board work with other groups to establish testing and certifying methods for all welders in the state. While the board must still work with these groups to establish testing and certifying methods, the change provides the board with some flexibility as to the particular welders which it will choose to regulate.

Section 8. The duty of the board to adopt regulations concerning the quality of welds has been expanded to include a duty to adopt regulations concerning the inspection of welds, and these obligations have been particularly applied to construction by or on behalf of the state or a subdivision of the state.

Section 9. This section adds new duties to the board including a requirement that the board prepare and submit a budget to the legislature. The board is authorized to request an appropriation to cover operating expenses, but this appropriation must not exceed the income received from fees generated through board activities. This section also requires the board to adopt regulations which would apply the latest standards and codes adopted by the American Welding Society in cases where a job specification fails to designate the standards or codes to be used.

Section 10. This change allows the board to request personnel from the Department of Commerce and Economic Development to review and analyze reports or provide field inspection. Under existing law, personnel are to be requested from the Department of Labor.

Section 11. A new power of the board is added allowing it to adopt regulations to permit welding inspectors to certify and renew certifications of welders.

Section 12. A section was added to create an exemption to AS 08.01.100(a), which requires that the Department of Commerce and Economic Development establish dates for renewal of occupational licenses. This was done so that the certificate of a welding inspector issued under this act expires on the date of expiration of the welding inspector's certification by the American Welding Society.

Section 13. June 30, 1984 is the new date of termination of the Board of Welding Examiners.

Section 14. Provisions which are inconsistent with this act are repealed.

AS 08.99.110 deletes standards set by outdated codes;

AS 08.03.010(b)(10) repeals the termination date for the Board of Welding Examiners.

Section 15. This is a temporary law providing that existing members of the board will continue to serve for the duration of their terms. In the year that the terms of three existing members expire, two terms shall not be refilled, cutting down board membership from seven to five persons.

Section 16. This is temporary law requiring that the board adopt emergency regulations in accordance with the Alaska Administrative Procedure Act at its next meeting. These regulations must

(1) provide that only if a job has been advertised or is done pursuant to a written contract must the work be performed by a certified welder;

(2) require the signature and license number of the welding inspector who issues a welding qualification certificate to appear on it;

(3) provide that a welder not be required to be continuously employed using the welding process for which he is certified in order to keep his certification valid;

(4) provide chat if inspection of a weldment is required, the inspection must be performed only by a licensed welding inspector unless exempted;

(5) permit an exemption to (4) by allowing the inspection of a weldment in a public works project by an engineer if a licensed welding inspector is not available; however, the engineer must be approved by the board; the inspection must be done under the general direction of a licensed welding inspector, and this special exemption expires January 1, 1982;

(6) include any other regulations needed to implement this act.

Section 7. This section should be corrected to read Section 17. It provides an immediate effective date.

If you have any further questions, please contact me.

TBC:jdn

SSHB 779 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 779 (relating to the development of geothermal resources) was read the second time with the Resources Committee report (page 930 of the journal).

Mr. Anderson moved and asked unanimous consent that the Resources COMMITTEE SUBSTITUTE FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 779 (relating to state resources and the development of geothermal resources) be adopted in lieu of the original bill. There being no objection, it was so ordered.

CS SSHB 779

Mr. Anderson moved and asked unanimous consent that CSSSHB 779 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSSSHB 779 was read the third time.

The question being: "Shall CSSSHB 779 pass the House?" The roll was taken with the following result:

CSSSHB 779

Yeas:	28	Anderson, Branson, Buchholdt, Carney, Chatterton, Cotten, Duncan, Eliason, Freeman, Fuller, Gardiner, Guy, Halford, Haugen, Hurlbert, McKinnon, Malone, Miles, Miller, Munson, Osterback, Parker, Parr, Phillips, Rogers, Schaeffer, Smith, Zharoff
Nays:	9	Barnes, Beirne, Bettisworth, Brown, Hayes, Martin, Montgomery, O'Connell, Randolph
Not Voting:	3	Meekins, Metcalfe, Moss

And so, CSSSHB 779 passed the House.

Representative Brown served notice of reconsideration of the vote on CSSSHB 779.

HB 994 HOUSE BILL NO. 994 (continuing the existence of the Board of Welding Examiners, and amending the statute relating to its powers and responsibilities; providing for an effective date) was read the second time with the Commerce Committee report (page 948 of the journal).

Mr. Anderson moved and asked unanimous consent that COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 994 (same title) be adopted in lieu of the original bill. There being no objection, it was so ordered. CSHB 994

Mr. Anderson moved and asked unanimous consent that CSHB 994 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 994 was read the third time.

Representative Rogers moved and asked unanimous consent that CSHB 994 be returned to second reading for the purpose of specific amendment. There being no objection, it was so ordered.

Amendment No. 1 by Rogers and Brown:

Page 2, lines 5 - 8

Delete sentence: "At least" through "in welding"

Insert "At least one [THREE] member shall have an [BE PERSONS WITH] engineering degree or registration as an engineer and [EACH ENGINEER MEMBER] shall have at least five years engineering experience and at least three years experience in welding"

Representative Rogers moved and asked unanimous consent that Amendment No. 1 be adopted.

Representative O'Connell objected and withdrew his objection. There being no further objection, Amendment No. 1 was adopted.

CSHB 994 am

Mr. Anderson moved and asked unanimous consent that CSHB 994am be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 994am CSHB 994am was read the third time.

The question being: "Shall CSHB 994am pass the House?" The roll was taken with the following result:

CSHB 994AM

Yeas:	30	Anderson, Cirne, Bettisworth, Branson, Brown, Buchholdt, Carney, Chatterton, Cotten, Duncan, Eliason, Freeman, Fuller, Gardiner, Guy, Halford, Hayes, Hurlbert, McKinnon, Malone, Miles, Miller, Montgomery, Munson, O'Connell, Osterback, Parker, Parr, Rogers, Smith
Nays:	4	Barnes, Martin, Phillips, Randolph
Not Voting:	6	Haugen, Meekins, Metcalfe, Moss, Schaeffer, Zharoff

And so, CSHB 994am passed the House.

Mr. Anderson moved and asked unanimous consent that the roll call on the passage of CSHB 994am be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 994am was referred to the Chief Clerk for engrossment.

CS SSHB 779 Representative Rogers moved and asked that the reconsideration of the vote on CSSSHB 779 be brought up at this time. There being no objection, it was so ordered.

THIRD READING OF HOUSE BILLS

CSSSHB 779 was automatically in third reading and was read the third time.

4/29

for /Frank/ Chris,

Use this format for all sensate sectional analyses.

Disregard underlining. I shall do that.

Where there is a comparasion between the changes in the bill and the existing statute, you may not need to give the reason for the change if it is an obvious comparison, but otherwise always give a reason for the change or changes in each section. Inevitably this question is asked.

Do not take a sectional analysis as the last word or the best way to express a point. Often they confuse the issue in Legislative Affairs agency.

Always attach a copy of the referenced statute (title. chapter. section) in the order that they are mentioned in your own sectional analysis of a bill.

Don't forget to include and explain all sections that are repealed in a bill.

Follow the attached model as close as possible -- no shortcuts /Brad

CS FOR SENATE BILL 574

MR. PRESIDENT, I MOVE THE ADOPTION OF CS FOR SB 574, WHICH IS IDENTICAL, AT THIS POINT, TO THE HOUSE BILL FOR THE SAME BOARD. WE HAVE WORKED JOINTLY TO TRY TO PREVENT AN UNNECESSARY AND OFTEN TIME-CONSUMING FREE CONFERENCE COMMITTEE.

THIRD READING

I will attempt to cover the changes to current law by section as quickly as possible

(SEC. 08.54.010) P. 1, L. 12

- SECTION 1 ESTABLISHES THE GUIDE LICENSING AND CONTROL BOARD SOLELY IN THE DIV. OF FISH AND WILDLIFE PROTECTION OF THE DEPT. OF PUBLIC SAFETY. CURRENTLY, THE BOARD IS ESTABLISHED IN THE DIV. OF OCCUPATIONAL LICENSING OF THE DEPT. OF COMMERCE AND ECONOMIC DEVELOPMENT AND THIS DIVISION PLUS THE DIV. OF FISH AND WILDLIFE PROTECTION OF THE DEPT. OF PUBLIC SAFETY SHARE THE RESPONSIBILITY FOR STAFF SUPPORT. THIS SECTION ALSO ENSURES THAT THREE MEMBERS OF THE BOARD WILL BE ACTIVELY INVOLVED IN GUIDING AND THE REMAINING FOUR WILL HAVE NO INVOLVEMENT IN THE GUIDING BUSINESS. CURRENTLY, THREE MEMBERS ARE JUST REQUIRED TO HAVE A GUIDE LICENSE AND THE OTHER FOUR A GENERAL KNOWLEDGE OF GAME RESOURCES.

(SEC. 08.54.020) P. 1, L. 28

- SECTION 2 PROVIDES THAT THE MEMBERS OF THE BOARD MAY NOT BE APPOINTED FOR MORE THAN TWO CONSECUTIVE TERMS. A TERM IS FOR THREE YEARS. CURRENTLY, THERE IS NO LIMIT TO HOW MANY CONSECUTIVE TERMS A MEMBER MAY SERVE if appointed.

(SEC. 08.54.030) P. 2, L. 2

- SECTION 3 REQUIRES THAT THE BOARD MUST ELECT A CHAIRMAN AND A VICE-CHAIRMAN ANNUALLY. THE CHAIRMAN MAY NOT SERVE FOR MORE THAN TWO CONSECUTIVE TERMS. TESTIMONY INDICATED THAT SUCH ROTATION WOULD ASSURE THAT THE BOARD WOULD BE MORE RESPONSIVE TO THE PUBLIC INTEREST. CURRENTLY, THERE IS NO LIMIT TO HOW LONG A CHAIRMAN CAN SERVE.

(SEC. 08.54.070(A)) P. 2, L. 7

- SECTION 4 REQUIRES GUIDE LICENSE FEES TO BE PAID BIENNIALLY AND GENERALLY INCREASES THEM 25 TO 30 PERCENT.

(SEC. 08.54.182) P. 2, L. 13

- SECTION 5. PERSONS SEEKING REGISTERED AND MASTER GUIDE LICENSES MUST PASS AN EXAMINATION, AND THAT EXAMINATION SHALL BE HELD TWICE A YEAR AT BOTH JUNEAU AND ANCHORAGE FOR THE CONVENIENCE OF APPLICANTS. CURRENTLY, THE EXAMINATIONS ARE ADMINISTERED ONLY IN ANCHORAGE.

(SEC. 08.54.190(A)) P. 2, L. 18

- SECTION 6 ELIMINATES A LICENSURE PROVISION FOR AIR TRANSPORTERS AND IT ASSURES THAT ALL GUIDE LICENSES ARE VALID FOR AT LEAST ONE FULL YEAR. UNDER EXISTING LAW, ALL LICENSES EXPIRE ON DECEMBER 31 FOLLOWING ISSUANCE REGARDLESS OF WHEN THEY WERE ISSUED. PERSONNEL IN THE DIV. OF FISH AND WILDLIFE PROTECTION CONSIDER THE "TRANSPORTER LAWS" CONFUSING AND DIFFICULT TO ENFORCE. IN ADDITION, THE INFORMATION AND REPORTS THAT TRANSPORTERS ARE REQUIRED TO FILE ARE NOT BEING ACCOMPLISHED AND ARE NOT NEEDED TO MANAGE THE GAME RESOURCES OF THE STATE. Testimony was unanimous that the transporter license should be elimin

(SEC. 08.54.190(B)) P. 2, L. 23 — SECTION 7 REQUIRES THAT AN ASSISTANT GUIDE OR A CLASS-A ASSISTANT GUIDE THAT HAS NOT RENEWED HIS LICENSE FOR FOUR YEARS MAY NOT BE RENEWED UNTIL HE MEETS THE QUALIFICATIONS FOR AN INITIAL LICENSE. CURRENTLY, THE GRACE PERIOD IS FOR ONLY TWO YEARS.

(SEC. 08.54.200(A)) P. 2, L. 28 — SECTION 8. UNDER EXISTING LAW, THE BOARD IS REQUIRED TO HOLD A HEARING TO CONSIDER DISCIPLINARY ACTION IF IT RECEIVED COMPLAINTS FROM THREE OR MORE SEPARATE PARTIES TO WHICH A LICENSEE HAS PROVIDED SERVICES. NO TIME PERIOD WAS INDICATED; IT COULD BE THREE COMPLAINTS IN THIRTY YEARS, which is impractical. SECTION 8 PROVIDES A TIME PERIOD OF FIVE YEARS WITHIN WHICH THESE COMPLAINTS MUST BE RECEIVED BEFORE THE BOARD IS REQUIRED TO HOLD A DISCIPLINARY HEARING. THIS SECTION ALSO PROVIDES THAT THE BOARD IS NO LONGER OBLIGATED TO HOLD A DISCIPLINARY HEARING WHEN A LICENSEE IS MERELY CHARGED WITH A VIOLATION OF FEDERAL OR STATE SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS. HOWEVER, UPON A CONVICTION, THE BOARD IS STILL REQUIRED TO HOLD A DISCIPLINARY HEARING.

(SEC. 08.54.200(C)) P. 3, L.9 — SECTION 9 PROVIDES THE BOARD THE OPTION OF REVOKING, SUSPENDING, OR DENYING RENEWAL OF A LICENSE IF THE BOARD FINDS THAT THE LICENSEE DOES NOT MEET CERTAIN REQUIREMENTS. UNDER EXISTING LAW, THE BOARD WAS REQUIRED TO REVOKE THE LICENSE UPON SUCH A FINDING. THIS SECTION ALSO PROVIDES THAT SPECIFIED DISCIPLINARY

ACTION MUST BE TAKEN BY THE BOARD ONLY WHEN A LICENSEE HAS BEEN CONVICTED OF TWO VIOLATIONS OF FEDERAL OR STATE SPORT FISH, GAME OR GUIDE STATUTES OR REGULATIONS WITHIN THE PAST FIVE YEARS. UNDER CURRENT LAW, TWO VIOLATIONS TRIGGER MANDATORY DISCIPLINARY ACTION REGARDLESS OF THE TIME PERIOD.

(SEC. 08.54.210(A)(1)) P. 3, L. 20 • SECTION 10 REMOVES REFERENCE TO A TRANSPORTER BECAUSE TRANSPORTERS WILL NO LONGER BE LICENSED UNDER THIS ACT. (SEE SECTION 6 AND SEC. 08.54.142 AND 144)

(SEC. 08.54.210(A)(2)) P. 3, L. 26 • SECTION 11 REMOVES REFERENCE TO A TRANSPORTER.

(SEC. 08.54.210(A)(4)) P. 4, L. 5 • SECTION 12 REMOVES REFERENCE TO A TRANSPORTER.

(SEC. 44.41.020) P. 4, L. 11 • SECTION 13 PROVIDES THAT A NEW DUTY OF THE DEPT. OF PUBLIC SAFETY SHALL BE THE SOLE RESPONSIBILITY FOR ADMINISTRATIVE STAFF SUPPORT OF THE GUIDE LICENSING AND CONTROL BOARD (SEE SECTION 1).

(SEC. 08.03.010(C)) P. 4, L. 15 • SECTION 14 PROVIDES FOR JUNE 30, 1984, AS THE TERMINATION DATE FOR THE GUIDE LICENSING AND CONTROL BOARD.

P. 4, L. 16 • SECTION 15. THIS SECTION REPEALS PROVISIONS WHICH ARE INCONSISTENT WITH THIS ACT.

AS 08.01.010(20) REMOVES THE GUIDE LICENSING AND CONTROL BOARD FROM THE LIST OF BOARDS TO WHICH CHAPTER 01 APPLIES, SINCE THIS BOARD

WILL NO LONGER BE ADMINISTERED BY THE DEPT. OF COMMERCE AND ECONOMIC DEVELOPMENT.

AS 08.03.010(B)(7) REPEALS THE SUNSET PROVISION FOR THIS BOARD;

AS 08.54.100(5) ELIMINATES THE BOARD'S DISCRETION TO ESTABLISH QUALIFIACTIONS FOR LICENSING MASTER GUIDES IN ADDITION TO THOSE ESTABLISHED BY STATUTE (IF THE BOARD WAS PERMITTED TO ESTABLISH QUALIFICATIONS IN ADDITION TO THOSE IN THE STATUTES, IT WAS THOUGHT THERE COULD POSSIBLY BE SOME CHANCE OF DISCRIMINATION);

AS 08.54.110(12) ELIMINATES THE BOARD'S DISCRETION TO ESTABLISH QUALIFICATIONS FOR LICENSING REGISTERED GUIDES IN ADDITION TO THOSE ESTABLISHED BY STATUTE (THE SAME REASON AS FOR MASTER GUIDES ALSO APPLIES HERE);

TRANSPORTER REPEALS BEGINS HERE (NEXT 5 SECTIONS)

AS 08.54.142 REPEALS THE SECTION DEALING WITH LICENSURE OF TRANSPORTERS;

AS 08.54.144 REPEALS THE RESTRICTIONS ON TRANSPORTATION OF HUNTERS BY TRANSPORTERS;

AS 08.54.146 REPEALS THE SECTION REQUIRING PREPARATION AND FILING OF TRANSPORTER REPORTS;

AS 08.54.170(c) ELIMINATES THE LICENSE FEE FOR A TRANSPORTER;

AS 08.54.240(5) REMOVES THE DEFINITION OF "TRANSPORTING" AND "ACTIVITY OF TRANSPORTING"; TRANSPORTER REPEALS END HERE.

AS 16.05.340(E) ELIMINATES FEES CHARGED TO MASTER GUIDES AND REGISTERED GUIDES FOR THE TAKING OF SPECIFIED GAME ANIMALS. (Heard Test).

P. 4, L. 19 ● SECTION 16 PROVIDES FOR THIS ACT TO TAKE EFFECT JUNE 30, 1980, THE DATE ON WHICH THE BOARD IS SCHEDULED TO TERMINATE.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 26, 1980

SUBJECT: Section-by-section analysis of SB 574 dealing with the Guide Licensing and Control Board (Work Order No. 8526)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have requested a section-by-section analysis of Senate Bill 574 entitled "An Act continuing the existence of the Guide License and Control Board and amending the law relating to its powers and responsibilities; and providing for an effective date."

Section 1. The Guide Licensing and Control Board is established in the division of fish and wildlife protection, Department of Public Safety. This amendment ensures that three members of the board will be involved in guiding and that the remaining four members will have no involvement in the guiding business.

Section 2. This amendment provides that members of the board may not be appointed for more than two consecutive terms. Since a term is for three years, a person would have to wait three years before being reappointed to the board after serving two terms. There is no limitation on the total number of terms which a person may serve on the board.

Section 3. The board must elect a chairman and a vice-chairman annually.

Section 4. This section generally increases fees required for licenses to engage in the profession of guiding.

Section 5. Persons seeking licenses must pass an examination, and that the examination shall be held twice a year at both Juneau and Anchorage for the convenience of applicants.

Section 6. This section is amended to eliminate a licensure provision for transporters and to assure that a license is valid for at least one full year. Under existing law all licenses expire on December 31st following issuance regardless of when they were issued.

Section 7. An assistant guide license which has not been renewed for four years may not then be renewed until the applicant meets the qualifications for an initial license. Under the existing statute only a two-year grace period is provided.

Section 8. Under existing law the board is required to hold a hearing to consider disciplinary action if it receives complaints from three or more separate parties which a licensee has provided services to. The amendment provides a time period of five years within which these complaints must be received before the board is required to hold a disciplinary hearing. This section is also amended so that the board is no longer obligated to hold a disciplinary hearing when a licensee is merely charged with a violation of federal or state sport fish, game or guide statutes or regulations. Upon a conviction, however, the board is still required to hold a disciplinary hearing.

Section 9. The board is permitted the option of revoking, suspending, or denying renewal of a license if the board finds that the licensee does not meet certain requirements. Under existing law the board was required to revoke the license upon such a finding. This section is also amended to provide that specified disciplinary action must be taken by the board only when a licensee has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations within the past five years. Under current law, two violations trigger mandatory disciplinary action regardless of the time period between the violations.

Section 10. This section is amended to remove reference to a transporter because transporters will no longer be licensed under this act.

Section 11 A reference to a transporter is deleted.

Section 12 A reference to a transporter is deleted.

Section 13 A new duty of the Department of Public Safety shall be the administration of the Guide License and Control Board.

Section 14. June 30, 1984 is set as the termination date for the Guide License and Control Board.

Section 15. This section repeals provisions which are inconsistent with this act.

AS 08.01.010(20) removes the Guide Licensing and Control Board from the list of boards to which Chapter 01 applies, since this board will no longer be administered by the Department of Commerce and Economic Development;

AS 08.03.010(b)(7) repeals the sunset provision for this board;

AS 08.54.100(5) eliminates the board's discretion to set qualifications in addition to those established by statute for licensure of master guides;

AS 08.54.110(12) eliminates the board's discretion in establishing qualifications for registered guide licenses in addition to those established by statute;

AS 08.54.142 repeals the section dealing with licensure of transporters;

AS 08.54.144 repeals the restrictions on transportation of hunters;

AS 08.54.146 repeals the section requiring preparation and filing of transporter reports;

AS 08.54.170(c) eliminates the license fee for a transporter;

AS 08.54.240(5) removes the definition of "transporting" and "activity of transporting";

AS 16.05.340(e) eliminates fees charged to master guides and registered guides for the taking of specified game animals;

Section 16. This act takes effect June 30, 1980, the date on which the board is scheduled to terminate.

If you have any further questions, please contact me.

TBC:ljb

BOARD OF WELDING EXAMINERS

Conference Call

May 12, 1980

OPERATOR:

Hello, Jane English?

ENGLISH:

Yes.

OPERATOR:

Peter Millar?

MILLAR:

Yes.

OPERATOR:

Don Delk?

DELK:

Yes.

OPERATOR:

And Don Lockman?

LOCKMAN:

Yes.

OPERATOR:

Can you all hear each other?

ENGLISH:

Yes. Where is J.C.?

LOCKMAN:

This is Don Lockman, Chairman of the Board of Welding Examiners in Anchorage. I would like to call a special board meeting to session as of 10:00, May the 12th. I would also like to have then Mr. Don Delk, the secretary of the State Board of Welding Examiners take a role call at this time.

DELK:

Okay, Chairman, Don Lockman? You're present?

LOCKMAN:

I am present, yes.

DELK:

Pete Millar?

MILLAR:

Yes.

DELK:

J.C. Wingfield?

ENGLISH:

Evidentally he didn't get back from San Francisco because he had told me he'd be on.

DELK:

There are only three of us on then?

ENGLISH:

That's right, right at the moment.

DELK:

Well, we can't conduct a meeting.

GARRETT:

Don, this is Elaine. Let me try and see if we can get ahold of the operator and see if she tried to get ahold of J.C.

ENGLISH:

I called him personally.. No, I called J.C. personally myself and he told me that ..

GARRETT:

How do you get ahold of the operator?

ENGLISH:

100. Elaine is going to see if she can get ahold of him. He has been in San Francisco but he told me that he would be available for this conference call today.

LOCKMAN:

Okay. Well, Pete, you're available, right?

MILLAR:

Yes.

LOCKMAN:

And Don Delk. We are the only three board members. Are there any other board members on? How about other interested parties?

ENGLISH:

There aren't any other interested parties here.

LOCKMAN:

Okay, Jane, you are on the line?

ENGLISH:

Yes. And Elaine..

LOCKMAN:

And how about Elaine Garrett. Is she on the line?

ENGLISH:

She has gone to see what happened to J.C. She is going to call the operator because he told me even though he was going to be in San Francisco all last week, he would be available for a conference call today, at this time.

LOCKMAN:

Okay, we will not have anybody else on the line then..the four members, youself and Jane English, er I mean, Elaine Garrett. Right?

ENGLISH:

That's correct.

LOCKMAN:

Okay. George Parks isn't available?

ENGLISH:

No. He has gone fishing.

DELK:

That's what we ought to be doing...fishing. The only smart board member in the bunch.

ENGLISH:

There you go.

LOCKMAN:

Okay, how long of a period of time do you suppose we should wait for Elaine? Is she going to get back with us positive or negative?

ENGLISH:

Yes she is. She has gone to call right now.

LOCKMAN:

Okay.

ENGLISH:

I contacted J.C. personally and he told me he would be available.

LOCKMAN:

Okay, just to interrate a little conversation here. The applications that were submitted for licensing of welding inspectors to the last board meeting where there was no quorum was circulated to the board members for a signature of each of the applicants, for a quorum signatures and have been sent to you, Jane...

ENGLISH:

Okay.

LOCKMAN:

...via airborne for delivery to your office.

ENGLISH:

Fine.

LOCKMAN:

And you should be getting those documents, of course, we talked about them over the phone anyway but you should be getting the original signed copies probably delivered today.

ENGLISH:

Okay, I will be on the lookout for them then.

LOCKMAN:

And I made no other copies of the signature page so you might want to copy the signature page of each of the applications and submit that back to the board members.

ENGLISH:

All right, will do.

DELK:

How has the Sunset Legislation gone, Don? Have you heard anything more?

LOCKMAN:

Okay, there is a Senate Bill 994, I mean a House Bill, excuse me, 994, which ratifies the board. There is also a Senate Bill 553 which says identical wording to the House Bill except it added some things onto the House Bill. Now, neither one of those apparently have been placed in front of the legislators for enactment and wasn't intended to do so until after the regulations were adopted, which we are trying to do now. There is some changes we probably would like to make in the wording of both the House and the Senate Bill, I think they will probably be passed as one bill but we can do that later if need be or we can do it at the time that it is submitted to the Legislature to make a floor revision. So, uh, there is some verbage there that doesn't really allow us to function within the wording that they have illustrated.

MILLAR:

It just seems like this House Bill 994 that I've seen, the Legislature has taken upon themselves to enact to make up rules and regulations and I thought that was the function of the Board of Welding Examiners.

LOCKMAN:

Me too, Pete.

ENGLISH:

Can you gentlemen speak a little louder, please.

LOCKMAN:

Okay, well, the way that it apparently works is that Legislature of course has the power to vote in any bill that clears the different various committees and so forth and so the board really has no power to change the statutes and that is what they are doing with the House Bill and the Senate Bill is actually changing the statutes and not the regulations. They, however, have put into the statutes some things that were involved in the regulations. But then of course they have that right, so what they are effectively doing is doing what they are allowed to do.

DELK:

The House Bill is to change the regulation not the statute, Don.

LOCKMAN:

Well, it is a bill though.

DELK:

But it is to change the regulations, not the statute. The Senate Bill is to change the statute, which that is their responsibility. But the House Bill is talking about the regulations itself.

LOCKMAN:

That's right. What the House Bill is doing is really putting part of the regulations into the statutes.

DELK:

It doesn't say anything about the statute. 12 AAC 72 is the regulation and unless you have different paperwork than I have. It appears to me that the House Committee is trying to write the welding regulations.

MILLAR:

That's what it looks to me like, too. They are telling how many board members...

DELK:

Now, the board members is under the statute, I think.

MILLAR:

Well, I sure disagree with what they are doing. I''d much rather see us meet maybe twice a year and get out of the business of trying to qualify, and work with AWS. I think certification of welding inspectors is AWS' responsibility, not ours and I'd like to out of that all together. And not fund them and let the welding, or AWS take care of the certification of welding inspectors by themselves. And then have only have one meeting a year in Anchorage, they can test welders, that's fine. And I'd like like to see us cut back on our costs but I think we do need seven members. I don't like to see it go to five members especially if you are going to put one guy on there that is not familiar with welding at all. I don't agree with that either.

LOCKMAN:

Yea, well I don't think we are going to have much control over what the House and Senate does. Brown's Committee is going to enact, if they enact anything, it is .. if they don't enact anything, then the board, of course, will be terminated by the Sunset legislation automatically. If they enact anything, it is going to be the bill that has been proposed as revised by the Senate, which the board has no influence over other than trying to make amendments to it on the floor. It has already went through the committees. It has already went through the House and the Senate and will be submitted to the Legislature so it will take a floor enactment to change anything, a floor revision before its enactment. Okay, that is going to happen regardless of what we do or what we think. They are going to change it to three... or, I mean, to five instead of seven. They are going to change the type of people who are on the board and they are going to change to say it is going to have to be self-sufficient. All of those things that are in there. I don't think we have too much voice in the matter. If we don't..apparently if we don't agree with the regulations as written that I submitted to each board member from the Juneau meeting with the Audit Committee and House Committee members, they will put those into the statute also, and they have the legality to do that and make it all a statute, with no regulations.

ROBSON:

Don, this is Art Robson in Fairbanks. I got a call from the staff member for the House Committee late Friday afternoon and he said that Mike Colletta is holding the bill in the Senate Committee and is going to hold it so that the board will die. He is doing so at the request of VECO because basically it's a union/nonunion situation, VECO being nonunion and using out of state people wants to see the board die and has set no requirements, you know, so they can keep doing what they are doing. For one reason or another they seem to have been able to get to Colletta. Colletta has agreed to hold the bill and until and unless we can find some way of blasting him off dead center and that is something that I have been trying to figure out over the weekend. I think that there are a couple of Democrats that can help us and I hope to be able to get some Republicans like Bettisworth to help us out on the doggone thing otherwise it is going to simply go down the tube.

LOCKMAN:

Okay, if the board goes down the tube like you are saying, then so does the licensing and the statutes?

ROBSON:

Right. In other words, if the board is phased out, the whole section and everything that they enforce is phased out. The State would probably try to come back during what they call a twilight period which you have got until next, not this July 1, '80 but July 1, '81. The Department of Professional Vocational Standards would come back and try to (undisc.) licensing, which they would do themselves under whatever criteria they wanted to do, which would probably just mix up all that much more. But apparently it's a combined political union/nonunion question right now and Mike Colletta is hanging onto it unless we can get somebody to twist his arm.

LOCKMAN:

What happened to the House Bill 994 then?

ROBSON:

The House Bill has gone to Senate and has .. is in Senate Committee currently.

DELK:

What committee is Colletta on?

ROBSON:

Let me take a look here and I will tell you in a flash. It's a committee of which he is chairman. They got enough damn fool committees in here to sink a ship. Rules Committee. That's the last step. It has gone through everything before going to floor. Colletta is Chairman of the Rules Committee, and that means it has passed everything excepting going onto the floor. Colletta, as Rules Chairman, (undisc.).

LOCKMAN:

That goes for the Senate Bill 553 or the House Bill 994?

ROBSON:

Right, which throws a new complex on everything cuz it just screws everything all up again. And I don't know. I sort of intend to try to get a few people that I know who are friends of Colletta to say, hey, if you're going to do this and if this is your reason, because you want to support a company that is hiring all out of state people, we're at least going to let it be known that this is an election year for you. You know, maybe that will get him off of it, I don't know. Unless you have some different feelings, it's a good thing this thing got going this morning because maybe we can find some way around that.

LOCKMAN:

Well, if that's his reasoning, that's not very good reasoning for the State of Alaska.

ROBSON:

Yeh, obviously it kind of screws things up and I talked to Dave Aaron, you know, who we met with when we were in Juneau..

LOCKMAN:

Right.

ROBSON:

..and he said, hey, here is the situation. We have done everything that we can do at this point but Colletta said he is going to hold it and he is going to kill it because this company, which it turned out then to be VECO, he said, well, it is a company which has a nonunion operation which is on Fairbanks Street in Anchorage. That tied down to which company it was.

LOCKMAN:

Well, what we should do is to talk with Mr. Colletta as board members and find out exactly why..what his reasoning is.

ROBSON:

Yeh, it would be interesting to see what he would say to somebody who wasn't a staff person, in other words, what public reasoning that he is attaching to this.

LOCKMAN:

Well, apparently, we don't have a quorum or will not be able to get a quorum. Elaine Garrett has not confirmed back yet but maybe you can. Is J.C. Wingfield.

ROBSON:

He is on the phone now.

LOCKMAN:

Oh.

WINGFIELD:

Yeh, I have been listening to you little devils.

LOCKMAN:

Oh, I see.

GARRETT:

Don.

LOCKMAN:

Okay, then we do then have a quorum for our special board meeting at this time.

ROBSON:

I wanted to pass that one thing onto you, Don, and then I should sort of bow out, not participate because I am not a board member but I wanted to let you know what the latest political hot potato was.

LOCKMAN:

Okay, thank you very kindly.

ROBSON:

Okay.

LOCKMAN:

Okay, at this time, the things that are in front of us is the regulations which we have the power to enact, change and regulate.

We had submitted a proposed regulations adoption to the Audit Committee and in reverse, have then received an amendment to those regulations by a committee that was put together in Juneau at the last Sunset regulation hearing. Each one of us should have a copy of that in front of us but I will go ahead and read the revision as it was described back to us. And the revision of regulation 12 AAC 72.015 is rescinded and changed to read as follows: Under heading of Welder Qualification Certificate Required. Welding performed in the state which is advertised for hire or is under a written contractual agreement for compensation shall be performed by a certified welder or under the direct supervision of a certified welder employed by the responsible firm. The welder certificate or certifications shall be within the appropriate rating in accordance with the applicable welding code or standard. And the next one would be 12 AAC 72.035, amended to read the underscored language. Under the Welder Qualification Certificate Issued. The welding inspector shall issue the welding qualification certificate in the appropriate rating to the applicant or company upon the applicant's successful completion of examination. The underscored areas is, this certificate shall bear the inspector's signature and state welding inspector's license number. So that is an addition. The next area of amendment was under 12 AAC 72.045, is amended to read. Under the heading of Requirements for Maintaining a Current Welder Qualification Certificate. Area (a), A welder qualification certificate is valid if it is kept current in compliance with the code under which it is issued unless stated otherwise by the job specification. (b) The expiration or revocation of one rating does not affect any remaining ratings. The following language was deleted from the existing code. (2) The welder has been continously employed on a welding process for which he is certified. So that area was deleted, so the continuously employed has been taken out because of the seasonal occupation of Alaska. The next area that was revised was under 12 AAC 72.055, is amended to delete words in parenthesis and to add words underscored. (a) is underscored. A person may not test a welder for the purpose of issuing a welder qualification certificate (parenthesis) (or inspect a welding operation in the state which welding failure would involve hazard to life or property), that is end of parenthesis, unless he or she holds a current valid welding inspecting license.

Okay, those parenthesis were deleted, so it would then just read, a person may not a test a welder for the purpose of issing a welding certificate in the State of Alaska in which welding...Wait a minute. A person may not test a welder for the purpose of issuing a welder qualification certificate unless he or she holds a current, valid welding inspector license. That's the way that would read, as amended. The next item amendment amended was 12 AAC 72.055(b), amended to read..to add the following section. A person may not inspect a public works and welding operation which requires inspection unless he or she holds a current, valid welding inspector license. Under (c) any welding operation in the state must be inspected by a licensed welding inspector if it is part of a public works construction project or the applicable code or specifications require inspection. (d) any welding oepration in the state may be inspected by a licensed welding inspector if it is advertised for hire or is performed under a written contractual agreement for compensation, and the word is may in there, not shall. (e) an engineer approved by the State Welding Board acting under the supervision of a licensed welding inspector may inspect public works construction projects where no licensed welding inspector is available. This section shall expire January 1, 1982. (f) an engineer applying for eligibility under Subsection (e) above shall submit a resume of their experience to the State Welding Board. The board may also require an interview before granting approval. That's an addition.

GARRETT:

Don.

LOCKMAN:

The next paragraph for revision is 12 AAC 72.105(a) is..

GARRETT:

Don.

LOCKMAN:

..is amended...

GARRETT:

Don, this is Elaine, can you hear me?

LOCKMAN:

Yes.

GARRETT:

I believe what you are reading from is an older version. It isn't what we had at the meeting, at the last meeting.

LOCKMAN:

Okay, what you had at the last meeting was the bill.

GARRETT:

No, it was the regulations as drafted by the Assistant Attorney General and it is somewhat different than what you are reading now. Remember, it's two pages, legal size pages.

DELK:

My question..this is Don Delk speaking. My question is who is going to draft regulations? The Attorney General, the House Commerce Committee, or the Welding Board?

GARRETT:

The Attorney General's Office drafted these in coordination with the House Commerce Committee.

ENGLISH:

We have to work with these, don't we?

GARRETT:

Don, do you have the latest version of the regulations?

LOCKMAN:

Well, I don't remember those being given out at the meeting. I have all of the documents here that we had at the meeting.

GARRETT:

Okay, we went over them word for word at the meeting and I've got a lot of notes here on things that the board discussed at that time.

LOCKMAN:

Well, maybe I am in error then.

GARRETT:

Have you got two legal size pages with regulations on them citing the authorities and everything?

LOCKMAN:

Okay, let me see what I have got here. Boy, I don't find them.

DELK:

What is the date on these, Elaine?

GARRETT:

Well, there isn't a date on it. It's..the first page has three paragraphs and cites the authority under each and the next one has several sections citing the authority under each one. If you don't have a copy I could read it but if none of the board members have a copy, I don't know. If you are going to consider these regulations

and adopt them, I don't think it would be appropriate to discuss the ones that were already revised.

LOCKMAN:

Okay, your copy there is it headed just with a 12 AAC 72.015 is amended to read?

GARRETT:

Yes, it does and then under the first paragraph the authority is AS 08.99.080(a)(1), (2), (5) and (9).

LOCKMAN:

Yeh, okay, I find it here.

GARRETT:

All right. That's the one that we need to work with.

MILLAR:

Just what do you expect the board to do? Are we suppose to agree with them or disagree with them or if we don't have any input, what difference does it make?

GARRETT:

The House Commerce Committee would like for you to agree with these and to adopt them at this time as emergency regulations, which would be in effect for 120 days.

MILLAR:

Anything else. They are just ramming this whatever way they want, whether we agree with them or disagree with them, I don't think really makes any difference.

DELK:

I agree with you, Pete.

GARRETT:

They would like to have you adopt these as emergency regulations and during the 120 day period that they would be in effect, the board would have regular regulations hearings such as you have had in the past, and sometime within that 120 days adopt regulations that you have come up with, either these or amended regulations but I am sure the Commerce Committee would like for you to not adopt them in a form that would change the intent.

MILLAR:

Well, um, without any input from the community as far as hearings go or anything like that? I couldn't say we could adopt those without changing the intent. I don't agree with what they are doing at all.

GARRETT:

No, during that 120 days you would have hearings just like you normally would under any regulation changes.

MILLAR:

Boy, what a way to pass law?

LOCKMAN:

Okay, Elaine, the legal size paper that you are referring to has not some of the wording that was originally received or was written by the temporary committee that was set up in Juneau.

GARRETT:

You're right, Don, it doesn't. It was worded this way by the Attorney General according to what her interpretation was of the draft she got and her discussions with Bob Aaron.

LOCKMAN:

Okay, let me quickly read that then. It's quite logic order. We reiterate on the revised regulation wording. Starting out at the top of the page it says 12 AAC 72.015 is amended to read: Welder Qualification Certificate Required. A person may not perform a welding operation in the state for compensation in which welding...

GARRETT:

Don.

LOCKMAN:

..or cause economic loss unless he or she holds a current, valid welder certificate.. qualification certificate in the appropriate rating.

GARRETT:

Don, that still is not the right one.

LOCKMAN:

That's the one...

GARRETT:

You are on the second page, I'm sorry.

LOCKMAN:

Pardon.

GARRETT:

I think you are on the right one, you are just on the second page.

LOCKMAN:

Okay, these are stapled together differently then but that was under 72.015 makes really no difference of whether we start on the first page or second page, they're separate paragraphs.

GARRETT:

Mine doesn't say that.

LOCKMAN:

Maybe you better read what you have, Elaine.

GARRETT:

All right, I will. 12 AAC 72.015 is amended to read: Welder Qualification Certificate Required. Welding performed in the state that is advertised for hire or is under a written contractual agreement for compensation may be performed only by a certified welder or under the direct supervision of a certified welder employed by the company responsible for performing the welding. A welder qualification certificate must be within the appropriate rating in accordance with the applicable welding code or standard. 12 AAC 72.035 is amended to read: Welder Qualification Certificate Issued. The welding inspector shall issue the welding qualification certificate in the appropriate rating to the applicant or company upon the applicant's successful completion of the examination. A certificate issued under this section must bear the welding inspector's signature and license number. 12 AAC 72.045 is amended to read: Requirements for Maintaining a Current Welder Qualification Certificate. (a) A welder qualification certificate is valid if it is kept current in compliance with the code under which it is issued unless otherwise stated in the job specification. (b) The expiration or revocation of one rating does not affect any remaining rating. 12 AAC 72.055 is amended to read: Welding Inspector License Required. (a) A person may not test a welder for the purpose of issuing a welder qualification certificate unless he or she holds a current, valid welding inspector license. (b) If the inspection of a welding operation is required by law, regulation, ordinance, code, job specification or agreement, the inspection may be performed only by a licensed welding inspector, except in the circumstances described in (e), that's "e" as in every, of this section. (c) A welding operation must be inspected by a licensed welding inspector if inspection is required by the applicable code or job specification. (d) A welding operation may be inspected by a licensed welding inspector if it is advertised for hire or is performed under a written contractual agreement for compensation. (e) An engineer approved by the board may inspect a welding operation in a public works construction project if a licensed welding inspector is not

available and if the inspection is performed under directions provided by a licensed welding inspector. (f) An engineer applying for eligibility under (e) of this section shall submit a resume of his or her experience to the board. The board may also require an interview before granting approval. (g) Subsections (e), as in every, and (f) of this section expire January 1, 1982. 12 AAC 72.105(a) is amended to read: A welding inspector license is valid from the date of issuance until the expiration date of the inspector's American Welding Society welder inspector certification. 12 AAC 72.195(b), as in baby, is amended to read: Application for renewal of a welding inspector liense must be made to the department on a form provided by the department and must be accompanied by a fee of $200. That's the end of the proposed regu'ations.

LOCKMAN:

Well, that is essentially what we were reading there but there is some slight changes.

GARRETT:

Well, we just want to make sure that we are all discussing the same regulations so that if they are adopted, we will have the correct ones.

LOCKMAN:

Okay, all the board members have heard the proposed regulations' last revisions read by Elaine Garrett. The Chair at this time would entertain a motion to the adoption of those regulations.

DELK:

This is Don Delk and I would like to make a motion and I would like to make a motion that the board do not accept the proposed regulations as just read by Elaine Garrett.

LOCKMAN:

Okay, Don, you can't make a negative motion. You have to make a positive motion and then vote upon it and if you wish not to vote for it, then of course you vote against it.

DELK:

I am not sure how I would put this into a positive motion.

LOCKMAN:

Well, you just move that we adopt the regulations and then if it is seconded, we will vote either to adopt it or not to adopt it, is all. Would you like to make a positive motion there?

DELK:

Nope.

LOCKMAM:

Okay.

WINGFIELD:

This is Wingfield. I will make a motion to adopt.

LOCKMAN:

Okay, motion is made by J.C. Wingfield to adopt the regulations as read by Elaine Garrett. Do we have a second to that motion?

MILLAR:

Okay, I will second it.

LOCKMAN:

The motion has been seconded. It is now open for discussion. Do I hear any discussion?

DELK:

Yes.

LOCKMAN:

Don.

DELK:

The first...right in the first paragraph 015. It doesn't even require that a certified welder weld on projects. It says the certified welders can weld under direct supervision, I mean, welders may weld under direct supervision of a certified welder. I don't think that is even in line with what this board has been working for for years.

MILLAR:

I don't think AWS agrees with anything like that either.

WINGFIELD:

Yeh, I think we are all in agreement. Why don't you just call for the question and let it die there.

LOCKMAN:

Okay. Is there any other discussion? Hearing no discussion, no further discussion, the Chair will call for the vote of the motion at this time. All in favor of the motion signify by saying "aye" with your name. All those opposed signify "aye" with your name.

WINGFIELD:

"Aye" Wingfield.

MILLAR:

Peter Millar "aye."

DELK:

"Aye" Don Delk.

LOCKMAN:

Okay, the motion is defeated. No positive action will be taken on that regulation adoption. Okay, at this time, I would like to set the date for the next board meeting. The next board meeting to be scheduled for a regular..on a regular basis would have been July 25 had it been submitted by motion to the last board meeting where there was no quorum. At this time, the Chair would entertain a motion to set the next board meeting for July 25, Friday, at 2:00 p.m. Do I hear a motion to that effect?

WINGFIELD:

Yeh, this is Wingfield, I'll make the motion.

LOCKMAN:

Okay, J.C. Winglield moves that the next regular meeting be held July 25 at 2:00 p.m. at the same place, I presume. Now is there a second to that motion?

MILLAR:

I will second it.

LOCKMAN:

Okay, the motion has been seconded by Pete Millar. Any discussion on that? Hearing no discussion, all in favor signify by saying "aye" with your name.

WINGFIELD:

Wingfield "aye."

MILLAR:

"Aye" Millar.

DELK:

"Aye" Don Delk.

LOCKMAN:

"Aye" Don Lockman. Okay, the next .. motion carried. The next meeting then will be scheduled..a regular meeting of July 25 at 2:00 p.m. in Anchorage at the same meeting place that we have been holding at the Community College, Room 103, Building G, at the Anchorage Community College. Okay, is there any other business that we would like to attend to at this time?

WINGFIELD:

This is Wingfield.

ENGLISH:

Don, how about the welding board exam? Is it going to be the 26th of July?

LOCKMAN:

Oh, excuse me, J.C. The examination for the next AWS meeting or examination should say, would normally be held on the 26th of July. The board is apparently still having those meetings scheduled on a special meeting basis twice a year. The July 26th proposal would be a special meeting, excuse me, a special examination. Is the state still funding the cost for those, Jane?

ENGLISH:

For those special meetings?

LOCKMAN:

On those special examinations?

ENGLISH:

As far as I know.

LOCKMAN:

Okay, if there is money left in the budget to pay the American Welding Society for the special examination for July, the Chair would at this time entertain a motion that we conduct a special examination...July 26th that the Anchorage Community College campus starting at 8:00 a.m.

DELK:

This is Don Delk. I will make a motion that we hold special examinations on July 26 at 8:00.

LOCKMAN:

Do I hear a second?

MILLAR:

Second.

LOCKMAN:

Okay the motion has been made and seconded that we hold a special examination. Is there any discussion?

MILLAR:

What does it cost anyway to hold one of those special examinations?

LOCKMAN:

Jane, could you fill us in on that?

ENGLISH:

H:

I really and truly don't know what the exact amount is because Carol Fredrickkson never told me. She just paid the bill.

LOCKMAN:

Okay, the way that I understand that if they do not have to send a representative up, if we handle the proctoring ourselves, they will charge us $250 for the examination.

ENGLISH:

That's probably what she has paid then.

LOCKMAN:

If they send in a proctor, then they would charge us for his transportation and expenses.

ENGLISH:

Right.

MILLAR:

We usually have somebody come up from Juneau also to monitor that for the Welding Board?

ENGLISH:

I do.

MILLAR:

We do.

LOCKMAN:

The cost of that is incurred by the state and I am not sure how it comes out of our budget, the Welding Board, but the salary is paid on a normal basis so the individual's salary is I think taken care of on a regular basis rather than a special application. Any other discussion on the examination? Motion? Hearing no further discussion, we will call for vote. All those in favor of holding the 26th examination signify by saying "aye" with your name.

WINGFIELD:

"Aye" Wingfield.

DELK:

"Aye" Don Delk.

MILLAR:

"Aye" Pete Millar.

LOCKMAN:

And "aye" Don Lockman. Motion carried unanimously. Is there any other further discussions.. business to be brought up. J.C., you had a thing you wanted to say?

WINGFIELD:

The only thing that I wanted to say, I think that all of us if we have a chance today or the next day or so, we ought to call Colletta and find out what his thinking is when he says (undisc.).

LOCKMAN:

Okay, I am sure that we will do that.

DELK:

This is Don Delk. If Colletta is holding up what we just did not approve.. (End of Side 1)...

ENGLISH:

You are on tape now.

LOCKMAN:

Ha ha, Jane, we tricked you. We are all done.

ENGLISH:

That's not fair.

LOCKMAN:

Okay, Elaine, I would like to request that you send all the board members a copy of what you had read to us.

ENGLISH:

I will send it you. She has left.

LOCKMAN:

Okay.

ENGLISH:

I sent that up by Nancy, but I will send it to you again.

LOCKMAN:

Okay. We must have gotten it and I just misplaced it or something. I thought I had the latest in front of me but that's fine as long as we heard what the verbage was. It really met no difference who read it.

MILLAR:

Well, my understanding of this whole deal is whether this gets out of committee or not if, don't approve this emergency regulation, that the House Commerce Committee is going to recommend that we expire to start with.

LOCKMAN:

Well, that's a...there's two bills in and if either one of them makes the floor, they will probably be voted to extend the Welding Board. However, they both have to..or either one has to get through

the Rules apparently and that's where it is hung up and if Colletta has enough influence to keep it from getting out of the Rules Committee, it will never get to the floor and then the board will automatically be Sunsetted.

DELK:

Well, if either on of these bills clears the House, I mean, clears the Legislature and get voted on, I don't agree with either one of them, either the Senate Bill or the House Bill, and we might as well been abondoned anyway, because I do not agree with the House Bill or the Senate Bill. Both of them have things that the Welding Board has never pushed for in the past and are against the concepts of what the Welding Board has had in the past so I don't, you know, I would never approve either the House Bill or the Senate Bill and according to my understanding, it looks like the Welding Board is going to fold.

LOCKMAN:

Well, the Welding Board has very little influence as to the statutes anyway. All we can do is make recommendations.

MILLAR:

Yes, but they have made a statute, the Senate Bill 553 has put things in their statute changes that are exactly what the Audits recommended that we not do. The Audit recommended that we change the statutes..that the statutes be changed more in line with the board's activities to where the Senate Bill is going right back to the Welding Board setting up certification tests, which is what the Welding Board has never been able to do and never will be able to do.

LOCKMAN:

That's correct. And so the revision of the statutes is not...

DELK:

It is just as bad as the revisions of the regulations. Neither one of them are any good. We don't have anything even if we are, uh, we are ... I think the Audit Committee was harder than the Senate or the House here.

WINGFIELD:

That very well may be. It sounds like it.

DELK:

If the Senate and the House are going to take over the Welding Board there is not a whole lot of sense in having a Welding Board.

LOCKMAN:

Well, as it stands at this point then, the regulations that we had submitted to the Audit Committee were the regulations that should be reprinted into the book if the board is continued. They were passed at a meeting unanimously and submitted to the House Committee on the Sunset Legislation.

DELK:

But the House Committee has not agreed, to or the Senate either one, agreed to pass the regulation changes that the board proposed and how are the proposed changes put forth by the board going to become part of the new regulations or part of the regulations? They are not going to.

LOCKMAN:

Well, probably not, but at least we have done our fair share in revising the regulations to meet the actions in which we have been working under and come in line..more in line with what we felt the state needed. If the committees, Senate, excuse me, the House Committee did not see fit to continue our efforts, our verbage, we really can't do much about that.

WINGFIELD:

Listen, gentlemen, I have got an 11:00 meeting I have got to go so I am going to cut my end of it short.

LOCKMAN:

Okay, I think we are all kind of busy so is there any further discussions on any other business to be taken upon?

ENGLISH:

I don't have any.

LOCKMAN:

Pardon.

ENGLISH:

I don't have any.

LOCKMAN:

Okay, hearing no further discussion, the Chair will entertain a motion to adjourn.

MILLAR:

I move that we adjourn.

DELK:

I will second that.

LOCKMAN:

Motion made by Pete Millar and seconded by Don Delk that we adjourn the special meeting at 10:50 a.m. All those favor signify by saying "aye" and your name.

WINGFIELD:

"Aye" Wingfield.

DELK:

"Aye" Delk.

MILLAR:

"Aye" Millar.

LOCKMAN:

"Aye" Don Lockman. Okay, motion carried. Meeting is adjourned.

final - CS for Senate
CSSB 553

Original sponsor: Commerce Committee

Offered: 4/14/80
Referred: Rules

IN THE HOUSE BY THE COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 994 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act continuing the existence of the Board of Welding Examiners, and amending the statute relating to its powers and responsibilities; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.99.010 is amended to read:

Sec. 08.99.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Welding Examiners, consisting of <u>five</u> [SEVEN] members appointed by the governor.

* Sec. 2. AS 08.99.020 is amended to read:

Sec. 08.99.020. TERM OF OFFICE. Board members serve a term of five years. * Board members are to serve for not more than 2 consecutive terms [HOWEVER, OF THE MEMBERS FIRST APPOINTED, ONE SHALL BE APPOINTED FOR A TERM OF ONE YEAR, ONE FOR TWO YEARS, ONE FOR THREE YEARS, ONE FOR FOUR YEARS, AND THREE FOR TERMS OF FIVE YEARS.]

* Sec. 3. AS 08.99.030 is amended to read:

Sec. 08.99.030. SOURCE OF APPOINTMENTS. The governor shall appoint <u>three of the</u> board members from a list of persons prepared by the Alaska Chapter of the American Welding Society and the Alaska Society of Professional Engineers and submitted at least 30 days before the expiration of a term and not more than 60 days after a vacancy occurs in an unexpired term. The list shall contain not less than two recommended candidates for each appointment. The governor shall make appointments within 30 days after receiving the list. <u>The governor shall appoint two members from the general public, one of whom must have general knowledge</u>

of welding.

* Sec. 4. AS 08.99.050 is amended to read:

Sec. 08.99.050. QUALIFICATIONS OF BOARD MEMBERS. Each member of the board shall be a citizen of the United States and a resident of the state. At least one [THREE] member [MEMBERS] shall have an [BE PERSONS WITH] engineering degree [DEGREES] or registration as an engineer and [EACH ENGINEER MEMBER] shall have at least five years engineering experience and at least three years experience in welding. At least two members shall be welding inspectors certified by the American Welding Society. [ALL MEMBERS SHALL HAVE EXTENSIVE EXPERIENCE IN WELDING.]

* Sec. 5. AS 08.99.080(a)(1) is amended to read:

(1) adopt [ESTABLISH AND PROMULGATE RULES AND] regulations concerning certification of welders and welding inspectors in the state;

* Sec. 6. AS 08.99.080(a)(2) is amended to read:

(2) establish and define certification tests as they apply to various types and categories of work done in or for the state or for a political subdivision of the state;

* Sec. 7. AS 08.99.080(a)(3) is amended to read:

(3) work with federal and private agencies and specifying engineers to establish uniform testing and certifying methods [FOR ALL WELDERS THROUGHOUT THE STATE];

* Sec. 8. AS 08.99.080(a)(9) is amended to read:

(9) adopt [PROMULGATE] regulations concerning the quality and inspection of welds and qualifications of welders required in specific areas of industry and construction, including construction by or on behalf of the state or a political subdivision of the state, and designate reporting procedures necessary to certify compliance with these quality standards;

* Sec. 9. AS 08.99.080(a) is amended by adding new paragraphs to read:

(11) prepare an annual budget to be submitted to the legislature and request an annual appropriation from the general fund to cover operating expenses of the board, not to exceed the amount of income to be received from fees under this chapter for the year;

(12) adopt regulations requiring the application of the latest standards and codes adopted by the American Welding Society if a contract or job specification fails to designate the standards or codes to be applied to a particular weldment.

* Sec. 10. AS 08.99.080(b) is amended to read:

(b) The board may request [TECHNICAL] personnel from the Department of Commerce and Economic Development [LABOR] for the purpose of reviewing and analyzing reports and may request field inspection by the department for the purpose of assuring compliance with, and enforcement of the regulations [, RULES] and orders adopted [PROMULGATED] under this chapter [AS 08.99.010 - 08.99.110].

* Sec. 11. AS 08.99.080 is amended by adding a new subsection to read:

(c) The board may adopt regulations to permit certified welding inspectors to examine, certify, and renew certifications of welders.

* Sec. 12. AS 08.99 is amended by adding a new section to read:

Sec. 08.99.085. RENEWAL OF WELDING INSPECTOR CERTIFICATES. Notwithstanding AS 08.01.100(a), the certificate of a welding inspector issued under this chapter expires on the date of expiration of the welding inspectors certification by the American Welding Society.

* Sec. 13. AS 08.03.010(c) is amended by adding a new paragraph to read:

(2) Board of Welding Examiners (AS 08.99.010) -- June 30, 1984.

* Sec. 14. AS 08.99.110 and AS 08.03.010(b)(10) are repealed.

* Sec. 15. Members of the Board of Welding Examiners serving on the board

on the effective date of this Act shall continue in office until the expiration of their terms. In the year that three terms of members expire simultaneously, two of those terms are abolished upon their expiration.

* Sec. 16. This Act takes effect ~~June 30, 1980.~~ April 25, 1980

CHAPTER 72.
BOARD OF WELDING EXAMINERS

Article
1. Codes
2. Welders
3. Welding Inspectors
4. General Provisions

ARTICLE 1.
CODES

Section
5. Rating
10. (Repealed)

12 AAC 72.005. RATING FOR WELDERS. Ratings for welders shall be governed by the code requirements in the job specifications. In the absence of code requirements, welders shall be certified in accordance with the applicable American Welding Society Code. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2) and (9)

12 AAC 72.010. CERTIFICATE REQUIRED. Repealed. (8/21/78, Reg. 67)

ARTICLE 2.
WELDERS

Section
15. Welder qualification certificate required
20. (Repealed)
25. Requirements for welder qualification certificate
30. (Repealed)
35. Welder qualification certificate issued
40. (Repealed)
45. Requirements for maintaining a current welder qualification certificate

12 AAC 72.015. WELDER QUALIFICATION CERTIFICATE REQUIRED. A person may not perform a welding operation in the state for compensation, in which weldment failure would involve hazard to life or property unless he or she holds a current, valid welder qualification certificate in the appropriate rating. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2),(5) and (9)

12 AAC 72.020. DURATION AND RENEWAL. Repealed. (8/21/78, Reg. 67)

12 AAC 72.025. REQUIREMENTS FOR WELDER QUALIFICATION CERTIFICATE. (a) Testing of welders shall be done under the direct supervision of a licensed welding inspector.

(b) An applicant for a welder qualification certificate or a company desiring to have a welder qualified shall

(1) submit to the welding inspector the welding procedure specifications or the welding performance specifications, or both when indicated, for the appropriate rating; and

(2) complete the welding test for the appropriate rating according to the terms of the welding procedure specifications or the welding performance specifications, or both when indicated.

(c) Prequalified procedure specifications may be used for test administration according to applicable codes. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2),(5) and (9)

12 AAC 72.030. TEST SELECTION. Repealed. (8/21/78, Reg. 67)

12 AAC 72.035. WELDER QUALIFICATION CERTIFICATE ISSUED. The welding inspector shall issue the welding qualification certificate in the appropriate rating to the applicant or company upon the applicant's successful completion of the examination. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(7) and (10)

12 AAC 72.040. QUALIFICATION. Repealed (8/21/78, Reg. 67)

12 AAC 72.045. REQUIREMENTS FOR MAINTAINING A CURRENT WELDER QUALIFICATION CERTIFICATE. (a) A welder qualification certificate is valid if

(1) it is kept current in compliance with the code under which it is issued unless stated otherwise in the job specification; and

(2) the welder has been continuously employed on the welding process for which he is certified.

(b) The expiration or revocation of one rating does not affect any remaining rating. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(5) and (10)

ARTICLE 3.
WELDING INSPECTORS

Section

50. (Repealed)
55. Welding inspector license required
60. (Repealed)
65. Requirements for welding inspector license
70. (Repealed)
75. Application for welding inspector license
80. (Repealed)
85. Examination for welding inspector license
90. (Repealed)
95. Welding inspector license issued
105. Welding inspector license expiration and renewal
115. Duties and responsibilities of welding inspector
125. Prohibited conduct of welding inspector

12 AAC 72.050. TEST FACILITIES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.055. WELDING INSPECTOR LICENSE REQUIRED. A person may not test a welder for the purpose of issuing a welder qualification certificate or inspect a welding operation in the state in which weldment failure would involve hazard to life or property unless he or she holds a current, valid welding inspector license. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7) and (10)

12 AAC 72.060. WELD QUALIFIER. Repealed. (8/21/78, Reg. 67)

12 AAC 72.065. REQUIREMENTS FOR WELDING INSPECTOR LICENSE. (a) An applicant for a welding inspector license must

(1) be a high school graduate or hold a state or military approved high school equivalency diploma;

(2) have no less than five years' experience at the technical level in an occupational function that directly involved

(A) design experience such as preparation of plans and drawings for weldment construction according to a code, standard or specification;

(B) construction experience such as actual construction or fabrication and erection of weldments in accordance with a code, standard, specification or drawing;

(C) maintenance experience such as detection and measurement of weld inadequacies or discontinuities in accordance with specified procedures; and

(D) repair experience such as repair or replacement of welds that were determined inadequate or defective by reference to a code, standard, specification or drawing;

(3) be familiar with and understand the fundamentals of shielded metal arc welding, stud arc welding, submerged arc welding, flux cored arc welding, gas metal arc welding, gas tungsten arc welding, electroslag welding, oxyfuel gas welding, brazing, thermal cutting and mechanical cutting;

(4) be capable of writing clear and concise reports and maintaining records;

(5) pass an eye examination to prove natural or corrected near distance acuity for reading J-1 letters at a distance of not less than 12 inches on Jaeger's standard test type chart for near vision, or equivalent test, and natural or corrected far distance acuity of 20/40 as evidenced by a written, signed statement from a physician or an optometrist;

(6) pass a closed book test on welding inspection fundamentals such as welding processes, nondestructive testing methods, and interpretation;

(7) pass an open book test on general code or standard requirements such as fabrication tolerances and preheat requirements;

(8) pass a demonstration of competency in the use of tools, gauges, and instruments pertaining to weld inspection; and

(9) submit evidence of having previously passed an all position welding qualification test in at least one welding process.

(b) The requirements of (a)(3) – (8) of this section will be waived for an applicant possessing a current welding inspector certificate issued by the American Welding Society in accordance with AWS QC 1-77, "Standard for Qualification and Certification of Welding Inspectors."

(c) An applicant may substitute up to two years of post-high-school education for two years of the five-year experience relevant to any of the functions covered by (a)(2) of this section and approved by the board. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(5) and (10)

12 AAC 72.070. TEST FEES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.075. APPLICATION FOR WELDING INSPECTOR LICENSE. Application for a welding inspector license must be made to the department on a form provided by the department and must be accompanied by a fee of $25. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(6) and (10)

12 AAC 72.080. CODES. Repealed. (8/21/78, Reg. 67)

12 AAC 72.085. EXAMINATION FOR WELDING INSPECTOR LICENSE. Examinations for welding inspector licenses will be conducted four times a year. Additional examinations may be conducted if the applicant furnishes all necessary facilities and pays all expenses incurred by the examiners. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(1),(2), (7) and (10)

12 AAC 71.090. DEFINITIONS. Repealed. (8/21/78, Reg. 67)

12 AAC 72.095. WELDING INSPECTOR LICENSE ISSUED. The department will issue a welding inspector license to an applicant who

meets the requirements of sec. 65 of this chapter. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7) and (10)

12 AAC 72.105. WELDING INSPECTOR LICENSE EXPIRATION AND RENEWAL. (a) A welding inspector license is valid until March 1 of each year unless revoked for reasons stated in sec. 125 of this chapter.

(b) Application for renewal of a welding inspector license must be made to the department on a form provided by the department no later than February first of each year and must be accompanied by a fee of $10.

(c) An application for renewal of a welding inspector license must contain

(1) evidence of compliance with the requirement of sec. 65(a)(5) of this chapter; and

(2) evidence of employment as a welding inspector in the form of

(A) a signed statement of an employer;

(B) payroll records indicating the position held; or

(C) affidavits of two fellow employees attesting to employment activity of the applicant.

(d) Application for renewal of a welding inspector license which has lapsed is considered a new application. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7) and (10)

12 AAC 72.115. DUTIES AND RESPONSIBILITIES OF A WELDING INSPECTOR. (a) A welding inspector shall, when applicable

(1) keep the department advised of his current address for the mailing of renewal notices;

(2) verify that the work inspected conforms to the requirements of the applicable codes, standards and job specifications;

(3) verify that the base materials and consumable welding materials conform to the specification requirements and that the specified welding filler metals are used on each base metal or combination of base metals;

(4) verify that the welding equipment to be used for the work is that which is specified in the welding procedure and has the capability to produce the specified welds;

(5) verify that the welding procedures are as specified, and are qualified and available to the welders for reference;

(6) verify that the welders have been properly qualified in accordance with the applicable codes and standards and that their qualification authorizes them to use the welding procedures specified for the work;

(7) observe the qualification tests when qualifying welders;

(8) verify that only specified and properly qualified welding procedures are used for the work;

(9) verify that the joint preparation and fit-up meets the requirements of the welding procedure and drawings;

(10) verify that the specified filler metals are used and that the filler metals are maintained in proper condition for use as specified;

(11) observe the technique and performance of each welder;

(12) examine the work for conformance to the requirements of the applicable codes, standards, specifications and drawings;

(13) identify the work inspected with specified marking methods or appropriate records;

(14) perform the necessary visual inspections;

(15) verify that the required visual and other nondestructive examinations have been performed by qualified personnel in the specified manner and review the resulting information to assure that the results are complete;

(16) perform nondestructive examinations that are specified, if he or she is qualified in accordance with the specified requirements;

(17) prepare clear and concise reports and keep necessary records of the welding procedure, the welding procedure qualifications, the welder qualifications, the control of welding materials and the results of inspections and tests;

(18) act with complete integrity in professional matters and be forthright and candid to the board or its representative on matters pertaining to this standard;

(19) to preserve the health and well-being of the public by performing the duties required of weld inspection in a conscientious and impartial manner to the full extent of his or her responsibilities and qualifications;

(20) undertake and perform assignments only when qualified by training, experience, and capability;

(21) be objective, thorough and factual in any written report, statement or testimony of the work and include all relevant or pertinent information in such communiques or testimonials;

(22) sign only for work that he or she has inspected, or for work over which he or she has personal knowledge through direct technical control; and

(23) conscientiously avoid conflict of interests with the employer or client and disclose any business association, interests, or circumstances that might be so considered.

(b) If there is evidence that the welder's work does not conform to the requirements of the applicable code, standard or specification, the welding inspector may require requalification of the welder. The welding inspector shall require a requalification of a welder if that person's qualification is not current by the requirements of the applicable codes, standards or specifications.

(c) If the welding inspector is to perform nondestructive examinations other than visual, and there are no specified qualification requirements, he or she must be qualified and certified in accordance with the Recommended Practice No. SNT-TC-1A, "Personnel Qualification and Certification for Nondestructive Testing," June 1975. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7),(9) and (10)

12 AAC 72.125. PROHIBITED CONDUCT OF WELDING INSPECTOR. (a) A welding inspector licensed under this chapter is prohibited from performing acts including

(1) signing a blank welder qualification certificate;

(2) issuing a welding qualification certificate to a welder not tested under his or her direct supervision;

(3) delegating his or her responsibility in testing of welders;

(4) paying, soliciting, or offering, directly or indirectly, any bribe or commission for professional employment with the exception of the usual commission required by employment agencies;

(5) falsifying, exaggerating, or indulging in the misrepresentation of personal academic and professional qualifications, past assignments, accomplishments, and responsibilities or those of his or her associates;

(6) issuing statements, criticisms, or arguments on weld inspection matters connected with public policy which are solicited or paid for by an interested party or parties, without first identifying the party and the speaker and disclosing any possible pecuniary interest;

(7) expressing an opinion on a weld inspection subject unless it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence pertinent to the subject and upon honest conviction of the accuracy and propriety of the statement;

(8) accepting compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties or their authorized agents;

(9) soliciting or accepting gratuities, directly or indirectly, from any party or parties dealing with the client or employer in connection with the welding inspector's work; and

(10) associating with or knowingly participating in a fraudulent or dishonest venture.

(b) The board will suspend, refuse renewal of or revoke the welding inspector's license, place the license holder on probation, or reprimand the holder, if he or she is found to have engaged in prohibited conduct. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7),(9) and (10)

ARTICLE 4.
GENERAL PROVISIONS

Section
899. Weld qualifier license
900. Definitions

12 AAC 72.899. WELD QUALIFIER LICENSE. A weld qualifier license issued under the authority of this chapter as it existed between August 2, 1973 and the effective date of this section is valid until six months after the effective date of this section and may not be renewed. (Eff. 8/21/78, Reg. 67)

Authority: AS 08.99.080(a)(7)

12 AAC 72.900. DEFINITIONS. (a) In this chapter

(1) "appropriate rating" means that rating which is required by the specific code designated in the job specifications; when there is no job specification or a specific code is not designated in the job specification, appropriate rating is not less than the all-position certification issued in accordance with the current edition of the American Welding Society Code;

(2) "board" means the Board of Welding Examiners;

(3) "code" means nationally recognized welding, nondestructive testing or engineering principles or rules published as guides or requirements or both by societies or agencies charged with establishing such guidelines;

(4) "continuous employment" means employment without interruption of more than 90 consecutive days unless otherwise specified in the code under which the certificate is being renewed;

(5) "coupon" means a piece of metal cut and sectioned for testing;

(6) "cutting process" means a process in which the severing or removing of metals is effected;

(7) "department" means the Department of Commerce and Economic Development;

(8) "direct supervision" means being physically present at the work site and in personal charge of the work being performed;

(9) "job specifications" means the written document setting out the specific construction standards to be adhered to for the project;

(10) "rating" means a particular skill level in the art of welding;

(11) "responsibility" means being accountable to the board or its agents or both for one's action relating to the requirements of this chapter;

(12) "standards" means minimum acceptable guidelines established by societies or agencies or both charged with the responsibility for promulgating such guidelines;

(13) "technical level" means a level of work in welding using mathematics and science such as would require at least two years of post-high-school study at an accredited engineering school or technical institute or equivalent study;

(14) "valid" means having legal force and properly executed and binding under the law and is in compliance with the appropriate code, standard or specification;

(15) "weld testing methods" means the destructive or nondestructive means of evaluating the integrity of the weld metal or heat affected zone of the base material or both;

(16) "welder" means welder, welding operator and tacker;

(17) "welding" means the metal joining process used in making welds;

(18) "welding inspector" means a person meeting the requirements of secs. 55 – 125 of this chapter;

(19) "welding performance specification" means a document required before testing, setting the criteria for demonstration of a welder's ability to produce welds meeting prescribed standards;

(20) "welding procedure" means a written document specifying the essential variables as listed in the appropriate welding or engineering code or both;

(21) "welding procedure specification" means a document required before welding on any structure, specifying the parameters and requirements which control the quality of the welding for that structure;

(22) "welding process" means the method of application of heat or filler metal or both to complete the joining process;

(23) "welding qualification certificate" means a certificate issued under the authority of the board by a licensed welding inspector to a person verifying that he or she has successfully performed one or more of the specific welding tests required for a certification to a particular welding or engineering code;

(24) "weldment" means an assembly whose component parts are joined by welding.

(b) Terms not defined in this section shall be construed in accordance with American Welding Society A3.0-76, "Terms and Definitions." (Eff. 8/21 '78, Reg. 67)

Authority: AS 08.99.080(a)(1) and (9)

HB

452

(RULES)

COMMITTEE REPORT

SENATE

FURTHER: None

3/6/80

Date: Mar 6, 1980

Mr. President:

The Committee on COMMERCE has had CSHB 452 (Rules)
credit unions

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[✓] reports it back with~~out~~ individual recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Brad Bradley

Tim Kelly

[illegible]

Arlin Stringulewski

MEMBERS HAVING OTHER RECOMMENDATIONS:

~~[illegible]~~

Ferguson (No Rec)

Brad Bradley
CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA
THE LEGISLATURE

POUCH V, STATE CAPITOL
JUNEAU, ALASKA 99811

SENATE

TO Christian Basle

REMARKS: Commerce Committee

F/ Note on HB 452

FROM Senate Secretary's Office DATE 3/7/90

LAA 25-5

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE CSSB-225

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB-452
Title Act providing for state-chartered Credit Unions
Requested by Senator Bradley Date

II. FISCAL DETAIL
Agency Affected Commerce and Economic Development
Program Category Affected Public Protection
BRU, Program, or Subprogram(s) Affected Banking & Securities
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES		120.4	178.7	196.6	216.3	237.9
200	TRAVEL		32.1	32.0	40.0	50.0	62.5
300	CONTRACTUAL		40.9	34.9	37.0	39.2	40.4
400	COMMODITIES		3.0	3.3	3.6	4.0	4.4
500	EQUIPMENT		5.0	7.5	1.5	1.7	1.9
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		201.4	256.4	278.7	311.2	347.2

FUNDING (Thousands of Dollars)

GENERAL FUND		157.9	202.9	222.0	251.1	283.5
FEDERAL FUNDS						
OTHER (Specify Fund Source)		43.5	53.5	56.7	60.1	63.7

POSITIONS

FULL TIME		3	4	4	4	4
PART TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This is a revision of the fiscal note prepared for SB 225 in July, 1979. If the bill should have an effective date in FY 80 an immediate startup is desired, supplemental funding would be necessary. The bill provides for the incorporation and regulation of credit unions. In addition, it provides the state-chartered credit unions will pay the cost incurred by the department in conducting examinations application investigations in accordance with AS 06.01.010. The bill requires an ann examination of each state-chartered credit union. Assuming there are approximately 1 credit unions chartered and doing business in the state and 10 man-days per credit union examination or application and including one-half the time of an administrative assistant to support the examiner would bring the total to $43,518.

It will be necessary to hire an experienced credit union examiner at the start of the program. This will involve out-of-state hire in order to find a qualified examiner.

IV. DATE 1/29/80 PREPARED BY Julius J. Brecht
AGENCY Banking & Securities
PHONE 465-2521

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSSB 225
Title Act providing for state-chartered credit unions
Requested by Senator Bradley Date

II. FISCAL DETAIL
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Program Category Affected Public Protection
BRU, Program, or Subprogram(s) Affected Banking & Securities
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500	EQUIPMENT		5.0	7.5	1.5	1.7	1.9
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700	GRANTS, CLAIMS, ETC.						
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POSITIONS

FULL TIME		3	4	4	4	4
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TEMPORARY		0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This is a revision of the fiscal note prepared for SB 225 in July, 1979. If the bill should have an effective date in FY 80 an immediate startup is desired, supplemental funding would be necessary. The bill provides for the incorporation and regulation of credit unions. In addition, it provides the state-chartered credit unions will pay the cost incurred by the department in conducting examinations application investigations in accordance with AS 06.01.010. The bill requires an annua examination of each state-chartered credit union. Assuming there are approximately 15 credit unions chartered and doing business in the state and 10 man-days per credit union examination or application and including one-half the time of an administrative assistant to support the examiner would bring the total to $43,518.

It will be necessary to hire an experienced credit union examiner at the start of the program. This will involve out-of-state hire in order to find a qualified examiner.

IV. DATE 1/29/80 PREPARED BY Julius J. Brecht
AGENCY Banking & Securities
PHONE 465-2521

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

In addition to these personnel needs, a member of the division's examination staff assisted by the administrative assistant will spend the remaining time responding to inquiries and complaints from the public concerning credit unions and take care of administrative matters relative to credit union regulation. It is estimated that at least the time of one and one-half examiners plus the full time of the administrative assistant would be necessary to handle the full administration and regulation of state-chartered credit unions under SB 225.

The present examination staff can easily use the additional one-half of an examiner to take care of the statistical matters and added workload related to the decided increase in new bank and branch applications, new savings and loan and branch applications, mergers and conversions of existing financial institutions, as well as the added examination workload.

Finally, the contractual budget for FY 81 includes $7,500 to have an individual(s) familiar with the regulation of state-chartered credit unions draft regulations and set up office and examination procedures, design reports, etc., for the administration of a credit union act. The division does not have the personnel to take care of these matters in a timely fashion and at the same time main present responsibilities.

Pork

5/14/80 Hold one day
By Rep. Hays.

CONFERENCE COMMITTEE REPORT

5/16/80 - To the Gov.

DATE: May 14 1980

Mr. President:
Mr. Speaker:

The ~~FBBE~~ Conference Committee which has had

CSHB 452 (Rules) Credit unions; eff date
&
CSHB 452(Rls)amS Same title

16 yeas
3 nays
(Hankwerth
Ray
2 legis)

under consideration, recommends that

FCCSHB 452 Financial institutions; providing for state credit unions and adding to the powers of mutual savings banks; e.d.

be adopted.

Senate Members:

Senator Colletta, Chairman

Senator Hackney

Senator Fahrenkamp

House Members:

Rep. McKinnon, Chairman

Rep. Smith

Rep. O'Connell

H/S 55 (Rev. 11/78)

August 14, 1979

Billy:

Although the attached letter was sent under Brad's signature, could you please return all correspondence to my attention.

Thank you.

Christian Basler

Christian Basler
Administrative Assistant
Senate Commerce Committee

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M March 7, 1980

SUBJECT: CS for House Bill No. 452 (Rules)
[Work Order No. 8305]

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Richard A. Bradley
Legislative Counsel

I have been requested to do a sectional analysis of the Committee Substitute for House Bill No. 452 (Rules). As you recognize this is identical to the Committee Substitute for Senate Bill No. 225 that I prepared for your committee.

Section 1 of the bill amends AS 06.01.020 to allow the commissioner of commerce and economic development to grant to a state credit union powers that may be granted to a federally chartered credit union. This power is typically granted to the commissioner and he presently possesses such power as to banks, trust companies and savings associations as well as other federally chartered institutions doing business in the state which are subject to identified federal regulatory agencies.

Section 2 establishes the Alaska Credit Union Act by amending AS 06 to add Chapter 45.

The titles of each Section are useful to an understanding of the material in the bill and its location:

Sec.	010	Responsibility of the Commissioner	Page 1
	020	Formation of a Credit Union	Page 2
	030	Approval of Articles of Incorporation and Issuance of Certificate of Authority	Page 3
	040	Fees	Page 4
	050	Reports and Examinations	Page 4
	060	Powers of a Credit Union	Page 4

070	Membership	Page 10
080	Meetings of Members	Page 11
090	Management of Credit Union	Page 11
100	Compensation	Page 11
110	Executive Officers	Page 12
120	Board of Directors	Page 12
130	Applications for Membership	Page 13
140	Powers and Duties of Credit Committee	Page 14
150	Loan Restriction	Page 14
160	Security	Page 15
170	Powers and Duties of Supervisory Committee	Page 15
180	Reserves	Page 16
190	Dividends	Page 17
200	Expulsion and Withdrawal	Page 17
210	Minors or Trusts	Page 17
220	Suspension [of Credit Union]	Page 17
230	Exemption from Taxation	Page 18
240	Allotment of Space in State Office Buildings	Page 18
250	Conversions	Page 18
260	Insurance of Member Accounts	Page 18
270	Liquidity Facility Participation	Page 19
280	Conflict of Interest	Page 19
290	Merger	Page 19
300	Branch Offices	Page 19
310	Unauthorized Conduct of Credit Union Business	Page 19
320	Transfer of Credit Union Property to Preferred Creditor	Page 20
330	Unlawful Deceit of Commissioner or Examiner	Page 20
340	Receipt of Deposits While Insolvent	Page 20
350	Limitations on Credit Union	Page 20
400	Definitions	Page 20

Section 010. This section deals with the responsibilities of the commissioner. It provides that he shall administer the chapter, that he may adopt regulations for the administration of the chapter, that he may delegate any authority granted by the chapter, and that records of a credit union will be kept under regulations that he adopts.

The section also provides for bonding of credit union officers under procedures approved by the commissioner.

Section 020. This section is a section under which a credit union would be established. It provides the procedures that individuals who wish to form a credit union will use. It also authorizes the commissioner to require other provisions that he considers necessary for the management of the credit union. Bylaws will also be submitted to the commissioner for approval at the time that the articles of incorporation are submitted.

Section 030. Articles of incorporation and bylaws are required to be submitted to the commissioner for his approval. Before he approves these documents and issues a certificate of authority to do business, the commissioner is required to determine whether the articles and bylaws conform to the chapter and to the regulations of the commissioner, the general character and fitness of the subscribers, and the economic advisability of establishing the proposed credit union.

Section 040. This section authorizes the commissioner to assess a fee for his expenses in processing an application. The fee is assessed under the procedures established in AS 06.01.010.

Fees are also authorized under this section for the approval of a branch of the credit union, for a merger or conversion of a credit union or for an examination of a credit union which is conducted under AS 06.45.050.

Section 050. This section authorizes the commissioner to require both an annual financial report and other financial reports required by regulations that he adopts. It also provides that a credit union is subject to examination by the commissioner.

Section 060. This section elaborates the powers of a credit union and it provides generally that a credit union has the powers to enter into a contract, to sue and be sued, to purchase, hold and dispose of property and to make loans.

Generally the maturity of a loan may not exceed 12 years. However, a residential real estate loan made to finance the acquisition of a one to four family dwelling for the principal residence of a credit union member may have a maturity not exceeding 30 years; and a loan to finance the purchase of a mobile home to be used as the residence of a credit union

member may generally not exceed 15 years. The section contains other restrictions on loans made by a credit union and these restrictions are detailed in sec. 060(5)(A)(iii) and following.

Thus, at (x), the bill provides that the total dollar amount of real estate loans and mobile loans outstanding may not exceed 25 percent of the paid-in and unimpaired capital and surplus of the credit union without the written approval of the commissioner. Similarly, a credit union with a paid-in and unimpaired capital and surplus of less than $3,000,000 may make real estate loans with maturity in excess of 15 years only with the approval of the commissioner.

Section 060(7) [starting on page 7 of the bill] is the section of the bill which regulates the investments of credit union funds.

Section 060(8) and the following paragraphs identify a series of authorities of a credit union. Thus, credit unions may make deposits in national banks and in state banks, trust companies, and mutual savings banks, may borrow in accordance with regulations adopted by the commissioner from any source, may levy late charges, may enforce a lien upon the shares and dividends of a member to the extent of a loan to the member, may sell to members negotiable checks,travelers checks, and money orders, and may cash checks and money orders for members, for a fee which does not exceed the direct and indirect costs incident to providing the service, and may engage in other miscellaneous activities detailed in this portion of sec. 060 which carries on over through page 10 of the bill.

Section 070. This section deals with membership in a credit union and provides that the membership consists of the incorporators of the credit union and other persons to the extent permitted by regulations adopted by the commissioner. Credit union membership is limited to groups "having a common bond of occupation or association, or to groups within a well-defined neighborhood community or rural district."

Section 080. This section deals with meetings of members and provides that the annual meeting of a credit union shall be held within three months after December 31st of each year; special meetings may be held under the bylaws.

Section 090. This section deals with the management of a credit union and provides that the business affairs of a credit union are managed by a board of not less than five directors, a credit committee of not less than three members and a supervisory committee of not less than three members or more than five members.

The bill provides that the members of the board of directors and the members of the credit committee are elected at the annual meeting by and from the membership. The supervisory committee is appointed by the board of directors. Members of the board and of the credit and supervisory committees hold office for terms specified in the bylaws.

Section 100. This section deals with the compensation of members of the board of directors and the section provides that members of the board of directors and of credit and supervisory committees may not be compensated for service on the board or on the committees. The section further provides that reasonable health, accident and similar insurance protection is not compensation under this section.

Section 110. This section deals with the executive officers of the credit union and provides that the board of directors shall elect from the membership a president, one or more vice presidents, a secretary and a treasurer. It provides that an executive officer other than the treasurer may not be compensated as an officer.

Section 120. This section deals with the board of directors; it provides that the board of directors shall meet at least once a month and shall have general direction and control of the business affairs of the credit union.

It is the board of directors that acts on applications for membership and will fill the vacancies in the board of directors and in the credit committee.

The board of directors has responsibility for investments other than loans to members. The board also determines the interest rates on loans, the security and the maximum amount which may be loaned or provided in lines of credit to a member.

The section provides that the board of directors may appoint an executive committee of not less than three directors to exercise powers granted to it by the board of directors.

Section 130. This section deals with applications for membership. And requires the board of directors to review and approve applications for membership in the credit union at least monthly. It requires the board of directors to provide reasons if an application for membership is denied. And it provides that the board of directors may appoint a membership officer to review applications for membership; the treasurer or a loan officer may not review applications for membership.

Section 140. This section deals with the powers and duties of the credit committee. The credit committee is obliged to consider applications for loans and lines of credit as the business of the credit union may require but not less often than once a month. A majority of the entire credit committee may approve an application or lines of credit unless the approval of the board of directors is required under AS 06.-45.060(5). The credit committee may delegate to a loan officer the power to approve loans and lines of credit.

The section provides that an individual may not disburse funds of a credit union for a loan, line of credit, or application which he approves in the capacity of loan officer.

Section 150. This section establishes restrictions on loans and limits the loan to a particular member to an amount less than 10 percent of the unimpaired capital and surplus of a credit union.

Section 160. This section deals with the security required for loans.

Section 170. This section deals with the powers and duties of the supervisory committee. It is the responsibility of the supervisory committee to conduct an annual audit of the accounts of the credit union and to conduct such other supplementary audits as it considers necessary or as ordered by the commissioner. The supervisory committee is charged with the verification of the passbooks and accounts of the members from time to time. The supervisory committee is also given the authority by a unanimous vote of its membership to suspend an officer of the credit union or a member of the

credit committee or the board of directors until the next meeting of the membership which shall be held within not less than seven nor more than fourteen days. The membership shall act to ratify or reject the action of the supervisory committee. This section also permits the board of directors to suspend a member of the supervisory committee until the next meeting of the membership which is called on short notice.

Section 180. This section deals with the reserves of a credit union. It establishes a formula under which the credit union will maintain reserves. I have not set out the requirements of this section since they are somewhat technical. The section itself is on page 16 of the bill. The commissioner is given authority to modify the reserve limitations of the section.

Section 190. This section deals with the dividends of the credit union. It grants to the board of directors the authority to declare a dividend at various rates on different types of shares.

Section 200. This section deals with the expulsion and withdrawal of membership.

Section 210. This section provides that shares of a credit union may be issued in the name of a minor or in trust subject to conditions prescribed by the bylaws.

Section 220. This section deals with the suspension of a credit union by the commissioner for insolvency or for operation in an unsafe and an unsound manner or for violation of its articles of incorporation, its bylaws, or violation of this chapter or regulations adopted by the commissioner under it. The commissioner is given the authority to act under AS 06.01.030 and temporarily suspend the operations of the credit union. He may then allow it to continue under his supervision.

Section 230. This section provides that a credit union is exempt from taxation by the state or a municipality of the state except for real and tangible personal property owned by it. Essentially this section means that the funds, the capital, the reserves, surplus, and other funds of the credit union as such are exempt from taxation.

This section does not prevent holdings in a credit union from being included in the valuation of the personal property of the owners under taxes imposed by the state or in political subdivisions.

Section 240. This section authorizes the commissioner of transportation and public facilities to allot space to a credit union if at least 95 percent of the membership is composed of persons who either are presently state employees or were state employees at the time of their admission to the credit union.

Section 250. This section authorizes a state credit union to convert into a federal credit union and authorizes a federal credit union to convert into a state credit union.

Section 260. This section requires a credit union under regulations of the commissioner to insure member accounts under programs offered by the National Credit Union Administration Board.

Section 270. This section permits a credit union to participate in programs offered by the National Credit Union Central Liquidity Facility under regulations of the commissioner.

Section 280. This section provides that a member of the board of directors or a member of the credit committee or the supervisory committee or an employee of the credit union may not participate in decisions affecting his own interests or the interests of a corporation, partnership or association in which he is interested; and it provides that a person who violates this section may not thereafter serve as an officer, agent or employee of a credit union.

Section 290. This section authorizes a credit union to merge with another credit union.

Secton 300. This section provides that a credit union may establish branch offices under regulations of the commissioner.

Section 310. This section makes it a class A misdemeanor for a natural person to conduct business under a name which is suggestive of a credit union business.

Section 320. This section prohibits the transfer of credit union property to preferred creditors.

Section 330. This section makes it a class B felony to deceive the commissioner or examiners of the credit union.

Section 340. This section prohibits the knowing acceptance of a deposit by an officer or employee of a credit union if that officer or employee knows that the credit union is insolvent. A violation is a class A felony.

Section 350. This section provides that a credit union may not acquire control directly or indirectly of another financial institution or invest in the shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization except as provided by this chapter.

Section 400. This section is a definitions section and the terms "commissioner", "credit union", and the "credit union association" are defined in this section.

Section 3. The effective date section of the bill provides that the effective date is July 1, 1980.

RAB:jdn

CS FOR HOUSE BILL 452 (RULES)

MR. PRESIDENT, I MOVE THE ADOPTION OF CS FOR HB 452 (RULES).

THIRD READING

(SEC. 06.01.020)
P. 1, L. 10

SECTION 1. THIS SECTION IS COMMONLY REFERRED TO AS THE "WILD CARD" PROVISION, BY ALLOWING THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AUTHORITY TO GRANT A STATE CREDIT UNION POWERS THAT MAY BE GRANTED TO A FEDERALLY CHARTERED CREDIT UNION. THIS PROVISION MERELY EXTENDS THE AUTHORITY THAT THE COMMISSIONE CURRENTLY HAS TO INCLUDE FEDERAL REGULATIONS AND LAWS PERTAINING TO CREDIT UNIONS.

(SEC. 06.45)
P. 1, L. 25

SECTION 2 AMENDS ALASKA TITLE 06 BY ADDING A NEW CHAPTER ENTITLED "ALASKA CREDIT UNION ACT"

P. 1, L. 27

SEC. 010 PROVIDES THAT THE COMMISSIONER SHALL ADMINISTER THE CHAPTER, ADOPT REGULATIONS, DELEGATE ANY GRANTED AUTHORITY OF THE CHAPTER, AND KEEP CREDIT UNION RECORDS ACCORDING TO REGULATIONS. THIS SECTION ALSO REQUIRES BONDING IN AN APPROVED CORPORA SURETY COMPANY.

P. 2, L. 18

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FOR HIS APPROVAL. THE CRITERIA FOR THE COMMISSIONER'S EVALUATION FOR APPROVAL ARE SPECIFIED IN THIS SECTION.

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P. 4, L. 21 — Sec. 060 ELABORATES THE POWERS OF A CREDIT UNION AND PROVIDES GENERALLY THAT A CREDIT UNION HAS THE POWER TO ENTER INTO A CONTRACT, TO SUE AND BE SUED, TO PURCHASE, HOLD AND DISPOSE OF PROPERTY, AND TO MAKE LOANS. GENERALLY A LOAN MAY NOT EXCEED 12 YEARS, A REAL ESTATE LOAN 30 YEARS, AND A MOBILE HOME LOAN 15 YEARS. INTEREST MAY NOT EXCEED ONE PERCENT A MONTH ON THE UNPAID BALANCE INCLUSIVE OF ALL SERVICE CHARGES. ALSO, THE TOTAL DOLLAR AMOUNT OF REAL ESTATE LOANS OUTSTANDING MAY NOT EXCEED 25 PERCENT OF THE PAID-IN AND UNIMPAIRED CAPITAL WITHOUT THE WRITTEN APPROVAL OF THE COMMISSIONER. A CREDIT UNION WITH A PAID-IN AND UNIMPAIRED CAPITAL AND SURPLUS OF LESS THAN $3,000,000 MAY MAKE REAL ESTATE LOANS WITH MATURITY IN EXCESS OF 15 YEARS ONLY WITH APPROVAL OF THE COMMISSIONER.

P. 10, L. 20 — Sec. 070 DEFINES THE FIELD OF MEMBERSHIP FOR CREDIT UNIONS AS "HAVING A COMMON BOND OF OCCUPATION OR ASSOCIATION, OR TO GROUPS WITHIN A WELL-DEFINED NEIGHBORHOOD, COMMUNITY, OR RURAL DISTRICT."

P. 11, L. 5 — Sec. 080 PROVIDES THAT THE ANNUAL MEETING OF A CREDIT UNION SHALL BE HELD WITHIN THREE MONTHS AFTER DECEMBER 31ST OF EACH YEAR. SPECIAL MEETINGS MAY BE HELD ACCORDING TO THE BYLAWS.

P. 11, L. 12 — Sec. 090 ASSURES THAT A BOARD OF FIVE DIRECTORS ARE ELECTED AT THE ANNUAL MEETING OF THE MEMBERSHIP, AND A CREDIT COMMITTEE OF NOT LESS THAN THREE ARE ELECTED, RESPECTIVELY. TERMS OF MEMBERSHIP TO THE BOARD AND SUPERVISORY COMMITTEES ARE SPECIFIED IN THE BYLAWS.

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P. 13, L. 23 — SEC. 130 REQUIRES THE BOARD OF DIRECTORS TO REVIEW AND APPROVE APPLICATIONS FOR MEMBERSHIP MONTHLY, AND TO PROVIDE REASONS IF AN APPLICATION IS DENIED.

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P. 14, L. 26 — SEC. 150 ESTABLISHES RESTRICTIONS ON LOANS AND LIMITS THE LOAN TO A PARTICULAR MEMBER TO AN AMOUNT LESS THAN 10 PERCENT OF THE UMIMPAIRED CAPITAL AND SURPLUS OF A CREDIT UNION.

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P. 19, L. 23 — SEC. 300 PERMITS A CREDIT UNION TO ESTABLISH BRANCH OFFICES UNDER REGULATIONS OF THE COMMISSIONER.

P. 19, L. 25 — SEC. 310 MAKES UNAUTHORIZED CONDUCT OF A CREDIT UNION A CLASS-A MISDEMEANOR. SUCH CONDUCT IS DESCRIBED AS A NATURAL PERSON CONDUCTING BUSINESS UNDER A DISGUISED NAME SUGGESTIVE OF A CREDIT UNION BUSINESS.

P. 20, L. 1 — SEC. 320 PROHIBITS THE TRANSFER OF CREDIT UNION PROPERTY TO PREFERRED CREDITORS.

P. 20, L. 6 — SEC. 330 MAKES IT A CLASS-C FELONY TO DECEIVE THE COMMISSIONER OR EXAMINERS OF THE CREDIT UNIO.

P. 20, L. 15 — SEC. 340 PROHIBITS ACCEPTANCE OF A DEPOSIT KNOWING THE CREDIT UNION IS INSOLVENT. SUCH AN ACT IS A CLASS-A FELONY.

P. 20, L. 19 — SEC. 350 DISALLOWS A CREDIT UNION TO ACQUIRE CONTROL OF ANOTHER FINANCIAL INSTITUTION EXCEPT AS PROVIDED BY THIS CHAPTER.

P. 20, L. 24 — SEC. 400 CONSISTS OF DEFINITIONS.

P. 21, L. 5 — SECTION 3 PROVIDES FOR AN EFFECTIVE DATE OF JULY 1, 1980.

ROUGH DRAFT

CS FOR HOUSE BILL 452 (RULES)

MR. PRESIDENT, I MOVE THE ADOPTION OF CS FOR HB 452 (RULES).

THIRD READING

Sec 06.01.020
p 1 L 10

SECTION 1. THIS SECTION IS COMMONLY REFERRED TO AS THE "WILD CARD" PROVISION, BY ALLOWING THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AUTHORITY TO GRANT A STATE CREDIT UNION POWERS THAT MAY BE GRANTED TO A FEDERALLY CHARTERED CREDIT UNION. THIS PROVISION MERELY EXTENDS THE AUTHORITY ~~OF~~ that THE COMMISSIONER CURRENTLY HAS TO INCLUDE FEDERAL (Regulations and laws pertaining) ~~BY CHARTERED~~ to CREDIT UNIONS.

Sec. 06. 45
P. 1 L. 25

SECTION 2 AMENDS ~~15~~ (Alaska Title) 06 BY ADDING A NEW CHAPTER ENTITLED "ALASKA CREDIT UNION ACT"

p 1 L 27

SEC. 010 PROVIDES THAT THE COMMISSIONER SHALL ADMINISTER THE CHAPTER, ADOPT REGULATIONS, DELEGATE ANY GRANTED AUTHORITY the chapter, AND KEEP CREDIT UNION RECORDS ACCORDING TO REGULATIONS. ~~FURTHERMORE,~~ This section also requires BONDING IN AN APPROVED CORPORATE SURETY COMPANY, ~~IS MANDATED.~~

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659 SC FILE NO. 26

659

the further the credit union is away from the NCUA office, the better the odds are of this occurring. If a credit union is able to inexpensively call or visit the NCUA office to check on the status of an inquiry, chances are that that inquiry will receive prompt attention.

The proliferation of regulations emanating from NCUA is also of concern to me. However, I can do nothing except voice my objections, and then abide by their regulations. Example: NCUA recently passed a regulation that effectively and severely limits the sources a credit union can borrow from. Several credit unions in California have since filed a lawsuit challanging NCUA's authority to limit such transactions. Regulations have also been proposed that would further limit the debt collection practices of Federal credit unions. Why? Because, says NCUA, last year they received 59 complaints about the collection practices of Federal credit unions. Not necessarily valid complaint, just unverified complaints. That, out of almost 13,000 credit unions. I consider that a pretty darn good track record, one that credit unions can be proud of, but NCUA thinks that merits further regulations.

I'm not saying that I would recommend my credit union convert from a Federal to a state charter as soon as possible, but I would like to have that option available.

There are many conditions in Alaska that are unique, as you all recognize. The problem is that for the most part, the uniqueness of our situation is not recognized by NCUA. subsequently, requests that might be out of the ordinary to outsiders are often rejected without considering our unique situation. Several years ago the Alaska Railroad Federal Credit Union requested an amendment to our field of membership that would allow us to serve the employees of 6 small companies that are lessees and shippers of the Railroad. Each of these groups were too small by current NCUA guidelines to form their own credit union, yet we felt there was a sufficient common bond with railroad employees to justify the request. The request was denied

No consideration was given to a unique situation. An attempt to provide credit union service to those groups failed because of the unwillingness of the regulatory agency to consider an unusual situation.

The issue at hand is not whether there will be credit unions in Alaska, but whether the State will take a role in the future of the credit unions and the services they provide the citizens of the State.

I urge you to support the passage of Senate Bill 225.

Thank you for this apportunity to present my viewpoint.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

May 8, 1979

Alaska U.F.A. Federal
Credit Union
777 Juneau St.
Anchorage, AK 99501

Dear Manager:

Enclosed is the latest revised draft of the Commerce Committee Substitute for Senate Bill 225, providing for state credit unions. The context has not been changed. Also enclosed is a section-by-section analysis of the changes incorporated in the latest draft bill.

As mentioned in my letter of April 6, considerable effort was made to get this bill in final form and passed this session; however, our Division of Legal Services, which assists in drafting bills, discovered numerous legal problems resulting from the latest amendments. Consequently, we were not able to meet the deadline for passage of bills during this proposed short session.

I would appreciate receiving any comments you may have pertaining to this bill. If you have any questions, please let me know of them.

I am quite certain we will get this bill through the Senate Commerce Committee early next session since the original committee substitute bill did not pass the Legislature this year. Representative Joe McKinnon attached the original bill to CSSB 118, but it did not pass the Legislature.

Sincerely,

Brad

Brad Bradley
State Senator
Chairman
Senate Commerce Committee

Enclosures

#50

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

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Sincerely,

Brad Bradley
State Senate
Chairman
Senate Commerce Committee

Enclosure

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Sincerely,

Brad Bradley
State Senate
Chairman
Senate Commerce Committee

RECEIVED
APR 1 1 1979
Alaska League Services,

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 6, 1979

Mr. ~~David Chatfield~~, Manager
Alaska Credit Union League
2509 Eide, Suite R
Anchorage, Alaska 99503

Dear ~~Mr. Chatfield~~,

Enclosed is the Committee Substitute for Senate Bill 225 providing for state credit unions. The content has not been changed. Also enclosed is a section-by-section analysis of the changes incorporated in the latest revised draft Commerce Committee Substitute.

As mentioned in my letter of April 6, considerable effort was made to get this bill in final form and passed this session; however, our Division of Legal Services, which assists in drafting bills, discovered numerous legal problems resulting from the latest amendments. Consequently, we were not able to meet the deadline for passage of bills during this proposed short session.

I would appreciate receiving any comments you may have pertaining to this bill. ~~If you know of other agencies or individuals who may be interested in this legislation, please let me know so that I may get the benefit from all knowledgeable and interested parties.~~ If you have any questions, please let me know of them.

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Sincerely,

Brad

Brad Bradley
State Senator
Chairman
Senate Commerce Committee

WEB:jp
Encl

~~Dave, we tried to meet the deadline of a short session, but Bill Bennie, Director of Legal Services, which drafts bills, had some problems with the legality of~~

Received 8/30/1979

ALASKA CREDIT UNION LEAGUE

2509 EIDE STREET, SUITE 4
ANCHORAGE, ALASKA 99503
(907) 278-4949

August 28, 1979

Mr. Julius J. Brecht, Director
State of Alaska
Department of Commerce and
Economic Development
Division of Banking, Securities,
Small Loans and Corporations
Pouch D
Juneau, Alaska 99811

Dear Julius:

Two items we received in yesterday's mail reminded me of our dialogue during the July 26 Senate Commerce Committee hearings on the state credit union act, concerning possible alternatives to NCUA share insurance for Alaska state-chartered credit unions. Enclosed are copies of these items for your review.

The first is a memo from Bob Bianchini, President of the Rhode Island Credit Union League, concerning an article in the July issue of "The Supervisor," the publication of the Conference of State Bank Supervisors. The article deals with threats to the dual banking system, and I share Bob's view of the similarity to current challenges to the credit union dual chartering system.

The second is a press release and copy of comments to NCUA from the National Association of State Credit Union Supervisors, expressing concern about the latest in an unending series of NCUA regulations that would usurp the prerogatives of state credit union regulators by NCUA through their share insurance function.

As we may have discussed before, my career progression included a recent two-year stint in the Washington, D. C. office of the Credit Union National Association. As part of my duties there I had frequent contact with many professional staff members of NCUA and worked with them on a wide variety of credit union issues. I'm not given to paranoia, and I'm convinced that there is a concerted attempt underway by top NCUA people to assume direct control over the large state-chartered segment of our industry. Some of them truly believe it to be in the best interests of credit unions to save them from "inept" state regulators, while others simply desire greater power and influence.

In both cases the device is the same--expanded requirements for continuation and

qualification for NCUA share insurance by state-chartered credit unions through application of operational regulations that have no direct bearing on the degree of risk to the share insurance fund. These "empire builders" have accurately identified mandatory NCUA share insurance as the stranglehold needed to gain regulatory control over state-chartered credit unions.

Unfortunately, we in the credit union movement have been somewhat gullible. Accustomed in the past to a benevolent federal regulatory agency, interested in encouraging and promoting, as well as regulating credit unions, we have acquiesced to and sometimes even encouraged inclusion of provisions for mandatory NCUA share insurance in our state credit union laws. That was, I believe, an error in judgement on our parts, and will be difficult to reverse in many cases. In addition to the steady stream of NCUA regulations that limit and control the operations of state-chartered credit unions, NCUA has proposed operating the newly-authorized central liquidity facility in a manner that would undermine the movement's central credit union financial system, and my colleagues confirm that the agency exhibits ever-increasing arrogance and intransigence in dealing with credit unions and their representatives.

Julius, I see that this letter has become longer than I intended, but may help you understand our strong desire to permit established, successful alternatives to mandatory NCUA share insurance in our pending Alaska state credit union act. I think you can see that this option is key to, and has become almost as important as, the option of state chartering and regulation itself. Our dual chartering system of checks and balances is seriously out of whack, with the scales tipping precariously in the direction of Washington, D. C. We have the opportunity in Alaska to assure from the outset that you truly have the authority and responsibility to utilize your considerable talents in regulating state-chartered credit unions, without unwarranted federal interference.

Thanks for taking the time to review this letter and enclosures.

Sincerely,

David L. Chatfield
President

DLC:

Enclosures

bcc: Christian Basler

AUG 27 1979

Alaska League Services, Inc.

RHODE ISLAND CREDIT UNION LEAGUE 89 JEFFERSON BOULEVARD / WARWICK, RHODE ISLAND 02888 / (401) 785-0600

August 23, 1979

TO: Members of Association of
Credit Union League Executives

FROM: Bob Bianchini

In the July issue of the "The Supervisor", the monthly publication of the Conference of State Bank Supervisors, Larry Kreider, CSBS Executive Vice President, discusses the dual banking system and what must be done to preserve the relative freedom inherent in the present regulatory structure. I was struck by the similarity of the problems, particularly those of a regulatory nature, facing the banking industry and those of our credit union movement. The following are excerpts from Mr. Kreider's talk along with some personal comments . . . . .

The dual banking system means different things to different people; but there is one characteristic on which all proponents of the system agree: When permitted to work, it constitutes an excellent check and balance against government monopoly in bank regulation.

Today, this check and balance is being threatened more than ever before. There are well organized attacks on the McFadden concept - attacks designed to destroy the right of the states to determine the banking structure best suited to their particular needs; proposals to consolidate and centralize banking regulation into one federal superagency.

It's unfortunate but we must recognize that through our own actions we have in effect created a super federal regulatory agency in the form of the National Credit Union Administration. NCUA has responsibility for chartering, supervising, insuring and in its latest attempt to exert absolute control . . . liquidity management through the newly created Central Liquidity Facility for all federal and federally insured state chartered credit unions. The creation of the CLF is a classic example of transferring to the federal government a function which we have every capability of maintaining ourselves. The CLF is nothing more than a newly created U. S. Central except that it is controlled and managed by the federal government, along with the usual bureaucratic and regulatory entanglements.

The basic issue confronting the dual system is the threat of monopolistic centralized regulatory control over banking. Please recognize that this threat is real. Not only are we confronted with a long list of major proposals which would take us far in the direction of a federal bank regulatory monopoly, we also are confronted with more central oriented, monopolistic minded bank regulatory bureaucrats than at any time in history. Some of them want, and a few even state so openly, federal monopolistic control over banking! But alas, it tends to be these same proponents of monopoly in government who profess so conspicuously to favor absolute freedom of entry into banking, if they can control banks after they are chartered.

Monopolistic regulatory control, along with its companion, overregulation, is the real issue. Not only is it of concern to the CSBS, but also to many in Congress and in the federal agencies which have spawned the problem.

Again, through our own legislative policy, we have allowed a single federal agency excessive regulatory functions. At the same time, we are discouraging competition within regulation between state and federal agencies, by permitting one individual (The NCUA Chairman) the opportunity to impose similar regulations and controls to both federal and state chartered credit unions . . . . authority which even the comptroller of the currency is not permitted to exercise. Under present circumstances, why would any state chartered federally insured credit union want to continue to maintain a state charter, when the only result is additional regulation and examinations and little, if no opportunity, to exercise functions permitted by state law while the NCUA Chairman exercises his veto power.

Notwithstanding problems, there are positive signs. With apologies for my grammar, "we've got" lots of help in our long-run struggle to limit and reduce federal monopoly and overregulation.

First, there is a basic national inclination for freedom from inherently oppressive centralized power. Instinctively, we will always fight for freedom - unless the loss of freedom goes so far that we no longer are capable of fighting! And there increasingly is an underlying inclination in our nation - and perhaps in the entire world - toward greater personal freedom and less centralized control over our daily lives. Some Members of Congress and some in the federal bureaucracy are out of step with the national trend. In our relatively democratic society, that national trend eventually will prevail over centralized power and monopolistic inclinations of government officials. But, we will all have to work to make that happen.

Second, CSBS gets lots of help from other groups in this effort to achieve checks and balances in our regulatory system. Help now comes from the National Governors' Association, the National Conference of State Legislatures, state bankers associations and an increasing number of Members of Congress.

Third, more and more support for CSBS goals reflects the fact that state banking departments are stronger and more capable of discharging their responsibilities than ever before in history. The state system overall is as capable and in some areas more capable than its federal counterparts. States have strengthened their departments and have taken the lead in techniques needed to get the basic job done more efficiently, while federal agencies have tended to become overburdened by excessive compliance examination responsibilities which, in many cases, have become cost/benefit ineffective.

We da have the ability to protect the checks and balances by encouraging and fostering the growth and development of a viable alternative to federal monopoly and centralized power. As a basic premise we should determine that one reason credit unions choose a state rather than federal charter is to minimize , if not eliminate altogether, federal control and intervention in its affairs. State chartered credit unions should be subject to regulation by the states and the states alone. With respect to the insurance function, state share and deposit insurance plans have proven they are functionally and actuarially sound, CUNA and the leagues should step up their involvement and support of existing plans and the establishment of new programs emulating those existing successful programs. Cooperative activities with the National Share and Deposit Insurance Corporation and the National Association of State Credit Union Supervisors should be increased and major goals and objectives should be established.

We can all be more effective if we have basic guides for our efforts. With this in mind, discussions were held by state bank commissioners in 1977 and 1978, culminating in the CSBS "Policies on the Presence of Federal Agencies in the Examination and Regulation of State Chartered Banks and Bank Holding Companies" which were unanimously approved by the CSBS Board of Directors last Fall. What does this policy guide say?

The "Policy" calls for equality in state and national bank examination and regulatory burdens. Redundant federal examinations and regulation of state-chartered banks must be eliminated. There is no justification for the present disparity - unless federal power per se is accepted as a valid goal.

The Office of the Comptroller and state banking departments should be primary regulators of respective national and state-chartered banks. The FDIC and FRS should maintain specialized insurance and monetary policy roles.

The FDIC should have a presence in examination and regulation for safety and soundness only as it relates to its insurance function. The FDIC presence should be essentially the same for state as for national banks and should be a specialized insurance presence, not a primary role.

We must help Members of Congress realize the merits of the checks and balances inherent in our dual system. That is an ongoing effort which has only begun.

We must study federal statutes and draft revisions consistent with our goals.

We must develop greater legislative strength at state and federal levels. Obviously, the development of practical legislative strength is a major focal point of this entire "Policy" effort.

Serious consideration should be given to the introduction of federal legislation separating the functions of NCUA in a similar manner to those of the comptroller of the currency, the FDIC and the Federal Reserve Bank, with each member of the NCUA Board assuming the administration of those separate functions. No one individual should enjoy absolute regulatory authority and control over our credit union movement . . . . de facto or otherwise.

Along with legislative efforts, we should adjust our relationship with NCUA . . . . openly and without rancor. The paternalistic relationship between NCUA and our movement is just not working and it's time we recognized that fact. We must view NCUA, as it continues to gain and expand its centralized powers as any other federal bureaucracy with its accompanying regulatory burdens. We should reaffirm our basic belief that the government should do for us only those things which we can't do as well or better for ourselves. And if it is in our best interest, in order to obtain certain services, to deal with an alternative federal agency we should not hesitate to do so. For instance, if credit union escape from monetary policy is a concern of our government officials, one suggestion would be to propose U. S. Central membership in the Federal Reserve with the extension of controls through the U. S. Central to its membership. In return, direct entry to the clearing system and discount window privileges should be granted.

Problems notwithstanding, we should not assume that our system of state/federal checks and balances is near death nor that federal bureaucrats will, in fact, gain so much centralized power and will regulate to such an extreme that we will lose many of our basic personal freedoms as well as the flexibility in banking needed to serve diverse trade areas. If we accept that assumption, it might become self-fulfilling. What we all must recognize, however, is that there are powerful forces at work, attempting to achieve a federal monopoly and overregulation.

Those forces will fail. Forceful attempts to centralize and regulate our daily lives are setting in motion even more powerful counterforces which eventually will restrain those on the Potomac who are so sure they know what is better for the citizens of far away states than do the citizens of those states working through their democratic process.

You see, what we really have in Washington, D. C. is an element of arrogance and disrespect for the democratic process, particularly at the state level. It only leads to mediocrity and is not progressive, so the argument goes. Well, we all want change where change will be useful to society; but history teaches that freedom and broadly based governmental democratic processes are a far superior way to achieve progress than an elitist government monopoly.

It shall be most interesting to watch these two basic forces act and counteract over the next decade. Bet on freedom and the democratic process! They will prevail over elitism, government monopoly and overregulation!

Our leadership at both national and state levels should recognize the CLF for what it really is . . . . a duplicate U. S. Central, performing virtually identical functions (particularly if it is granted depository powers and tax exempt status as recently proposed to Congress by NCUA) and seeking the same membership . . . . our credit unions. A competitive relationship exists between our U. S. Central and the CLF . . . so let's stop ignoring that fact and establish rational courses of action. To begin with, under no circumstances should NCUA be permitted to examine any state chartered corporate credit union or the U. S. Central (Would Chase Manhattan invite Citibank in to determine who its major customers are?). Federally chartered corporate credit unions in states where strong state laws exist should convert to state charters . . . . and as I said earlier upgrading CUNA and the leagues' working relationships with NSDGA and NASCUS should become a major priority. We must increase our efforts to acquaint our individual state regulatory agencies with NCUA's growing monopolistic centralized regulatory control over the credit union movement. Goals and objectives to preserve federal and state checks and balances should be established with our state supervisors, including necessary legislative programs.

Finally . . . . the U. S. Central represents our strongest tool for preserving a credit union movement which offers a choice, and credit union leaders throughout our nation should recognize that fact and respond accordingly.

RECEIVED
AUG 27 1979
Alaska League Services, Inc.

NATIONAL ASSOCIATION OF STATE CREDIT UNION SUPERVISORS
1001 Connecticut Ave., N.W., Washington, D.C. 20036 — (202) 452-1530

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Georgia
John Foley
Nebraska
Administrator
Bill Drohan

P R E S S R E L E A S E

For Immediate Release
Contact: Bill Drohan
202/452-1530

Following extensive review of the proposed National Credit Union Administration Board(NCUA) regulation "Liquidity Reserves of Insured Credit Unions," designed to impose a uniform 5% general liquidity reserve on all federally insured credit unions, the National Association of State Credit Union Supervisors (NASCUS) adopts a position in opposition to the proposed regulation.

NASCUS officials feel that each state regulator can protect the public interest and the safety and soundness of state chartered credit unions without further intrusion by the federal government. NASCUS members have always endorsed and promoted the concept of sound liquidity management for state chartered credit unions.

The major shift in policy direction by the NCUAB which this denotes with regard to their confidence in state regulation of credit unions is unnecessary and unwarranted. The healthy relationship already established between NCUAB and the state credit union supervisors should be encouraged through continued harmony and cooperation, not with additional regulation.

continued.....

Especially onorous is the Depletion and Replenishment Section 742.4, which requires state chartered/federally insured credit unions to notify the appropriate NCUAB Regional Office when it's reserves dip below 5%. This section effectively by-passes the state supervisory authority - an obvious affront to that state's rights.

In addition, the state chartered credit unions would then be required to report to two regulatory bodies; the NCUAB Regional Office and the respective state regulatory agency. It is our recommendation that this section be applied only to federal credit unions. If, after careful examination of the issues raised, the NCUAB determines to enact this section, we propose that the state agencies be authorized to act as the supervisors and enforcers of the regulation.

Following careful consideration of the entire promulgated regulation NASCUS recommends that NCUAB should offer the 5% liquidity requirement as a recommended voluntary guideline, not as a regulation with the effective impact of law. A regulation could be implemented by administrative sanction by each state supervisors if they deemed that such a regulation is needed.

# # # # # #

NATIONAL ASSOCIATION OF STATE CREDIT UNION SUPERVISORS
1001 Connecticut Ave., N.W., Washington, D.C. 20036 — (202) 452-1530

Board of Directors
President
Oliver G. Barnett
Tennessee
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Georgia
John Foley
Nebraska
Administrator
Bill Drohan

The Honorable Lawrence Connell, Chairman
National Credit Union Administration Board
2025 M Street, North West
Washington, D.C. 20456

August 10, 1979

RE: Liquidity Reserves of Insured Credit Unions

Dear Chairman Connell:

The National Association of State Credit Union Supervisors (NASCUS), the collective voice of state credit union regulatory departments, has reviewed the proposed NCUA regulation to establish a 5% general liquidity reserve requirement for all federally insured credit unions and offer the following comments:

Proposed Liquidity Requirement

NASCUS opposes the NCUA in pre-empting states' rights in extending a 5% liquidity reserve requirement to state chartered/federally insured credit unions. We feel that such action on the part of the NCUA is not needed, not wanted and not warranted at this time. We do not recognize a demonstrated need at this time for such a sweeping regulation.

Liquidity regulations and policies exist for share drafts and overall liquidity in many states at the present time (see appendix). The NCUA's proposed regulation will result in duplication of effort and confusion among state chartered credit unions. State regulators have dealt with liquidity reserves on a formal and informal basis for many years. We can continue to protect the public interest and the safety and soundness of state chartered credit unions without the intrusion of the federal government.

Regulation is most effective at the state level. At this level, the state supervisor can use his discretion in developing regulations that reflect local market conditions or the particular problems of specific credit unions. Broad, sweeping regulations promulgated by the federal government result in rigid rules that fail to take into account the intricacies or special problems of credit unions. As an example, if National

or local economic trends force an outflow of shares, state regulators are much closer to the situation than the NCUA and can react much faster, with remedial action, to stem the flow of share withdrawals.

NASCUS members have always endorsed and promoted the concept of sound liquidity management for state chartered credit unions. We feel that such management practice is prudent and in the best interest of credit union members. We constantly encourage credit union managers to employ such concepts. We do not feel that the federal government should mandate strict liquidity requirements for credit unions in place of independent management judgements.

Research Design

The economic justification provided by the NCUA does not isolate and provide an analysis of only state chartered/federally insured credit unions. In place, the data report groups the liquidity of both state and federally chartered credit unions as an aggregate figure. We feel that if NCUA desires to regulate state chartered/federally insured credit unions, it should break-out the state chartered data and provide a separate analysis of the situation.

Additionally, the data is compiled as of December 31, 1978 which is now over 7 months old. The liquidity situation may have changed significantly since that time and not be reflected in data used by the NCUA in its decision-making process. Several states have reported strong liquidity positions, i.e., North Carolina, Nebraska, Texas and Georgia(see appendix), and see no need for a federal regulation on liquidity in their states. We feel that a decision of this magnitude should be based on current data, not information that is more than 1/2 year old.

Depletion and Replenishment

We vehemently object to Section 742.4 Depletion and Replenishment, where state chartered/federally insured credit unions shall notify the appropriate NCUA Regional Office and shall replenish its liquidity reserve to the required level within 60 days, unless an extension is approved by the Administration. This section completely bypasses the state supervisory authority. Moreover, it sets up a mechanism for the NCUA to regulate and supervise state chartered/federally insured credit unions. State chartered credit unions will have to report to two regulatory bodies, both the NCUA Regional Office and their respective state regulatory agency.

We suggest that this section apply to only federal credit unions. If the regulation is indeed approved, we recommend that the state agencies act as the supervisors and enforcers of the regulation.

Federal Pre-emption

We have not seen a discussion of the federal pre-emption question in this regulation. This regulation, if implemented, will conflict with existing statutes and administrative actions and policies in several states. As an example, Tennessee, Iowa, Utah and North Dakota have liquidity regulations mandated by statute pertaining to share drafts authorized under their state programs. This proposed regulation will result in those state chartered credit unions having to comply with a regulation for share drafts and a separate regulation for all member accounts and notes payable. Needless to say, such duplication is not needed.

The state of Georgia has had a 5% liquidity policy for several years. The Michigan Department of Financial Institutions has recently instructed all state chartered credit unions to establish a liquidity policy. Please reference the Comparative Digest of Credit Union Acts published yearly by the Credit Union National Association for additional state reserve requirements.

Alternative

NASCUS believes that the NCUA should state the 5% liquidity requirement as a recommended voluntary guideline, not as regulation with the force and effect of law.

We have shown that the liquidity situation is not severe in several states, and that these states should not be saddled with a regulation that is intended for someone else. In effect, why should the majority of state chartered credit unions be affected by a regulation, when only a minority may be experiencing a liquidity squeeze?

Your point of sound liquidity management is well taken. We differ in the method of implementation. We feel that the states will promulgate a liquidity regulation if the situation warrants such action. As we have shown, not every state needs such a regulation.

The NCUA recommended guideline could be implemented by administrative sanction of state supervisory authorities. Each state agency, if they deemed that such a regulation was necessary in their particular state, could promulgate such a regulation.

NASCUS recognizes the legitimate interest which the NCUA has in protecting the soundness of their share insurance fund. However, the present liquidity situation is being adequately handled by the states, and we do not see a need for such a sweeping regulation.

This proposed regulation reflects a major shift in policy direction by the NCUA with respect to NCUA confidence in state regulation of credit unions. The federal/state partnership that has developed over the years between the NCUA and the state credit union supervisors has been successful. This partnership has worked well and we question the need to extend such a regulation to the states at this time.

We hope that you will take our comments into consideration when drafting your final regulation on liquidity reserves.

Very truly yours,

Oliver Barnett

Oliver G. Barnett
President

OGB/mrf

FORT WAINWRIGHT FEDERAL CREDIT UNION
P O Box 3525 ● Fort Wainwright, Alaska 99703

November 14, 1979

Senator Brad Bradley
1530 Beaver Place
Anchorage, AK 99501

Dear Senator Bradley:

On behalf of the Board of Directors and members of this credit union I wish to thank you for the time and effort you gave in helping to get "State General Fund Investments in Alaska Credit Unions." I can assure you that the funds this credit union receives will stay in Alaska and be used to loan to Alaskans.

Sincerely,

Ethel Faye Stoneman

Ethel Faye Stoneman, Manager

FEDALASKA
FEDERAL
CREDIT
UNION

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Anchorage, Alaska 99510
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JUNEAU
Box 1307
Juneau, Alaska 99802
R.W. COOPER Manager
(907) 789-2126

April 16, 1979

Senator Brad Bradley
P. O. Box 8-Q
Anchorage, AK 99508

Dear Senator Bradley,

Thank you for your letter of April 6th in which you enclosed a copy of Senate Bill 225. In reviewing that piece of legislation I find that it is a duplicate of previous year's bill therefore I would need a copy of the redraft.

I am in great hopes that a hearing might be found on this particular Bill prior to adjournment. It we can get it through one committee we might have a better chance to get it completed next year. If it is not processed at all this year I am sure there will be difficulty concluding it next year.

W. E. Samples
General Manager

CITY OF FAIRBANKS FEDERAL CREDIT UNION

BOX 2332 • 452-3371 • FAIRBANKS, ALASKA 99701

April 18, 1979

Senator Brad Bradley
Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Ak. 99811

Dear Senator Bradley:

After reviewing Senate Bill 225 which provides for State chartered credit unions, I have some comments based on my experience as Manager of our credit union.

Page 9, Section 06.40.120 - Supervisory Committee

Annual audits should be considered as opposed to semi-annual. The scope of Supervisory Committee audits is extensive therefore only once a year is necessary. For smaller credit unions, if the audit is conducted by an ourside firm, this can be an expensive proposition. If conducted by the Supervisory Committee, which consists of volunteers who may or may not have accounting backgrounds, an audit can take quite a bit of time which could have the effect of discouraging volunteers.

Also, under this Section it states that at least one-half of passbooks or accounts must be verified each year. This has some of the same ramifications as stated above, i.e., time and expense.

Page 6, Section 06.40.080 - Member Meetings

Rather than a mandatory simple majority to conduct an Annual Meeting, a stated minimum should be considered. The majority concept places a burden on credit unions to get such a majority of members to attend. If their membership is spread in several different localities or is involved in shift work, or there are no suitable facilities to accomodate a large group, the credit union is placed in the position of not conforming with the State law.

Thank you for this opportunity to comment on SB 225 and for your interest in the credit union movement in general.

Sincerely,

Penny Riccio

Penny Riccio, Manager

ALASKA CREDIT UNION LEAGUE

2509 EIDE STREET, SUITE 4
ANCHORAGE, ALASKA 99503
(907) 278-4949

April 23, 1979

The Honorable Brad Bradley
The State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

Thanks for your recent letter and the copy of the proposed Committee substitute for Senate Bill 225, the Bill for a State Credit Union Act.

As you recall, differences between last year's bill (also introduced this year as SB 225 and HB 452) and this proposed Committee substitute were generally those suggested by Division of Banking Director Julius Brecht in discussions with our staff. We have no objections to the inclusion of provisions desired by the Banking Division to enhance the regulatory and supervision process, and are pleased to have Mr. Brecht's assistance in drafting the bill.

We keenly regret, however, that revisions caused the bill to become entangled in the logjam of proposed legislation pending review by the Division of Legal Services. This lengthy delay has apparently resulted in the bill not receiving full legislative consideration again this year. We know you agree that the bill deserves full consideration, and that decisions based on the merits of the issues should be made without further delay. Your assistance in this effort is much appreciated and will be reported to our membership at the conclusion of this year's legislative session.

We also appreciate the efforts by those involved in legislative analysis to clarify and simplify language in the Committee substitute. Most of their changes are constructive in cleaning up old "boilerplate" language. However, some of the changes they made resulted in substantive rather than technical changes to certain sections of the bill. It's unfortunate they didn't take the opportunity to contact our staff during analysis of the Committee substitute, as we suggested to Mr. Brecht and your staff, since we would have been able to explain why certain phrases and terms were used and should be retained. We appreciate this opportunity to make suggestions for changes in the proposed Committee substitute, CSSB 225.

Page 4, lines 15-19, Sec. 06.45.060. Membership. -- In modifying the Committee substitute, certain language concerning availability of membership was taken from Sec. 06.45.030. Bylaws, and inserted in this section instead. We agree with this rearrangement, but find that the section dealing with membership of organizations and associations composed primarily of members was dropped in the transition. Accordingly, we suggest that Sec. 06.45.060 (C), Page 4, lines 15-19 of CSSB 225 be changed to read as follows:

"(C) Organizations, associations and partnerships composed primarily of individuals who are eligible for membership, and corporations whose stockholders are composed primarily of individuals who are eligible for membership, may be admitted to membership in the same manner and under the same conditions as individuals."

Page 5, lines 2 and 3, Sec. 06.45.070. Powers. -- Under (6) the term "Share Certificates" was changed to "Time Certificates". Share certificates in credit unions do not have precisely the same function as time certificates in other institutions, and we disagree with this change. Further, inasmuch as share certificate and other types of accounts are separately defined in Sec. 06.45.500, we suggest that Sec. 06.45.070(6) page 5, lines 2 and 3 of CSSB 225 be changed to read as follows:

"(6) Receive savings from its members in the form of share accounts, deposit accounts, share certificate accounts or special purpose thrift accounts;"

Page 5, line 6, Sec. 06.45.070. Powers. -- In (8) the words "an aggregate" were changed to "a total". We're concerned that this could be construed to mean that a credit union could borrow a total of 50% of unimpaired capital and surplus from one source, and could borrow similar amounts from additional sources, obviously an unsafe and unsound practice. We suggest that the words "an aggregate" replace the words "a total" on page 5, line 6 of CSSB 225 to help clarify the intent.

Page 6, line 12, Sec. 06.45.070. Powers -- In (20) following "honor requests for withdrawals of those savings" the words "in any form" were removed. We feel this phrase is important in clarifying that remote withdrawals, i.e., share drafts, automatic teller and point-of-sale terminals, correspondent credit union relationships, etc., are permitted. We suggest that the words "in any form" be inserted after the word "savings" on page 6, line 12 of CSSB 225 to help clarify the intent.

Page 15, lines 4-8, Sec. 06.45.200. Special Accounts -- Certain changes and omissions occured during legislative analysis. Inasmuch as these accounts are specifically covered under both "powers" and "definitions" sections of the bill, we suggest that this section be deleted entirely and subsequent sections be renumbered accordingly.

Page 15, line 22, Sec. 06.45.210. Multiple Party Accounts. -- Wording changes in legislative analysis help to clarify this section, but we suggest that the words "qualify as", page 15, line 22 be deleted, and the word "constitute" be substituted therefor. This will clarify that accounts listed in Sec. 06.45.210(b) are not subject to the limitations under Sec. 06.45.210(a).

Page 18, line 15-16, Sec. 06.45.250. Loans -- The words "on any business day" were deleted from (f) relating to repayment of loans without prepayment penalty. These words, taken from the Federal Credit Union Act, clarify that loan repayments will be accepted and posted as of the regular business day received. Otherwise, credit unions could be expected to post as of an evening or weekend a member's loan payment was attempted or postmarked. We suggest the words "on any business day" be inserted after the word "part" on page 18, line 15 of CSSB 225.

Page 18, lines 17-19 and 22, Sec. 06.45.250. Loans.(g) -- Here again we note the use of the word "total" in place of "aggregate". We are concerned that it could be construed that more than one loan or line of credit to a member, each of which could total 10% of the credit union's unimpaired capital and surplus could be extended. This limitation is intended to apply to the aggregate loans or lines of credit to a member, and would be more clearly stated in that manner. The following adaptation of the language from the Federal Credit Union Act is suggested to replace Sec. 06.45.250 (g), page 18, lines 17-19 of CSBB 225:

> "(g) A loan or line of credit may not be made to a member if, upon the making of that loan or line of credit, the member would be indebted to the credit union upon loans made to him in an aggregate amount which would exceed 10 per cent of the credit union's unimpaired capital and surplus."

Page 18, line 22, Sec. 06.45.250. Loans (h) -- Again, we suggest use of the word "aggregate" in place of the words "the total".

Page 21, line 15, Sec. 06.45.300 Investments (6) -- It appears the analyst incorrectly assumed we had used abbreviations in listing the facility as "U.S. Central Credit Union" and turned it into "United States Central Credit Union" which, to our knowledge, does not exist. We suggest restoring the correct name of the institution, as incorporated under the laws of the state of Kansas, which is "U.S. Central Credit Union".

Page 21, line 24, Sec. 06.45.310. Reserve Allocations -- In changing the term "accounting period" to "calendar year", the analyst suggests that reserve allocations would not have to be made with each period for which the books are closed and dividends calculated and posted, but only at the end of the year. While we appreciate the attempt to lessen our accounting

requirements (virtually all credit unions post dividends more often than annually), we suggest that good business practice dictates the calculation and posting of reserve allocations prior to declaring dividends (as required by NCUA). We suggest deleting the words "calendar year" on Page 21, line 24, and substituting the words "accounting period" therefor.

Page 23, line 14 -- We suggest use of the title "Commissioner" instead of "Department" to be consistant with the rest of the bill.

Page 24, line 3, Sec. 06.45.330. Merger.(a) -- After the words "present at" we suggest striking the "a" and adding an "s" to the word "meeting" to make it plural. This would clarify that one grand membership meeting of all merging credit unions is not required to vote on a proposed merger, rather that each credit union's membership should have a separate meeting to consider the merger, as is the custom elsewhere.

Page 24, line 14, Sec. 06.45.330. Merger (c) -- The analyst has removed the 60-day requirement for action by the Commissioner on a proposed merger, thus leaving an open-end time period. We suggest restoring the 60-day requirement by inserting the words "within 60 days of receipt" after the word "and" on page 24, line 14.

Page 25, lines 21 and 23 -- Again, the analyst has used "department". We suggest using the title "Commissioner" for consistancy with the rest of the bill.

Page 29, lines 16 and 17, Sec. 06.45.470. Exemption from Taxation. (a) -- The term "shares and deposits" is used in the exemption. To clarify that all types of accounts, as defined in Sec. 06.45.500 are to be exempt, and that the exemption is not limited only to "shares and deposits", we suggest deleting the words "shares and deposits" on page 29, lines 16 and 17, and substituting the word "accounts" therefor.

That completes our suggestions for changes in CSSB 225. Again, we appreciate the opportunity to analyze changes made by the Division of Legal Services. The many technical amendments they made that we have not discussed have improved and clarified certain sections of the bill.

We look forward to further progress on this important bill and stand ready to assist you in any way possible.

Sincerely,

David L. Chatfield
President

DLC:sal

NATIONAL
Bank of Alaska
CORPORATE HEADQUARTERS: BOX 600 ANCHORAGE, ALASKA 99510 (907) 276-1132

April 19, 1979

Senator Brad Bradley
Chairman, Senate Commerce Committee
Alaska State Senate
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Brad:

Thank you for sending me the information and the copy of SB 225 providing for state credit unions.

We continue to oppose this legislation as it basically establishes a commercial bank operating under the title of "credit union". This gives the credit union all banking powers without the regulations, taxation and protection to the depositors that the commercial banking system offers.

The arguments made by the credit unions that a state charter is necessary is misleading. At the present time to our knowledge there are no people that cannot be served under the federal chartering. To expand to state chartering will only increase our cost of government and not serve the public in any beneficial way. I would hope that this Bill would not become law this or next Session as, in my opinion, it is not a good piece of legislation, nor will it develop the free enterprise system. If credit unions want to be commercial banks, regulate them identically. The cost of doing business is the same, and the protection is afforded to the depositors.

Sincerely,

Richard T. Hall
Senior Vice President

RTH:mr

PEOPLES BANK & TRUST

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TELEPHONE (907) 279-7511

R. A. KENNARD
PRESIDENT

April 26, 1979

Senator Brad Bradley
Pouch 5D
State Capitol
Juneau, AK 99811

Dear Brad:

I received your letter of April 6th regarding the Senate Bill #225 providing for state credit unions and have talked to the other bankers at a meeting the other day and wanted to let you know that although you had not heard too much from the bankers, we still feel that this credit union bill would not be a good thing for the people of the State of Alaska.

We continue to feel that it is nothing but a commercial bank under the guise of being called a credit union and one that is very liberal without proper controls and without proper capitalization. We also feel that it is a type of financial institution that is unfair competition because of the fact that it does not have to pay taxes. They can compete in every way and in more ways than commercial banks but yet do not have to pay taxes.

I was mentioning this to a state person the other day that if we establish enough of these types of non-taxible entities that in time there would not be sufficient taxes to pay the salaries of the state people or legislators.

Brad, I know that you are under pressure, but really when you look at this type of legislation, it cannot be good for the community, cannot be good for the State and, of course, is very bad for the tax paying institutions of Alaska. We certainly hope that you can contain it and not allow it to become law.

Sincerely,

Dick

President

RAK/lc

BARANOFHTL JNU
TO DAVE CHATFIELD
C/O BARANOF HOTEL, JUNEAU
ROOM 518

FROM ALASKA BANK OF COMMERCE, ANCHORAGE

ALASKA BANK OF COMMERCE IS NOT OPPOSED TO THE CREDIT UNION AMENDMENT ATTACHED TO SB NO 118.

BARANOFHTL JNU

AK BK COMM AHG

ATTN DAVE CHATFIELD

WITH REGARDS TO THE INCLUSION OF THE STATE CREDIT UNION BILL AS PART OF S B 118, THE FIRST NATIONAL BANK OF FAIRBANKS HAS NO OBJECTIONS TO THE INCLUSION OF SAME AS PART OF THE ABOVE BILL

MIKE WEIS

PLS ADVISE MR CHATFIELD OF THIS MSG HE IS IN ROOM 518 PHONE 586-2660

IMMEDIATE ADVISE PLS

FIRST NATIONAL BANK OF FAIRBANKS

FNBOFFAIR FBK

BARANOFHTL JNU

DW1Z

BARANOFHTL JNU

AKPAC BANK AHG

BARANOF HOTEL
JUNEAU
MR DAVID CHATFIELD
RM $518

IN RESPONSE TO YR TELEPHONE INQUIRY, ALASKA PACIFIC BANK DOES NOT OPPOSE THE INCLUSION OF THE STTE CREDIT UNION BILL AS PART OF AB SB 118.

ALASKA PACIFIC BANK

AKPAC BANK AHG

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D
JUNEAU, ALASKA 99811

September 17, 1979

Chris

Honorable Brad Bradley
Chairman, Senate Commerce Committee
P.O. Drawer 8-Q
Anchorage, Alaska 99508

Dear Senator Bradley:

I have just reviewed the transcript for the hearing which your committee held on July 25-26, 1979 on the proposed CS SB225, an Act providing for state-chartered credit unions.

I note from the testimony towards the end of the July 26 hearing that it would appear that you and Senator Sturgulewski would like to see draft regulations in the areas of field of membership, share drafts, and application procedures. I said, during the hearing, that the division would certainly cooperate with the committee if it wanted to become more directly involved in the review of proposed regulations, separate from the authority for the Legislature to review all regulations of State agencies. I would draw your attention to the fiscal note that was submitted along with my testimony. That fiscal note provides for funding for an individual to draft regulations and to set up procedures for the regulating of credit unions under CS SB225. It may, therefore, be premature to come up with draft regulations prior to the enactment of the bill.

I would suggest that if the committee feels strongly that certain guidelines be followed in the drafting of those regulations, that the committee adopt a Letter of Intent setting out those guidelines. I would be happy to discuss this further with you as well as members of your committee and staff. My reason for hesitating in drafting regulations at this time, is that we have no assurance that the bill that may be eventually enacted will be, in fact, that which is presently before the

committee. In my estimation, it would be best to draft regulations after we have a firm statement from the Legislature as to what the law is going to be.

In any event, please do not hesitate to contact me if you have any further comments on the matters touched on in this letter or other matters relating to this bill.

Sincerely,

Julius J. Brecht
Director

JJB/5/7

SENATE COMMERCE COMMITTEE

MINUTES

SB225 Credit Unions

July 26, 1979

The teleconference hearing was called to order by Committee Chairman, Brad Bradley at 9:15 a.m. The only other committee member present was Senator Arliss Sturgulewski; Senator Terry Stimson was represented by Licia Piceno. Representative Terry Martin was in attendance and participated in the proceedings. Committee staff members in attendance were Christian Basler, Jon Mathison and Luci Tennison. The teleconference took place in the Legislative Information Office in Anchorage.

Attached is a transcript of the proceedings taken from a taped recording. Also attached are copies of written testimony and a list of those testifying from the various teleconference sites.

WITNESSES

SENATE COMMERCE COMMITTEE
TELECONFERENCE

July 26, 1979

ANCHORAGE

Alaska Credit Union League
David Chatfield

Alaska Pacific Bank
George Diener

FAIRBANKS

Eielson Employees Federal Credit Union
Anita Davis

Ft. Wainwright Federal Credit Union
Ethel Stoneman

Wien Employees Federal Credit Union
Mebble Hansen

First National Bank of Fairbanks
Michael Weis

KODIAK

Fedalaska Federal Credit Union
Tim Johnson

JUNEAU

Tlingit/Haida Federal Credit Union
Stephen Vlahovich

Division of Banking & Securities
Julius Brecht

The Senate Commerce Committee will come to order. Today, of course, we are taking up the state chartered credit union bill, Committee Substitute for Senate Bill 225 and we will start out with Nome. There were no witnesses or observers in Nome at that time. We'll check back with Nome later and proceed on with Sitka. There were no witnesses or observers in Sitka at that time. Proceed on to Soldotna. There were no witnesses or observers at that time. Proceed on to Fairbanks. Fairbanks had three witnesses. First witness Anita Davis from Eielson Credit Union.

"Mr. Chairman and members of the Committee, I am Anita Davis from the Eielson Credit Union and I would like to thank you for the opportunity of talking with you this morning and expressing my support to the bill that is before you. I am sure that after all of the hearings and all that you have been listening to that some of it has been very repetitious. We feel, though, that this is caused by the fact that we are all very united in our position on this bill. The strong points involving the bill are something that needs to be said time and time again. I, personally, have been with the credit union for 15 years. I believe in the credit union movement; I believe in Alaska. Thirteen of those years that I have been with the credit union have been in Alaska. I, personally, feel that the Alaskans are a proud and independent people and do not like to be placed in the position of being in the minority. We are one out of only four states left that does not have a state credit union act. I also would like to say that I feel the people of Alaska would like most certainly to avoid any further involvement by the federal government in matters that the state can handle. As I said before, I believe in the credit union, I believe in the

philosophy of people helping people. I believe that people getting involved in this spirit adds quality to their lives. We have a great many people in the Fairbanks area that do not have credit union services available to them. This is caused by the federal chartering laws requiring common bond of the people forming a credit union. We are approached many times by people that would like to form credit unions that have none available to them. My own particular situation being a Department of Defense or government related credit union; they cannot join our credit union and we cannot refer them to any other credit union in the area. I am not aware of any of the present credit unions that operate within the state that are contemplating any type of a charter conversion. We all are very much aware of how much more effective we can be if we have an alternative available to us and this means a dual chartering system. Our NCUA administrator himself is a strong supporter of the dual system. He at one time was a state regulator. It has taken the credit unions a long time to be recognized as a viable financial institution. We would like very much now for the state to recognize the fact that we are here, we are real, we are serving a great many peoples' needs and we feel that the people of the state should have the opportunity to take advantage of some of the services that we have to offer. Thank you very much."

No questions were asked of Ms. Davis. Next witness was called. Ethel Stoneman, Ft. Wainwright Credit Union.

"Mr. Chairman and members of the committee, this is Ethel Stoneman from the Ft. Wainwright Credit Union. As Anita said, everything that we are all saying probably is repetitious because we feel so

strongly on this. Credit unions were formed by people who have something in common. A good return on savings and low interest loans are the principal service. Because they operate without a profit motive and because all earnings are passed on to the member/owner credit members, credit unions have been and continue to be the most consumer-oriented type of financial institution. We have all heard that credit unions thrive very well in Alaska without a charter, but the reason we have is because they are consumer-oriented. There are still a lot of people in Alaska that are not eligible to be members because they do not belong to the common bond of one that is already in effect. The federal charters do not always accommodate all of the people. We, as Alaskans, are fighting very strongly at this time trying to get out from under so much federal government rule. We feel our state government can supervise much easier and as good if not better than the federal government. State control would permit more timely legislative changes when it appears necessary to adapt the law to the altering social and economic conditions. State legislators are here in Alaska and are more aware of and sympathetic to our needs. Our needs are not the same as the lower 48, therefore, we need to be able to have some control here in our state so that we have a better control of the situation. There are only four states that do not have their own act and Alaska is one of them. I just returned from two weeks at a credit union school in Wisconsin where both state credit unions, federal credit union employees and officials from all over were in attendance. Without fail, every state credit union person that I talked to showed me it was better to be in control by a state charter. They meet the individual state's needs more efficiently than federal control. At this time I do not know of any of the credit unions

that plan to change their charters, but it would be much easier for credit unions to help the people that do not have charters at this time. That concludes my testimony."

Next witness was called to testify. Mebble Hansen from the Wien Credit Union.

"Mr. Chairman and members of the Committee. My name is Mebble Hansen of the Wien Employees Federal Credit Union. I appreciate this opportunity to give testimony in support of the bill that is now before your committee for consideration. In Alaska we do have 30 federal credit unions with a federal charter but we do not have a state act. Alaska is only one of four states left which does not allow its own credit union act. While a federal charter is meeting the needs of our members, there is still many unmet needs for the people of Alaska because of the federal authorities who are either unwilling or unable to recognize for our smaller population and small businesses. We believe a state act would give federal chartered credit unions more leverage when dealing with their regulatory agencies by providing an alternative to charter conversion. We at federal chartered credit unions have no options except to conform to their requests whether they are necessary or required by law. We believe that the needs of smaller credit unions can be met and better served by a state agency that would permit a much more simple administration and regulation to meet the demands of certain geographic regions. Alaska is now dependent on federal authority for administration of our consumers deposits with no control over your credit union chartering or rates. We believe that the state of Alaska would want to take a more active role in controlling the destiny of our depository institutions

in Alaska. Credit unions are here and we are serving our members and will continue to do so whether the state act is enacted. Enacting a state credit union act will only help us seek a choice of Alaska's other financial institutions which is a choice of a state of federal chartering provisions. We thank you for letting us testify today in behalf of this issue and we urge your support. Thank you."

No other witnesses in Fairbanks at that time. Senator Bradley stated, for the benefit of those testifying in Fairbanks, who was present at the hearing in Anchorage. Chairman Bradley checked back with the outlying sites, but no witnesses or observes had materialized. The teleconference recognized Kodiak. Mr. Tim Johnson, Fedalaska Federal Credit Union in Kodiak.

"Mr. Chairman and members of the committee, this is Tim Johnson from Fedalaska Credit Union in Kodiak. I appreciate the opportunity to speak in support of the bill before you now. As you know, we are an island and not uncommon at all with other cities in Alaska, and particularly in the needs of its people. I would like to particularly state that this bill would give an opportunity to towns like Kodiak to develop area type credit unions to service the needs of the communities as the federal regulator is not a local person it is very difficult to accomplish the needs of the people here. For example, five years ago Kodiak did operate under an area type charter where it had the municipal, state and federal employees. However, since then, the regulating body has been shifted to remove the city, state and borough associations from our charter and make it federal only. This leaves people without a credit union to take care of their economic needs. Again, it primarily is unique

to us by being far away from the regulators, not to have their support and it makes us feel detached from the whole program. That is all I have to say at this time."

Proceeded to Juneau. First witness, Brian Andrews, with Alaska State Employees Federal Credit Union.

"Chairman Bradley, members of the Commerce Committee and interested parties. My name is Brian Andrews and I am the General Manager of the Alaska State Employees Federal Credit Union. My testimony today will be very brief and pointed towards to what I feel is the most important element of this state act and why it should be enacted. That element is the flexibility and timeliness of the act which allows us to meet the changing economic conditions of today and still maintain our goal of improving the economic and social conditions of our membership. The federal regulatory body NCUA, I believe, has failed us by not changing to meet today's economic conditions. Specifically, their inability to adjust our interest ceilings. With today's inflation being the worst since World War II, there has been a tremendous pressure to maintain a profit margin which, consequently, adversely affects our services and monetary return to our membership. It is this inability of the federal government to provide an adequate profit spread which is destroying, in my mind, the very existence of the credit union movement and that is why I strongly advocate the state charter. I can assure you that if this act is enacted into law, we will be one of the first to recharter and refirm our goal of improving the economic conditions to our membership. Thank you."

Next witness was called. Stephen Vlahovich, Tlingit/Haida Federal Credit Union.

"Good morning Mr. Chairman, members of the committee. I think you all know me, I have been on this committee for many years now. My testimony today is in favor, as usual, of the state chartered credit union act. All the reasons given for the act are legitimate and valid. I do have some areas of the bill itself which I would like to address. First is in the big seven where it states that the par value of the credit union share shall be in $5 multiples of not less than $5 and no more than $25. There has been some studies done in federal credit unions on the size of the share deposit and it has been proven, statistically, that share deposits of less than $50 are a loser to the credit union itself and the credit union does not incur any benefit to its membership by holding a deposit of less than $50. It would be my recommendation that the $25 be increased to $50 and then multiples of $5 thereafter. The other part of the bill I would like to address is on page 25 section 06.45.280, Insurance, part B. All credit unions chartered under this chapter shall be required to furnish evidence of insurance coverage by a national credit union administration. In talking to the federal examiner, what happens when a state chartered credit union applies for insurance coverage for shares through the national credit union administration is, if the bill providing the chartering of state credit unions has powers which the national credit union administration feels are not warranted in their operation, they usually require that credit union, in order to provide the insurance coverage, to drop those powers. Making an agreement with the national credit union administration. This,

I feel, would be an unwarranted invasion into the powers of the state to direct its own operation. I feel that there should be language added there that the credit union charter, say in the state of Alaska, would have the ability to purchase share insurance from another state chartered share insurance corporation or from a private insurance corporation. That's the end of my testimony today."

STURGULEWSKI: I do have one question if we could go back to page 7. Are you suggesting that the wording would be $5 multiples not less than $50 and then with some upward limit. What kind of wording might you suggest?

ANDREWS: The language would only have to rely on the fact that you would have a $50 minimum share, initial purchase and then multiples of $5 thereafter.

STURGULEWSKI: Thank you.

BRADLEY: Question for Mr. Chatfield for the benefit of those listening. Dave, don't some credit unions already implement this, a minimum of $50?

CHATFIELD: Thank you Mr. Chairman. To my knowledge there are no provisions in state charters elsewhere providing for that high a minimum par value on a share. Federal credit unions, by the federal act, may not increase the par value of a share above $5 at this time although there are proposals before the Congress to change that. I appreciate what Stephen is saying; I would be willing to discuss

with you the possibility of increasing the allowable par value. I think perhaps a minimum of $50 might be a bit high. $5 multiples perhaps starting a $5 and with a maximum of $100 would be possible avenue to take on this.

BRADLEY: Thank you very much, David. Do you have anything further Stephen?

VLAHOVICH: Thank you Mr. Chairman, I don't.

BRADLEY: Thank you, Stephen. Proceed to next witness.

Third witness, Julius Brecht, Director, Division of Banking and Securities.

BRECHT: Good morning Mr. Chairman and members of the committee. I wish to thank you for giving me the opportunity to come forward and offer testimony on the bill before the committee on behalf of the administration. As you all know, the bill provides for the establishment of a state chartered credit union. At the present time there are approximately 33 credit unions doing business in the state. They are all federally chartered. The credit union as an institution is only one of several forms of financial institutions which are doing business in the state including commercial banks, mutual banks, bank holding companies, foreign banks, trust companies, savings and loan associations, finance companies and premium finance companies as well as credit unions. Each institution performs a service to the public and each is subject to regulation by state and/or federal agencies. I've made this statement before, but those institutions providing a wider range

of services are subject to more extensive regulations. For example, commercial banks provide perhaps the widest range of services to the public, and they are also the most heavily regulated by both state and federal agencies. The regulation of a financial institution in the best interest of the public and the customers of that institution must be commersurate with the scope of services rendered and the risk of loss to depositors, shareholders and other creditors should the institution fail. I believe that if the Legislature enacts legislation providing for state chartered credit unions there must be provisions for adequate regulatory control of these financial institutions by the state commensurate with the services offered. I do have some specific comments on the draft bill which I could go through at this time at the pleasure of the committee.

BRADLEY: Go ahead please, Julius.

BRECHT: A number of these are really more in the vein of drafting type changes, but I think they should be brought to your attention at this time. The first one is on page 11 of the draft, line 11. Reference to AS 06.25.010-06.25.350. That, of course, is the trust company act. I think it should be just a reference to AS 06.25 in the event that sometime in the future that act is extended beyond section .350 and has an inadvertent omission of the appropriate change in this bill if it were to become law. Second item goes to page 16, lines 24-26. There is a reference to what might be termed wild card statute. It, in effect, allows the department to authorize state chartered credit unions to provide those services that a federally chartered credit union is allowed to provide, but which are not specifically provided for in the statute. There is

a similar wild card statute that applies to other financial institutions and is found in a new chapter that was enacted by the Legislature last year. Chapter 1, entitled Administration and within that chapter I would suggest that the provisions of C on page 16 of the bill be deleted and in its place a reference be made in section 06.01.020 to the national credit union administration. In this way the same provisions of C in the bill will apply but will be put in a more logical place within Title 6. Is that clear to the committee?

BRADLEY: I think so, but hold just a moment. Do you have any comments, Dave? We have a comment from Mr. Dave Chatfield.

CHATFIELD: Thank you Mr. Chairman. Julius, we have no big problem with that. I think you have recognized the fact that the conformity provision or advantageous powers, or other names that it goes by is in the statute for other financial institutions and this would simply duplicate that for credit unions. In most cases the state credit union acts are fairly well self-contained rather than implying provisions of other parts of the banking code and things that would pertain to credit unions. I guess we have a preference to leave it in here so that this act remains self-contained, but as long as the effect is the same, we have no big problem with that.

BRECHT: The purpose of establishing Chapter 1 was to put in one place rather than in several different chapters, those provisions that would generally apply to all institutions. For instance, Chapter 1 now has provisions dealing with administrative procedures, examination policy, charging of fees for examinations and investigations and the general power of the department to use what I

term a wild card statute.

CHATFIELD: We have a request for the specific statute reference of the conformitive provisions for the other financial institutions. I don't have that at hand.

BRECHT: I would suggest that national credit union administration be inserted after Federal Deposit Insurance Corporation in AS 06.01.020.

CHATFIELD: Thank you Julius, I think we have it referenced now. Again, we have no big problem with this. We would prefer the thing to be self-contained but we recognize that there are other provisions of the banking code that apply.

BRADLEY: Attorney Sharyn Campbell has a comment.

CAMPBELL: Julius, we have discussed this previously and there was a technical difference in the standards that are provided. Subsection 1 of 020 requires that one of the standards be that it serve the public convenience and advantage and if you are going to incorporate the wild card provision it has to be clear in the legislative record that the public convenience standard is not the same as it would be with respect to institutions that can serve the general public because the credit union membership is limited to its field of membership.

BRECHT: Well then an appropriate amendment could be made to paragraph 1. Or in the legislative history of the bill we could make clear

that the public convenience and advantage of the membership of the credit union, but at least in that way all wild card type of statutes would appear at one place in the financial institution's title.

BRADLEY: I think I follow you, Julius, but let me see if anyone else has a comment.

STURGULEWSKI: Mr. Chairman I think what we need is to have your staff take a look at that and discuss it and draw up a possible amendment and then we can have some further input on it. I like the idea of it all being together, but I agree with Ms. Campbell's comments that it has to apply, definitely, to the credit union field of membership.

BRADLEY: Did you understand that Julius? It was from Senator Sturgulewski.

BRECHT: Yes, I understand. On pages 21, 25 and 28 there are several references to the national credit union administration. I think that there are enough references here that the acronym could be used in the term defined to decrease the verbage within the bill.

BRADLEY: I agree; I'm a great advocate for such. Spell it out the first time and use an acronym from there on because it is long terminology.

BRECHT: Specifically for the record, on page 21, line 14, page 25, lines 18, 20, 21 and 23, page 23, line 1 there is reference

for returning small loans and savings and loan associations and since this work draft was based on that, the repealer was part of the work draft and it is not appropriate for the final bill.

BRADLEY: Then if I understand you, you agree that this repealer should be omitted?

CHATFIELD: That's correct because this, as a matter of fact, was dealt with with the legislature during the last session and this happened to appear on the work draft that we're now viewing, but it has been dealt with by the legislature and has no bearing to the credit union act itself.

BRADLEY: Fine, I missed that discussion between Mr. Chatfiel and Mr. Basler, the administrative assistant. Do you have anything further to add, Julius?

BRECHT: Just that the provisions of the proposed committee substitute in the context of the comments that I have made are what I view as adequate regulatory guidelines for credit unions their members, and the department. I will also submit to the committee a copy of a fiscal note that was prepared by the Division earlier this year and it should still reflect a reasonable projection of the Division for the cost of administering a credit union act. That fiscal note is dated February 23, 1979.

BRADLEY: I understand and would appreciate your submitting an up-to-date fiscal note, Julius. Would there not be some changes in the previous fiscal note?

BRECHT: Well, there might be some changes due to inflation, but other than that, I think that the fiscal note assumes that approximately 15 credit unions would be chartered and doing business in the state and from there makes projections as to how much time would be necessary to investigate and examine. There is an estimate for the need of one and one-half examiners to administer that program and an additional one-half examiners could easily be used to support other activities of the banking section within the division.

BRADLEY: I would appreciate your considering if there were any changes because from past experience I know from one section to another sometimes it's a frequent question that is this an updated fiscal note from one year to the next, one session to the next, so maybe to avoid any unnecessary discussion on that we might give it all the consideration that you think necessary, but if not I think I could explain it away on the floor. Mr. Chatfield has a comment.

CHATFIELD: I would like to suggest at this time that it is the committee's desire we may wish to touch on the issue raised by Stephen Vlahovich concerning an alternative for share insurance. If it is the committee's desire it might be well to do that while Julius is on the other end.

BRADLEY: Please go ahead.

CHATFIELD: I can see Stephen's concern and I think this bears on a question that Rep. Martin asked on Tuesday concerning the potential for regulation and I think that that is the only place where there might be possible dual regulation or any conflict of it arises.

For example, if the standards of NCUA concerning state chartered credit unions retaining their share insurance would be different from or in conflict with the standards that the banking division might have, so perhaps it would be a good idea to discuss at this time other options and I guess one way to do that would be to consider page 25, line 18 after national credit union administration inserting the words "or similar share insurance program approved by the commissioner." This would solve the problem as far as at least leaving the door open to alternative programs. Now we know of some other share insurance programs that do accept credit unions for insurance purposes from other states so if the words" or similar share insurance program approved by the commissioner" were inserted after the word administration on page 25, line 18, that would leave that door open and then I would suggest if that is done that to conform elsewhere in that paragraph, paragraph b on page 25, the words "national credit union administration" be changed to "insuring organization". I guess I would like to know Julius' feelings on that.

BRECHT: This question has been raised from time to time, not only in the context of credit unions, but other financial institutions. One real advantage of having a federal agency insure a financial institution is that you have the good full faith and credit of the U.S. government behind that insurance. The committee should be aware of the one decided disadvantage of stepping away from that is the possibility of getting involved in insurance problems in the context of financial institutions. Certain states have had considerable difficulty with private insurers. Maybe not necessarily in the context of credit unions, but in the context of other financial institutions and I think that the committee

should be very careful about considering the possibility of insurance other than through a federal agency.

CHATFIELD: Yes Julius, I think we have considered that and we realize that there are some problems with that during the time that this has been kicked around. I think it's obvious that it would be actuarily unsound to attempt to do that, to form a share insurance organization just for Alaska credit unions because the numbers aren't large enough to be able to spread the risk properly. However there is the national share and guaranty corporation. There are other share insurance corporations which insure large numbrs of credit unions in other states. They are quasi-government agencies, they are supervised by the state agencies in those states and some of them operate on a regional basis or permit insurance and membershi by credit unions in other states, so with the wording "as approved by the commissioner" in there, would you feel uneasy about at least leaving the door open that much?

BRECHT: It would, of course, be at the discretion of the Commissioner, but what you do by, it depends, you could have a hypothetical at sometime in the future where there was considerable pressure put on a future commissioner to allow private insurance in this context and maybe perhaps in other contexts involving other financial institutions. Perhaps in the long run the net effect was not in the best interest of the institutions or their customers. It could be inserted, but I would still be rather cautious about the use of any insurance other than through a federal agency.

CHATFIELD: Julius, I think we share your concerns and we know that

there have been some problems with private insurance companies insuring the deposits of other financial institutions. Fortunately none of those have occurred in connection with credit unions. But I think we share those concerns and it would certainly be our desire to see credit unions financially strong and insured by financially strong organizations and this, again, would address the problem that Rep. Martin brought up on Tuesday about the potential for dual responsibilities, dual regulations. This appears to be the only area where that's possible. Where state chartered credit unions would be required to have and maintain share insurance as their only option and if the NCUA standards for that insurance prove to be different or in conflict with those of your department. I think that's the only opportunity or potential problem area as far as dual regulation is concerned.

VLAHOVICH: I have a question to ask Dave. It's my understanding that the NCUA's share insurance program is not backed by the total good faith and credit of the U.S. government; it is basically a privately funded program supported by the credit unions throughout the United States.

CHATFIELD: Stephen, that's partly true and partly a little narrower than the actual fact. The share insurance fund was developed and is sustained by assessments against the credit unions that are insured -- premiums for that type of insurance. However, it does have guarantees and draws from the U.S. treasury to maintain its liquid status.

VLAHOVICH: Thank you.

BRECHT: Well, I guess my final comment on this would be that if that language were inserted it would certainly be used with caution by the administration.

BRADLEY: Thank you Julius; any further comments.

STURGULEWSKI: Julius, several areas. First, the page that refers to the seven member aggregate, $1,000 and then it goes on on the next page and one of the things that has to be looked at by the Commissioner is that the proposed credit union is economically feasible. We've heard a lot of debate or discussion over the last couple of days of hearings regarding the fact that, in Alaska we have somewhat of a unique situation in that the groups here, for the common bond, may not be as large as outside, so we have some very unique conditions that we need to bring together and utilize a broader definition of the common bond. I'm wondering, just from a philosophical point if you might like to speak on what kind of standards you apply to see that a common bond exists and that it is economically feasible. I'm wondering what kind of standards would be developed; would they be in the form of regulations or can it be that precise?

BRECHT: Yes, Senator Sturgulewski. A part of the fiscal note envisions an appropriation for a study and for the drafting of regulations to interpret and implement an act that would become law. The question of common bond and several other questions that may be raised regarding the present bill need to be clarified.

STURGULEWSKI: In other words you don't have those standards set up and you would anticipate that they would be done by regulation. Is that correct?

BRECHT: Preferably by regulation, we would of course look to what the history had been in other states that seem to be at least somewhat similar to Alaska. We would look to the regulations and procedures of the NCUA. They certainly would have more experience in this than we would starting right off. Again, going back to the fiscal note, the study would outline what has to be done to establish an appropriate mechanism for the regulation of credit unions under the act.

STURGULEWSKI: Okay, I've been rather of the feeling that there may have been more done on that; it sounds as though you have a way to go if this bill is enacted in that area. On page 9, line 13, under section 06.45.060 on membership. I'm just wondering if the way that's laid out, including the one at the end, members of the immediate family of a member. Is that a normal standard and inclusion?

BRECHT: I believe that the substance of this bill, to a large extent, comes from the model credit union act and certain other state acts that are thought to be progressive. As to where this specific language comes from, I'd have to defer to Mr. Chatfield who might be more familiar with it.

STURGULEWSKI: Julius, if you go to page 30, line 18. Talking in that particular section about the suspension and just begin kind

of an overview. It calls for an annual report. There are certain percentages listed throughout the bill as to where a credit union can put their money and the amount of loans and so on. How onerous a burden is it going to be as far as a regulatory process goes to see that credit unions, in fact, stay healthy. Have you really carefully looked at that in drawing up your fiscal note. Because I think that if this bill passes, we're saying to the public that we are going to take over a certain responsibility and I'm frankly pretty shocked in some of our sunset reviews to find that our ability to enforce and police the laws and regulations that are enacted is extremely weak. My concern here is, are we holding out that we are going to do a job and then find that we don't have the resources to do it. I'd like some comment on that.

BRECHT: We have tried to address that in the fiscal note. We tried to estimate how much time it would take to do a typical examination and took our own experience in examining other types of financial institutions and drawn on the experience of certain other states in their experiences in examining institutions. We have that as a basis for our estimate. We are also estimating that we would have approximately 15 credit unions that would either charter or convert. If it was a much larger number, then obviously we would be saturated with business in that respect and would go beyond the projections of the fiscal note.

STURGULEWSKI: Julius, in the matter of financial institutions that are regulated by the state charter, do you have a specified time that you go on annual inspections. If the answer is yes, would you anticipate in the credit unions that you would actually go

and make an inspection or is it just as a report to you. Do you go out in the field and verify that?

BRECHT: Our policy, let's say with respect to other financial institutions, would be to do a field examination. On a periodic basis. We would do the same with credit unions if this bill becomes law. In fact, I think this bill specifies an annual examination so we would be required to do an examination at least once a year. There might be a need for special examinations if there were particular problems with a specific credit union.

STURGULEWSKI: Julius, one other question. There was some discussion at the earlier hearing that you didn't have an opportunity to hear. There was talk about possible adoption of a fee schedule that would go a long way toward funding the necessary staff to regulate. What is your feeling on that as far as credit unions meeting part of the cost of the operation of your department?

BRECHT: The fee schedule that had appeared in a previous version of this bill would generate fees that would not come close to paying the cost of doing an examination and the reason why the credit unions will pay the full cost incurred by the department in conducting an examination is to put them on a par with other financial institutions with respect to payment of fees. Under the present law, under AS 06.01.010, any financial institution that is subject to the regulation of the department must pay the costs incurred by the department in examination or investigations. It's pretty clear as to how far that goes. It includes the cost of the examiner, the salary and benefits of the examiner, plus travel and per diem

if it's a field examination. During the course of the on-site examination and including the time necessary to write up the examination report with the investigative report after the examiner returns from the field. That is a large portion of the cost of administering the program. Rough figures, 25% or so. I would say that if we're going to have some sort of administrative fee or assessment for administrative costs that it should be applied across the board on all financial institutions.

STURGULEWSKI: Julius, I'm afraid I'm a little bit lost. You refer to .010 where you have the full cost. Does it mean then that with this bill we're covered for the field examination and all the attendent costs. But it does not go beyond that, is that basically what you said?

BRECHT: That's right, it does not cover, for instance, the time that would be spent by an examiner in answering a consumer complaint or the time spent in preparing statistics in response to inquiries from the public or from legislative personnel or whatever. There are certain administrative costs that are involved in administering the bank and financial institutions titles that no institution at the present time pays for. It's the taxpayer that pays for it.

STURGULEWSKI: Okay, but what is in the law now. It's consistent with other financial institutions so credit unions would just fit in and pay the same fees or same proportions.

BRECHT: Alright, I said I didn't know the exact citation, but there is a provision for examination for financial institutions.

Here, for example, section 06.45.450 on page 34 makes reference to the cost of the investigation incurred in making application for a branch by the department shall be paid by the applicant in accordance with AS 06.01.010. That ties directly into that statute. There is a similar provision for processing an application for a new association probably closer to the bill.

CHATFIELD: At the bottom of page 16 and the top of page 17 there are references to that statute and the fact that the credit union shall be required to pay the fees necessary for investigations and examinations. Let me say that it is our intention that the supervision of credit unions be self-sustaining. That is the case with the NCUA; that agency has no appropriation from the general fund of the United States. They are strictly self supporting based on examination and investigation fees. That is our intention here although we realize that it might work some burden on smaller credit unions. I think we do not wish to take issue with the fiscal note that Julius has done, however, he may have been a little optimistic in the number of credit unions and I think his fiscal note includes some start-up costs for the initial guidelines and regulations that would be required. We have, and I will provide you with, a copy of a survey of state regulators of all the various states and I believe it includes the Canadian provinces as well, which may be of less significance, showing the number of financial institutions that each of them supervises and the number of persons that they have employed to do that. Again, it is our intent to be self-supporting, we are self-supporting on the national level; we intend to pay the fees necessary to support proper supervision of credit unions under this act.

STURGULEWSKI: Julius, one further question. What type of magic hat did you use to arrive at your figure of some 15. I'm just curious; I'd like to think about if this bill passes, what happens in the state to the credit unions. We have had quite a bit of testimony from people stating that they feel that there will not necessarily be a mass change from federal to state. Of course they have to wait and see how regulations and so on are developed under the new law, but what basis, if any, did you use for picking that figure and what's your feeling as to what will happen in the credit union field in Alaska if this bill, in fact, does become law?

BRECHT: The figure 15, I must admit, is an arbitrary figure. But it's based in some respect on the general interest in this legislation. The sustained interest over the past three years that I have been associated with it and even before that. And, in fact, in previous times there was more talk about conversion to state charter. There was one person who testified that they would be very likely to submit an application for conversion to state charter. I think that those other federal credit unions that have testified obviously letting their present regulators know that they are just chafing at the bit to convert once the state charter legislation was provided. In any case, I think that it would take at least one examiner, a very conservative estimate, to handle the necessary examination of the institutions. Obviously if we have one or two new institutions and no more, that's a different story from 10 to 15. But if we get something like 10 to 15 we're going to be talking about keeping one examiner busy pretty much full time and very likely more than one examiner, one and one-half examiners. I'm not suggesting that the department

BRADLEY: Thank you very much, Mike. Mr. Buzz Hoffman, your current president of the Alaska Bankers Association has insisted that we have one more hearing when your lobbyist, Wes Coyner, arrives back from his vacation. So, in all fairness, I think we possibly will have to have one more and so at that time you will have another opportunity to testify.

Fairbanks testimony was concluded.

CHATFIELD: First of all, I think that the testimony that you've heard over the two days of hearings has been beneficial to us as well as to yourselves. I think there were many good points brought out; a lot of questions raised and perhaps it would be best to address a couple of those now. On Tuesday there were a couple of questions concerning the function of the central credit union provided for in this bill. It was mentioned again that it is a credit union for credit unions. It serves a corporate function in correcting liquidity mismatches in essence. Shifting funds from credit unions that are in a liquid position to those that have needs to borrow. These tend to be seasonal things and the example was used of teachers credit unions that have surpluses at times of the year when agricultural or other credit unions may have needs for borrowing. As far as what happens now, I believe that was asked. There is some informal interlending between credit unions in the state to serve this liquidity mismatch problem. However, it is informal and most of this activity flows to and from the Westcorp Federal Credit Union which is a corporate central credit union in California that has agreed to serve this region. If there is no state act, then, in fact, we will file for a federal corporate central charter

would just run off and immediately hire two additional examiners. We would hire additional examiners as the workload required.

STURGULEWSKI: Thank you Julius. Just a final question. If you turn to page 23, line 8. I'm sure that this is a question that will be answered by some of the people here, but are those standard percentages for real estate loans; are you comfortable with those?

BRECHT: I believe that that was standard language from another act. Mr. Chatfield might be able to answer that.

STURGULEWSKI: Mr. Chatfield indicates that those are federal regulations. Thank you very much, Julius.

Testimony was concluded from Juneau. Chairman Bradley checked back with the other sites for additional witnesses. Fairbanks had one witness, Michael Weis from First National Bank of Fairbanks.

WEIS: I would just like to emphasize that I am speaking on behalf of the 1st National Bank of Fairbanks and the banking industry in general. We at the 1st National Bank of Fairbanks, as we have indicated to numerous members of the credit union association, do, in principal, agree with the bill that is now before the legislature. We feel that the bill is consistent with the existing financial system of dual structure that was established within the constitution of the United States and we also feel that the increased competitive nature of the bill for the benefit of the Alaskan consumer is welcomed by our bank in enabling us to sharpen our skills and better benefit those individuals.

because we feel this is an important function that is not yet served in Alaska. I have had the papers on my desk for several months to file an application for a federal corporate central charter and I have not submitted those pending resolution of what happens with the state act. It would be our desire to have state supervision for the other reasons that have been stated. For the corporate central as well as for the individual credit unions that might come under the act.

STURGULEWSKI: On that issue, are there other functions that they fill such as in the case of a suspension or one that's in temporary financial problems or is this liquidity mismatch the primary reason for the establishment of the credit union's credit union.

CHATFIELD: There are perhaps some other functions that the central would fill in terms of settlement and wire transfers and some other needs that occur to the corporate functio of the credit union. However, some central credit unions serve as liquidating agents but they are generally those credit unions that also serve individual members and since this credit union is intended to serve a corporate function only, I rather doubt that it would engage its services as a liquidating agent although that's possible, but this is not intended to be an individual member type credit union. This association would have corporate members consisting of credit unions within the state that choose to join. Perhaps now we could move on to address the questions on the field of membership and Sen. Sturgulewski and others may have raised some questions on this. Julius Brecht I make reference to it, but we might talk now about section 60 concerning the field of membership of credit unions. This generally

follows federal procedures, however, the federal credit union act itself is rather narrow about what is says about field of membership. It permits, for example, the kinds of gathering together of similar groups that we have talked about in this bill. The problem has been in the regulations, so what we have here is an enumeration of the types of credit unions that could be formed. The main difference between this and what is currently available from the national credit union administration is in the term "employees of related or neighboring industries". This is an issue which NCUA has gone back and forth on and sometimes been inconsistent. Sometimes they say yes you can charter a credit union to serve everybody in this industrial park and next year they say no we're not doing that anymore. So we're talking here about related employee groups, related fields of membership, related people to serve such groups as the bar association that you heard from, the broadcaster's association, which you heard from which is composed of small employer's in a wide field, but without sufficient numbers to form their own credit union so we're clearly talking about a situation that is not unique to, but more serious in Alaska than some other places. We're talking about small groups of employees and a way to serve those by this language "employees of related or neighboring industries" and the neighboring industries, the industrial park example, might be an example of how you would serve some small employers through that provision. Senator Sturgulewski, have Julius' and my comments answered your questions?

STURGULEWSKI: I think the area I would be interested in taking a look at would be the regulations because these words are certainly broad enough to bring in and meet some very specific needs, but

from the safety of the individual deposit, obviously, those standards that are used to determine the economic health of it are terribly important as well as the ongoing regulations to be sure that it continues to be a viable organization.

CHATFIELD: Yes, I appreciate that and I was going to address this economic viability question next, but I think that you have brought up some very good points in noting that the field of membership includes members of the immediate family and that's further defined within that section and I think the fact that this closely follows the federal credit union provisions except for those we have talked about for neighboring and related industries particularly to serve the needs of Alaskans.

MARTIN: I have concerns similar to Sen. Sturgulewski on the start-up costs, Mr. Chatfield, and sometimes in the testimony that's given I feel that we're promising that golden light for everybody; here's the answer to all your financial worries in the world and the start-up costs, now that we've gotten more into it, seem to be prohibitive for certain groups, especially with the regulations seems to be a deal where the people want to fund their own organization even though they will be paying the government for services. Seems we're developing false pretenses to begin with; there are only so many groups that you can divide up into to take care of yourself. We can have the Scandinavians of Alaska, we can have the Cuban groups of Alaska, and all these would be viable people saying we deserve to be recognized but yet they can't pay for themselves. Is there anything to protect the taxpayers from saying well, we have a discriminatory law here, therefore these groups who cannot

fund themselves will be exempt from these regulatory start-up costs and perhaps because these people are what they are and their economic conditions, we will waive the cost. How do you feel about that?

CHATFIELD: First of all, just as a matter of information, there are credit unions in various parts of the country serving groups such as the Cubans located here or the Scandinavians located there. Those kinds of things do exist although thus far not in Alaska. We're talking about the economic viability, and it's been noted that the Commissioner is charged with the responsibility of determining that, and Julius listed the ways in which they would attempt to do that. We're also talking about start-up costs that can be amortized over a certain period and that's the way it's done now. When credit unions are formed there are certain start-up costs that are incurred and those are amortized over an accounting period so that they need not be expensed off all at once with the accompanying burden that that would bring on the credit union. But I can tell you that we are also not interested in forming a lot of marginal credit unions that would require constant work and struggle to keep them active, because as the state trade association of credit unions, that function would fall upon us and we don't have the resources nor the desire to see a bunch of credit unions brought into being that would require constant handholding on a long term basis. We don't have the resources to do that and that is our responsibility should it occur, so we have a definite interest in saying credit unions formed have good economic potential, that have solid leadership and that we can guide in their growth periods and that can become successful credit unions.

Juneau came back on-line with a comment from Julius Brecht.

BRECHT: I thought I might make one statement here to make sure there isn't a misunderstanding. When we were going through the administrative costs as opposed to the cost of examination and investigation, I want to make clear that the cost of developing regulations or guidelines to regulate credit unions would not be charged to the individual credit unions, chartered or in the process of being chartered under the state law. That would be a good example of an administrative cost that would be borne by the taxpayer. The only cost that would be borne by the credit unions themselves are the costs incurred directly to the examining or investigative effort on that specific credit union.

CHATFIELD: Let me say that that differs, and I can't speak to banks but I can speak to what happens now with federal credit unions, since the NCUA is only chartered to supervise, examine and otherwise keep track of credit unions then there is no problem, therewith passing administrative costs as well as direct examination costs on to credit unions and their examination schedule, which, by the way, was the examination schedule that Julius referred to which was in an earlier version of this bill. It was the same examination schedule as for federal credit unions. However, we realize that they have certain economies of scale because of their nationwide operation that perhaps those same rates would not result in self-sustaining supervision in Alaska. In the case of federal credit unions those costs, all costs, including administration, are reflected in the examination and investigation fees that are used to support the entire agency and again that agency does not have an appropriation from the general fund of the United States; it is completely self-sustaining and the administration costs are

levelled out and included in the cost of supervision.

STURGULEWSKI: I can see the tremendous interrelationship between that economic standard and the field of membership. I would hope that if this bill passes that indeed it can be adapted more to the Alaskan conditions that we might take in, for example, the bar membership is good, not just the bar association, but the firms and employees. I don't think that it's going to be an easy task necessarily, to go to what has happened in other areas to give us too much in the way of guidelines on setting up those economic standards. We might well have to develop new ones. I think that is of sufficient interest that I would hope that it is not out of line to ask that, possibly, those regulations could be shared with the Commerce Committee so that we could take a look at that to see that we're not unduly restricting, putting impositions, on the membership and the groups can go ahead and form. I think that's going to be terribly important as to how this whole act works. The interrelationship between the economic health and the field of membership.

CHATFIELD: It is certainly out intent to try to work very closely as closely as conditions require and will permit, with the Division of Banking, with this committee, and with other interested parties in making the thing to work to its best advantage so that there are successful credit unions so that the needs of the members are properly served and that the credit unions are financially stable. We would be happy to have some input into the regulations; we would also be pleased to assist the Department in its charter investigation as we now do with the NCUA. We submit an investigation report

for proposed credit unions to assist them in making their decisions. We would be pleased to do that for the Department.

BRADLEY: Dave and Julius, on the first page of the bill it's mentioned it only takes seven people and $1,000 to form a credit union. That obviously would not be a viable credit union. That's all it takes to begin it, but how would we prevent one from forming with that as the initial requirement. It may not be any more than that, or a few more than that and it definitely would not be a viable credit union. You think this is misleading?

CHATFIELD: The other standards and things that the department is charged with determining as far as economic feasibility are certainly good provisions and valid provisions to have. And, again, we are not interested in seeing a bunch of credit unions form that are not economically feasible and don't have good potential for success. The seven people with the $1,000 is more restrictive than the federal act where seven people with $5 each or a total of $35 can apply for a federal credit union charter. However, that's just the beginning. There is obviously much more than that. There is an investigation there are reports rendered, the economic feasibility is determined, the proposed field of membership is examined and obviously that would be true under the state act as well. I think it's important to note the very different capital requirements of credit unions as they begin versus other financial institutions. When a bank first opens its doors it must have offices proper to house its operations and to put the desired image across to its customers, must have a full time staff, must have sufficient funds to meet its lending objectives, must have certain support facilities to service that business

including such things as data processing. There are very substantial capital requirements before a bank should begin operation. Contrast that with the credit union where typically a credit union does not begin with cause for office space; it's usually operated out of a volunteer's home, it does not have paid staff for the first several years of its existence. It's operated entirely by volunteers donating their time to develop this organization for the rest of the members. It generally begins with hand posting and a couple of years down the road may graduate to a bookkeeping machine and starts out making very small loans for such things as furniture, appliances, medical and emergency needs. It has very different loan requirements and overall a very different set of capital requirements than do other financial institutions. I think it's important to note that because this seven people with the $1,000 thing has come up before and I don't think that argument recognizes the very different capital needs of the two institutions.

BRECHT: There are a number of members where the minimum might be 200 members as opposed to another area where the minimum might be 300 members, so we're talking about an institution that would have more than just the seven incorporators.

BRADLEY: Thank you, Julius. Mr. Chatfield has another comment.

CHATFIELD: I just wanted to say that those were a couple of areas that I think were left hanging from Tuesday that I did want to cover. In summary, the record will show that you have heard from representatives from 15 credit unions; those 15 credit unions represent total membership of approximately 190,000 persons, we

have heard testimony from other organizations including the bar association, native corporations, broadcasters and this morning you heard from a banker in Fairbanks who said he was not opposed to the bill. Also present is Mr. George Diener, Vice President of Alaska Pacific Bank, which I believe has a similar view and I am sure Mr. Diener would be happy to answer your questions on that. In addition, I have telegrams that I would like to submit for the record which were received in May, they are in consideration of this bill and one is from a bank that was not able to appear at these hearings, Alaska Bank of Commerce, which indicated it had no opposition to the bill. I think we have had a broad, open discussion of the issue, you have heard the opinion of the banking division and I think that the hearing records will reflect a very in-depth discussion that was held. We were very happy to see these questions raised and if you have any further questions, I would be happy to try and answer them at this time.

STURGULEWSKI: Just one, and again, this is for my learning a bit more. This bill does allow for the utilization of the share drafts and I would like just a little background information; was the federal ruling not really on the issue, as to whether it was appropriate or not, but simply that it exceeded the present federal law and regulation. Is that correct?

CHATFIELD: The issue concerning share drafts for federal credit unions is a fairly complex one. The federal regulator, NCUA, permitted an experimental program some years ago for share drafts which are an improvement on the existing transaction accounts and do provide for payment of earnings or dividends on the unused funds

in those accounts which can then be accessed by negotiable instrument. Permitted the experimental program and then found that after that successful experimental program it was in accordance with the statute and the best interest of the consumer to allow federal credit unions to offer that program on a wider basis and they did that and another financial organization promptly sued them charging that it did go beyond the scope of current law; the federal district court agreed with the NCUA that it was permitted under current statute, it was then appealed to the United States court of appeals in Washington, D.C. They linked it in with a couple of other related issues concerning automatic transfer from savings to checking for banks and remote service units for savings and loans. I think in linking it together that made it difficult for the court to then say well this one's okay and this one is not. That really was the key to the court's adverse opinion on April 20 of this year, that the program exceeded what was currently permitted by statute. We happen to agree with the regulator agencies' interpretation of that statute under the implied powers that this is a proper function under the statute, for credit unions to be able to perform. There are steps being taken to appeal that ruling to the United States Supreme Court, but in the meantime we are seeking legislative action before the Congress to clarify and remove the cloud from this whole program. To specifically provide for the use of share drafts by the federal credit unions. That whole thing is separate from this bill. There is wording in this bill that says that credit unions may make their withdrawals in any form and that wording would include the share drafts. It might, at some point, include such other things as automatic teller machines if the Commissioner deemed it appropriate. That is a separate issue,

but we believe we are going to be successful at the federal level. We disagree with the court's decision and we feel that if the Congress does not take action in time, then the Supreme Court would, but some of those things remain to be seen.

STURUGLEWSKI: In that case, we would need, say there's no further federal ruling for some time, regulations to handle the method of withdrawal here or does that just open it totally by the wording we have in this law.

CHATFIELD: The wording in this law is that the credit unions may honor withdrawals from its share savings accounts by its members. Those withdrawals can take any form and obviously the Department, the banking division and the credit unions would draw heavily upon the successful experience the federal credit unions have with share drafts and the procedures involved in that. However, there is with this particular statute, this bill would not go beyond permitting those withdrawals in any form. Again, it would not be tied to whatever happens on the federal level.

STURGULEWSKI: I think I would like a little bit better understanding of, is the wording too broad as far as allowing withdrawals in any form; are we, in effect, allowing for complete checking privileges. What part of the statute is that?

CHATFIELD: I believe it's under the powers section, under withdrawals. On page 11, at the beginning of line 17. The last part of that paragraph says "on a request for withdrawals of these savings in any form, subject to reserves, bonds or other conditions required by the

Commissioner.

STURGULEWSKI: Is the wording complete in itself; will it need regulations to implement, if not would it be broad enough to allow full checking privileges without the conditions that were set up on the share draft?

BRECHT: My rating of paragraph 20 is that it would allow for a checking account subject to reserves, bonds, or other conditions required by the Commissioner. The Division has recently noticed the intent to adopt regulations to provide for NOW accounts or mutual banks and also for commercial banks.

STURGULEWSKI: What kind of accounts?

BRECHT: Negotiable order of withdrawal accounts. Basically a mechanism to pay interest on a demand account.

CHATFIELD: Negotiable order of withdrawal accounts are currently under consideration by the Congress for nationwide use by other thrift institutions and have been in use in New England under experimental basis for quite some time. It's important to note that the language of this paragraph would permit various forms of electronic funds transfer, electronic teller machines, perhaps point of sale terminals and other things that might be appropriate and as determined by the Commissioner under the language in the rest of this section.

STURGULEWSKI: I'd like a direct response on this. This would allow,

then, far more flexibility than currently would be available if the share draft regulations were still in effect.

CHATFIELD: Yes, that is correct, but if the share drafts were found to be not appropriate and not available for use by federal credit unions, then this would be broader than that. However, I don't think anybody in Washington, D.C. seriously believes that there is going to be an interruption in the share draft program. We believe that the Congress will take action before the deadline established by the court and in failing that, the Supreme would take action. To that extent, yes, it would be broader, but those services are not broader than those currently available for federal credit unions, including share drafts, those that have automatic teller machines and there are some point of sale terminal experiments underway now. To that extent it would not be broader, but if federal credit unions were to lose share drafts then, yes, this would be a bit broader.

STURGULEWSKI: That doesn't answer my question. Let's assume that we can use share drafts on the national level if they are found to be acceptable. As I read 20, this is not constrained by those regulations that are utilized in connection with the share drafts. It is, in fact, broader than what is allowable under the share draft Is that correct?

CHATFIELD: It is my understanding that it would be as broad in terms of withdrawals in various forms as the Commissioner would deem appropriate.

STURGULEWSKI: I asked if it would be necessary to have regulations

and I think it was given to me that, no, there would be maximum flexibility. It would not necessarily be subject to regulation.

CAMPBELL: I'm not sure, I think there might be a couple of things you are alluding to that probably should be addressed. The share draft regulation itself, that applies to federal credit unions, is not really that restrictive. It does require a couple of technical things. One of which is truncation. Truncation simply means that the original draft isn't returned and whether the Department wanted truncation required by state credit unions offering share drafts is something that would remain to be discussed in regulatory hearings. The essence, really, is that if there is a need for regulation the general regulatory authority would provide for it. If state credit unions, or say a federal credit union converted simply continued its existing share draft program, it would still be clearing through the banking system, it would still be offering the same type of service, it would still offer a rate of return that would be established by the board of directors and consistent with the standards that are similar to federal law in terms of classes of accounts and in order to offer credit union members the same type of thing that they can expect from other credit unions. It's likely to be comparable to the existing share draft program. The important thing to recognize is that credit unions offering any third party payment power would have to offer it consistent with Uniform Commercial Code and with the standards that the federals apply to the banking system for purposes of clearing.

STURGULEWSKI: This is an area that I would appreciate a bit

more information on it and possibly that could be supplied by Julius and also by members of the credit union league. I just need to understand it and I don't. I'd like to know what the federal requirements are, how this provision likely would work

BRADLEY: While we're on this subject, since Director Julius Brecht will be providing these regulations, subject to our approval, let's let him briefly comment on it.

BRECHT: I meant to mention earlier in the hearing that the members of this committee plus the other legislators will be advised of any intent to adopt regulations pursuant to the Alaska Administrative Procedure Act, would each receive a copy of a notice of that intent, but in addition to that, if this committee wishes to have some further input in the review of these regulations we can certainly accommodate them in that respect.

BRADLEY: Any further questions? Rep. Martin has a question.

MARTIN: I'm concerned again about the starting up, and in hopes of not giving false hopes to i dividuals, is it possible to have in this bill and/or regulations other things that will be necessary for the standard procedures for starting up rather than simple minimum requirements of certain bodies and so many dollars. Can we present a realistic picture to them of some of the things they might face and perhaps it would be good for the administration, in the first place, to throw out applicants that aren't serious.

BRECHT: As I understand it, Mr. Chatfield has alluded to the fact that perspective credit unions could be cleared through the

state league, that is if the league itself could provide some of assistance in helping groups of people who think that they would like to be able to establish a credit union to come to the realization that yes it is feasible or not it isn't. The second step would be to contact the Division and request information on the chartering of a credit union. In that respect I can say that our procedure in processing applications for other types of financial institutions is to answer questions that the individual might have to make copies of the regulations available to them so they can have a better idea as to what will be expected of them in the application process. I don't see why a drastically different procedure would be followed for credit unions; we would have the same general procedure; the Division would make itself available to answer questions. If we, in fact, had a large number of requests, it is very likely that we would have some brochure put together to answer some of the basic questions. It also brings back points on where we got the estimates for charters within the first fiscal year. I mentioned that that number was somewhat of an arbitrary figure, but it should be put in context. There are presently 33 credit unions doing business in the state. That gives us some indication of the interest in the state assuming that there was at least 50% greater interest that would amount to somewhat like 15 applications being processed. That could be a gross underestimate. I might add that in the context of the previous financing act enacted session before last, that we had estimated a certain number of institutions being licensed and what we found is that there was a much larger number of persons doing business in the state that need to be licensed and it turned out that the estimate that we gave in that respect was a real underestimate and we have been very busy in processing license applications

So I don't know that the number 15 is all that unrealistic. It could possibly be an underestimate or could be a good estimate. I don't think we can really reconsider until we get through at least one year of operations and get some better idea as to the interest from the Alaska public in this type of institution.

CHATFIELD: I don't know that 15 is unrealistic; I think that it's as good a number to use as any at this time. You've heard from two credit unions that indicated they would probably entertain the thought of converting to a state charter if this bill became law. We're aware of perhaps 3 maybe 4 other groups that would be interested in obtaining a new charter under this law. We are not aware of any definite interest beyond that, but obviously you have to hang your estimates on some kind of a figure. I wouldn't disagree with 15 as an arbitrary figure in trying to estimate those costs. I think it is also important to look at the chartering requirements and perhaps it would be helpful to include arbitrary standards within the act, but obviously the Commissioner and the Director would establish some kind of standards within regulations and then people could be aware of the requirements as Julius has said, that they could be expected to meet before they could give a credit union a charter.

BRADLEY: I've been enlightened quite a bit in that accordance with the regulations and with the Director of Banking giving the final word of approval, seems to me there are enough safeguards and I could answer any questions in that regard pretty well.

MARTIN: What would the start-up procedures be for the individual

groups that would be interested, if we might not also warn them of the costs -- I am not satisfied that taxpayers would not be burdened by special interest groups -- if we feel that the administration has the potential of spending $75,000-$200,000 in getting this thing rolling that if there are 15 groups that would participate then perhaps the pie should be divided up after the $6,000 immediately is going to be used for your start-up costs and help pay the government institution that is responsible for your regulation. Is this fair?

CHATFIELD: I think, generally speaking, that would be appropriate. There will be start-up costs, it is again the intent of the credit union community to assume those costs that newly chartered credit unions would assume those costs and pay them and amortize them over accounting periods in their books. That's what they do now. Those costs may differ from costs that involved in obtaining a federal charter and they may, in fact, be higher and I suggest they will be because of the lack of the economy's scale that we talked about. That's the sort of thing we anticipated and Julius may wish to comment further.

BRECHT: As far as putting the perspective applicant on notice as to the charges that might be incurred, we do that as a matter of course right now. We try to make clear to the perspective applicant what it is they are getting themselves into in the way of financial responsibility, during the organizational process and also responsibility otherwise. There is responsibility for establishing an institution and following through on it. I don't think that would change. As for the start-up costs for

a program, it's hard to say, if, for instance, we had 30 or 40 applicants for institutions in the first fiscal year perhaps it wouldn't be unreasonable to amortize the start-up costs of establishing the program from the standpoint of state administration amongst those 30 or so applicants and charge it to maybe 10 or less might be a considerable burden on those individual institutions. What I might suggest would be that if some time in the future the credit union movement, assuming there was a state chartered system established, there would probably be some way some legislation at a later time to pay for the administrative costs of administering the credit union act and that way the full cost would be paid and the Alaska taxpayer would not in any way be charged for administering the program.

CHATFIELD: I guess I would just reiterate the fact that we plan to be self-supporting although we recognize that there will be some start-up costs for the Department. I think once the start-up costs and the initial set up and the regulations and those guidelines are determined that we would certainly support any effort to provide for full self-sustaining status for the reasonable supervision costs of our credit unions.

STURGULEWSKI: There has been a lot of good input on this bill and I would like to see it move along quickly through the process. I wonder if you could outline for us -- you indicated that it was necessary that there be another public hearing, are you perhaps expecting that to be done prior to the start of the next session of the legislature and that we could perhaps see action, at least as far as our committee, taken early in the session? Is that waht you are looking for?

you're looking for?

BRADLEY: I was anticipating that it would be the first bill taken up at the next session. Normally you have a couple or sometimes three weeks before any bills are ready to go to the Senate floor. You may have a few insignificant resolutions or something of that sort, but that's what's anticipated. In fact, I was hoping that maybe we could finalize it today, but since it's been insisted that we wait til the Alaska Bankers Association lobbyist, who normally doesn't testify, someone else more knowledgeable in the banking matters normally does the testifying, there may not be anybody else. But as soon as we can get what we have already in the way of written transcription prepared for the members who were not able to be here today so they can peruse those and then have one more quick meeting prior to the next session, then we'll be all ready to take it up as possibly the first bill. One other comment, and I think we'll need to do that, incidentally. I don't think we want to give anyone any excuses that we haven't been fair and given everyone an ample opportunity to testify. Frankly, I don't anticipate any more testimony. But the request was made and I think it would be unfair if we didn't recognize it. As soon as we can get this done we can get two of the members of the committee that are missing today back here for that final session after they have had time to peruse all the testimony, then we'll sign a committee report and date it after we convene in January.

CHATFIELD: I guess we wish there had been objections raised, if in fact there are some objections during this process which everybody received due notice of. We were certainly prepared and would be at

a future time to address any objections. It's important to note that everyone was notified and had the same opportunity to appear and that there were no objections registered during this hearing. However, if there are objections we would be happy to discuss any points that are raised. We hope to have that opportunity.

BRADLEY: Too, we need to have the signatures of the other members on the report. I think in all fairness to them, we don't need to give anyone any excuses. We think we have a good bill here and we thing, in regard to costs, many beneficial services to the public. There will always be start-up costs, but then many beneficial services to the taxpayer cost a little tax money. I'm not overly concerned about that. I have no further comments, but I think before we close off, in fairness to all stations and any latecomers, we will contact all stations before Mr. George Diener testifies.

No stations had witnesses.

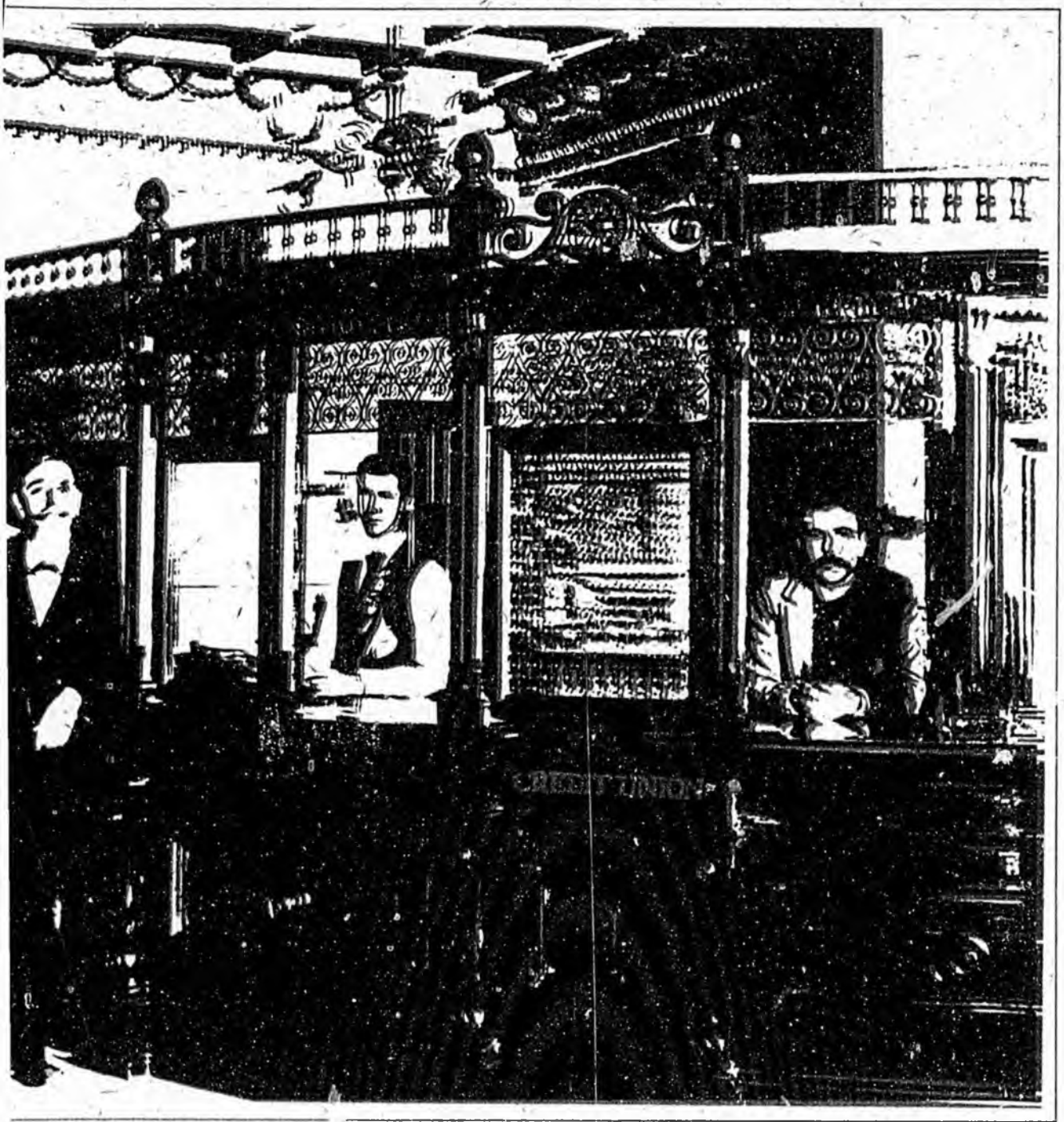
DIENER: My comments will be brief and basically a reaffirmation of the position of Alaska Pacific Bank of non-opposition to this bill. We feel that the question is not "shall there be credit unions" because there is, and obviously will continue to be, credit unions even if they are all federally chartered. As we read the bill, it appears to us that the bill is not asking for authority to do anything that is not already provided for under federal charters, we do not believe that it is seeking any change in the competitive balance. CSSB 225 would provide the credit unions with the same option enjoyed by the banking industry, by

the savings and loans and by the mutuals, that has long been recognzied in our industry that one of the strengths of the banking industry in this country has rested on the dual chartering of financial institutions. I for one fail to see the logic or the fairness in depriving the same option to the credit unions. That's basically my statement.

BRADLEY: Thank you; any questions by committee members?

No further questions or comments. Commerce Commitee adjourned at 11:20 a.m.

1979 COMPARATIVE DIGEST OF CREDIT UNION ACTS



70 YEARS OF PROGRESS IN THE NATION'S LEGISLATIVE HALLS 1909-1979

From passage of the first credit union act in 1909 to last year's revision of 25 state laws and restructure of the federal credit union system.

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SCOPE OF STUDY

The *Comparative Digest of Credit Union Acts* deals with the credit union laws of forty-six states, the Commonwealth of Puerto Rico, the Federal Credit Union Act and the Model Credit Union Act. (There are no credit union laws for the states of Alaska, Delaware, South Dakota and Wyoming and the District of Columbia.) The research for the *Digest* was based on the texts of those laws, as amended to December 1, 1978, and as found in the *Credit Union Guide*, a law service published by Prentice-Hall, Inc.

Except for the federal and model acts, all law provisions in the *Comparative Digest* are in summary form or are quoted in substance only. For the complete law text, the U.S. and state codes cited in the appendix or the *Credit Union Guide* should be consulted. Statutory section numbers are given throughout the *Digest*.

The *Comparative Digest* limits itself to analysis of credit union statutes. For a complete and accurate reflection of the powers and services of credit unions, one must go beyond the credit union act.

In many instances, there is no clear-cut statutory provision setting forth permissible or prohibited activity. Often a grant of power flows from a so-called "incidental powers" clause authorizing a credit union to exercise such powers as are necessary or requisite to enable it to carry on its business effectively. Sometimes a law other than the credit union act may apply to an activity or service.

A complex system of general law, regulations, standard bylaws, agency rulings, attorney general opinions, and, in some cases, court decisions, define more specifically what credit unions can and cannot do. Such an exhaustive survey goes beyond the scope of this study.

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1979 COMPARATIVE DIGEST OF CREDIT UNION ACTS

A comparative study of the credit union statutes
of the several states, the United States and
Puerto Rico as of December 1, 1978

Compiled and researched by
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Preface

70 Years of Progress in the Nation's Legislative Halls 1909 - 1979

This new edition of CUNA's "yearbook" of credit union laws marks the 70th year of progressive credit union legislation in the United States, from passage of the first credit union act by Massachusetts in 1909 to the restructure of the federal credit union system last October.

The 1979 *Comparative Digest of Credit Union Acts* also chronicles the attainment of a goal sought by credit unions for many of those 70 years — the establishment of an effective vehicle for meeting the liquidity requirements of credit unions. The early credit union pioneers, Filene and Bergengren, were looking for ways in the 1920's to operate a central credit union system on a nation-wide basis. When the federal credit union program was created by Congress in 1934, a separate title in the bill would have established a federal central credit union in each state, but the proposal did not pass. Central liquidity legislation of one kind or another was reintroduced in ten succeeding Congresses over the intervening years, but those bills all failed to pass.

It was last year's 95th Congress — perhaps the most sensitive to credit union needs in over 40 years — that recognized the vital role of credit unions in the nation's financial system by creating a central liquidity facility for credit unions, housed within a restructured National Credit Union Administration. It was the same 95th Congress, only a year and a half earlier that had greatly expanded the powers and services of federal credit unions by Public Law 95-22.

Central Liquidity Facility Created

To commence operations in October 1979, the central liquidity facility will be a permanent, federal central bank for credit unions designed to meet their short-term, seasonal and emergency liquidity needs. Both credit unions and corporate centrals will be eligible to join the CLF and to borrow from it. The CLF is authorized to borrow on the open market and from the U. S. Treasury, within specified limits.

The revamped National Credit Union Administration is also due to become operative in 1979. It will be headed by a three-man administrative board, appointed by the President, with tenured terms of office.

States Refine Liquidity Management

The nation's capital was not the only place where credit union liquidity management was a legislative concern. Seven states acted to broaden or refine the role of central credit unions — Arizona, Massachusetts, Michigan, Pennsylvania, Rhode Island, South Carolina, and Tennessee. In the main, this involved securing broader powers for central credit unions and more precisely defining their membership base.

Government Supervision Enhanced

The 1978 sessions of the state legislatures brought significant gains for credit unions in other areas as well, including government supervision.

A 10 year campaign culminated in Iowa with establishment of an independent credit union agency. It will be directed by an administrator, and have an advisory board, both appointed by the governor. Ohio created a separate credit union division within the Commerce Department headed by a superintendent. Both agencies are to be self-supporting from fees paid by credit unions.

Formerly Ohio credit unions were regulated by the Securities Division, while Iowa credit unions fell under the Banking Department — a situation which obtains in 26 states. Besides Iowa, only three other states have independent credit union agencies — Kansas, Texas, and Wisconsin. Five states grant credit unions divisional status on a par with other financial institutions, as in Ohio.

Mandatory Share Insurance

Four more states — Alabama, Iowa, Pennsylvania, and Vermont — passed laws in 1978 requiring credit unions to insure members' savings and deposits. Thirty-five states now have statutory share insurance requirements, and at last count nearly 75 percent of all state credit unions were insured.

Other Services and Powers Revised

Share certificates classified according to maturities, rates, and conditions, became legally possible in New York and South Carolina. Both laws prescribe the federal standards for such accounts. Credit unions in 24 states may now offer varied forms of shares.

A liberalized reserve formula, similar to the two-tiered one adopted for federal credit unions in 1977, became law in Louisiana, Maryland, Minnesota and South Carolina. Basically, the formula permits older, well-established credit unions with assets over $500,000 to taper off allocations to the regular reserve after accumulating 4% of total loans and risk assets.

Electronic Funds Transfer

Use of electronic funds transfer systems became legal for credit unions in three additional states — Connecticut, Michigan, and Minnesota. Sixteen states now include credit unions among those institutions permitted to use EFT facilities.

Wild card laws were enacted in Ohio and Maryland. They permit state-chartered credit unions to exercise advantageous powers and privileges granted to federal credit unions. Twenty-seven states now have such authority.

10th Edition of Comparative Digest

All of these changes in credit union laws and others are dealt with in this 10th edition of the *Comparative Digest of Credit Union Acts*. In the appendix, there is found a summary of each credit union bill enacted during the past year by the various states and the U.S. Congress. The main body of the *Digest* offers a selective analysis of 130 separate provisions found in the credit union statutes of 46 states, Puerto Rico and the federal act. It compares those provisions with one another and with the Model Credit Union Act.

The *Comparative Digest* is not intended to be a prototype for credit union legislation, but only a convenient reference to existing enactments, revealing both strengths and weaknesses. It is within that context that both credit union lawmakers and lawseekers over the years have had need to consult its pages. Thus, CUNA's Governmental Affairs division annually publishes a current edition of the *Comparative Digest* in the expectation that it will, in some measure, facilitate the legislative process, and contribute towards sound and progressive credit union laws.

Robert W. Davis, *Director*
State Governmental Affairs

Chapter one

THE CORPORATE STRUCTURE

Definition and Purpose Clause

CUNA MODEL ACT: A credit union is a cooperative, nonprofit association, incorporated under this Act, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition. [§1.10]

FEDERAL CREDIT UNION ACT: The term "Federal credit union" means a cooperative association organized in accordance with the provisions of this Act for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes . . . [§101(1)]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-501(3)]	Montana	[§14-602]
Arkansas	[§67-901]	North Carolina	[§54-109.1]
Connecticut	[§36-194(a)]	North Dakota	[§6-01-02]
Hawaii	[§410-2]	Oregon	[§723.006]
Idaho	[§26-2102]	Texas	[§1.02]
Illinois	[§496.1]	West Virginia	[§31-10-1(A)]
Indiana	[§28-7-1-0.5]	Wisconsin	[§186.01]

ACT SIMILAR TO FEDERAL ACT:

New Jersey	[§17:13-26]	Utah	[§7-9-1]
Ohio	[§1733.03]		

ACT REFERS TO BYLAWS for definition of credit union:

Georgia	[§41A-3001(7)]	New York	[§451(1)]
New Hampshire	[§394:15]		

CREDIT UNION DEFINED as a cooperative, nonprofit corporation organized in accordance with Act:

Iowa	[L.1978,S.F. 137]	Maine	[C.13,§131(12)]

CREDIT UNION DEFINED as a cooperative association, organized for the purposes of promoting thrift among its members and creating a source of credit at reasonable (or legitimate) rates of interest for provident purposes:

**Alabama	[§5-17-1]	*New Mexico	[§48-19-1(C)]
California	[§14000]	*Oklahoma	[§2001]
Florida	[§657.01]	Pennsylvania	[§12302]
Minnesota	[§52.01]		

*Adds term "productive" to provident.

**No reference to provident purposes.

CREDIT UNION DEFINED as a corporation for the purpose of accumulating and investing the savings of its members and making loans to them for provident purposes:

Massachusetts	[Ch. 171, §2]	Virginia	[§6.1-196]

OTHER ACTS:

COLORADO—Credit union defined as a cooperative association incorporated for the purposes of promoting thrift among its members and creating a source of credit for them at fair and reasonable rates of interest. [§11-30-101(1)]

MICHIGAN—Credit union defined as a cooperative society, incorporated for the two-fold purpose of promoting thrift among its members and creating a source of credit for them at legitimate rates of interest, and by leasing tangible personal property to its members for provident purposes. (Sec. 490.1a)

NEBRASKA—Credit union defined as a cooperative association organized for the purposes of promoting thrift among its members, creating a source of credit for provident and productive purposes and carrying on such collateral activities as are set forth in the Act. [§21-1760]

NEVADA—Credit union defined as a cooperative, nonprofit corporation, organized for the purposes of promoting thrift among its members and creating a source of credit for them at a fair and reasonable rate of interest. [§678.070]

PUERTO RICO—Credit union defined as a cooperative association organized for the double purpose of encouraging savings among its members and of affording them credit at reasonable rates of interest for their personal or legitimate business requirements. [§2(b)]. Loans may be made to non-members. [§7(b)]

RHODE ISLAND—Credit union defined as a cooperative association formed for the purpose of promoting thrift among its members. [§19-21-1]

SOUTH CAROLINA—Credit union defined as a cooperative association formed for the purpose of promoting thrift among its members and to enable them when in need, to obtain for productive and provident purposes moderate loans of money for short periods and at reasonable rates of interest. [§8-651]

WASHINGTON—Credit union defined as a cooperative society incorporated for the purposes of promoting thrift among its members and creating a source of credit for them at legitimate rates of interest not to exceed 1% per month on the unpaid balance and the equivalent thereto, for provident, productive and educational purposes. [§31.12.020]

ACT IS SILENT:

Kansas	Maryland	Tennessee
Kentucky	Mississippi	Vermont
Louisiana	Missouri	

Restriction on Use of Name

CUNA MODEL ACT: With the exception of a credit union organized under the provisions of this Act or of any other credit union act, or an association of credit unions or a recognized chapter thereof, any person, corporation, co-partnership or association using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise as conducting business as a credit union shall be fined not more than $500.00 or imprisoned not more than one year, or both, and may be permanently enjoined from using such words in its name. [§1.40]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT, but penalties may differ:

Alabama	[§5-17-3]	Montana	[§14-606]
Arizona	[§6-528]	Nebraska	[§21-1771]
Arkansas	[§67-904(1)]	Nevada	[§678.880(1)]
California	[§14003]	New Jersey	[§17:13-46]
Colorado	[§11-30-105]	New Mexico	[§48-19-3]
Florida	[§657.03]	New York	[§479]
Hawaii	[§410-10]	North Carolina	[§54-109.5]
Idaho	[§26-2107]	North Dakota	[§6-06-05]
Illinois	[§496.44]	Ohio	[§1733.44, 1733.99]
Indiana	[§28-7-1-8]	Oklahoma	[§2005]
Iowa	[§533.3]	Oregon	[§723.026]
Kansas	[§17-2203]	Pennsylvania	[§12330]
Louisiana	[§6:643]	South Carolina	[§8-652]
Maine	[§882]	Tennessee	[§45-1805]
Maryland	[§6-328]	Texas	[§2.07]
Massachusetts	[Ch. 171, §4]	Utah	[§7-9-5]
Michigan	[§490.3]	Vermont	[§2053]
Minnesota	[§52.03]	Virginia	[§6.1-224]
Mississippi	[§81-13-9]	West Virginia	[§31-10-3]
Missouri	[§370.360]	Wisconsin	[§186.03]

PROVISION IN ACT LIMITING the use of the name "credit union" to legally chartered credit unions, but no penalty for violation of the prohibition:

Connecticut	[§36-223]	Puerto Rico	[§39]
Kentucky	[§290.060]	Rhode Island	[§19-21-13]
New Hampshire	[§394:2]	Washington	[§31.12.030]

ACT IS SILENT: Georgia

Organizational Potential

(The minimum or maximum potential membership required for issuance of a credit union charter.)

CUNA MODEL ACT: Act is silent.

FEDERAL CREDIT UNION ACT: Act is silent.

MINIMUM POTENTIAL MEMBERSHIP for any charter is number of persons indicated:

California—100	[§14254]	Indiana—100	[§28-7-1-1]
Florida—200	[§657.01]	Pennsylvania—100 adults	[§12306]

MAXIMUM POTENTIAL for residential groups is 25,000 persons:

Colorado	[§33-1-5(2)]	New York	[§451(2)]

OTHER ACTS:

ARIZONA—Potential membership sufficient to assure the success of the credit union. [§6-502(C)]

ILLINOIS—Associational and occupational groups—potential membership must exceed 100 persons. Community groups—potential may not exceed 20,000. [§496.3(1)(2)]

LOUISIANA—Minimum potential of 100 persons in occupational credit unions; minimum potential 200 families in all other common bond groups. [§6:645(B)]

NEW JERSEY—Minimum potential for labor unions, benevolent and civil service associations is 200 persons. Maximum potential for rural residents is 2,500. [§17:13-30]

RHODE ISLAND—If after two years from date of incorporation, a credit union does not have at least 50 members, the charter shall be declared forfeited; if the total number of persons eligible for membership is less than 100, 50% of said potential membership is sufficient to retain the charter. [§19-21-4]

TEXAS—A credit union may not transact any business until it has a membership of at least 100 persons. [§2.05(2)]

WEST VIRGINIA—Credit union organizations limited to common bond groups of both large and small membership. [§31-10-5]

ACT IS SILENT:

33 states and Puerto Rico.

Organization Costs

CUNA MODEL ACT: The director may . . . establish chartering . . . fees, subject to the advice and consent of the Credit Union Council. [§2.10(3)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Texas	[§2.03(b)]

$5 FEE CHARGED RELATIVE to the organization of a new credit union.

California	[§14256]	Washington	[§31.12.050]
Missouri	[§370.040]	Wisconsin	[§186.02]
North Dakota	[§6-06-02(5)]		

$10 FEE CHARGED RELATIVE to the organization of a new credit union.

Iowa	[§533.1(3)]	Utah	[§7-9-4]
Mississippi	[§81-13-1]	Vermont	[§2051(3)]
South Carolina	[§8-654]		

$25 FEE CHARGED RELATIVE to the organization of a new credit union.

Idaho	[§26-2134]	Michigan	[§490.1(b)]
Louisiana	[§6:641(D)]	New Jersey	[§17:13-51]

FILING FEE REQUIRED, no amount specified:

Montana	[§14-603(5)]	Ohio	[§1733.07(E)]

OTHER ACTS:

ARIZONA—$20 filing fee [§6-125.01(5)]
COLORADO—$20 filing fee, $1 certification fee. [§11-30-101(4)]
CONNECTICUT—$20 application fee if license is issued from July 1 to December 31, $10 if license is issued from January 1 to June

30; also a franchise and filing fee of $10. [§33-195,36-196(1)]

FLORIDA—$5 filing fee, $15 investigation fee. [§657.01(3)(c)]

GEORGIA—Fees set forth in other act. [§41A-3001]

HAWAII—$20 investigation fee, $5 charter fee. [§410-9]

ILLINOIS—$20. [§196.2]

KANSAS—Fee prescribed in other Act. [§17-2201(c)]

MAINE—$50 application fee. [§812(2)]

MARYLAND—Filing with the commissioner - $10, filing with the Department - as provided for under the general corporation law. [§6-306(b)]

MASSACHUSETTS—$50 filing fee; $100 investigation fee [Ch. 171 §3, Ch. 172 §7]

MINNESOTA—$100 application fee. [§52.01(3)]

NEBRASKA—$1. [§21-1767]

NEVADA—Application for permission to organize a credit union shall be accompanied by an application fee and payment to cover expenses of investigation required for such approval. The amount of the fees shall be established by regulation. [§678.310(4)]

NEW MEXICO—Filing fee prescribed by state corporation commission. [§48-19-1(6)]

NORTH CAROLINA—Charter fee and investigation fee are prescribed by the Credit Union Commission. [§54-109.2(e)]

OKLAHOMA—Fees shall be statutory. [§2004]

OREGON—$150 filing fee. [§723.012(4)]

PUERTO RICO—$5 for filing, $2 for issuance at registration certificate. [§38]

ACT IS SILENT:

Alabama	New Hampshire	Tennessee
Arkansas	New York	Virginia
Indiana	Pennsylvania	West Virginia
Kentucky	Rhode Island	

General Powers

CUNA MODEL ACT: A credit union may . . . make contracts; sue and be sued. [§3.10(1)(2)]

FEDERAL CREDIT UNION ACT: A federal credit union . . . shall have power . . . to make contracts; to sue and be sued. [§107(1)(2)]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-509(3)]	Missouri	[§370.070(7)]
Arkansas	[§67-905(a)(b)]	Montana	[§14-613(1)(2)]
Florida	[§657.04]	Nebraska	[§21-1773(1)(2)]
Hawaii	[§410-12(f)(1),(2)]	No. Carolina	[§54-109.21(1)(2)]
Idaho	[§26-2108]	Oklahoma	[§2006(1)(2)]
Illinois	[§496.9(4)]	Texas	[§4.01(1)(2)]
Iowa	[§533.4(8)(9)]	Vermont	[§2054(1)(2)]

A CREDIT UNION SHALL HAVE power to sue and be sued:

New York	[§453(19)]	Pennsylvania	[§12305(A)(2)]
North Dakota	[§6-06-06(8)]		

ACT IS SILENT:

Alabama	Maryland	Oregon
California	Massachusetts	Puerto Rico
Colorado	Michigan	Rhode Island
Connecticut	Minnesota	South Carolina
Georgia	Mississippi	Tennessee
Indiana	Nevada	Utah
Kansas	New Hampshire	Virginia
Kentucky	New Jersey	Washington
Louisiana	New Mexico	West Virginia
Maine	Ohio	Wisconsin

Incidental Powers

CUNA MODEL ACT: A credit union may exercise such incidental powers as are granted corporations organized under the laws of this state including such as are necessary or requisite to enable it to promote and carry on most effectively its purposes. [§3.20]

FEDERAL CREDIT UNION ACT: A federal credit union may exercise such incidental powers as shall be necessary or requisite to enable it to carry out effectively the business for which it is incorporated. [§107(15)]

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-905(p)]	New Jersey	[§17:13-27(g)]
California	[§14807]	Oregon	[§723.012(2)(g)]
Louisiana	[§6:644(11)]	Texas	[§4.02]
Montana	[§14-614]	Vermont	[§2054(18)]

ACT SIMILAR TO FEDERAL ACT:

Arizona	[§6-509(18)]	Minnesota	[§52.04(14)]
Colorado	[§11-30-104(1)(i)]	Nebraska	[§21-1773(14)]
*Florida	[§657.04(8)]	New York	[§453(24)]
Hawaii	[§410-12(f)(14)]	North Carolina	[§54-109.22]
Idaho	[§26-2108(r)]	Oklahoma	[§2006(15)]
Illinois	[§496.9(12)]	Pennsylvania	[§12305(A)(4)]
Indiana	[§28-7-1-9(o)]	Puerto Rico	[§7(h)]
Iowa	[§533.4(11)]	Wisconsin	[§186.113(10)]

*Pursuant to rules of the department.

ACT PROVIDES THAT THE CREDIT UNION may undertake other activities, not inconsistent with the law, as authorized by the bylaws:

Kentucky	[§290.070(1)]	Tennessee	[§45-1806(4)]
Maryland	[§6-307(6)]	Utah	[§7-9-2]
Rhode Island	[§19-21-8]	Virginia	[§6.1-200]
South Carolina	[§8-656]	Washington	[§31.12.090]

ACT PROVIDES THAT BOARD OF DIRECTORS may authorize other activities not inconsistent with law nor reserved by the bylaws to the members:

Maine	[§842(2)(S)]	Nevada	[§678.380(7)]

OTHER ACTS:

ALABAMA—The credit union may exercise such incidental powers as necessary to enable it to carry on effectively the purposes for which it is incorporated and such other powers expressly authorized by the Supervisor of the Bureau of Credit Unions. [§5-17-4(a)(9)]

GEORGIA—The credit union may undertake other activities not inconsistent with the provisions of the code. [§41A-3101(f)]

continued

MISSISSIPPI—A credit union, like other state corporations, may have and exercise all powers necessary or convenient to affect any or all of the purposes for which the corporation is organized. [§§81-13-11, 79-3-7(r)]

ACT IS SILENT:

Connecticut	Missouri	North Dakota
Kansas	New Hampshire	Ohio
Massachusetts	New Mexico	West Virginia
Michigan		

Authority to Exercise Federal Powers

CUNA MODEL ACT: Act is silent.

FEDERAL CREDIT UNION ACT: Act is silent.

THE GOVERNMENT SUPERVISOR may authorize state credit unions to engage in any activity in which they could engage if they were federally chartered, if he determines such a move to be in the best interests of the credit union and the public:

Arizona	[§6-533(B)]	Utah	[§7-9-30]
Oregon	[§723.156]	Vermont	[§2066(b)]
Texas	[§1.03]		

THE GOVERNMENT SUPERVISOR may authorize state credit unions to engage in any activity in which they could engage if they were federally chartered:

*California	[§15801.5]	Missouri	[§370.071(3)]
**Colorado	[§11-30-104(1)(i)]	New Mexico	[§48-19-4.1]
Hawaii	[§410-46]	*Ohio	[§1733.341(B)]
*Idaho	[§26-2145]	Rhode Island	[§19-21-51]
Maine	[§828]	*Virginia	[§6.1-200.2]

*Regulations authorizing such activity expire as specified in the act.

**Provided such activity is not prohibited by state law.

THE GOVERNMENT SUPERVISOR, with the approval of the credit union council, may authorize any credit union to engage in any activity in which it could engage if it were federally chartered. Upon a credit union's written request, the supervisor shall exercise such powers if he deems them necessary to protect the credit union and promote the state's economy:

Kansas	[§17-2244]	Montana	[§14-676]

OTHER ACTS:

ALABAMA—Any credit union may engage in any activity in which it could engage if it were federally chartered, subject to written prohibition by the Superintendent of Banks. [§5-17-4]

LOUISIANA—A credit union may take advantage of all the rights and privileges available to credit unions by virtue of any act of Congress, particularly any act creating a federal credit union system, subject to the approval of the Commissioner of Financial Institutions. [§6:644]
Unless federal laws or regulations provide otherwise, federal credit unions and the members thereof shall possess all of the rights and privileges provided for this state's credit unions. [§6:667.1]

MARYLAND—With authorization of the bank commissioner and the Maryland Credit Union Insurance Corporation, a state credit union may engage in any additional activity or related services under the same conditions or limitations as are applicable for federal credit unions. [§141A]

MINNESOTA—The commissioner may authorize a state-chartered credit union to engage in any activity in which it could engage if it were federally chartered, provided the activity is not prohibited by Minnesota law and was permitted by law or rule as of June 1, 1977. [§52.04(2)]

NEBRASKA—Any credit union incorporated under Nebraska law shall have all the rights, privileges, benefits and immunities which may be exercised by a federal credit union doing business in the state as of September 2, 1977; provided, that such rights shall not relieve such credit union from payment of Nebraska state taxes. [§21-17, 120.01]

NEW JERSEY—The Department of Banking may, in relation to loans or investments, promulgate rules and regulations in substantial conformity with similar rules and regulations under the Federal Credit Union Act and under regulations promulgated by the administrator of the National Credit Union Association. [§17:13-27(k)]

NORTH CAROLINA—In accordance with the rules and regulations of the Administrator and subject to the advice and consent of the Credit Union Commission, a credit union may engage in any activity in which it could engage if it were federally chartered, if on investigation, the Administrator finds it necessary to protect credit unions and to promote the state's economy. [§54-109.21(25)]

OKLAHOMA—A credit union chartered under Oklahoma law and insured under the Federal Credit Union Act may exercise any of the powers of a federally chartered credit union until otherwise provided by the legislature and subject to prohibition by the State Credit Union Board. [§2023]

SOUTH CAROLINA—The Board of Bank Control may by regulation permit cooperative credit unions to engage in any activities that are authorized for federally chartered credit unions. [§34-1-110]

TENNESSEE—State-chartered credit unions may make loans upon the same terms, conditions, and rates of interest as permitted federal credit unions. [§45-1849] May also make any investment lawful for federal credit unions. [§45-1806(3)(g)] May also engage in any or all shares or funds withdrawal activities authorized for federal credit unions. [§45-1806(6)]

WASHINGTON—A central credit union may exercise any powers conferred on a federally chartered credit union doing business in the state, if the supervisor finds that such exercise of power is desirable. [§31.13.030]

ACT IS SILENT:

18 states and Puerto Rico.

Out-of-State Credit Unions

CUNA MODEL ACT: A credit union organized and duly qualified as a credit union in another state may conduct business as a credit union in this state provided:

(1) Such credit union is organized under a credit union law substantially similar to this Act;

(2) The interest rate of such credit union on loans made to members in this state does not exceed the maximum interest rate permitted by this Act;

(3) A credit union organized and doing business under the laws of this state is permitted to do business in such other state under conditions substantially similar to those in this Act;

(4) The director approves an application filed by the credit union, which application shall include an agreement to comply with all rules and regulations prescribed by the director. [§1.70]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:
Ohio [§1733.38, 1733.39]

OTHER ACTS:

ILLINOIS—A credit union chartered in another state may be permitted by the director to do business in Illinois only under the same conditions and to same extent that an Illinois credit union may do business in that state. [§496.45]

KANSAS—No credit union, except credit unions organized under Kansas law or the Federal Credit Union Act, shall do business in this state until it has received the approval of the credit union administrator. [§17-2223(a)]

OREGON—Act similar to Model Act, but such credit union must also agree to submit an annual report of examination from the supervising agency of the state in which it is chartered, and to authorize the examination of its parent credit union by the superintendent and to pay the reasonable cost and fee of such examination. [§723.042]

WISCONSIN—All credit unions authorized to transact in this state a business similar to that authorized to be done by the Wisconsin credit union chapter shall be under the control and supervision of the commissioner. [§186.25]

ACT IS SILENT:

41 states and Puerto Rico.

Deposit of Funds

(Also refer to "Investment in Financial Institutions")

CUNA MODEL ACT: A credit union may make deposits in legally chartered banks, savings banks, savings and loan associations, trust companies and central-type credit union organizations. [§3.10(13)]

FEDERAL CREDIT UNION ACT: A federal credit union may make deposits in national banks and in state banks, trust companies, and mutual savings banks operating in accordance with the laws of the state in which the federal credit union does business. [§107(8)]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-613(12)]	Oregon	[§723.152(13)]
North Carolina	[§54-109.21(12)]	Texas	[§4.01(13)]

A CREDIT UNION MAY DEPOSIT funds in state and national banks:

*Colorado	[§11-30-104(1)(d)]	Missouri	[§370.070(3)]
Florida	[§657.04(4)]	Nebraska	[§21-1773(9)]
Illinois	[§496.9(3)]	West Virginia	[§31-10-4(d)]

*Provided the bank is insured by the federal deposit insurance corporation.

OTHER ACTS:

ALABAMA—A credit union may deposit funds in federally insured state and national banks, savings and loan associations, and other credit unions. [§5-17-4(a)(6)]

ARIZONA—A credit union may deposit funds in banks authorized to do business in Arizona. [§6-509(11)]

ARKANSAS—A credit union may make deposits (checking accounts) in state and federal chartered banks insured by the FDIC. [§67-905(k)]

CALIFORNIA—A credit union may deposit in savings banks, state banks or trust companies incorporated under California law, national banks in the state, federal and California credit unions in the state, and in federally approved savings and loan associations. [§15101]

CONNECTICUT—A credit union may deposit its funds in financial institutions whose accounts are insured by the U.S., provided not more than 10% of its assets are deposited in financial institutions whose principal offices are located in another state. [§36-198(f)]

GEORGIA—A credit union may deposit funds in banks, building and loan associations, savings and loan associations, and in credit unions, and may purchase certificates of deposits and savings certificates in same. [§41A-3101(d)(4)]

HAWAII—A credit union may deposit funds in national, state and mutual savings banks. [§410-12(f)(8)]

IDAHO—A credit union may make deposits in federally insured banks and savings and loan companies in Idaho, in state or federally chartered credit unions in Idaho and in the Idaho Corporate Credit Union. [§26-2108(k)]

INDIANA—A credit union may deposit funds in savings, private and national banks, trust companies, loan and trust, and safe deposit companies. [§28-7-1-9(d)]

IOWA—A credit union may deposit funds in state and national banks, and in a credit union which has been in existence for not more than a year an amount not to exceed 25% of the assets of the new credit union. [§533.4(4)(14)]

KANSAS—A credit union may deposit funds in state, savings and national banks, and trust companies. [§17-2204(3)]

MARYLAND—A credit union may deposit funds in state or national banks, insured building and savings and loan associations. [§151]

MICHIGAN—A credit union may deposit funds in federally insured state and national banks and in shares of or loans to central-type credit unions, as authorized by board of directors or executive committee. [§490.4(d)]

MINNESOTA—A credit union may deposit funds in state and national banks, and trust companies. [§52.04(4)]

MISSISSIPPI—A credit union may deposit funds in savings, state, national and mutual banks, credit unions, trust companies, savings and loans and any other federally insured financial institution. [§81-13-11(c)(iii)]

NEVADA—Deposits in federal or state banks, savings and loan associations, and credit unions are exempted from the definition of risk assets. [§678.690(2)]

NEW HAMPSHIRE—A credit union may deposit funds in savings, co-operative or national bank, trust company, building and loan association, or savings and loan, which is federally insured. [§394:17(I)]

NEW JERSEY—A credit union may deposit funds in state, savings and national banks, savings and loans, central funds of credit unions or central-type credit unions. [§17:13-27(f)]

NEW MEXICO—A credit union may deposit funds in state and national banks, and to an extent not greater than 25% of credit union's capital, invest in shares of building and loan associations and other credit unions organized under New Mexico laws. [§48-19-4(A)(4)]

continued

NEW YORK—A credit union may deposit funds in savings banks, banks or trust companies incorporated under New York law or in national banks located in state. [§456(1)]

NORTH DAKOTA—A credit union may deposit funds in state and national banks, trust companies, and central-type credit unions. [§6-06-06(4)]

OKLAHOMA—A credit union may deposit funds in state and national banks, trust companies, savings and loans, and credit unions approved by State Credit Union Board as depositories. [§2006(9)]

PENNSYLVANIA—A credit union may deposit funds in insured state banks, bank and trust companies, savings banks, national banking associations, savings associations or federal saving and loan associations. [§12305(B)(6)]

PUERTO RICO—A credit union may deposit funds in commercial banks or in the Puerto Rico Federation of Credit Unions. [§7(d)]

VERMONT—A credit union may deposit funds in banks, trust companies and credit union organizations. [§2054(11)]

WASHINGTON—A credit union may deposit funds in state or national banks located in this state or in checking accounts of banks in other states in which such accounts are insured by the FDIC. [§31.12.260(a)]

ACT IS SILENT:

Kentucky	Ohio	Utah
Louisiana	Rhode Island	Virginia
Maine	South Carolina	Wisconsin
Massachusetts	Tennessee	

Borrowing Power

CUNA MODEL ACT: A credit union may . . . borrow from any source in accordance with policy established by the board of directors. [§3.10(9)]

FEDERAL CREDIT UNION ACT: A federal credit union shall have the power to borrow, in accordance with such rules and regulations as may be prescribed by the Board, from any source, in an aggregate amount not exceeding 50 per centum of its paid-in and unimpaired capital and surplus. [§107(9)]

ACT SIMILAR TO MODEL ACT:

Nevada	[§678.470(2)]	Oregon	[§723.152(9)]
North Carolina	[§54-109.21(8)]		

ACT SIMILAR TO FEDERAL ACT:

California [§15103]

A CREDIT UNION MAY BORROW from any source, provided the amount borrowed does not exceed the specified percentage of capital, surplus and reserve fund:

Indiana—50%	[§28-7-1-22]	Missouri—50%	[§370.290]
Kansas—25%	[§17-2215]	Tennessee—50%	[§45-1823]
Kentucky—100%	[§290.210]	West Virginia—20%	[§31-10-17]
Mississippi—50%	[§81-13-41]		

A CREDIT UNION MAY BORROW from any source, provided the amount borrowed does not exceed 50% of paid-in and unimpaired capital:

Florida [§657.15]

A CREDIT UNION MAY BORROW from any source, provided the amount borrowed does not exceed the specified percentage of paid-in and unimpaired capital and surplus:

Hawaii—50%	[§410-12(f)(9)]	*Maine—50%	[§822(1)]
Louisiana—40%	[§6:655]	**Maryland—50%	[§161]

*Bank Commissioner must be notified of intention to borrow more than 35%.

**For a period not exceeding 1 year, unless commissioner extends period 1 more year.

A CREDIT UNION MAY BORROW from any source, provided the amount borrowed does not exceed the specified percentage of assets:

Alabama—50%	[§5-17-4(a)(8)]	Montana—50%	[§14-613(8)]
Arizona—50%	[§6-509(9)]	*North Dakota—25%	[§6-06-19]
Minnesota—40%	[§52.15]		

*Unless state examiner authorizes more.

A CREDIT UNION MAY BORROW from any source, provided the amount borrowed does not exceed 50% of its shares and deposits:

Colorado	[§11-30-115]	New Mexico	[§48-19-15]
Iowa	[§533.15]		

A CREDIT UNION MAY BORROW from any source, provided the amount borrowed does not exceed the specified percentage of shares, deposits and surplus:

Georgia—50% [§41A-3101(e)]

Texas—25%, without prior approval of the credit union commissioner. [§4.01(10)]

A CREDIT UNION MAY BORROW from any source, provided the amount borrowed does not exceed the specified amount:

Arkansas—60% of the share balances [§67-905(i)]

Nebraska—40% of paid-in and outstanding shares [§21-1733(7)]

New Jersey—25% of share loans, or amount equivalent to investments in securities other than share loans, whichever is greater [§17:13-43]

*Wisconsin—50% of total savings, deposits and reserves [§186-112(1)]

*For no longer than 12 months, unless commissioner authorizes longer period.

ACT IS SILENT AS TO SOURCE; amount borrowed by credit union shall not exceed specified amount:

Connecticut—50% of paid-in and unimpaired capital and surplus; bank commissioner must be notified of intention to borrow more than 35% [§36-198(b)]

Illinois—40% of paid-in and unimpaired capital and surplus [§496.9(6)]

New Hampshire—30% of paid-in and unimpaired capital [§394:27]

New York—10% of capital; or 40% of capital with approval of superintendent of banks [§453(7)]

Ohio—25% of paid-in and unimpaired capital and surplus without approval of superintendent of credit unions [§1733.04(B)(1)]

Rhode Island—25% of paid-in and unimpaired capital and surplus without approval of director of business regulation [§19-21-22(g)]

Virginia—90% of outstanding shares; approval of commissioner required for amounts in excess of 50% of outstanding shares [§6.1-201]

Washington—33-1/3% of paid-in and unimpaired capital and surplus; supervisor may authorize higher limit [§31.12.190]

OTHER ACTS:

IDAHO—A credit union may borrow from any financial institution or individuals in an aggregate amount not to exceed 50% of its members' shares and deposits. [§26-2108(i)]

MASSACHUSETTS—With approval of commissioner of banks, board of directors may borrow for and in behalf of the credit union. It may borrow money without approval of the commissioner from a savings bank, cooperative bank, federal savings and loan associations or the Central Credit Union Fund, Inc., provided that the sum borrowed does not exceed the deposit or share account of the credit union in such institution and the period does not exceed one year. [Ch. 171, §16]

MICHIGAN—At the discretion of its board of directors, a credit union may borrow from any source an amount up to 50% of its paid-in and unimpaired capital or up to 75% of its paid-in and unimpaired capital if its capital consists mainly of funds from other credit unions. Borrowing in excess of 75% must be approved by the commissioner.[§490.15]

OKLAHOMA—A credit union has the power to borrow from any source in an aggregate amount not exceeding 50% of its shares, deposits and undivided earnings; such borrowed money may be borrowed either by means of bills payable or through rediscounts of its negotiable instruments, and credit unions may pledge their assets as collateral securities. [§2006(10)]

PENNSYLVANIA—A credit union may borrow from any source a sum not exceeding 50% of its capital, surplus and undivided profits to meet loan demands or share withdrawals but not for purpose of investment. [§12320]

PUERTO RICO—A credit union may obtain loans from any person or public or private agency. They shall be authorized by board of directors through resolution to that effect. [§26]

SOUTH CAROLINA—A credit union may borrow from banks, savings and loan associations, building and loan associations, trust companies or other credit unions or persons. [§8-656]

UTAH—The board of directors may borrow from banking institutions and other credit unions. [§7-9-11(6)]

VERMONT—Subsequent to a vote at annual meeting, a credit union can borrow from any source an aggregate amount not exceeding 20% of its share, deposit and surplus account balances; or, up to 50% of such balances with prior written approval of commissioner. [§2054(9)]

Acquisition of Property

CUNA MODEL ACT: A credit union may . . . acquire, lease, hold and dispose of property, either in whole or in part, necessary or incidental to its operations. [§3.10(4)]

FEDERAL CREDIT UNION ACT: A federal credit union may purchase, hold and dispose of property necessary or incidental to its operations. [§107(4)]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-613(4)]	Oregon	[§723.152(4)]
North Carolina	[§54-109.21(4)]		

ACT SIMILAR TO FEDERAL ACT:

Arkansas	[§67-905(d)]	New Mexico	[§48-19-4(A)(7)]
Colorado	[§11-30-104(1)(h)]	Oklahoma	[§2006(4)]
Hawaii	[§410-12(f)(4)]	Vermont	[§2054(4)]
Nebraska	[§21-1773(4)]		

A CREDIT UNION MAY PURCHASE, lease, hold or dispose of property necessary or incidental to its operations:

Arizona	[§6-509(5)]	*Texas	[§6-509(5)]

*Subject to the regulations issued by the commissioner.

OTHER ACTS:

CALIFORNIA—Every credit union may purchase, hold, either individually or jointly with other credit unions or affiliated organizations, a lot and building to be employed principally for the transaction of business, and to provide for future expansion of the facilities of such organizations. Any excess space which is not occupied by the organizations purchasing and holding the building may be leased to the public. The lot and building may be sold, if all the holders of the property join in its sale. [§14804]

CONNECTICUT—A credit union may acquire, improve, hold, alter, maintain, repair, incumber, and convey such real estate as may be necessary for the transaction of its business or to protect its securities, provided no credit union shall expend in the purchase or construction of any building for the purpose, in whole or in part, of accommodating its business a greater amount than in the opinion of the Bank Commissioner should be used for such purpose. [§36-198(m)]

FLORIDA—Credit union may invest surplus funds in real estate and improvements thereon that may be required for its accommodation in the transaction of its business; before any such investment is made, the proposal must be submitted to the state comptroller and his approval obtained if he is satisfied that the proposed investment is necessary, that the amount is commensurate with the size and needs of the credit union and that it will be beneficial to the members. [§657.161(5)]

GEORGIA—A credit union may purchase, hold and convey real estate for the following purposes only: (1) that necessary for the convenient transaction of its business, subject to prior approval of the Department; (2) that conveyed to it in satisfaction of debt; (3) that purchased at sales under judgments, decrees or mortgage foreclosures pursuant to mortgages or security deeds held by it. [§41A-3101(h)]

IDAHO—A credit union shall have the power to own, hold or use any real property or any interest therein as it may reasonably require for any administrative or branch offices or other areas as approved by the director which may be necessary to the business functions of their offices, and any drive-up teller facilities or customer-credit union communication terminals which in the aggregate shall not exceed 15% of the total of its members' shares and deposits without prior approval of the director. [§26-2109]

ILLINOIS—A credit union shall have the power to purchase, lease, or own such real property as it may reasonably require for its administrative offices, to lease to others any part of such real property as is not required for its own use and to convey or otherwise dispose of such property, subject to the approval of the director of financial institutions. [§496.9(9)]

INDIANA—Credit union has power to provide suitable buildings or other office space or facilities from funds of the credit union but such expenditures shall not exceed 10% of the assets of the credit union and all such expenditures are subject to the approval of the department of financial institutions. A credit union also has power to purchase, hold, own and/or convey such real estate as may be conveyed to the credit union in satisfaction of debts previously contracted in its business or in exchange for real estate so conveyed to the credit union. A credit union may also own, hold and/or con-

continued

vey such real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages held by it. [§28-7-1-9(e)(i)]

IOWA—A credit union has power to purchase, hold and dispose of property necessary and incidental to its operation, provided that any property acquired through foreclosure shall be disposed of within a period not to exceed 10 years. [§533.4(10)]

MAINE—The board of directors can authorize the conveyance of property. A credit union may invest in real estate by the purchase of improved or unimproved real estate, and in the erection or improvement of buildings thereon together with fixtures and equipment, for the purpose of providing offices for the transaction of its business. Such buildings may include space for rental purposes. The cost shall not exceed 50% of the credit union's total surplus; provided that the superintendent may approve an amount in excess of said 50% of total surplus. [§842(2)(E), 863]

MASSACHUSETTS—Subject to approval of commissioner of banking, a credit union may invest a sum not exceeding its guaranty fund and other surplus accounts in the purchase of a suitable site and in erection or preparation of a suitable building or for alterations, improvements, or additions thereto for convenient transaction of its business. Subject to approval, a credit union may expend a sum not exceeding its guaranty fund and other surplus accounts for alterations, improvements and additions to any premises leased by it for the convenient transaction of its business. [Ch. 171, §21]

MICHIGAN—Credit union may purchase land and buildings for the purpose of providing adequate facilities for the transaction of its business at a cost not to exceed 20% of the capital of the credit union. Credit unions may purchase or hold such property jointly; and individually or jointly may purchase, acquire, and hold the outstanding shares of stock of a corporation engaged exclusively in purchasing, constructing, holding and furnishing property for such purposes. [§490.4(g),(h)]

MISSISSIPPI—Credit union may invest in real property and equipment needed for credit union operations as authorized by board of directors. [§81-13-11(e)(iv)]

MISSOURI—Credit union may purchase, hold and dispose of property, real or personal, necessary and incidental to its operations. Any property, real or personal, not used in the business, but acquired by way of pledge or foreclosure in the collection of loans or accounts, may be held by said credit union but must be sold within six years from the date it was so acquired. [§370.070(5)]

NEVADA—The board of directors may authorize the conveyance of property. [§678.380(4)]

NEW HAMPSHIRE—Credit union may purchase, build, improve, hold, dispose of, mortgage, rent, lease or exchange any property, real or personal, as is necessary or incidental to its operation, in which it occupies a portion of as office space, and is reasonably required for further expansion. [§394:19-a]

NEW JERSEY—Credit union can purchase land and buildings for its operations, so long as the cost does not exceed 50% of amount of credit union reserves and so long as the commissioner of banking and insurance approves. [§17:13-27(j)]

NEW YORK—A credit union shall have power, subject to prior approval of the superintendent, and of the membership present at a regular or special meeting, to purchase a plot whereon there is or may be erected a building suitable for the transaction of its business; provided that the aggregate of all investments of any credit union in such plot and building shall be limited to 25% of the surplus account of such credit union. [§453(18)]

NORTH DAKOTA—Credit union may invest in a credit union office building including the lot, piece, or parcel of land on which the same is located, and in furniture and fixtures, to the extent authorized by regulations issued by the state credit union board. [§6-06-06(9)]

OHIO—Credit union may purchase, acquire by lease or otherwise own and dispose of any property, real or personal, but only when necessary and to the extent required for the use of the credit union alone in the operation of its office or headquarters; and for the purchase of real estate by the credit union, the written approval of the superintendent shall be first secured.
[§1733.04(B)(4)]

PENNSYLVANIA—Credit union may hold, purchase, mortgage, alter, improve and sell such real property, and furniture and fixtures to be used therein, as the purposes of the credit union require and which the credit union occupies or intends to occupy for the transaction of its business or partly so occupies and partly so leases to others, provided that the cost at the time of acquisition shall not exceed 50% of the unimpaired surplus and undivided profits of the credit union or 5% of its unimpaired capital up to one million dollars plus 3% of its capital over $1 million, whichever is greater except with prior approval from department of banking. [§12305(B)(10)]

PUERTO RICO—A savings and credit union may purchase, sell, exchange, and mortgage or take or give in lease the necessary property to carry out the purposes for which it was organized, provided said operations shall also be subject to the limitations imposed by the laws of Puerto Rico. [§11]

WASHINGTON—With prior written approval of supervisor and a three-fourths affirmative vote of directors, a credit union may invest a reasonable amount of its funds in real property or leasehold interests therein for use principally in the transaction of its business when:

(1) The aggregate of its guaranty fund and undivided profits accounts equals 5% of the aggregate of its share accounts;
(2) The total investment in such property does not exceed 7½% of the aggregate of its share accounts.

However a credit union may acquire real property through collection of loans secured thereby. [§31.12.090]

WISCONSIN—With the approval of the commissioner the board of directors may purchase or construct a building for the operation of the credit union provided the aggregate cost, including the cost of the land acquisition, does not exceed 100% of regular reserve unless prior approval for greater amounts, not to exceed 10% of savings, is given by the commissioner and the credit union review board. The cost of land acquisition may include vicinal property for future expansion but may not exceed the aggregate cost limitation. The credit union may rent or lease a portion of its building or property. [§186.11(2)]

ACT IS SILENT:

Alabama	Maryland	Tennessee
Kansas	Minnesota	Utah
Kentucky	Rhode Island	Virginia
Louisiana	South Carolina	West Virginia

Subsidiary Offices

(Service facilities or branch offices)

CUNA MODEL ACT: A credit union may maintain service facilities at locations other than its main office if the maintenance of such offices is reasonably necessary to furnish service to its members. [§1.50(1)]

FEDERAL CREDIT UNION ACT: A "branch" includes any office, agency or place of business at which member accounts are established or money is lent. [§101(8)] The Act requires the same publication of legal notice in involuntary liquidation situations regarding branch offices as it does for non-branch offices. [§120(b)(4)]

ACT SIMILAR TO MODEL ACT, but requires approval of the supervisor:

Georgia	[§41A-3116]	Maine	[§826]
Hawaii	[§410-39(1)]	Nevada	[§678.330(1)]
Iowa	[§533.4]	North Carolina	[§54-109.6(a)]

ACT MAKES REFERENCE TO "principal office", "principal place of business", "main office", "business office", or "registered office":

Kentucky	[§290.020(2)(d)]	Nebraska	[§21-1767]
Louisiana	[§6:641(1)]	Pennsylvania	[§12303(B)(3)]
Mississippi	[§81-13-3(a)]	Puerto Rico	[§9(b)]
Missouri	[§370.020(1)]	West Virginia	[§31-10-1(a)(2)]
Montana	[§14-603(2)(a)]		

CREDIT UNION HAS POWER to establish offices at locations other than its main office if the maintenance of such offices shall be reasonably necessary to furnish services to its membership. No additional offices shall be established to serve persons who are not entitled to membership as defined in the common bond provision of the articles of incorporation and who would not be entitled to services of the credit union at its main office.

The state credit union supervisor shall grant prior written approval for the establishment of subsidiary offices. He shall have the authority to issue notice and hold a public hearing to determine if the establishment of the subsidiary office or offices is necessary and in the best interests of the credit union:

*Arkansas	[§67-939]	Idaho	[§26-2143]

*All books of account shall be maintained at the main office.

OTHER ACTS:

ARIZONA—A credit union may establish a branch office with the prior written permission of supervisor. [§6-524]

CONNECTICUT—The certificate of organization shall contain the location of the credit union's principal office and subsidiary offices. [§36-196(2)(c)]

INDIANA—The credit union shall have power to establish service offices within the state upon prior approval by the department, provided that all books of accounts shall be maintained at principal office. [§28-7-1-9(j)]

MASSACHUSETTS—After such notice and hearing as the commissioner may require and with his written permission and under such conditions as he may approve, a credit union may establish and maintain one or more branch offices or depots in the county where the main office is located or on a site within 15 miles from the premises of the main office in any city or town in another county. Any of the usual business transacted by a credit union at its main office may be transacted at a branch office. The business at a depot shall be transacted only on such days as may be designated by the board of directors and shall be limited to the receipt of deposits and the collection of moneys due or payable to the credit union, and such business shall be subject to such other conditions, if any, as may be prescribed by the commissioner. With the written consent of the commissioner a branch office or depot may be closed, or its location may be changed. No more than 1 application by a credit union to establish a branch office or depot outside the county shall be approved in any calendar year. [Ch. 171, §2]

MICHIGAN—A credit union shall have the power to establish one or more service centers upon the approval of the commissioner. Before granting approval, the commissioner shall satisfy himself that the credit union is in sound financial condition and that the proposed service center will serve the convenience and needs of the members. [§490.4(o)]

NEW YORK—Any credit union may open and maintain within the state, in any locality in which a substantial portion of its actual or potential membership is employed, one or more stations for the payment of money for withdrawals of shares or deposits, and the receipt of interest, fines and of payments upon shares and upon the principal of loans; with the superintendent's approval. [§460(2)]

OHIO—A credit union shall have no branches, but subject to the approval of the superintendent, may have service facilities other than its home office. [§1733.04(B)(3)]

OREGON—Any credit union may make a written application to the superintendent of banks for leave to establish a branch. Upon application, the credit union shall pay a $500 non-refundable fee for each branch requested. The superintendent shall determine whether or not the establishment of a branch is advisable or justified and whether the public convenience and advantage will be promoted, and shall, at his discretion, approve or disapprove the establishment of the branch. [§723.032(1)]

RHODE ISLAND—No credit union may establish a branch or branches within the state at any other place than its principal place of business without first obtaining the consent of the board of bank incorporation. [§19-21-12]

TEXAS—Subject to prior written notification of the commissioner, a credit union may establish at locations other than its principal place of business additional offices that are reasonably necessary to furnish services to its members. [§2.08]

VERMONT—With the approval of the commissioner, a credit union may maintain 1 or more offices other than the principal place of business as may be necessary to conduct the affairs of the credit union. [§2054(15)]

WISCONSIN—If the need and necessity exists, a credit union may establish subsidiary offices within the state. [§186.113(1)]

ACT IS SILENT:

Alabama	Maryland	Oklahoma
California	Minnesota	South Carolina
Colorado	New Hampshire	Tennessee
Florida	New Jersey	Utah
Illinois	New Mexico	Virginia
Kansas	North Dakota	Washington

Agent for Government

CUNA MODEL ACT: A credit union may . . . perform such tasks and missions as are requested by the federal government or this state or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with this Act; act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision thereof. [§3.10(18)(19)]

FEDERAL CREDIT UNION ACT: Each federal credit union, when requested by the Secretary of the Treasury, shall act as fiscal agent of the U.S. and perform such services as may be required in connection with the collection of taxes and other obligations due the U.S. and the lending, borrowing and repayment of money by the U.S.; and shall be a depository of public money when designated for that purpose. [§121]

ACT SIMILAR TO MODEL ACT:

Nevada	[§678.490(2)(3)]	Oregon	[§723.152(19)]
North Carolina	[§54-109.21(17)(18)]		

A CREDIT UNION MAY ACT AS A FISCAL AGENT of the federal government, this state, or any of its subdivisions:
New Jersey [§17:13-27(h)]
Texas—Also for federal and state instrumentalities [§4.01(7)]

OTHER ACTS:

CALIFORNIA—The county board of supervisors may designate one or more state or federal credit unions, doing business in the county, as disbursing agent so that the auditor may pay the salaries of such persons who choose to receive their salaries from such an agent. [§28008]

CONNECTICUT—A credit union may act as agent for the sale, issue and redemption of the obligations of the U.S. and pledge assets to the U.S. or the proper federal reserve bank for its obligations as such agent. [§36-198(t)]

ILLINOIS—A credit union has power to act as an issuing agent of the U.S. Treasury in the purchase, sale, and issuance of U.S. savings bonds to members. [§496.9(13)]

LOUISIANA—A credit union may receive from any officer, employee, or agent of those nonmember units of the United States, the state of Louisiana, any parish, or municipality, and political subdivision thereof, payments on shares, share certificates and share deposits. [§6:644(12)]

MICHIGAN—County, city, or other local government units may invest surplus funds in credit unions insured by NCUA. (§129.91)

MONTANA—A credit union may perform such tasks and missions as are requested by the federal government or this state or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with this act. [§14-613(17)]

PENNSYLVANIA—A credit union may act as an issuing agent of the United States Treasury for the sale, issuance and redemption of U.S. savings bonds to its members. [§12305(8)(12)]

PUERTO RICO—Credit unions may be depositories of public funds of any kind. [§7(i)]

ACT IS SILENT:
34 states

Contributions

CUNA MODEL ACT: A credit union may make donations or contributions to any civic, charitable or community organization as authorized by the board of directors, subject to such regulations as are prescribed by the Director. [§3.10(21)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Montana	[§14-613(19)]	Oregon	[§723.152(21)]
No. Carolina	[§54-109.21(20)]	Texas	[§4.01(20)]

OTHER ACTS:

CALIFORNIA—A credit union may make a gift or donation, provided it is in the best interests of the credit union and has been approved by resolution of the board and by a vote of a majority of the members present at a meeting for which notice of such intended gift or donation has been given. [§14850]

CONNECTICUT—The credit union may make contributions for charitable, educational or public welfare purposes, so long as the annual total amount of such gifts shall not exceed the greater of $100, 1½% of its undivided earnings or .1% of gross income. [§36-198(q)]

NEVADA—Credit union may make donations or contributions to any nonprofit civic, charitable or community organization as authorized by the board. [§678.500(

NEW YORK—Credit union may make donations for public welfare or community fund, hospital, charitable, educational, scientific, civic or similar purposes and in time of war or other national emergency, in aid thereof. [§453(21)]

ACT IS SILENT:
38 states and Puerto Rico.

Taxation

CUNA MODEL ACT: Any credit union organized under this or any other credit union act and all shares and deposits therein shall be exempt from all taxation now or hereafter imposed by this state or any taxing authority within this state. No law which taxes corporations in any form, or the shares or deposits thereof, or the accumulation thereon, shall apply to any such credit union; except that any real property and any tangible personal property owned by any such credit union shall be subject to taxation to the same extent as other similar property is taxed, provided that this exception shall not permit the imposition of any sales or use taxes on the credit union.

The shares of any such credit union shall not be subject to stock transfer taxes, either when issued or when transferred from one member to another.

The participation by a credit union in any government program providing unemployment, social security, old age pension or other benefits shall not be deemed a waiver of the taxation exemption hereby granted. [§13.10, .12, .20]

FEDERAL CREDIT UNION ACT: The federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or

by any state, territorial, or local taxing authority; except that any real property and any tangible personal property of such federal credit unions shall be subject to federal, state, territorial, and local taxation to the same extent as other similar property is taxed.

Nothing herein contained shall prevent holdings in any federal credit union organized hereunder from being included in the valuation of the personal property of the owners or holders thereof in assessing taxes imposed by authority of the state or political subdivision thereof in which the federal credit union is located; but the duty or burden of collecting or enforcing the payment of such a tax shall not be imposed upon any such federal credit union, and the tax shall not exceed the rate of taxes imposed upon holdings in domestic credit unions. [§122]

ACT SIMILAR TO MODEL ACT:
Nevada [§678.540]

ACT SIMILAR TO FEDERAL ACT:

Hawaii	[§410-30]	North Dakota	[§6-06-29]
Mississippi	[§81-13-63]		

CREDIT UNIONS ARE TAXED in same manner as savings banks:

Minnesota—[§52.22] Tennessee—[§45-1830]

CREDIT UNIONS ARE DEEMED an institution for savings and are not subject to taxation except on real estate owned. The shares of a credit union are not subject to a stock transfer tax when issued by the corporation or when transferred from one member to another:

Arkansas	[§67-935]	Louisiana	[§6:662]
Colorado	[§11-30-123]	Michigan	[§490.22]
Idaho	[§26-2138]	New Mexico	[§48-19-22]
Kentucky	[§290.300]	Pennsylvania	[§12331]

OTHER ACTS:

ALABAMA—Credit unions are deemed an institution for savings and are not subject to taxation except on real estate owned. The shares of a credit union are not subject to a stock transfer tax when issued by the corporation or when transferred from one member to another. However, the corporate franchise tax and financial institution excise tax is applicable. [§5-17-24]

CONNECTICUT—Nothing in the credit union act shall be construed to exempt credit unions from taxation under Chapter 208. [§36-220]

GEORGIA—The constitutional ad valorem property tax is assessed unless a specific provision excludes credit unions. The ad valorem tax is assessed upon full market value of the credit union's shares (including surplus and undivided profits) and not upon their assets other than real estate. Tax rate shall not exceed banking corporation's rate of taxation. [§41A-3113]

ILLINOIS—All credit union shares and loans are exempt from taxation. [§496.42]

INDIANA—Credit unions are taxed in the same manner as building and loan associations, except they are exempt from excise tax and the shareholdings of members of both state and federal credit unions are exempt from intangibles tax. [§28-7-1-32]

IOWA—A credit union is deemed an institution for savings and is subject to taxation only as to its real estate, moneys, and credits. The shares are exempt from taxation. [§533.24]

KANSAS—Money, notes and other evidence of debt owned by any credit union is exempt from property and ad valorem taxes. [§79-3120a(e)]. Credit unions are also exempt from state income taxation. [§79-32, 113(c)]

MAINE—Credit union shares are exempt from state tax. [§833(4)]

MARYLAND—Credit union capital, reserves, surplus and other funds and their income are exempt from all state, county or municipality taxation. [§159]

MONTANA—All credit unions shall have the same immunity from state and local taxation that federal credit unions have under the laws of the United States. [§14-672]

NEBRASKA—Real estate and tangible personal property taxed same as any other corporation or individual. In lieu of all other taxes on intangible property, credit unions shall be assessed and taxed four mills on the dollar of their gross interest income during the preceding calendar year. [§21-17, 126]

NEW JERSEY- Credit unions exempt from property tax on intangibles; also from inheritance and estate taxes. [§17:13-71]

NEW YORK—Credit unions are taxed as institutions for savings. No law which taxes corporations, or their shares or accumulations will apply to credit unions unless the statute specifically so states. [§474]

NORTH CAROLINA—Deemed institution for savings, and credit union and its accumulations shall not be taxable under any law exempting building and loan associations or institutions for savings; no law taxing corporations in any form, their shares, or their accumulations, shall apply to credit unions unless it specifically names credit unions; credit union shares are exempt from stock transfer taxes either when issued or when transferred from member to member. [§54-109.99]

OHIO—Credit unions shall be exempt from domestic corporation annual tax imposed for the privilege of exercising the corporate franchise. [§1733.43]

OKLAHOMA—Credit union shares not subject to any stock transfer tax, either when issued or transferred. [§2014]

OREGON—Credit union deemed an institution for savings within meaning of law which exempts such from taxation. No law which taxes corporations in any form, their shares or accumulations shall apply to credit unions, unless credit unions are specifically mentioned. However, credit unions are subject to the same tax as mutual savings and loan associations. The shares of any credit union shall not be subject to stock transfer taxes, and participation by a credit union in government programs providing unemployment or other benefits shall not be deemed a waiver of the taxation exemption. [§723.752; 723.756; 723.762]

PUERTO RICO—A credit union is not subject to payment of income tax. Also exempt from all property and municipal excise taxes. [§43]

RHODE ISLAND—The capital stock, corporate franchises and personal property, but not the real estate, of credit unions shall be exempt from taxation. [§19-21-40] The RICUL Corporate Central Credit Union is exempt from the state tax imposed on deposits. [§19-21-53]

TEXAS—Texas-chartered credit unions exempt from all franchise or other license tax. Their intangible property not taxable by the state or political subdivisions. [§2.10]

UTAH—Credit unions are exempt from taxation. [§7-9-25]

VERMONT—Credit unions are exempt from all taxation except that any real property and tangible personal property owned by

continued

a credit union may be taxed as similar property is taxed; there shall be no sales or use taxes imposed on credit unions; credit union shares shall not be subject to transfer taxes when transferred from one member to another. [§2085]

VIRGINIA—All credit unions organized under laws of Virginia are exempt from payment of any franchise tax. [§6.1-225]

WASHINGTON—Neither the credit union nor its members shall be taxed on its shares and deposits as property. A credit union is deemed a mutual institution for savings and neither it nor its property shall be taxable under any law which exempts from taxation savings banks or institutions for savings, except that credit union real property and tangible personal property is taxable. [§31.12.380]

WEST VIRGINIA—Exempt from all taxation. Laws concerning taxation of corporation, its shares or its accumulations do not apply to credit unions, except that all real property and tangible personal property owned by the credit union shall be taxed. The shares of a credit union are not subject to a stock transfer tax, either when issued or transferred from one member to another. [§31-10-33]

ACT IS SILENT:

Arizona	Massachusetts	South Carolina
California	Missouri	Wisconsin
Florida	New Hampshire	

Fiscal Year

CUNA MODEL ACT: [Alternative A.] The fiscal year of each credit union organized under this Act shall end on the last day of _____.

[Alternative B.] The fiscal year of each credit union organized under this Act shall be as determined by the board of directors. [§1.60]

FEDERAL CREDIT UNION ACT: The fiscal year of all federal credit unions shall end December 31. [§110]

ACT SIMILAR TO FEDERAL ACT:

Alabama	[§5-17-9]	Nevada	[§678.340]
Arizona	[§6-511(A)]	New Jersey	[§17:13-49]
Arkansas	[§67-909]	New Mexico	[§48-19-7]
Colorado	[§11-30-107]	New York	[§475]
Connecticut	[§36-202]	North Dakota	[§6-06-09]
Florida	[§657.07]	Ohio	[§1733.27]
Georgia	[§41A-3112]	Oklahoma	[§2009]
Hawaii	[§410-12(d)]	Oregon	[§723.036]
Idaho	[§26-2112]	Pennsylvania	[§12308]
Illinois	[§490.11]	Rhode Island	[§19-21-14]
Indiana	[§28-7-1-14]	Tennessee	[§45-1811]
Iowa	[§533.7]	Texas	[§2.02(4)]
Louisiana	[§6:647]	Utah	[§7-9-8]
Maryland	[§6-311]	Vermont	[§2070]
Michigan	[§490.7]	Virginia	[§6.1-209]
Minnesota	[§52.07]	West Virginia	[§31-10-7]
Mississippi	[§81-13-23]	Wisconsin	[§186.06(4)]
Montana	[§14-608]		

THE FISCAL YEAR SHALL END at the close of business on the last business day in December:

Maine	[§834]	Washington	[§31.12.150]
Nebraska	[§21-1780]		

THE FISCAL YEAR SHALL END at the close of business on September 30:

Kansas	[§17-2207]	Missouri	[§370.160]

OTHER ACTS:

KENTUCKY—Each credit union shall establish its own fiscal year. [§290.110(1)]

MASSACHUSETTS—At close of business on last business day in October. [Ch. 171, §12]

NEW HAMPSHIRE—The fiscal year shall end June 30. [§394:38]

PUERTO RICO—The fiscal year shall be set in the Articles of Incorporation. [§9(f)]

SOUTH CAROLINA—At close of business on December 31 or any other date approved by the State Board of Bank Control. [§8-673]

ACT IS SILENT:

California	North Carolina

Amendments to Bylaws

CUNA MODEL ACT: (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the Director of the Credit Union Department who shall approve or disapprove the amendments within sixty (60) days.

(2) [Alternative A.] Amendments shall become effective upon approval in writing by the Director and no fee shall be charged for such approval.

(2) [Alternative B.] Amendments shall become effective upon approval in writing by the Director and a reasonable fee may be charged for processing such proposed amendments, which fee may not exceed _____ dollars ($_____). [§1.32]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT (Alternative A):

Montana	[§14-605]	North Carolina	[§54-109.4]
Nevada	[§678.320]		

ACT SIMILAR TO MODEL ACT (Alternative B) with the specified fee:

Oregon—$5 [§723.022]

PRIOR APPROVAL OF GOVERNMENT SUPERVISOR only requirement for amendment of bylaws stated in Act:

Arkansas	[§67-903]	New Mexico	[§48-19-2]
Colorado	[§11-30-102]	Rhode Island	[§19-21-11]
Florida	[§657.02]	Texas	[§2.08]
Kansas	[§17-2202]	Utah	[§7-9-7]
Kentucky	[§290.050]	Vermont	[§2052]
Mississippi	[§81-13-7]	Virginia	[§6.1-199]
Missouri	[§370.060]	Washington	[§31.12.120]
Nebraska	[§21-1770]	West Virginia	[§31-10-2]
New Jersey	[§17:13-31]		

THREE-FOURTHS VOTE OF MEMBERS at meeting and prior approval of supervisory authority required to amend bylaws:

*Alabama	[§5-17-9]	North Dakota	[§6-06-04]
Michigan	[§490.2]		

*The proposed amendment must also be contained in the call for the meeting.

TWO-THIRDS VOTE OF MEMBERS and approval of the government supervisor required to amend bylaws:
Pennsylvania [§12304]

BOARD OF DIRECTORS may amend bylaws:
*Indiana [§28-7-1-16(d)] South Carolina [§8-661(8)]
*Provided that the membership qualifications are defined in the articles of incorporation.

OTHER ACTS:

ARIZONA—Proposed bylaw amendments shall be adopted upon vote of three-fourths of the board of directors present; then they shall be submitted to superintendent for his approval; then ratified by the members at the next regular or special meeting. [§6-505(B)]

CALIFORNIA—The bylaws shall prescribe the manner in which they may be amended. [§14202(p)]

CONNECTICUT—Two-thirds vote of the board of directors at meeting and approval of government supervisor. [§36-196(4)(c)]

GEORGIA—Two-thirds vote of board and approval of department. [§41A-3005]

IDAHO—The bylaws may be amended as provided in bylaws. Amendments must be approved by the director of finance and submitted to a vote by the members. [§26-2106]

ILLINOIS—The bylaws may be amended by a majority vote of the members present or by two thirds vote of the directors present provided the proposed amendment is set forth in the call for the meeting. Amendments to the bylaws must be approved by the Director. [§496.5]

IOWA—The bylaws may be amended by the majority vote of a quorum of the members and with approval of the administrator of credit unions. [§533.2]

LOUISIANA—The members may amend the bylaws upon a majority vote, or may delegate that power to the board of directors. [§6:665]

MAINE—Amendments of the bylaws may be adopted and amendments of charter requested by an affirmative vote of two-thirds of the members of the board. [§848]

MARYLAND—Amendments require approval of commissioner, and three-fourths vote of members present, or voting by mail if the board authorizes mail ballots. [§6-312, 6-313]

MASSACHUSETTS—Three-fourths vote of members present at meeting and entitled to vote. Amendments dealing with common bond, name, or location of the credit union require approval of the commissioner. [Ch. 171 §8]

MINNESOTA—Approval of the commissoner and two-thirds of the members actually voting (by mail or at the meeting), provided the members actually voting constitute a quorum. [§52.02]

NEW HAMPSHIRE—The bylaws may be amended by three-fourths of the members present at a meeting and entitled to vote. [§394:7]

NEW YORK—Bylaws may be amended, with the approval of the superintendent, by vote of a majority of the directors a credit union would have if there were no vacancies. Any bylaw change affecting the shareholders meeting, voting rights of shareholders, the number of directors, or membership qualifications also requires approval of a majority of shareholders present at a meeting. [§473]

OHIO—Members may adopt amendments upon vote of two-thirds of those present at meeting called for that purpose; or if articles provide for it, by a greater or lesser proportion of the vote, so long as at least a majority approves the amendment. [§1733.33]

TENNESSEE—Three-fourths vote of those members present at meeting required to amend bylaws. [§45-1811]

WISCONSIN—All amendments to the bylaws shall be filed with the commissioner and shall become operative only when approved by him. [§186.02]

ACT IS SILENT:
Hawaii Oklahoma Puerto Rico

Merger of Credit Unions

CUNA MODEL ACT: Any credit union may, with the approval of the Director of the Credit Union Department, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger, and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members duly called for such purpose. [§11.30(1)]

FEDERAL CREDIT UNION ACT: The Board may prescribe rules and regulations for the administration of this Act (including, but not by way of limitation) the merger, consolidation and dissolution of corporations organized under the Act.
[§120(a)]

ACT SIMILAR TO MODEL ACT:
Montana [§14-666] Oregon [§723.682]

ACT SIMILAR TO MODEL ACT, but requires the affirmative vote of a majority of the members of each of the credit unions:

*Arkansas	[§67-929(1)]	Maryland	[§6-326(a)]
Idaho	[§26-2132]	Nevada	[§678.800]
Iowa	[§533.30(1)]	Oklahoma	[§2022]
Kansas	[§17-2228]	**Utah	[§7-9-27]

*The supervisor may waive the common bond requirement.
**Other merger procedures may be authorized by the regulatory agency.

ACT SIMILAR TO MODEL ACT, but the supervisor may waive the necessity for a meeting of the members to approve the merger:
Texas [§10.03(a)]

ACT SIMILAR TO FEDERAL ACT:
Louisiana [§6:646(A)(1)]

PROVISION IN ACT FOR MERGER PROVIDED merging credit unions are of like community of interest of membership:

California	[§15600]	Pennsylvania	[§12327(C)]
Hawaii	[§410-33]	West Virginia	[§31-10-28]

PROVISION IN ACT FOR MERGER between any two credit unions:

Georgia	[§41A-3188(a)]	Rhode Island	[§19-21-44(1)]
Massachusetts	[Ch. 171, §30]	Tennessee	[§45-1828(c)]
Missouri	[§370.351, 370.352]	Washington	[§31.12.370]
North Carolina	[§54-109.94]	Wisconsin	[§186.31(2)]
Ohio	[§1733.34]		

continued

PROVISION IN ACT FOR MERGER between any two state credit unions or between a state and federal credit union:

Alabama	[§5-17-22]	Maine	[§872]
Arizona	[§6-526(A)]	Nebraska	[§21-17, 122]
Colorado	[§11-30-122]	New Mexico	[§48-19-20.2]
Connecticut	[§36-223c]	North Dakota	[§6-06-36]

OTHER ACTS:

ILLINOIS—Provision for merger of credit unions having similar associational, community, occupational interest or similar common bonds. The director may disregard that requirement if one of the merging credit unions is forced to liquidate. [§496.32]

INDIANA—A credit union may, with the approval of the department, merge with another Indiana credit union not more than 100 miles from the initial credit union's principal office pursuant to a plan approved by majority vote of board of directors and members (present at meeting) of each credit union. [§28-7-1-33]

KENTUCKY—With the approval of the commissioner, any credit union may merge with any other credit union chartered by the state and located in the capital city of the state and operated solely for the benefit of state employees. Such merger must be approved both by the credit union to be absorbed and by the continuing credit union. [§290.260]

MICHIGAN—A credit union may merge with a state or federal credit union. The commissioner shall approve mergers only in cases where the merging credit union is in financial difficulty, or its field of membership was lost, substantially reduced or has only limited potential for growth. [§490.4(s)]

MINNESOTA—Provision for merger between any credit union within the state or with credit union of another state or federal credit union, and vice versa. [§52.203]

VERMONT—Act similar to model act, but the commissioner may waive the necessity for voting for the credit union accepting the merger and approval is by a two-thirds vote of the respective memberships. A certificate of merger containing certain criteria is required. [§2083]

ACT IS SILENT:

Florida	New Jersey	South Carolina
Mississippi	New York	Virginia
New Hampshire	Puerto Rico	

Conversion of Charter

CUNA MODEL ACT: (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the Director of the Credit Union Department.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the Director of the Credit Union Department and file proof of such compliance with said Director. [§11.40]

FEDERAL CREDIT UNION ACT: A federal credit union may be converted into a state credit union under the laws of any state, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, by complying with the requirements of the act.

A state credit union, organized under the laws of any state, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, may be converted into a federal credit union by: (a) complying with all state requirements requisite to enabling it to convert to a federal credit union or to cease being a state credit union, (b) filing proof of such compliance, satisfactory to the Board, and (c) filing with the Administration an organization certificate as required by this act. [§125(a), (b)(1)]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-667]	North Carolina	[§54-109.95]
Nevada	[§678.810]	Oregon	[§723.686]

ACT PROVIDES FOR CONVERSION of a federal credit union or a credit union chartered by another state to a credit union chartered by the enacting state. Act also provides for conversion of a credit union chartered under the act to a federal charter or that of another state:

Connecticut	[§36-223a, 36-223b]	Oklahoma	[§2021]
Illinois	[§496.35, 496.36]	Washington	[§31.12.390, 31.12.400]

ACT PROVIDES FOR CONVERSION of a credit union chartered by the enacting state to a federal charter:

Colorado	[§11-30-120.5]	West Virginia	[§31-10-27]
Maryland	[§6-325]	Wisconsin	[§186.314]

ACT PROVIDES FOR CONVERSION of a federal credit union to a credit union chartered by enacting state. Act also provides for conversion of a credit union chartered by the enacting state to a federal credit union:

Arizona	[§6-533, 6-534]	New Hampshire	[§394:52, 394:53]
Arkansas	[§67-936]	New Jersey	[17:13-74]
California	[§15700, 15750]	New Mexico	[§48-19-20.1]
Florida	[§657.23]	New York	[§480-a; 480-b]
Georgia	[§41A-3119]	North Dakota	[§6-06-35]
Hawaii	[§§410-31,32]	Ohio	[§1733.341]
Idaho	[§26-2139]	Pennsylvania	[§12327]
Indiana	[§28-7-1-29]	Rhode Island	[§19-21-43]
Iowa	[§533.34, 533.35]	South Carolina	[§8-676]
Louisiana	[§6:667]	Tennessee	[§45-1831, 45-1832]
Michigan	[§490.25, 490.26]	Texas	[§10.04]
Mississippi	[§81-13-65]	Vermont	[§2084]
Nebraska	[§21-17,112; 21-17,114]		

OTHER ACTS:

KANSAS—A Kansas chartered credit union may convert to federal credit union charter and a federal credit union or a credit union chartered by another state may convert to Kansas charter. [§17-2222, 17-2223]

MAINE—Act provides for conversion from a federal charter to a state charter; state charter to a federal charter; or a state credit union charter to a charter to do business as a savings bank, trust company, or savings and loan association. [§873, 874, 875]

MASSACHUSETTS—Any credit union operating under a charter other than one issued by the Commonwealth of Massachusetts may make application to the commissioner for incorporation under the state act. [Ch. 171, §30]

MINNESOTA—Act provides for conversion of a federal credit union to a charter under the Minnesota Act. [§52.20]

MISSOURI—A federal credit union, a credit union chartered by

continued

another state or another country may convert to a Missouri charter. A Missouri chartered credit union may convert to a federal charter, a charter of another state or of another country. [§370.358, 370.359]

ACT IS SILENT:

Alabama	Puerto Rico	Virginia
Kentucky	Utah	

Preservation of Records

CUNA MODEL ACT: (1) A credit union shall maintain all books, records, accounting systems and procedures in accordance with such rules as the Director from time to time prescribes. In prescribing such rules, the Director shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the Director.

(3) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union. [§2.40]

FEDERAL CREDIT UNION ACT: After the expiration of five years from the date of cancellation of the charter of a federal credit union the Board may, in its discretion, destroy any or all books and records of such federal credit union in its possession under its control. [§120(c)]

ACT SIMILAR TO MODEL ACT:

Maine	[§225]	North Carolina	[§54-109.17]
Montana	[§14-612]	Oregon	[§723.116]

ALL CREDIT UNION RECORDS shall be kept for the specified period after date of making or last entry:

Arkansas—5 years	[§67-932]	Vermont—6 years	[§2068]
Connecticut—At least 6 years	[illegible 217]	West Virginia—6 years	[§31-10-30]
Nevada—6 years	[§678.7[illegible](1)]		

CREDIT UNIONS NOT REQUIRED to preserve or keep their records or files for a longer period than 5 years next after the first day of January of the year following the time of the making or filing of such records or files; provided, however, that all ledger and journal sheets showing unpaid balances in favor of shareholders and depositors of such credit union shall not be destroyed unless photographic copies of such ledger and journal sheets are retained:

Florida	[§657.22]	Utah	[§7-9-26]

OTHER ACTS:

IOWA—Credit unions shall not be required to preserve or keep their records or files for a longer period than eleven years next after the first day of January of the year following the time of the making or filing of such records or files; provided, however, that signature identification records, and ledger sheets showing balance in favor of member of such credit union shall not be destroyed. [§533.26]

MASSACHUSETTS—Each credit union shall preserve all records for 6 years from date of making or last entry. Such records shall be preserved in their original form for two years and thereafter may be preserved on microfilm or microfiche. [Ch. 171, §26A]

NEW YORK—Each credit union shall preserve all records for a period of at least 6 years; photographic reproductions of records constitute compliance with this section. [§480]

NORTH DAKOTA—No credit union shall be required to preserve and retain its records of accounts or files, except share and deposit files, for longer than 6 years after the first day of January of the year following the final date of the termination of such accounts or files; nor share and deposit account records for longer than two years after the first day of January of the year following the date of the death of the shareholder or deposit holder. A credit union must keep sufficient records to satisfy the reporting requirements of the escheat and abandoned property laws of the state. [§6-06-38]

OHIO—A credit union shall keep the minutes of all committees of the board for at least 6 years. Financial records required by the superintendent shall be kept for a period specified by the superintendent. [§1733.29]

OKLAHOMA—Credit unions may destroy records after 5 years, with the approval of the State Bank Commissioner. [§2019]

RHODE ISLAND—A credit union may with the consent of the director of business regulation, and in accordance with such rules and regulations as he may adopt, destroy its records as may have become obsolete. [§19-21-37]

TEXAS—A credit union may cause any or all records to be copied or reproduced by any photostatic, photographic, electronic, or micr[illegible]ming process that correctly and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a file or other durable material, subject to any regulations promulgated by the commissioner, and dispose of the original record. Any copy or reproduction shall be deemed to be an original record for all purposes. A facsimile, exemplification, or certified copy shall, for all purposes, be deemed as such. [§4.01(22)]

ACT IS SILENT:

27 states and Puerto Rico.

Chapter two

THE MEMBER

Common Bond

CUNA MODEL ACT: Credit union membership may include, but is not necessarily limited to, groups having a common bond of similar occupation, association or interest, or to groups who reside within an identifiable neighborhood, community, or rural district, or to employees of a common employer, and members of the immediate family of such persons. [§4.10(2)]

FEDERAL CREDIT UNION ACT: Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. [§109]

ACT SIMILAR TO MODEL ACT:

*Georgia	[§41A-3001(8)(b)]	New York	[§451(2)]
Nevada	[§678.510(2)]	North Carolina	[§54-109.26(b)]

*Also includes members of a bona fide cooperative, educational, fraternal, professional, religious, rural or similar organization.

ACT SIMILAR TO FEDERAL ACT:

Alabama	[§5-17-5]	Mississippi	[§81-13-13]
Colorado	[§11-30-193(2)]	Missouri	[§370.080(2)]
Iowa	[§533.5]	New Mexico	[§48-19-5(A)]
Kansas	[§17-2205]	North Dakota	[§6-06-07]
Louisiana	[§6:645(B)]	Tennessee	[§45-1807]
Michigan	[§490.5]	Texas	[§3.01(1)]
Minnesota	[§52.05]	Washington	[§31.12.080]

CREDIT UNION MEMBERSHIP shall include groups having a common bond of occupation or association; groups with a well-defined neighborhood, community or rural district; employees of a common employer; and members of a bona fide fraternal, religious, cooperative, labor, rural, educational, or similar organization:

Arkansas	[§67-907(2)]	Kentucky	[§290.080]
Hawaii	[§410-11(1)(A)]	Maine	[§814(1)]
Idaho	[§26-2110(b)]	Vermont	[§2055]

BYLAWS TO DEFINE FIELD OF MEMBERSHIP, but must include the specified conditions which qualify a person for membership:

Massachusetts—Residence, occupation or association. [Ch. 171, §7(c)]
New Hampshire—Residence or occupation. [§394:5]
Rhode Island—Residence, occupation or community of interest. [§19-21-5(a)]
South Carolina—Residence or occupation. [§8-655(3)]
Utah—Domicile or vocation. [§7-9-6(3)]

ACT REFERS TO BYLAWS for definition of field of membership:

Maryland	[§6-304(b)(4)]	Puerto Rico	[§12]
Oregon	[§723.172]		

CREDIT UNION MEMBERSHIP LIMITED to groups having a common bond of occupation or association:

Oklahoma	[§2007]	West Virginia	[§31-10-5]

OTHER ACTS:

ARIZONA—Credit union membership is open to those with a common bond of interest. [§6-502(C)]

CALIFORNIA—Act declares that principles of organizing a credit union are based on common bond of employment, membership, or residence. The commissioner may issue a certificate authorizing a credit union for an association of employers located in one reasonably compact geographical area. [§14254]

CONNECTICUT—The certificate of organization shall contain a description of the field of membership in detail. [§36-196(2)(d)]

FLORIDA—Act similar to Federal Act, but a credit union may amend its bylaws to accept into the field of membership individuals of a similar common bond of a liquidating credit union. [§657.04(11)]

ILLINOIS—In an associational credit union, membership is limited to persons belonging to a specific local association or organization; community credit union limited to residents of a well-defined neighborhood or community with less than 20,000 population; occupational credit union limited to persons having a common employer or having employers associated in an industry. [§496.3]

INDIANA—Membership shall be limited to persons having a common bond of occupation, trade or professional association, members of a labor organization or local church, or persons engaged in a common trade or profession within a well-defined geographical location; members of their immediate family; organizations of such persons; employees of the credit union; and farm bureau cooperatives and other farm bureau organizations. [§28-7-1-10]

MONTANA—Membership may include groups having a common bond of similar occupation, association or interest provided, that mere residence in a community may not establish a common bond of association or interest; or to employees of a common employer, and members of the immediate family of such persons. [§14-615(2)]

NEBRASKA—Membership is limited to groups of both large and small membership having a common bond of occupation or association, including religious, social or educational groups, employees of a common employer or members of a fraternal, religious, labor, farm, or educational organization and members of the immediate families. [§21-1774]

NEW JERSEY—Membership is limited to persons employed by a common employer or belonging to the same labor union or fraternal or benevolent association or employees of organizations oper-

ating in a compact business community, industrial park or shopping center, or employees of trade association members; members of a church parish or congregation; persons employed by local, state or federal government in the state; residents of a well-defined rural area having not more than 2500 population; employees of the credit union. [§17:13-30]

OHIO—Membership shall be limited to persons having a common bond of association. [§1733.05(c)]

PENNSYLVANIA—Membership is limited to groups having a potential membership of 100 or more adults and common bond of association within a well-defined community or rural district by reason of occupation or of membership in a religious, labor or fraternal organization. [§12306]

VIRGINIA—Membership is limited to persons having a specified common bond of interest, members of their families, associations of such persons, and employees of the credit union. [§6.1-198(3)]

WISCONSIN—The bylaws shall prescribe the conditions of residence or occupation which qualify persons for membership. However, credit unions shall be open to groups having common bonds of occupation or association; residents of a well-defined neighborhood, community or rural district; employees of related or vicinal industries; members of a bona fide fraternal, religious, cooperative, labor, rural, educational or similar organization; employees of the credit union. [§186.05(1)]

Immediate Family

CUNA MODEL ACT: Credit union membership may include, but is not necessarily limited to, groups having a common bond of similar occupation, association or interest, or to groups who reside within an identifiable neighborhood, community, or rural district, or to employees of a common employer, and members of the immediate family of such persons. [§4.10(2)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-907(2)]	Maine	[§814(1)]
Colorado	[§11-30-103(2)]	Montana	[§14-615(2)]
Hawaii	[§410-11(1)(A)]	Minnesota	[§52.05]
Idaho	[§26-2110(b)]	Nebraska	[§21-1774]
Indiana	[§28-7-1-10]	North Carolina	[§54-109.26(b)]
Kentucky	[§290.080(1)]	Virginia	[§6.1-198(3)]
Louisiana	[§6:645B]		

OTHER ACTS:

ARIZONA—Immediate family is defined as persons related by blood, by marriage or adoption. [§6-501(5)]

CONNECTICUT—Any credit union may provide for the inclusion of the surviving spouse of a deceased member in its field of membership. [§36-196a(a)]

GEORGIA—Membership includes persons related by blood, adoption or marriage to, and living in the same household with, a person within the common bond, and the surviving spouses of deceased members. [§41A-3001(8)(b)]

ILLINOIS—In the case of occupational, associational, or community credit unions, membership is defined to include spouses, children and parents domiciled in the same residence as the primary member. [Ch. 32, §496.3(3)]

IOWA—Membership may be extended to persons related to a member in a specified degree (including foster children and adopted children) and to such relatives of a deceased member. [§533.5]

NEVADA—Immediate family includes any relative, by consanguinity or marriage, of a member living in the members household and includes foster and adopted children. [§678.130]

NEW JERSEY—Members of the immediate family defined as parents, brothers and sisters, spouse and children and unremarried widows or widowers of such persons; provided that such immediate family members over age 16 shall be permitted to borrow from the credit union only to the extent of their shareholdings in the credit union unless such loans are fully secured; provided further, that such immediate family members shall not be permitted to act as a comaker or endorser of any member's loan, except as provided otherwise in the act. [§17:13-30(e)]

NEW MEXICO—The immediate family of any person who is eligible for membership in, and is a member of a credit union, may also be admitted to membership therein; but the rights and privileges of any member admitted and eligible by virtue only of such relationship may be specially restricted, qualified and terminated as the bylaws of the credit union may provide. "Immediate family" shall be deemed to mean the relationship of spouse, child, parent, brother, sister, aunt or uncle, and any such step relationship. Relationship by the half blood shall be deemed the same as by the whole blood. [§48-19-5(A)]

NEW YORK—To the extent the bylaws do not provide otherwise, in each instance where a person is eligible to membership, his or her spouse, dependent children or parents living in the same household, shall be eligible to membership. [§451(2)]

OHIO—Membership is limited to those having a common bond of association, defined as a member and his family. [§1733.05, 1733.01(j)]

OREGON—Membership may include groups having a common employer, and members of the immediate family of such persons. [§723.172(2)]

PENNSYLVANIA—Persons who are members of the immediate family of a member of the credit union and who share the same domicile with a member may be elected to membership, but may not hold office. Unremarried spouse of a deceased member may become member. [§12306(B),(E)]

VERMONT—Members of immediate family of various common bond groups are eligible to join credit union. "Immediate family" includes any relative of any member by blood or marriage living under the same roof and in the same household. [§2055(b)]

WISCONSIN—Members of immediate family of various common bond groups are eligible to join credit union. "Immediate family" includes wife, husband, parents and children of the member or spouse of member living together in the same household as the member. [§186.05(1)(a)]

ACT IS SILENT:

Alabama	Mississippi	South Carolina
California	Missouri	Tennessee
Florida	New Hampshire	Texas
Kansas	North Dakota	Utah
Maryland	Oklahoma	Washington
Massachusetts	Puerto Rico	West Virginia
Michigan	Rhode Island	

Member Other Than Natural Person

CUNA MODEL ACT: Societies, and co-partnerships composed primarily of individuals who are eligible to membership, and corporations whose stockholders are composed primarily of such individuals, may be admitted to membership in the same manner and under the same conditions as individuals, but may not borrow in excess of their shareholdings. [§4.20]

FEDERAL CREDIT UNION ACT: Membership may include incorporated and unincorporated organizations to the extent permitted by the rules and regulations prescribed by the Board. [§109]

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-907(3)]	New York	[§451(2)]
Florida	[§657.15]	North Carolina	[§54-109.27]
Georgia	[§41A-3102(b)]	*Oregon	[§723.176, .184]
Kansas	[§17-2205]	Rhode Island	[§19-21-3]
Kentucky	[§290.08(1)]	Tennessee	[§45-1807]
Missouri	[§370.080(1)]	Vermont	[§2055]
Montana	[§14-616]	Virginia	[§6.1-198(3)]
Nebraska	[§21-1774]	Wisconsin	[§186.05(1)(b)]

*State deemed member for credit union to receive deferred compensation deposits from it.

MEMBERSHIP MAY INCLUDE organizations—incorporated or unincorporated—composed of the same general group as credit union members:

Alabama	[§5-17-5]	Mississippi	[§81-13-13]
Colorado	[§11-30-103(1)]	New Mexico	[§48-19-5(A)]
Hawaii	[§410-11(1)(B)]	North Dakota	[§6-06-07]
Iowa	[§533.5]	Oklahoma	[§2007]
Louisiana	[§6:645A]	Pennsylvania	[§12306(A)]
Michigan	[§490.5]	West Virginia	[§31-10-5]
Minnesota	[§52.05]		

MEMBERSHIP MAY INCLUDE any fraternal organization, voluntary association, partnership or corporation, with its place of business within the state, composed principally of persons eligible to membership in the credit union. Except with consent of supervisor, no loan may be made to such member in excess of shareholdings nor shall the total shareholdings of such class of members exceed 25% of the credit union's assets:

Maine	[§814(2)]	Washington	[§31.12.080]
Massachusetts	[Ch. 171, §5]		

OTHER ACTS:

IDAHO—Societies and associations composed of individuals who are members may be admitted to membership. [§26-2110(c)]

ILLINOIS—Organizations composed exclusively of persons eligible for membership may join, except such groups may not borrow in excess of their shareholdings. [§496.6]

INDIANA—Membership may be extended to organizations of those persons otherwise eligible to join. [§28-7-1-10]

MARYLAND—Membership includes every incorporator, and every person who meets the requirements. [§6-309]

OHIO—Associations comprised of persons within the field of membership of a credit union may become members. [§1733.05(D)] The total loans to such members may not exceed 10% of unimpaired surplus and capital or the total value of shares pledged by association members as security, whichever is greater. [§1733.25(E)]

PUERTO RICO—All those nonprofit artificial persons that comply with the requirements established in the bylaws and articles of incorporation may become members. [§12]

ACT IS SILENT:

Arizona	Nevada	South Carolina
California	New Hampshire	Texas
Connecticut	New Jersey	Utah

Small Employee Groups

CUNA MODEL ACT: Membership in Central Credit Union may include . . . employees of an employer with insufficient numbers to form or conduct the affairs of a separate credit union [§12:20(4)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Montana	[§1[illegible]-669(4)]	Oregon	[§723.706(4)]

ANY CREDIT UNION MAY ADMIT as members groups with an insufficient number to have a separate credit union with supervisor's approval:

Colorado—such groups must have common bond of employment or association; central credit union also eligible. [§11-30-103]

Iowa—employee groups only. [§533.3(13)]

Ohio—must have a common bond; may later form own credit union. [§1733.05(d)]

EMPLOYEE GROUPS WITH INSUFFICIENT NUMBERS to form their own credit union are eligible for membership in a central credit union

Arkansas	[§67-907(4)]	*Nebraska	[§21-17, 117]
Louisiana	[§6:645B]	Vermont	[§2056(c)]

*50 or more employees with common bond

OTHER ACTS:

CALIFORNIA—A central credit union may, with approval of commissioner, admit small employee groups of at least 25 in number and whose place of employment is within 25 miles of principal office of the credit union to the credit union or is located within boundaries of a greater or lesser geographic area prescribed by the commissioner, upon the application of the employees. [§14008.1(a)]

CONNECTICUT—A central credit union may accept small employee groups of under 250 if employer agrees to a program of automatic payroll deduction. [§36-196(1)(b)]

FLORIDA—A central credit union may serve select groups with a common bond of employment of not more than 250 employees and not less than 7 employees, provided they are approved by the board of the central credit union and reviewed by the department. [§657.245]

GEORGIA—A central credit union may admit groups within a common bond which the Commissioner determines lack the potential membership for their own credit union. [§41A-3120(b)(6)]

HAWAII—Any resident in the state not eligible for membership in any credit union in the state, may be eligible for membership in a central credit union. [§410-37] Credit unions shall be open to groups having common or related bonds of occupation. [§410-11(1)(A)]

ILLINOIS—A central credit union may accept as members persons from occupational groups too small to form their own credit union. [§496.3(4)]

NEW JERSEY—Employees of small business groups having less than 100 people and located in the state are eligible for membership in a central credit union. [§17:13-73(6)]

SOUTH CAROLINA—Employees of employers who do not qualify under the organization provision in the act may become members of the statewide credit union authorized by §34-27-50 of the Act. [§8-654.1]

ACT IS SILENT:

29 states and Puerto Rico.

Acceptance Into Membership

CUNA MODEL ACT: It shall be the duty of the directors to . . . act upon applications for membership; or to appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board. [§5.56(1)]

FEDERAL CREDIT UNION ACT: The board of directors shall act upon membership applications. An executive committee or one or more membership officers may be appointed by the board from among the members, other than the treasurer or loan officer, to approve membership applications under the conditions set by the board. Such membership officers shall submit to the board at each monthly meeting a list of approved and pending applications for membership, together with such related information as the bylaws require. A person denied membership may request in writing, a written explanation of the reasons for the denial. [§113]

ACT SIMILAR TO MODEL ACT:

Missouri	[§370.200(1)]	North Carolina	[§54-109.44(1)]
Montana	[§14-631(1)]	Oregon	[§723.296(1)]

UNLESS THE BYLAWS EXPRESSLY RESERVE THE DUTY TO THE SHAREHOLDERS, the board of directors is to act upon all applications for membership. It may also delegate that responsibility to a committee or officer:

Kentucky	[§290.130(2)a]	New York	[§469(1)]
Nebraska	[§21-1785(1)]		

UNLESS THE BYLAWS EXPRESSLY RESERVE THE DUTY TO THE SHAREHOLDERS, the board of directors is to act upon all applications for membership:

Georgia	[§41A-3107(a)]	West Virginia	[§31-10-9(a)]
Mississippi	[§81-13-27(a)]		

ACT STATES BOARD OF DIRECTORS HAS THE DUTY to act on applications for membership, but may delegate it to one or more membership officers:

Colorado	[§11-30-109(1)(a)]	No. Dakota	[§6-06-12(1),(10)]
Connecticut	[§36-203(4)(8)]	Ohio	[§1733.05(a)]
Hawaii	[§410-13(c)(1)]	Oklahoma	[§2010(C)]
Indiana	[§28-7-1-16(a)]	Puerto Rico	[§16(a)]
Louisiana	[§6.649B(1)]	South Carolina	[§7-661(1)]
Maine	[§842(2)(A)]	Tennessee	[§45-1813]
Maryland	[§6-316(b)(2), 319]	Washington	[§31.12.190]
Minnesota	[§52.09(2)(1)]	Wisconsin	[§186.08(1)]
Nevada	[§678.380(1)]		

ACT STATES BOARD OF DIRECTORS HAS DUTY to act on membership applications, but may delegate it to either a membership officer or to a membership committee:

Arizona	[§6-513(B)(1)]	Idaho	[§26-2116(a)]
Iowa	[§533.9(1)]		

ACT STATES BOARD OF DIRECTORS HAS DUTY to act on membership applications, but may delegate it to either a membership officer or to an executive committee:

Arkansas	[§67-913(a)]	Florida	[§657.09(1)]
California	[§14406(a)]	Vermont	[§2061(1)]

ACT RESERVES TO BOARD OF DIRECTORS the duty to act on applications for membership:

Alabama	[§5-17-11]	Pennsylvania	[§12312(1)]
Massachusetts	[Ch. 171, §16]	Rhode Island	[§19-21-22(a)]
Michigan	[§490.9(1)(a)]	Utah	[§7-9-11(1)]
New Hampshire	[§394:26]	Virginia	[§6.1-211(1)]

OTHER ACTS:

ILLINOIS—A membership committee shall be elected by the directors from among their number to act upon all applications for membership. [§496.14(3)] However, the board of directors has the power to review membership applications. [§496.13(1)]

KANSAS—Only the board of directors, not membership officers, may reject applications for membership. [§17-2209(1)]

NEW JERSEY—Applications for membership shall be acted upon by the proper authorities as prescribed in the bylaws. [§17:13-37]

NEW MEXICO—The board of directors may delegate the duty to act on membership applications to one or more designated directors or appointed membership officer. [§48-19-9(A)]

ACT IS SILENT:

Texas

Entrance Fee

CUNA MODEL ACT: The membership of a credit union shall be limited to . . . (those) persons (who) have paid the required entrance fee, or membership fee, or both. No amount specified. [§4.10(1)]

FEDERAL CREDIT UNION ACT: Persons applying for membership shall pay a uniform entrance fee, if required by board of directors; no amount specified. [§109]

ACT SIMILAR TO MODEL ACT:

California	[§14800(a)(1)]	Oklahoma	[§2007]
Florida	[§657.05]	Oregon	[§723.172(1)]
Georgia	[§41A-3102(2)]	Pennsylvania	[§12306(a)]
Iowa	[§533.5]	Tennessee	[§45-1807]
Minnesota	[§52.05]	Vermont	[§2055]
Montana	[§14-615(a)]	Washington	[§31.12.080]
New York	[§453(2)]	West Virginia	[§31-10-5]
North Carolina	[§54-109.26(a)]		

ACT REQUIRES PAYMENT OF ENTRANCE FEE as provided in bylaws:

Arkansas	[§67-907(1)]	Missouri	[§370.080(1)]
Louisiana	[§6:645A]	Nebraska	[§21-1774]
Mississippi	[§81-13-13]	Nevada	[§678.510(1)]
		North Dakota	[§6-06-07]

continued

ACT REQUIRES PAYMENT OF ENTRANCE FEE if any is provided for in bylaws:

*Idaho	[§26-2110(a); 26-2108(e)]	Massachusetts	[Ch. 171, §7(j)]
Maine	[§813(2)(B)(9)]	Michigan	[§490.5]

*Fee not to exceed $1.00.

ACT REQUIRES PAYMENT OF ENTRANCE FEE if any is provided for:

Illinois	[§496.6]	New Mexico	[§48-19-5(A)]

ENTRANCE FEE PRESCRIBED IN BYLAWS, but not to exceed specified amount:

Alabama	[§5-17-14]—$1.00	Maryland	[§6-308(f)]—$.25
Indiana	[§28-7-1-10]—$.25	Texas	[§3.01(2), 4.01(5)]—$1.00

ENTRANCE FEE SET BY the board of directors:

Kentucky	[§290.160(2)]	Utah	[§7-9-11(8); 7-9-14]
*South Carolina	[§8-661(10); 8-664]		

*Not to exceed $1.00.

OTHER ACTS:

COLORADO—A credit union organized after April 17, 1941, shall charge an entrance fee of 25 cents. [§11-30-112]

NEW HAMPSHIRE—The amount of the entrance fee, if any, shall be fixed by members at each annual meeting. [§394:12]

OHIO—If authorized by the regulations, a credit union may charge a membership or entrance fee not to exceed $1 per member. [§1733.04(A)(4)]

RHODE ISLAND—The board of directors shall make recommendations to meetings of members relative to the amount of the entrance fee. [§19-21-22(f)]

ACT IS SILENT:

Arizona	Kansas	Virginia
Connecticut	New Jersey	Wisconsin
Hawaii	Puerto Rico	

Leaving Field of Membership

CUNA MODEL ACT: Members who leave the field of membership may be permitted to retain their membership in the credit union as a matter of general policy of the board of directors. [§4.40]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Iowa	[§533.5]	North Carolina	[§54-109.29]
Montana	[§14-619]	Oregon	[§723.186]

ONE WHO LEAVES FIELD OF MEMBERSHIP may retain his membership at the discretion of board of directors:

Georgia	[§41A-3102(c)]	Nevada	[§678.510(3)]
Hawaii	[§410-13(c)]	Wisconsin	[§186.05(1)(c)]

OTHER ACTS:

ARIZONA—The membership of one who leaves employment of the company, association, or corporation which is basis of field of membership may be terminated when so provided by bylaws, except membership is retained if a person retires from employment. Terminated members may have shares in credit union until payment of next dividend. [§6-500(0)2]

COLORADO—One who leaves the field of membership may retain membership as provided by the bylaws. [§11-30-103(3)]

CONNECTICUT—Any person properly admitted to membership may continue his membership in the credit union during his lifetime, notwithstanding any change in occupation, residence, or other condition initially controlling eligibility. [§36-196a(b)]

IDAHO—One who leaves field of membership may retain his credit union membership at discretion of board of directors, and as the bylaws may provide. [§26-2110(d)]

ILLINOIS—A credit union may retain as a member any person who, subsequent to becoming a member, changes his employment, his place of residence, or his marital status. [§496.3]

LOUISIANA—A member (or his family) who leaves the field of membership may retain his membership, but cannot hold any credit union office or serve on any credit union committee or board. A person retiring from office maintains full membership privileges. [§6:645B]

NEBRASKA—One duly admitted to membership, unless expelled or withdrawn pursuant to this act, retains his membership for life. [§21-1774]

NEW MEXICO—One who leaves sphere of operation may retain full membership if bylaws so provide. However, the board may impose special restrictions on such membership. [§48-19-5(B)]

NEW YORK—Any person eligible for membership in a credit union by virtue of being employed by a common employer shall not become ineligible after termination of such employment as long as he receives a pension from said employer. Any member who leaves the field of membership and is not a pensioner may continue as a member; however, he may not borrow in excess of his shareholdings. [§451(2)]

OHIO—A person is deemed to retain the common bond so long as he remains a member of the credit union. [§1733.05(c)]

PENNSYLVANIA—One who leaves field of membership and has not withdrawn all of his share account retains all the rights and obligations of membership. [§12306(D)]

VERMONT—A member shall have all privileges of membership so long as he is a member in good standing. [§2055]

ACT IS SILENT:

26 states and Puerto Rico.

Annual Members Meeting

CUNA MODEL ACT: The annual meeting and any special meetings of the members of the credit union shall be held at the time, place, and in the manner indicated by the bylaws. [§4.60(1)]

FEDERAL CREDIT UNION ACT: The annual meeting of each federal credit union shall be held during January, February, or March of each year at a time and place specified in the bylaws. [§110]

ACT SIMILAR TO FEDERAL ACT:

Arizona	[§6.511(B)]	New Mexico	[§48-19-7]
Connecticut	[§36-202]	New York	[§464(2)]
Georgia	[§41A-3002(b)(1)]	Virginia	[§6.1-198(1)]
Indiana	[§28-7-1-4(a)]	Washington	[§31.12.160]
Maryland	[§6-310(a)]	Wisconsin	[§186.05(7)]
New Jersey	[§17:13-32]		

ACT SIMILAR TO MODEL ACT:

Alabama	[§5-17-9, 5-17-10]	North Carolina	[§54-109.31(a)]
Arkansas	[§67-910]	Oklahoma	[§2009]
California	[§15400]	Oregon	[§723.196(1)]
Idaho	[§26-2113]	Pennsylvania	[§12309]
Illinois	[§496.11]	South Carolina	[§8-657]
Iowa	[§533.7]	Texas	[§3.02]
Montana	[§14-621(1)]	Utah	[§7-9-8]
Nebraska	[§21-1769(1)]	Vermont	[§2057]
Nevada	[§678.550(1)]		

ANNUAL MEETING shall be held during January:

Rhode Island	[§19-21-13]	West Virginia	[§31-10-7]

ANNUAL MEETING SHALL BE HELD at a time and place prescribed in the bylaws but no later than a specified date after close of fiscal year:

Hawaii—90 days	[§410-11(C)(7)]	Missouri—90 days	[§370.030]
Kansas—120 days	[§17-2201(b)]	New Hampshire—90 days	[§394:8]
Massachusetts—30 days	[Ch. 171, §13]		

OTHER ACTS:

COLORADO—The fiscal year shall end Dec. 31; the annual meeting shall be held within 45 days after that date. [§11-30-107]

KENTUCKY—The annual meeting shall be held in accordance with the bylaws. Special meetings shall be held upon written request of 10% of the members. At any meeting, a majority vote of the entire membership is sufficient to overrule the board of directors. [§290.110(1), (3)]

LOUISIANA—The annual meeting shall be held in January, or in any other month approved by the board and the commissioner. [§6:641(4)]

MAINE—The annual meeting shall be held as the board of directors determines, but within 60 days of the close of the fiscal year. [§846(1)]

MINNESOTA—The date of the organization meeting shall be the date of the annual meeting. [§52.08]

MISSISSIPPI—The bylaws shall specify the date of the annual meeting, which shall be during the month in which the annual report is filed. [§5393(a)]

NORTH DAKOTA—The organization meeting shall be the first annual meeting. [§6-06-11]

OHIO—The annual meeting shall be held on the first Friday in March, unless another date is provided for in the articles or regulations. [§1733.12(A)]

PUERTO RICO—The annual meeting shall be held during the first three months after close of fiscal year. However, the Inspector of Cooperatives can extend the time for the meeting up to six months. [§14]

TENNESSEE—The annual meeting shall be held at any time during January or February of each year. [§45-1803(1)]

ACT IS SILENT:

Florida Michigan

Absentee Voting

CUNA MODEL ACT: No member may vote by proxy, but a member may vote by absentee ballot, if the bylaws of the credit union so provide. [§4.60(2)]

A society, association, co-partnership or corporation, having membership in the credit union, may be represented and have its vote cast by one of its members or shareholders, provided such person has been fully authorized by the organization's governing body. [§4.60(3)]

FEDERAL CREDIT UNION ACT: No member may vote by proxy, but a member not a natural person may vote through an agent designated for the purpose. [§110]

ACT SIMILAR TO MODEL ACT:

Kentucky	[§290.110(2)]	Oregon	[§723.196(2)(3)]
Montana	[§14-621]	Vermont	[§2057]
North Carolina	[§54-109.31(b)(c)]		

ACT SIMILAR TO FEDERAL ACT:

Alabama	[§5-17-9]	Nebraska	[§21-1782]
Arkansas	[§67-910]	Nevada	[§678.550(2)]
Connecticut	[§36-202]	New Hampshire	[§394:11]
Florida	[§657.07]	New Jersey	[§17:13-32]
Georgia	[§41A-3112]	New Mexico	[§48-19-7]
Idaho	[§26-2113]	North Dakota	[§6-06-10]
Iowa	[§533.7]	Oklahoma	[§2009]
Kansas	[§17-2207]	Pennsylvania	[§12309]
Louisiana	[§6:647(C)]	Puerto Rico	[§14]
Massachusetts	[Ch. 171, §13]	So. Carolina	[§8-657]
Michigan	[§490.7]	Tennessee	[§45-1811]
Mississippi	[§81-13-23]	Texas	[§3.02]
Missouri	[§370.170(3)]	West Virginia	[§31-10-7]

ACT SIMILAR TO FEDERAL ACT, but also provides for voting by mail if authorized by the board under the stated conditions:

Maryland—By resolution at least 90 days before a meeting. [§6-310(b), 6-313, 6-314]

Minnesota—[§52.02, 52.07]

Washington—As prescribed in the bylaws. [§32.12.160]

ACT PERMITS PROXY VOTING by natural persons only on a vote of dissolution. Non-natural members may vote by proxy at any meeting:

Maine	[§846(2)]	Rhode Island	[§19-21-15]

OTHER ACTS:

ARIZONA—The bylaws shall provide regulations as to voting. [§6-503(B)(1)]

CALIFORNIA—The bylaws may provide that any action or specifically designated actions which may be taken at a meeting of the shareholders may be taken without a meeting by submitting the matter to all members who would be entitled to vote upon such action at a meeting, for their written vote. [§15407]

COLORADO—There shall be no voting by proxy, but a member other than a natural person may cast a single vote through a delegated agent. [§11-30-107] Also, members may vote for directors and committee members by proper balloting within 30 days before or 20 days after the annual meeting. [§11-30-108]

HAWAII—Credit unions may conduct elections by mail ballot, which must be signed by the member and be valid only for the meeting designated. [§410-11(C)]

continued

ILLINOIS—No proxy voting except in election of directors and in merger or dissolution propositions. Non-natural members may vote through an authorized agent. [§496.11]

INDIANA—The bylaws shall prescribe the voting regulations and the methods of voting, which must include absentee and proxy voting. [§28-7-1-4(g)]

NEW YORK—Every member entitled to vote at a meeting of members may authorize another person or persons to act for him by proxy at such meeting, subject to certain conditions provided by the act and further limitations which may be imposed by the bylaws. [§464(1)]

OHIO—If the articles or regulations so provide, any person who is entitled to vote at a members' meeting may be represented by a proxy or proxies appointed by a writing signed by such person. No appointment of a proxy shall be valid for more than 11 months. [§1733.13(C)]

UTAH—The bylaws may provide for ballot by mail, provided that voting by proxy is disallowed. [§7-9-10]

VIRGINIA—No voting by proxy except at a meeting called to amend the articles of incorporation or dissolve the corporation. [§6.1-209]

WISCONSIN—A credit union may conduct elections by mail ballot which shall be valid only for the meeting designated. [§186.113(12)]

Voting—Minimum Age

CUNA MODEL ACT: The board of directors may establish a minimum age, not greater than sixteen (16) years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both. [§4.60(4)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Vermont	[§2057(d)]

MINIMUM AGE FOR VOTING IS 16 YEARS; minimum age to hold office is 18 years.

New Jersey	[§17:13-37]	No. Carolina	[§54-109.31(d)(e)]

MINIMUM AGE FOR VOTING IS 18 YEARS:

Maine	[§846(2)]	New Mexico	[§48-19-7]
Massachusetts	[Ch. 171, §11]	Washington	[§31.12.140]
New Hampshire	[§394.18]		

OTHER ACTS:

COLORADO—The board of directors may provide in the bylaws a minimum age of any minor to vote at any meeting of the members. [§11-30-113]

HAWAII—Minimum age for voting is 16 years. No person may become a director or committee member until he or she has reached the age of majority. [§410-20]

LOUISIANA—The bylaws may provide the minimum age for a member to vote or to hold office. [§647(C)]

MONTANA—Similar to Model Act, but minimum shall not be greater than 18. [§14-621(4)]

NEVADA—Minimum age for voting is 16 years. [§678.520(2)]

OHIO—The bylaws may set a minimum age for voting. [§1733.07(B)(2)]

OREGON—The board may establish a minimum age as a qualification to vote. [§723.196(4)]

TEXAS—A minor may vote in the meetings of the members if permitted by the bylaws, except no minor may vote through his parent or guardian. No minor is eligible for any office or committee membership within the credit union unless the bylaws specify otherwise. [§6.06]

WISCONSIN—Minor's right to vote is at discretion of board of directors. [§186.10]

ACT IS SILENT: 29 states and Puerto Rico.

Multiple Share Voting

CUNA MODEL ACT: At all such meetings a member shall have but one vote, irrespective of his shareholdings. [§4.60(2)]

FEDERAL CREDIT UNION ACT: No person shall have more than one vote, irrespective of the number of shares. [§110]

ACT SIMILAR TO MODEL AND FEDERAL ACTS:

Alabama	[§5-17-9]	Nevada	[§678.550(3)]
Arkansas	[§67-910]	New Hampshire	[§394:11]
Colorado	[§11-30-107]	New Jersey	[§17:13-32]
Connecticut	[§36-202]	New Mexico	[§48-19-7]
Florida	[§657.07]	New York	[§464(1)]
Georgia	[§41A-3112]	North Carolina	[§54-109.31(b)]
Hawaii	[§410-12(a)]	North Dakota	[§6-06-10]
Idaho	[§26-2113]	Ohio	[§1733.13(a)]
Indiana	[§28-7-1-14]	Oklahoma	[§2009]
Iowa	[§533.7]	Oregon	[§723.196(2)]
Kansas	[§17-2207]	Pennsylvania	[§12309]
Kentucky	[§290.110(2)]	Puerto Rico	[§14]
Louisiana	[§6:647(C)]	Rhode Island	[§19-21-15]
Maine	[§846(2)]	So. Carolina	[§8-657]
Maryland	[§6-310(b)]	Tennessee	[§45-1811]
Massachusetts	[Ch. 171, §13]	Texas	[§3.02]
Michigan	[§490.7]	Vermont	[§2057]
Minnesota	[§52.07]	Virginia	[§6.1-209]
Mississippi	[§81-13-23]	Washington	[§31.12.160]
Missouri	[§370.170(2)]	West Virginia	[§21-10-7]
Montana	[§14-621(2)]	Wisconsin	[§186.06(1)]
Nebraska	[§21-1782]		

OTHER ACTS:

ARIZONA—The bylaws shall provide regulations as to voting. [§6-503(B)(1)]

CALIFORNIA—In credit unions formed on or after September 15, 1945, no member shall have more than one vote irrespective of the number of shares held by him. [§15402]

ILLINOIS—At all elections and in all questions except the election of directors, each member shall have one vote. [§496.11]

In all elections for directors, every shareholder shall have the right to vote, in person or by proxy, for the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate such shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall think fit, and such directors shall not be elected in any other manner. [§496.12]

ACT IS SILENT: Utah

Chapter three

THE OFFICIALS

General Authority of Board of Directors

CUNA MODEL ACT: The board of directors shall have the general direction of the business affairs, funds and records of the credit union. [§5.50]

FEDERAL CREDIT UNION ACT: The board of directors shall have the general direction and control of the affairs of the corporation. [§113]

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-913]	Nebraska	[§21-1785]
California	[§14403]	Nevada	[§678.360(1)]
Connecticut	[§36-203(1)]	New York	[§468]
Georgia	[§41A-3107]	North Carolina	[§54-109.41]
Idaho	[§26-2116]	Oregon	[§723.282]
Indiana	[§28-7-1-16]	Rhode Island	[§19-21-22]
Kansas	[§17-2209]	South Carolina	[§8-661]
Kentucky	[§290.130]	Tennessee	[§45-1813]
Louisiana	[§6:649]	Utah	[§7-9-11]
Maine	[§842(2)]	Vermont	[§2061]
Maryland	[§6-316(a)]	Virginia	[§6.1-211]
Mississippi	[§81-13-27]	West Virginia	[§31-10-9]
Missouri	[§370.200]	Wisconsin	[§186.08]
Montana	[§14-628]		

ACT SIMILAR TO FEDERAL ACT:

Alabama	[§5-17-11]	New Hampshire	[§394:26]
Arizona	[§6-513]	New Jersey	[§17:13-33]
Colorado	[§11-30-109(1)]	New Mexico	[§48-19-9]
Florida	[§657.09]	North Dakota	[§6-06-12]
Hawaii	[§410-13(b)]	Oklahoma	[§2010(C)]
Iowa	[§533.9]	Pennsylvania	[§12312(A)]
Massachusetts	[Ch. 171, §16]	Puerto Rico	[§16]
Michigan	[§490.9(1)]	Texas	[§5.01]
Minnesota	[§52.09 (Subd. 2)]	Washington	[§31.12.190]

OTHER ACTS:

ILLINOIS—The board of directors is responsible for general management of the credit union; in discharging this general responsibility it may delegate duties but may not relinquish, waive or surrender any of its responsibilities. [§496.13]

OHIO—Except as otherwise provided by law, the articles or regulations, the corporate powers of the credit union shall be exercised, its business conducted, and its property controlled by a board of directors. [§1733.15]

Composition of Board of Directors

CUNA MODEL ACT: The credit union shall be directed by a board consisting of an odd number of directors, at least five in number, to be elected from the members. [§5.10]

FEDERAL CREDIT UNION ACT: The business affairs of a federal credit union shall be managed by a board of not less than five directors to be elected from the members. [§111]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-622(1)]	North Carolina	[§54-109.35(a)]
Nevada	[§678.350(1)]	Oregon	[§723.252(1)]

ACT SIMILAR TO FEDERAL ACT:

Arizona	[§6-512]	Missouri	[§370.030]
Arkansas	[§67-911]	Nebraska	[§21-1783]
Georgia	[§41A-3002]	Ohio	[§1733.15]
Idaho	[§26-2114]	South Carolina	[§8-658]
Indiana	[§28-7-1-4(b)]	Tennessee	[§45-1803]
Kansas	[§17-2201(2)]	Texas	[§5.01]
Louisiana	[§6:641(5)]	Utah	[§7-9-10]
Maryland	[§6-315(a)]	Vermont	[§2058]
Michigan	[§490.8]	Washington	[§31.12.170]
Mississippi	[§81-13-5(b)]	West Virginia	[§31-10-8]

THE CREDIT UNION SHALL BE DIRECTED by a board of not less than five directors:

Alabama	[§5-17-10]	North Dakota	[§6-06-11]
Colorado	[§11-30-108]	Pennsylvania	[§12310]
Florida	[§657.08]	Puerto Rico	[§15]
New Hampshire	[§394:20]	Virginia	[§6.1-210]
New Mexico	[§48-19-8]		

BOARD SHALL CONSIST of not less than seven directors:
Illinois [§496.12]
Oklahoma—Must be members of the credit union. [§2010]

BOARD SHALL CONSIST of not less than five nor more than fifteen directors:

Connecticut—Must be members of the credit union. [§36-203(1)]
Hawaii—Must be an odd number of directors. [§410-13(a)]
Kentucky [§290.120]
New York—Must be U.S. citizens and shareholders. [§450(6)]

OTHER ACTS:

CALIFORNIA—Bylaws shall establish the number of directors which shall constitute a quorum. [§14202(d)]

continued

IOWA—Board shall consist of not less than 9 directors. [§533.8]

MAINE—The number of directors shall not be less than five, all of whom must be residents of this state. [§842(1)(A)]

MASSACHUSETTS—Board shall consist of not less than 11 directors, unless the number of members of the credit union is less than 11. No person shall be a director of two credit unions at the same time. [Ch.171, §14,15A]

MINNESOTA—The credit union shall be managed by a board of not less than five directors to be elected from the members; however, no full time manager of a credit union shall be a director. [§52.08]

NEW JERSEY—The board shall consist of not less than seven directors, all of whom must be members of the credit union and a majority of whom shall be residents of the state. [§17:13-33]

RHODE ISLAND—Number of directors to be fixed in the bylaws, but must be a multiple of three. [§19-21-17]

WISCONSIN—The board shall consist of an odd number of directors, at least five in number. [§186.06]

Election of Board of Directors

CUNA MODEL ACT: The board of directors shall be elected at the annual members' meeting by and from the members. [§5.10]

FEDERAL CREDIT UNION ACT: The business affairs of a federal credit union shall be managed by a board of not less than five directors . . . all to be elected at the annual members' meeting by and from the members. [§111]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-512]	Nevada	[§678.350(1)]
Arkansas	[§67-911]	New Jersey	[§17:13-33]
California	[§15400]	New York	[§467]
Connecticut	[§36-203]	North Carolina	[§54-109.35(a)]
Georgia	[§41A-3106]	Ohio	[§1733.12]
Idaho	[§26-2114]	Oklahoma	[§2010]
Indiana	[§28-7-1-15]	Oregon	[§723.252(1)]
Kansas	[§17-2208]	South Carolina	[§8-658]
Louisiana	[§6:648]	Tennessee	[§45-1812; 45-1803(2)]
Massachusetts	[Ch. 171, §14]		
Michigan	[§490.8]	Texas	[§5.03(a)]
Mississippi	[§81-13-25]	Utah	[§7-9-10]
Missouri	[§370.180]	Vermont	[§2058]
Montana	[§14-622(1)]	Washington	[§31.12.170]
Nebraska	[§21-1783]	West Virginia	[§31-10-8]

THE BOARD OF DIRECTORS shall be elected at the annual members' meeting by the members:

Alabama	[§5-17-10]	New Mexico	[§48-19-8]
Colorado	[§11-30-108]	North Dakota	[§6-06-11]
Florida	[§657.08]	Pennsylvania	[§12310]
Hawaii	[§410-13(a)]	Puerto Rico	[§15]
Iowa	[§533.8]	Rhode Island	[§19-21-17]
Maine	[§842(1)(B)]	Virginia	[§6.1-210]
Minnesota	[§52.08]	Wisconsin	[§186.07]
New Hampshire	[§394:20]		

OTHER ACTS:

ILLINOIS—Directors of a credit union shall be elected, classified, and shall hold their office for such period of time as is provided by the bylaws and general law governing the election and classification of directors of corporations. [§490.12]

KENTUCKY—Directors shall be elected by the members at the annual meeting from their own number. Any person so elected must be the owner or joint owner of at least one share in the credit union. [§290.120]

MARYLAND—Directors shall be elected from the members, at the annual meeting, or by mail if mail ballots are authorized by the board. [§6-310(c)(2),313]

Meetings of Board of Directors

CUNA MODEL ACT: The board of directors and the executive committee shall meet as often as necessary, but one body must meet at least monthly and the other at least quarterly. [§5:54]

FEDERAL CREDIT UNION ACT: Board of directors shall meet at least once a month. [§113]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-630]	Oregon	[§723.292]

ACT SIMILAR TO FEDERAL ACT:

Arizona	[§6-513]	New Hampshire	[§394:26]
Hawaii	[§410-13(b)]	Pennsylvania	[§12312]

BOARD OF DIRECTORS SHALL MEET as often as necessary:

Kentucky	[§290.130(1)]	Tennessee	[§45-1813]
Louisiana	[§6:648]	Utah	[§7-9-11]
Maryland	[§6-316(b)(1)]	Virginia	[§6.1-211]
Mississippi	[§81-13-27]	West Virginia	[§31-10-9]
Rhode Island	[§19-21-22]	Wisconsin	[§186.08]
South Carolina	[§8-661]		

BOARD OF DIRECTORS SHALL MEET as often as necessary, but not less than once each month:

Arkansas	[§67-913]	Massachusetts	[Ch. 171, §16]
Connecticut	[§36-203(2)]	Nebraska	[§21-1785]
Idaho	[§26-2116]	Nevada	[§678.360(1)]
Indiana	[§28-7-1-16]	Vermont	[§2061]
Maine	[§842(2)]	Washington	[§31.12.190]

OTHER ACTS:

GEORGIA—Board shall meet as often as necessary, but at least once during ten different months of each calendar year. [§41A-3107]

ILLINOIS—Board shall meet at least once each quarter. [§496.13]

KANSAS—The board shall meet at least six times each year with at least one meeting in each quarter-year period. [§17-2209(7)]

MICHIGAN—The commissioner may call a meeting of the board when he deems it expedient. [§8(2)]

NEW YORK—Unless otherwise provided in the bylaws, regular meetings of the board may be held without notice if the time and place of such meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon notice to the directors. The directors must hold an annual meeting within ten days after the annual meeting of the shareholders for the purpose of electing officers and committees as the bylaws provide. [§467(5), 464(2)]

NORTH CAROLINA—Board shall meet as often as bylaws prescribe. [§54-109.43]

OKLAHOMA—Board shall meet at least once a month, unless permitted by the bank commissioner to meet less often. [§2010(C)]

ACT IS SILENT:

Alabama	Minnesota	Ohio
California	Missouri	Puerto Rico
Colorado	New Jersey	Texas
Florida	New Mexico	
Iowa	North Dakota	

Term of Directors

CUNA MODEL ACT: All members of the board shall hold office for such terms as the bylaws provide. [§5.10]

FEDERAL CREDIT UNION ACT: All members of the board . . . shall hold office for such terms . . . as the bylaws may provide. [§111]

ACT SIMILAR TO MODEL AND FEDERAL ACTS:

Arkansas	[§67-911]	North Carolina	[§54-109.35(a)]
Illinois	[§496.12]	Oklahoma	[§2010]
Indiana	[§28-7-1-15]	Oregon	[§723.252(1)]
Louisiana	[§6:648]	South Carolina	[§8-658]
Maryland	[§6-315(b)]	Tennessee	[§45-1812]
Mississippi	[§81-13-25]	Texas	[§5.03(c)]
Missouri	[§370.180]	Utah	[§7-9-10]
Montana	[§14-622(1)]	Vermont	[§2058]
Nebraska	[§21-1783]	West Virginia	[§31-10-8]
Nevada	[§678.350(2)]		

TERMS OF DIRECTORS SHALL BE AS THE BYLAWS PROVIDE, and until successors qualify:

Alabama	[§5-17-10]	Minnesota	[§52.08]
Colorado	[§11-30-108]	New Mexico	[§48-19-8]
Florida	[§657.08]	North Dakota	[§6-06-11]
Iowa	[§533.8]	Pennsylvania	[§12310]
Kansas	[§17-2208]	Wisconsin	[§186.05(5), 186.07]
Michigan	[§490.8]		

DIRECTORS SHALL BE ELECTED for not less than one, nor more than three years, as the bylaws shall provide. If the term is for more than one year, the directors shall be divided into classes and an equal number, as nearly as can be, elected each year:

Arizona	[§6-512]	Massachusetts	[Ch. 171, §14]
California	[§14401]	New Hampshire	[§394:23]
Maine	[§842(1)(C)]	Washington	[§31.12.170]

OTHER ACTS:

CONNECTICUT—The directors shall have terms not to exceed 3 years, as the bylaws provide and until their successors qualify. [§36-203(1)]

GEORGIA—The directors shall serve until the next annual meeting and until their successors are elected and qualified, unless the bylaws provide for staggered elections. [§11A-3106(b)]

HAWAII—The directors shall hold their offices until others are elected or appointed, and qualified, in their stead. [§410-13(a)]

IDAHO—Term of one year. [§26-2114]

NEW JERSEY—At least one-third of the directors shall be elected each year. [§17:13-33]

NEW YORK—If the bylaws so provide, the term of office for directors may be one, two or three years. [§467]

OHIO—May divide directors into two or more classes whose terms shall expire at different times and may fix term of any class at not more than three years. [§1733.15(c)]

PUERTO RICO—Directors shall be elected for not less than one, nor more than 3 years and shall not be appointed for more than two consecutive terms. However, they shall hold office until their successors are elected and qualified. [§15]

RHODE ISLAND—Directors shall be elected in classes for terms of three years, such that one-third shall expire each year. [§19-21-17]

ACT IS SILENT:

Kentucky	Virginia

Executive Officers

CUNA MODEL ACT: (1) At their organization meeting and within thirty (30) days following each annual meeting of the members, the directors shall elect from their own number an executive officer, who may be designated as chairman of the board or president; a vice-chairman of the board or one or more vice presidents; a treasurer; and a secretary. The treasurer and the secretary may be the same individual. The persons so elected shall be the executive officers of the corporation.

(2) The terms of the officers shall be one year, or until their successors are chosen and have duly qualified.

(3) The duties of the officers shall be prescribed in the bylaws.

(4) The board of directors may employ an officer in charge of operations whose title shall be either president and/or general manager; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union. [§5.40]

FEDERAL CREDIT UNION ACT: At their first meeting after the annual meeting of the members, the directors shall elect from their number a president, one or more vice presidents, a secretary, and a treasurer, who shall be the executive officers of the corporation. The offices of secretary and treasurer may be held by the same person. The duties of the officers shall be determined by the bylaws. [§112]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-503(B)(2), 6-513(A)]	Montana	[§14-627]
		North Carolina	[§54-109.40]
Colorado	[§11-30-109(1)]	North Dakota	[§6-06-13]
Kansas	[§17-2201(b)(2), 17-2209]	*Oklahoma	[§2010(B)]
		Oregon	[§723.276]

*Terms not specified.

THE DIRECTORS SHALL ELECT from their own number a president, vice president, secretary, and treasurer. The offices of secretary and treasurer may be held by the same individual. Duties of officers determined by bylaws.

*Kentucky	[§290.030(2), 290.130]	*Missouri	[§370.030(2), 370.190]
*Louisiana	[§6:641(5), 6:649]	South Carolina	[§8-655(9), 8-659]
Mississippi	[§81-13-5(b), 81-13-27]		

*The offices of secretary and treasurer may be held by the same person if the bylaws so provide.

THE DIRECTORS SHALL ELECT from their own number a president, vice president, secretary, and treasurer. The offices of secretary and treasurer may be held by the same individual.

continued

Duties of officers shall be determined by bylaws, except the treasurer shall be general manager:

Florida	[§657.09]	•Minnesota	[§52.09]

•Treasurer need not be director.

THE DIRECTORS SHALL ELECT from their own number a president, vice president, secretary, and treasurer. The offices of secretary and treasurer may, if the bylaws so provide, be held by one person; and other officers may be elected in the discretion of the directors. Duties of officers determined by bylaws:

Virginia	[§6.1-198(2)]	West Virginia	[§31-10-1(b)(2), 31-10-9]

THE DIRECTORS SHALL ELECT from their own number a president, vice president, secretary, and treasurer. The offices of secretary and treasurer may be held by the same individual. Duties of officers not specified:

Arkansas	[§67-912]	Vermont	[§2059]
•Nebraska	[§21-1784]		

•The offices of secretary and treasurer may be held by the same person if the bylaws so provide.

THE DIRECTORS SHALL ELECT from their own number a president, one or more vice presidents, a clerk, a treasurer, and such other officers as may be necessary. The offices of clerk and treasurer may be held by the same individual. Duties of officers shall be determined by bylaws:

Maine	[§813(2)(B)(8), 843(1)]	New Hampshire	[§394:5, 394:25]
Massachusetts	[Ch. 171, §7(1), 15]		

OTHER ACTS:
(NOTE: Duties of officers determined by bylaws unless otherwise stated)

ALABAMA—The directors shall elect a president, who must be either a member of the board of directors or an employee of the credit union. The directors shall also elect from their own number, a vice-president, secretary and treasurer, of whom the last two may be the same individual. [§5-17-11]

CALIFORNIA—The directors shall elect a president, vice president, secretary and treasurer. The same person may be secretary and treasurer if the bylaws so provide. [§14404, 14551, 14552]

CONNECTICUT—The directors shall elect a president, vice president, secretary, and treasurer from their own number, and such other officers as the bylaws or chapter 649 of the general statutes may provide. Board members shall hold only one office at a time. Duties shall be as set forth in the bylaws and determined by the board. [§36-204]

GEORGIA—The board shall elect a president, vice president, secretary and treasurer from its own number, and may also elect such other officers as the bylaws may provide. [§41A-3004(b)]

HAWAII—The directors shall elect from their own number a chief executive officer who may be designated as chairman of the board, a vice-chairman, a treasurer and a secretary, of whom the last two may be the same individual. [§410-14(a)]

IDAHO—The directors shall elect from their own number a president, one or more vice presidents, a treasurer, and a secretary, of whom the last two may be the same individual. The board may appoint an assistant treasurer from the membership. Act silent as to duties of officers. [§26-2115]

ILLINOIS—The Directors may elect from their own number a chairman and a vice chairman and shall elect a president, a vice president, a treasurer and a secretary, of whom the last two may be the same individual. The title of vice president may be expanded or used in combination with any other title except president. The directors shall also elect any other officers and assistant officers as are provided in the bylaws. These officers need not be directors. [§496.14]

INDIANA—The board shall elect from its own number a chairman of the board and a vice chairman or vice chairmen of the board, secretary and treasurer of the board. The board may appoint 1 or more persons as officers of the credit union, with titles of president and vice president(s). If the bylaws so provide, the office of secretary and treasurer may be held by the same person and there may be an assistant secretary and/or assistant treasurer. [§28-7-1-16]

IOWA—The directors shall elect from their own number a chairman of the board, vice chairman, president and secretary of whom the last two may be the same individual. The president shall be the general manager. [§533.9]

MARYLAND—At their first meeting after the annual meeting of the members, the board shall elect a president, vice president, secretary and treasurer who shall be the executive officers of the corporation. The president shall be selected from among the directors. If the bylaws so provide an assistant secretary or an assistant treasurer, or both, may be appointed by the board. The offices of secretary and treasurer may, if the bylaws so provide, be held by one person. [§6-137]

MICHIGAN—The directors shall elect from their own number a president, vice president, treasurer, and secretary of whom the last two named may be the same individual. The board may by resolution designate a general manager and define his duties. [§490.9]

NEVADA—The board shall elect from their own number a chairman of the board, vice-chairman, treasurer, and secretary, of whom the last two may be the same person. [§678.420]

NEW JERSEY—A president, vice president, secretary and treasurer shall be chosen either by the board of directors or by the members as the bylaws may direct, and shall hold their offices until others are chosen and qualified in their stead; the president shall be chosen from among the directors. All officers shall perform such duties as shall be assigned to them. [§17:13-36]

NEW MEXICO—The directors shall elect from their own number a president, vice president, treasurer and clerk, of whom the last two may be the same individual. The duties of the officers shall be as determined by the bylaws, except that the principal financial officer shall be the general manager. [§48-19-10]

NEW YORK—Directors shall elect officers, including a president from their own number, one or more vice presidents, a secretary and a treasurer and such other officers of the corporation as are required by the bylaws. The offices of secretary and treasurer may be held by the same person if the bylaws so provide. [§168,472]

OHIO—The directors shall elect a president, a secretary, and a treasurer, and, if desired, a chairman of the board, one or more vice presidents and such other officers and assistant officers as is provided for in the regulations, bylaws, or by resolution of the board. The chairman of the board shall be a director. Unless the articles or regulations otherwise provide, none of the other officers need be a director. Any two offices may be held by the same person, but no

officer shall execute, acknowledge, or verify any instrument in more than one capacity. [§1733.20]

PENNSYLVANIA—The directors shall elect from their own number a president, one or more vice presidents, a treasurer and a secretary and may elect a chairman of the board. The same individual may be both secretary and treasurer. The directors may appoint one or more assistant treasurers. Directors may employ an officer in charge of operations whose title shall be general manager or executive vice president. [§1232(A)]

PUERTO RICO—The directors shall elect from their own number the officers of the board. Duties determined by bylaws. The treasurer may act as general manager. [§16]

RHODE ISLAND—The board shall elect a president, a vice president, a clerk (or secretary) and a treasurer, who shall be the executive officers. It may also choose such other officers, with such powers, as it may deem expedient, provided that it shall not delegate to such other officers and committees any functions properly exercised only by the board. [§19-21-21]

TENNESSEE—The bylaws shall provide the duties of officers elected by the board. [§45-1802(2)]

TEXAS—The board shall elect from their own number a chairman, treasurer and secretary. From their own number or otherwise the board shall elect such other officers as may be prescribed in the bylaws, and may employ or shall designate the president. The president may or may not be, in the discretion of the board, the same person as the treasurer or general manager. The treasurer and the secretary may be the same person, but the president and secretary may not be the same person. [§5.03(d), 5.04]

UTAH—The board shall elect a president and a vice president from their own number, and a secretary and a treasurer who may or may not be directors. The executive officers shall have the power to act for and on behalf of the entire board in such matters as the board may delegate and as provided in the bylaws. [§7-9-11]

WASHINGTON—The directors shall elect from their own number a president, one or more vice presidents, a secretary, a treasurer, and such other officers as may be necessary. The treasurer need not be a director. The offices of secretary and treasurer may be held by the same individual. [§31.12.180]

WISCONSIN—The directors shall elect from their own number a chairman of the board and 1 or more vice chairmen, a secretary and a treasurer. The directors shall appoint a president and may appoint 1 or more vice presidents. The president shall be the operating executive officer and may be a director, as may the vice presidents. [§186.08]

Selection of Credit Committee

CUNA MODEL ACT: The board of directors shall appoint a credit committee, or in lieu of a credit committee, a credit manager. [§5.10(3)]

FEDERAL CREDIT UNION ACT: Credit committee is to be elected by and from the members at the annual members' meeting. [§111]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-622(3)]	Texas	[§5.05(a)(g)]
North Carolina	[§54-109.35(c)]		

ACT SIMILAR TO FEDERAL ACT:

Alabama	[§5-17-10]	North Dakota	[§6-06-11]
Arkansas	[§67-911]	Oklahoma	[§2010]
Georgia	[§41A-3106]	Pennsylvania	[§12310]
Kentucky	[§290.120]	Puerto Rico	[§15]
Louisiana	[§6:648]	Rhode Island	[§19-21-19]
Minnesota	[§52.08]	South Carolina	[§8-658]
Mississippi	[§81-13-25]	Tennessee	[§45-1812]
Missouri	[§370.180]	Vermont	[§2058]
Nebraska	[§21-1783]	Virginia	[§6.1-210]
New Hampshire	[§394:20]	West Virginia	[§31-10-8]
New Jersey	[§17:13-34]		

CREDIT COMMITTEE APPOINTED BY the board of directors:

Arizona	[§6-513(11)]	Maryland	[§6-321(a)]
Hawaii	[§410-13(a)]	Nevada	[§678.400(1)]
Idaho	[§26-2114]	Utah	[§7-9-10]
Maine	[§842(2)(k)]	Wisconsin	[§186.07]

CREDIT COMMITTEE ELECTED BY the board of directors from their own number:

Illinois	[§496.14]	Massachusetts	[Ch.171, §15]
Iowa	[§533.9]		

CREDIT COMMITTEE MAY EITHER BE APPOINTED by the board or elected by the membership:

California—As the bylaws provide. [§14500]
Indiana—As the bylaws provide. [§28-7-1-15]
New Mexico—If, at the option of the board, a credit committee is not appointed, it shall be the duty of the board to assume the duties of the credit committee. [§48-19-10(A)]
New York—As the bylaws provide. If committee is appointed, vacancies shall be filled for the unexpired term by the board. [§464(2)]
Oregon—A credit manager may be appointed in lieu of a credit committee. [§723.252(3)]

OTHER ACTS:

COLORADO—At the annual meeting, or by other proper balloting, within 30 days before and 20 days after the meeting, the members may elect a credit committee or authorize the board to appoint a credit committee or credit officer. [§11-30-108]

CONNECTICUT—The board of directors shall elect a credit committee. [§36-203(4)]

FLORIDA—Credit committee elected at annual meeting of members, unless bylaws provide for its appointment by the board. [§657.08]

KANSAS—The bylaws shall state the manner of appointment or election of a credit committee. [§17-2208]

MICHIGAN—Credit committee members to be elected at annual meeting of members, or the bylaws may provide for their election by the board. The bylaws may also provide for the appointment by the board, or by the membership, of one or more alternates. [§490.8]

OHIO—Unless the articles or regulations provide otherwise, the board shall appoint the credit committee members. [§1733.19(d)]

WASHINGTON—The board of directors shall select a credit committee. [§31.12.180]

Loan Officer—Appointment of

CUNA MODEL ACT: The credit committee may appoint one or more loan officers . . . [§5.64(1)]

FEDERAL CREDIT UNION ACT: The credit committee may appoint one or more loan officers. Not more than one member of the credit committee may be appointed as a loan officer. [§114]

ACT SIMILAR TO MODEL ACT:

Alabama	[§5-17-12]	Puerto Rico	[§17]
Kentucky	[§290.140]	South Carolina	[§8-669]
Montana	[§14-634(1)]	Tennessee	[§45-1815]
Ohio	[§1733.26(a)]	Texas	[§5.05(f)]
Oregon	[§723.252(2)]	Vermont	[§2062]

ACT SIMILAR TO FEDERAL ACT:

Arkansas	[§67-915(2)]	Maryland	[§146]
Colorado	[§11-30-110]	New Jersey	[§17:13-34]
Florida	[§657.10(2)]	North Dakota	[§6-06-14]
Georgia	[§41A-3109(b)]	Pennsylvania	[§12313]
Hawaii	[§410-13(e)]		

BOARD OF DIRECTORS MAY AUTHORIZE CREDIT COMMITTEE to appoint one or more loan officers:

Michigan—Subject to approval of Commissioner [§490.10]
Minnesota—When credit union's assets exceed $10,000 [§52.1
New Mexico [§48-19-10]

BOARD OF DIRECTORS MAY AUTHORIZE CREDIT COMMITTEE to appoint a credit manager when credit union's assets exceed $50,000:

Illinois—Subject to approval of Director [§496.15]
Missouri [§370.220(4)]

OTHER ACTS:

ARIZONA—The credit committee may, subject to the provisions of the bylaws and upon ratification of the board, appoint one or more loan officers. [§6-514(B)]

CALIFORNIA—The credit committee may, with the approval of the board of directors, appoint one or more loan officers, who must be a member of the credit union and may, but need not be, a member of the credit committee or an officer or director. [§14502]

CONNECTICUT—The board may appoint 1 or more loan officers, who shall not be members of the supervisory committee but any or all of whom may be members of the credit committee. [§36-203(9)]

IDAHO—The credit committee, upon approval of the board, may appoint one or more loan officers to act under the supervision of the credit committee. No more than one member of the credit committee may serve as loan officer. [§26-2118]

INDIANA—The board of directors of a credit union may appoint 1 or more loan officers and delegate to him or them authority not to exceed that granted to the credit committee. Not more than one member of the credit committee may be appointed as a loan officer. [§28-7-1-16(g)]

IOWA—Upon approval of the board the credit committee may appoint one or more loan officers, who may be the president or vice president. [§533.10]

KANSAS—The credit committee may appoint one or more loan officers, who may be the treasurer or an assistant treasurer. [§17-2210]

LOUISIANA—The credit committee may appoint one or more loan officers from among members of the credit union, other than a treasurer, assistant treasurer, membership officer, or other person authorized to disburse funds of the credit union. [§6:650.1]

MAINE—When so provided by the bylaws, the credit committee may appoint one or more loan officers who may receive such compensation as may be provided by the board of directors. [§845(2)]

MASSACHUSETTS—The board of directors may delegate to one or more loan officers, who need not be members of the credit committee, or to an employee, who need not be a member of the board, the power to make all loans. [Ch. 171, §22]

MISSISSIPPI—The credit committee may delegate authority to approve loans and advances to loan officers. [§81-13-31]

NEBRASKA—The credit committee may apply to the Department of Banking for the licensing of one or more loan officers in order to delegate to him or them the power to approve loans up to a limit set by the credit committee on its application. A loan officer shall be a member of the credit union. Not more than one member of the credit committee shall be appointed as a loan officer. [§21-1786]

NEVADA—The credit committee may appoint a loan officer. Only one member of the credit committee may be appointed as loan officer or assistant loan officer. [§678.400(3)]

NEW HAMPSHIRE—When so provided by the bylaws, the board may, with the approval of the credit committee, appoint and provide for the compensation of a loan officer to act under the supervision of the credit committee. A deputy loan officer may be appointed and compensated in the same manner. [§394:25(a)]

NEW YORK—The credit committee may appoint one or more loan officers. Not more than one loan officer shall be a member of the credit committee, nor shall any officer who is authorized to sign checks act as a loan officer. [§470]

NORTH CAROLINA—The credit committee may appoint one or more loan officers to act under the supervision of the credit committee. The board of directors may appoint one or more loan officers in lieu of a credit committee. [§54-109.47(a), 54-109.35(c)]

OKLAHOMA—To facilitate its work, the credit committee may appoint one or more loan officers and such assistants as may be necessary. [§2010(D)]

RHODE ISLAND—The bylaws may provide for the appointment by the credit committee of one or more loan officers. [§19-21-5(a)]

UTAH—When recommended by the credit committee, the board may appoint and provide for compensation of one or more loan officers and such assistants as may be necessary. The treasurer may be appointed as a loan officer. [§7-9-18]

VIRGINIA—The credit committee may appoint one or more loan officers, but no member of the credit committee may be appointed as a loan officer. [§6.1-212]

WASHINGTON—Board of a credit union with assets of $200,000 may appoint such loan officers as it deems advisable for the purpose of approving certain types of loans without further authorization from the credit committee. Credit unions with assets of $200,000 or less may appoint loan officers with the approval of the supervisor. [§31.12.245]

WISCONSIN—The board of directors shall appoint such other officers as it determines are necessary. [§186.07]

ACT IS SILENT: West Virginia

Selection of Supervisory Committee

CUNA MODEL ACT: The board of directors shall appoint a supervisory committee at the organization meeting and within thirty (30) days following each annual meeting of the members. [§5.10(2)]

FEDERAL CREDIT UNION ACT: The supervisory committee shall be appointed by the board of directors. [§111]

ACT SIMILAR TO FEDERAL ACT:

Arizona	[§6-513(11)]	*Nevada	[§678.390(1)]
*Hawaii	[§410-13(a)]	North Carolina	[§54-109.35(b)]
Idaho	[§26-2114]	Oregon	[§723.252(2)]
Maine	[§842(2)(j)]	Utah	[§7-9-11(12)]
Maryland	[§6-320(a)]	Vermont	[§2058]
Montana	[§14-622(2)]		

*Committee officially known as the audit committee.

SUPERVISORY COMMITTEE ELECTED by the members at the annual meeting:

Alabama	[§5-17-10]	New Hampshire	[§394:20]
Arkansas	[§67-911]	*New Jersey	[§17:13-35]
California	[§15400]	Pennsylvania	[§12310]
Florida	[§657.08]	Puerto Rico	[§15]
Georgia	[§41A-3106]	Rhode Island	[§19-21-19]
Indiana	[§28-7-1-15]	South Carolina	[§8-658]
Kentucky	[§290.120]	Tennessee	[§45-1812]
Louisiana	[§6:648]	Virginia	[§6.1-210]
Minnesota	[§52.08]	**Washington	[§31.12.200]
Mississippi	[§81-13-25]	West Virginia	[§31-10-8]
Missouri	[§370.180]		

*Committee officially known as the examining committee.
**Committee officially known as the auditing committee.

SUPERVISORY COMMITTEE ELECTED by the board of directors from their own number:

Illinois	[§496.14]	Massachusetts	[Ch. 171, §15]
Iowa	[§533.9]		

BOARD OF DIRECTORS APPOINTS SUPERVISORY COMMITTEE under the conditions indicated:

Nebraska—with approval of a two-thirds majority. [§21-1784]
Ohio—unless articles or regulations provide otherwise. [§1733.19(b)]
Oklahoma—unless bylaws provide otherwise. [§2010]

OTHER ACTS:

COLORADO—At the annual meeting, or by other proper balloting within 30 days before and 20 days after the meeting, the members shall elect a supervisory committee [§11-30-108]

CONNECTICUT—The board of directors shall elect a supervisory committee. [§36-203(4)]

KANSAS—The bylaws shall state the manner of appointment or election of a supervisory committee. [§17-2208]

MICHIGAN—Supervisory committee members to be elected at annual meeting of members, or the bylaws may provide for their election by the board. The bylaws may also provide for the appointment by the board, or by the membership, of one or more alternates. [§490.8]

NEW MEXICO—Supervisory committee may be either appointed by the board or elected by the membership. [§48-19-11]

NEW YORK—Supervisory committee may either be appointed by the board or elected by the membership as the bylaws provide. If committee is appointed, vacancies shall be filled for the unexpired term by the board. [§464(2)]

NORTH DAKOTA—Supervisory committee members to be elected by the members at the annual meeting unless the bylaws provide for their appointment by the board. [§6-06-11]

TEXAS—The board shall make or cause to be made a comprehensive annual audit and such supplementary audits as it deems necessary. [§5.07(a)]

WISCONSIN—After the annual meeting and within one month the board of directors shall appoint a competent and qualified person to audit the operations of the credit union. [§186.15]

Composition of Supervisory Committee

CUNA MODEL ACT: Supervisory committee consists of not less than three members. [§5.10(2)]

FEDERAL CREDIT UNION ACT: Committee consists of not less than three, nor more than five members, one of whom may be a director, other than the treasurer. [§111]

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-911(1)]	Montana	[§14-622(2)]
Arizona	[§6-513(11)]	New Mexico	[§48-19-8]
California	[§14450]	North Dakota	[§6-06-11]
Colorado	[§11-30-108]	Ohio	[§1733.19(d)]
Idaho	[§26-2114]	Oregon	[§723.252(2)]

SUPERVISORY COMMITTEE CONSISTS of three members:

Alabama	[§5-17-10]	Minnesota	[§52.08]
Florida	[§657.08]	Puerto Rico	[§15]

SUPERVISORY COMMITTEE CONSISTS OF NOT LESS than three nor more than five members, only one of whom may be a director:

Connecticut—None of whom may be an officer or member of the credit committee nor an employee. [§36-208(1)]
Hawaii—[§410-13(a)]

SUPERVISORY COMMITTEE CONSISTS OF NOT LESS than three members, none of whom may be directors or credit committee members:

Kentucky	[§290.120]	Virginia	[§6.1-210]
Nebraska	[§21-1784]	West Virginia	[§31-10-8]
Vermont	[§2058]		

SUPERVISORY COMMITTEE CONSISTS OF NOT LESS than three members, none of whom may be directors:

Georgia	[§41A-3002(b)(4), 41A-3106(a)]	Louisiana	[§6:648]

SUPERVISORY COMMITTEE CONSISTS OF THREE MEMBERS, none of whom may be directors or credit committee members:

Rhode Island	[§19-21-19]	South Carolina	[§8-658]

SUPERVISORY COMMITTEE CONSISTS OF NOT LESS than three members. Unless the number of credit union members is less than eleven, no director may be a member of the committee:

Indiana	[§28-7-1-4, 28-7-1-15]	Missouri	[§370.030, 370.180]
*Kansas	[§17-2208]	Tennessee	[§45-1803, 45-1812]
Mississippi	[§81-13-5(d), 81-13-25]		

*Except treasurer may be member

continued

OTHER ACTS:

ILLINOIS—Supervisory committee of three members all of whom are to be members of the board of directors, excluding officers and members of the credit committee. [§496.14(2)]

IOWA—Supervisory committee of at least three members, all of whom are to be members of the board of directors. [§533.9]

MAINE—Supervisory committee consists of not less than three members, not more than one of whom may be a director. No director shall be a member of both the credit and supervisory committee unless the number of members of the credit union is less than eleven. [§842(2)(j), 842(4)]

MARYLAND—Supervisory committee of three to seven members, one of whom may be a director other than the treasurer. No member of the credit committee or any employee of the credit union may be on the supervisory committee. [§6-320]

MASSACHUSETTS—Auditing committee of not less than three members of the board of directors. No member of the board may be a member of both the credit and auditing committee unless the credit union has less than 11 members. [Ch. 171, §15]

MICHIGAN—Supervisory committee consists of three members, none of whom are directors, officers, loan officers, credit committee members or other employees of the credit union. [§490.8]

NEW HAMPSHIRE—Supervisory committee of three members, who may not be members of the board or credit committee unless the number of members of the union is less than eleven. [§394:20, 394:21]

NEW JERSEY—Examining committee of not less than three members, none of whom may be officers, directors, or members of the credit committee. [§17:13-35]

NEW YORK—Supervisory committee of not less than three, all of whom must be U. S. citizens and shareholders. [§451(6), 465]

NORTH CAROLINA—Supervisory committee of not less than three members, no more than one of whom may be a director and none a member of the credit committee. [§54-109.35(b)]

OKLAHOMA—Supervisory committee of not less than three members; one director other than the treasurer may be elected to it. [§2010(A)]

PENNSYLVANIA—Supervisory committee of not less than three nor more than five members, none of whom may be a member of the board of directors, the treasurer, an assistant treasurer or a member of the credit committee. [§12310]

TEXAS—Act provides that the board shall make or cause to be made the audits. [§5.07(a)]

UTAH—Supervisory committee of not less than three members, none of whom may be a member of the credit committee or an employee of the credit union, but one of whom may be a member of the board, other than the treasurer. [§7-9-10, 7-9-11(12)]

WASHINGTON—The auditing committee shall consist of not less than three members, not more than one of whom may be a director. No director may be a member of both the credit and auditing committees. [§31.12.180, 31.12.200]

WISCONSIN—Act provides for appointment of a competent and qualified person to audit operations of credit union. No provision for a supervisory committee. [§186.5]

ACT IS SILENT: Nevada

Delegation of Board Duties

(Refers to Executive and/or Investment Committee; see also "Acceptance into Membership")

CUNA MODEL ACT: From the persons elected to the board, the board may appoint an executive committee of not less than three directors who may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board.

It shall be the duty of the directors to . . . have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors. [§5.52, 5.56(7)]

FEDERAL CREDIT UNION ACT: The board may appoint an executive committee of not less than three directors to exercise such authority as may be delegated to it, subject to such conditions and limitations as may be prescribed by the board.

The board may designate a committee of not less than two to act as an investment committee, such investment committee to have charge of making investments under rules and procedures established by the board of directors. [§113]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-629; 14-631(7)]	North Carolina	[§54-109.42, 54-109.44(7)]
Nevada	[§678.360(2); 678.380(2)]	Oregon	[§723.286; 723.296(7)]

ACT SIMILAR TO FEDERAL ACT:

Louisiana	[§649(8)(11)]	*Pennsylvania	[§12312(C)]

*No reference to investment committee.

THE BOARD MAY APPOINT AN EXECUTIVE COMMITTEE of not less than three directors to act for it in the purchase and sale of securities or the making of loans to other credit unions, or both:

Arizona	[§6-513(8)]	Florida	[§657.09(8)]

OTHER ACTS:

CALIFORNIA—With the written approval of the commissioner, the board may appoint an executive committee of no fewer than three directors, to serve at its pleasure, to act for it in the purchase and sale of securities, investment and withdrawal of funds, in borrowing funds and to make loans to other credit unions in accordance with the law and regulations. [§14404]

CONNECTICUT—The board may appoint an executive committee of not less than 3 nor more than 5 directors, one of whom shall be the president of the credit union who shall serve as chairman of the committee, to exercise such authority as may be delegated to it between meetings of the board. The board may also appoint from among the credit union members an investment officer or an investment committee to act for it between board meetings in all matters involving the deposit or investment of credit union funds except loans to members. [§36-203(6)(7)]

HAWAII—The board may appoint an executive committee of not less than three directors and delegate its authority to the committee to act for the board, within limitations established by the board. [§410-13(d)]

IDAHO—The board may appoint an executive committee from its own members to exercise such authority as may be delegated to it between meetings of the board. [§26-2116(p)]

INDIANA—The board may delegate the authority for investments

to an executive committee or manager. However, the board shall review all investments made by the executive committee or manager at least monthly. [§28-7-1-16(f)]

MAINE—The board shall appoint an executive committee, when the bylaws so provide, consisting of not less than three members with the authority to invest surplus funds or borrow in the name of the credit union. [§842(2)(L)]

MICHIGAN—The board may appoint an executive committee of not less than three directors or an investment officer who shall be either a member of the board or an employee of the credit union to act for it in the purchase and sale of securities or the making of loans to or the deposits in other credit unions. The investment officer shall act only within the limits of an investment policy and list of approved investments established by the board. The executive committee or investment officer shall make a report at each regular meeting of the board. [§490.9]

OHIO—The regulations may provide for the creation by the directors of an executive committee consisting of not less than three directors and may authorize the delegation to any such committee of any of the authority of directors other than any action requiring more than a majority vote of the board, provided that the executive committee shall exercise only such authority in the interim between meetings of the board and shall make a full report of all its action for review by the board at the next regular meeting of the board. [§1733.19(a)]

PUERTO RICO—The board may appoint an executive committee of at least 3 persons. Said committee shall execute the resolutions and decisions the board may entrust to them. [§16(h)]

RHODE ISLAND—The board may elect, from its own number, a finance committee and an executive committee, and may delegate to such committees such of its powers as they may deem expedient. [§19-21-21]

WASHINGTON—The board may elect an investment committee of not less than three members of the credit union, who need not be board members. No director shall be a member of both the investment and auditing committee. The investment committee shall hold such meetings as are necessary to accomplish its work. It shall have the authority to make those investments permitted by this act, but the actions of the committee shall be subject to the supervision of the board. [§31.12.180, .205]

ACT IS SILENT:

28 states.

Compensation of Officials

CUNA MODEL ACT: No officer, director, or committee member, other than the treasurer, a credit manager, or a loan officer may be compensated for his service as such, but providing reasonable life, health, accident and similar insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business. [§5.20]

FEDERAL CREDIT UNION ACT: No board, credit committee or supervisory committee member, or executive officer, other than the treasurer, shall be compensated as such; provided, however, that reasonable health, accident, and similar insurance protection shall not be considered compensation under regulations promulgated by the Board. [§111, 112]

ACT SIMILAR TO MODEL ACT with provision that compensation of treasurer and employees shall be established by the board:

Arkansas	[§67-918]	Montana	[§14-625]
Idaho	[§26-2122]		

ACT SIMILAR TO MODEL ACT, but the general manager may also be compensated:

Oregon	[§723.266]

ACT SIMILAR TO MODEL ACT, but no reference made to officers:

Florida	[§657.04(9)(10), 657.09(4)]	North Carolina	[§54-109.38]

ACT SIMILAR TO FEDERAL ACT:

Louisiana	[§6:649(c)]

NO OFFICER, DIRECTOR OR COMMITTEE MEMBER, other than the treasurer, may be compensated for his services as such. This shall not be construed to prevent reimbursement of such directors and committeemen for actual expenses they may incur in carrying out their duties:

Hawaii	[§§4-10-14(c), 410-42]	Vermont	[§2064]

NO MEMBER OF BOARD or either committee shall be compensated:

Alabama	[§5-17-11]	Mississippi	[§81-13-29]
Arizona	[§6-512(C)]	Tennessee	[§45-1814]
Colorado	[§11-30-109(2)]	West Virginia	[§31-10-9]
Iowa	[§533.9]		

NO MEMBER OF THE BOARD or either committee shall be compensated, but the board may authorize compensation to the following individuals:

Illinois—officers. [§496.14]
Kansas—officers and employees. [§17-2205(7)]
Kentucky—treasurer, assistant treasurer and office personnel. [§290.130(4)]
Maine—treasurer or any other officer serving in the capacity of general manager. [§842(3), 843(3)]
Nebraska—treasurer - based on services rendered. [§21-1785]
South Carolina—treasurer. [§8-600]

OTHER ACTS:

CALIFORNIA—No member of the board or of the credit or supervisory committees shall receive any compensation for his services, except for actual expenses incurred in the performance of his duties. [§14405, 14454, 14501]

CONNECTICUT—No director may be compensated for his services as board member or as member of any committee other than the supervisory committee. Supervisory committee members and the treasurer or chief financial officer may be compensated. All officers may be reimbursed for expenses incurred in the performance of their duties. [§36-204(c)] Also, directors, supervisory and credit committee members may be provided with personal liability or indemnity insurance. [§36-204(a)(2)]

MARYLAND—Officers elected by the board may receive such compensation as the members may authorize, except as to compensation of the treasurer. Members of the board, credit and supervisory committees may receive such compensation as the members may authorize subject to the final approval of the State Bank Commissioner. [§6-324]

MASSACHUSETTS—Members of the board, audit and credit committees shall receive no compensation but members of the audit

continued

and credit committee may receive reimbursement for actual expenses in performance of their duties, as authorized by the board subject to the approval of the members. The officers elected by the board shall receive such compensation as it may authorize. Any credit union may provide group life, accident, health, and/or hospital insurance or benefits for its employees, officers, and directors. [Ch. 171, §17, 18, 22; Ch. 167, §57]

MICHIGAN—No member of the board or of either committee or officer, except the treasurer, shall, as such, be compensated. [§490.9(2)]

MINNESOTA—No member of the board or of either committee shall receive a salary as such, but may be compensated for time actually spent in his official duties at an hourly rate as determined by the annual meeting of members. [§52.08]

MISSOURI—No member of the board, credit or supervisory committees shall receive compensation. No salary shall be paid any officer or other employee except as may have been approved by the board, but in no instance shall the total salaries so authorized exceed the amount approved for such purpose by the regular annual meeting of the members. [§370.216]

NEVADA—No director or committee member, other than officers, shall be compensated for his services except that he may be provided reasonable health, life, accident and similar insurance protection. Any member may be reimbursed for necessary expenses incidental to the performance of credit union business and approved by the board. [§678.450]

NEW HAMPSHIRE—No member of the board of directors or of either committee shall receive any compensation. The officers elected by the board of directors may receive such compensation as the board shall authorize. However, if at any time any credit union shall have enlarged its business to such an extent that this section may create an impediment to its proper functioning, the commissioner, upon petition of the board of directors, may permit the board to pay such credit committee such compensation as he shall consider proper. [§394:29]

NEW JERSEY—Compensation for officers and committee members provided for in the bylaws; however, the Commissioner of Banking and Insurance may, at any time, reduce the amount of such compensation if in his judgment it is excessive. [§17:13-36]

NEW MEXICO—A board member in attendance at regular board meetings may be compensated up to a maximum of $20 per month for such attendance. The compensation, if any, of the board, if other than a regular credit union employee, shall be established by the board. [§48-19-9, 48-19-10(B)]

NEW YORK—Compensation of officers is as prescribed in bylaws; directors may not be compensated. Subject to restrictions set by the superintendent of banking, a credit union may purchase life insurance for its officers and employees, who have served at least one year, in an amount not to exceed $10,000 or three times such person's annual salary, whichever is greater. However, in no event shall such sum exceed $50,000. [§468, 472, 472-a]

NORTH DAKOTA—The general manager may be given a reasonable compensation. No other board or committee member shall receive any compensation, except that the board may pay for expenses incurred by the directors or committee members while on official business. [§6-06-13]

OHIO—No officer, director, or employee shall receive any commission, salary, or other emolument for services arising out of his association with the credit union except per diem, wages, or salary which he receives as compensation for his services to the credit union. Except that no director or member of any committee shall receive any compensation for his services as such, but, unless otherwise provided in the articles or regulations, shall be entitled, when so authorized by the board of directors, to reimbursement for his expenses incurred in connection with the business of the credit union. [§1733.22]

OKLAHOMA—No member of the board shall be compensated, but the officers elected by the board and the members of the credit and supervisory committees may receive such compensation for services performed, as the board shall, by resolution, authorize. [§2010(A)]

PENNSYLVANIA—The directors fix the amount of compensation of directors, officers, committee members and the loan officer, if the credit union paid a dividend of not less than 3% from the earnings of the last preceding year. The Department of Banking may prohibit or regulate such compensation if it deems it excessive or in its opinion the financial condition of the credit union is not such as to warrant such compensation. [§12312(B)]

PUERTO RICO—No director shall receive compensation as such. However, the treasurer, secretary and general manager may receive compensation determined by the board. [§16(k)]

RHODE ISLAND—Officers, members of the credit and supervisory committees may receive compensation as the board shall authorize. The board of directors shall receive no compensation unless the credit union has assets of $500,000 in which case the members at the annual meeting may fix from time to time such compensation. [§19-21-36]

TEXAS—No director may receive compensation, directly or indirectly, for serving as a director or committee member. Directors may receive reimbursement for actual expenses incurred in carrying out their duties. [§5.08(a)]

UTAH—No member of the board of directors or of the credit committee or supervisory committee shall receive any compensation for his services as a member thereof. However, any member of any credit union who may incur any expense or perform any service authorized by the board of directors may be compensated for such expense or service in such amount as the board of directors may deem just; provided, however, that all such items shall be available for review at the annual meeting of members for their inspection. The board shall determine the compensation of the treasurer, other administrative and operating personnel, and the loan officer(s). [§7-9-18]

VIRGINIA—No member of the board shall receive compensation. The members of the credit or supervisory committee may receive compensation as determined by the board if assets of the credit union are in excess of $50,000. The bylaws will set the maximum compensation of all officers. [§6.1-211, 6.1-198(2)]

WASHINGTON—No director shall receive compensation. The treasurer elected by the board may receive such compensation as the board may authorize. [§31.12.210]

WISCONSIN—No member of the board shall receive any compensation. The officers elected by the board and the members of the credit committee may receive such compensation as the board shall authorize, but the expenditures of the credit union for all purposes shall be from its earnings. [§186.12]

ACT IS SILENT:

Georgia Indiana

Employees

CUNA MODEL ACT: It shall be the duty of the directors to authorize the employment of such persons necessary to carry on the business of the credit union, including the credit manager, loan officers and auditing assistants requested by the supervisory committee; and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors. [§5.56(8)]

FEDERAL CREDIT UNION ACT: The board of directors shall provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit committee. [§113]

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-913(i)(o)]	Montana	[§14-631(8)]
Hawaii	[§410-13(c)(8),(10)]	Oregon	[§723.296(8)]
Maine	[§84[illegible]O)]	Vermont	[§2061(10)(17)]

ACT SIMILAR TO FEDERAL ACT:

Colorado	[§11-30-109(1)(i)]	New Hampshire	[§394:25-a,26]

THE BOARD SHALL EMPLOY SUCH PERSON or persons as necessary to carry on the business of the credit union:

Connecticut	[§36-203(3)(i)]	Nebraska	[§21-1785(9)]
Kentucky	[§290.130(2)(f)]	North Carolina	[§54-109.44(8)]

OTHER ACTS:

ARIZONA—The board shall appoint and dismiss employees and fix their compensation. Such duties may be delegated to the chief executive officer. [§6-513(15)]

IDAHO—The board of directors shall authorize the employment of such person or persons as may be necessary to carry on the business of the credit union and authorize their compensation. [§26-2116(h)]

ILLINOIS--The board shall provide for any necessary clerical and auditing assistance requested by the supervisory committee and for the credit manager appointed by the credit committee, and shall employ and compensate necessary managerial and clerical personnel as authorized and defined in the bylaws. [§496.13(10)(12)]

MINNESOTA—The board shall fix the salaries of the treasurer and other employees. [§52.09(8)]

NEVADA—The board shall authorize the employment of persons necessary to carry on the business of the credit union, including a general manager, and shall establish compensation to be paid any employee, officer or other persons performing services on behalf of the credit union. [§678.370(9); 678.380(3)(8)]

OHIO—In lieu of a supervisory audit committee the board may employ a public accountant or a firm of same. [§1733.19(c)]

ACT IS SILENT:

Alabama	Michigan	Rhode Island
California	Mississippi	South Carolina
Florida	Missouri	Tennessee
Georgia	New Jersey	Texas
Indiana	New Mexico	Utah
Iowa	New York	Virginia
Kansas	North Dakota	Washington
Louisiana	Oklahoma	West Virginia
Maryland	Pennsylvania	Wisconsin
Massachusetts	Puerto Rico	

Suspension or Removal of Officials

CUNA MODEL ACT: The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report such action to the board of directors for appropriate action. The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which shall be held not less than 7 nor more than 21 days after suspension. At such meeting the suspension shall be acted upon by the members. [§5.72]

It shall be the duty of directors to...suspend any or all members of the credit or supervisory committee for failure to perform their duties. [§5.56(12)]

FEDERAL CREDIT UNION ACT: The supervisory committee may by a unanimous vote suspend any officer of the credit union or any member of the credit committee or of the board of directors, until the next members' meeting, which shall be held not less than 7 nor more than 14 days after any such suspension, at which meeting any such suspension shall be acted upon by the members. [§114]

Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members shall decide, at a meeting not less than seven nor more than fourteen days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee. [§115]

ACT SIMILAR TO MODEL ACT §§5.72, 5.56(12):

Montana	[§§14-637(1),(2),(3), 14-631(12)]
Oregon	[§§723.326(1),(2),(3), 723.296(12)]

ACT SIMILAR TO MODEL ACT §5.56(12) ONLY:

Maine	[§842(2)(M)]	North Carolina	[§54-109.44(12)]

ACT PROVIDES FOR SUSPENSION of any officer, director or committee member by unanimous vote of the supervisory committee with approval by the membership and that the board of directors may suspend members of the credit and supervisory committees under certain conditions:

Arizona [§§6-515(B)(1), 6-513(16)]
Idaho [§§26-2121, 26-2116(l)(n)]
Minnesota [§§52.11(3), 52.09(11)]
Pennsylvania [§§12314(c),(e)]

ACT PROVIDES FOR SUSPENSION of any officer, director or credit committee member by unanimous vote of the supervisory committee with approval by the membership and that the board of directors may suspend members of the credit and supervisory committees under certain conditions:

Arkansas	[§§67-917(3), 67-913(n), (p)]	Vermont	[§§2063, 2061(16)]
Hawaii	[§410-13(c)(12), (f)]	Washington	[§§31.12.200, 31.12.190]
Kansas	[§§17-2211, 17-2208]		

SUPERVISORY COMMITTEE MAY, by unanimous vote, suspend any member of the credit committee or any officer elected by the board and shall call the members together to act on such suspension:

Rhode Island	[§19-21-24]	*South Carolina	[§8-662]

*Act also similar to Federal Act §115.

continued

SUPERVISORY COMMITTEE MAY suspend any officer, director or committee member by unanimous vote and shall call the members together to act on the suspension:

Alabama	[§5-17-13(e)]	*Mississippi	[§81-13-31]
*Colorado	[§11-30-111(1)(c)]	*Nebraska	[§21-1791]
*Connecticut	[§36-208(2)]	*New Hampshire	[§394:34,35]
Florida	[§657.11(3)]	New Mexico	[§48-19-11(D)]
*Georgia	[§41A-3108(a)]	North Dakota	[§6-06-15(4)]
Iowa	[§533.11(3)]	*Oklahoma	[§2010(E)]
*Kentucky	[§290.150(1)]	*Tennessee	[§45-1816]
*Louisiana	[§6:651]	*West Virginia	[§31-10-11]
Michigan	[§490.11(c)]		

*Only credit committee members may be suspended in this manner.

SUPERVISORY COMMITTEE MAY suspend any officer, director or member of the credit committee by unanimous vote and shall call the members together to act on the suspension; the commissioner may remove any or all members of the supervisory committee for failure to perform their duties:

California	[§§14451(a), 14452, 14455]
*Missouri	[§§370.230, 370.157]
Utah	[§7-9-13]

*Commissioner may also remove any officers or members of other committees.

OTHER ACTS:

ILLINOIS—The supervisory committee may, by unanimous vote, suspend any officer or member of any committee, and call the board together to approve the suspension. If not approved by the board the committee may call the members together to act upon the suspension. [§496.16(4)] The board may remove or suspend for cause any member, any officer or any committee member by a two-thirds vote of the board, but only after that person has been given an opportunity to be heard. [§496.13(11)]

MARYLAND—By unanimous vote, the supervisory committee may recommend to the board the suspension of any director, officer, or member of the credit committee. [§147] Within seven days after the receipt of a report or recommendation from the supervisory committee concerning the suspension of any officer, director, or member of the credit committee, the board may (with the commissioner's approval) give notice to the members of a special meeting to act on such recommendation. [§6-322(a)]

MASSACHUSETTS—The board may by a two-thirds vote remove from office for cause any officer or any member of any committee. [Ch. 171, §16]

NEVADA—The audit committee may by unanimous vote suspend any director, officer or member of the credit union and shall call the members together to act on such suspension. [§678.390(2)] The board may, by unanimous vote, suspend any member of the audit committee, and shall call the members together to act on such suspension. [§678.390(3)]

NEW JERSEY—If any director or committee member shall violate the provisions of his oath the board may, by a vote of two-thirds of those present at any meeting of the board after notice to each director and to the committee member, if any, affected, declare the position of such director or committee member to be vacant. [§17:13-33]

NEW YORK—Supervisory committee members may be removed for cause by vote of the shareholders at a regular or special meeting thereof, provided that a written copy of the charges made against each such member shall have been served upon him personally and mailed to each shareholder and to the superintendent at least two weeks before such meeting. [§471(3)] The supervisory committee may suspend any officer, director or member of the credit committee by unanimous vote and shall call the members together to act on the suspension. [§471(1)(a), (2)(b)]

OHIO—The directors may remove any director and thereby create a vacancy on the board: 1) If, by order of court, he is found to be of unsound mind, adjudicated a bankrupt, or convicted of a felony; 2) If the board, by a two-thirds majority at any meeting called for that expressly stated purpose.

Any or all directors may be removed by a two-thirds vote of the members voting at any meeting called for that express purpose.

Any officer may be removed, with or without cause, by the directors without prejudice to the contract rights of such office. The election or appointment of an officer for a given term, or a general provision in the articles, regulations, or bylaws with respect to term of office, shall not be deemed to create contract rights. [§1733.18, 1733.20(d)]

PUERTO RICO—The supervisory committee may suspend any director, officer or committee member by unanimous vote, if he should act contrary to the provisions of this act, the bylaws or the resolutions or decisions of the members' meeting. Prior to the suspension, the committee shall inform the person or persons affected of the charges preferred against them and shall give them a reasonable opportunity to defend themselves in person or by counsel, at a hearing to that effect. From the decision of the committee, appeal may be taken before the next meeting of the credit union or before the Inspector of Cooperatives. [§18(c)]

TEXAS—If the commissioner finds an offending officer, director, or employee has continued violations or practices previously charged and found, after notice and demand, and further finds that removal from office or employment is necessary and in the best interests of the credit union he shall order removal. The credit union, the director, or the person removed shall have 10 days to file for an appeal before the commissioner. [§5.09(d)]

VIRGINIA—The commission may remove from office any director or officer who violates any lawful order of the commission a second time. [§6.1-223.1] The supervisory committee may suspend any officer, director or credit committee member by unanimous vote and shall call the members together to act on the suspension. [§6.1-213]

WISCONSIN—The members may, by three-fourths vote, remove any officer and fill the vacancy caused by such removal, if the notice of meeting specified the questions to be considered.

The commissioner may request the removal of any officer, director or committeeman. If such request is not complied with within a reasonable time fixed by the commissioner he may, with approval of the credit union review board, remove such officer, director, or committeeman after there has been an opportunity for a hearing before the credit union board. [§§186.06(3)(c), 186.24]

ACT IS SILENT:

Indiana

Chapter four

THE SAVINGS

Share Capital

CUNA MODEL ACT: A credit union may receive savings from its members in the form of shares . . . The capital of the credit union consists of the payments made by members on shares. [§§3.10(6), 6.10(1)]

FEDERAL CREDIT UNION ACT: A federal credit union shall have the power to receive payments on shares and share certificates from its members, from other credit unions, from an officer, employee or agent of those non-member units of federal, state or local governments and political subdivisions thereof, and from non-members in the case of credit unions serving predominantly low-income members. [§107(6)]

ACT SIMILAR TO MODEL ACT:

Alabama	[§§5-17-4(a)(1), 5-17-14]
*California	[§§14801(a), 15100, 14800(a)]
Colorado	[§§38-1-4(1)(a), 38-1-12]
*Connecticut	[§§36-198(b), 36-200(1)]
Florida	[§§657.04(1), 657.12]
Georgia	[§§41A-3101(a), 41A-3105]
*Idaho	[§§26-2108(f), 26-2104(b)]
Illinois	[§§496.9(1), 496.18]
*Indiana	[§§28-7-1-9(a), 28-7-1-19]
Iowa	[§§533.4(1), 533.12]
Kansas	[§§17-2204(1), 17-2212]
Kentucky	[§§290.070(1), 290.160(1)]
Louisiana	[§§6:644(1), 6:652]
Maine	[§§827, 831(A)]
Maryland	[§§6-307(1), 6-308(a)]
*Michigan	[§§490.4(a), 490.12]
Minnesota	[§§52.04(1), 52.12]
*Mississippi	[§§81-13-11(a), 81-13-35]
Montana	[§§14-613(6), 14-639(1)]
**New Hampshire	[§§394.16, 394.15]
New Mexico	[§§48-19-4(A)(i), 48-19-12]
Oregon	[§§723.152(6), 723.402(1)]
Pennsylvania	[§§12305(B)(1), 12315]
**South Carolina	[§§8-656, 8-664]
Tennessee	[§§45-1806(1), 45-1824]
**Utah	[§§7-9-2, 7-9-14]
Vermont	[§§2054(6), 2071(a)]
**Washington	[§§31.12.090, 31.12.130]
West Virginia	[§§31-10-4(a), 31-10-12]

*Act uses term other than "savings"

**Act implies that capital consists, in whole or in part, of shares

A CREDIT UNION SHALL have the power to receive payments on shares from its members; act does not include reference to shares as capital:

Arkansas	[§67-905(f)]	*New Jersey	[§17:13-27(a)]
Hawaii	[§410-12(f)(6)]	**Oklahoma	[§2006(6)]
Nebraska	[§21-1773(5)]	*Virginia	[§6.1-200]

*Act uses term "savings" rather than "payments"

**Shares may also be purchased by other credit unions doing business in the state.

OTHER ACTS:

ARIZONA—A credit union may receive the funds of its members as payment on shares. The capital of a credit union shall consist of members' share accounts, special investment accounts and undivided earnings. [§§6-509(1), 6-517]

MASSACHUSETTS—A credit union may receive savings of its members in payment for shares, but share holdings of certain members are limited to a particular percentage of the credit union's assets. The capital of a credit union shall be unlimited in amount and shall consist of shares and deposits. [Ch. 171, §§6,10]

MISSOURI—A credit union has the power to receive the savings of its members in payment for shares. The capital of a credit union shall consist of the outstanding share balances of the members. [§§370.070(1), 370.240]

NEVADA—A credit union may sell shares in the manner prescribed by the by-laws; anyone who purchases one or more shares is a member. [§678.530(1)]

NEW YORK—Subject to the restrictions and limitations contained in this chapter and in its by-laws, a credit union has the power to receive sums of money from its members in payment of shares. The capital of a credit union shall consist of the payments and dividends credited to shareholders on their shares. [§§453(4), 455]

NORTH CAROLINA—A credit union may receive savings from its members in the form of shares . . . The capital of a credit union consists of the payments made by members on shares, undivided surplus and reserves. [§§54-109.21(6), 54-109.53(a)]

NORTH DAKOTA—A credit union shall have the power to . . . receive the savings of its members as payment on shares . . . The capital of a credit union shall consist of the entrance fees paid in and the payments made to it by the several members on shares therein. [§§6-06-06(1), 6-06-16]

OHIO—A credit union may allow persons to subscribe to shares; such subscription is a prerequisite for membership. The capital of a credit union is the amount paid or to be paid under subscription

continued

for all shares, fractional shares and share accounts. [§1733.01(k), (m)]

PUERTO RICO—Credit unions may incorporate under this act for the purpose of receiving the savings of its members . . . as payment for stock . . . The capital of a credit union shall not be limited in amount and shall consist of the payments made by members on shares subscribed. [§§7(a), 19]

RHODE ISLAND—A credit union may receive the savings of its members and the funds of a credit union member in payment for shares . . . The capital of the corporation shall be unlimited in amount. Shares of capital stock may be subscribed for and paid in such manner as the by-laws shall prescribe. [§§19-21-8, 19-21-6]

TEXAS—A credit union may receive from its members payments on shares . . . The capital of a credit union consists of the aggregate amount of the share and deposit accounts of its members plus all reserves and undivided earnings of the credit union. [§§4.01(6), 6.01]

ACT IS SILENT:
Wisconsin

Share Value

CUNA MODEL ACT: The par value of the shares of the credit union . . . shall be in $5 multiples, of not less than $5, nor more than $25. [§1.20(2)(c)]

FEDERAL CREDIT UNION ACT: The par value of the shares shall be $5 each. [§103(4)]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-503(4)]	Nevada	[§678.310(3)(b)]
Arkansas	[§67-919(1)]	New Mexico	[§48-19-1(C)(1)]
Idaho	[§26-2123]	No. Carolina	[§54-109.2(b)(3)]
Indiana	[§28-7-1-1(b)(6)]	Oregon	[§723.012(2)(c)]
Maine	[§831(1)(B)]	Utah	[§7-9-14]
Montana	[§14-603(2)(c)]	Vermont	[§2051(C)]

ACT SIMILAR TO FEDERAL ACT:

Colorado	[§11-30-101(2)(a)]	New Jersey	[§17:13-28(f)]
Georgia	[§41A-3102(a)]	Ohio	[§1733.24]
Hawaii	[§410—16]	South Carolina	[§8-664]
Kentucky	[§290.020(2)(c)]	Tennessee	[§45-1802]
Massachusetts	[Ch. 171, §10]	Washington	[§31.12.050(4)]
Nebraska	[§21-'762(3)]		

PAR VALUE OF SHARES NOT TO EXCEED $10 each:

Florida	[§657.01(1)(a)(3)]	New Hampshire	[§394:15]
Kansas	[§17-2201(3)]	Oklahoma	[§2002]
Maryland	[§6-308(b)]	Pennsylvania	[§12303(5)]
Michigan	[§490.1(3)]	Puerto Rico	[§9(d)]
Minnesota	[§52.01(1)(c)]	West Virginia	[§31-10-1(4)]
Mississippi	[§81-13-3(c)]		

PAR VALUE OF SHARES NOT TO EXCEED $25 each:

Alabama	[§5-17-2(b)(3)]	Missouri	[§370.020(4)]
Iowa	[§533.1(1)(c)]	New York	[§450(3)]
Louisiana	[§641(B)(3)]	Wisconsin	[§186.05(c)(2)]

OTHER ACTS:

CONNECTICUT—Act similar to Model Act, except that any credit union in existence on May 23, 1969, having a par value of shares other than as set forth in this subsection [i.e. greater than $25] shall not be required to change such par value. [§36-200(3)]

ILLINOIS—The par value of shares must be at least $5 each. [§496.2(5)]

NORTH DAKOTA—The par value of shares shall not exceed $50 each. [§6-06-02(1)]

RHODE ISLAND—The par value of shares to be provided in by-laws. [§19-21-5(c)]

TEXAS—The par value of shares shall be $5, or multiples thereof. [§2.02(5)]

ACT IS SILENT:
California Virginia

Limit On Shareholdings

CUNA MODEL ACT: It shall be the duty of the directors to limit the number of shares . . . which may be owned by a member, such limitations to apply alike to all members. [§5.56(6)]

FEDERAL CREDIT UNION ACT: The directors shall determine from time to time the maximum number of shares and share certificates and the classes of shares and share certificates that may be held. [§113]

ACT SIMILAR TO MODEL ACT:

Alabama	[§5-17-11]	Missouri	[§370.200(4)]
Arizona	[§6-513(6)]	Montana	[§14-631(6)]
California	[§14406(f)]	Nebraska	[§21-1785(5)]
Colorado	[§38-1-9(g)]	Nevada	[§678.370(4)]
Florida	[§11-30-109(1)(f)]	New Mexico	[§48-19-9(F)]
Georgia	[§41A-3107]	North Carolina	[§54-109.44(6)]
Hawaii	[§410-13(c)(5)]	North Dakota	[§6-06-12(7)]
Idaho	[§26-2116(f)]	Oklahoma	[§2010(c)]
Illinois	[§496.13(5)]	Oregon	[§723.296(6)]
Indiana	[§28-7-1-16(d)]	Pennsylvania	[§12312(7)]
Iowa	[§533.9(6)]	Puerto Rico	[§16(f)]
Kansas	[§17-2209(4)]	Rhode Island	[§19-21-22(f)]
Kentucky	[§290.130(c)]	South Carolina	[§8-661]
Louisiana	[§6:649(4)]	Tennessee	[§45-1813(4)]
Maine	[§842(2)(C)]	Vermont	[§2061(6)]
Maryland	[§316(b)(4)]	Virginia	[§6.1-211]
Michigan	[§490.9(f)]	West Virginia	[§31-10-9(d)]

OTHER ACTS:

ARKANSAS—The board of directors shall limit the number of shares to be owned by a member, not to exceed 10% of outstanding shares. [§67-913(e)]

CONNECTICUT—The board shall limit the number of shares that may be held by a member, provided that no member shall own at any time an amount of shares with a share or membership liability in excess of $50,000 exclusive of dividends thereafter credited and exclusive of shares which are insured in full under the Federal Credit Union Act. [§36-200(4), 36-203(3)(m)]

MASSACHUSETTS—Maximum shareholdings restricted as follows: $14,000 per individual, $28,000 jointly. If credit union's assets are over $500,000, $23,000 per individual and $46,000 jointly. If assets are over $4,000,000, $40,000 per individual and $80,000 jointly. However, NCUA-insured credit unions may not accept deposits or share payments in excess of coverage limits. [Ch. 171, §10]

MINNESOTA—The board of directors shall limit the maximum

number of shares to be owned by a member, not to exceed 10% of the outstanding shares, or $2,000, whichever is larger. [§52.09-2(6)]

MISSISSIPPI—Unless the bylaws reserve the duty to the members, the directors shall fix the maximum number of shares which may be held by one member. [§81-13-27(d)]

NEW HAMPSHIRE—The bylaws shall prescribe the maximum number of shares which may be held by one member. [§394:5]

NEW YORK—Maximum shareholdings determined by the board of directors, but subject to the following restrictions: (a) If the capital is $100,000 or less—not to exceed 10% of amount paid in on shares. In any event, a member may hold shares with a par value of up to $2,000. (b) If the capital is more than $100,000, but not over $2 million—not to exceed $10,000. Or, if insured by the N.C.U.A.—not to exceed the insured limit or $10,000, whichever is greater. (c) If the capital is over $2 million—not to exceed $15,000. Or, if insured by N.C.U.A.—not to exceed the insured limit, or $15,000, whichever is greater. [§453(11)]

WASHINGTON—Maximum shareholdings is $500 or 20% of total shares and deposits, whichever is greater. [§31.12.130]

ACT IS SILENT:

New Jersey Texas Wisconsin
Ohio Utah

Deposits or Classes of Shares

(Savings instruments other than traditional share account)

CUNA MODEL ACT: A credit union may receive savings on deposit from its members, subject to such conditions as the board of directors establishes. Deposits differ from shares in that a predeclared rate of return may be established on deposits and they have a prior claim on the assets of the credit union . . . Dividends are payable on such classes of shares as are determined by the board. [§6.20(1)(2), 6.12]

FEDERAL CREDIT UNION ACT: A federal credit union shall have the power to receive payments on shares and share certificates from its members, from other credit unions, from an officer, employee, or agent of those nonmember units of federal, state, or local governments and political subdivisions thereof, and from nonmembers in the case of credit unions serving predominantly low-income members. [§107(6)]

A CREDIT UNION MAY RECEIVE the savings of its members as deposits:

Alabama	[§5-17-4(a)(1)]	North Dakota	[§6-06-06(1)]
Colorado	[§38-1-4(1)(a)]	Texas	[§6.03]
Florida	[§657.04(1)]	Utah	[§7-9-2]
Kentucky	[§290.070(1)]	Vermont	[§2054(6)]
Maryland	[§6-307(1)]	Washington	[§31.12.090]
New Mexico	[§48-19-4(A)(1)]	West Virginia	[§31-10-4(a)]

A CREDIT UNION MAY RECEIVE DEPOSITS from members and from the specified groups:

Georgia—Non-members, in such manner as the bylaws provide. [§41A-3101(a)(b)]
Mississippi—Other credit unions. [§81-13-11(a)]
North Carolina—Non-members, as provided by the board and the bylaws. [§54-109.55]
Oklahoma—Other credit unions, state and federal, doing business in the state. [§2006(7)]
Puerto Rico—Non-members. [§7(a)]

A CREDIT UNION MAY RECEIVE DEPOSITS and provide for classes of shares, according to conditions, maturities and rates:

Hawaii	[§410-12(f)(6)]	*Oregon	[§723.406, .412, .184]
Iowa	[§533.18(1)]	Rhode Island	[§19-21-5(d), 19-21-8]
Maine	[§827, 833]		
Michigan	[§490.4(a)]	Wisconsin	[§186.16]
Nevada	[§678.560, 678.700]		

*May also receive deposits from state under deferred compensation program.

A CREDIT UNION MAY PROVIDE FOR CLASSES OF SHARES, according to conditions, maturities and rates:

California	[§15200]	Missouri	[§370.070(1)]
Connecticut	[§36-210]	Montana	[§14-640(1)]
Illinois	[§496.22]	Nebraska	[§21-17, 105]
Indiana	[§28-7-1-9(g)]	Ohio	[§1733.24]
Louisiana	[§6:658(A)]	Virginia	[§6.1-219]

DEPOSIT ACCOUNTS PROHIBITED:

Arkansas—No credit union shall carry any demand, commercial or checking accounts, or issue any time or demand certificates of deposit. [§67-906]

New York—Act states no credit union shall accept money for deposit. However, act contains references to deposits being received in connection with a minor's account or a trust account. Subject to limitations, a credit union may receive payments on share certificates which may be issued at varying interest rates and maturities established by board of directors. [§§454(14)(a), 453(15),(16), 453]

OTHER ACTS:

ARIZONA—A credit union may receive the funds of its members in special investment accounts. [§6-509(1)(2)] A credit union may accept direct deposits of net pay for state, county, municipal or school district employees. [§23-351]

IDAHO—Members may purchase certificates of deposit for a specified period and bearing a guaranteed rate of interest. [§26-2123]

MASSACHUSETTS—A credit union may receive deposits and provide for classes of shares according to conditions, maturities and rates. [Ch. 171, §10A,B]. A credit union may act as trustee under a profit sharing plan, but the deposit accounts of any person, partnership or corporation may not exceed $75,000 or 1½% of the deposits or shares of the credit union, whichever is greater. [Ch. 171, §10C]

MINNESOTA—A credit union may receive deposits and provide for classes of shares according to conditions, maturities and rates. Credit unions may accept deposits of public funds but such accounts must be covered by insurance or else the credit union must provide security or surety bond coverage. U.S. Treasury tax and loan accounts may be accepted. [§52.04 (17,18)]

NEW HAMPSHIRE—A credit union may receive money from members on deposit and on payment of shares, upon such terms and in amounts as bylaws provide. [§394.16]

SOUTH CAROLINA—A credit union may issue share certificates, subject to same withdrawal penalties, maximum rates, and minimum dollar requirements as NCUA sets for federal credit unions. Except no maximum rate on corporate certificates. [L.1978, H.3888]

TENNESSEE—A credit union may receive members' special accounts. [§45-1806]

ACT IS SILENT:

Kansas New Jersey Pennsylvania

Thrift Club Accounts

(Special purpose thrift accounts)

CUNA MODEL ACT: Christmas clubs, vacation clubs, and other thrift accounts may be operated under the conditions established by the board of directors. [§6.24]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Alabama	[§5-17-4(a)(1)]	Nebraska	[§21-1773(4)]
Arkansas	[§67-905(f), 67-920]	Nevada	[§678.560(2)]
Colorado	[§11-30-104(1)(a)]	New Jersey	[§17:13-27(a)]
Florida	[§657.04(1)]	New Mexico	[§48-19-4(A)(2)]
Hawaii	[§410-17]	North Carolina	[§54-109.56]
Idaho	[§26-2123]	North Dakota	[§6-06-06(1)]
Indiana	[§28-7-1-25]	Oregon	[§723.416]
Iowa	[§533.4]	Tennessee	[§45-1806(1)]
Maine	[§827]	Texas	[§6.04]
Minnesota	[§52.04(1)]	Vermont	[§2073]
Missouri	[§370.070(9)]	West Virginia	[§31-10-4(a)]
Montana	[§14-641]	Wisconsin	[§186.113(11)]

OTHER ACTS:

ARIZONA—A credit union may receive the funds of its members, employees of members, sponsors or profit or pension trusts of such members, employers or sponsors in special investment accounts. [§6-509(2), 6-513(B)(4)]

CONNECTICUT—A credit union may issue short term shares in connection with accounts upon which payments may be made at the option of the members to be withdrawn within fifteen months and on which no dividends need be paid. [§36-198(a)]

MASSACHUSETTS—A credit union may accept deposits at intervals within a period of 12 months, of sums of money to be known as club deposits, not to exceed $4,000, and may pay interest or dividends thereon. [Ch. 171, §10]

VIRGINIA—A credit union may issue short term savings shares. [§6.1-200]

ACT IS SILENT:

California	Michigan	Pennsylvania
Georgia	Mississippi	Puerto Rico
Illinois	New Hampshire	Rhode Island
Kansas	New York	South Carolina
Kentucky	Ohio	Utah
Louisiana	Oklahoma	Washington
Maryland		

Withdrawal Notice Requirements

CUNA MODEL ACT: Act is silent.

FEDERAL CREDIT UNION ACT: Act is silent.

CREDIT UNION MAY REQUIRE 60 days notice of intention to withdraw shares and 30 days notice of intention to withdraw deposits:

Alabama	[§5-17-6]	Michigan	[§490.19]
California	[§15404]	Minnesota	[§52.19]
Florida	[§657.19]	New Mexico	[§48-19-19]
Iowa	[§533.19]	North Dakota	[§6-06-27]

CREDIT UNION MAY REQUIRE notice to withdraw shares in the bylaws:

Colorado	[§11-30-119]	Maryland	[§6-322(b)(2)]

CREDIT UNION MAY REQUIRE 60 days notice of intention to withdraw shares:

Arizona	[§6-507]	Missouri	[§370.340]
Connecticut	[§36-200(5)]	Nebraska	[§21-17,102]
Illinois	[§496.7]	Ohio	[§1733.24(H)]
Indiana	[§28-7-1-26]	Pennsylvania	[§12324]
Kansas	[§17-2219]	Texas	[§6.02(c)]
Louisiana	[§6:659]		

CREDIT UNION MAY REQUIRE 60 days notice to withdraw deposits:

Georgia	[§41A-3104]	West Virginia	[§31-10-23]

WRITTEN NOTICE OF WITHDRAWAL of shares may be required:

New York	[§463]	Oklahoma	[§2012]

CREDIT UNION MAY REQUIRE notice of withdrawal:

Arkansas—60 days (shares), 60 days (deposits). [§67-908]
Idaho—20 days (shares), 20 days (deposits). [§26-2111]
Massachusetts—90 days (shares), 60 days (deposits). [Ch. 171 §10]
Mississippi—90 days on deposits; not specified on shares. [§81-13-57]
New Jersey—30 days (shares). [§17:13-38]
Puerto Rico—30 days (deposits), 90 days (shares). The board may require, whenever it may deem necessary, that notice of withdrawal be given with more anticipation, provided it obtains the approval of the Inspector of Cooperatives. [§31]
Tennessee—Written notice (shares), 60 days (special accounts). [§45-1827]
Washington—90 days (shares), 60 days (deposits). [§31.42.130]

ACT IS SILENT:

Hawaii	New Hampshire	Utah
Kentucky	North Carolina	Vermont
Maine	Oregon	Virginia
Montana	Rhode Island	Wisconsin
Nevada	South Carolina	

Transfer of Shares and Deposits

CUNA MODEL ACT: Shares may be subscribed to, paid for and transferred in such manner as the bylaws prescribe. [§6.10(2)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-919(1)]	North Carolina	[§54-109.53(b)]
Hawaii	[§410-16]	Oregon	[§723.402(2)]
Montana	[§14-639(2)]	Texas	[§6.02(a)]
Nevada	[§678.530(1)]	Vermont	[§2071]

THE BYLAWS SHALL PRESCRIBE the conditions under which shares may be transferred or withdrawn:

Arizona	[§6-503(B)(5)]	New Hampshire	[§394:5]
California	[§14202(g)]	New York	[§451(2-a)(7)]
Georgia	[§41A-3002(5)]	Rhode Island	[§19-21-5(d)]
Indiana	[§28-7-1-4(e)]	South Carolina	[§8-655(5)]
Kansas	[§17-2201(5)]	Tennessee	[§45-1803(5)]
Kentucky	[§290.030]	Utah	[§7-9-6(5)]
Maine	[§813(2)(B)(4)]	Washington	[§31.12.100(3)]
Massachusetts	[Ch. 171, §7(d)]	West Virginia	[§31-20-1(b)(5)]
Mississippi	[§81-13-5(e)]	*Wisconsin	[§186.05(3)]
Missouri	[§370.030(5)]		

*Act refers to "accounts" rather than "shares".

OTHER ACTS:

IDAHO—Shares may be transferred in such manner as the bylaws may prescribe. [§26-2123]

MARYLAND—A member of a credit union may subscribe and pay for shares as provided in the bylaws. [§6-308(c)]

NEBRASKA—The bylaws shall provide the conditions upon which shares may be issued and withdrawn. [§21-1769(6)]

NEW JERSEY—A non-member who acquires title to the shares of a member may withdraw such shares, but he shall have no other rights of membership. [§17:13-37(a)]

OHIO—Shares in a credit union may be negotiated or transferred only to the credit union which issued them, except on liquidation, in which event the accounts may be transferred to the liquidating agent or acquiring owner. [§1733.24(d)]

PENNSYLVANIA—Shares are transferable only to other members. [§12315]

VIRGINIA—Shares are transferable as the bylaws provide, but only to the account of another member, or to a federal agency or a corporation organized pursuant to the Virginia Credit Union Share Insurance Act, upon payment by such agency or corporation of a claim based upon such shares. [§6.1-198(5), 6.1-206]

ACT IS SILENT:

Alabama
Colorado
Connecticut
Florida
Illinois
Iowa
Louisiana
Michigan
Minnesota
New Mexico
North Dakota
Oklahoma
Puerto Rico

Joint Accounts

CUNA MODEL ACT: A member may designate any person or persons to hold shares, deposits and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment discharge the liability to all. [§6.32]

FEDERAL CREDIT UNION ACT: Shares may be issued in joint tenancy with right of survivorship with any person designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans or hold office unless he is within the field of membership and is a qualified member. [§109]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-508]	Kansas	[§17-2213]
Arkansas	[§67-921]	Missouri	[§370.287]
Hawaii	[§410-19]	Montana	[§14-643]
Idaho	[§26-2124]	North Carolina	[§54-109.58]
Iowa	[§533.13(1)]		

ACT SIMILAR TO MODEL ACT, but also provides that proceeds of life insurance covering shares or deposits shall be payable to the surviving joint tenant:

Vermont [§2074]

ACT SIMILAR TO FEDERAL ACT:

Georgia	[§41A-3103]	New York	[§453(i)]
Indiana	[§28-7-1-20.1]	Oregon	[§723.426]
New Jersey	[§17:13-37(b)]	Wisconsin	[§186.113(3)]

SHARES MAY BE ISSUED IN JOINT TENANCY with any person or persons designated by the credit union member. Payment of all or part of such accounts to any of the joint tenants, or, in the event of death of one, to the surviving joint tenant(s) shall be valid:

Alabama	[§5-17-15]	New Mexico	[§48-19-5(c)]
California	[§14800(a)(2),(e)]	Ohio	[§1733.24(e)]
Colorado	[§11-30-103(4)]	Rhode Island	[§19-21-7]
Louisiana	[§6:664]	Tennessee	[§45-1834]
Minnesota	[§52.13]	Washington	[§31.12.140]

OTHER ACTS:

CONNECTICUT—Act provides for joint tenancy with right of survivorship where one or both co-tenants are minors. [§36-200(6)]

ILLINOIS—Act permits joint tenancy or survivorship plans for issuance of shares in the name of two or more persons. In survivorship accounts, payments may be made in whole or in part to any of the named persons regardless of whether the others are living but only if an agreement permitting such payment was signed and dated by all persons at the time the shares were issued or at some later date. In joint accounts, any of the owners may make withdrawals without further permission of the others. At least one of the persons in a joint or survivorship account must be a member of the credit union at which the account is established and only that person may vote at a meeting of the members. [§196.8]

MAINE—Act contains detailed provisions regulating joint tenancy for all financial institutions. Payment of all or part of such accounts to any one of the joint tenants, whether the other or others be living or not, or to the legal representative of the survivor, shall be valid. [§427(4)]

MASSACHUSETTS—Shares and deposits may be held in joint tenancy in the name of two or more members. Any part or all of the joint account may be withdrawn, assigned or transferred by any of the individual parties. Payment to any of the parties while all of them are alive discharges the credit union's liability to all. If any of the parties dies, the credit union is liable only to the survivor(s) and payment to any of the survivors discharges the credit union's liability to all. [Ch. 171, §10]

MICHIGAN—Act contains detailed provision regulating credit union multiple party accounts. A "multiple-party account" is defined as an account in the names of two or more persons, one or more or all of whom may make withdrawals, or an account in the name of one or more parties as trustee for one or more beneficiaries even though no mention is made of a right of withdrawal by a beneficiary. Excluded are accounts established for deposit of funds of a partnership, joint venture or other association or accounts controlled by two or more persons as the duly authorized agents or trustees for a corporation, unincorporated association, charitable or civic organization or any trust, except trusts of deposits evidenced only by the form of the deposit. At least one party to a multiple-party account shall be a member of the credit union in which the account is established. [§490.56]

NEVADA—Act contains detailed provisions concerning multiple-party and survivorship accounts. The death of any party to a multiple-party account has no effect on the beneficial ownership of the account other than to transfer the decedent's right to his estate un-

continued

less the account is a trust or joint tenancy. A multiple-party account payable to two or more persons, jointly or severally, which does not expressly provide that there is not a right of survivorship, though there is no mention of survivorship or joint tenancy, is presumed to be a survivorship account. At the death of a party, sums on deposit in a survivorship account belong to the surviving party or parties as against the estate of the decedent. The right of survivorship continues between survivors. [§678.570-678.600]

PENNSYLVANIA—Act provides for joint tenancy, but payment to one person in joint tenancy only valid if all have agreed to such payment in writing. The co-owner of a joint account may, with the credit union's consent, give the credit union written notice not to honor any or all requests for withdrawal of shares of any other co-owner of the joint account. The Act specifies which provisions are applicable to share accounts in the names of a husband and wife. [§12316]

TEXAS—Act similar to Model Act, but a multiple-party account payable to two or more persons, jointly or severally, that does not expressly provide that there is a right of survivorship, is presumed to be a nonsurvivorship account. [§6.05]

VIRGINIA—Act provides for joint tenancy, except upon written request of one co-tenant, the credit union may refuse any withdrawals, pending the determination of the parties' rights. [§6.1-208.2]

ACT IS SILENT:

Florida	Nebraska	Puerto Rico
Kentucky	New Hampshire	South Carolina
Maryland	North Dakota	Utah
Mississippi	Oklahoma	West Virginia

Trust Accounts

CUNA MODEL ACT: Shares may be issued and deposits held in the name of a member in a trust for a beneficiary, including a minor, but no beneficiary, unless a member in his own right, shall exercise the rights of membership or be required to pay an entrance or membership fee. Payment of part or all of such shares or deposits to such member shall discharge the liability of the credit union to the member and beneficiary, and the credit union shall be under no obligation to see to the application of such payment. Upon death of the member, if the credit union has been given no other written notice of the terms of any trust, such shares or deposits and any dividends or interest shall be paid to the beneficiary. [§6.34]

FEDERAL CREDIT UNION ACT: Shares may be issued in the name of a minor or in trust, subject to such conditions as may be prescribed by the bylaws. When shares are issued in trust, the name of the beneficiary shall be disclosed to the federal credit union. [§119]

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-923]	Ohio	[§1733.24(f)]
California	[§14853]	Oregon	[§723.432]
Hawaii	[§410-21]	Texas	[§6.07]
Idaho	[§26-2126]	Utah	[§7-9-15]
Massachusetts	[Ch. 171,§10]	Vermont	[§2076]
Michigan	[§490.57]	Virginia	[§6.1-207]
Montana	[§14-644]	Rhode Island	[§19-21-26]
New Jersey	[§17:13-45]		

ACT SIMILAR TO FEDERAL ACT:

Arizona	[§6-508]	Missouri	[§370.280]
Florida	[§657.12]	New Mexico	[§48-19-12]
Georgia	[§41A-3103]	New York	[§454(5)]
Illinois	[§496.8]	North Dakota	[§6-06-17]
Louisiana	[§6:654]	Pennsylvania	[§12317]
Maryland	[§6-308(c)(2)]	Puerto Rico	[§24]
Mississippi	[§81-13-37]	Tennessee	[§45-1818]

IF SHARES ARE HELD OR DEPOSITS MADE IN TRUST, the name of the beneficiary shall be disclosed. Such shares or deposits, upon the death of the trustee, may be withdrawn by the named beneficiary or his legal representative:

Iowa	[§533.12(2)]	West Virginia	[§31-10-13]
North Carolina	[§54-109.57]		

IF SHARES ARE HELD IN TRUST, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of the holder as trustee for such person. Such shares may, upon the death of the trustee, be withdrawn by the person for whom the shares were held, or by his legal representative:

Kentucky	[§290.170(2)]	Wisconsin	[§186.10]
South Carolina	[§8-665]		

WHEN ANY SHARES OR DEPOSITS shall be held by any person in trust for another, and no other written notice of the existence of any valid and legal trust shall have been given to the credit union, upon the death of the trustee, the same and any interest or dividends thereupon may be paid to the beneficiaries thereof.

Minnesota	[§52.13]	New Hampshire	[§394.19]

OTHER ACTS:

ALABAMA—A credit union may accept deposits of fiduciary funds if a member is the beneficiary, trustee or personal representative and if the funds are part of the estate of a deceased member. The name of the beneficiary of shares or deposits received in trust must be disclosed to the credit union. If no other notice of the existence and terms of such trust has been given in writing to the corporation, such shares or deposits may, upon the death of the trustee, be transferred to or withdrawn by the person who was named by the trustee as the beneficiary or by his legal representative, and such transfer or withdrawal shall release the corporation, from liability to any other claimant upon such shares or deposits. [§§5-17-4(a)(2), 5-17-15]

CONNECTICUT—No credit union shall issue shares to or receive payments on shares from one person in trust for another unless the same is accompanied by a statement signed by the member giving the name and residence of the beneficiary and setting forth to whom the principal and interest or dividends on such shares belong. Unless provision is made to the contrary in such statement, such shares may, upon the death of the trustee, be paid to the beneficiary and any credit union shall be fully protected in making such payment. In the case of a trust created by deed, will or other instrument, a certified copy of the instrument establishing such trust shall be filed by the member if at any time requested by such credit union. [§36-200(7)]

INDIANA—Shares may be issued in trust in such way and manner as the bylaws provide. [§28-7-1-20.1]

MAINE—Act contains provisions for fiduciary deposits or accounts for all financial institutions. Upon the death or disability of any fiduciary, the value of such deposit or account may be paid, at the option of the institution, and in the absence of notice of the exist-

ence and terms of a trust, either to the executor, administrator, conservator or guardian of such fiduciary, or to any substituted fiduciary, or to the person, if any, who is designated on the records of the institution as the beneficiary of such deposit, if of the age of 15 years or upwards, or to the guardian or parent or person standing in loci parentis to such person if under the age of 15 years. [§427(2)]

NEVADA—Except where there is evidence of a trust other than as provided by the form of the account, the account and any sums withdrawn therefrom are presumed to belong to the trustee, and upon his death, or the death of the surviving trustee, to the person or persons named as beneficiaries. If no beneficiary survives the trustee the sums are presumed to belong to the estate of the trustee or the last trustee to die. [§678.610]

ACT IS SILENT:

Colorado	Nebraska	Washington
Kansas	Oklahoma	

Minors' Accounts

CUNA MODEL ACT: Shares may be issued to and deposits received from a minor who may withdraw the shares and deposits, including the interest and dividends thereon. Deposits and share payments made by a minor and withdrawal thereof by a minor shall be valid in all respects. For such purposes a minor is deemed of full age. [§6.30]

FEDERAL CREDIT UNION ACT: Shares may be issued in the name of a minor or in trust, subject to such conditions as may be prescribed by the bylaws. [§119]

ACT SIMILAR TO MODEL ACT:

Colorado	[§11-30-113]	Oregon	[§723.422]
Nevada	[§678.520(1)]	Utah	[§7-9-15]
Ohio	[§1733.24(g)]		

ACT SIMILAR TO FEDERAL ACT:

Alabama	[§5-17-15]	Mississippi	[§81-13-37]
Arizona	[§6-508]	Missouri	[§370.280]
Florida	[§657.13]	New Mexico	[§48-19-13]
Georgia	[§4A-3103]	North Dakota	[§6-06-17]
Indiana	[§28-7-1-20.1]	Pennsylvania	[§12317]
Louisiana	[§6:653]	Puerto Rico	[§24]
Maryland	[§6-308(c)(2)]	Tennessee	[§45-1818]

SHARES MAY BE ISSUED in the name of a minor, and such shares may be withdrawn by such minor and payments made on such withdrawals shall be valid:

Arkansas	[§67-922]	Montana	[§14-642]
Hawaii	[§410-20]	Nebraska	[§21-796]
Idaho	[§26-2125]	Texas	[§6.06]
Illinois	[§496.8]	Vermont	[§2075]
Iowa	[§533.13(2)]	Virginia	[§6.1-207]
Kentucky	[§290.170]	West Virginia	[§31-10-13]
Michigan	[§490.13]		

SHARES MAY BE ISSUED in the name of minors, and may, in the discretion of the directors, be withdrawn by such minor or his parents or guardian and payments made on such withdrawals shall be valid:

Massachusetts	[Ch. 171, §11]	South Carolina	[§8-665]
New Hampshire	[§394:18]	Washington	[§31.12.140]
North Carolina	[§54-109.57]	Wisconsin	[§186.10]
Rhode Island	[§19-21-25]		

A CREDIT UNION MAY RECEIVE money for shares from minors or in the name of minors, and may pay the same to such minors, whether or not they are emancipated, until receiving a certified copy of the appointment of a legal guardian. Payments so made shall discharge the credit union from any further liability for the money so paid:

Kansas	[§17-2212]	Minnesota	[§52.13]

MINORS OVER THE AGE OF 16 may become members and enjoy all the rights and privileges and incur all the obligations and liabilities of members, but may not hold office until 21:

New Jersey	[§17:13-37(a)]	Oklahoma	[§2014]

OTHER ACTS:

CALIFORNIA—Act similar to Model Act, but provides that the receipt or acquittance of a minor whose parent or guardian has consented to the account, whether before or after any transaction therein, constitutes a valid release and discharge of the credit union for the payment of dividends, interest, or other money due such minors. [§14800(b)]

CONNECTICUT—Act provides for minors to hold shares with right to dividends, including privilege of pledge or assignments. [§36-200(6)]

MAINE—Money deposited in the name of a minor is his property, and a financial institution may, in the discretion of the officer making or authorizing the payment, pay the same to such minor, to his order or to his guardian. The receipt of such minor, or his guardian, for any such payment is a valid release and shall discharge the institution. [§427(1)]

NEW YORK—A credit union may issue shares to any minor over 15. Any deposit made in his name shall be held for his exclusive right, free from control or lien from all other persons except creditors and payments made in withdrawals shall be valid [§453(15)]

Individual Retirement Accounts

CUNA MODEL ACT: Act is silent.

FEDERAL CREDIT UNION ACT: Act is silent. (NOTE: The Internal Revenue Code, §401(d)(1), refers to the definition of an "insured credit union" in the Federal Credit Union Act, §101(6), in qualifying federally insured credit unions to serve as custodians or trustees of individual retirement accounts.)

CREDIT UNION MAY ACT AS CUSTODIAN of qualified pension plans:

Nevada	[§678.490(4)]	Oregon	[§723.152(22)]

CREDIT UNION MAY ACT AS TRUSTEE or custodian under the Employee Retirement Income Security Act of 1974, provided the funds of such accounts are invested in shares of the credit union:

Louisiana	[§6:645(13)]	Virginia	[§6.1-207.1]
*New Hampshire	[§394:16-a]		

*Investment in credit union shares is permissible, but not mandatory.

SUBJECT TO THE SPECIFIED CONDITIONS, credit union may act as trustee or custodian under the Self-employed Individuals Retirement Act of 1962 or the Employee Retirement Income Security Act of 1974:

continued

Maine—Subject to the conditions and limitations set forth in Section 422 of the state financial code. [§823(5)]

Massachusetts—If the provisions of such retirement plan have been approved by the commissioner, and allow for the investment of funds in the credit union's shares or deposits. [Ch. 171, §10(C)]

Minnesota—Upon approval of the commissioner of banks of an application in the prescribed form filed with him together with a filing fee of $100. [§52.135]

New York—Subject to any regulations and restrictions prescribed by the superintendent of banks, and provided the funds are invested exclusively in share accounts of insured state and federal credit unions in the state. [§453(1-a), (1-b)]

Rhode Island—Subject to any regulations and restrictions prescribed by the director of business regulation, and provided the funds are invested exclusively in deposits in credit unions. [§19-21-8]

CREDIT UNION MAY ACT AS TRUSTEE of the specified accounts, provided the funds of such accounts are invested only in share accounts in or obligations issued by the credit union:

Idaho—Any trust created in the U.S. and forming part of a stock bonus, pension, or profit-sharing plan qualified for specific tax treatment under §401(d), §403(b), or §408(a) of the Internal Revenue Code of 1954, as amended. [§26-2151]

Illinois—Individual retirement accounts or plans established pursuant to §401(d)(f) or §408(a) of the Internal Revenue Code, as amended and insured pursuant to §101(6) of the Federal Credit Union Act, for its members or groups of its members. [§496.9(17)]

Indiana—Any trust created in the U.S. and forming part of a stock bonus, pension, or profit-sharing plan qualified for specific tax treatment under §408(a) or §401(d) of the Internal Revenue Code of 1954, as amended. [§28-7-1-9(p)]

OTHER ACTS:

ARIZONA—A credit union may receive the profit or pension trusts of its members, employers or sponsors in special investment accounts. [§6-509(2)]

CONNECTICUT—With approval of the commissioner, a credit union may receive from a member payments on shares as an individual retirement account, as authorized by §408 of the Internal Revenue Code of 1954 or of a Keogh or similar type retirement plan as authorized by §410(c). [§36-260(8)]

FLORIDA—A credit union may accept payments from a governmental employee as premiums on an annuity contract issued in the name of such employee or as payment into a qualified custodial account established pursuant to §403(b) of the Internal Revenue Code. Any such annuity contract or custodial account shall be in such payments thereon for tax deferment under the Internal Revenue Code. [§112.21]

GEORGIA—Credit unions may, with approval of the Department, exercise all the powers and privileges of trust companies, including the power to act as trustees for individual retirement accounts and other IRS-approved plans. [§41A-1401]

HAWAII—A credit union may provide pension savings programs and deferred income accounts. [§410-39(6)]

MICHIGAN—A credit union may receive funds from a public employee retirement system or plan as shares or deposits, if the credit union is federally insured. [§490.4(T)]

NEBRASKA—A credit union may act as trustee or custodian under the Federal Self-Employed Individuals Retirement Act of 1962, as amended, or §408(a) of the Internal Revenue Code if the funds therefrom are invested exclusively in shares or accounts in credit unions. [L. 1975, L.B. 452, §1]

NORTH CAROLINA—A credit union may act as custodian of qualified pension funds if permitted by federal law; and, subject to the rules and regulations of the administrator, may act as trustee or custodian under any written trust instrument or custodial agreement created or organized and forming part of a deferred compensation plan for its members or groups of members, provided the funds from such plans are invested in savings or deposits of the credit union. [§54-109.21(21)(26)]

TEXAS—A credit union may act as custodian of individual retirement accounts, custodian of pension funds of self-employed individuals or of the sponsor of a credit union, or as trustee under pension and profit-sharing plans, subject to standards prescribed by regulation. [§4.01(11)]

WISCONSIN—A credit union may provide pension savings programs, and deferred income, pension, and similar types of accounts. [§186.113(6)(11)]

ACT IS SILENT:

Alabama	Mississippi	Pennsylvania
Arkansas	Missouri	Puerto Rico
California	Montana	South Carolina
Colorado	New Jersey	Tennessee
Iowa	New Mexico	Utah
Kansas	North Dakota	Vermont
Kentucky	Ohio	Washington
Maryland	Oklahoma	West Virginia

Dividends - Frequency Of

CUNA MODEL ACT: At such intervals and for such periods as the board of directors may authorize, and after provision for the required reserves, the board of directors may declare dividends to be paid from the undivided earnings on all paid up shares outstanding at the close of the period for which the dividend is declared. [§6.12(1)]

FEDERAL CREDIT UNION ACT: At such intervals as the board of directors may authorize, and after provision for the required reserves, the board may declare, pursuant to such regulations as may be issued by the Board, a dividend to be paid. [§117]

ACT SIMILAR TO MODEL ACT:

Alabama	[§5-17-20]	Montana	[§14-640(1)]
Colorado	[§11-30-118]	Nevada	[§678.700(1)]
Florida	[§657.18]	Oregon	[§723.406(1)]
Idaho	[§26-2130]	Wisconsin	[§186.16(1)]
Iowa	[§533.18(1)]		

ACT SIMILAR TO FEDERAL ACT:

Louisiana	[§6:658(A)]	Hawaii	[§410-24]

DIVIDEND DECLARED AT DISCRETION OF BOARD OF DIRECTORS, but not more often than quarterly:

Arizona	[§6-522(A)]	North Dakota	[§6-06-26]
Georgia	[§41A-3111]	Utah	[§7-9-21(1)]
Indiana	[§28-7-1-25]		

DIVIDEND DECLARED AT DISCRETION OF BOARD OF DIRECTORS, and as its bylaws may provide:

Arkansas	[§67-927(1)]	North Carolina	[§54-109.54]
Connecticut	[§36-210(1)]	Oklahoma	[§2013]
Illinois	[§496.22]	Vermont	[§2081]
Maine	[§833(1)(A)]	Virginia	[§6.1-219]
Missouri	[§370.330(1)]		

DIVIDEND DECLARED BY THE BOARD OF DIRECTORS quarterly, semi-annually, or annually as the bylaws may provide:

Maryland	[§155]	Tennessee	[§45-1826(a)]

BOARD OF DIRECTORS MAY DECLARE AND PAY a dividend quarterly, semi-annually, or annually:

Michigan	[§490.18(a)]	South Carolina	[§8-672]
Mississippi	[§81-13-53]	Washington	[§31.12.190]

DIVIDEND DECLARED BY THE BOARD OF DIRECTORS at the end of the fiscal year on all fully paid outstanding shares:

New Hampshire	[§394.42]	West Virginia	[§31-10-21]

AT LEAST ANNUALLY the board shall declare a dividend on all fully paid outstanding stock:

Massachusetts	[Ch. 171, §25]	New Jersey	[§17:13-41(a)]

OTHER ACTS:

CALIFORNIA—The board of directors may declare dividends annually, semi-annually, or with the approval of the commissioner, quarterly. [§15200]

KANSAS—After providing for required reserves, the board of directors may declare a dividend to be paid from net earnings or from other funds set aside for dividends at such intervals and in such a manner as the board of directors may authorize. [§17-2218]

KENTUCKY—The board of directors may declare a dividend to be paid from the remaining net earnings at least annually and after provision for the required reserves. [§290.250(1)]

MINNESOTA—The board of directors may declare any dividend on a daily, monthly, quarterly, semi-annual, or annual basis. [§52.18]

NEBRASKA—Dividends declared at least annually as provided for in the bylaws. [§21-1769(12), 21-17,105(1)]

NEW MEXICO—Dividends declared by board of directors. [§48-19-18]

NEW YORK—If the bylaws so provide, a majority of the directors may declare an annual dividend during the first quarter of the calendar year, a semi-annual dividend during the first and third quarters, or quarterly dividends. [§459]

PENNSYLVANIA—The directors or the members on recommendation of the directors, whichever the bylaws provide, may declare an annual, semi-annual, or quarterly dividend. [§12323]

PUERTO RICO—Declared by the membership at the annual meeting, on the recommendation of the board. [§29]

RHODE ISLAND—Declared at annual meeting, or if the bylaws provide for semi-annual or quarterly dividends, at meetings held not more than 15 days prior to nor more than one month after the close of the dividend period. [§19-21-35]

TEXAS—Dividends declared by board in accordance with rules and regulations promulgated by the commissioner. [§9.02]

ACT IS SILENT:

Ohio

Dividend Rate Ceiling

CUNA MODEL ACT: The board of directors may declare dividends to be paid from the undivided earnings at such rates and upon such classes as are determined by the board. [§6.12(1)]

FEDERAL CREDIT UNION ACT: The board of directors may declare, pursuant to such regulations as may be issued by the Board, a dividend to be paid at different rates on different types of shares and at different rates and maturity dates in the case of share certificates. [§117]

ACT SIMILAR TO MODEL ACT:

Iowa	[§533.18(1)]	Nevada	[§678.700(1)]
Montana	[§14-640(1)]	Oregon	[§723.409(1)]

ACT SIMILAR TO FEDERAL ACT:

Louisiana	[§6:658(A)]	Hawaii	[§410-24]

DIVIDEND NOT TO EXCEED SPECIFIED RATE without the approval of the supervisory department:

Arkansas—6%	[§67-927(3)]	Georgia—7%	[§41A-3111]

DIVIDEND RATE SET BY DIRECTORS and not to exceed percentage indicated:

Colorado—7%	[§11-30-118]	New Jersey—7%	[§17:13-41(a)]
Florida—7-1/2%	[§36-210(2)]	Oklahoma—7%	[§2013]
Maryland—8%	[§155]	Tennessee—6%	[§45-1826]

DIVIDEND RATE MAY VARY on different classes of shares, but no ceiling specified:

California	[§15200]	Missouri	[§370.070(1)]
Illinois	[§496.22]	Nebraska	[§21-17, 105]
Indiana	[§28-7-1-9(g)]	Ohio	[§1733.24]
Michigan	[§490.4(a)]	Rhode Island	[§19-21-22]
Minnesota	[§52.04, 52.18]	Virginia	[§6.1-219]

OTHER ACTS:

ALABAMA—The directors may declare a dividend from net earnings as the bylaws may provide. [§5-17-20]

CONNECTICUT—Dividends not to exceed 6% per annum, except that the commissioner shall establish by regulation higher rates to be paid on shares having an agreed maturity. If the bylaws so provide, a credit union may declare a dividend at a rate or rates which vary in relationship to par value and length of time shares remain in credit union. [§36-210]

KANSAS—The rate of dividend paid in the event of withdrawal of shares during an accounting period shall not exceed that rate paid for the previous accounting period. [§17-2218]

MAINE—The board may establish dividend rates for Christmas club accounts and the like. The superintendent may establish rate ceilings by regulation, but in the absence of such regulations dividends shall not exceed 7% per year. [§833(2)(3)]

MASSACHUSETTS—Dividend not to exceed 8% until the guaranty fund equals 15% of the assets. At that time special dividends may be declared from surplus earnings. Also, credit union is authorized to accept term share and deposit accounts, with dividend rates to be approved by the commissioner. [Ch. 171, §10B; §25]

NEW HAMPSHIRE—Dividend rate for shares is not limited. Interest rate for deposits not to exceed 5% or the amount authorized by the FDIC regarding interest paid on deposits by savings banks. [§394.42]

continued

NORTH DAKOTA—Dividend rate not to exceed 6% and members may fix the maximum rate. [§6-06-26]

PUERTO RICO—The Cooperative Development Administration shall establish the maximum dividends by regulation. [§29]

TEXAS—Dividends declared by board in accordance with rules and regulations promulgated by the commissioner. [§9.02]

UTAH—Dividends may be paid on all fully paid shares or in $5 increments of the value of a share, or $5 increments which become fully paid during the dividend period may be entitled to a proportional part of the dividends calculated from the date of payment in full. [§7-9-21(2)]

WASHINGTON—Not to exceed 7%, unless the guaranty fund and undivided profits exceed 15% of assets. [§31.12.310]

WISCONSIN—The board of directors may establish the dividend rate; however, the commissioner may set a maximum dividend that a credit union may pay in each classification of its savings. [§186.16]

ACT IS SILENT:

Arizona	New Mexico	South Carolina
Idaho	New York	Vermont
Kentucky	North Carolina	West Virginia
Mississippi	Pennsylvania	

Dividend Grace Period

CUNA MODEL ACT: Dividend credit for a month may be accrued on shares which are or become fully paid up during the first 15 days of that month. [§6.12(3)]

FEDERAL CREDIT UNION ACT: Dividend credit may be accrued on various types of shares and share certificates as authorized by the board of directors. [§117]

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-927(3)]	Minnesota	[§52.18]
Indiana	[§28-7-1-25]	Montana	[§14-640(2)]
Iowa	[§533.18(3)]	New Mexico	[§48-19-18]

ACT SIMILAR TO FEDERAL ACT:

Louisiana	[§6:658]

DIVIDEND CREDIT MAY BE ACCRUED on shares as authorized by the board of directors:

Missouri	[§370.330(2)]	Virginia	[§6.1-219]

5-DAYS DIVIDEND CREDIT:

Maryland	[§155]	New Jersey	[§17:13-41(a)]

10-DAYS DIVIDEND CREDIT:

California	[§15205]	Mississippi	[§81-13-53]
Colorado	[§11-30-118]	New Hampshire	[§394-43]
Connecticut	[§36-210(2)]	North Carolina	[§54-109.54]
Florida	[§657.18]	Oregon	[§723.406(3)]
Kansas	[§17-2218]	Pennsylvania	[§12323]
Kentucky	[§290.250(1)]	South Carolina	[§8-672]
Massachusetts	[Ch. 171, §25]	Tennessee	[§45-1826(e)]
Michigan	[§490.18(b)]	Vermont	[§2081]

OTHER ACTS:

ARIZONA—Dividend credit for a month may be accrued on shares or $5 increments thereof which are or become fully paid up during the first 10 days of that month. [§6-522(C)]

IDAHO—Dividend credit for a month may be accrued on shares as provided by the board of directors. [§26-2130]

MAINE—The institution may elect to treat deposits made on other than the first day of the month as having been made either on the first day of the month, the last day of the month, or on the date of deposit. [§425(3)]

NEBRASKA—Dividend credit for a month may be accrued if payment is made on or before a date not later than the 20th of the month, as if deposited on the first day of the month, at the discretion of the board of directors. [§21-17,105]

NEVADA—Dividend credit for a month may be accrued on all shares which are or become fully paid up during that month. [§678.700(3)]

NEW YORK—Act provides for 10-day dividend credit; but a credit union may also credit dividends on shares from the date of purchase to the date withdrawn, subject to regulation by the banking board, and provided that the credit union also holds savings on which dividends are not credited in such manner. [§459(4)(6)]

UTAH—Dividend credit for a month may be accrued on shares, or $5 increments as prescribed in the bylaws. [§7-9-21(3)]

WASHINGTON—Board may compute such full shares if purchased on or before the tenth day of any month, as of the first day of the month, and from the date of deposit to the date of withdrawal. [§31.12.190]

ACT IS SILENT:

Alabama	North Dakota	Rhode Island
Georgia	Ohio	Texas
Hawaii	Oklahoma	West Virginia
Illinois	Puerto Rico	Wisconsin

Dormant Accounts

CUNA MODEL ACT: If a credit union is unable to contact a member, beneficiary or other person via first class mail at the last address shown on the records of the credit union, and if such inability continues for more than five years, all sums due such person may, by action of the board of directors, be credited to the reserve fund of the credit union, and thereafter no dividends or interest will accrue thereto. The member may reclaim any such sums by proper judicial proceedings commenced within 10 years after such action. [§6.50]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-924]	Nevada	[§678.660]
Montana	[§14-646]		

OTHER ACTS:

ARIZONA—Upon authorization of the board the partial shareholdings in excess of $5 and less than par value for a period of two years may be credited to the reserve of the credit union if upon written notice mailed to the member at his last known address no action to withdraw such funds is taken within 30 days after the mailing. All share accounts of $5 or less may be credited to the reserve without notice. [§6-508(B)]

INDIANA—Share accounts which have been inactive for a period of two years may be transferred to an accounts payable or special account. Thereafter the credit union shall not consider the payment of dividends on such transferred accounts. The credit union may charge an account up to $10 for the cost of locater service

where a member has failed to keep the credit union informed about his current address. Such charge may be made only once in any 12 month period. [§28-7-1-9(h)]

KANSAS—Any money received in the share account of any member which has not matured to one full share within a three year period shall be refunded to the member. If the member cannot be located, such money shall be transferred to the reserve fund. [§17-2212]

LOUISIANA—If any credit union domiciled in Louisiana is unable to contact a member, beneficiary or other person via first class mail at the last address shown on the records of the credit union, and if such inability continues for a period of more than two years, all shares, dividends and other sums not in excess of $100 due to or standing in the name of such member, beneficiary or other person may, by action of the board of directors, be credited to the reserve for inactive accounts of the credit union. Thereafter no dividends will accrue thereto. The member shall have the right to reclaim any such sums. Provision does not apply to shares, dividends and other sums due to or standing in the name of two or more persons unless the credit union is unable to contact any of such persons in the manner and during the period specified. [§6:659.1]

MICHIGAN—Shareholdings with balances under $5 for a one year period may be escheated and the membership shall be terminated. [§490.5a]

MINNESOTA—Whenever a member's share or deposit balance is not more than $25 and the member has not transacted any business with the credit union for a period of at least seven years, the board of directors, after giving 30 days written notice by certified mail to the last known address of the member, may transfer the balance to the operating reserve fund of the credit union. Thereafter, subject to the law governing abandoned funds, the member may recover the funds in the account at the time of the transfer by making application to the credit union for such funds, but the credit union shall have no obligation to the member for the payment of dividends or interest on the funds after the transfer to the operating reserve. [§52.191]

NEW JERSEY—When a member's whereabouts are unknown for 12 months, all sums due him may be credited to a special reserve fund of the credit union, after return of certified letter sent to the last known address. The member shall have five years to reclaim the proceeds after which they shall be given to the state treasurer. [§17:13-37(a)]

NEW MEXICO—All sums due any member whose whereabouts are unknown for seven years or more may, after return of registered letter sent to such member at last known address, be by action of the board of directors, disposed of in accordance with the law. [§48-19-12]

OKLAHOMA—Any money deposited in a member's account which has not matured to at least $25 within a three year period may be transferred to a special reserve for dormant accounts if the owner, after reasonable effort, cannot be located. If, however, the member later requests a withdrawal, the request will be honored. [§2020]

OREGON—If a credit union is unable to contact a member, any of the persons named on a joint account, beneficiary or other person via first class mail at the last address shown on the records of the credit union, and if such inability continues for a period of more than one year, all shares, dividends, deposit accounts, interest and other sums due or standing in the name of such member, beneficiary or other person may, by action of the board of directors, be credited to the accounts payable of the credit union, and thereafter no dividends or interest will accrue thereto, providing the balance of said account is below $50. Such items shall be carried until the period provided by the Uniform Disposition of Unclaimed Property Act has expired, after which items shall be turned over to the State of Oregon. [§723.442]

TENNESSEE—A credit union may charge $1 per year on any account of less than $5 for a period of three years, provided that the credit union gives written notice to the member at his last known address. [§45-1833]

VIRGINIA—The bylaws shall provide for the manner of effecting the forfeiture of a member's shares when a balance of less than $5 has been maintained for a period of two years. [§6.1-198(11)]

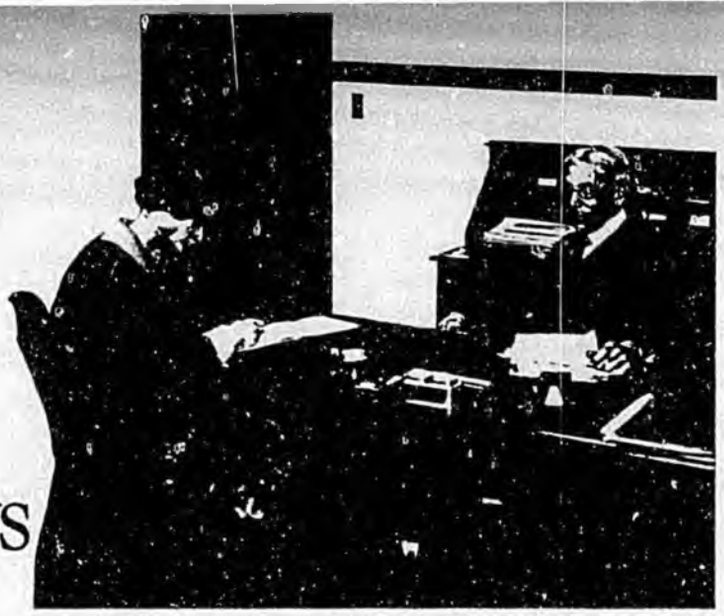
WASHINGTON—Funds representing unclaimed dividends of a credit union in liquidation and remaining in the hands of the supervisor over five years from the date of receivership, such funds shall escheat to the state and revert to the permanent school fund. [§31.12.410]

WISCONSIN—Credit unions may make an annual maintenance charge of not more than 50¢ per month against dormant accounts. An account is dormant if no deposit or withdrawal has taken place in the last 36 months and if mailings to the account holder(s) are returned to the credit union marked "address unknown". [§186.113(13)]

ACT IS SILENT:

29 states and Puerto Rico

Chapter five



MAKING THE LOANS

Purpose and Conditions of Loans

CUNA MODEL ACT: A credit union may loan to its members for such purpose and upon such security and terms as the credit committee, credit manager or loan officer(s) approves. [§7.10]

FEDERAL CREDIT UNION ACT: A federal credit union shall have power to make loans to its members in conformance with criteria established by the board of directors, and to other credit unions and credit union organizations if approved by the board of directors. [§107(5)]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-648]	*Texas	[§7.01]
Oregon	[§723.502]		

*If made in accordance with rules and regulations promulgated by the commissioner.

A CREDIT UNION MAY LOAN to members for such purpose and upon such conditions as the bylaws may provide and the credit committee shall approve:

Kansas	[§17-2216]	Nevada	[§678.710(1)]
Maryland	[§152(a)]	New York	[§453(5)]
Mississippi	[§81-13-43]	Tennessee	[§45-1821]
Missouri	[§370.310(1)]	West Virginia	[§31-10-19]

A CREDIT UNION MAY LOAN to members for provident or productive purposes and upon such conditions as the bylaws shall provide and the credit committee shall approve:

*Arkansas	[§67-916(1)]	New Jersey	[§17:13-42(a)]
*Idaho	[§26-2119]	Vermont	[§2078(a)]
Nebraska	[§21-1790]		

*Approval may also be by loan officer.

A CREDIT UNION MAY LOAN to members for provident or productive purposes and upon such conditions as the bylaws shall provide and the credit committee shall approve:

*Arkansas	[§67-916(1)]	New Jersey	[§17(a)]
*Idaho	[§26-2119]	Vermont	[§2078(a)]
Nebraska	[§21-1790]		

*Approval may also be by loan officer.

A CREDIT UNION MAY LOAN to members for provident or productive purposes and upon such security and terms as the credit committee may approve consistent with the resolutions of the board of directors, the bylaws, and the provisions of this chapter:

Arizona	[§6-518(A)]	Illinois	[§496.19]
Hawaii	[§410-15(a)]		

BYLAWS TO PROVIDE THE CONDITIONS upon which loans may be made:

Alabama	[§5-17-17]	Indiana	[§28-7-1-4(e)]
California	[§14202(k)]	Virginia	[§6.1-198(9)]

LOAN MUST PROMISE TO BE of benefit to borrower:

Rhode Island	[§19-21-23]	Washington	[§31.12.240]

OTHER ACTS:

COLORADO—A credit union may loan to members subject to the provisions of this article and the bylaws of the credit union. [§11-30-116]

CONNECTICUT—A credit union may loan to members for provident or productive purposes upon such terms and conditions as this chapter, the bylaws and any loan policies of the board of directors may permit. [§36-198(d)]

GEORGIA—A credit union may loan to members for such purposes as may be approved by the credit committee or loan officer. [§41A-3109(a)]

LOUISIANA—A credit union may loan to members for good and provident purposes, subject to the provisions of the act. [§6:656]

MAINE—A credit union may make loans to its members in accordance with the provision of this chapter. [§851(1)]

MASSACHUSETTS—A credit union may make loans of specified types and according to specified conditions to its members. [§Ch. 171 §24]

NEW HAMPSHIRE—A credit union may loan to members on such terms and upon such security, real or personal, as the union may vote or its bylaws prescribe. [§394:16]

NORTH CAROLINA—A credit union may loan to its members for such purposes and upon such security and terms as the board of directors prescribe. [§54-109.65]

NORTH DAKOTA—A credit union may loan to members. [§6-06-06(2)]

OHIO—A credit union may loan to members for provident and productive purposes as authorized by law, the articles and regulations, and subject to the policies adopted by the credit committee and approved by the board of directors. [§1733.25(A)]

OKLAHOMA—A credit union may loan to members for provident and productive purposes as the credit committee may approve. [§2006(5)]

PUERTO RICO—A credit union may loan to members and non-members for their personal requirements, or legitimate business, and shall be subject to the borrowing rules determined by the board. [§7(b) and §16(f)]

SOUTH CAROLINA—A credit union may loan to members for such purposes and upon such security and terms as the credit committee approves. [§8-668]

UTAH—A credit union may loan to members for the purposes and upon the indorsements, security and terms as the bylaws shall provide, or, in the absence of such provisions, as the credit committee shall approve. [§7-9-16]

WISCONSIN—A credit union may loan to members upon such terms as approved by the credit committee or loan officer. [§186.09(1)]

Interest Rate on Loans

CUNA MODEL ACT: A credit union may loan . . . at rates of interest not exceeding 1% per month on the unpaid monthly balances, unless a greater rate is otherwise approved by the Director. [§7.10]

FEDERAL CREDIT UNION ACT: A federal credit union shall have power to make loans to members at rates of interest not to exceed 1% per month on unpaid balance, inclusive of all service charges. [§107(5)(A)(vi)]

ACT SIMILAR TO FEDERAL ACT:

New Jersey	[§17:13-42(a)]	Tennessee	[§45-1820]
New Mexico	[§48-19-14]	Vermont	[§2078(a)]

INTEREST RATE NOT TO EXCEED 1% per month on unpaid balance:

Alabama	[§5-17-18]	Minnesota	[§52.14]
Arizona	[§6-513(B)(2)]	Mississippi	[§81-13-39]
Colorado	[§11-30-114]	New Hampshire	[§394:16]
Florida	[§657.14]	Ohio	[§1733.25(C)]
Hawaii	[§410-15(a)]	South Carolina	[§8-656]
Illinois	[§496.20]	Texas	[§7.01]
Louisiana	[§6:654(A)]	Virginia	[§6.1-330.18]
Maryland	[§153]	Washington	[§31.12.020]

INTEREST RATE NOT TO EXCEED 1% per month, or in the alternative, interest may be deducted in advance on the loan at a rate not exceeding 6% per year, either rate is inclusive of all charges:

New York	[§453(5a)]	Pennsylvania	[§12319]

INTEREST RATE NOT TO EXCEED 1¼% per month on unpaid balance:

*California	[§14901]	Montana	[§14-648]
*Connecticut	[§36-206]	North Dakota	[§6-06-18]
Georgia	[§41A-3109(a)]	Oregon	[§723.502]
Michigan	[§490.14]		

*Including all charges incident to making the loan.

INTEREST RATE DETERMINED BY BOARD OF DIRECTORS, subject to maximum ceilings in Consumer Credit Code:

Idaho	[§26-2116(c)]	Oklahoma	[§2010(C)]
Indiana	[§28-7-1-16(b)]	Utah	[§7-9-11(5)]
Kansas	[§17-2209(2)]	Wisconsin	[§186.09(1)]

INTEREST RATE DETERMINED BY BOARD OF DIRECTORS, subject to limitations in other statutes:

Maine	[§842(2)(R)]	Puerto Rico	[§16(b)]
Massachusetts	[Ch. 171, §16]		

OTHER ACTS:

ARKANSAS—Board of directors to determine rate of interest, but in no event may rate exceed that permitted by the State Constitution. [§67-913(c), 67-916(1)]

IOWA—Interest rates on loans shall not exceed 1% per month on unpaid balances, except that with respect to consumer loans, a credit union may charge the finance charge permitted under the Iowa Consumer Credit Code. [§533.14]

KENTUCKY—Rate of interest on loans is not to exceed 1% per month on the unpaid balance of the loan, except that the legal rate of interest provided for by KRS 360.010 shall apply to any loan secured by real estate. [§290.200]

MISSOURI—Reasonable rate of interest not to exceed 1% per month on the unpaid balance; however, a minimum interest charge not exceeding $1.00 per month may be charged. [§370.300(1)]

NEBRASKA—Interest rate not to exceed 14% per year on unpaid balance. [§21-1773(7)]

NEVADA—Maximum rate is 1% per month on the unpaid balance, unless a higher rate is approved by the commissioner. [§678.710(1)]

NORTH CAROLINA—Shall not exceed an annual rate of 12% unless a greater rate not to exceed 18% is approved by the credit union commission for all credit unions. [§54-109.65]

WEST VIRGINIA—Interest rate not to exceed 1½% per month. [§31-10-16]

ACT IS SILENT:

Rhode Island

Incidental Charges

CUNA MODEL ACT: Act is silent. (Comment in Act: "It is the further intent of this section that a credit union not be precluded from passing on to borrowers certain charges incidental to making a loan, such as closing costs and filing fees.") [§7.10]

FEDERAL CREDIT UNION ACT: The maximum interest rate on loans to members is inclusive of all service charges. [§107(5)(A)(vi)]

ACT SIMILAR TO FEDERAL ACT:

New Mexico	[§48-19-14]	Vermont	[§2078(a)]
Tennessee	[§45-1820]		

IF PERMITTED BY THE BYLAWS, the borrowing members may be charged for the cost of filing fees on security instruments in connection with the transaction:

*Arkansas	[§67-916(1)]	Idaho	[§26-2119]

*Also for appraisal and investigation.

THE MAXIMUM RATE OF INTEREST is inclusive of all charges, and no further fee for examination, service, brokerage, commission, or otherwise shall be charged, except for (1) lawful fees paid out to a public officer for filing, recording or releasing in

continued

any public office any instrument securing a loan, and (2) reasonable attorneys fees for necessary court process:

Arizona—Reasonable attorneys fees assessed and fixed by the court, and any necessary fees required to obtain and perfect a lien. [§6-513(B)(2)]
New Jersey—Attorneys fees not to exceed 20%, but with a minimum fee of $10. [§17:13-27(e)]
New York [§453(5)(a)]

OTHER ACTS:

CALIFORNIA—The interest rate is not inclusive of the cost of any insurance and any cost of acknowledgement, certification, registration recordation or filing, independent appraisals, separate escrows, and other fees actually paid by a credit union in connection with a loan. A charge for special services applied to a share account is not a charge incident to the making of a loan when an overdraft from the share account results in a loan advance, provided the same charge is applied to the share account whether such an overdraft occurs or not. A service charge not to exceed 25 cents may be made for any loan of $50 or less which is repaid before the end of the first full month. [§14901, 14902]

CONNECTICUT—Attorney fees, including preparation of mortgage deed and note, title search, waivers and closing fees or recording fees, shall be at the expense of the borrower, and all such fees shall be excluded from the computation of "charges incident to the making of the loan". [§36-198b(f)]

HAWAII—Borrower may be required to pay fees and charges prescribed by law and payable to public officials in connection with security on a credit transaction and fees or premiums in connection with real estate loans. [§410-15(a)]

KENTUCKY—The maximum interest rate shall be in lieu of all other charges, except for fines for delinquent payments, and in case of secured loans, premiums incurred in the carrying of insurance against the loan, mortgage recording fees, title examination fees, and such other reasonable charges as are necessarily incident to the effective protection of the loan by the security offered. In the case of a temporary loan, a credit union may charge a fee of up to five dollars. [§290.200(2)]

LOUISIANA—Applicant for real estate loan must bear cost of title insurance or other documentation assuring merchantable title to property, and if the property is appraised by an independent appraiser the cost of such appraisal shall be advanced by the applicant. [§6:656(A)(4)(b)(e)]

MINNESOTA—In addition to the interest charged on loans, the borrowing member may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of personal or real estate loans. The commissioner of banks may prescribe by regulation which of said expenses may be charged to the member and the maximum amounts which may be charged. [§52.141]

MISSISSIPPI—Fines and penalties shall not be considered as interest. [§81-13-39]

MISSOURI—A credit union may charge a borrower expenses of making a loan including title examinations on real estate used as security for a loan, credit investigations, credit life insurance, and filing and recording fees by government agencies. [§370.300(2)]

NEBRASKA—A credit union may make a minimum loan or use charge on loans on which the interest charged does not exceed $2.00; provided, that such loan or use charge including the interest on such loan shall not exceed $2.00. [§21-1773(11)]

NORTH CAROLINA—Interest shall not be deemed to include charges made by a credit union for appraisals of real or personal property; attorneys fees for searching title to real property, preparing notes, deeds of trust, mortgages and closing loans; and recording fees. [§54-109.65]

PENNSYLVANIA—No other charges or fines shall be collected other than fees to public officials and reasonable fees of attorneys and outside collectors or outside collection agencies; provided the aggregate of such fees does not exceed 20% of the outstanding loan balance. [§12319]

PUERTO RICO—Loans are subject to the borrowing rules of the board. [§16(f)]

WASHINGTON—In any loan in which the funds advanced do not exceed $500 a setup charge, not to be considered interest, may be charged and collected, provided it shall not exceed 4% of the amount of funds advanced or $15, whichever is less, except that on loans of under $100 a minimum not exceeding $4 may be charged. [§19.52.020]

ACT IS SILENT:

Alabama	Maryland	Oklahoma
Colorado	Massachusetts	Oregon
Florida	Michigan	Rhode Island
Georgia	Montana	South Carolina
Illinois	Nevada	Texas
Indiana	New Hampshire	Utah
Iowa	North Dakota	Virginia
Kansas	Ohio	West Virginia
Maine		Wisconsin

Interest Refund

CUNA MODEL ACT: It shall be the duty of the directors to authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes. [§5.56(3)]

FEDERAL CREDIT UNION ACT: The board of directors shall, subject to such regulations as may be issued by the Board, authorize an interest refund to members of record at the close of business on the last day of any dividend period in proportion to the interest paid by them during that dividend period. [§113]

ACT SIMILAR TO MODEL ACT:

Connecticut	[§36-206(b)]	Nevada	[§678.370(11)]
Maine	[§842(2)(R)]	No. Carolina	[§54-109.44(3)]
Montana	[§14-631(3)]	Oregon	[§723.296(3)]

ACT SIMILAR TO FEDERAL ACT:
Hawaii [§410-13(c)(7)]

THE BOARD OF DIRECTORS SHALL DETERMINE the rate of interest refund, if any, to be paid to borrowing members, the qualifications for participation, and the manner of computation and payment. Such interest rebates are to be paid from the credit balance of the retained earnings account.

Arkansas	[§67-913(c)]	Idaho	[§26-2116(c)]

THE BOARD OF DIRECTORS MAY PROVIDE for an interest refund to borrowing members:

Arizona	[§6-513(B)(9)]	New Mexico	[§48-19-9(C)]
*California	[§14406(g)]	Oklahoma	[§2010(C)]
Illinois	[§496.13(7)]	South Carolina	[§8-661(7)]
**Indiana	[§28-7-1-9(k)]	Utah	[§7-9-21(4)]
Iowa	[§533.9(4)]	Vermont	[§2061(3)]
Kentucky	[§290.250(2)]	Virginia	[§6.1-211(3)]
New Hampshire	[§394:26]		

*Unless bylaws reserve to members.

**Conditional on reserves and payment of reasonable dividend.

OTHER ACTS:

COLORADO—The board shall determine the rate of interest refund, if any, paid to members of record at the close of any given period, in proportion to the interest paid by them during that period. Any such refund shall be paid from interest income of the credit union prior to any transfer to reserves. [§11-30-109(1)(c)]

LOUISIANA—Unless reserved to members by the charter, it shall be the duty of the board to authorize interest refunds to members of record at the close of business on December 31, in proportion to the interest paid by them during the year. [§6:649(B)(6)]

MISSOURI—The board at the close of a dividend period may allocate a portion of receipts from interest on loans for the purpose of making an interest refund, in proportion to the interest paid by members during the period. The board may deny such refund to members whose loans have been delinquent during such period. [§370.300(3)]

NEW YORK—It shall be the special duty of directors to authorize an interest refund to all members of record at the close of business on the last day of any dividend period, for which it has declared a dividend, in proportion to the interest paid by them for the dividend period. [§469(5)]

NORTH DAKOTA—A credit union, upon action of its board, may authorize an interest refund to members of record at the close of business the last day of any dividend period in proportion to the interest paid during that period. Interest refunds may be made to borrowers only after provision for a special reserve for delinquent loans, if required by the state credit union board. [§6-06-26]

OHIO—If authorized by the code of regulations, a credit union may rebate to borrowing members a portion of the member's interest paid to the credit union. [§1733.04(a)(3)]

PENNSYLVANIA—The directors shall determine whether, to what extent, and to what class or classes of borrowers, if any, an interest refund shall be paid in proportion to the interest paid by each borrower during the dividend period. No interest dividend may be authorized unless a share dividend of not less than 3% has been declared from the earnings of the last preceding dividend period. [§12312(10)]

TEXAS—A credit union may pay interest refunds to borrowers. [§4.01(15)]

WASHINGTON—Surplus earnings may be distributed to the borrowers as a patronage dividend ratably in proportion to interest paid by them. [§31.12.310]

ACT IS SILENT:

Alabama	Massachusetts	New Jersey
Florida	Michigan	Puerto Rico
Georgia	Minnesota	Rhode Island
Kansas	Mississippi	Tennessee
Maryland	Nebraska	West Virginia
		Wisconsin

Maturity Limit on Loans

(Other than real estate loans)

CUNA MODEL ACT: A credit union may loan to its members for a provident or productive purpose and upon such security and terms as the credit committee, credit manager, or loan officer(s) approve. [§7.10]

FEDERAL CREDIT UNION ACT: A federal credit union shall have the power to make loans, the maturities of which shall not exceed twelve years. [§107(5)]

OTHER ACTS:

CONNECTICUT—Unsecured loans up to 10 years. Secured loans up to 15 years. [§36-198(d)]

HAWAII—Unsecured loans up to 5 years. Secured loans up to 10 years. Not applicable to loans guaranteed by U.S. or state agencies under the National Higher Education Act [§410-15(a)]

INDIANA—The terms of any loan with a maturity of more than six months shall provide for principal and interest repayments in at least monthly installments of substantially equal amounts. [§28-7-1-17(b)]

LOUISIANA—Maximum maturity is 60 months for unsecured loans and loans secured by shares; 12 years for loans secured by a chattel mortgage or other collateral or guaranteed by 1 or more solvent comakers. [§6:656(2),(3)]

MASSACHUSETTS—For an unsecured personal loan the maximum maturity is 48 months; for secured personal loans, 120 months. Both are renewable on or before the due date. Maximum maturity is 48 months for loans secured by satisfactory collateral (automobile loans) and 60 months for certain loans based upon one per cent of the credit union's assets. [Ch. 171, §24(A)]

WASHINGTON—Unsecured personal loans may not exceed four years. Secured personal loans may not exceed eight years. [§31.12.270]

ACT IS SILENT:

40 states and Puerto Rico.

Unsecured Loan Limit

(See also general restrictions under Secured Loan Limit)

CUNA MODEL ACT: Board of Directors shall fix the maximum amount which may be loaned to any one member . . . but shall not exceed $200 or 10% of the credit union's total assets, whichever is greater. [§5.56(4), 7.20]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Vermont	[§2078(b)]

MAXIMUM UNSECURED LOANS ARE as follows unless a lower limit is established:

Arkansas	$3,000	[§67-916(2)]
Kansas	$1,000	[§17-2216]
Louisiana	$5,000	[§6:656(A)(1)]
Missouri	$5,000	[§370.220(3)]
Nebraska	$4,500	[§21-1790]
North Carolina	$5,000	[§54-109.67]

continued

NO UNSECURED LOAN SHALL BE MADE in excess of $2,500, although a lower limit may be established:

Kentucky	[§290.230(1)]	Tennessee	[§45-1815]
Mississippi	[§81-13-31]	West Virginia	[§31-10-19]

BOARD OF DIRECTORS SHALL FIX maximum amount of unsecured loan which may be loaned to a member:

Alabama	[§5-17-11]	New Hampshire	[§394:26]
Colorado	[§11-30-109(1)(g)]	New Mexico	[§48-19-9(F)]
Florida	[§657.09(6)]	Oklahoma	[§2010(c)]
Idaho	[§26-2116(f)]	Pennsylvania	[§12312(7)]
Michigan	[§490.9(1)(f)]	South Carolina	[§8-661(10)]
Nevada	[§678.370(6)]		

UNSECURED LOAN LIMIT DETERMINED AT MEMBERS' MEETINGS, based on recommendations of board of directors:
Rhode Island [§19-21-22]

UNSECURED LOAN LIMIT is related to the credit union's assets:

Assets	Limit
Less than $5,000	$ 250
Up to $25,000	500
Up to $100,000	1,000
Up to $500,000	2,500
Up to $1 million	3,500
Exceeding $1 million	5,000

Hawaii	[§410-15(f)(1)]	Wisconsin	[§186.09(6)]

OTHER ACTS:

ARIZONA—Unsecured loans to any one member shall not exceed 10% of the credit union's paid-in and unimpaired capital or $200, whichever is greater. [§6-519(B)]

CALIFORNIA—Unsecured limit is: $1,000 where assets are not greater than $100,000; 1% of assets which are between $100,000 and $250,000; $2,500 plus one fourth of 1% of assets, but not more than $5,000, where assets are greater than $250,000. [§14903]

CONNECTICUT—Unsecured loan limit is $5,000 or 2½% of paid-in and unimpaired capital and surplus, whichever is less. [§36-199]

GEORGIA—Any credit union can make loans up to $200 regardless of its shares and deposits. Unsecured loans shall not exceed 1% of the first $100,000 of deposits and shares, plus ¼ of 1% of deposits and shares over $100,000. The amount loaned to any one borrower on an unsecured basis when added to the amount loaned on a secured basis shall not exceed the secured loan limit. [§41A-3109(d)]

ILLINOIS—Unsecured loans to any one member shall not exceed $5,000 or 5% of unimpaired capital and surplus, whichever is less. [§496.20]

INDIANA—Unsecured loans up to $750 may be made without restrictions. Larger unsecured loans shall not exceed 2½% of the current assets of the credit union or $2,500, whichever is less. [§28-7-1-17(a)]

IOWA—Unsecured loan limit to be established by the board of directors. Loans to any one member which in the aggregate exceed that limit must be secured to extent they exceed the unsecured loan limit. [§833.16(5)(a)]

MAINE—Unsecured loans shall not exceed $500 or 2½% of share capital and surplus, whichever is greater, up to a maximum amount of $5,000 per member. [§853]

MARYLAND—Security need not be taken for any loans of $400 or less. In any case, where the loan is in excess of $400 up to a maximum of $3,500 it shall be subject to the prior written approval of the bank commissioner. [§152(a)]

MASSACHUSETTS—If credit union is insured, the maximum amount of a loan or loans in excess of a member's shares or deposits shall be $200 or 2% of the assets whichever is greater, not exceeding $3,000 if evidenced by the unsecured and unendorsed note of the borrower. If credit union is not insured, loan may not exceed $500. [Ch. 171 §24(A)]

MINNESOTA—The maximum individual loan is 10% of outstanding shares and deposits; except for the Minnesota Central Credit Union, or for credit unions insured by the National Credit Union Administration. [§52.09(6)]

MONTANA—The board of directors fix the maximum amount that may be loaned to any one member; but no loan shall be made to any one member in an aggregate amount in excess of 10% of the credit union's total assets. [§14-631(4), 14-650]

NEW JERSEY—No unsecured loan shall be made which would exceed 2½% of the credit union's shares and reserves or $3,500, whichever is less. [§17:13-42]

NEW YORK—Permits an unsecured loan of $1,500 in excess of a member's shares and deposits or 10% of the credit union's share capital and deposits, whichever is lower; except that where the credit union's share capital is over $1 million the unsecured limit is $2,500, or $5,000 where the credit union's share capital is over $5 million. [§454(2)]

NORTH DAKOTA—Unsecured limit is $2,500 or 1% of a credit union's total share and deposit account, whichever is higher, but not over $5,000. [§6-06-14]

OHIO—Subject to policies adopted by credit committee and approved by board of directors. [§1733.25]

OREGON—No loan shall be made to any member in an aggregate amount in excess of $10,000, or 15% of the credit union's guaranty fund and undivided earnings, whichever is greater. [§723.512]

PUERTO RICO—Board will set secured and unsecured limits in the borrowing rules. [§16(f)] However, all loans exceeding applicant's total unencumbered shares and/or deposits must be secured. [§28]

UTAH—No unsecured loan of more than $3,000 in excess of the book value of the shares and deposits of the member. [§7-9-12]

VIRGINIA—Unsecured loans may be made to any one member up to $200 or 2½% of the unimpaired capital and surplus, whichever is greater, but not to exceed $2,500. [§6.1-217]

WASHINGTON—The aggregate of unsecured loans to any one member of a credit union whose unimpaired capital and surplus is less than $8,000 shall not exceed $500, or in the case of any other credit union it shall not exceed $2,500 or 2½% of the unimpaired capital and surplus, whichever is less. [§31.12.280]

ACT IS SILENT:

Texas

Secured Loan Limit

CUNA MODEL ACT: Board of directors shall fix the maximum amount which may be loaned to any one member . . . but shall not exceed $200 or 10% of the credit union's total assets, whichever is greater. [§5.56(4), 7.20]

FEDERAL CREDIT UNION ACT: No loan shall be made to any member if the aggregate amount of the member's indebtedness to the credit union would exceed 10% of the credit union's unimpaired capital and surplus. [§114]

ACT SIMILAR TO MODEL ACT:
Vermont [§2078(b)]

ACT SIMILAR TO FEDERAL ACT:

Nevada	[§678.710(3)]	Texas	[§7.02]

NO LOAN SHALL BE MADE to any member in an aggregate amount in excess of $200 or 10% of the credit union's unimpaired capital and surplus, whichever is greater:

*Arizona	[§6-519(B)]	Kentucky	[§290.230(1)]
Connecticut	[§36-199]	North Carolina	[§54-109.67]
Indiana	[§26-7-1-17(a)]		

*Omits reference to surplus.

NO LOAN MAY EXCEED 10% of credit union's assets or the dollar amount shown, whichever is greater:

Kansas—$500	[§17-2216]	Tennessee—$300	[§45-1815]
Missouri—$2,000	[§370.310]	*Wisconsin—$100	[§186.09(5)]
Nebraska—$500	[§21-1773(8)]		

*Plus pledged shares

NO LOAN MAY EXCEED PERCENTAGE of credit union's assets shown:

Arkansas—10%	[§67-916(2)]	Montana—10%	[§14-650]
Mississippi—5%	[§81-13-43]		

BOARD OF DIRECTORS DETERMINES SECURED LOAN LIMIT:

Alabama	[§5-17-11]	New Mexico	[§48-19-9(F)]
Colorado	[§11-30-109(1)(g)]	Oklahoma	[§2010(c)]
Florida	[§657.09(6)]	Pennsylvania	[§12312(7)]
Idaho	[§26-2116(f)]	Puerto Rico	[§16(f)]
Michigan	[§490.9(1)(f)]	South Carolina	[§8-661(10)]
New Hampshire	[§394:26]	West Virginia	[§31-10-9(d)]

SECURED LOAN LIMIT as determined at members' meeting, based on recommendations of board of directors:
Rhode Island [§19-21-22]

OTHER ACTS:

CALIFORNIA—Maximum secured loan is the greater of $3,000 or 10% of the credit union's paid in and unimpaired capital, but not to exceed $10,000 plus the unpledged shares. Those with assets of $1 million or more can make larger loans. [§14904]

GEORGIA—Any credit union can make loans up to $200 regardless of its shares and deposits. Secured loans shall not exceed 10% of the first $100,000 of its shares and deposits, plus 4% of the next $1 million, plus 2% of its deposits and shares over $1,100,000. [§41A-3109(d)]

HAWAII—Loans to one member shall not exceed 10% of the credit union's shares, deposits, and surplus or $200, whichever is greater. [§410-15(a)]

ILLINOIS—No loan may be made and no person can become indebted to a credit union, without the prior approval of the Director, for more than $20,000 or 12½% of the unimpaired capital and surplus, whichever is less. These limits may be increased by the amount of the member's share account. [§496.20]

IOWA—Loans to one member shall not exceed $100 or 10% of the credit union's capital, whichever is greater. [§533.16(2)]

LOUISIANA—No member shall become indebted to the credit union for more than $200 or 10% of its paid in capital and surplus, whichever is greater; with a maximum indebtedness of $15,000 for loans not secured by real estate. [§6:656]

MAINE—Secured loans may be made up to $1,000 or 5% of share capital and surplus, whichever is greater. Loans fully secured by a pledge of shares of the credit union may be made without limitation as to amount. [§854]

MARYLAND—The board shall determine the amount that shall be loaned to a member, but in no case may that amount exceed 10% of the credit union's paid-in and unimpaired capital and surplus. [§152(a)]

MASSACHUSETTS—

(NOTE: "Insured" refers to loan limit for credit unions with member accounts insured in full under federal or state law. "Uninsured" refers to credit unions not so insured.)

Secured loan limit is:

1) If evidenced by the note of the borrower with one or more responsible endorsers or co-makers thereon, or with satisfactory collateral pledged as security:

   Uninsured: The greater of $500 or 2% of the assets, not to exceed $1,000.

   Insured: The greater of $1,000 or 2% of the assets, not to exceed $4,000.
2) If evidenced by the note of the borrower with two or more responsible endorsers or co-makers thereon, or with satisfactory collateral pledged as security:

   Uninsured: $1,000 when assets are $500,000 or less and $1,500 when assets are over $500,000.

   Insured: $4,000 when assets are $500,000 or less and $5,000 when assets are over $500,000.
3) Secured loan limit is $2,000 if evidenced by the note of the borrower fully secured by a pledge of satisfactory collateral valued at not more than 80% of its market value.
4) Secured loan limit is $5,000 if evidenced by the note of the borrower and secured with significant collateral, such collateral to be composed of any of the following:
   a) Bonds or notes issued by the U. S. in any state or subdivision thereof, which are legal investments for savings banks or credit unions in Massachusetts—to the extent of 80% of their market value.
   b) Assignment of the passbook of a depositor in a savings bank operating in any New England state; a depositor in a trust company or national bank operating in Massachusetts; or a shareholder in a federal savings and loan association operating in Massachusetts.
   c) Assignment of the savings share account book of a cooperative bank operating in Massachusetts, or of the unpledged shares thereof, as represented by passbooks or certificates.
   d) Assignment of life insurance policy issued by a company operating in Massachusetts, to the extent of its cash surrender value.

continued

In addition, a credit union with assets of more than $500,000 may lend amount not in excess of 2% of assets, or $50,000, whichever is the lesser upon the collateral described above, or upon collateral composed of readily marketable common or preferred stock of a corporation listed by an S.E.C. regulated stock exchange, to an extent not to exceed 80% market value.

5) For loans evidenced by the note of the borrower and secured by a pledge or security interest in satisfactory collateral valued at not more than 80% of the collateral's market value, the limit is $3,500 if the assets of the credit union are less than $100,000; and the greater of $5,000 or 1% of assets, but not more than $16,000, if the assets exceed $100,000.

6) An amount not exceeding the share account of a depositor or shareholder, which note shall be secured by the passbook of that share account. [Ch. 171, §24A]

MINNESOTA—The maximum individual loan is 10% of outstanding shares and deposits; except for the Minnesota Central Credit Union, or for credit unions insured by the National Credit Union Administration. [§52.09(6)]

NEW JERSEY—No loan shall be made which causes any member to become indebted to the credit union in excess of $250 or 5% of the credit union's shares and reserves, whichever is greater. [§17:13-42(c)]

NEW YORK—The aggregate amount of loans to any one member in excess of his unhypothecated shares and deposits shall be limited depending on the share capital of the credit union as follows:

Share Capital	Loan Limit
Not more than $500,000	$ 1,500
More than $500,000	$10,000
More than $2 million	$15,000
More than $5 million	$20,000

[§454(12)]

NORTH DAKOTA—If the total assets of the credit union are less than $70,000 the loan limit shall be the greater of $200 or 10% of the assets, but not more than $5,000. Otherwise the loan limits are as follows:

Total Assets	Loan Limit
$70,001 to $100,000	$ 6,000
$100,001 to $200,000	$ 8,000
$200,001 to $300,000	$10,000
$300,001 to $400,000	$12,000
$400,001 to $500,000	$14,000
Over $500,000	3% of assets

[§6-06-12(7)]

OHIO—Subject to policies adopted by the credit committee and approved by the board of directors. [§1733.25]

OREGON—Loans to any one member shall not in the aggregate exceed $10,000 or 15% of the guaranty fund and undivided earnings, whichever is greater. These restrictions do not apply to any loan fully guaranteed by shares or deposits. [§723.512]

UTAH—The maximum amount loaned to one member shall not exceed $200 or 15% of the capital, surplus, and the capital notes from the Utah Central Credit Union; these capital notes not to exceed $5,000 in any one credit union after its capital and surplus and capital notes have reached $2,000. The aggregate amount of the member's loans may be in excess of $20,000 only if the amount in excess is secured in full by share savings in the credit union, unless the credit union's capital and surplus equals $2 million. [§7-9-11(11)]

VIRGINIA—Loans to one member shall not exceed 10% of the credit union's outstanding shares and reserve or $200, whichever is greater. [§6.1-217]

WASHINGTON—The aggregate of loans to any one family community shall not exceed $500 or 10% of the credit union's unimpaired capital and surplus, whichever is greater, provided that loans which are not secured totally by share deposits shall not exceed $12,000 without the permission of the supervisor. [§31.12.280]

Loan Security Acceptable

(Other Than Real Estate)

CUNA MODEL ACT: In addition to generally accepted types of security, the endorsement of a note by a surety, co-maker or guarantor, or assignment of shares or wages, in a manner consistent with the laws of this state, shall be deemed security. [§7.22]

FEDERAL CREDIT UNION ACT: An assignment of shares or the endorsement of a note shall be deemed security, and, subject to such regulations as the Board may prescribe, insurance obtained under Title I of the National Housing Act shall be deemed adequate security. [§114]

ACT SIMILAR TO MODEL ACT:

*Georgia	[§41A-3109(e)(2)]	Montana	[§14-651]
*Hawaii	[§410-15(i)]	*No. Carolina	[§54-109.68]

*Omits reference to assignment of wages

ACT SIMILAR TO FEDERAL ACT:

Idaho	[§26-2119]	Iowa	[§533.10, 533.16]

AN ASSIGNMENT OF SHARES OR DEPOSITS or the endorsement of a note may be deemed security:

Alabama	[§5-17-12]	Nevada	[§76]
Arkansas	[§67-916(6)]	New Jersey	[§17:13-42(c)]
Colorado	[§11-30-110]	New Mexico	[§48-19-10(B)]
Florida	[§657.10(1)]	North Dakota	[§6-06-14]
Indiana	[§28-7-1-17(a)]	Pennsylvania	[§12313]
Kentucky	[§290.230]	Tennessee	[§45-1815]
*Maryland	[§152(b)]	Vermont	[§2078(c)]
Michigan	[§490.10]	Virginia	[§6.1-217]
Minnesota	[§52.10]	West Virginia	[§31-10-19]
Missouri	[§370.220(3)]		

*All other types of security must be approved by the commissioner.

OTHER ACTS:

ARIZONA—Security may include: (1) the assignment of a mortgage, contract, etc. for any personal property; (2) shares or special investment accounts in the credit union; (3) negotiable obligations of the United States; (4) a written assignment of the cash value of a life insurance policy; (5) a co-maker; (6) assignments of stocks and bonds; (7) anything else approved by the superintendent. [§6-519(D)]

CALIFORNIA—Security includes, but is not limited to, (a) a note endorsed by any member of the credit union or any other person, (b) any obligation wherein the payment of interest and principal is guaranteed by the federal government or any of its instrumentalities, state or municipal government, (c) the amounts which a member has invested in the credit union. If amount invested by a mem-

ber is equal to the loan, he shall not be required to give further security. [§14907]

CONNECTICUT—The following shall be deemed to be security: (1) share accounts in any credit union and insured savings accounts in any other financial institution in the state; (2) insured share accounts and savings accounts in credit unions and other financial institutions in other states; (3) life insurance policies; (4) stocks, bonds and investment securities deemed to be proper security; (5) tangible personal property deemed to be proper security; (6) the endorsement or other guaranty of a loan.
[§36-198(d)]

ILLINOIS—Security may include but not be limited to: (a) assignment by a vendor of a security agreement contract for the conditional sale or chattel mortgage on personal property, (b) an assignment of shares, (c) the general endorsement of a note, (d) a co-maker on the note, and (e) an assignment of wages. [§496.20]

LOUISIANA—Loans may be secured by shares, government insurance or guarantee, chattel mortgage or other collateral of good and sufficient value, or guaranteed by one or more solvent co-makers or endorsers. [§6:656(2),(3)]

MAINE—Loans may be secured by personal property, including a pledge of credit union shares. [§854]

MASSACHUSETTS—A credit union may accept as security an assignment of wages, a co-maker on a note, a pledge of shares, a pledge of U.S. government or state or municipal obligations, an assignment of a passbook of a financial institution doing business in the commonwealth, or an assignment of an insurance policy.
[Ch. 171, §24(A)]

MISSISSIPPI—Endorsement of a note or assignment of shares in a credit union or other tangible collateral shall be deemed security. [§81-13-31]

NEBRASKA—The adequacy of all security shall be within the determination of the credit committee. [§21-1790]

NEW HAMPSHIRE—Security is such as credit union may vote or its by-laws may prescribe. [§394:16]

NEW YORK—Loans may be secured by: (a) credit union shares, (b) investments authorized by [§453(13a),(14)], (c) assignment of savings bank deposits, or (d) assignment of cash surrender value of life insurance policy. [§454(9)]

OHIO—A credit union may accept security in such form and under such rules as shall be set forth in the articles, the regulations, or established by the credit committee and approved by the board of directors. [§1753.25(d)]

PUERTO RICO—Security may include but is not limited to: shares, deposits, credits, bonds and pledges. [§17]

WASHINGTON—Loans to members may be secured by the note of the borrower or other collateral satisfactory to the credit committee, including security interests in mobile homes, travel trailers, and motor homes. [§31.12.270]

WISCONSIN—Collateral is such as the board of directors shall determine. [§186.09(6)]

ACT IS SILENT:

Kansas	Oregon	Texas
Oklahoma	Rhode Island	Utah
	South Carolina	

Real Estate as Security on Loans

CUNA MODEL ACT: Act is silent.

FEDERAL CREDIT UNION ACT: A federal credit union shall have power . . . (to make) a residential real estate loan which is made to finance the acquisiton of a one-to-four-family dwelling for the principal residence of a credit union member, the sales price of which is not more than 150% of the median sales price of residential real property situated in the geographical area (as determined by the board of directors) in which the property is located, and which is secured by a first lien upon such dwelling, may have a maturity not exceeding thirty years, subject to the rules and regulations of the Board. [§107(5)(A)(i)]

LOANS MAY BE SECURED by first mortgages on real estate:

Florida— [§657.16]
Kentucky— [§290.200(3)]
Maryland—Subject to approval of Bank Commissioner. [§162]
Minnesota— [§52.16(1)]
North Dakota—Not limited to first mortgages. [§6-06-06(10)(a)]
Wisconsin—Subject to rules of the Commissioner. [§186.09(10)]

LOANS MAY BE SECURED by first mortgages on real estate, provided the outstanding balance of all such loans shall not exceed the following limitations:

Arkansas—25% of outstanding shares. [§67-916(4)]
Hawaii—30% of outstanding shares and deposits. [§410-15(e)]
Idaho—10% of outstanding shares; total second mortgage loans may not exceed 5% of outstanding shares. [§26-2119]
New York—25% of outstanding shares. [§454(8)]

LOANS MAY BE SECURED by first mortgages on real estate within the state provided the outstanding balance of all such loans does not exceed limitation indicated:

Louisiana—50% of credit union's total assets. [§6:656(4)]
Maine—35% of credit union's share capital and surplus. [§855(3)]

OTHER ACTS:

ARIZONA—Loans may be secured by first and second mortgage liens on real property. [§6-519(D)(6),(7)]

CALIFORNIA—Any loan in excess of $5,000 can be secured by real or personal property to the extent that the loan exceeds $5,000. [§14905(a)]

CONNECTICUT—Loans may be secured by mortgages on real estate located in the state or in a town or city within 25 miles of the credit union, provided the total of all such loans shall not exceed 30% of the credit union's paid-in and unimpaired capital and surplus. The total of such loans for a credit union with assets of $10 million or more may not exceed 50% of the credit union's paid-in and unimpaired capital and surplus. [§36-198b]

ILLINOIS—A credit union with total assets in excess of $1 million may make real estate loans. Maximum for a first mortgage real estate loan is $50,000. [§496.10, 496.20]

INDIANA—Loans may be secured by a first mortgage on improved real estate located within the state or within 50 miles of the credit union office, provided the unpaid balance of all such loans shall not exceed one-third of the credit union's total assets. Second mortgages may be taken by credit unions as additional security. [§28-7-1-17(e)]

continued

IOWA—Loans secured by a mortgage or deed of trust may be made on unencumbered property located in Iowa and in bordering counties of adjacent states. [§533.16(4)]

KANSAS—A credit union may discount or sell real estate loans to the central credit union. [§17-2204(9)]

MASSACHUSETTS—A credit union may make or acquire first mortgage loans subject to detailed limitations as to terms up to an aggregate of 1% of shares, deposits, guaranty fund, reserve fund and undivided earnings. Second mortgage loans may be made up to 10% of the credit union's assets. [§171, §24(B)]

NEW HAMPSHIRE—A credit union may loan on such terms and upon such security, real or personal, as the union may vote or by-laws prescribe. [§394:16]

PENNSYLVANIA—A credit union may make loans to members secured by mortgages which are first liens on improved real property within the state or within 100 miles of its borders. The aggregate total of mortgage loans shall not exceed 25% of the union's paid-in capital. [§12305(4)]

WASHINGTON—Loans may be secured by first mortgages or real estate contracts in which members are buyers if such mortgage or contract relates to improved real estate which is within the state. Also must be within 50 miles of credit union's principal office unless with prior approval of supervisor. Aggregate of such loans shall not exceed: 10% of total assets if assets are under $100,000, 20% if assets from $100,000 to $1 million, 30% if assets are over $1 million. [§31.12.270(4), 31.12.290]

ACT IS SILENT:

Alabama	Nevada	Rhode Island
Colorado	New Jersey	South Carolina
Georgia	New Mexico	Tennessee
Michigan	North Carolina	Texas
Mississippi	Ohio	Utah
Missouri	Oklahoma	Vermont
Montana	Oregon	Virginia
Nebraska	Puerto Rico	West Virginia

Real Estate Loan Terms

CUNA MODEL ACT: Act is silent.

FEDERAL CREDIT UNION ACT: A federal credit union shall have power . . . (to make) a residential real estate loan which is made to finance the acquisition of a one-to-four-family dwelling for the principal residence of a credit union member, the sales price of which is not more than 150% of the median sales price of residential real property situated in the geographical area (as determined by the board of directors) in which the property is located, and which is secured by a first lien upon such dwelling, may have a maturity not exceeding thirty years, subject to the rules and regulations of the Board. [§107(5)(A)(i)]

OTHER ACTS:

ARIZONA—Real estate loan may not exceed 80% of the conservative appraised value as established by an independent qualified appraiser appointed by the board of directors.
[§6-519(C)(6)]

ARKANSAS—Real estate loan shall not exceed two-thirds of the appraised value of the real estate, and shall also provide for substantially equal monthly payments for insurance premiums and taxes assessed against the security. [§67-916(4)]

CONNECTICUT—If the assets of the credit union are less than $2 million, the loan shall not exceed 90% of the appraised value, nor shall it exceed the greater of $5,000 or 1% of the credit union's paid-in and unimpaired capital and surplus, with a maximum term of 15 years. If assets are $2 million to $10 million, the loan shall not exceed 80% of the appraised value or $35,000, whichever is less, with a maximum term of 30 years. If assets are more than $10 million, the loan shall not exceed 80% of the appraised value or $40,000, whichever is less, with a maximum term of 30 years. Credit unions with assets over $10 million may make loans secured by mortgage for the purpose of constructing or repairing buildings or other improvements on the property of the borrower and secured by mortgage thereon, which may be made in instalments advanced at the discretion of the credit union as the work progresses; provided at no time shall the ratio of the amount of loans to the then total value of the mortgaged premises exceed fifty per cent or the ratio the final loan is to bear to the value of the completed mortgaged premises, whichever is greater. [§36-198b(e),(g)]

HAWAII—The loan cannot exceed 90% of the appraised value of the real estate plus the unencumbered share or deposit balance pledged for a loan for residential property; or 80% for real estate loans other than residential. In neither case shall the maturity exceed 30 years. [§410-15(c),(d)]

IDAHO—First mortgage real estate loans shall not have a maturity of more than ten years and shall not exceed 80% of value of the real estate, determined by an independent qualified appraiser. Second mortgage real estate loans may not exceed 50% of the difference between the appraised value and the balance owing on the first mortgage. [§26-2119]

ILLINOIS—Loans secured by first mortgage on real estate shall not exceed $50,000, with a rate of interest not to exceed a rate ¼% below the maximum rate allowed by Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money". [§496.20] Credit union may make "reverse mortgage" loans to persons 65 or older to pay taxes on homestead. [§496.9a]

INDIANA—Where repayment of such loans is to be made at maturity, the loan shall not be for a period of more than 5 years nor an amount greater than 50% of the appraised value. Loans amortized by substantially equal principal repayments at least semiannually shall not exceed 80% of the appraised value with a maximum maturity of 25 years. [§28-7-1-17(c)]

IOWA—Where repayment of such loans is to be made at maturity, the loan shall not be for a period of more than 5 years nor an amount greater than 50% of the appraised value. Where the terms call for installment payments which retire at least 40% of the principal within 10 years, the loan shall not exceed 60% of the appraised value and the maturity limit is 10 years. If the terms call for monthly installment payments, including principal and interest, at least equal to 1% of the principal, the loan shall not exceed 80% of the appraised value. The board of a credit union with assets of at least $500,000 may set maturity schedules not to exceed 30 years for amounts up to 90% of the appraised value. The maximum real property loan balances of this type shall be established by rule by the administrator. A credit union may take a second mortgage as security subject to rules made by the administrator. [§§533.16(4),533.4]

KENTUCKY—The legal rate of interest provided by KRS 360.010

shall apply to loans secured by real estate, and no greater rate shall be charged.[§290.200(3)]

LOUISIANA—Loans secured by first mortgage on real estate shall not exceed 75% of the appraised value. The maximum amount for such loans shall be $45,000, with a maximum term of 30 years. [§6:656(4)(b,c,d)]

MAINE—No such loan shall exceed 80% of the appraised value, and the maximum term is 30 years. [§855(1)(B)]

MARYLAND—First mortgage real estate loans may be at the rate set by the interest and usury law. Such loans are to be amortized over a period not exceeding 20 years, may not exceed $25,000, and are only to be made upon approval of the Bank Commissioner. [§162]

MASSACHUSETTS—A mortgage on unimproved and unproductive real estate shall not exceed more than 50% of the appraised value with a term not more than 3 years. Otherwise the maximum terms are 80% and 25 years, except that when the credit union is insured under federal or state law and shares and deposits aggregate more than $2 million, it may make motgage loans not to exceed $50,000 with maximum terms of 90% and 30 years. [Ch. 171, §24(B)]

MICHIGAN—Redlining in mortgage and home improvement loans is forbidden. Credit unions may not deny applications, charge higher interest or alter any other lending terms because of neighborhood racial or ethnic trends. Age of building may not be a factor in lending decisions but the condition of the building can be considered. Credit unions may not require a minimum mortgage amount above $5,000; in home improvement loans, $500. [L. 1978, P.A. 135]

NEW YORK—Where the share capital of the credit union exceeds $5 million, the aggregate amount of such loans to any member may equal but not exceed $20,000 if each such loan is secured by a first mortgage on improved and unencumbered real estate located in this state having an appraised value at least 25% greater than the amount of such loan, if uniform monthly, semi-monthly or weekly payments of principal and interest are required sufficient to pay all interest and effect full repayment of principal within 25 years, and provided no such loan bears interest at a rate greater than the rate prescribed by the banking board, or, if no rate has been so prescribed, 6% per annum. [§454(12)(a)]

PENNSYLVANIA—Mortgage loan on any one property shall not exceed $35,000 or 5% of the paid-in capital of the credit union, whichever is lesser, and the term shall not exceed 30 years. Such mortgages shall not exceed 90% of the fair market value of the property. [§12305(B)(4)]

WASHINGTON—The total amount which may be loaned on any one property or to any one family community borrower shall not exceed 2½% of the assets of the credit union, or $10,000, whichever is greater, except with the prior approval of the supervisor. Such loan shall not exceed 75% of the appraised value, with a maximum term of 20 years. Payments, including interest, shall not be less than 7½% per year of the original principal. [§31.12.290(3)]

WISCONSIN—Real estate loans may provide for additional advances, but any additional advance, if the mortgage and mortgage note so provide, may not exceed an amount specified in the mortgage. [§186.09(10)]

ACT IS SILENT:

28 states and Puerto Rico.

Guaranteed Loan Programs

CUNA MODEL ACT: A credit union may participate in guaranteed loan programs of the federal and state government. [§7.40(2)]

FEDERAL CREDIT UNION ACT: Federal credit unions may make loans secured by insurance or guarantee of the Federal government, of a State government, or any agency of either under the terms specified in the law under which such insurance or guarantee is provided. [§107(5)(A)iii] Insurance obtained under Title I of the National Housing Act shall be deemed adequate security on loans. [§114]

ACT SIMILAR TO MODEL ACT:

Iowa	[§533.16(5)(c)]	Oregon	[§723.526(2)]
Montana	[§14-654(2)]	Texas	[§7.04(b)]
No. Carolina	[§54-109.71(b)]		

INSURANCE OBTAINED UNDER TITLE I of the National Housing Act shall be deemed adequate security on loans:

Idaho	[§26-2119]	North Dakota	[§6-06-06(7)]

LOANS WHICH ARE INSURED under Title I of the National Housing Act or under Title IV, Part B of the Higher Education Act of 1965 or a similar state insurance program are exempted from the definition of risk assets:

Georgia	[§41A-3110(e)]	Nevada	[§678.690]

LIMITATIONS AND RESTRICTIONS ON secured real estate loans not applicable to loans which are secured under the provisions of the National Housing Act:

Maine	[§855(1)(B)]

OTHER ACTS:

CALIFORNIA—Security includes any obligation wherein the payment of interest and principal is guaranteed by any municipal government, state government, the government of the United States, or by any instrumentality of the United States. [§14907(b)]

CONNECTICUT—A credit union may make loans to members for the payment of expenses of college or university education of such member or of a member of such member's family. If such loans are fully insured under the provision of any state or federal legislation the applicable limitations imposed by such legislation shall apply in lieu of the corresponding limitations stated in this chapter. [§36-205a]

A credit union may make home or property improvement loans to its members insurable under Titles I and II of the National Housing Act, provided no such loan shall exceed $5,000, or, in the case of loans which the Federal Housing Administrator is authorized to insure under section 203(k) or section 220(h) of the National Housing Act, $10,000, for each family unit. Each such loan must be insured to the maximum amount insurable under Titles I and II of the National Housing Act. [§36-198a]

HAWAII—A credit union may loan to members under the provisions of Title I of the National Housing Act and such insurance on these loans shall be deemed adequate security. The terms of such loans shall be as defined by the credit committee under the provisions of Title I of the National Housing Act. Maturity limits shall not apply to loans made under the National Higher Education Act and guaranteed in whole or in part by the United States government or any of its agencies, or any agency of the State. [§410-15(a),(b)]

continued

ILLINOIS—Any credit union with assets of $500,000 or more may loan to its members under scholarship programs which are subject to a federal or state law providing 100% repayment guarantee. The total of all such loans may not exceed 10% of the credit union's unimpaired capital and surplus, but the Director on application of the credit union may permit a maximum of such loans to 20% of the unimpaired capital and surplus. [§496.20]

INDIANA—A credit union may invest in mortgages on real estate situated within the state which are fully insured under Title II of the National Housing Act. [§28-7-1-9(c)(2)]

LOUISIANA—Loans may be secured by insurance obtained under Title I of the National Housing Act and Veterans Housing Act for such amounts and terms as permitted by the guarantee agency. Students who qualify for a student loan under the provisions of the Louisiana Higher Education Assistance Commission Act shall be eligible for membership in any credit union in the state solely for the purposes of obtaining a student loan.
[§6:656(A)(2)(b), 6:645(C)]

MASSACHUSETTS—A credit union may make loans guaranteed by the Massachusetts Higher Education Assistance Corporation if a member of the student's family is a member of the credit union. [Ch. 171, §24(C)] Credit unions may invest in loans insured by federal housing agencies but no more than 25% of the total deposits may be committed at any time to such loans. [Ch. 167, §51]

MICHIGAN—A credit union may service under contractual arrangement with a third party student loans made by the credit union to its members and subsequently sold without recourse to such third party, if the student loans are 100% guaranteed by this state or the federal government. [§490.4(p)]

NEW HAMPSHIRE—Any credit union with assets of $3 million or more may purchase real estate mortgages which are guaranteed by the Federal Housing Administration or the Farmer's Home Administration. [§394:17(VI)]

NEW YORK—A credit union may lend money to its members, or their children who are attending or planning to attend college, to assist them in meeting the expenses of higher education, where such loans are made by the state higher education assistance corporation, and in such cases no further security shall be required. [§453(5-a)]

PENNSYLVANIA—A credit union may grant any mortgage loan which is insured or guaranteed, in whole or in part, by the U.S. or any instrumentality thereof. [§12305(B)(4)]

Credit unions can make higher educational loans to students and invest in loans guaranteed by the Pennsylvania Higher Education Assistance Agency. [L. 1967, Act 424]

WASHINGTON—A credit union may make loans to members under the "Higher Education Act of 1965", or under "FHA Title I, National Housing Act of 1934". [§31.12.270(2)(6)]

ACT IS SILENT:

Alabama	Mississippi	Rhode Island
Arizona	Missouri	South Carolina
Arkansas	Nebraska	Tennessee
Colorado	New Jersey	Utah
Florida	New Mexico	Vermont
Kansas	Ohio	Virginia
Kentucky	Oklahoma	West Virginia
Maryland	Puerto Rico	Wisconsin
Minnesota		

Application For Loan

CUNA MODEL ACT: Every application for a loan shall be made in writing upon a form which the credit committee, credit manager, or loan officer prescribes. The application shall state the purpose for which the loan is desired, and the security, if any, offered. Each loan shall be evidenced by a written document. [§7.12]

FEDERAL CREDIT UNION ACT: Application for loans shall be made on forms prepared by the credit committee which shall set forth the security, if any, and other such data as may be required. [§114]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-649]	Oregon	[§723.506]

ACT SIMILAR TO MODEL ACT, but application form is to be prescribed by the board of directors:

Georgia	[§41A-3109(b)]	Nevada	[§678.710(2)]
Kansas	[§17-2210]	No. Carolina	[§54-109.66]
Michigan	[§490.10]	Tennessee	[§45-1815]
Mississippi	[§81-13-31]	Virginia	[§6.1-212]
Missouri	[§370.220(2)]	West Virginia	[§31-10-10]
Nebraska	[§21-1788]		

ACT SIMILAR TO MODEL ACT, but application form is to be prescribed by the credit committee and approved by the board of directors:

Arkansas	[§67-916(1)]	Indiana	[§28-7-1-17]
Hawaii	[§410-15(a)]	Vermont	[§2078(a)]
Idaho	[§26-2119]		

ACT SIMILAR TO MODEL ACT, but no provision as to who shall prescribe the form:

Arizona	[§6-514(A)]	New Hampshire	[§394:33]
California	[§14900]	New York	[§470]
Connecticut	[§36-205]	Puerto Rico	[§17]
Illinois	[§496.19]	Rhode Island	[§19-21-23]
Maine	[§852(1)]	South Carolina	[§8-669]
Maryland	[§146]	Utah	[§7-9-12]
Massachusetts	[Ch. 171, §23]	Washington	[§31.12.250]

APPLICATION FOR LOANS shall be made on forms approved or prepared by the credit committee which set forth the purpose for which the loan is desired, the security if any, and other such data as may be required:

Alabama	[§5-17-12]	New Jersey	[§17:13-42]
Colorado	[§11-30-110]	New Mexico	[§48-19-10(B)]
Florida	[§657.10(1)]	North Dakota	[§6-06-14]
Iowa	[§533.10]	Pennsylvania	[§12313]
Minnesota	[§52.10]		

OTHER ACTS:

LOUISIANA—Every application for a loan shall be in writing and signed by the applicant, and contain full and complete information pertaining to the applicant. The application shall state the purpose for which the loan is desired, a financial statement, and the security, if any, offered. [§6:650]

TEXAS—Every loan must be evidenced by a written instrument. [§7.01]

WISCONSIN—Every application for a loan shall be in writing and shall state the security or collateral offered, if any. [§186.09(3)]

ACT IS SILENT:

Kentucky	Ohio	Oklahoma

Line of Credit

CUNA MODEL ACT: The credit committee or credit manager may approve in advance upon their own motion or upon application by a member, a line of credit, and advances may be granted to each member within the limit of such extension of credit. Where a line of credit has been approved, no additional loan applications are required as long as the aggregate obligation does not exceed the limit of such extension of credit. [§7.30]

FEDERAL CREDIT UNION ACT: A federal credit union may extend lines of credit to its members, to other credit unions, and to credit union organizations. A self-replenishing line of credit to a borrower may be established to a stated amount on certain terms and conditions which may be different from the terms and conditions established for another borrower. [§107(5)(B)]

ACT SIMILAR TO MODEL ACT:

Mississippi	[§81-13-31]	Oregon	[§723.522]
Montana	[§14-653]	Texas	[§7.03]
North Carolina	[§54-109.70]	Virginia	[§6.1-212.1]

ACT SIMILAR TO MODEL ACT, but the credit committee shall review all extensions of credit at least once a year, and any extension of credit shall expire if the member becomes delinquent by the specified period of time:

Arkansas—90 days	[§67-916(7)]
California—90 days	[§14503]
Hawaii—90 days	[§410-15(j)]
Idaho—60 days	[§26-2119]
Missouri—90 days	[§370.220(8)]
Nevada—90 days	[§678.720(2)]
New York—90 days	[§470]
Vermont—90 days	[§2078(d)]

OTHER ACTS:

ILLINOIS—The credit committee may approve a maximum line of credit upon which the member may draw from time to time. [§496.15]

INDIANA—The credit committee or loan officer may approve in advance upon application by a member, a line of credit, which shall establish a signature limit of the member. Where a line of credit has been approved, no additional loan application and no statement of purpose is required, provided the aggregate unsecured obligation does not exceed the signature limit of such credit. [§28-7-1-17.5]

LOUISIANA—A credit union may make loans to members on a revolving credit, open-end credit, or line of credit plan in conformity to Regulation Z of the Truth-in-Lending Act. The finance charge, which shall not exceed 1% per month on the unpaid balance, may be added to the loan balance on the monthly due date or monthly billing date or the proportionate part due may be added when a new advance is made. [§6:656(D), 6:654(B)]

MAINE—The credit committee may approve a line of credit upon written application of a member. Advances within the limits of such extension of credit may be made directly to the member, but not to any other person or entity. A line of credit shall expire no later than 12 months after its approval unless renewed in the same manner in which it was originally given. [§857]

MASSACHUSETTS—Notwithstanding any prior provisions of the law to the contrary, a credit union may make a loan or a series of loans to its members evidenced by a note, loan agreement, or other instrument, with or without security, at such rates of interest and subject to such lawful charges as the credit committee may determine. Such loan or loans shall be payable in installments at intervals not exceeding one month. [Ch. 171, §24(G)]

MICHIGAN—With the written approval of the commissioner, a credit union may make line-of-credit loans, which are loans approved by the credit committee under which a member from time to time may request advances and under which he may maintain an outstanding loan balance not to exceed a stated sum during a specified period of time. A credit union authorized to make line-of-credit loans shall maintain such reserves as the commissioner may prescribe. [§490.4(b)]

MINNESOTA—Upon application by a member, the credit committee may approve a self-replenishing line of credit, and advances may be granted to a member within the limit of the extension of credit. Where a self-replenishing line of credit has been approved, additional loan applications may be required. [§52.16(2)]

NEW JERSEY—The credit committee may approve upon its own motion or upon application by a member, a line of credit. The committee shall review all lines of credit at least each 2 years and may at its discretion extend the expiration date or increase the amount of a line of credit. The line of credit will expire if the member becomes more than 60 days delinquent. [§17:13-34]

RHODE ISLAND—No extension of credit shall be made upon a revolving credit plan, or line of credit or letter of credit, in which the credit authorization shall exceed $500, unless it shall be reviewed at least annually by the credit committee. [§19-21-23]

WISCONSIN—The credit committee may approve in advance, upon its own motion or upon application by a member, an extension of credit and loans may be granted to such member within the limit of such extension of credit. The credit committee or loan officer shall annually review all extensions of credit. With the approval of the commissioner, credit unions may utilize credit cards, providing the credit committee or loan officer has predetermined the extent of credit extension. [§186.09(8)]

ACT IS SILENT:

22 states and Puerto Rico.

Loan Approval by Credit Committee

CUNA MODEL ACT: The credit committee shall have the general supervision of all loans to members. No loan shall be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered. [§5.60, 5.62]

FEDERAL CREDIT UNION ACT: Except for those loans or lines of credit required to be approved by the board of directors in §107(5) of this Act, approval of an application shall be by a majority of the entire credit committee and by all members of the committee who are present at the meeting at which the application is considered. [§114]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-514(A)]	No. Carolina	[§54-109.46]
Illinois	[§496.15(2),(3)]	Oregon	[§723.306]
Montana	[§14-633]	Texas	[§5.05(e)]
Nevada	[§678.400(2)]		

continued

ACT SIMILAR TO FEDERAL ACT:

Alabama	[§5-17-12]	New Mexico	[§48-19-10(B)]
Florida	[§657.10(1)]	New York	[§470]
Minnesota	[§52.10]	Pennsylvania	[§12313]
New Jersey	[§17:13-34]		

SIMILAR TO FEDERAL ACT, but an applicant may appeal the decision of the credit committee if the bylaws so provide:

Louisiana	[§6:650]	Missouri	[§370.220(4)]
Maryland	[§146]	Tennessee	[§45-1815]

NO LOAN SHALL BE MADE unless it has received the approval of a majority of the members of the credit committee present at a meeting, provided that a majority of the committee shall be present:

Hawaii	[§410-13(e)]	Vermont	[§2062(a)]
Idaho	[§26-2119]		

NO LOAN SHALL BE MADE unless it has received the unanimous approval of the members of the credit committee present when the loan was considered, which number shall constitute at least a majority of the committee, nor if any member of the committee shall disapprove thereof. An applicant may appeal to the board from the decision of the credit committee:

Kansas—If appeal is provided for in the bylaws. [§17-2210]
*South Carolina [§8-669]
Virginia [§6.1-212]
West Virginia [§31-10-10]
*No reference to majority requirement.

NO LOAN SHALL BE MADE unless it is approved by a majority of the entire credit committee:
Arkansas [§67-916(2)]
California—May appeal to the board. [§§14502, 14504]
Colorado [§11-30-110]
Georgia—May appeal to board if bylaws provide. [§41A-3109(b)]
Indiana—May appeal to board if bylaws so provide. [§28-7-1-17]
Iowa [§533.10]
Nebraska [§21-1789]
North Dakota [§6-06-14]
Rhode Island—May appeal to the board. [§19-21-23]
Wisconsin—May appeal to the board. [§186.09(4)]

NO LOAN SHALL BE MADE unless approved by a majority of a quorum of the credit committee. A quorum shall consist of not less than two members.

Michigan	[§490.10]	Utah	[§7-9-12]

NO LOAN SHALL BE MADE unless approved by all members of the credit committee who are present when the loan is considered, which number shall constitute at least two-thirds of the members of the committee:

Washington	[§31.12.240]	New Hampshire	[§394:32]
*Maine	[§845-(3)]	Massachusetts	[Ch. 171, §22]

*Approval by majority rather than unanimous agreement.

OTHER ACTS:

CONNECTICUT—Loans which are secured in full by pledge of the borrowing member's own shares may be made for up to 1 year without prior approval of the credit committee. Approval of the credit committee shall be by majority vote of members present at a meeting at which a majority of the members are present. [§36-205]

KENTUCKY—The credit committee shall approve every loan, in accordance with policies established by the board of directors and the bylaws, and shall generally supervise the administration of all loans. [§290.140]

MISSISSIPPI—An applicant for a loan may appeal to the directors if denied a loan by the credit committee, if the bylaws so provide. The bylaws determine the number of members constituting a quorum. [§81-13-5(a), 81-13-31]

OHIO—The credit committee shall have such powers in the granting of loans and the supervision of lending practices as shall be delegated to it by the articles, regulations, or resolutions of the board of directors. [§1733.19(d)]

OKLAHOMA—The credit committee shall have the general supervision of all loans to members. It shall be the duty of the committee to review all loan applications and to decide whether necessary requirements have been met. [§2010(D)]

PUERTO RICO—The credit committee shall consider and approve or refuse loans applied for by members and shall determine the form and manner in which said loans are to be paid, all according to the borrowing rules of the board. [§17]

Loan Approval By Loan Officer

CUNA MODEL ACT: The credit committee may appoint one or more loan officers and delegate the power to approve loans subject to such limitations or conditions as the credit committee prescribes. Loan applications not approved by a loan officer shall be reviewed and acted upon by the credit committee. [§5.64(1)(2)]

FEDERAL CREDIT UNION ACT: The credit committee may appoint one or more loan officers and delegate to him or them the power to approve loans and lines of credit. Each loan officer shall furnish to the credit committee a record of each application approved or not approved by him within seven days of the date of filing of the application therefor. No individual shall have authority to disburse funds of the federal credit union with respect to any loan or line of credit for which the application has been approved by him in his capacity as a loan officer. [§114]

ACT SIMILAR TO MODEL ACT:

Kansas	[§17-2210]	North Carolina	[§54-109.47]
Montana	[§14-634]	Oregon	[§723.312]

ACT SIMILAR TO FEDERAL ACT, but with no restriction on the disbursement of funds:

New York	[§470]

ACT SIMILAR TO FEDERAL ACT, but references to lines of credit are omitted:

*Alabama	[§5-17-12]	*Nebraska	[§21-1786]
Arkansas	[§67-915(2)]	New Jersey	[§17:13-34]
Colorado	[§11-30-110]	New Mexico	[§48-19-10(B)]
Florida	[§657.10(2)]	North Dakota	[§6-06-14]
Hawaii	[§410-13(e)]	Ohio	[§1733.26]
Indiana	[§28-7-1-16(g)]	Tennessee	[§45-1815]
*Louisiana	[§650.1]	Virginia	[§6.1-212]
Maryland	[§146]		

*No restriction on the disbursement of funds.

LOAN OFFICERS MAY AUTHORIZE LOANS subject to conditions and regulations of the credit committee:

Iowa	[§533.10]	Kentucky	[§290.140]

LOAN OFFICERS MAY AUTHORIZE LOANS only within written rules and regulations established by the credit committee, and all such loans shall be reviewed by the credit committee during one of its regular meetings:

Oklahoma	[§2010(D)]	Utah	[§7-9-18]

LOAN OFFICERS, SUBJECT TO THE SUPERVISION OF THE CREDIT COMMITTEE, may be delegated authority to act on all or some applications for loans and to approve them, reporting thereon to the credit committee within 15 days:

***Illinois	[§496.15]	**Minnesota	[§52.10]
*Michigan	[§490.10]	***Missouri	[§370.220(4)]

*Reporting within 30 days

**Applicable only to credit unions having assets in excess of $10,000.

***Applicable only to credit unions having assets in excess of $50,000.

OTHER ACTS:

ARIZONA—Loan officers may approve loans, extension agreements, and releases or exchange of collateral within amounts set by this subsection. Loan officers may not sign checks or disburse personally approved loan funds. [§6-514(B)]

CALIFORNIA—Loan officer may be authorized to approve loan applications within the limits set by the credit committee, but in no event to exceed the limits specified in this section. Action taken on applications must be reported to the credit committee. Within limits, loan officers may also approve credit extensions. [§§14502, 14503]

CONNECTICUT—The credit committee may delegate loan approval authority to loan officers. Written reports of applications received by loan officers and their handling of them must be given to the committee at each meeting. Loan officers may not disburse funds for personally approved credit extensions. [§36-205]

GEORGIA—Loan officers may approve loans within limits set by the credit committee. A record of loans approved by each loan officer shall be made available to the credit committee upon request by it. All loans not acted upon by a loan officer shall be acted upon by the credit committee. [§41A-3109(b)]

IDAHO—A loan officer may make loans without necessity for a meeting of or approval by members of the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him in his capacity as loan officer except that the loan officer may disburse loans approved by him which are fully secured by shares or which do not exceed the credit union's unsecured loan limit. [§26-2118]

MAINE—The credit committee may delegate to the loan officer or officers such authority, as is within the limits set for the committee by the board of directors. No loan officer shall disapprove any loan application, but shall refer such applications to the full committee. All loan officers shall furnish to the credit committee a record of each application acted upon by him at the next meeting of said committee after the date of the filing of the application. No loan officer shall have the authority to disburse funds of the credit union for any loan approved by him in his capacity as loan officer. [§845(2)]

MASSACHUSETTS—The loan officers may not make real estate loans. All loans made by such loan officer or employee shall be reported to the credit committee within seven days from the date of the loan. [Ch. 171, §22]

MISSISSIPPI—Loan officers will report weekly in writing to the credit committee the full details of all loans approved by them and will refer immediately all loans disapproved by them for review and such action as deemed appropriate by the credit committee. [§81-13-31]

NEVADA—If a loan is not approved by the loan officer the application shall be reviewed by the credit committee. If a loan is approved by the loan officer, it must also be approved by at least ⅔ of the credit committee within 31 days in order to become final. [§678.400(4)]

NEW HAMPSHIRE—Any loan application rejected by the loan officer shall be referred to the credit committee, and all loans made by the loan officer shall be approved within 30 days by at least two-thirds of the credit committee. [§394:25(a)]

PENNSYLVANIA—A loan officer may approve loans, share withdrawals, releases and substitutions of security within limits specified by the credit committee. Each loan officer must furnish the credit committee with a record of each loan applied for. No loan officer may disburse a loan that he or she had approved. [§12313]

PUERTO RICO—The appointed officer(s) may grant loans up to the maximum determined by the board, and shall, weekly, make a written report of loans so authorized to the credit committee and shall also submit to the credit committee for its final decision any loan application which has not been approved. [§17]

RHODE ISLAND—The loan officers may approve, but not disburse loans not to exceed $5,000 each above the portion of such loans fully secured. Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by him, and all loans not approved by a loan officer shall be acted upon by the committee. [§19-21-5(n)]

SOUTH CAROLINA—The credit committee may delegate to a loan officer the power to approve every loan or advance made by the credit union. The loan officer may not disburse a loan that he or she had approved. [§8-669]

TEXAS—At least once each month, each loan officer shall furnish to the credit committee a record of each loan approved or not approved during the preceding month. The credit committee shall act on all applications for loans not approved by the loan officer. [§5.05(f)]

VERMONT—Loan officers may make loans without necessity for a meeting of or approval by any members of the credit committee, as provided in the bylaws. [§2062(b)]

WASHINGTON—The loan officers may approve certain types of loans without further authorization from the credit committee. All loans not approved by a loan officer shall be acted upon by the credit committee. [§31.12.245]

WISCONSIN—Loan officers may approve loans and lines of credit, and a record must be maintained of each loan approved or not approved. [§186.09(2),(4),(8)(a)]

ACT IS SILENT:

West Virginia

Loans to Officials

CUNA MODEL ACT: A credit union may make loans to its directors, employees, loan officers, credit manager, and to members of its supervisory and credit committees, provided that: a) The loan complies with all lawful requirements under this act with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and b) Any such loan or aggregate of loans to any one director or committee member which exceeds $2,500 must be approved by the board of directors. [§7.60]

FEDERAL CREDIT UNION ACT: A federal credit union may make loans to its own directors and to members of its own supervisory or credit committee provided that any such loan or aggregate of loans to one director or committee member which exceeds $5,000 plus pledged shares must be approved by the board of directors. [§107(5)(A)(iv)]

LOANS MAY BE MADE TO OFFICIALS, provided that any such loan or aggregate of loans to any one official which exceeds $2,500 plus pledged shares must be approved by the board of directors:
Nevada [§678.730] Texas [§7.05(a)]

LOANS TO OFFICIALS MAY BE MADE under the same general terms and conditions as loans to other members, with the added requirements indicated:

Alabama—Provided that loans to officials are not prohibited in the bylaws, it shall be the duty of the board to establish a written policy concerning such loans. The credit committee shall at least monthly submit to the board a listing of all loans made to officials. Other specific limitations also listed. [§5-17-17]

Arkansas—Shall require the additional approval of the board and credit committee and the maximum aggregate of such loans shall be prescribed by the supervisor according to the credit union's asset categories. [§67-916(3)]

Illinois—Aggregate total of such loans may not exceed 20% of credit union's unimpaired capital and surplus. [§496.19]

Maine—Loans to officers or directors are restricted to loans secured by a first mortgage on real estate, personal loans having an aggregate value of $5,000 or less, and passbook loans. Such loans must be on the same terms as are generally available to members. [§465(2)]

Mississippi—Such loans must be approved by the board. [§81-13-47]

Missouri—All such loans shall be approved by the board and shall not exceed a total of $5,000 for each official. They must also be reported to the supervisor at least annually. [§370.310(4)]

Oregon—The aggregate of such loans may not exceed 10% of the paid-in and unimpaired capital. [§723.532]

LOANS TO OFFICIALS MAY BE MADE under the same general terms and conditions as loans to other members, provided the borrower takes no part in the consideration of his application. Such loans are also subject to the added requirements indicated:

Arizona—The approval of all members of the credit committee and board of directors is required where the loan exceeds an amount set by the board over the share balance of the borrower. [§6-518(B)]

California—The loan shall be approved by the credit committee and the board of directors and shall not exceed 1% of the unimpaired capital and surplus of the credit union or the maximum obligation prescribed by 14904(b), whichever is less. The aggregate of all such loans shall not exceed 10% of the unimpaired capital and surplus of the credit union. The loan shall be reported to the commissioner within 5 days after the board's approval. [§14910(a)]

Georgia—All such loans shall be reported to the board of directors at its next meeting. [§41A-3109(c)]

Hawaii—If the total outstanding loans to one official shall exceed $5,000, the loan must be approved by the credit committee and board of directors after submission to them of a detailed current financial statement by the applicant. All loans to officials shall be reported to the commissioner at least annually, and the aggregate of all such loans shall not exceed 20% of the unimpaired capital and surplus of the credit union. [§410-15(b)]

Indiana—The loan must be approved by the credit committee, or loan officer(s) if applicable. The aggregate of loans outstanding shall not exceed 20% of the paid-in capital and surplus of the credit union. [§28-7-1-9(b)]

Iowa—Loans in excess of a director's shares and deposits shall be made only if the director has submitted a detailed current financial statement and upon the approval of the board. The aggregate amount of director loans shall not exceed 20% of the assets of the credit union. [§533.16(3)]

Kansas—The loan is approved by the credit committee and board of directors. All such loans shall be reported to the administrator at least semi-annually and the total of such loans outstanding shall not exceed 10% of the unimpaired capital and surplus of the credit union. Loans to employees are subject to similar requirements and shall not exceed by $5,000 the amount of the employee's shareholdings not otherwise encumbered or pledged. [§17-2216]

Louisiana—Loans to officials up to the amount of their shareholdings may be made subject to approval by a majority of the board of directors. [§6:656(5)]

Michigan—Officials may borrow in excess of their share and deposit holdings if the bylaws so permit. The aggregate amount of loans to directors and committeemen shall not exceed 10% of the share capital of the credit union. [§490.16]

Montana—Any such loan or aggregate of loans to any one director or committee member which exceeds $2,500 plus pledged shares must be reported to the board. Loans to directors and committee members may not exceed an aggregate of 20% of unimpaired surplus of the credit union. [§14-655(1)]

New Hampshire—Members of the board of directors and the credit and supervisory committees may borrow in excess of their holdings with the approval of a majority of the members of the credit and supervisory committees. [§394:30]

New Mexico—Loans to an official must be approved by the credit committee or loan officer and the board of directors after submission to them of a detailed current financial statement by the borrower. [§48-19-16]

Oklahoma—Loans to officials must also meet the requirements set in the bylaws, and shall not exceed the applicant's shares and/or deposits unless approved by both the credit committee and the board of directors. The aggregate of all such loans shall not exceed 20% of the unimpaired capital and surplus of the credit union. [§2006(5)]

OTHER ACTS:

COLORADO—Officials may borrow in excess of their holdings only upon approval of both the credit committee and the board. [§11-30-116]

FLORIDA--All loans to directors, officers, and committeemen (except share loans) must be approved by the credit committee and the board without the applicant having a vote on his loan, and provided that the total of such loans shall not exceed 10% of the capital and deposits of the credit union. [§657.16]

IDAHO—Any loan made to, co-signed, endorsed, or guaranteed by members of the official family shall require the additional two-thirds written approval of all members of the board and credit committee where such loan exceeds the unsecured loan limit plus the unencumbered share balance of the borrowing official. [§26-2119]

KENTUCKY—In order to borrow more than the amount of his shareholdings, an officer, director, or member of the credit or supervisory committee must receive authorization by the members of the credit union at an annual meeting, or at a special meeting called for such purpose. However, any officer, director or committee member may borrow up to the unsecured loan limit without member authorization. [§290.230]

MARYLAND—No member of the board of directors, the credit committee, the supervisory committee, or the commissioner or any member of his staff shall directly or indirectly borrow from or become security for a loan or advance made by the credit union in excess of the total paid-in shares and deposits held by him and his co-makers in said credit union, unless the loan is approved by majority vote at meetings in the absence of the applicant of the credit committee at which a majority of the members of the credit committee are present and at a meeting of the board or directors, in the absence of the applicant, at which a majority of the members of the board of directors are present. [§152(b)]

MASSACHUSETTS—Member of the board needs approval of two-thirds of balance of board to borrow in excess of his holdings. [Ch. 171, §18]

MINNESOTA—The credit committee and the board of directors, meeting jointly and acting collectively as a whole, shall have the general supervision of all loans to a member who is a director, officer or a member of the credit or supervisory committee whenever the amount exceeds the member's shares and deposits. At least a majority of the credit committee and the board shall pass on all such loans in the absence of the applicant, and the approval of such loan must be in writing and by unanimous vote of all present. [§52.10]

NEBRASKA—Any loan beyond the amount of an official's holdings must be approved by the entire credit committee present. The person whose loan is being considered shall not be present or take in that portion of the meeting at which his loan is considered. [§21-1787]

NEW JERSEY—No loan to a director, officer or member of th credit committee shall exceed the amount of his shareholdings unless the loan shall have been approved by a majority vote at a joint meeting at which a majority of the credit committee and board of directors shall be present. [§17:13-42(d)]

NEW YORK—To borrow more than his shareholdings the loan shall be unanimously approved in writing at a joint meeting of the directors, the credit and supervisory committees at which a majority of the total membership, is present. [§454(4)]

NORTH DAKOTA—No director, officer, or member of any committee may borrow more than $2,500 plus pledged shares and deposits less any loan balance therein, unless his application is approved by three-fourths of the other members of the board. [§6-06-20]

PENNSYLVANIA—A director, officer, or member of any committee may only borrow an amount not exceeding the unsecured loan limit or $2,500, whichever is less, plus the member's shareholdings or the unpledged and free shares of another member pledged as security for such loan. [§12321]

PUERTO RICO—A loan to an officer in excess of his shareholdings must be approved at a meeting expressly called for this purpose, where a majority of the members of the credit committee and a member of the supervisory committee are present. [§28]

RHODE ISLAND—Members of the credit and supervisory committees may borrow up to the amount of shares and deposits pledged for the loan or upon prior authorization and approval by the board. [§19-21-30]

SOUTH CAROLINA—Loans to members of the credit committee shall be approved by the board of directors. The credit committee may grant loans to credit committee members and loan officers and loan officers may grant loans to credit committee members and other loan officers if the loan is to be fully secured by shares on deposit in the same credit union. [§8-669]

TENNESSEE—A director or member of the credit or supervisory committee may borrow subject to the limitations for other loans. The maximum of any loan to an official varies with the credit union's assets as follows:

Assets up to $50,000	$1,000
$50,001 to $100,000	2,000
$100,001 to $250,000	3,500
$250,001 to $500,000	5,000
$500,001 to $1,000,000	7,500

Shares of stock in the credit union held by an official given as security for a loan are not subject to the limitations of the above schedule.

The total of all such loans shall not be in excess of 20% of the credit union's assets. [§45-1821]

UTAH—A majority of the members of the board must approve loan applications of credit committee members. [§7-9-12]

VERMONT—The credit committee must sit with the supervisory committee when acting upon a loan application from a director. The board of directors must pass on loans to members of the supervisory and credit committees. [§§2061, 2062(a)]

VIRGINIA—If the borrower or endorser is a member of the credit committee the loan must be approved by the supervisory committee. [§6.1-217]

WASHINGTON—Loans to directors and committee persons shall be under at least the same conditions and terms as required of the general membership. [§31.12.210]

WEST VIRGINIA—Supervisory committee appoints a person to act on credit committee when member of credit committee applies for a loan. [§31-10-19]

WISCONSIN—The board of directors shall act on applications of credit committee members and loan officers. [§186.09(4)]

ACT IS SILENT:

Connecticut North Carolina Ohio

Fines for Late Payments

(Refer to "Incidental Charges" for collection costs)

CUNA MODEL ACT: A credit union shall have the power to assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union. [§3.10(14)]

FEDERAL CREDIT UNION ACT: A federal credit union shall have power . . . to levy late charges, in accordance with the bylaws, for failure of members to meet promptly their obligations to the federal credit union. [§107(10)]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-503(B)(6)]	Nevada	[§678.480(3)]
Colorado	[§11-30-117(1)(a)]	New Hampshire	[§394:5]
Georgia	[§41A-3002(b)(6)]	No. Carolina	[§54-109.21(13)]
Hawaii	[§410-12(f)(10)]	Oklahoma	[§2006(11)]
Idaho	[§26-2108(n)]	Oregon	[§723.152(14)]
Indiana	[§28-7-1-4(f)]	Rhode Island	[§19-21-5(i)]
Maine	[§813(2)(B)(10)]	South Carolina	[§8-670]
Maryland	[§150]	Tennessee	[§45-1803(6)]
Massachusetts	[Ch. 171, §7(k)]	Utah	[§7-9-17]
Michigan	[§490.4(v)]	Vermont	[§2054(12)]
Mississippi	[§81-13-5(f)]	Virginia	[§6.1-198(6)]
Missouri	[§370.030(6)]	Washington	[§31.12.020]
Montana	[§14-613(13)]		

ACT PROVIDES FOR FINES to be added to reserve fund:
Nebraska [§21-17, 103]

ACT STATES BYLAWS MAY PROVIDE FOR ASSESSMENT OF FINES TO MEMBERS for failure to meet obligations, but fine may not exceed specified amount:

California—3% of payment due, with a minimum of 5¢ and a maximum of $5. [§14202, 14852(h)]
Iowa—1% per month or 5¢, whichever is larger. [§533.4(7)]
Kentucky—1½% per month with a minimum of 5¢. [§290.180]
New York—2% per month with a 5¢ minimum. [§454(3)]
Pennsylvania—¼% per week with a 5¢ minimum. [§12319]

OTHER ACTS:

ILLINOIS—Reasonable fines may be levied as provided in the bylaws and may be deducted from the share balance or added to the loan balance of the member. Since credit unions are of the nature of cooperative associations, no interest or fines that may accrue shall be deemed usurious and the same may be collected by law in this state. [§496.42]

KANSAS—Fines may be collected for late payments if the certificate of organization so provides. [§17-2201(b)(6)]

LOUISIANA—The act of incorporation may specify late charges, within limit allowed by state bank department, for late repayments. [§§6:641(B)(9), 6:644(10)]

NORTH DAKOTA—The board shall establish a schedule of fines for delinquency in the payment of principal or interest, which the board shall impose at its discretion. [§6-06-12(9)]

ACT IS SILENT:

Alabama	New Jersey	Texas
Arkansas	New Mexico	West Virginia
Connecticut	Ohio	Wisconsin
Florida	Puerto Rico	
Minnesota		

Participation Loans

CUNA MODEL ACT: A credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial organizations. [§7.40(1)]

FEDERAL CREDIT UNION ACT: A federal credit union may participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with written policies of the board of directors, provided that a credit union which originates such a loan shall retain an interest of at least 10% of the face amount of the loan. [§107(5)(E)]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-654(1)]	Oregon	[§723.526(1)]
Nevada	[§678.710(4)]	Rhode Island	[§19-21-49]
No. Carolina	[§54-109.71(a)]	Texas	[§7.04(a)]

OTHER ACTS:

CONNECTICUT—A credit union may invest in a participating interest in any part or all of the outstanding loans of any other credit union or federal credit union located within this state and to sell a participating interest in any or all of its outstanding loans pursuant to an appropriate written loan participation and serving agreement to be signed by both credit unions involved in such transaction, provided such agreement shall be subject to the prior approval of the commissioner. [§36-198(s)]

IDAHO—The Idaho Corporate Credit Union may participate with the United States Central Credit Union in making loans to members of the corporate credit union upon the terms and conditions determined by the board of directors. [§26-2173(e)]

KANSAS—Two credit unions may participate in the risk liability and income on loans approved by both, except for real estate loans. Forms and procedures are subject to approval by administrator. [§17-2245]

MAINE—A financial institution may participate with another lender or lenders in making loans, and may purchase from or sell to other lenders any loan or participation interest. [§851(2), 434]

MASSACHUSETTS—A credit union whose shares and deposits aggregate more than $2 million and which is insured in full under federal or state law may make mortgage loans on a single or two-family residential property in participation with other banking institutions or associations. The maximum amount a credit union may invest in any participation loan is 1% of its deposits or $50,000 whichever is greater. The total of all such loans may not exceed 5% of the credit union's deposits, shares, guaranty fund, and undivided earnings. [Ch. 171, §24(B)(a)(6)]

MICHIGAN—A credit union may participate with any state or federal credit union doing business in this state in making loans to members. The credit union of which the borrower is a member shall supply at least 25% of the borrowed funds. [§490.4(q)]

NEW HAMPSHIRE—Credit unions with assets of $3 million or more may be an originator or participating lender in participation loans (as defined in RSA 387:1), provided such loans are within limits prescribed for other loans. [§394:17(VI)]

ACT IS SILENT:

33 states and Puerto Rico.

Chapter six

SAFEGUARDING THE FUNDS

Audits by Supervisory Committee

CUNA MODEL ACT: The supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. It shall make or cause to be made such supplementary audits or examinations as it deems necessary or as are required by the Director or by the board of directors, and submit reports of these supplementary audits to the board of directors. [§5.70]

FEDERAL CREDIT UNION ACT: The supervisory committee shall make or cause to be made an annual audit and shall submit a report of that audit to the board of directors and a summary of the report to the members at the next annual meeting of the credit union; shall make or cause to be made such supplementary audits as it deems necessary or as may be ordered by the Board, and submit reports of the supplementary audits to the board of directors. [§115]

ACT SIMILAR TO MODEL ACT:

Alabama	[§5-17-13(a)]	Montana	[§14-636]
Conn.	[§36-208(3),(5),(6)]	Oregon	[§723.322(1)]

ACT SIMILAR TO FEDERAL ACT:

Hawaii	[§410-13(f)]	South Carolina	[§8-662]
North Carolina	[§54-109.49]	Virginia	[§6.1-213]

THE SUPERVISORY COMMITTEE SHALL MAKE, or cause to be made, an annual audit with full report given to the directors and report given to the membership:

California—[§14453]

Maine—[§844]

North Dakota—[§6-06-15(3)]

Pennsylvania—[§12314(a)]

West Virginia—At close of fiscal year. [§31-10-11]

THE SUPERVISORY COMMITTEE SHALL MAKE, or cause to be made at least semi-annually, an examination of the affairs of the credit union, and an annual audit to be reported to the members:

Arkansas	[§67-917(1)]	Minnesota	[§52.11]
Colorado	[§11-30-111(1)(a)]	New York	[§ 471(2)(d)]
Idaho	[§26-2121]	Oklahoma	[§ 2010(E)]
Illinois	[§496.16]	Washington	[§ 31.12.200]
Maryland	[§147]		

THE SUPERVISORY COMMITTEE SHALL MAKE, or cause to be made, at least quarterly, an examination of the affairs of the credit union, and an annual audit to be reported to the members:

Arizona	[§6-515(A)]	Kansas	[§17-2211]
Florida	[§657.11]	Kentucky	[§290.150(2)]
Indiana	[§28-7-1-18]	Missouri	[§370.230]
Iowa	[§533.11]	Nebraska	[§21-1791]

AN INSPECTION OF THE CREDIT UNION'S AFFAIRS to be made at frequent intervals and a thorough audit to be made at the close of the fiscal year:

Louisiana	[§6:651]	Tennessee	[§45-1816]
Mississippi	[§81-13-33]		

OTHER ACTS:

GEORGIA—Inspection made at frequent intervals and a thorough audit made at least once each year. [§41A-3108(b)]

MASSACHUSETTS—The auditing committee shall examine carefully the cash and account of the credit union monthly; shall certify the monthly statements submitted by the treasurer; shall make a thorough audit of the books, including income and expense, semi-annually; and shall report to the board its findings together with its recommendations. [Ch. 171, §17]

MICHIGAN—The supervisory committee shall make an examination of its affairs, including a comprehensive audit of its books, at least annually, and an annual audit to be reported to the members. [§490.11]

NEVADA—The audit committee shall make a semi-annual audit of the financial records of the credit union and any interim audits as may be deemed necessary by the board or directed by the commissioner. A report shall be submitted to the board and a summary presented to the members. [678.390(1)]

NEW HAMPSHIRE—Inspection from time to time. [§394:28]

NEW JERSEY—Annual examination as of December 31 of each year. [§17:13-35]

NEW MEXICO—The supervisory committee shall make or cause to be made an examination of the affairs of the credit union at least annually including an audit of its books; shall make an annual audit and report to the members; and shall ascertain that all funds received shall have been deposited in a depository within 48 hours after receipt, however, receipts in the aggregate of $100 or less need not be deposited more than once each week. [§48-19-11]

OHIO—The supervisory committee shall make monthly examina-

continued

tion of the cash and accounts, verification of the treasurer's monthly statement, and an audit at least annually with a report of findings to the board. [§1733.19(b)]

PUERTO RICO—The supervisory committee shall examine all the operations of the credit union, at least once a year, such examination to include an audit of accounts. The report shall be submitted to the board. Should the board fail to correct deficiencies pointed out, said committee may call a meeting of the members to submit said report to them. The committee may make additional audits if deemed pertinent. [§18(a)]

The committee shall also render a written report to the annual meeting of members and to the Inspector of Cooperatives. [§18(b)]

RHODE ISLAND—The supervisory committee shall make a thorough audit immediately before a meeting of the directors, called to recommend the declaration of a dividend, and shall make a report to the directors and at the annual meeting.
[§19-21-34]

TEXAS—The board of directors shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union, in accordance with principles and regulations promulgated by the commissioner, and shall submit a report of the results to the department and a summary to the members at the next annual membership meeting. The board shall make or cause to be made any supplementary audits or examinations that it deems necessary. [§5.07(a)]

UTAH—The supervisory committee shall make or cause to be made an examination of the affairs of the credit union, including an inspection of its books, securities, cash, accounts, and loans, at least annually, and shall make a written report of its findings to the board following each examination. [§7-9-13]

VERMONT—The supervisory committee shall make or cause to be made a quarterly audit of the books and affairs of the credit union, a report of which shall be submitted to the board, and an annual audit to be reported to the members. The commissioner may accept the annual audit instead of quarterly audits. The committee shall make any supplementary audit required by the commissioner. [§2063(a)]

WISCONSIN—No supervisory or audit committee. See "External Audit."

External Audit

CUNA MODEL ACT: The board shall authorize the employment of such persons necessary to carry on the business of the credit union, including . . . auditing assistants requested by the supervisory committee. [§5.56(8)]

FEDERAL CREDIT UNION ACT: The board of directors shall provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee. [§113]

ACT SIMILAR TO MODEL ACT:

Connecticut	[§36-208(4)]	Montana	[§14-631(8)]
Idaho	[§26-2116(m)]	Oregon	[§723.296(8)]
Maine	[§842(2)(C)(O)]		

ACT SIMILAR TO FEDERAL ACT:

Arizona	[§6-513(14)]	Hawaii	[§410-13(8)]
Arkansas	[§67-913(o)]	New Hampshire	[§394:26]
Colorado	[§11-30-109(1)(i)]	Vermont	[§2061(17)]

THE GOVERNMENT SUPERVISOR MAY REQUIRE an external audit:

ALABAMA--By an auditor employed by the superintendent at the credit union's expense.[§5-17-13(d)]

GEORGIA—The supervisory committee may employ the services of independent accountants. [§41A-3108(b)]

ILLINOIS—If the assets of the credit union are $500,000 or more, the supervisory committee must employ a registered public accountant to make the annual audit. [§496.16(3)]

KANSAS—The administrator may accept, in lieu of the quarterly examinations, one annual audit by a CPA or other independent public accountant. [§17-2211]

MARYLAND—By a CPA. [§147A]

MASSACHUSETTS—The auditing committee shall cause an examination and audit to be made of the books, securities, cash, assets, liabilities, income and expenditures of the credit union including a trial balance of the deposit and share account. The person selected shall be subject to the approval of the commissioner, and the examination and audit shall be made in such form and manner as prescribed by the commissioner's regulations. [Ch. 171, §17]

NEBRASKA—The annual audit may be made by an accountant approved by the Department of Banking. [§21-1791]

NEVADA—In lieu of having an audit committee the board may employ the services of a public accountant or credit union auditing service. [§678.390(5)]

NEW YORK—Independent auditors shall be employed when the assets of the credit union are over $100,000. [§471(2)(d)]

NORTH CAROLINA—In lieu of a supervisory committee the bylaws may authorize the board to employ such clerical and auditing assistants as may be required. [§54-109.35(b)]

OHIO—The board may employ a public accountant or firm of public accountants in lieu of a supervisory audit committee. [§1733.19(c)]

OKLAHOMA—The supervisory committee may employ an auditor approved by the State Credit Union Board, a licensed public accountant, or a CPA. [§2010(E)]

PENNSYLVANIA—By a public accountant. (The department of banking may remove the members of the supervisory committee and issue an order on the board requiring an external examination if the supervisory committee and the board fail or refuse to act.) [§12314(e)]

PUERTO RICO—The supervisory committee shall contract private auditors to audit the accounts and operations, according to the budget the board may authorize. [§18(e)]

TEXAS—By an independent committee appointed by the commissioner from outside the credit union and its membership. [§5.07(b)]

VIRGINIA—By a CPA or other person or firm approved by the commission. [§6.1-213.1]

WISCONSIN—The board shall appoint a competent and qualified person to audit the operations of the credit union. The auditor shall at least annually report his activities and recommendations to the board and to the membership at the annual meeting. [§186.15]

ACT IS SILENT:

California	Minnesota	Rhode Island
Florida	Mississippi	South Carolina
Indiana	Missouri	Tennessee
Iowa	New Jersey	Utah
Kentucky	New Mexico	Washington
Louisiana	North Dakota	West Virginia
Michigan		

Account Verification

CUNA MODEL ACT: The supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time, and not less frequently than every two years. [§5.70(2)]

FEDERAL CREDIT UNION ACT: The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two years. [§115]

ACT SIMILAR TO MODEL AND FEDERAL ACTS:

Alabama	[§5-17-13(b)]	Nebraska	[§21-1791]
Florida	[§657.11(2)]	Oklahoma	[§2010(E)]
Indiana	[§28-7-1-18]	Oregon	[§723.322(2)]
Kansas	[§17-2211]	South Carolina	[§8-662]
Kentucky	[§260.150(2)]	Utah	[§7-9-13(4)]
Maryland	[§147(o)]	Vermont	[§2063]
Montana	[§14-636(2)]		

THE SUPERVISORY COMMITTEE shall cause the passbooks and accounts of members to be verified with the records of the treasurer from time to time and not less frequently than once a year:

Idaho	[§26-2121]	Missouri	[§370.230(1)]
Illinois	[§496.16(3)]	New Jersey	[§17:13-35]

OTHER ACTS:

ARIZONA—The supervisory committee shall make or cause to be made a verification of members' share, special investment and loan accounts at least every two years. [§6-515(A)(3)]

COLORADO—The supervisory committee shall biennially verify or cause to be verified, the members' share, deposit, and loan accounts, either by calling in the passbooks, or by sending, or causing to be sent, a statement of account to each member. [§11-30-111(1)(d)]

GEORGIA—The annual audit shall include a confirmation of the share, deposit, and loan accounts of the members. [§41A-3108(b)]

MAINE—Verification by supervisory committee at least once every three years. If the superintendent deems such verification inadequate, he may cause the bureau to verify such accounts. [§844(2)]

NEW MEXICO—Annual audit of the passbooks of at least one-half the membership. [§48-19-11(C)]

OHIO—Under the supervision of the supervisory committee, accounts showing installment payments by members upon shares of the credit union shall be verified at least annually. [§1733.19(b)]

TEXAS—The board of directors shall make or cause to be made verifications of the accounts of the members with the records of the credit union if required by regulations promulgated by the commissioner. [§5.07(a)]

WASHINGTON—The auditing committee shall cause the passbooks to be verified under regulations prescribed by the supervisor. [§31.12.200]

ACT IS SILENT:

Arkansas	Minnesota	Pennsylvania
California	Mississippi	Puerto Rico
Connecticut	Nevada	Rhode Island
Hawaii	New Hampshire	Tennessee
Iowa	New York	Virginia
Louisiana	North Carolina	West Virginia
Massachusetts	North Dakota	Wisconsin
Michigan		

Regular Reserve Allocation

CUNA MODEL ACT: Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:

(a) Ten (10%) percent of gross income until the regular reserve equals five (5%) percent of the total of outstanding loans and risk assets; then

(b) Seven (7%) percent of gross income until the regular reserve equals six (6%) percent of the total of outstanding loans and risk assets; then

(c) Five (5%) percent of gross income until the regular reserve equals seven (7%) percent of the total of outstanding loans and risk assets.

Whenever the regular reserve falls below seven (7%) percent, six (6%) percent, or five (5%) percent of the total of outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of five (5%) percent, six (6%) percent, or seven (7%) percent.

Any entrance fees, charges and transfer fees shall, after payment of organization expenses, be added to the regular reserve. [§10.10]

FEDERAL CREDIT UNION ACT: At the end of each accounting period the gross income shall be determined. From this amount, there shall be set aside sums in accordance with the following schedule:

(1) A credit union in operation for more than four years and having assets of $500,000 or more shall set aside (A) 10% of gross income until the regular reserve shall equal 4% of the total of outstanding loans and risk assets, then (B) 5% of gross income until the regular reserve shall equal 6% of the total of outstanding loans and risk assets.

(2) A credit union in operation less than four years or having assets of less than $500,000 shall set aside (A) 10% of gross income until the regular reserve shall equal 7½% of the total of outstanding loans and risk assets, then (B) 5% of gross income until the regular reserve shall equal 10% of the total of outstanding loans and risk assets.

(3) Whenever the regular reserve falls below the stated per centum of the total of outstanding loans and risk assets, it shall be replenished by regular contributions in such amounts as may be needed to maintain the stated reserve goals. [§116(a)]

The Board may decrease the stated reserve requirement when in its opinion such a decrease is necessary or desirable. [§116(b)]

continued

ACT SIMILAR TO MODEL ACT:

Montana [§14-660]

ACT SIMILAR TO FEDERAL ACT:

Louisiana	[6:657]	*Nevada	[§678.670]
*Maryland	[§154]	South Carolina	[§34-27-55]
**Minnesota	[§52.17]		

*All entrance fees, charges, and transfer fees to be added to the reserve.

**If assets less than $500,000, reserve goal is 7% of total loans and risk assets.

ACT SIMILAR TO MODEL ACT, BUT RESERVE requirement is based on risk assets only, rather than on total of outstanding loans and risk assets. Also reference to entrance fees, charges and transfer fees is omitted:

Hawaii	[§410-23(a)(1)]	Wisconsin	[§186.17(1)]

IMMEDIATELY BEFORE PAYMENT OF EACH DIVIDEND, the gross earnings of the credit union shall be determined. From this amount there shall be set aside 10% of gross income until the regular reserve equals 7½% of the total of outstanding loans and risk assets, then 5% of gross income until the regular reserve shall equal 10% of the total of outstanding loans and risk assets, and then such amounts as necessary to maintain the required level:

Arkansas—Entrance fees must be added to reserve. Transfer to reserve to be made at close of fiscal year. [§67-926(1)]

Connecticut— [§36-209]

Illinois—Reserve allocations made at close of fiscal year. The director may, under certain circumstances, permit the reserve fund of a credit union with assets of more than $1 million to be maintained at less than 10% but not less than 4% of its outstanding loans and risk assets; and may permit the reserve of a credit union with assets of more than $50 million to be maintained at less than 10% but not less than 2% of its outstanding loans and risk assets. [§496.21(1)(2)]

Indiana—Entrance fees and charges must be added to the reserve after payment of organization expenses. Also, the department may by regulation, revise the reserve formula as it applies to credit unions insured by an agency of the federal government, the state of Indiana or any insuring entity which is approved by the department. [§28-7-1-24(a)]

Iowa—Entrance fees, fines, and transfer fees must be added to the reserve after payment of organization expenses. [§533.17(1)]

Nebraska—Entrance fees, fines, and transfer fees must be added to the reserve after payment of organization expenses.[§21-17, 103; 21-17, 104]

New York—Entrance fees, transfer fees and fines remaining after payment of organization expenses shall be added to the surplus account. The surplus account shall in no case exceed the capital of the corporation, plus 50% of its other liabilities. [§457]

North Carolina— [§54-109.86]

Vermont—Entrance fees, charges and transfer fees remaining after payment of organization expenses to be added to the reserve fund. Loans to other credit unions are not to be considered in computing outstanding loans and risk assets totals. [§2080]

IF A CREDIT UNION IS INSURED by the National Credit Union Administration, the reserve requirements are as provided by the Federal Credit Union Act, §116(a)(2), for credit unions in operation less than 4 years or having assets less than $500,000. Otherwise the allocations shall be as follows:

Florida—All entrance fees, and each year, before the declaration of a dividend, but after declaring any interest refund, 20% of the net earnings shall be set aside until the reserve fund equals $3,000. After the reserve has reached $3,000 the credit union shall continue to place 10% of the net earnings in a reserve fund, until the reserve fund equals 10% of total loans outstanding. [§657.17]

Kansas—All entrance fees, transfer fees and charges shall, after the payment of the organization expenses, be added to the reserve fund. At the close of the fiscal year or each dividend paying period there shall be set apart to the reserve fund 20% of the net income of the credit union. Whether or not a credit union carries federal share insurance, the members, at an annual meeting, may increase the proportion of profits which is required or decrease it when the reserve fund equals 10% of the paid-in capital of the credit union. The Federal Act allocations also apply to credit unions insured under the state program. [§17-2217]

Mississippi—All entrance fees, transfer fees, fines and penalties and charges other than interest shall after the payment of expenses, be added to the reserve fund. At the close of each fiscal year there shall be set apart to the reserve fund 20% of the net income until the reserve fund totals 20% of loans outstanding, after which no further transfers are required to the reserve fund until it falls below 20% of total loans outstanding. [§81-13-49, 81-13-51]

Oregon—All entrance fees, transfer fees and fines remaining after the payment of organization expenses shall be set aside to the reserve fund. Immediately before the payment of each dividend, 10% of gross income shall be set aside until the regular reserve equals 8% of the total of outstanding loans and risk assets; then 7% until it equals 9% of said total; then 5% until it equals 10%. It shall then be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of 8, 9, or 10%. [§723.632]

IF A CREDIT UNION IS INSURED by the National Credit Union Administration, it may follow the federal credit union reserve requirements. Otherwise the reserve allocations shall be:

Oklahoma—All entrance fees and fines shall be paid into the reserve fund. Before the declaration of a dividend on shares or the payment of interest on deposits, 20% of the income from loans to personal members, less all operating expenses, since the last dividend or interest payment and figured prior to deducting additional dividends or interest payments, shall be paid into the reserve fund, until same shall amount to 7% of the personal loans outstanding. If the reserve fund is reduced below such 7% it shall be replenished in like manner. [§2011]

Washington—Before the payment of any dividend there shall be set apart as a guaranty fund not less than 20% of the net income, until such time as said fund and undivided profits shall equal 10% of the outstanding loans not fully covered by shares, and then only such amounts as necessary to maintain that level. [§31.12.220]

20% OF NET INCOME TO BE ALLOCATED annually to reserve fund, together with all entrance fees, fines, before declaration of dividend. When fund equals a specified accumulation, further transfers not in excess of 20% net income, need only be made to maintain that level. Maximum level indicated:

*Colorado—20% of the total amount of loans then outstanding. [§11-30-117(1)(a)]

Kentucky—10% of outstanding loans or shares, whichever is greater. Upon recommendation of the board, the members at an

annual meeting may increase the proportion of the net income to be set apart to the reserve. [§290.240]

**New Mexico—7% of outstanding loans, except that allocations shall be 10% of net earnings after the fund equals at least 5% of outstanding loans. [§48-19-17]

North Dakota--10% of paid-in capital and surplus. [§6-06-21]

*Pennsylvania—7% of the capital of the credit union or 7% of the outstanding loans, whichever is larger; upon written approval of the Department of Banking, transfers may be discontinued provided that the 7% is maintained. [§12322]

*Tennessee—$1,000 or 5% of the outstanding loans (excluding unearned interest) whichever is greater; except that allocations need not exceed 10% of net income after the reserve equals $10,000 and need not exceed 5% after the reserve equals $50,000. [§45-1825]

*Allocations made at the close of each dividend period.
**Allocations made at the close of each fiscal year or at the time dividends are paid.

20% OF NET INCOME to be allocated annually, together with all entrance fees and charges, after payment of organization expenses. Percentage allocation may be modified when the fund attains a specified accumulation:

*Missouri—The board of directors may increase, or if such fund equals or exceeds 7% of the outstanding loans to members excluding loans to other credit unions, decrease the proportion of the net earnings to be thus set aside, and may transfer part or all of the undivided earnings to the reserve fund. [§370.320]

**Rhode Island—Upon recommendation of the board of directors, the members at an annual meeting may increase, and for any period in which said fund equals 10% of the outstanding loans, investments made under the provisions of 19-21-27 (b) 1, 3 and 5 and any other high risk investments in the opinion of the director of business regulation, may decrease, the proportion of profits which is required by this section to be set apart as a guaranty fund. In addition, amounts equal to percentages of time deposits as specified by this section must be added to the guaranty fund. This additional reserve may be waived by the Director of Business Regulation. [§19-21-36]

West Virginia—Upon the recommendation of the board, the members at the annual meeting may increase, and whenever the funds equal 20% of the capital, may decrease, the proportion of profits which is required. [§31-10-20]

*Allocations made at the close of each dividend period.
**Allocations made before the payment of each dividend.

10% OF GROSS INCOME TO BE ALLOCATED at the close of each dividend period to reserve fund until it equals the specified accumulation. All entrance fees, fines, and transfer fees shall be added to the fund:

*Arizona—5% of the outstanding loans to members, excluding loans to other credit unions and, when the reserve equals or exceeds that 5%, not less than 5% of interest earned on loans to individuals shall be set aside in the reserve fund until such fund is equal to 7% of the outstanding loans to members, excluding loans to other credit unions. Subsequent transfers shall be required only to maintain the 7% maximum. [§6-521(A)]

California—20% of the credit union's gross assets. When the fund falls below 20% of gross assets, it shall be replenished by contributions of 10% of the gross income or in such lesser amounts as may be needed to maintain a level of 20% of gross assets, except that any credit union participating in a program of share insurance approved by the commissioner may, in lieu of compliance with this section, maintain such guaranty fund as may be specified by the commissioner. [§15150]

Virginia—The reserve fund is equal to 10% of the total liabilities of the credit union. Upon recommendation of the board of directors, the members may increase the amount to be transferred to the reserve. [§6.1-218]
*Allocations are percentage of interest earned on loans to individuals.

OTHER ACTS:

ALABAMA—Every credit union must set aside such regular reserves as are required in order to maintain insurance of member accounts under Title II of the Federal Credit Union Act. [§5-17-19(1)]

GEORGIA—All entrance fees shall, after payment of organization expense, be added to the reserve. Immediately before the payment of each dividend, 5% of the gross income shall be set aside as a regular reserve, until the regular reserve shall equal 7-1/2% of the total of outstanding loans and risk assets. [§41A-3110(a)(b)]

IDAHO—As of July 1, 1981, every credit union shall have on hand as a reserve an amount equal to 6% of its outstanding shares, certificates of deposit and certificates of indebtedness. 3% of same required until July 1, 1979; and 4% of same required from July 1, 1979 to June 30, 1981. [§26-2128]

MAINE—Before the payment of a dividend there shall be set apart as a guaranty fund not less than 10% of the gross income which has accumulated during the preceding dividend period, until such time as said guaranty fund shall equal 7% of the total of outstanding loans and risk assets, and then 5% of the gross income until the fund shall equal 10% of such total. The superintendent may vary the amount of the fund required for individual credit unions as may be required for the protection of the credit union and its members. [§832]

MASSACHUSETTS—Before the payment of a dividend, but not more than quarterly if dividends are paid more than quarterly, there shall be transferred from the earnings of the dividend period to the guaranty fund not less than one fourth of one per cent annually of the aggregate of shares and deposits, until it amounts to 7% of total shares and deposits. Thereafter, the guaranty fund shall be maintained at an amount equal to said seven per cent by means of such contributions. [Ch. 171, §19]

MICHIGAN—All entrance fees and 20% of the net earnings of the credit union before declaration of a dividend, shall be set aside in a reserve fund. When the reserve fund equals 4% of outstanding loans to members, excluding loans to other credit unions, 15% of net earnings shall then be set aside in the reserve fund. When the reserve fund equals 5-1/2% of the outstanding loans, then 10% of net earnings shall be set aside in the reserve fund. When the reserve fund equals 7% of the outstanding loans no further transfer of net earnings to the reserve fund shall be required. If the reserve fund becomes less than 7% of outstanding loans to members, then the schedule of allocation to the reserve fund shall apply, until the 7% ratio of reserves to loans outstanding to members is again established. [§490.17a]

NEW HAMPSHIRE—Before the payment of any annual or semi-annual dividend there shall be set apart as a guaranty fund 15% of the net income which has accumulated during the dividend period. All entrance fees shall be added at once to the guaranty fund. Upon

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recommendation of the board, the members may increase, and, whenever said fund equals 10% of the amount of capital stock actually paid in, may decrease the proportion of profits to be set apart as a guaranty fund. [§394:38, 39]

NEW JERSEY—All entrance fees and fines collected by any such credit union together with at least 15% of the net earning of each year. When the regular reserve equals 10% of the total amount, no further transfer of net earnings to such regular reserve shall be required, except that such amounts not in excess of 15% of the net earnings as may be needed to maintain this 10% ratio shall be transferred. [§17:13-44]

OHIO—In addition to such reserves as the superintendent may from time to time require a credit union to maintain, each credit union shall set aside at the first closing of its books, a reserve fund equal to the amount of all membership fees collected that year plus 3% of the principal on outstanding loans to members and notes purchased from another credit union. Each subsequent year, upon the closing of the books, 15% of the net earnings shall be added to the reserve fund until it equals 5% of outstanding notes and loans. Then 10% of the net earnings shall be added until the fund equals 7% of such notes and loans. If the reserve fund becomes less than 7% of such loans and notes, then the schedule of allocation to the reserve fund shall apply until the 7% ratio is again established. [§1733.31]

PUERTO RICO—Annually and before distribution of dividends, 20% of net surplus must be set aside as a reserve fund. At the request of a credit union and on the basis of its financial soundness, the Inspector of Cooperatives may lower to a maximum of 50% the reserve requirements established. [§25]

TEXAS—The commissioner shall, with the approval of the commission, promulgate rules and regulations prescribing reserve allocations and requiring credit unions to maintain any reserves necessary to protect the interests of their members.

The board of directors may increase, or if such fund equals or exceeds the percentage established by regulation, decrease the proportion of the net earnings to be thus set aside, and may transfer part or all of the undivided earnings to the reserve fund. [§9.01]

UTAH—Immediately before payment of a dividend and at the close of every dividend period, there shall be set apart 10% of the gross income from members' loans, after deducting the amount paid in interest refunds, until the guaranty fund equals 7½% of risk assets; then 5% of gross income from members' loans until the fund equals 10% of risk assets. All entrance fees shall be added to the fund. [§7-9-22]

Special Reserves

CUNA MODEL ACT: In addition to such regular reserve, special reserves to protect the interest of members shall be established—(1) When required by regulation; or (2) When found by the board of directors of the credit union or by the Director of the Credit Union Department, in any special case, to be necessary for that purpose. [§10.20]

FEDERAL CREDIT UNION ACT: The Board may require special reserves to protect the interests of members either by regulation or for an individual credit union in any special case. [§116(b)]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-663]	Nevada	[§678.680]

ACT SIMILAR TO MODEL ACT, but if a credit union is insured by the NCUA, special reserves may also be required by the Administrator of the NCUA:

Oregon [§723.646]

ACT SIMILAR TO FEDERAL ACT:

Alabama	[§5-17-19(1)]	No. Carolina	[§54-109.86(c)]
Louisiana	[§6:657(B)]	So. Carolina	[§34-27-55]
Michigan	[§490.17a(4)]		

SPECIAL RESERVES TO PROTECT INTERESTS OF MEMBERS shall be established when found necessary in any special case by the board of directors or by the supervisory agency:

Arizona	[§6-521(C)(D)]	*Kansas	[§17-2217(a)]
Georgia	[§41A-3110(d)]		

*Only the administrator may require special reserves.

SPECIAL RESERVE MAY BE REQUIRED by the commissioner on an individual credit union basis for purchased accounts or when serious threat of impairment threatens the adequacy of the regular reserve:

Hawaii	[§410-23(a)(2)]	Wisconsin	[§186.17(2)]

WHEN THE AMOUNT OF DELINQUENT LOANS, at the end of any dividend period, is so large that it is not covered by the reserve fund as required, a special reserve for delinquent loans must be established before the credit union may pay any dividend. Such reserve shall not be less than—(a) Loans delinquent less than six months—10% of the unpaid balance; (b) Loans delinquent six months but less than 12 months—25% of the unpaid balance; (c) Loans delinquent 12 months and over—80% of the unpaid balance:

Colorado	[§11-30-117(2)(a)]	New Mexico	[§48-19-17.1]
Nebraska	[§21-17, 105(2)]		

REGULAR RESERVE SHALL BE SUPPLEMENTED by a special reserve for delinquent loans, which shall be equal to the excess of the sum of 10% of the unpaid balances of loans delinquent more than two months and less than six months, plus 25% of the unpaid balances of loans delinquent from six months to less than 12 months, and plus 80% of the unpaid balances of loans delinquent 12 months or more over the balance in the regular reserve. The transfer to the special reserve for delinquent loans, if required, shall be made as of the end of dividend period from undivided earnings before any distribution of dividends. The maintenance of such special reserve shall not eliminate the regular reserve requirement. In the event the required transfer exceeds the balance of undivided earnings, only the balance of undivided earnings shall be transferred to the special reserve for delinquent loans. When, as of the end of any dividend period, the amount in the special reserve for delinquent loans exceeds the amount required by the regulations, the board of directors of the credit union may authorize the transfer of the excess to undivided earnings:

Idaho	[§26-2129]	*Indiana	[§28-7-1-24(b)]

*On request of board, department may waive special reserve.

OTHER ACTS:

ARKANSAS—State Credit Union Supervisor may require the establishment of special reserve accounts by transfers from the undivided earnings account when the reserve fund is inadequate for bad loans and/or investments. Transfers from this account must be approved by the Supervisor in writing. [§67-926(3)]

ILLINOIS—In addition to the regular reserve, special reserves may be established. [§496.21(4)]

IOWA—Special reserve may be required by the administrator of credit unions if an examination of assets should disclose that the legal reserve is inadequate. [§533.17(3)]

MASSACHUSETTS—The bylaws of a credit union may provide that unpaid balance of an unsecured loan and any loss thereon of a deceased borrower may be charged to a contingent fund created and maintained by contributions from undivided earnings, current earnings or from the borrowers, as determined by the board of directors. In any calendar year, charges to the contingent fund may not exceed 10% of the guaranty fund in addition to the unexpended balance of contributions by borrowers.

There shall also be maintained from the earnings at each dividend period, but only quarterly if dividends are paid more often than quarterly:

(1) a reserve for delinquent loans equal either to two per cent of the balances on all outstanding loans, exclusive of loans secured by a first mortgage on real estate, certain loans secured by second mortgages and exclusive of that portion of all loans insured by the Federal Housing Administration, or twenty per cent of the balances on all such outstanding loans which are two months or more in arrears, whichever is greater; and

(2) a reserve for losses on investments equal to the difference between book value and the market value of all investments mentioned in section twenty-one, excluding those investments which are included in the liquidity requirements, up to a maximum of five per cent of the remaining investment portfolio. Reserves in excess of the amounts required may be transferred into an undivided earnings account.

[§Ch. 171, §19A, 20]

MINNESOTA—There shall also be established and maintained, a reserve of not less than 10% of the amount of the deposits, which shall be in cash and balances due from solvent banks, or which may be, in whole or in part, in short term obligations guaranteed as to principal and interest by the U. S. Government, or in certificates of deposit in a federally insured bank, or in a passbook or other account in a federally insured savings and loan association, or in balances due from Minnesota Central Credit Union or ICU Services Corporation or U.S. Central Credit Union. [§52.17(b)]

MISSOURI—The board may establish additional reserves. In addition, a special reserve for delinquent loans shall be established when required by regulations of the commissioner. [§370.320(4)]

NEW JERSEY—Any such credit union shall have the right, by transfer from undivided profits, to create specific reserves to provide against any contingency or loss anticipated by the board of directors. [§17:13-44]

NEW YORK—Every credit union shall create at the end of each fiscal year and maintain a reserve for bad debts on payments delinquent as follows:

Delinquent	Reserve
6 to 12 months	10% of bad debts
12 to 18 months	50% of bad debts
18 months or more	100% of bad debts

Transfer from earnings to bad debt reserve shall be made before payment of dividends but credit union may transfer 25% of surplus account to bad debt reserve before transferring from earnings. This reserve shall be charged with all losses incurred by the credit union on bad debts and credited with all recoveries. "Bad debt" means any debt due credit union on which payments are delinquent 6 months or more, less value of security. [§458]

NORTH DAKOTA—Whenever the reserve fund shall be inadequate for bad loans or investments, a special reserve for delinquent loans and investments shall be established. The amount of such reserve shall be determined by the State Credit Union Board. The board is authorized to adopt such rules and regulations as it deems advisable for the establishment of special reserves for delinquent loans and investments. [§6-06-21.1]

OHIO—A credit union shall maintain a net liquidity fund equal to 5% of its total capital which shall be determined by adding together its total cash and government bonds and such of its equity in loans to members and in other investments as the superintendent, after taking into account the risks and liquidity of such loans and investments, shall permit by rule or otherwise. [§1733.31(c)]

PENNSYLVANIA—Similar to Federal Act, except the directors are authorized, after the required reserve has been provided for, to make additional transfers from undivided profits to a contingent reserve for other anticipated losses and expenses. The members at the annual meeting may transfer any part or all of such contingent reserve to the undivided profit account. [§12322]

PUERTO RICO—Act similar to Federal Act. However, it adds a deposit reserve which shall not be of less than 15% of the total deposits. In addition, the Inspector of Cooperatives may direct that certain amounts be set aside from the net surpluses as a special reserve for uncollectable loans. The Inspector can lower the reserve requirements. [§25]

RHODE ISLAND—Special reserve for delinquent loans—(1) Immediately before the payment of each dividend the guaranty fund of each credit union shall be supplemented by a special reserve which shall be equal to the excess of the sum of the following amounts over the balance in the guaranty fund:

Of loans on which no regular payment has been received within two months:

(a) 10% of the unpaid balances of loans delinquent two or more months but less than six months; and

(b) 25% of the unpaid balances of loans delinquent six or more months but less than 12 months; and

(c) 80% of the unpaid balances of loans delinquent 12 months or more.

Of loans on which a regular payment has been received within two months:

(a) 10% of the unpaid balances of loans delinquent two or more months but less than 12 months; and

(b) 25% of the unpaid balances of loans delinquent 12 or more months.

Upon written application by the board of directors, the Director of Business Regulation may waive in whole or part the requirement of a special delinquent loan reserve. [§19-21-36.1]

TEXAS—The commissioner shall, with approval of the commission, promulgate rules and regulations prescribing reserve allocations and requiring credit unions to maintain any reserves necessary to protect the interests of their members. [§9.01(p)]

UTAH—Whenever the guaranty fund is less than the total of loans classified as doubtful and loss in the last examination report of the department of financial institutions there shall be set aside an additional 5% of gross income from members' loans into a special reserve for bad loans at the close of each dividend period. Where such conditions no longer exist the board may transfer this special reserve to the guaranty fund and/or to undivided earnings. [§7-9-22]

VERMONT—If the commissioner determines that the regular re-

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serve is inadequate for any reason, he may require the establishment of such additional reserves as he deems necessary for the protection of shareholders. [§2080(b)]

WASHINGTON—The supervisor shall have the right to require a credit union to charge off or set up a reserve fund for delinquent loans or other assets as in his or her opinion require such action. [§31.12.230]

ACT IS SILENT:

California	Maine	Oklahoma
Connecticut	Maryland	Tennessee
Florida	Mississippi	Virginia
Kentucky	New Hampshire	West Virginia

Risk Assets Defined

CUNA MODEL ACT: For the purpose of establishing the reserves required by Sec. 10.10 all assets except the following shall be considered risk assets:

(1) Cash on hand.

(2) Deposits and shares in federal or state banks, savings and loan associations, and credit unions.

(3) Assets which are insured by, fully guaranteed as to principal and interest by, or due from the U. S. Government, its agencies, the Federal National Mortgage Association, or the Government National Mortgage Association.

(4) Loans to other credit unions.

(5) Loans to students insured under the provision of Title IV, part B of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) or similar state insurance programs.

(6) Loans insured under Title I of the National Housing Act (12 U.S.C. 1703) by the Federal Housing Administration.

(7) Shares or deposits in central credit unions organized under Article 12 of this Act or of any other state act or of the Federal Credit Union Act.

(8) Common trust investments which deal in investments authorized by this Act.

(9) Prepaid expenses.

(10) Accrued interest on nonrisk investments.

(11) Furniture and equipment.

(12) Land and buildings. [§10.14]

FEDERAL CREDIT UNION ACT: Reference to "outstanding loans and risk assets" in reserve formula. Risk assets defined in regulations. [§116]

ACT SIMILAR TO MODEL ACT:

Georgia	[§41A-3110(c)]	Montana	[§14-662]
Hawaii	[§410-2]	Nevada	[§678.690]
*Iowa	[§533.17(2)]	**North Carolina	[§54-109.88]
***Maryland	[§154(4)]		

*Also includes common trust investments.

**Includes loans secured by shares, and deposits in mutual savings guaranty associations, and investments in the College Foundation.

***Does not include shares or deposits in any type of credit union.

ALL ASSETS EXCEPT THE FOLLOWING are risk assets: 1) cash on hand; 2) deposits and shares in banks, etc.; 3) assets insured by the federal government; 4) insured student loans; 5) loans insured by the FHA; 6) shares or deposits in central credit unions; 7) accrued interest on nonrisk investments; 8) loans fully guaranteed by shares or deposits.

Oregon	[§723.642]	Utah	[§7-9-22]

OTHER ACTS:

ARKANSAS—Risk assets defined as any income producing asset which has a possible value variation. [§67-926(1)]

ILLINOIS—For the purpose of establishing required reserves all assets except the following are "risk assets"; a) cash on hand; b) land; c) depreciated value of buildings, furnishings and equipment; d) federally insured student loans; e) FHA-insured home improvement loans; and f) funds invested as authorized in the investment section of the Act. [§496.21(5)]

MAINE—The superintendent shall have authority to define what assets are to be deemed "risk" assets. [§832(4)]

MINNESOTA—Loans to other credit unions excluded in computing outstanding loans and risk assets. [§52.17]

WISCONSIN—Risk assets defined as investments with maturities in excess of 60 months, loans other than first mortgage real estate loans and loans to credit unions. [§186.01(4)]

ACT IS SILENT:

32 states and Puerto Rico

Use Of Reserve Fund

CUNA MODEL ACT: The regular reserve shall belong to the credit union and shall be used to meet losses except those resulting from an excess of expenses over income and shall not be distributed except on liquidation of the credit union, or in accordance with a plan approved by the Director of the Credit Union Department. [§10.12]

FEDERAL CREDIT UNION ACT: Sums shall be set aside as a regular reserve against losses on loans and against such other losses as may be specified in regulations prescribed under this Act. [§116(a)]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-521(B)]	North Carolina	[§54-109.87]
Arkansas	[§67-926(2)]	Oregon	[§723.636]
Iowa	[§533.17(1)]	Texas	[§9.01(b)]
Montana	[§14-661]	Vermont	[§2080(b)]
Nevada	[§678.670(3)]		

ACT SIMILAR TO FEDERAL ACT:

Hawaii	[§410-23(a)]	Nebraska	[§21-17, 104]

RESERVE FUND SHALL BE HELD to meet bad debts, bad loans or losses in the business of the credit union, and shall not be distributed to its members except in case of dissolution:

Colorado	[§11-30-117(1)(b)]	North Dakota	[§6-06-21]
Minnesota	[§52.17]	Ohio	[§1733.31(a)]
New Mexico	[§48-19-17]		

RESERVE FUND SHALL BELONG to the credit union and shall be held to meet contingencies and shall not be distributed to members, except upon dissolution of the credit union:

Georgia	[§41A-3110(c)]	Mississippi	[§81-13-51]
Indiana	[§28-7-1-24(a)]	Missouri	[§370.320(5)]
Kansas	[§17-2217(b)]	Washington	[§31.12.220]
Kentucky	[§290.240(3)]	West Virginia	[§31-10-20]
Maryland	[§154]		

RESERVE FUND AND THE INVESTMENTS thereof shall be-

long to the corporation and shall be held to meet the contingencies or losses in its business:

Maine	[§832(1)]	Utah	[§7-9-22]
New Hampshire	[§394:38]	Wisconsin	[§186.17(1)]
Rhode Island	[§19-21-36]		

OTHER ACTS:

ALABAMA—The reserve fund shall be held to maintain insurance of member accounts under the Provisions of Title II of the Federal Credit Union Act. [§5-17-19(1)]

CALIFORNIA—Losses incurred by a credit union may be charged to its guaranty fund. [§15151]

CONNECTICUT—Each credit union shall maintain a reserve against bad loans and other losses, which shall not be distributed so long as any assets other than cash remain on its books. [§36-209]

FLORIDA—The reserve fund shall be held as a reserve against bad debts, and shall not be distributed or reduced except in cases of liquidation of the credit union or for the charging out of bad debts, and any such charge to this account must first be approved by the board. Money in the reserve fund may be invested. [§657.17]

ILLINOIS—The reserve fund shall be held for losses resulting from loans and risk assets, and may not be distributed except upon liquidation or in accordance with a plan of distribution approved by the director of financial institutions. [§496.21(3)]

LOUISIANA—The reserve fund shall be held against losses on loans and such other losses as may be specified under this section. [§6:657(A)]

MASSACHUSETTS—The guaranty fund shall be held to meet the contingencies of losses in the business of the credit union with the exception that loan and investment losses shall be charged against the reserves established by section twenty. With the prior written approval of the commission, there may be transferred from the guaranty fund amounts necessary to pay a dividend in whole or in part or to create or maintain the reserves required by section twenty, or for any other contingency. [Ch. 171, §19]

MICHIGAN—If instructed by the commissioner all loans which are delinquent on principal or interest for a period of 12 months shall be considered bad debts and charged off to the reserve fund. The reserve fund may also be used for such other losses as approved by the commissioner. [§490.17, 490.17a]

NEW JERSEY—Reserve subject to terms and conditions specified in the bylaws. [§17:13-44]

NEW YORK—Every credit union shall accumulate and maintain a surplus account which shall be held to meet contingencies until the corporation is dissolved, when it may be distributed among the shareholders. Losses resulting from depreciation in value of shares and securities may be charged to the surplus account, but losses incurred on bad debts may not be charged to except in the case where accounts are insured by the NCUA. [§457]

OKLAHOMA—Reserve fund shall be held as a reserve against possible bad debts and other losses which the credit union may sustain. [§2011]

PENNSYLVANIA—The regular reserve shall not be loaned out to members and it shall be deposited in a bank account or invested. It shall belong to the credit union and shall not be distributed except in case of liquidation. The board of directors shall decide loans which are to be charged off against the regular reserve fund, and the department of banking may recommend loans for charge-off which in its opinion are unsound. [§12322]

PUERTO RICO—Reserve fund shall be kept liquid and intact and not loaned out to members, and shall belong to the corporation to be used as a reserve against bad loans, and shall not be disturbed except in case of liquidation. However, the Puerto Rico Federation of Savings and Credit Unions may use the fund to make loans to its affiliates, but the amount accrued in this service shall not exceed 10% of the balance of the loans upon collection. [§25]

SOUTH CAROLINA—The guaranty fund shall be held to meet loan losses. [§34-27-55]

TENNESSEE—Reserve fund shall be maintained for contingencies and shall not be distributed to the members except upon dissolution of the corporation. Fees paid to the State Credit Union Share Insurance Corporation may be a charge to its regular reserve account or reserve fund or may be established as a prepaid asset to be charged against its regular reserve account or reserve fund over a period of five years. [§45-1825]

VIRGINIA—Loans may be charged to the reserve fund. Any sums recovered on items previously charged to it shall be credited to the reserve fund. No dividends shall be paid out of the reserve fund unless the fund, after such payment, exceeds 10% of the gross liabilities of the credit union. [§6.1-218]

ACT IS SILENT:

Idaho

Surety Bond

CUNA MODEL ACT: The Director shall from time to time issue rules and regulations prescribing the minimum amount of surety bond coverage and casualty, liability and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved, or their exposure to risk.

It shall be the duty of the directors to purchase a blanket fidelity bond, in accordance with any rules and regulations of the director, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, embezzlement, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, attorney-at-law or other agent.
[§2.10(4), 5.56(2)]

FEDERAL CREDIT UNION ACT: The board of directors shall require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the Board. [§112, 113]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-513(B)(2)]	Nevada	[§678.370(1)]
Arkansas	[§67-913(b)]	*No. Carolina	[§54-109.11(5),
Hawaii	[§410-13(c)(2)]		54-109.44(2)]
Idaho	[§26-2116(b)]	Vermont	[§2061(2)]
Montana	[§14-631(2)]		

*Act provides minimum bond schedule.

ACT SIMILAR TO FEDERAL ACT:

Georgia	[§41A-3107(c)]	Pennsylvania	[§12312(3)]
Kansas	[§17-2209(3)]	Virginia	[§6.1-211(2)]
Maine	[§842(2)(F)]	Washington	[§31.12.130]
North Dakota	[§6-06-12(3)]		

continued

BOND IS REQUIRED OF ALL OFFICERS handling money; amount to be fixed by board:

Indiana	[§28-7-1-16(c)]	Rhode Island	[§19-21-22(c)]
Mississippi	[§81-13-27(c)]	South Carolina	[§8-661(3)]
Nebraska	[§21-1785]	Utah	[§7-9-11(3)]
New Mexico	[§48-19-9(B)]	West Virginia	[§31-10-9(b)]
New York	[§469(2)]		

BOND IS REQUIRED OF ALL OFFICERS and employees handling money; amount to be fixed by board:

Alabama	[§5-17-11]	Maryland	[§6-316(b)(3)]
Connecticut	[§36-213(2)]	Michigan	[§490.9(c)]
Illinois	[§496.13(3)]	Minnesota	[§52.09(3)]

AMOUNT OF BOND TO BE FIXED by board of directors, based on assets of the credit union. Required of all officers, directors, committeemen and employees having access to money. Graduated schedule for bond based on assets provided in statute:

Florida	[§657.09(3)]	Kentucky	[§290.130(3)]

ANY PERSON HANDLING MONEY OR COLLATERAL shall be covered by an individual, schedule, or blanket bond, as a condition precedent to entry upon the discharge of duties:

Missouri—Supervisor must approve amount of bond. [§370.235]

Ohio—Directors and superintendent must approve amount of bond; amount may be increased by the superintendent. [§1733.23]

Wisconsin—Directors must approve amount; form prescribed by commissioner. [§186.19]

OTHER ACTS:

CALIFORNIA—The directors shall obtain adequate fidelity bond coverage for each officer and employee having access to funds or securities commensurate with risks involved, and shall obtain adequate surety bond coverage for the treasurer and any assistant treasurer conditioned upon the honest performance of his trust. The minimum principal amount of such bond shall be based on the gross assets of the credit union, as provided in the graduated schedule. [§14406(c)(d)]

COLORADO—The board shall fix the amount of the blanket surety bond which shall cover all elected and appointed officials and all employees of the credit union. Such bond shall be in an amount equal to the assets of the credit union as of December 31 of the previous year, or $1 million, whichever is less.
[§11-30-109(1)(c)]

IOWA—Bond is required of all officers and employees who handle money; amount to be fixed by board. [§533.9(3)] A bond in the amount of $100,000 is required of the administrator to insure the faithful performance of his staff and to insure against property loss which might occur during the course of any lawful activity of the credit union department. [L. 1978, S.F. 137, Sec. 9]

LOUISIANA—Amount of faithful performance bond fixed by board of directors. Bond shall cover each officer, director, or employee, who has charge of or who handles cash or securities of the credit union. Minimum bond $1,000. [§6:64.7(B)(3)]

MASSACHUSETTS—The treasurer and all other officers and employees of a credit union having access to its cash or negotiable securities, shall give bond to the credit union at its expense in such amounts and under such conditions as the commissioner may prescribe. The directors may require bonds of such other officers, employees, or agents as they deem advisable. The persons required to give bond may be included in one or more blanket or schedule bonds, provided that such bonds are approved by the commissioner. [Ch. 171, §15]

NEW JERSEY—Bond is required of all officers and employees handling money or securities, and the amount is fixed by the board. The board shall annually examine all bonds and pass on their sufficiency. The commissioner may order the bond of any person to be increased. In lieu of such individual bonds the board may procure a blanket bond providing the same protection to the credit union. [§17:13-36]

OKLAHOMA—Each active officer and employee shall, before he enters upon his duties, make and give a bond in amount fixed by the state credit union board. [§2010(B)]

OREGON—It shall be the duty of the directors to purchase a fidelity bond which includes employee faithful performance to cover any and all acts of its agents, directors, officers, committee members or employees in an amount not less than 100 percent of its assets up to $2 million. Such bond shall be approved by the superintendent who may require such additional amounts as he deems necessary for credit unions with assets in excess of $2 million. [§723.122(1); 723.296(2)]

PUERTO RICO—The board shall require of all officers and employees who handle money or securities the bonds required under the regulations of the inspector of cooperatives. [§16(c)]

TENNESSEE—Amount of the blanket surety bond shall be determined by the board of directors and required for all officials and employees. Amounts as follows: for one year from the charter date, the bond shall be not less than $1,000; thereafter the bond shall not be less than 30% of the true assets of the credit union, and shall be adjusted annually subject to a maximum bond requirement of $1,000,000. [§45-1813(3)]

TEXAS—The board of directors shall purchase from a surety company authorized to do business in this state a blanket security bond covering all officers, employees, members of official committees, attorneys at law, and other agents of the credit union to protect the credit union against loss caused by the failure of a person to faithfully perform his duties. [§5.06(b)]

ACT IS SILENT:
New Hampshire

Share and Deposit Insurance

(Voluntary or mandatory participation in either federal or state share and deposit insurance programs)

CUNA MODEL ACT: A credit union may obtain insurance on shares and deposits from the National Credit Union Administration under the Federal Credit Union Act or from any guarantee organization qualified under the laws of this state to provide such guarantees or from any insurer qualified under the laws of this state to write such insurance.

The Director of the Credit Union Department may make available reports of condition and examination reports to the Administrator of the National Credit Union Administration or to an administrator of any qualified state guarantee organization and may accept any report of examination made on behalf of such administrators. The Director may appoint the Administrator of the National Credit Union Administration or the administrator of any qualified state guarantee organization as liquidating agent of an insured credit union.

Any legally chartered credit union may become a member of the Credit Union Share Insurance Corporation upon application by

the credit union's directors and approval of the directors of the corporation.

Before any credit union which is not chartered under the laws of this state may be admitted to membership, written authorization from its supervisory agency shall be submitted. In such authorization, the supervisory agency shall agree to cooperate with the Director of the Credit Union Department of this state in fulfilling the share insurance laws of this state with respect to such credit union.

[Optional] Every credit union chartered under the laws of this state shall become a member of the corporation and failure to apply for membership within _____ days after the effective date of this section constitutes grounds for revocation of charter by the Director of the Credit Union Department. Failure to become a member within _____ years after application for membership constitutes grounds for revocation of charter by the Director of the Credit Union Department. [§8.20, 14.30]

FEDERAL CREDIT UNION ACT: The National Credit Union Administration Board shall insure the accounts of all federal credit unions and it may insure the accounts of credit unions organized and operating according to the laws of any state, the District of Columbia, the several territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, and credit unions organized and operating under the jurisdiction of the Department of Defense. [§201(a)]

ACT PROVIDES FOR MANDATORY PARTICIPATION in the NCUA insurance program:

Arizona	[§6-504(E)]	**Michigan	[§490.31]
Arkansas	[§67-902(5)(7)]	Nevada	[§678.750(3)]
Kentucky	[§290.070(3)]	*North Dakota	[§6-06-40]
Louisiana	[§6:641(E)]	South Carolina	[§8-653]
Maine	[§836]	Vermont	[§2087]

*A central credit union with corporate shareholdings of at least 75% of its total assets may elect not to be insured.

**Participation optional for credit unions whose assets consist primarily of funds from other credit unions.

ACT PROVIDES FOR MANDATORY PARTICIPATION in either the NCUA or the local state insurance program:

Connecticut	[§36-200b]	New Mexico	[§48-19-25.1]
Florida	[§657.253(6)]	North Carolina	[§54-109.78]
Georgia	[§41A-3117(a)]	*Ohio	[§1733.041]
**Kansas	[L. 1975, SB 516]	Tennessee	[§45-1850]
Massachusetts	[Ch. 171, §34]	Virginia	[§6.1-226.5]
Missouri	[§370.377]	Washington	[§31.12A.040(4)]

*or that of any qualified insurer

**Central credit unions located in the state are exempt from mandatory participation.

ACT PERMITS STATE CREDIT UNIONS to participate voluntarily in the NCUA insurance program:

Oklahoma [§2011]

ACT PROVIDES FOR MANDATORY PARTICIPATION in either the NCUA insurance program or some other officially sanctioned insurance program:

California	[§14805.6]	*New York	[§32]
*Hawaii	[§410-45]	Oregon	[§723.582]
Iowa	[L. 1978, S.F. 137, §15]	*Pennsylvania	[§12315(B)]
Minnesota	[§52.24]		

*Banking Board or Department may permit exemptions.

ACT PROVIDES FOR MANDATORY PARTICIPATION in the local state insurance program:

Maryland [§140A] Wisconsin [§186.35(5)]

OTHER ACTS:

ALABAMA—Act provides for mandatory initial participation in the NCUA program. If the NCUA coverage is subsequently cancelled, the supervisor may allow a credit union to obtain some other kind of insurance. [§5-17-19]

ILLINOIS—The credit union may purchase insurance for the benefit of the credit union and its members. [§496.9(9)] Any credit union which issues shares in trust pursuant to §496.8 must be insured by the NCUA. [§496.8]

MONTANA—A central credit union with corporate shareholdings equal to 95% of its total assets may participate in the NCUA insurance program at its own option. Participation is mandatory for other credit unions. [§14-658; 14-671(5)]

RHODE ISLAND—No credit union is required to participate in State Credit Union Insurance Corporation. [L. 1976, H.B. 7401, §9] However, any credit union permitted by law to receive deposits shall have insurance on all deposits made in an amount not less than that established by the Board of Bank Incorporation. [§19-11-9] The RICUL Corporate Central Credit Union is exempt from deposit insurance requirements. [§19-21-53]

TEXAS—The commissioner, with the approval of the commission, shall promulgate rules and regulations requiring credit unions doing business within the state to provide or cause to be provided share and deposit insurance for members and depositors. [§11.10(e)]

ACT IS SILENT:

Colorado	Nebraska	Puerto Rico
Idaho	New Hampshire	Utah
Indiana	New Jersey	West Virginia
Mississippi		

Establishment of Insurance Program

(Applies only to federal program and 18 states with share insurance laws)

CUNA MODEL ACT: There is created the _____ Credit Union Share Insurance Corporation, a nonprofit membership corporation, hereinafter referred to as the corporation. The general purposes of the corporation shall be to:

(1) Aid and assist any member credit union which is in liquidation or incurs financial difficulty, such as insolvency or lack of liquidity, in order that the shareholdings and deposits of any individual member of a member credit union shall be protected or guaranteed against loss. The amounts of loss to be protected or guaranteed shall be established from time to time by the corporation with the approval of the Director of the Credit Union Department.

(2) Cooperate with its member credit unions and the Credit Union Department for the purpose of advancing the general welfare of credit unions in this state. [§14.18]

FEDERAL CREDIT UNION ACT: The Board shall insure the member accounts of all federal credit unions and it may insure the member accounts of credit unions organized and operating under the laws of any state, the District of Columbia, and the territories, trust territories, and possessions of the United States

continued

and credit unions organized and operating under the jurisdiction of the Department of Defense ... There is created in the Treasury of the United States a National Credit Union Share Insurance Fund which shall be used by the Board as a revolving fund for carrying out the purposes of the Act. [§201, 203]

ACT SIMILAR TO MODEL ACT:
Tennessee—may also serve credit unions in other states. [§§45-1835, 45-1836]

GUARANTY CORPORATION is created to: (1) provide a mechanism whereby the shareholdings, savings and deposits of any member of a member credit union shall be protected or guaranteed up to amounts which are established by the corporation and to avoid excessive delay in payment of such shareholdings, savings and deposits and to avoid financial loss to members of credit unions because of the insolvency or liquidation of a member credit union; (2) assist in the detection and prevention of credit union insolvencies or liquidations; (3) create a corporation to administer, implement and supervise the plan of operation provided for under this act; and (4) provide for the equitable apportionment among member credit unions and to assess the cost of such protection among member credit unions:

**Florida—Florida Credit Union Guaranty Corporation [§657.251]

*Nebraska—Nebraska Depository Institution Guaranty Corporation [§21-17, 128]

*Act refers to depository institutions rather than credit unions.
**Act refers to "shares and deposits" being protected and guaranteed.

OTHER ACTS:

CONNECTICUT—The Connecticut Credit Union Share Insurance Corporation is established as a nonprofit membership corporation. Its general purposes shall be to, to the ... extent of its resources: (a) guarantee and protect members' shares in every member credit union up to the maximum share or membership liability which the law permits any member to own; (b) aid and assist any member credit union which develops financial difficulties such as insolvency or nonliquidity or which enters liquidation proceedings; and (c) cooperate with its member credit unions and the bank commissioner for the purpose of improving the general welfare of credit unions in this state. [§SA 73-142, §1, 2]

GEORGIA—The Credit Union Deposit Insurance Corporation is created to aid and assist any member credit union which is in liquidation or facing liquidation due to insolvency in order that the deposits and shares of any member shall be insured or guaranteed against loss in such amounts as may be established by the board of directors of the corporation pursuant to the act. [L. 1974, Act 1002, §1(a)]

KANSAS—A guarantee corporation is any person other than an insurance company, approved by the commissioner, who contracts with credit unions to guarantee the shares of members. [L. 1975, SB 516, §9(a)]

MARYLAND—A nonstock, nonprofit corporation is created, known as the Maryland Credit Union Insurance Corporation. The purposes of the corporation are to improve and stimulate the ability of credit unions doing business in the state to provide low-cost consumer loans, to promote the elasticity and flexibility of the resources of credit unions, to make loans for liquidity purposes to credit unions, to discount notes of credit unions, to provide a state service of interlending for credit unions, to aid in the rehabilitation and stabilization of credit unions, to aid in the orderly liquidation of credit unions when necessary, to aid in the strengthening and development of credit unions serving low-income persons, to insure and guarantee the share and deposit accounts of member credit unions, and to cooperate with and assist credit unions, organizations of credit unions, the supervisor of credit unions of this state, the National Credit Union Administration, and the Central Credit Union of Maryland. [§452]

MASSACHUSETTS—The Massachusetts Credit Union Share Insurance Corporation is constituted a corporation for the purpose of creating and maintaining a fund for the insurance of shares and deposits of members of credit unions and the Central Credit Union Fund, Inc. [Ch. 294, §1]

MISSOURI—Upon approval by the director, a credit union share guaranty corporation may be organized by 25 or more credit unions chartered under the act or by an association of credit unions, composed of a majority of the credit unions chartered under the act. The general purpose of such non-profit corporations shall be to aid member credit unions which develop financial problems and to assist member credit unions in the process of merger or consolidation in order that the shares of each member of member credit unions shall be protected and guaranteed to a total of $50,000 in shares and deposits for each credit union member and up to $50,000 in deposits for each nonmember depositor. [§370.371; 370.372]

NEW MEXICO—Any seven or more credit unions in the state organized under the act, may form the New Mexico Share Insurance Corporation for the purpose of creating and maintaining a fund for the insurance of shares and deposits of credit unions which become members. [Ch. 114, §3]

NEW YORK—Any fifty or more credit unions organized under the act whose shares aggregate at least 50% of the total shares of all credit unions so organized, may agree, with the approval of the superintendent of banking, to create a fund for the purpose of insuring the shares of such credit unions as shall become parties to the agreement. [§481]

NORTH CAROLINA—Not less than ten credit unions and building and loan associations organized under North Carolina law may become incorporated as a mutual deposit guaranty association without capital stock. The purposes shall be to assure liquidity of member institutions and guarantee deposits therein. [§54-44.8]

OHIO—The purpose of the Ohio Credit Union Shareholders' Guaranty Association is to establish and maintain a nonprofit organization of member credit unions for the prevention of insolvencies of their members; and in the event of liquidation, insolvency, or bankruptcy of any member, to provide for the guaranty of the return of deposits, the redemption of shares or share accounts of members of member credit unions; to aid and assist the supervisor of credit unions in maintaining the solvency of state-chartered credit unions and the handling of liquidations of credit unions under order of liquidation; and to assist its member credit unions that are going through voluntary liquidation. [§1761.02]

RHODE ISLAND—The Rhode Island Share and Deposit Insurance Corporation is constituted for the purpose providing a fund for the insurance against loss of shares and ... ts of members of credit unions. [L. 1969, HB 2037, §1]

VIRGINIA—Representatives of nine or more ... unions may establish a corporation for the purpose of aiding ... assisting any member credit union which is in liquidation ... experiencing financial difficulties such as insolvency or ... dity, in order

that the member shares of member credit unions shall be protected, in amounts not less than $20,000 which shall be established by the corporation with the approval of the State Corporation Commission; and for the further purpose of cooperating with the commission and member credit unions in maintaining and advancing the financial integrity of member credit unions. [§6.1-226.3]

WASHINGTON—The Washington Credit Union Share Guaranty Association is created for the purpose of providing funds arising from assessments upon member credit unions to guarantee payment to credit union shareholders of the amount of loss to their share and deposit accounts in a liquidating member credit union, and to provide other services to promote the stability of state-chartered credit unions. [§31.12A.905]

WISCONSIN—The Wisconsin Credit Union Savings Insurance Corporation, a nonprofit corporation, shall be organized by the authorized representatives of not less than nine credit unions chartered under the Act. The general purposes of the corporation shall be to aid and assist any member credit union which develops financial difficulties such as insolvency, nonliquidity, or liquidation in order that the savings of any individual member credit union shall be protected or guaranteed to any amount not to exceed $40,000, and to cooperate with its member credit unions and the commissioner for the purpose of improving the general welfare of credit unions in the state. [§186.35(1)(2)]

ACT IS SILENT:

Texas

Supervision of Insurance Program

(Applies only to federal program and 18 states with share insurance laws)

CUNA MODEL ACT: The Credit Union Share Insurance Corporation shall be subject to supervision and an annual examination by the Credit Union Department. The cost of each examination shall be paid by the corporation. [§14.45]

FEDERAL CREDIT UNION ACT: The National Credit Union Administration Board insures member accounts of credit unions. [§201]

SHARE INSURANCE CORPORATION SUPERVISED BY authority specified and annual examination required:

Connecticut—Commissioner of Banking [§7(b)]
Missouri—Director of the Division of Credit Unions of the Dept. of Consumer Affairs, Regulation and Licensing [§370.375]
Nebraska—[§13]
North Carolina—Commissioner of Insurance [§54-44-1]
Tennessee—Commissioner of Banking [§45-1845]
Virginia—State Corporation Commission [§6.1-226.10(1)]
Washington—State Supervisor of the Division of Savings and Loans [§31.12A.120]
Wisconsin—Commissioner of Credit Unions [§186.35(7)]

BYLAWS SUBJECT TO APPROVAL of Commissioner of Banks.
Other powers which corporation may exercise subject to approval or rule-making authority of commissioner:
Massachusetts [Ch. 294, §3,6] New Mexico [§4(C)]

OTHER ACTS:

FLORIDA—The books, records and accounts of the corporation shall be subject to an examination by the Department of Banking and Finance. [§657.263]

KANSAS—The commissioner of insurance shall issue certificates to qualified guarantee corporations, may adopt rules and regulations regarding such corporations, and may examine their records. [L. 1975, SB 516, §11,12,16,19]

MARYLAND—The Banking Commissioner must approve bylaws, rules and regulations set by the corporation. [§457]

NEW YORK—The credit union insurance fund may be organized with the approval of the superintendent of banks. [§481]

OHIO—The superintendent of credit unions is empowered to issue rules and orders necessary to further the purposes of the act and to protect the guaranty association, the member credit unions, or the public interest. He shall make or cause to be made an annual examination and such special examinations as he deems necessary. [§1761.31]

RHODE ISLAND—The corporation is subject to supervision by the director of business regulation, who shall examine the books, assets and liabilities of the corporation at least every 2 years. [L. 1976, H.B. 7401, §11]

ACT IS SILENT:
Georgia Texas

Chapter seven

THE SUPERVISORY AUTHORITY

Government Supervisor

CUNA MODEL ACT: [Alternative A] There is created a Credit Union Department under the supervision of a Director appointed by the Governor, with the advice and consent of the Credit Union Council.

[Alternative B] There is created a Credit Union Department under the supervision of a Director appointed by the Credit Union Council. [§2.10(1)]

FEDERAL CREDIT UNION ACT: This section establishes the National Credit Union Administration as an independent agency within the executive branch of the government. The management of the Administration is vested in the National Credit Union Administration Board. The Board shall consist of three members who are appointed, by the President with the advice and consent of the Senate, for six year terms. [§102(a),(b),(c)]

ACT PROVIDES THAT STATE BANKING AUTHORITY supervises credit unions:

Alabama	[§5-2-100]	Montana	[§14-609]
Arizona	[§6-502(A)]	Nebraska	[§21-1775]
Arkansas	[§67-940]	New Hampshire	[§394:3]
Colorado	[§11-30-106(1)]	New Jersey	[§17:13-50]
Connecticut	[§36-195]	New York	[§477(1)]
Florida	[§657.06(1)]	North Dakota	[§6-01-01]
Georgia	[§41A-3003(a)]	Oklahoma	[§2008(A)]
Kentucky	[§290.100]	Oregon	[§723.102(2)]
Maine	[§815]	Pennsylvania	[§12307]
Maryland	[§141(a)]	Rhode Island	[§19-21-38]
Massachusetts	[Ch. 171, §2]	Tennessee	[§45-1808]
Minnesota	[§52.06(1)]	Vermont	[§2066]
Mississippi	[§81-13-15]	West Virginia	[§31-10-6]

ACT PROVIDES THAT THE COMMISSIONER OR DEPARTMENT OF FINANCIAL INSTITUTIONS shall supervise credit unions:

Idaho	[§26-2144]	Michigan	[§490.6]
Illinois	[§496.24]	New Mexico	[§48-19-6(A)]
Indiana	[§28-7-1-11]	South Carolina	[§8-653]
Louisiana	[§6:646(A)(1)]	Utah	[§7-9-24]

ACT PROVIDES THAT THE ADMINISTRATOR OR COMMISSIONER OF CREDIT UNIONS shall supervise credit unions:

Kansas	[§17-2206(a)]	Texas	[§11.10]
Iowa	[§527.3(1)]	Wisconsin	[§186.012(2)]

OTHER ACTS:

CALIFORNIA—Commissioner of Corporations. [§15800]

HAWAII—The Director of the Department of Regulatory Agencies shall be the commissioner of credit unions. [§410-4(a)]

MISSOURI—The Director of the Division of Credit Unions, Department of Consumer Affairs, Regulation and Licensing. [§370.005]

NEVADA—Commissioner of Credit Unions, subject to supervision by the Director of the Department of Commerce and the Credit Union Advisory Council. [§678.250]

NORTH CAROLINA—Administrator of Credit Unions, Department of Commerce. [§54-109.12]

OHIO—Superintendent of Credit Unions, Division of Credit Unions. [§1733.32(a)]

PUERTO RICO—Inspector of Cooperatives. [§3]

VIRGINIA—State Corporation Commission. [§6.1-220]

WASHINGTON—Supervisor of the Division of Savings and Loan Associations. [§31.12.360]

Approval of Charters

(Governmental agency or officer issuing credit union charter)

CUNA MODEL ACT: [Alternative A.] The subscribers shall forward the required charter fee, the articles of incorporation, and the bylaws to the Director of the Credit Union Department. If they conform to the law, he shall within thirty (30) days issue a certificate of approval attached to the articles and return a copy of the bylaws and the articles to the applicants or their representatives, which shall be preserved in the permanent files of the credit union.

[Alternative B.] The subscribers shall forward the required charter fee and the articles of incorporation and the bylaws to the Director of the Credit Union Department. The Director may issue a certificate of approval, if the articles and the bylaws are in conformity with this Act and he is satisfied that the proposed field of operation is favorable to the success of such credit union and that the standing of the proposed organizers is such as to give assurance that its affairs will be properly administered. He shall return a copy of the bylaws and the articles to the applicants or their representatives, which shall be preserved in the permanent files of the credit union. The application shall be acted upon within thirty (30) days. [§1.20(5)]

FEDERAL CREDIT UNION ACT: The organization certificate shall be presented to the National Credit Union Administration Board. Before any organization certificate is approved, an appropriate investigation shall be made for the purpose of determining (1) whether the organization certificate conforms to the provisions of this Act; (2) the general character and fitness of the subscribers thereto; and (3) the economic advisability of establishing the proposed federal credit union. Upon approval of such organization certificate by the Board it shall be the charter of the corporation. [§104]

CHARTER APPROVED BY SAME GOVERNMENT AGENCY that supervises credit unions:

Alabama	[§5-17-2(b)]	Missouri	[§370.040]
Arizona	[§6-502(D)]	Montana	[§14-603(5)]
Arkansas	[§67-902(C)]	Nebraska	[§21-1761]
California	[§14254(a)]	Nevada	[§678.310(1)]
Colorado	[§11-30-101(4)]	New Hampshire	[§394:4]
Connecticut	[§36-196(a)]	New Jersey	[§17:13-27]
Florida	[§657.01]	New Mexico	[§48-19-1(B)]
Georgia	[§41A-3003(b)]	New York	[§450]
Hawaii	[§410-8]	No. Carolina	[§54-109.2(e)]
Idaho	[§26-2105(d)]	North Dakota	[§6-06-02(3)]
Illinois	[§496.4]	Ohio	[§1733.07(D)]
Indiana	[§28-7-1-1(d)]	Oregon	[§723.012(4)]
Iowa	[§533.1(3)]	Pennsylvania	[§12303(C)]
Kansas	[§17-2201(a)]	Puerto Rico	[§3(c), §9]
Kentucky	[§290.020(1)]	South Carolina	[§8-654]
Louisiana	[§6:641(D)]	Tennessee	[§45-1804]
Maine	[§812(4)]	Texas	[§2.03(e)]
Maryland	[§6-305]	Utah	[§7-9-3]
Massachusetts	[Ch. 171, §2]	Vermont	[§2051(3)]
Michigan	[§490.1(c)]	Virginia	[§6.1-197]
Minnesota	[§52.01]	Washington	[§31.12.040]
Mississippi	[§81-13-1]	Wisconsin	[§18.02]

CHARTER APPROVED BY SECRETARY OF STATE:
West Virginia [§31-10-1(d)]

OTHER ACTS:

OKLAHOMA—The Bank Commissioner advises the State Credit Union Board which makes the actual decision. [§2003]

RHODE ISLAND—Charter is approved by the Board of Bank Incorporation. [§19-21-2]

Appointment of Advisory Council

CUNA MODEL ACT: The Credit Union Council shall consist of five (5) persons of tested credit union experience who shall be appointed by the Governor from a list of recommended names submitted by the credit unions of the state. Appointments to the Council shall be for terms of three (3) years each, except that initial appointments shall be: two (2) members for three (3) years each; two (2) members for two (2) years each, and one (1) member for one (1) year. [§2.50(2)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:
Nevada [§678.290(2)]

OTHER ACTS:

ALABAMA—The Credit Union Board shall consist of the superintendent of banks (as ex-officio member) and seven other persons, one from each congressional district, appointed by the governor with the consent of the Senate. All nominations for board membership shall come from a list of recommended names submitted by the credit unions of the state; 5 years experience as state credit union official required and must continue to hold credit union office. After confirmation by the Senate, they shall serve for staggered terms of six years. [§§5-2-120, 5-2-123]

HAWAII—Credit Union Review Board consists of five members, appointed by the governor for four year terms. [§410-3(a)]

ILLINOIS—The governor appoints a five-man Board of Credit Union Advisers from people familiar with and associated in the field of credit unions to serve for terms of four years each on a staggered basis. [§496.26]

IOWA—Credit Union Review Board consists of seven members, each of whom must have been a member for at least the five previous years of an Iowa or federally chartered credit union. Two members may not be credit union employees or directors. Upon appointment by the governor and approval by the senate, the members serve for staggered terms of three years. [L. 1978, S.F. 137, Sec. 4]

KANSAS—Credit Union Council consists of seven members, appointed by the governor, for three year terms. Kansas credit unions may submit to governor a list of 25 names to be considered for positions on the council. [§17-2232]

MAINE—The superintendent shall create an advisory board and appoint the members thereof in such manner and form and in a number not less than 9 nor more than 15 as the superintendent deems necessary. Membership on such board shall include persons associated with representative financial institutions and shall include members of the general public. [§216]

MINNESOTA—The Credit Union Advisory Council consists of five members appointed by the governor for four year terms. Members must have three or more years experience as credit union officer. The Minnesota League of Credit Unions may submit list of 15 names to be considered for these positions. [§52.061]

NEW HAMPSHIRE—The advisory board shall consist of ten members, seven members to be appointed by the governor with the advice and consent of the council from nominations made from various financial institutions, including credit unions, each of whom shall select a panel of three persons representing its type of institution and from each of the seven panels thus selected one person shall be appointed to the advisory board. Their terms of office shall be for six years each. In addition, the speaker of the house shall appoint two members of the house, and the president of the senate one member of the senate to the board. They shall serve for a term of four years or until they are no longer members of their respective house. [§383:19]

NORTH CAROLINA—Credit Union Commission shall consist of seven members, appointed by the governor for four year terms. Four members shall have had a minimum of three years experience as credit union director or similar management position. [§143A-181(a)]

NORTH DAKOTA—The State Credit Union Board shall consist of the state examiner and two members appointed by the governor from a panel of five residents of North Dakota who have had at least three years of experience as an officer, director or committeeman of a state-chartered credit union, said panel to be furnished the governor by the North Dakota Credit Union League. Terms are for five years. The State Examiner shall be chairman of the board. [§6-01-03(2)]

continued

OKLAHOMA—State Credit Union Board shall consist of five members, one of whom shall be Bank Commissioner, appointed by the governor, with consent of Senate for four year terms. The Oklahoma Credit Union League may submit list of 12 names to be considered for those positions. [§2001.1]

TEXAS—The Credit Union Commission consists of six members, all of whom are from state-chartered credit unions. They are appointed by the governor, with consent of Senate, for six year terms. All members shall have at least five years credit union experience. [§11.01, 11.02, 11.03]

UTAH—There shall be a board of credit union advisors of five members to be appointed by the governor. Members of the board shall be individuals who are familiar with and associated in the field of credit unions. At least three of the members shall be persons who have had three or more years of experience as a credit union officer and shall be selected from a list submitted by the Utah Credit Union League. Terms of members are for five years, expiring on a staggered basis. [§7-9-28]

WISCONSIN—The Credit Union Review Board consists of five members appointed by the governor with the advice and consent of the Senate. All members of the board shall have at least five years' experience in the operation of a credit union. Members of the board shall each be appointed for a term of five years and until his successor shall be appointed and qualified. [§186.015(2)]

ACT IS SILENT:

31 states and Puerto Rico.

Duties of Advisory Council

CUNA MODEL ACT: There is created a Credit Union Council to consult with, advise and make recommendations to the Director of the Credit Union Department and to hear appeals on matters pertaining to credit unions. [§2.50(1)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT PROVIDES THAT THE COUNCIL may advise and make recommendations to the supervisor:

Minnesota [§52.061] Nevada [§678.290(2)]

OTHER ACTS:

ALABAMA—The Board may advise and make recommendations to the governor, superintendent of banks, and to the supervisor of the bureau of credit unions with respect to credit union laws. Credit union rules and regulations must be approved by the Board. [§5-2-125]

HAWAII—The duties of the Credit Union Review Board shall include, but not be limited to: (1) advising the commissioner, supervisor of credit unions, and others in improving the condition and service of credit unions; (2) reviewing the acts and decisions of the commissioner in relation to credit unions; (3) serving as an appeal board for credit unions and performing other review functions in relation to credit unions as are provided by law; (4) issuing subpoenas, taking testimony, and administering oaths to witnesses; (5) making available the official actions of the commissioner for inspection of the board; (6) making necessary recommendations as to procedural rules and regulations pursuant to Chapter 91; (7) adopting rules to safeguard the interest of depositors and shareholders. [§410-3(b)]

ILLINOIS—Duties of the Board of Credit Union Advisers include obtaining from director of financial institutions reports concerning supervision and regulation of credit unions, to advise the governor and the director on problems concerning credit unions, to foster interest and cooperation of credit unions in improving service, and to advise governor and director upon appointments and employment of personnel concerned with supervision of credit unions. [§496.29]

IOWA—The Credit Union Review Board has power to adopt, amend and repeal rules or take other action it deems necessary or suitable to carry out this Act. [L. 1978, S.F. 137, Sec. 5]

KANSAS—The Credit Union Council shall hire and fix the compensation of an administrator, who shall serve at its pleasure. The administrator shall head the Credit Union Department and have general supervision of credit unions, subject to the orders and direction of the council. [§17-2233]

MAINE—The advisory board shall advise the superintendent on the regulation, supervision and structure of financial institutions, but shall not have veto power over his actions. [§215(1)]

NEW HAMPSHIRE—The advisory board shall advise and consult with the commissioner from time to time in order to promote understanding and cooperation between the office of the bank commissioner and the institutions under his supervision, to provide for better enforcement and observation of the laws relating to banking and credit, and to serve as a medium for exchange of ideas for the establishment of sound banking and credit practices. The advisory board shall also act as a committee to study the banking laws and make such recommendations as they see fit to any future session of the legislature. [§383:19]

NORTH CAROLINA—The Credit Union Commission is vested with full power and authority to review, approve, or modify any action taken by the Administrator of Credit Unions in the exercise of all powers, duties, and functions vested by law in or exercised by the Administrator of Credit Unions under the credit union laws of this state. An appeal may be taken to the commission from any finding, ruling, order, decision or the final action of the administrator by any credit union which feels aggrieved thereby. [§143A-181(c)]

NORTH DAKOTA—The State Credit Union Board has power to make such rules and regulations for the government of credit unions as in its judgment may seem wise and expedient; it reviews all reports made by credit unions and all reports of examinations made by state, and shall approve or disapprove such reports. The board shall make and enforce such orders as may be necessary to protect the public and the members of credit unions. [§6-01-04]

OKLAHOMA—The State Credit Union Board shall exercise the powers that, prior to this Act, were exercised by the Bank Commissioner; it may promulgate rules and regulations to carry out the credit union laws. [§2001.2]

TEXAS—The Credit Union Commission shall advise the credit union commissioner. The Credit Union Commission or commissioner assumes all duties relating to credit unions previously held by the banking commissioner. [§11.01(a)]

UTAH—The Board of Credit Union Advisers shall have the powers and duties to advise the governor and bank commissioner on problems relating to credit unions, and to foster the interest and cooperation of credit unions in the improvement of their services to the people of the state of Utah. [§7-9-28]

WISCONSIN—The commissioner shall confer with the Credit Union Review Board on matters affecting credit unions and his office. The board may require the commissioner to submit any of his official actions to the board for its approval. The board may make rules of procedure as provided in Ch. 227. Any interested person aggrieved by act, order or determination of the commissioner may apply for review thereof by filing a petition with the secretary of the board within 30 days after the act, order or determination to be reviewed.

The board may make rules to safeguard the interest of depositors and shareholders. [§186.015(1)(3)(b)(e)]

ACT IS SILENT:

31 states and Puerto Rico.

Rules and Regulations

CUNA MODEL ACT: The Director may prescribe rules and regulations for the administration of this Act subject to the advice and consent of the Credit Union Council. [§2.10(3)]

FEDERAL CREDIT UNION ACT: The Board may prescribe rules and regulations for the administration of this act (including, but not by way of limitation, the merger, consolidation, and dissolution of corporations organized under this Act). [§120(a)]

ACT SIMILAR TO MODEL ACT:

Texas	[§11.07(a)]

SUPERVISOR AUTHORIZED TO PRESCRIBE OR ADOPT RULES AND REGULATIONS pursuant to administering or enforcing the credit union act:

Arizona	[§6-123(2)]	Michigan	[§490.27]
Arkansas	[§67-940]	Missouri	[§370.100(1)]
California	[§15801]	Montana	[§14-609(2)]
Colorado	[§11-30-106(3)]	New Mexico	[§48-19-4.1]
Connecticut	[§36-216]	No. Carolina	[§54-109.12]
Georgia	[§41A-3114]	North Dakota	[§6-01-04]
Hawaii	[§410-38]	Ohio	[§1733.41]
Idaho	[§26-2144]	Oregon	[§723.102(3)]
Kentucky	[§290.070(2)]	Pennsylvania	[§12307]
Louisiana	[§6:646(A)(1)]	Puerto Rico	[§4]
Maine	[§215, 251]	Rhode Island	[§19-21-45]
Massachusetts	[Ch. 167, §11D, 16A]	South Carolina	[§8-653]

OTHER ACTS:

ALABAMA—Superintendent of Banks, with the approval of state credit union board, may issue rules and regulations. Proposed regulations must be distributed to all credit unions who have 30 days to comment and can demand a formal hearing. [§§5-2-10, 5-2-125]

FLORIDA—The department of banking and finance shall promulgate rules and regulations governing the conduct of state credit unions, and may adopt rules to promote and preserve the liquidity and soundness of credit unions. [§657.06(3)(b); 657.16]

IOWA—The Credit Union Review Board has authority to make rules and regulations regarding credit unions. The administrator may make further rules as necessary, subject to Board approval. [§533.1]

KANSAS—The Administrator has the authority to promulgate audit and reporting standards via regulations. [§17-2206(b)]

MISSISSIPPI—The Department of Bank Supervision is empowered with authority to promulgate rules and regulations concerning the operation of credit unions. [§81-13-15]

NEBRASKA—The Department of Banking shall make regulations as to the minimum amount and kind of fidelity or performance bonds that shall be required of officials or employees. [§21-1776]

NEVADA—The commissioner of credit unions shall make the decisions and determinations and adopt regulations to accomplish the purposes of this chapter, subject to administrative supervision by the director and the advisory council. [§678.250]

NEW JERSEY—The Department of Banking may promulgate rules and regulations, in relation to loans or investments, in substantial conformity with similar rules and regulations under the Federal Credit Union Act. [§17:13-27(k)]

NEW YORK—The superintendent may prescribe regulations and restrictions regarding the power of credit unions to act as trustees for certain retirement plans. [§453(1-a),(1-b)]

VERMONT—The commissioner may make rules necessary for the proper conduct of credit unions. Such rules must not be inconsistent with the act. General rules become effective only after the credit unions and the Vermont Credit Union League have had time to comment. [§2066(a)]

WASHINGTON—Supervisor authorized to make and promulgate uniform rules and regulations dealing with merger of one credit union with another. [§31.12.370]

WISCONSIN—The Credit Union Review Board may make rules to safeguard the interests of depositors and shareholders. [§186.015(e)]

ACT IS SILENT:

Illinois	New Hampshire	Utah
Indiana	Oklahoma	Virginia
Maryland	Tennessee	West Virginia
Minnesota		

Reporting to Supervisory Authority

CUNA MODEL ACT: Credit unions organized under this Act shall report to the Director annually on or before the first day of _____ on forms supplied by him for that purpose. Additional reports may be required. [§2.20(1)]

FEDERAL CREDIT UNION ACT: Financial reports shall be made to the Board when it requires, but at least annually. [§106]

ACT SIMILAR TO MODEL ACT:

Alabama	February 1	[§5-17-8]
Iowa	February 1	[§533.6(1)]
Montana	February 1	[§14-610(1)]
New York	February 1	[§477(1),(2)]

ACT SIMILAR TO FEDERAL ACT:

Oklahoma	[§2008(A)]
Pennsylvania	[§12307]

REPORT TO BE MADE AT LEAST SEMI-ANNUALLY on or before specified dates, with additional reports as required:

Indiana	January 31, July 31	[§28-7-1-11]
North Carolina	January, July	[§54-109.15(a)]
Washington	*	[§31.12.320]
West Virginia	January 1, July 1	[§31-10-6]

*Within 30 days after first business day of January

continued

REPORT TO BE MADE AT LEAST ANNUALLY on or before specified dates, with additional reports as may be required:

California	*	[§15802]
Connecticut	**	[§36-215(a)]
Florida	January 31	[§657.06(1)]
Hawaii	January 31	[§410-13-(15)]
Maryland	March 31	[§141(a)]
Michigan	February 15	[§490.6]
Minnesota	January 25	[§52.06(1)]
Missouri	November 15	[§370.110(1)]
New Mexico	January 31	[§48-19-6(A)]
Oregon	January 31	[§723 106(1)]
Puerto Rico	***	[§13]
Texas	February 1	[§2.09]
Vermont	February 15	[§2067]

*On or before 45 days after December 31
**Within 30 days after December 31
***Within 60 days after the close of their fiscal year.

REPORT TO BE MADE AT LEAST ANNUALLY on or before specified date:

Arizona	February 15	[§6-523(A)]
Arkansas	February 1	[§67-930]
Colorado	February 1	[§11-30-106(2)]
Idaho	February 1	[§26-2133]
Illinois	February 1	[§496.25]
Maine	**	[§835(1)]
Massachusetts	**	[Ch. 171, §27]
Mississippi	January 21	[§81-13-15]
Nebraska	February 1	[§21-1775]
Nevada	February 1	[§678.780(1)]
New Hampshire	***	[§394:45]
New Jersey	January 31	[§17:13-49]
Ohio	January 31	[§1733.32(C)]
Rhode Island	March 1	[§19-21-39]
South Carolina	****	[§8-674]
Utah	February 1	[§7-9-24]
Virginia	December 31	[§6.1-220]

**Within 30 days after last December business day
***Within 20 days after the last June business day
****Within 31 days of last December business day

OTHER ACTS:

KANSAS—Reports to be made at least semi-annually on forms supplied by the Administrator in April and October. [§17-2206(a)]

KENTUCKY—Credit union reports shall be made to director of banking on the dates of the calls made to the state banks. Such reports must be made as often as the Commission requires, but at least annually. [§§290.090,290.100]

LOUISIANA—Report to be made at end of fiscal year (December 31), to be filed on or before February 15. Additional reports may be required. [§6:646(B)(2)]

NORTH DAKOTA—Reports made at least once annually, upon the call of the supervisory authority. [§6-06-08]

TENNESSEE—Report is to be made at least semi-annually on the dates of the second and fifth calls made to national banks. [§45-1808]

WISCONSIN—Report to be made on December 31 of each year and filed on or before February 1. [§186.25]

ACT IS SILENT:

Georgia

Examinations by Government

CUNA MODEL ACT: The Credit Union Department shall annually examine or cause to be examined each credit union. Each credit union and all of its officers and agents shall be required to give to representatives of the Director of said Department full access to all books, papers, securities, records and other sources of information under their control; and for the purpose of such examination said representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents. [§2.36(1)]

FEDERAL CREDIT UNION ACT: Each federal credit union shall be subject to examination by any person designated by the Board, and shall make its books and records accessible to such person. [§106]

ACT SIMILAR TO MODEL ACT:

Hawaii	[§410-25]	Nevada	[§678.790(1)]
Illinois	[§496.25]	Ohio	[§1733.32(A)]
Iowa	[§533.6(2), L. 1978, S.F. 137, Sec. 10]	Oregon	[§723.112(1)]
Montana	[§14-611(1)]		

ACT SIMILAR TO FEDERAL ACT:

Kentucky	[§290.100]	South Carolina	[§8-653]
Missouri	[§370.120(1)]		

ACT PROVIDES THAT THE CREDIT UNION shall be examined by the supervisory authority at least annually:

Alabama	[§5-17-8]	Nebraska	[§21-1777]
Arizona	[§6-523(C)]	New Mexico	[§48-19-6(B)]
Arkansas	[§67-933(1)]	North Dakota	[§6-06-08]
Colorado	[§11-30-106(1)]	Texas	[§11.12]
Florida	[§657.06(2)]	Washington	[§31.12.320]
Michigan	[§490.6]	West Virginia	[§31-10-6]
Minnesota	[§52.06(1)]	Wisconsin	[§186.26(1)]

ACT PROVIDES THAT THE CREDIT UNION shall be examined by the supervisory authority at least annually and whenever the supervisor deems necessary:

California	[§15807(a)]	Oklahoma	[§2008(A)]
Connecticut	[§36-214(1)]	Pennsylvania	[§1230-7]
Kansas	[§17-2206]	Puerto Rico	[§13]
Maryland	[§141(a)]	Rhode Island	[§19-21-38]
Mississippi	[§81-13-17]	Tennessee	[§45-1809]
New York	[Art. II, §36]	Vermont	[§2069(a)]
No. Carolina	[§54-109.16]		

OTHER ACTS:

IDAHO—Each credit union shall be examined at least annually by the Department of Finance. [§26-2136] Each credit union, as a supervised lender, is to be examined at least every 2 years by the administrator. [§28-33-506]

INDIANA—Every credit union shall be examined by the Department as often as the Department considers necessary. [§28-7-1-12]

LOUISIANA—Each credit union shall be examined at least biennially by the commissioner or his deputy. [§6:646(B)(3)]

MAINE—The superintendent shall examine each credit union at least once in every 18 months. [§§815,221]

MASSACHUSETTS—Each credit union shall be audited and examined at least once every three years, in manner prescribed by commissioner. If the credit union has assets of more than $5 mil-

lion, such audit and examination must be made by an accountant not connected with the credit union. [Ch. 171, §17]

NEW HAMPSHIRE—Bank commissioner has same authority and powers in the supervision of credit unions that are vested in him in the supervision of banks. [§394:3]

NEW JERSEY—Every credit union shall be examined by commissioner at least once in each two years, or more often if it is deemed expedient. [§17:13-50]

UTAH—Act provides for setting of examination fees by commissioner. [§7-1-10]

VIRGINIA—Each credit union shall be examined as often as the commissioner deems is in the shareholder's interests, but not less than twice in every three year period. [§6.1-221]

ACT IS SILENT:

Georgia

Audit in Lieu of Examination

CUNA MODEL ACT: In lieu of making an annual examination of a credit union, the Director may accept an audit report of the condition of the credit union made by an auditor approved by the Director. The cost of the audit shall be borne by the credit union. [§2.30(3)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-523(D)]	Montana	[§14-611(3)]
Indiana	[§28-7-1-12]	Nebraska	[§21-1778]
Michigan	[§490.6]	Rhode Island	[§19-21-38]
Missouri	[§370.120(3)]	South Carolina	[§8-653]

ACT PERMITS ACCEPTANCE BY THE STATE of an external audit by an approved auditor in lieu of an examination by the supervisory authority:

California	[§15807(a)]	New Jersey	[§17:13-50]
Idaho	[§26-2136]	Puerto Rico	[§13]
Massachusetts	[Ch. 171, §17]	Washington	[§31.12.320]

ACT PERMITS ACCEPTANCE BY THE STATE of an external audit by an approved auditor in lieu of examination if the credit union's assets are less than $25,000:

Colorado	[§11-30-106(1)]	West Virginia	[§31-10-6]
Florida	[§657.06(2)]		

OTHER ACTS:

ILLINOIS—Any credit union with assets under $500,000 may submit an audit rather than examination but if such an audit is submitted, the Director of Financial Institutions has the discretion to reject it in favor of the state examination; any credit union with assets over $500,000 must be audited by a firm registered with the Department of Registration and Education except where the Director may determine that a state examination should be made. [§496.25]

IOWA—The administrator of credit unions may accept, in lieu of the annual examination of a credit union, an audit report conducted by a certified public accounting firm selected from a list of firms previously approved by the administrator. [§533.6(2)]

KANSAS—In lieu of examination, the Administrator may accept examination by National Credit Union Administration, other appropriate federal agency, or an independent auditor or CPA licensed to do business in the state. [§17-2206(b)]

MINNESOTA—The commissioner may accept either an audit by a CPA or an examination by the National Credit Union Administration in lieu of the annual examination. [§52.06(1)]

NEVADA—The directors may engage a qualified audit service or accountant to perform the examination in lieu of the division staff. [§678.790(4)]

NORTH CAROLINA—The administrator may designate an independent auditing firm to do the work under his direction and supervision. [§54-109.16]

NORTH DAKOTA—Credit union may be examined annually by a certified public accountant or the North Dakota Credit Union League, with approval of State Examiner and the State Credit Union Board. [§6-06-08]

PENNSYLVANIA—The department may use methods other than examinations to determine the condition of credit unions it supervises. [§12307]

ACT IS SILENT:

Alabama	Maryland	Oregon
Arkansas	Mississippi	Tennessee
Connecticut	New Hampshire	Texas
Georgia	New Mexico	Utah
Hawaii	New York	Vermont
Kentucky	Ohio	Virginia
Louisiana	Oklahoma	Wisconsin
Maine		

Examination Fees

CUNA MODEL ACT: The Director . . . may establish chartering, supervision and examination fees, subject to the advice and consent of the Credit Union Council. [§2.10(3)]

FEDERAL CREDIT UNION ACT: In accordance with rules prescribed by the Board, each Federal credit union shall pay to the Administration an annual operating fee which may be expended by the Board to defray the expenses incurred in carrying out the examination and supervision of credit unions. The fee assessed shall reflect the expenses of the Administration as well as the ability of credit unions to pay. [§105]

ACT SIMILAR TO MODEL ACT:

Nevada	[§678.270(1)]	Hawaii	[§410-25]

THE CREDIT UNION SHALL PAY THE actual cost of the examination, as determined by the supervisory authority:

Arkansas	[§67-933(3)]	*Ohio	[§1733.32(E)]
California	[§16003]	Pennsylvania	[§12307]
Connecticut	[§36-214(1)]	Texas	[§11.12]
Iowa	[§533.6(4)]	**Vermont	[§2069(a)]
Maine	[§214(1)]	Washington	[§31.12.320]
New Jersey	[§17:13-51]	Wisconsin	[§186.04(3)]

*Maximum of $2,000 for total examination and supervisory fee assessment.

**Added $10 fee if books not balanced 30 days prior examination.

EXAMINATION FEES ARE PRESCRIBED BY the supervisory authority:

Montana	[§14-609(2)]	Oklahoma	[§2008(A)]
North Carolina	[§54-109.14(a)]		

continued

OTHER ACTS:

ALABAMA—Examination fees fixed by the supervisor of the bureau of credit unions, but not to exceed:

Assets	Fee
Up to $25,000—	$.50/$100 assets subject to minimum fee $25
Over $25,000—	$.08/$100 assets up to $500,000 assets
$54 Examiner	$.03½/$100 assets $500,000 to $1,000,000 assets
day plus	$.02½/$100 assets $1,000,000 to $5,000,000 assets
	$.01/$100 assets over $5,000,000 assets subject to minimum fee $125. [§5-17-7(a)]

ARIZONA—$50 for first $50,000 of assets or fraction thereof; $100 for the next $50,000 of assets or fraction, $50 for each additional $100,000 or fraction up to $2,000,000, and $75 for each additional $100,000 or fraction thereof. [§6-125A(4)]

COLORADO—$55 per man day or $3 for each $1,000 assets, whichever is the lesser, plus 15¢ for each full $1,000 of assets with a minimum fee of $25. [§11-30-106(1)]

FLORIDA—Based on the total amount of resources held by the credit union:

Resources	Fee
Up to $10,000	$25.00
up to 15,000	50.00
up to 25,000	75.00
up to 50,000	100.00
up to 75,000	125.00
up to 100,000	150.00
over 100,000 but less than 1,000,000	150.00 plus $50 for each additional $100,000 or fractional part
over $1,000,000 but less than $5,000,000	600.00 plus $45 for each additional $100,000 or fractional part
over $5,000,000	2,400 plus $40 for each additional $100,000 or fractional part

§657.06(3)]

IDAHO—A credit union shall pay an examination fee based upon the cost of performing the examination in accordance with regulations adopted by the director. [§26-2136]

ILLINOIS—Based on Assets:

Assets	Fee
$25,000 assets or less	$25 plus $2 per $1,000 of assets up to and including $25,000
Over $25,000 assets and not over $100,000 assets	$75 plus $1.75 per $1,000 of assets in excess of $25,000
Over $100,000 assets and not over $200,000 assets	$206.25 plus $1.50 per $1,000 of assets in excess of $100,000
Over $200,000 assets and not over $500,000 assets	$356.25 plus $1.25 per $1,000 of assets in excess of $200,000
Over $500,000 assets and not over $750,000 assets	$731.25 plus 85¢ per $1,000 of assets in excess of $500,000
Over $750,000 assets and not over $1,000,000 assets	$943.75 plus 80¢ per $1,000 of assets in excess of $750,000
Over $1,000,000 assets and not over $5,000,000 assets	$1,143.75 plus 40¢ per $1,000 of assets in excess of $1,000,000
Over $5,000,000 assets	$2,743.75 plus 25¢ per $1,000 of assets in excess of $5,000,000

or the cost of the examination including such part of the overhead cost as the Director determines is attributable to the examination, whichever is less, but not less than $35. No examination fee may be collected from a credit union until it has been in operation one year. [§496.30]

KANSAS—Based on Assets:

Assets	Fee
Under $25,000	Min. fee — $25; Max. fee $.50/$100 assets
Over $25,000	$54/examiner day,*

*plus $.08/$100 assets up to $500,000
plus $.035/$100 assets from $500,000 to $1,000,000
plus $.025/$100 assets from $1,000,000 to $5,000,000
plus $.01/$100 assets over $5,000,000 [§17-2206(e)]

KENTUCKY—The commissioner shall fix a scale of examination fees to be paid by credit unions, giving due consideration to the time and expense incident to such examinations and to the ability of credit unions to pay such fees. [§290.100]

LOUISIANA—Based on assets:

Assets	Fee
Less than $15,000	$35
$15,000 to 20,000	45
20,000 to 30,000	55
30,000 to 40,000	60
40,000 to 50,000	70
50,000 to 60,000	135
60,000 to 75,000	155
75,000 to 100,000	165
100,000 to 150,000	190
150,000 to 200,000	215
200,000 to 300,000	245
300,000 to 400,000	270
400,000 to 500,000	300
500,000 to 600,000	325
600,000 to 700,000	370
700,000 to 800,000	405
800,000 to 900,000	490
900,000 to 1,000,000	540*

*plus $70 for each $100,000 or fraction thereof in excess of $1,000,000. [§6:646B(4)]

MARYLAND—$20 plus (after deducting $10,000 from total assets) an additional charge of $20 plus 1/18 of 1% of remaining assets; or $40 per examiner day, whichever is less. [§142]

MICHIGAN—Based on Assets:

Assets	Fee
Up to $500,000	$6.75/examiner hour*

*plus $.08/$100 assets up to $500,000
plus $.035/$100 assets from $500,000 to $1,000,000
plus $.025/$100 assets from $1,000,000 to $5,000,000
plus $.01/$100 assets over $5,000,000
All credit unions pay minimum fee of $125. [§490.6]

MINNESOTA—The bank commissioner shall collect an annual fee based on assets; credit unions with assets below $25,000 must pay an additional examination fee of a minimum $20. No examination fee for the first year of operation. [§46.131]

MISSISSIPPI—Examination fees determined by the state comptroller based on average daily cost of all examiners of the Department plus actual and necessary expenses. [§81-13-17]

NEBRASKA—Act refers to Section 8-601, Reissue Revised Statutes of Nebraska, 1943 for examination fee schedule. [§21-1779]

NEW MEXICO—$100 per examiner day, or $50 per examiner half day or any portion thereof. [§48-19-6(B)]

NORTH DAKOTA—Credit union shall pay to the examiner for examination a fee equal to $65 per examiner day, with a $100 minimum fee. [§6-06-08]

OREGON—At the time of the annual examination, each credit union shall pay a fee equal to 1/10 of 1% of total assets not in excess of $500,000, plus 1/25 of 1% of assets in excess of $500,000 but less than $5,000,000, plus an amount deemed necessary by the Superintendent, but not to exceed 1/20 of 1% of assets over $5,000,000. In addition, the credit union must pay a branch fee based on the actual cost of each branch examination, or $25, whichever is larger. The Superintendent may, with the Banking Board's approval, reduce or charge added fees. [§723.112(3)(4)(5)]

RHODE ISLAND—For each examiner: $100/day. No credit union shall be charged during the first two years of its existence. The total examination fees cannot exceed:

Assets	Fee
Under $ 50,000	$ 62.50
$ 50,000 to 100,000	125.00
100,000 to 250,000	250.00
250,000 to 500,000	375.00
500,000 to 1,000,000	500.00
1,000,000 to 3,000,000	750.00
3,000,000 to 6,000,000	1,000.00

More than $6,000,000—shall not exceed total examination fees imposed upon a bank, savings bank or trust company with same total assets. [§19-21-38.1]

TENNESSEE—$40 per day for each examiner plus $.06/$100 assets up to $500,000; plus $.03/$100 assets from $500,000 to $1,000,000; plus $.02/ $100 assets from $1,000,000 to $5,000,000; plus $.01/ $100 assets over $5,000,000, plus up to an additional $10 per day if the Superintendent of Banks prescribes. Fees for follow-up examinations are $40 per examiner per day. [§45-1809(a),(b)]

UTAH—Hourly charge for the services of each examiner, to be set by the commissioner with the concurrence of the board of credit union advisors. [§7-1-10(5)(b)]

VIRGINIA—$25 to cover first $3,000 or less of assets, plus: for the amount by which its assets exceed $3,000 and do not exceed $30,000, $1 for each $1,000 or fraction; and for the amount by which assets exceed $30,000 and do not exceed $5,000,000, 60¢ for each $1,000 or fraction thereof. For assets in excess of $5,000,000, $.30 for each $1,000 or fraction. The Commission is authorized to increase fees by 50%. [§6.1-221,6.1-2]

WEST VIRGINIA—$65 per day per examiner. [§31-10-6]

ACT IS SILENT:

Georgia	Missouri	Puerto Rico
Indiana	New Hampshire	South Carolina
Massachusetts	New York	

Supervision Fees

CUNA MODEL ACT: The Director . . . may establish chartering, supervision, and examination fees, subject to the advice and consent of the Credit Union Council. [§2.10(3)]

FEDERAL CREDIT UNION ACT: In accordance with rules prescribed by the Board, each Federal credit union shall pay to the Administration an annual operating fee which may be expended by the Board to defray the expenses incurred in carrying out the examination and supervision of credit unions. The fee assessed shall reflect the expenses of the Administration as well as the ability of credit unions to pay. If the annual operating fee is composed of separate charges, no supervision fee shall be payable by a Federal credit union. [§105]

ACT SIMILAR TO MODEL ACT:

Nevada [§678.270(1)]

FEE PRESCRIBED BY the supervisory authority:

Arkansas	[§67-931]	North Carolina	[§54-109.14(a)]
Montana	[§14-609(2)]	Oklahoma	[§2008(A)]

FEE REQUIRED for filing annual report to supervisor:

Rhode Island—$5 [§19-21-39] South Carolina—$10 [§8-674]

OTHER ACTS:

CALIFORNIA—Every credit union licensed by Commissioner shall pay in advance for ensuing year's charges and assessments in accordance with schedule:

Assets	Assessment
Assets of $1,000 or less	$20.00
Over $1,000, but not more than $50,000	$20.00 plus $2.00 per $1,000 of assets in excess of $1,000
Over $50,000, but not more than $150,000	$118.00 plus $1.75 per $1,000 of assets in excess of $50,000
Over $150,000, but not more than $300,000	$293.00 plus $1.50 per $1,000 of assets in excess of $150,000
Over $300,000, but not more than $500,000	$518.00 plus $1.00 per $1,000 of assets in excess of $300,000
Over $500,000, but not more than $750,000	$718.00 plus $0.50 per $1,000 of assets in excess of $500,000
Over $750,000 [§16000]	$843.00 plus $0.25 per $1,000 of assets in excess of $750,000

FLORIDA—Fees collected under part I of this chapter are appropriated to the Department of Banking and Finance to be used in administering this Act. [§657.06(3)(b)]

ILLINOIS—Each credit union must pay the Department an annual supervision fee by February 1, according to a graduated scale based on assets. No fee collectible during first year of operations.

If Credit Union has Total Assets of:	Minimum Supervision Fee is:
Under $10,000	$ 10
At least $10,000 but less than $20,000	20
At least $20,000 but less than $25,000	25
At least $25,000 but less than $50,000	40
At least $50,000 but less than $100,000	75
At least $100,000 but less than $200,000	140
At least $200,000 but less than $350,000	175
At least $350,000 but less than $500,000	275
At least $500,000 but less than $1,000,000	400
At least $1,000,000 but less than $2,000,000	500
At least $2,000,000 but less than $5,000,000	600
At least $5,000,000 but less than $10,000,000	700
$10,000,000 or greater	800

[§496.30]

IOWA—Each credit union must pay an annual filing fee to the Administrator. The fee shall be based upon the actual operating costs of the department, exclusive of examination expenses, and shall be established as a rule by the Administrator. [L. 1978, S.F. 137, Sec. 13(1)]

KANSAS—The Administrator may, with the approval of the Credit Union Council, assess a supervision fee not to exceed the following:

On assets of:	Fee not greater than:
Under $500,000	$.30/$1,000 assets
$500,000 to $1,000,000	$150 plus $.25/$1,000 assets exceeding $500,000

continued

$1,000,000 to $2,000,000	$275 plus $.20/$1,000 assets exceeding $1,000,000
$2,000,000 to $5,000,000	$475 plus $.15/$1,000 assets exceeding $2,000,000
over $5,000,000 [§17-2206(e)]	$925 plus $.10/$1,000 assets exceeding $5,000,000

MAINE—The superintendent shall assess semiannually each financial institution at the annual rate of at least 7¢ for each $1,000 of average deposits or share accounts, excluding deposits of other financial institutions and deposits of the United States Government. The superintendent may raise the minimum assessment rate by promulgating regulations at such time as economic conditions warrant such an increase. In no event shall the semi-annual assessment be less than $25. [§214(2)]

MINNESOTA—Each credit union shall pay an annual fee based on assets. [§46.131]

MISSISSIPPI—$20 a year. [§81-13-17]

MISSOURI—Each credit union shall pay an annual fee based on assets as follows:

Total Assets	Fee
Less than $15,000	$10.50
Over $15,000 and not over $50,000	$10.50 plus 70 cents per $1,000 in excess of $15,000
Over $50,000 and not over $200,000	$35 plus 60 cents per $1,000 in excess of $50,000
Over $200,000 and not over $500,000	$125 plus 50 cents per $1,000 in excess of $200,000
Over $500,000 and not over $1,000,000	$275 plus 40 cents per $1,000 in excess of $500,000
Over $1,000,000 and not over $2,000,000	$475 plus 30 cents per $1,000 in excess of $1,000,000
Over $2,000,000 and not over $3,000,000	$775 plus 20 cents per $1,000 in excess of $2,000,000
Over $3,000,000 and not over $5,000,000	$975 plus 10 cents per $1,000 in excess of $3,000,000
Over $5,000,000	$1,175 plus 5 cents per $1,000 in excess of $5,000,000

An additional surcharge, which may not exceed 60% of the fee paid according to the above schedule, may be assessed when the supervisor's budget exceeds receipts from fees. [§370.107]

OHIO—The fee shall be 1/10 of 1% of the credit union's assets, provided that the minimum fee shall be $50 and the maximum fee shall be $2,000. [§1733.32(E)]

OREGON—To defray the costs of supervision, every credit union shall pay to the Superintendent of Banks a fee based on the total assets of the credit union at the time of examination:

Assets over	And not over	Fee
$ 0	$ 1,000	$ 10
1,000	5,000	20
5,000	15,000	30
15,000	25,000	50
25,000	50,000	75
50,000		200

In addition thereto, the credit union shall pay at the same time such fees as the Superintendent deems necessary, but not to exceed 1/20 of 1% of assets in excess of $5,000,000. The Superintendent may, with the Banking Board's approval, reduce the supervision fee to be collected. The Superintendent may also charge additional fees based upon actual costs of extra attention devoted to a credit union's affairs. [§723.112(3),(4),(5)]

PENNSYLVANIA—A credit union shall pay annually its proportionate share of the overhead expenses of the Department of Banking determined by general rule or regulation of the Department. [§12307]

TENNESSEE—Each credit union subject to an annual supervision fee as follows, but in no event less than $5.00:

Total Assets	Maximum Fee
$500,000 or less	30 cents per $1,000
Over $500,000 and not over $1,000,000	$150 plus 25 cents per $1,000 in excess of $500,000
Over $1,000,000 and not over $2,000,000	$275 plus 20 cents per $1,000 in excess of $1,000,000
Over $2,000,000 and not over $5,000,000	$475 plus 15 cents per $1,000 in excess of $2,000,000
Over $5,000,000 [§45-1809(c)]	$925 plus 10 cents per $1,000 in excess of $5,000,000

TEXAS—With the approval of the commission, the commissioner shall levy and collect all supervision fees, penalties, charges and revenues required to be paid by the credit unions. [§11.10(c)]

UTAH—The fees for the cost of supervision (which are in addition to any other fee or tax imposed by law) are determined according to the following schedule:

Aggregate Assets	Fee
First $25,000	$5 per $1,000 of assets or $25, whichever is greater
Next $475,000	$1 per $1,000
Next $500,000	50 cents per $1,000
Next $4,000,000	35 cents per $1,000
All over $5,000,000	10 cents per $1,000

[§7-1-10(5)(a)]

VERMONT—Each credit union must pay annually its proportionate share of the Department of Banking and Insurance's overhead expenses as determined by the Department. [§2069(a)]

VIRGINIA—In order to provide additional funds for the Bureau of Banking, the Commission is authorized to increase the examination fees specified in §6.1-221 by 50%. [§6.1-2]

WASHINGTON—The actual cost of supervision will be paid by the credit union examined. [§31.12.320]

WISCONSIN—The Commissioner shall set the amount of supervision fees, with the consent of the credit union review board. The fee amount should represent as nearly as possible the credit union's fair share of the maintenance of the office of the Commissioner. [§186.04(1),(2)]

ACT IS SILENT:

Alabama	Indiana	New Hampshire
Arizona	Kentucky	New Jersey
Connecticut	Louisiana	New Mexico
Colorado	Maryland	New York
Georgia	Massachusetts	North Dakota
Hawaii	Michigan	Puerto Rico
Idaho	Nebraska	West Virginia

Voluntary Liquidation

CUNA MODEL ACT:

(1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily, and directing that the question of liquidation be submitted to the members.

(3) Within ten (10) days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the Director of the Credit Union Department thereof in writing, setting forth the reasons for the proposed action. Within ten (10) days after the members act on the question of liquidation, the president shall notify the Director in writing as to whether or not the members approved the proposed liquidation.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds (⅔) majority of the members present at a regular or special meeting of the members is required. Where authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first class mail, at least ten (10) days prior to such meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted.

(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay: first, expenses incidental to liquidating including any surety bond that may be required; second, any liability due non-members; third, deposits and special purpose thrift accounts as provided in this Act. Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

(8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, they shall execute a certificate of dissolution on a form prescribed by the Credit Union Department and file the same, together with all pertinent books and records of the liquidating credit union, with the Credit Union Department, whereupon such credit union shall be dissolved. [§11.20]

FEDERAL CREDIT UNION ACT: The board may prescribe regulations to govern voluntary liquidation.
[§120(a)(b)(2)]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-665]	Oregon	[§723.676]
North Carolina	[§54-109.93]		

MAJORITY VOTE of entire membership required to dissolve the credit union:

Arizona	[§6-529]	Nevada	[§678.820]
Arkansas	[§67-938(1)]	North Dakota	[§6-06.1-01]
Colorado	[§11-30-120(2)]	Ohio	[§1733.35]
Florida	[§657.20(1)]	Pennsylvania	[§12328]
Idaho	[§26-2142(a)]	Tennessee	[§45-1828(a)]
Iowa	[§533.20]	Vermont	[§2082(b)]
Maine	[§871(1)]	West Virginia	[§31-10-24(a)]

APPROVAL OF PORTION OF ENTIRE MEMBERSHIP required for dissolution at a meeting called for that purpose. Approval of supervisory authority also required. (Fraction indicates vote of members required for approval.):

Kentucky—4/5	[§290.290]	New Mexico—2/3	[§48-19-20]
Mississippi—4/5	[§81-13-59]	Oklahoma—3/4	[§2018]

THREE-FOURTHS VOTE of membership present at meeting required for dissolution:

Missouri	[§370.350]	New Jersey	[§17:13-60]

TWO-THIRDS VOTE of members present at a meeting called for the purpose of dissolution; with other conditions indicated:

Alabama—If the superintendent finds that the credit union is solvent he shall issue a certificate to the effect that the section has been complied with. [§5-17-21]

Georgia—[§41A-503(b)]

Louisiana—Verification of the vote must be given by Commissioner of Banking. [§6:660]

Massachusetts—After recommendation of two-thirds of the board of directors. [Ch. 171, §29]

Minnesota—Subject to approval of commissioner of banks. [§52.20]

Nebraska—Order for dissolution based on recommendation by two-thirds of the board of directors. [§21-17,106]

New Hampshire—Upon prior recommendation of two-thirds of the board of directors. [§394:49]

Puerto Rico—Subject to approval by the Inspector of cooperatives. [§33]

Washington—Prior recommendation of two-thirds of the board of directors needed. [§31.12.410]

OTHER ACTS:

CALIFORNIA—When three-fourths vote of the board of directors recommend dissolution, the members may elect to dissolve by a majority vote. [§15650(a)]

CONNECTICUT—A credit union may terminate its corporate existence and be dissolved as provided by the law pertaining to non-capital stock corporations. Notification requirements are imposed in regard to both board resolutions and membership votes. If the members vote to dissolve, the Bank Commissioner can either take over the credit union himself, or have the liquidating agent take it over, or he can seek a court appointed receiver. [§36-219]

HAWAII—Upon the unanimous recommendation of the board of directors and with majority vote of members, a credit union may dissolve, provided that not more than 15 members or 10% total

continued

membership, whichever is greater, object in writing to the dissolution. [§410-28]

ILLINOIS—Board of directors adopts a resolution, which must be affirmed by majority vote of the credit union members. Director of Financial Institutions determines if statutory voluntary dissolution provision has been complied with. [§496.34]

INDIANA—Upon resolution of majority of board of directors and two-thirds written consent of members and approval of the Department of Financial Institutions. [§28-7-1-27.1]

KANSAS—At a meeting especially called to consider the matter, a majority of the entire membership may vote to dissolve the credit union. Any member not present, within the next 20 days, may vote in favor of dissolution by signing a statement in form approved by the bank commissioner. [§17-2230(a)]

MARYLAND—Four-fifths of the entire membership may vote to dissolve the credit union, such dissolution becoming effective upon approval by the Bank Commissioner. Alternatively, dissolution may be achieved by placing the credit union's affairs and assets in the Bank Commissioner's hands for final liquidation after a majority vote of the members present at a special meeting called for that purpose. [§157(a),(b)]

MICHIGAN—A majority of the entire membership of the credit union, by ballot or written consent, may agree to a dissolution of the credit union. Upon certification by the Commissioner and filing with the clerk of the county in which the credit union is located, the dissolution is complete. [§490.20(a)]

NEW YORK—While the credit union article indicates that the credit union's shareholders may vote to liquidate, the specific procedures not detailed. General Corporation law governs. [§463-a; Art. XIII, §605]

RHODE ISLAND—Two-thirds vote of the issued and outstanding shares, at a special meeting where the dissolution has the unanimous recommendation of the directors. [§19-21-42]

SOUTH CAROLINA—Upon recommendation of the board of directors and approval of the Board of Financial Institutions, a credit union may go into voluntary liquidation after obtaining approval of a majority of its members in writing or by a majority vote of the members at a regular meeting of the members or at a special meeting called for that purpose. [§6-675]

TEXAS—A majority of members present, at meeting called for that purpose, may vote to dissolve the credit union, so long as a quorum exists and every member had at least 10 days notice of meeting. [§10.02(b)]

UTAH—Majority vote of the entire membership required at specially called meeting. Any member not present at the meeting may vote within the next 20 days; each member must have at least 10 days notice of meeting. [§7-9-23(2)]

WISCONSIN—Upon unanimous recommendation of board of directors, a majority vote of members by ballot taken in person or in writing will dissolve the credit union, so long as not more than 15 members or 10% of the total membership, whichever is greater, do not object in writing. [§186.18]

ACT IS SILENT:
Virginia

Suspension of Credit Union

CUNA MODEL ACT: If it appears that any credit union is bankrupt or insolvent, or that it has willfully violated this Act, or is operating in an unsafe or unsound manner, the Director of the Credit Union Department shall issue an order temporarily suspending the credit union's operations for not less than thirty (30) nor more than sixty (60) days. The board of directors shall be given notice by registered mail of such suspension, which notice shall include a list of the reasons for such suspension, and/or a list of the specific violations of this Act. The Director of the Credit Union Department shall also notify the members of the Credit Union Council of any suspension.

Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the Director. The board of directors shall then file with the Director a reply to the suspension notice, and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the Director may revoke the suspension notice, permit the credit union to resume normal operations, and notify the Council of such action. [§11:10(1)(2)(3)]

FEDERAL CREDIT UNION ACT: The Board may suspend the charter of any federal credit union, upon its finding that the credit union is bankrupt, insolvent, or has violated any provision of its charter, bylaws, the Federal Credit Union Act or any regulations issued thereunder. [§120(b)(1)]

ACT PROVIDES THAT SUPERVISORY AUTHORITY may suspend credit union activities under certain conditions:

Alabama	[§5-17-8]	Nebraska	[§21-1777]
Arizona	[§6:523E]	Nevada	[§678.830(1)]
Arkansas	[§§67-930,67-937]	New Jersey	[§§17:13-52]
California	[§15810]	New Mexico	[§48-19-6(D)]
Colorado	[§11-30-120(1)(a)]	No. Carolina	[§54-109.92]
Connecticut	[§36-214(2)]	North Dakota	[§6-06-08]
Florida	[§657.06(1)]	Ohio	[§1733.32(D), 1733.36]
Hawaii	[§410-35(a)(11)]	Oklahoma	[§2008(B)]
Idaho	[§26-2141]	Oregon	[§723.672]
Illinois	[§496.37(1)]	Pennsylvania	[§12307]
Iowa	[§533.6(1)]	Puerto Rico	[§§13,32]
Kentucky	[§290.280(2)]	Tennessee	[§45-1810]
Louisiana	[§6:646B(1)]	Texas	[§10.01]
Maryland	[§141(b)]	Utah	[§7-9-23(1)]
Michigan	[§490.6]	Vermont	[§2082(a)]
Minnesota	[§52.082]	Virginia	[§6.1-223]
Mississippi	[§81-13-21]	Washington	[§§31.12.440, 31.12.450]
Missouri	[§370.150(2)]	Wisconsin	[§186.29(14)]
Montana	[§14-664]		

ACT IS SILENT:

Georgia	Massachusetts	Rhode Island
Indiana	New Hampshire	South Carolina
Kansas	New York	West Virginia
Maine		

Involuntary Liquidation

CUNA MODEL ACT: If the Director, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, he may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.

If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the Director may then revoke the credit union's charter, appoint a liquidating agent and liquidate the credit union. [§11.10(4)(5)]

FEDERAL CREDIT UNION ACT: The Board may suspend or revoke the charter of any federal credit union, or place the same in involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the organization is bankrupt or insolvent, or has violated any of the provisions of its charter, its by-laws, this Act, or any regulations issued thereunder.

The Board through such persons as it shall designate, may examine any federal credit union in voluntary liquidation and, upon his finding that such voluntary liquidation is not being conducted in an orderly or efficient manner or in the best interests of its members, may terminate such voluntary liquidation and place such organization in involuntary liquidation and appoint a liquidating agent therefor. [§120(b)(1)(2)]

ACT PROVIDES FOR INVOLUNTARY LIQUIDATION of credit union by supervisory authority under certain conditions:

Alabama	[§5-17-8]	Missouri	[§370.150]
Arizona	[§6-530]	Montana	[§14-664(4)(5)]
Arkansas	[§67-938(2)]	Nebraska	[§21-1777]
California	[§15811]	Nevada	[§678.830]
Colorado	[§11-30-120(1)(c)]	New Jersey	[§§17:13-53,54,55]
Connecticut	[§36-195, 36-214(2)]	New Mexico	[§48-19-6(D)]
		No. Carolina	[§54-109.92(d),(e)]
Florida	[§§657.01(1),657.20(2)]	North Dakota	[§6-06-08]
Hawaii	[§410-35(a)]	Ohio	[§1733.32(D)]
Idaho	[§26-2142(b)]	Oklahoma	[§2008(B)]
Illinois	[§496.37(2)]	Oregon	[§723.672(4)(5)]
Indiana	[§28-7-1-13]	Pennsylvania	[§12307]
Iowa	[§§533.6(1),(4)]	Puerto Rico	[§32]
Kansas	[§17-2230(b)]	Tennessee	[§45-1810]
Kentucky	[§290.280]	Texas	[§10.02(a)]
Louisiana	[§6:646(B)(1)]	Utah	[§7-9-23(3)]
Maine	[§871(2)]	Vermont	[§2082(c)]
Maryland	[§141(b)]	Virginia	[§6.1-223]
Michigan	[§490.6,490.20(b)]	Washington	[§§31.12.440, 31.12.450]
Minnesota	[§§52.003,52.004]		
Mississippi	[§81-13-21]	West Virginia	[§31-10-24(b)]
		Wisconsin	[§186.29]

ACT IS SILENT:

Georgia	New Hampshire	Rhode Island
Massachusetts	New York	South Carolina

Crimes and Offenses

CUNA MODEL ACT: [Optional] Any credit union officer, director, employee or agent, who willfully does any of the following may be fined not more than $ _____ dollars or imprisoned not more than _____ years, or both;

(1) With intent to deceive, falsifies any books of account, report, statement, record or other document of a credit union whether by alteration, false entry, omission or otherwise;

(2) Signs, issues, publishes or transmits to a government office any book of account, report, statement, record or other document which he knows to be false;

(3) By means of deceit, obtains a signature to a writing which is a subject of forgery; or

(4) With intent to deceive, destroys any credit union book of account, report, statement, record or other document. [§15.10]

FEDERAL CREDIT UNION ACT: Anyone connected in an official capacity with the National Credit Union Administration or any institution insured by the NCUA or a receiver for any such institution can be fined up to $5,000 and imprisoned not more than five years, or both, if he embezzles, obstructs, purloins or willfully misapplies any monies, funds or other things of value belonging to the institution, or pledged or entrusted to its care. [18 USC, §657] Anyone connected in an official capacity with the National Credit Union Administration or any institution insured by the NCUA can be fined up to $10,000 and imprisoned up to 5 years if, with intent to defraud the institution or deceive it or a government agency, makes any false entry in a book, report or statement or without authorization draws any order, bill of exchange, makes any acceptance, or issues, puts forth or assigns any note or other obligation, or draft, bill of exchange, mortgage, judgment and decree. If any such person, with intent to defraud shares or receives directly or indirectly any money profit, property or benefits through any transaction of the institution he is subject to same penalties. [18 USC, §1006]

ACT SIMILAR TO MODEL ACT:

Oregon—Such crimes are class C felonies. [§723.826(1); 723.992(1)]

UNLAWFUL FOR OFFICIALS OF CREDIT UNION to knowingly permit a loan to be made to a non-member or to participate in such a loan. Such official liable to credit union for amount illegally loaned and may also be subject to other penalties indicated:

Arizona—[§6-518(E)]

California—[§14600, 14601]

Connecticut—Also shall be fined not more than $500. [§36-207]

Kentucky—Also may be fined $10 to $100 and/or imprisoned one to six months. [§290.230(5), 290.990(3)]

New York—[§178]

Texas—Any other form of illegal loan is a felony of third degree. [§5.08]

UNLAWFUL FOR OFFICIAL OF CREDIT UNION: (1) To permit a loan to be made or to participate in a loan to a non-member; violator guilty of misdemeanor and primarily liable to credit union for such loan. (2) A felony to make or subscribe to false entries or to

continued

exhibit fictitious paper instruments, or security to an authorized examiner of credit union. (3) Official who accepts payments on shares knowing credit union is insolvent is also guilty of crime indicated:

Arkansas—A felony punishable by fine of $5,000 and/or imprisonment up to 10 years. [§67-914]

Idaho—A misdemeanor. [§26-2117]

OTHER ACTS:

GEORGIA—Any director, officer, agent or employee who willfully engages in the business of a credit union before receiving a permit to do so under 41A-3004 shall be guilty of a felony. [§41A-9908(3)(iii)]

ILLINOIS—Any officer who embezzles funds commits a class 4 felony and in addition shall be fined double the amount fraudulently taken. Any officer, director or member of a credit union committee who knowingly permits a loan to be made or participates in a loan to a non-member or who solicits or accepts any form of payment to influence the granting of a loan is guilty of a misdemeanor and is liable to the credit union for the amount loaned. [§496.39, 496.40]

IOWA—Any director, officer, agent, employee or clerk of any credit union who knowingly subscribes or makes any false statements or entries in the books, or knowingly subscribes or exhibits false papers with intent to deceive any person authorized to examine its condition, or knowingly subscribes and makes false reports, or knowingly diverts the funds of the credit union to unauthorized objects can be imprisoned up to five years or fined up to $1,000, or both, and be forever barred from holding any credit union office. [§533.31] Also, any person who willfully accepts a deposit from or establishes a business relationship with any member of the credit union department shall, upon conviction, be guilty of a serious misdemeanor and shall be permanently disqualified from certain jobs. Specific penalties are also prescribed for making certain types of false statements. [L.1978, S.F.137, Sec. 13(4),14,16]

LOUISIANA—Any director or committeeman who knowingly and willfully makes or agrees to the making of any loan to other than a member or another qualified credit union, shall by such act become jointly, severally or in solido responsible with the maker and endorsers for the full amount of the debt. [§6:656(C)]

MAINE—Any person responsible for an act or omission expressly declared to be a criminal offense by statutes pertaining to the supervision of financial institutions and for which no other penalty has been provided by statute shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than 11 months or by a fine of not more than $5,000 or by both. If the act or omission was intended to defraud, such person shall be guilty of a felony and shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or by both.

A director, corporator, officer, agent or employee of a financial institution shall be responsible for an act or omission of the institution declared to be a criminal offense against statutes pertaining to the supervision of financial institutions whenever, knowing that such act or omission is unlawful, he participates in authorizing, executing, ratifying or concealing such act, or in authorizing or ratifying such omission or, having a duty to take the required action, omits to do so. [§466]

MICHIGAN—A person who willfully or intentionally violates any provisions of this act for which specific punishment is not provided under any other provision of this act or of other laws applicable to such violation, is guilty of a misdemeanor and shall be fined not less than $100 nor more than $500 or imprisoned not more than six months, or both. [§490.29]

MINNESOTA—Any director, officer or trustee who, in the opinion of the commissioner has committed any violation of law, or has violated any final cease and desist order, or has participated in any unsound act in connection with the credit union or has committed any act or omission which constitutes a breach of his fiduciary duty, may be removed from office pursuant to procedures set forth in the statute. [§46.26-33]

MISSISSIPPI—The making of a willfully false affidavit to any statement, report or other document required by law in connection with the establishment or operating of a credit union shall be perjury and punishable as such, according to the general laws of the state and the embezzlement of any of the funds, securities or other property of a credit union, shall be punishable as such according to the general laws. [§81-13-71]

NEW JERSEY—A person who willfully and corruptly testifies falsely to a material matter upon oath administered by the commissioner or examiner upon investigation, or makes a false statement in any affidavit or oath verifying any report made to the commissioner, shall be guilty of perjury and punished accordingly. [§17:13-49,50]

NEW MEXICO—Any person who makes a false statement in writing for the purpose of obtaining credit union funds shall be guilty of a third degree felony, and upon conviction shall be punished by imprisonment for not less than two years nor more than ten years, or fined not more than $5,000, or both. [§48-19-25]

PUERTO RICO—Any person violating any of the provisions of this act or of any regulation of the office of the Inspector of Cooperatives, shall be guilty of a misdemeanor and for a first offense shall be fined a minimum of $50 or imprisoned for a minimum term of 25 days, or both. Should the offense be repeated, the minimum fine shall be of $500 and the minimum imprisonment six months, or both. [§41(b)]

VIRGINIA—The commission may impose, enter judgment for, and enforce by its process, a fine of not more than $10,000 against any credit union or against any of its directors, officers or employees for knowingly or willfully violating any lawful order of the commission. [§6.1-223.1]

WASHINGTON—Any person who knowingly subscribes to or makes or causes to be made a false statement or false entry in the books of a credit union or in a report required to be made to a supervisor, or who knowingly exhibits a false or fictitious paper, instrument or security to a person authorized to examine the institution, shall be guilty of a felony. [§31.12.340]

WEST VIRGINIA—Any violation of this article shall be deemed a misdemeanor and any person convicted thereof shall be fined not less than $100 nor more than $500 and imprisoned in the county jail not less than one month nor more than six months. [§31-10-29]

ACT IS SILENT:

Alabama	Missouri	Oklahoma
Colorado	Montana	Pennsylvania
Florida	Nebraska	Rhode Island
Hawaii	Nevada	South Carolina
Indiana	New Hampshire	Tennessee
Kansas	North Carolina	Utah
Maryland	North Dakota	Vermont
Massachusetts	Ohio	Wisconsin

False Statements or Reports

CUNA MODEL ACT: Whoever maliciously and knowingly spreads false reports about the management or finances of any credit union shall be fined not less than $50 nor more than $500 or be imprisoned for not less than 30 days nor more than one year, or both. [§15.15]

FEDERAL CREDIT UNION ACT: No provision in the Federal Credit Union Act; however, the U.S. Code, Title 18, "Crimes and Criminal Procedures", provides that a person who knowingly makes any false statement or report upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of same, to a federal credit union shall be fined not more than $5,000 or imprisoned not more than two years, or both. [18 U.S.C., §1014]

ACT SIMILAR TO MODEL ACT but with differing penalties:

Arkansas	[§67-934]	Oregon	[§723.816(2);
Idaho	[§26-2137]		723.992(2)]

OTHER ACTS:

CALIFORNIA—The making, circulating, or transmitting of any statement which is untrue in facts and directly or by inference derogatory to the financial condition of any credit union shall be a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or both. [§14005]

IOWA—Any director, officer, agent, employee, or clerk of any credit union who shall knowingly subscribe or make any false statements or false entries in the books thereof, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe and make false reports, or shall knowingly divert the funds of the credit union to other objects than those authorized by law, shall be punished by imprisonment in the penitentiary not more than five years or in the county jail not more than one year, or by fine of not more than $1,000, or by both such fine and imprisonment, and be forever after barred from holding any office. [§533.31]

LOUISIANA—Whoever makes false statement or report to influence credit union action on a loan application or any document relating to a loan transaction shall be fined not more than $1,000 or jailed for not more than one year, or both. [§6:668]

MAINE—No director, corporator, officer, agent or employee of a financial institution shall, with intent to deceive, make any false or misleading statement or entry or omit any statement or entry that should be made in any book, account, report or statement of the institution; obstruct or endeavor to obstruct a lawful examination or investigation of the institution or any of its affairs by an official or employee of the Bureau of Banking. [§466(7)]

NEVADA—Any person who maliciously and knowingly spreads false reports about the management or finances of any credit union is guilty of a gross misdemeanor. [§678.880(2)]

NEW JERSEY—Any false statement made in any affidavit or oath verifying any report made to the supervisory authority shall be deemed perjury and shall be punished accordingly. [§17:13-49]

NEW MEXICO—Any person giving a false affidavit in regard to any matter specified in this act shall be guilty of a 3rd degree felony. [§48-19-25]

PUERTO RICO—Any credit union or credit union officer or director who violates any provision in this act may be fined not more than $100. [§41(9)]

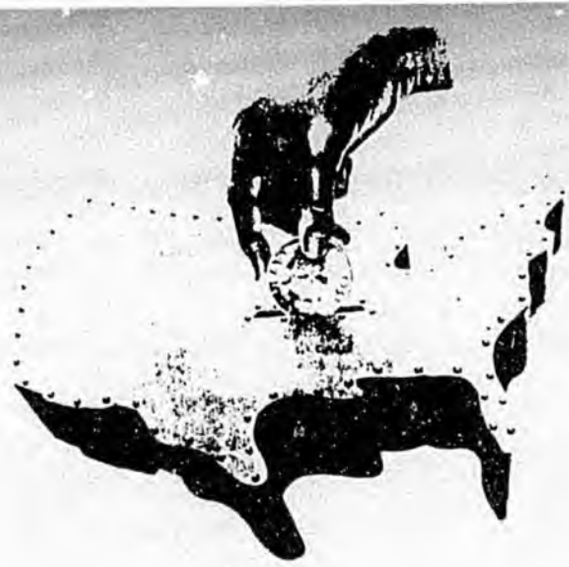
WASHINGTON—Any person who knowingly subscribes to or makes or causes to be made a false statement or false entry in the books of a credit union, or who knowingly makes a false statement or entry in a report required to be made to the supervisor, or who knowingly exhibits a false or fictitious paper, instrument, or security to a person authorized to examine the institution, shall be guilty of a felony. [§31.12.340]

WEST VIRGINIA—A person, firm, corporation, or association who maliciously and knowingly spreads false reports about the management or finances of any credit union shall upon conviction be fined not less than $25 nor more than $200 or be imprisoned for not less than 30 days nor more than 1 year, or both. [§31-10-32]

ACT IS SILENT:

34 states

Chapter eight



OTHER CREDIT UNION ACTIVITIES

Investments in U. S. Obligations

CUNA MODEL ACT: Funds not used in loans to members may be invested in securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency thereof or in any trust or trusts established for investing directly or collectively in the same. [§9.10(1)]

FEDERAL CREDIT UNION ACT: A federal credit union may invest its funds in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby; . . . in obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in section 846 of Title 31 as a wholly owned government corporation; or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act; or in obligations or other instruments or securities of the Student Loan Marketing Association; in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more government agencies to a trust or trusts for which any executive department, agency or instrumentality of the United States (or the head thereof) has been named to act as trustee. [§107(7)(B)(E)(F)]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-520(1)(5)]	*New Hampshire	[§394.17(V)]
*Florida	[§657.161(8)]	North Dakota	[§6-06-06(5)(a)]
*Hawaii	[§410-22(3)]	Oregon	[§723.602(1)]
Iowa	[§533.4(5)(b)]	Rhode Island	[§19-21-27(a)]
Michigan	[§490.4(e)]	*Texas	[§8.01(4)]
Montana	[§14-659(1)]	Utah	[§7-9-16(1)(5)]
*Nevada	[§678.760(1)]	Vermont	[§2079(1)]

*May also invest in participations.

ACT SIMILAR TO FEDERAL ACT:

**Georgia	[§41A-3101(d)(1)]	*Washington	[§31.12.260(b)(c)(d)(f)]
Illinois	[§496.23(1)]		
New York	[§453(14)]		

*May also invest in ICU government securities program.

**Excludes FHLMCA, SLMA instruments, and participation certificates. Includes GNMA instruments.

OBLIGATIONS OF THE U. S. OR SECURITIES fully guaranteed as to principal and interest thereby:

Arkansas	[§67-925(3)]	Nebraska	[§21-1773(8)(b)]
Colorado	[§11-30-104(1)(e)]	No. Carolina	[§54-109.82(4)]
Missouri	[§370.075(1)]	Oklahoma	[§2006(8)(b)]

OTHER ACTS:

CALIFORNIA—A credit union may invest with the written approval of the commissioner, in trusts organized solely for the purpose of investing in United States government securities and United States government agency securities; provided such trust is formed by an organization composed of credit unions described in subdivision (a) of Section 14805.5 or an organization of credit union associations. [§15101(f)]

IDAHO—A credit union may invest in obligations fully guaranteed as to principal and interest by the United States government. [§26-2127(a)]

INDIANA—A credit union may invest in: (1) Bonds, notes, or certificates which are direct or indirect obligations of the United States.

(2) Bonds or debentures issued under and by the authority of the Federal Farm Loan Act, the Federal Home Loan Bank Act, the Home Owners' Loan Act, interest-bearing obligations of the Federal Savings and Loan Insurance Corporation issued pursuant to Title IV of the National Housing Act, obligations of national mortgage associations issued under and by the authority of the National Housing Act and mortgages on real estate situated in the State of Indiana which are fully insured under Title II of the National Housing Act.

(3) In trusts which are created by and fully controlled by credit unions or credit union associations, or wholly owned corporate subsidiaries thereof and which trusts have been established for investing directly or collectively in securities, obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the United States government or any agency thereof. However, prior to the investment of any credit union funds as authorized in this paragraph, the trusts to be invested in shall have obtained certification from the department as approved trusts. The department is granted specific authority to make and promulgate rules and regulations, concerning trusts referred to in this paragraph, in the manner prescribed in the Indiana Industrial Loan and Investment Act. [§28-7-1-9(c)]

KANSAS—A credit union may invest in bonds of the U.S.; and in the bonds, debentures, or similar obligations issued under the authority of and pursuant to the act of Congress known as the Farm

Credit Act of 1971, as amended: Provided, however, the total amount of such bonds, debentures, or other similar obligations of any one obligor or maker shall at no time exceed 15% of the capital, surplus, and reserves of the credit union. [§17-2204(3),17-2204a]

KENTUCKY—Funds of credit unions may be invested in (a) Bonds and other interest-bearing obligations of the federal government; (b) Obligations issued by or for federal land banks, federal intermediate credit banks and banks for cooperatives under the Act of Congress known as the Farm Credit Act; (c) Bonds and obligations of the Home Owners' Loan Corporation; (d) Notes and bonds secured by mortgage or trust deed insured by the Federal Housing Administrator, obligations issued or insured by the Federal Housing Administrator, and securities issued by National Mortgage Association. [§290.220(3)]

LOUISIANA—Investments may be made in bonds, certificates, notes, or other evidence of indebtedness of the United States, and in federal farm loan bonds issued by Federal Land Banks, debentures issued by Federal Intermediate Credit Banks, and debentures issued by Banks for Cooperatives. [§6:644(3)(a)]

MAINE—A credit union may invest in any bonds or notes of the United States which are legal investments for savings banks in this state. [§862(2)]

MARYLAND—A credit union may invest in registered or coupon bonds of the United States and those guaranteed by it. [§151]

MASSACHUSETTS—A credit union may invest in 1) a common trust unit plan organized for the purchase of bonds or notes of the United States or any subdivision thereof which are legal investments for savings banks and which plan has, as its custodian, a banking institution authorized to accept deposits from a credit union, or from a savings bank as provided in Chapter 168, Section 55; 2) bonds or notes of the U.S.; 3) bonds or notes of federal agencies; 4) repurchase agreements secured by government obligations; and 5) federal funds. [Ch. 171, §21(i-j,o)]

MISSISSIPPI—A credit union may invest in United States bonds, notes, or bills, of long or short term. [§81-13-11(c)(i)]

NEW MEXICO—A credit union may purchase obligations of the United States and may invest in any obligation in which a federal credit union is authorized to invest. [§48-19-4(B)(1,5)]

OHIO—A credit union may invest in United States government securities. [§1733.30(A)]

PENNSYLVANIA—A credit union may invest in bonds or other interest-bearing obligations of the United States or those for the payment of the principal and interest on which the faith and credit of the United States are pledged, or those of any wholly owned United States Government Corporation as so designated by Section 101 of the Government Corporations Control Act of 1945, its supplements and amendments. [§12305(7)(a)]

TENNESSEE—A credit union may invest in obligations of or securities fully guaranteed as to principal and interest by the Government of the United States of America; in any bonds or other obligations issued by the Tennessee Valley Authority; and in investments authorized under sections 35-327 and 35-328 (FNMA securities, debentures of federal housing commissioner, and notes and bonds secured by mortgages or trust deeds insured by the federal housing commissioner) or any investment which is lawful for federal credit unions. [§45-1806(3)(e)(f)(g)]

VIRGINIA—A credit union may invest in obligations of the United States. [§6.1-216(5)]

WISCONSIN—A credit union may invest in United States government direct and agency obligations. [§186.11(1)]

ACT IS SILENT:

Alabama	New Jersey	South Carolina
Connecticut	Puerto Rico	West Virginia
Minnesota		

Investments in State Obligations

(Includes State, County, and Municipal Obligations)

CUNA MODEL ACT: Funds not used in loans to members may be invested in obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress, or any political subdivision thereof. [§9.10(2)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

California	[§15101(c)]	Oregon	[§723.602(2)]
Montana	[§14-659(2)]	Vermont	[§2079(2)]

CREDIT UNION MAY INVEST IN MUNICIPAL BONDS issued by municipalities of this state:

Ohio	[§1733-30(A)]	Wisconsin	[§186.11(1)]

CREDIT UNION MAY INVEST IN OBLIGATIONS of the state or any subdivision thereof:

Arkansas	[§67-925(2)]	No. Carolina	[§54-109.82(3)]
Hawaii	[§410-22(2)]	Tennessee	[§45-1806(3)(e)]
Iowa	[§533.4(5)(c)]	Texas	[§8.01(2)]
Nevada	[§678.760(2)]		

OTHER ACTS:

COLORADO—A credit union may invest in obligations of any state or territory of the United States, or of any political subdivision or instrumentality thereof, except certain revenue obligations of municipalities having less than 5,000 residents. [§11-30-104(1)(e)]

FLORIDA—A credit union may invest in general obligations of states and general obligations of counties, municipalities or county road, school, hospital and other public purpose districts of the state; provided, that such securities shall not be eligible for investment if they have been in default either as to principal or interest within five years prior to date of purchase. [§657.161(2)]

GEORGIA—A credit union may invest in general and direct obligations of the state, its counties, districts, and municipalities, which have been validated as provided by law, but no more than 25% of the shares and deposits of a credit union shall be invested in the obligations of any one such obligor. [§41A-3101(d)(2)]

ILLINOIS—A credit union may invest in securities issued as direct obligations and guaranteed by any state or municipality within the United States. [§496.23(1)(D)]

INDIANA—A credit union may invest in bonds, notes or certificates which are the direct or indirect obligations of the state of Indiana; or the direct obligations of any county, township, city, town or other taxing district or municipality or instrumentality of the state of Indiana, subject to certain limitations regarding default. [§28-7-1-9(c)(1)]

KANSAS—A credit union may invest in the bonds of any state or of

continued

any municipality, the bonds of which municipality are legal investments for savings banks in Kansas. [§17-2204(3)]

KENTUCKY—A credit union may invest in bonds, state warrants and other interest-bearing obligations of this state. [§290.220(3)(b)]

LOUISIANA—A credit union may invest in bonds, certificates, notes, or other evidence of indebtedness of the state or of any municipality of Louisiana, including paving certificates of municipalities. [§6:644(3)(a)]

MAINE—A credit union may invest in any bonds or notes of any state or subdivision thereof which are legal investments for savings banks in this state. [§862(2)]

MARYLAND—A credit union may invest in registered or coupon bonds of, or those guaranteed by, the state or any county or municipality thereof, including public stock debt of Baltimore City. [§151]

MASSACHUSETTS—A credit union may invest in bonds or notes of any state or subdivision thereof. [Ch. 171, §21(j)]

MISSISSIPPI—A credit union may invest in state, county, county district, municipal and corporate bonds or notes or bills of long or short term. [§81-13-11(c)(i)]

MISSOURI—A credit union may invest in bonds of the state of Missouri or bonds of any other state, or bonds of any town, city, county or school districts, subject to certain limitations regarding default; provided that no investment in any single type of security shall exceed 25% of the capital, surplus and reserve fund. [§370.075(2)(3)(6)]

NEBRASKA—A credit union may invest in bonds, notes, and warrants of the state or any political subdivision thereof. [§21-1773(8)(b)]

NEW HAMPSHIRE—A credit union may invest in obligations of the state, or any county, city, or town of the state, issued pursuant to authority of law. [§394:17(IV)]

NEW MEXICO—A credit union may invest in obligations of a state or territory of the United States; a subdivision or instrumentality thereof; an authority organized under either state law, an interstate compact or by substantially identical legislation adopted by two or more states; or in an amount not exceeding 20% of its reserve accounts in any one issue for revenue obligations issued to provide, enlarge or improve electric power, gas, water, sewer facilities and other public facilities, by any city or town located in New Mexico, provided total investments in all such issues shall not exceed total reserve accounts. [§48-19-4(B)(1),(2),(4)]

NORTH DAKOTA—A credit union may invest in bonds or evidences of debt of this or any state; and in bonds or certificates of indebtedness of any county, city, village, or school district in this state, issued pursuant to authority of law. Not more than 30% of the assets of any credit union may be invested in county, city, village or school bonds or certificates of indebtedness. [§6-06-06(5)(b)(c)]

PENNSYLVANIA—A credit union may invest in bonds or other interest-bearing obligations of the Commonwealth of Pennsylvania or any county, city, borough, township, incorporated town or school district thereof or an authority which has been created as a body corporate and politic under any law of this Commonwealth; and bonds and notes of the Pennsylvania Housing Agency. [§12305(7)(b),(d)]

VIRGINIA—A credit union may invest in obligations, including revenue bonds, of the state or any political subdivision or agency thereof. [§6.1-216(5)]

WASHINGTON—A credit union may invest in general obligations of this state and general obligations of counties, municipalities, or public purpose districts of this state. [§31.12.260(b)]

ACT IS SILENT:

Alabama	Minnesota	Rhode Island
Arizona	New Jersey	South Carolina
Connecticut	New York	Utah
Idaho	Oklahoma	West Virginia
Michigan	Puerto Rico	

Investments in Financial Institutions

(Refer also to "Deposit of Funds" and "Investments in Other Credit Unions")

CUNA MODEL ACT: Funds not used in loans to members may be invested . . . in certificates of deposit or passbook type accounts issued by a state or national bank, mutual savings bank, or savings and loan association. [§9.10(3)]

FEDERAL CREDIT UNION ACT: A federal credit union may invest in shares or accounts of savings and loan associations or mutual savings banks, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation. [§107(7)(D)]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-659(3)]	Oregon	[§723.602(3)]
Nevada	[§678.760(3)]	Vermont	[§2079(3)]

A CREDIT UNION MAY INVEST in the shares and accounts of savings and loan associations insured by the Federal Savings and Loan Insurance Corporation (FSLIC):

Colorado [§11-30-104(1)(d)]

A CREDIT UNION MAY INVEST in time deposits, including certificates of deposit, in any bank which is a member of the Federal Deposit Insurance Corporation. Deposits in out-of-state banks shall be limited to such accounts as are fully insured by the FDIC. May also invest in shares and savings certificates of any savings and loan association which is a member of the Federal Savings and Loan Insurance Corporation. Investments in out-of-state associations shall be limited to such accounts as are fully insured by the FSLIC.

Arizona	[§6-520(2)(3)]	Utah	[§7-9-16(2)(3)]

A CREDIT UNION CAN MAKE DEPOSITS in state and national banks and trust companies.

Minnesota	[§52.04(4)]	*West Virginia	[§31-10-4(d)]
North Dakota	[§6-06-06(4)]		

*Act does not include trust companies.

OTHER ACTS:

ALABAMA—A credit union may deposit in national and state banks and savings and loan associations, the accounts of which are fully insured by the FDIC or the FSLIC. [§5-17-4(a)(6)]

CALIFORNIA—A credit union may invest in accounts, with investment certificates, or withdrawable shares of, any savings and loan associations doing business in this state and which is an insured institution as defined by Title IV of the National Housing Act. The total sum so invested in any one savings and loan association may not exceed the greater of ¼ of 1% of the savings and loan

association's total withdrawable accounts or the maximum amount of insurance on a single savings and loan account then provided by the Federal Savings and Loan Insurance Corporation and Title IV of the National Housing Act. [§15101(e)]

CONNECTICUT—A credit union may invest in accounts of mutual savings banks, state bank and trust companies, national banking associations and federal and state chartered building or savings and loan associations which are insured by or under a program operated by an agency of the U.S. Investments in institutions located outside the state shall be limited to the extent that the accounts are so insured. [§36-198(g)(2)(3)]

FLORIDA—A credit union may invest in shares of building and loan associations and savings and loan associations, or in certificates of deposit or time deposits of state and national banks and savings and loan associations. [§657.161(4)(9)]

GEORGIA—A credit union may invest in deposits in banks, building and loan associations and savings and loan associations and may purchase certificates of deposit and savings certificates which such financial institutions are authorized to issue, to the extent provided in regulations issued by the department. [§41A-3101(d)(4)]

HAWAII—A credit union may invest in certificates of passbook-type accounts, insured by the Federal Savings and Loan Insurance Corporation, which are issued by a savings and loan association domiciled in the United States. Also in certificates of deposit issued by a state or national bank domiciled in Hawaii. However, no credit union may purchase, or own at any one time, certificates of deposit totaling in excess of 25% of the paid-in capital and surplus of an issuing bank. [§410-22(6),(7)]

IDAHO—A credit union may invest in time certificates of deposit issued by any state or federally chartered bank in Idaho whose accounts are insured by the Federal Deposit Insurance Corporation in an amount not to exceed the greater of the FDIC insurance limits or 1% of the issuing bank's total deposits; and in time certificates of deposit or savings accounts in any state or federally chartered savings and loan association in Idaho whose accounts are insured by the Federal Savings and Loan Insurance Corporation in an amount not to exceed the greater of the FSLIC insurance limit or 1% of the savings and loan's withdrawable savings liability. [§26-2127(b)(c)]

ILLINOIS—A credit union may invest in withdrawable accounts or investment certificates of any savings or building and loan association incorporated under the laws of this state or of any other state or of the United States, if the withdrawable accounts or investment certificates are fully insured by the Federal Savings and Loan Insurance Corporation. Investment in such institutions may not exceed 40% of the credit union's unimpaired capital and surplus. Also may invest in savings certificates of deposit of any state or national bank, if the certificates are fully insured by the Federal Deposit Insurance Corporation. [§496.23(1)(D),(2)]

INDIANA—A credit union may invest in building and savings and loan associations and in certificates of indebtedness or investment of any industrial loan and investment company operating under the Indiana Industrial Loan and Investment Act, provided the association or company is insured by an agency of the federal government. Not more than 20% of the assets of a credit union may be invested in the shares or certificates of any such association or company nor more than 40% in all such associations and companies. [§28-7-1-9(c)(2)]

IOWA—A credit union may invest in time deposits in national and state banks the deposits of which are insured by the Federal Deposit Insurance Corporation, and in paid up shares of savings and loans, the shares of which are insured by the Federal Savings and Loan Insurance Corporation. [§533.4(5)(a)(d)]

KANSAS—A credit union may invest in shares of any savings and loan association having its principal office located in the state, or in deposits in savings banks, state banks, trust companies, and national banks. [§17-2204(3)]

KENTUCKY—A credit union may invest in deposits in state or national banks doing commercial banking, and in savings and loan associations. [§290.220(1)]

LOUISIANA—A credit union may invest in deposits to the credit of the corporation in savings banks, state banks, trust companies, and national banks. [§6:644(3)(c)]

MAINE—A credit union may invest in deposits or share accounts in any financial institution; provided that deposits in such institution are insured by the FDIC or the Federal Savings and Loan Insurance Corporation. [§862(1)]

MARYLAND—A credit union may invest in deposits in banking institutions organized under the laws of Maryland, or in national banks located therein, and insured building, savings, and loan associations. The total of all types of accounts, excluding checking accounts, in any one institution shall not exceed the insurable amount per account that the institution currently carries. [§151]

MASSACHUSETTS—A credit union may invest in savings banks or trust companies incorporated in the Commonwealth, or in banking companies so incorporated and which are members of the Federal Deposit Insurance Corporation, or in national banks located in the Commonwealth, or in paid-up shares and accounts of co-operative banks incorporated in the Commonwealth, or in the shares of savings and loan associations so incorporated, or in the shares of federal savings and loan associations having a usual place of business within the Commonwealth. Amount may not exceed the insurance provided by the Federal Savings and Loan Insurance Corporation for a depositor in any one of such associations. [Ch. 171, §21]

MICHIGAN—A credit union may invest in deposits in federally insured state and national banks; and in savings and share accounts in federally insured savings and loan associations doing business in the state, provided such investments, together with investments in other credit unions, shall not exceed 50% of the investing credit union's capital. [§490.4(d)]

MISSISSIPPI—A credit union may invest in deposits in savings banks, state banks, national banks, mutual banks, trust companies, savings and loan associations, and any other financial institutions whose savings and deposits are insured as to principal by any agency of the U. S. Government. [§81-13-11(c)(iii)]

MISSOURI—A credit union may invest in savings share accounts of federal and state chartered savings and loan associations doing business in Missouri and holding certificates of insurance from the Federal Savings and Loan Insurance Corporation, provided that such investments shall not exceed 25% of the capital, surplus and reserve fund of the credit union. [§370.075(4)]

NEBRASKA—A credit union may invest in the shares or accounts of savings and loan associations to the extent they are insured, or, with the approval of the department of banking, in the shares or accounts of savings and loan institutions which are uninsured up to the insured limit. It may also make deposits in national, state and mutual-savings banks operating in accordance with the laws of the United States or the State of Nebraska. [§21-1773(8)(c),(9)]

continued

NEW HAMPSHIRE—A credit union may invest in deposits in any cooperative bank, building and loan association, savings bank, trust company, federal savings and loan association, or national bank in this state, provided they are insured by either the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation. [§394:17(I)]

NEW JERSEY—A credit union may invest in shares, certificates and accounts of savings and loan associations organized under New Jersey or federal law, provided all such investments are insured by an agency or instrumentality of the United States Government and do not exceed the amount of the insurance. [§17:13-27]

NEW MEXICO—A credit union may invest in paid-in shares of building and loan associations, to an extent which shall not exceed 25% of the investing credit union's capital; deposits in state and national banks and building and loan associations may also be made. [§48-19-4(A)(4)]

NEW YORK—A credit union may invest in shares of savings and loan associations, chartered under New York, federal, or other state laws, and insured by the FSLIC. The amount so invested may not exceed the insured maximum in any one association. May also deposit funds in savings banks, state banks, trust companies, or industrial banks incorporated under New York law or in national banks located in the state. [§454(13-a), 456]

NORTH CAROLINA—A credit union may invest in deposits in savings banks, savings and loan associations, state banks or trust companies incorporated under the laws of the state, or in national banks located therein; in time deposits in any banks insured by the Federal Deposit Insurance Corporation, or in deposits or investments in any savings or building and loan association insured by the Federal Savings and Loan Insurance Corporation. [§54-109.82(5),(9)]

OHIO—A credit union may invest in state or national banks, and state or federal chartered savings and loans doing business in the state. [§1733.30(A)]

OKLAHOMA—A credit union may invest in shares or accounts of savings and loan associations insured by the FSLIC, as well as deposits in national banks, state banks and trust companies. [§2006(8)(e),(9)]

PENNSYLVANIA—A credit union may invest in shares of any building and loan or savings and loan association, organized under the laws of the Commonwealth, or of any federal savings and loan association to the extent to which such shares are insured by the Federal Savings and Loan Insurance Corporation. [§12305(7)(c)]

PUERTO RICO—A credit union may make deposits in commercial banks. [§7(d)]

RHODE ISLAND—A credit union may invest in shares of savings and loan associations organized under federal or state law that are insured by the Federal Savings and Loan Insurance Corporation. Such investments in institutions located outside the state shall be limited to the extent that they are insured. [§19-21-27(4)]

SOUTH CAROLINA—A credit union may invest in deposits to the credit of the credit union in savings and loan associations, building and loan associations, trust companies, state banks or national banks. [§8-668]

TENNESSEE—A credit union may invest in any legally chartered bank or trust company and in any state or federal savings and loan association. [§45-1806(1)(a),(b)]

TEXAS—A credit union may invest in certificates of deposit or passbook accounts issued by a state or national bank, a building and loan association, or a savings and loan association, subject to regulations established by the commissioner. [§8.01(3)]

VIRGINIA—A credit union may invest in deposits in banks doing business in the state, and in shares of any savings and loan doing business in the state whose shares are insured by the Federal Savings and Loan Insurance Corporation. [§6.1-216(3)(6)]

WASHINGTON—A credit union may invest in deposits in banks or trust companies or in state or national banks located in Washington or in FDIC insured checking accounts in out-of-state banks; investment may also be made in the shares of savings and loan associations organized or authorized to do business under the laws of this state or of the United States. [§31.12.260(a)(e)]

WISCONSIN—A credit union may invest in banks and savings and loans located in Wisconsin. [§186.11(1)]

ACT IS SILENT:
Arkansas

Investments in Other Credit Unions

(Refer also to "Investment in Central Credit Unions")

CUNA MODEL ACT: Funds not used in loans to members may be invested . . . in loans to or in shares or deposits of other credit unions. [§9.10(4)]

FEDERAL CREDIT UNION ACT: A federal credit union shall have power to invest its funds . . . in accordance with rules and regulations prescribed by the Board, in loans to other credit unions in the total amount not exceeding 25 per centum of its paid-in and unimpaired capital and surplus and in shares, share certificates, or share deposits of federally insured credit unions. [§107(7)(C),(H)]

ACT SIMILAR TO MODEL ACT:

Mississippi	[§81-13-11(b)(c)]	Oregon	[§723.602(4)]
Montana	[§14-659(4)]		

ACT SIMILAR TO FEDERAL ACT:

Oklahoma	[§2006(8)(c)]

A CREDIT UNION MAY INVEST in shares and special investments in other credit unions in the state:

Arizona	[§6-520(4)]	Utah	[§7-9-16(4)]

A CREDIT UNION MAY MAKE LOANS to other credit unions:

Alabama	[§5-17-4(a)(4)]	Puerto Rico	[§20]
Colorado	[§11-30-104(1)(c)]	Vermont	[§2079(4)]
Maryland	[§161]		

A CREDIT UNION MAY INVEST in loans to other credit unions in an amount not to exceed 25% of the shares, deposits, and surplus of the lending credit union, or any trust or trust established for lending directly or collectively to credit unions:

Hawaii	[§410-22(4)]	Texas	[§8.01(5)]

OTHER ACTS:

ARKANSAS—A credit union may invest in loans to other credit unions in an amount not to exceed 33⅓% of the shares and unimpaired surplus of the lending credit union. [§67-925(6)]

CALIFORNIA—A credit union may invest in shares or certificates for funds received or any form of evidence of interest or indebtedness issued by any credit union in the state organized under the state or federal act. [§15101(d)]

CONNECTICUT—A credit union may make loans to any other credit union in the state, not exceeding 20% of the lending credit unions paid-in and unimpaired capital and surplus. May also invest in the notes or share accounts of any credit union in the state, provided the investment in any one credit union does not exceed the greater of $40,000 or 5% of the investing credit union's assets. [§36-198(g)(5),(j)]

FLORIDA—A credit union may invest in loans to other credit unions in the state provided that no such loan may exceed 25% of the unimpaired capital of the lending credit union nor be made for more than one year. May also invest in shares of another credit union provided the investment does not exceed $15,000, or 1% of the assets of the credit union, whichever is greater, and the aggregate of all such investments does not exceed 25% of the unimpaired capital of the investing credit union. May invest in certificates of deposit or time deposits of other credit unions. [§657.161(1)(4)(9)]

GEORGIA—A credit union may invest in loans to other credit unions, but loans to any one credit union shall not exceed 10% of the shares, deposits, and surplus of the investing credit union. A credit union may also invest in deposits in credit unions and may purchase such certificates of deposit and saving certificates as those credit unions are authorized to issue. [§41-3101(d)(3),(4)]

IDAHO—A credit union may make loans to other credit unions who are its members with a maximum maturity of one year and in an amount that shall not in total exceed 10% of the shares and certificates of deposit of the credit union. Deposits may also be made in state or federal credit unions in Idaho. [§§26-2108(k),26-2120]

ILLINOIS—A credit union may invest in loans to other credit unions with a maximum maturity of five years and in an amount that shall not in total exceed 25% of the unimpaired capital and surplus of the credit union making such loans. However, loans in excess of the 25% limitation may be made by any credit union whose membership includes one or more directors of at least 25 state or federal credit unions. [§496.23(3)]

IOWA—A credit union may invest in shares of and deposits in other credit unions, and also may purchase the notes of liquidating credit unions with the approval of the administrator. [§533.4(5)(e),(f)]

KANSAS—A credit union may lend to any other credit union operating under the provisions of the Kansas credit union act, but only with the approval of the administrator and only up to 25% of the shares, undivided earnings and reserves of the lending credit union. [§17-2214]

KENTUCKY—Not more than 10% of the capital stock and reserve funds of a credit union may be invested in the stock of other credit unions, including federal credit unions operating in Kentucky. Loans to other credit unions shall not exceed 25% of the capital and surplus of the lending credit union. A credit union may also make investments in the form of deposits in state credit unions as well as federal credit unions operating in Kentucky. [§290.220(1),(2),(3)(g)]

LOUISIANA—A credit union may invest in the shares of other credit unions to a total amount which shall not exceed 10% of the capital stock paid-in and reserve fund of the investing credit unions. When duly authorized by its board of directors, a credit union may lend to any other credit unions at such rates, as shall be fixed and determined by the board of directors, not exceeding 25% of the paid-in and unimpaired capital and surplus of the lending credit union. [§6:644(3)(c), (4)(a)]

MAINE—A credit union may deposit with or invest in shares of other credit unions authorized to do business in this state and insured by the National Credit Union Administration. Subject to the approval of its board a credit union may make loans to other credit unions located in this state, provided that loans outstanding at any one time to any one credit union shall not exceed 10% of the share capital and surplus of the lending credit union. A credit union may also invest up to 5% of its share capital and surplus in the purchase of notes from liquidating credit unions. [§§856,861(2),862(1),(3)]

MICHIGAN—A credit union may deposit with or invest in shares of, or loans to federally insured credit unions and credit unions chartered in this state, except that a credit union shall not deposit with or invest in any credit union whose application for federal share insurance shall have been denied and which has not received an extension of time from the commissioner. Such investments, together with investments in savings and loan associations, shall not exceed 50% of the capital of the investing credit union. A credit union may also purchase the notes receivable of credit unions which are in liquidation or receivership in Michigan. [§490.4(d),(l)]

MINNESOTA—A credit union may invest in shares or deposits in any other credit union chartered by this or any other state or operating under the provisions of the Federal Credit Union Act, in amounts not exceeding in the aggregate 25% of its unimpaired assets. Payments on shares of and deposits with credit unions chartered by other states shall be restricted to credit unions insured by the National Credit Union Administration. [§52.04(8)]

MISSOURI—A credit union may invest in shares of other credit unions incorporated under the laws of this state or of the United States, with commissioner's prior approval. No such investment may exceed 25% of the capital, surplus and reserve fund of the investing credit union. [§370.075(5),(6)]

NEBRASKA—A credit union may invest in shares of or in loans to other credit unions organized in this state, either under state or federal law. It may not invest in the shares of other credit unions more than 15% of the sum of its share balances. No such credit union shall have an aggregate of loans from any source and shares issued to other credit unions in an amount in excess of 40% of its paid-in and outstanding shares. [§21-1773(8)(d)]

NEVADA—A credit union may invest in loans to or shares or deposits of other credit unions as permitted by the bylaws. [§678.760(4)]

NEW HAMPSHIRE—A credit union may invest in loans to other credit unions chartered under the laws of this state or under the Federal Credit Union Act, provided that the lending credit union has assets of $100,000 or more. [§394:17(III)]

NEW JERSEY—A credit union may make loans to any other credit union operating under the provisions of this act or of the Federal Credit Union Act. The aggregate of all loans to other credit unions shall not exceed 25% of its share liability, and no credit union shall loan to any other credit union more than 25% of the share liability of such other credit union. [§17:13-27]

NEW MEXICO—A credit union may invest in shares of other New Mexico credit unions up to 25% of the surplus of the investing credit union, and may lend up to 10% of its assets to another credit union. [§48-19-4(A)(4), 48-19-16]

NEW YORK—A credit union may invest in shares of other federally insured credit unions and loans to other credit unions, including credit unions chartered by the federal government. The maximum amount of such investments may not exceed 15% of either the investing credit union or the credit union being invested in. [§§453(13), 454(13)]

NORTH CAROLINA—A credit union may invest in deposits in

continued

other credit unions, or loans to other credit unions in an amount not to exceed 25% of the shares and unimpaired surplus of the lending credit union. [§54-109.82(5), (6)]

OHIO—Upon the approval of the board, a credit union may make loans to other credit unions. The total of all such loans, including the aggregate of all money paid into any trust established by one or more credit unions for the purpose of making loans to other credit unions, shall not exceed 25% of the unimpaired capital and surplus of the lender. [§1733.25(B)]

PENNSYLVANIA—A credit union may make loans to credit unions organized under the laws of Pennsylvania or under the laws of any other state or the United States. The aggregate amount outstanding on all such loans shall not exceed 25% of the unimpaired capital of the lending credit union. [§12305(B)(5)]

RHODE ISLAND—A credit union may invest up to one-third of its total capital, deposits and surplus in the shares of other credit unions incorporated under the laws of this state or incorporated under federal law and located in this state. [§19-21-27(b)(2)]

SOUTH CAROLINA—A credit union may invest in deposits in other credit unions. [§8-668]

TENNESSEE—A credit union may invest in state or federal credit unions in an amount not to exceed 10% of the shares, members' special accounts and reserve funds of the investing credit union or of the credit union in which the investment is made, whichever amount is the smaller. [§45-1806(3)(c)]

VIRGINIA—A credit union may invest in loans to other credit unions doing business in Virginia to the extent permitted in the bylaws; and up to 10% of outstanding shares and reserve fund in shares of credit unions doing business in Virginia. [§6.1-216(2)(4)]

WASHINGTON—A credit union may invest in the shares, share certificates or share deposits of other credit unions organized or authorized to do business under the laws of this state or the United States, or in the notes of such credit unions in the process of liquidation. [§31.12.260(e)]

WISCONSIN—A credit union may make investments in credit unions with the approval of the commissioner. [§186.11(1)]

ACT IS SILENT:

Indiana
Massachusetts
North Dakota
West Virginia

Investments in Cooperative Societies

CUNA MODEL ACT: Funds not used in loans to members may be invested . . . in shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding ten (10%) percent of the shares, deposits, and surplus of the credit union. [§9.10(6)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-925(4)]	Rhode Island	[§19-21-27(7)]
Montana	[§14-659(6)]	Vermont	[§2079(6)]
Nevada	[§678.760(6)]		

ACT SIMILAR TO MODEL ACT, but the total amount of such investments shall not exceed the specified limitation:

Oregon—1% of the shares, deposits, and surplus of the credit union. [§723.602(6)]

A CREDIT UNION MAY MAKE LOANS to a cooperative society or other organizations having membership in the credit union:

Alabama	[§5-17-4(a)(5)]	New Mexico	[§48-19-4(A)(3)]
Florida	[§657.04(3)]	North Dakota	[§6-06-06(3)]
Iowa	[§533.4(3)]	Pennsylvania	[§12305(B)(3)]
Minnesota	[§52.04(3)]	West Virginia	[§31-10-4(c)]

OTHER ACTS:

MICHIGAN—A credit union may make loans to a cooperative society or other organizations having membership in the credit union. It may also invest up to 5% of its unimpaired share capital in programs that will assist in providing cooperative housing and related facilities to its members. Credit union is not authorized to invest in the stock of a housing cooperative. [§§490.4(c), 490.4a(2)(a)]

PUERTO RICO—A credit union may invest in loans to cooperative associations and other nonprofit organizations. If they are not members of the credit union, the operation must be approved by the Inspector of Cooperatives. [§7(c)]

WISCONSIN—A credit union may invest an amount not to exceed 10% of its regular reserve in agreements with other corporations or its members to provide cooperative housing and facilities for its members. [§186.11(3)]

ACT IS SILENT:

30 states.

Investments in Service Corporations

CUNA MODEL ACT: Funds not used in loans to members may be invested . . . in the capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association or membership corporation, provided the membership or stockholdings, as the case may be, of such agency or association are primarily confined or restricted to credit unions, or organizations of credit unions, and provided the purposes for which such agency or association is organized are designed primarily to service or otherwise assist credit union operations. [§9.10(5)]

FEDERAL CREDIT UNION ACT: A federal credit union may invest its funds in the shares, stocks, or obligations of any other organization, providing services which are associated with the routine operations of credit unions, up to 1% of the total paid-in and unimpaired capital and surplus of the credit union with the approval of the Board: *Provided, however,* That such authority does not include the power to acquire control directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by this Act. [§107(7)(I)]

ACT SIMILAR TO MODEL ACT:

Kentucky	[§290.220(3)(f)]	Rhode Island	[§19-21-27(b)(6)]
Montana	[§14-659(5)]	Vermont	[§2079(5)]
Nevada	[§678.760(5)]		

SIMILAR TO MODEL ACT, provided that such investments shall not exceed the specified limitation:

Arizona—5% of the credit union's paid-in and unimpaired capital. [§6-520(7)]

Michigan—5% of the credit union's capital. The commissioner's approval is also required. [§490.4(r)]

Oregon—1% of assets. [§723.602(5)]

Tennessee—25% of the allocations to the reserve fund of the investing credit union, such investment not legal if such company or association is authorized or empowered to make loans to any person or corporation who is not a member of the credit union organization. [§45-1806(3)(d)]

Utah—5% of the credit union's paid-in and unimpaired capital. [§7-9-16(8)]

SIMILAR TO MODEL ACT, and may also invest in an aggregate amount not to exceed the specified limitations in any such agency or association which is designed to assist in maintaining liquidity, solvency, and security in credit union operations:

Arkansas—25% of the allocations to reserve fund. [§67-925(1)(7)]

Hawaii—2½% of the credit union's total assets or the amount of its reserve fund, whichever is less. [§410-22(1),(5)]

Iowa—25% of the allocations to the reserve fund; the aggregate amount so invested shall not exceed 20% of the unimpaired legal reserve account of the credit union. [§533.4(5)(g)]

North Carolina—25% of the allocations to the reserve fund. [§54-109.82(2)(7)]

Texas—5% of the credit union's total assets or the amount of its reserve fund; whichever is less. [§8.01(1)]

A CREDIT UNION MAY INVEST up to the specified limitations in a corporation organized to perform only business administration services for two or more credit unions at least one of which is subject to supervision by the department:

Florida—3% of unimpaired capital and surplus. [§657.161(10)]

Kansas—2% of shares and unimpaired capital. [§17-2204(a)]

OTHER ACTS:

CALIFORNIA—A credit union may invest in the shares of stock of a corporation organized solely for the purposes of providing services to credit unions providing such corporation is formed by an organization of credit unions, or in any corporation which provides services to credit unions provided such investment is approved by the commissioner. Such investment shall not exceed in aggregate, 5% of its paid-in and unimpaired capital and surplus. [§14804.2]

CONNECTICUT—A credit union may invest in stocks, bonds, debentures or other investments in 1 or more corporations which provide a service necessary to or in the conduct of the business of the credit union. No credit union may invest more than the amount necessary to procure the amount of services needed by the credit union. The investment shall be subject to the approval of the commissioner. [§36-198(g)(4)]

IDAHO—A credit union may invest in shares of stock in a credit union service corporation, such investment not to exceed 10% of the paid-in shares and deposits of members. [§26-2127(d); 26-2146]

LOUISIANA—A credit union may invest in the ICU Services Corporation. [§6:644(6)]

MAINE—A credit union may purchase the capital stock or obligations or otherwise invest or participate in or utilize the service of any organization performing necessary clearing, bookkeeping, statistical and related services for the credit union or other credit unions or related organizations. No credit union shall invest more than 10% of its share capital and surplus for such purpose without the superintendent's approval. [§364]

MISSOURI—With the consent first obtained from the commissioner of finance, a credit union may invest up to 5% of its capital, surplus, and reserve funds in capital stocks of corporations solely and exclusively established to assist credit union operation in bookkeeping and accounting, consumer counseling for members, and the insuring of members' accounts. [§370.075(6)]

NEW MEXICO—A credit union may invest an amount approved by the commissioner in the stock of a corporation engaged in providing record keeping services, using electronic or other similar machines. [§48-19-4(C)]

NEW YORK—Subject to regulations and restrictions of the banking board, a credit union may participate with other credit unions in the establishment or maintenance of an accounting service center, limited to providing data processing services only for participating credit unions. Capital stock ownership (which may not exceed 2% of the value of the credit union's members' shareholdings) and operating expenses are proportionate to each credit union's use of the facilities and services. [§453(26)] Credit unions may also invest funds in and make loans to credit union organizations (any organization established primarily to serve the needs of its member credit unions and whose business relates to the daily operations of the credit unions it serves) upon approval by the board of directors, up to 1% of shares and deposits or 10% of surplus, whichever is less. The total amount of all such loans may not exceed 2% of shares and deposits or 20% of its surplus account, whichever is less. [§453(14a)]

PENNSYLVANIA—Subject to prior approval by the Secretaty of Banking, a credit union may invest up to 1% of its assets in capital stock, obligations or other securities of any service corporation organized under the laws of Pennsylvania, or under the laws of any other state and duly qualified to do business in Pennsylvania, if the entire capital stock of such corporation is available for purchase only by credit unions, organized and existing under the laws of Pennsylvania and by federal credit unions or association of credit unions. [§12305(7)(e)]

ACT IS SILENT:

20 states and Puerto Rico.

Investments In Corporate Securities

CUNA MODEL ACT: Funds not used in loans to members may be invested in stocks and bonds of corporations organized in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the several territories organized by Congress to a maximum of five (5%) percent of members' shares, provided that such investment shall be limited to income stocks or bonds which appear on a list approved by the Director and published quarterly or annually, such list to include not less than thirty (30) corporations. [§9.10(7)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

California [§15101(c)] *Nevada [§678.760(7)]

*No reference made to corporations of the District of Columbia, Puerto Rico or the territories.

OTHER ACTS:

ARIZONA—A credit union may invest in commercial bonds, rated Triple A. [§6-520(6)]

continued

COLORADO—A credit union may invest to an extent which shall not exceed 10% of its paid-in capital, in shares of mutual funds or investment companies, stocks, bonds, or other securities of any corporation as may be approved by the state bank commissioner. [§11-30-104(1)(e)]

FLORIDA—With the approval of the state comptroller credit unions may invest in corporation bonds with a fixed maturity of any corporation within the United States, if such bonds are rated by at least two nationally recognized rating services in any one of the three highest classifications approved by the comptroller of the currency for the investment of the funds of national banks. Not more than 10% of the total assets of the credit union shall be so invested; and not more than $15,00 1% of the total assets of the credit union, whichever is greater, sha be invested in any one corporation's bonds. A credit union may also invest in first mortgage bonds of railroad and public service corporations; total investment in any such corporation shall not exceed the greater of $15,000 or 1% of the credit union's assets. Such securities shall not be eligible for investment if they have been in default either as to principal or interest within five years prior to date of purchase. [§657.161(3)(7)]

IOWA—With approval of the administrator, credit unions may acquire and hold shares in corporations engaged in providing and operating electronic transmission or recording facilities. [§533.4(17)]

MAINE—Nothing contained in this section shall be construed as authorizing a credit union to purchase or invest in the stock of any corporation. [§862]

MASSACHUSETTS—A credit union may invest in any bonds, notes, certificates of deposit, bankers' acceptances, bank stocks or bank holding company stocks or insurance stocks, or preferred stocks of public utility companies which are at the time of their purchase legal investments for savings banks in the Commonwealth. Not more than 10% of the assets of a credit union shall be invested in bank stocks or in bank holding company stocks or insurance stocks or preferred stocks of public utility companies, or in all 4 of such types of stock. Not more than $15,000 or 2% of the assets of a credit union, whichever is greater, shall be invested in the stock of any one bank, bank holding company, insurance company or preferred stocks of public utility companies. The amount invested by a credit union in such stocks shall not exceed that permitted to savings banks. [Ch. 171, §21(n)]

MICHIGAN—A credit union may invest in the common or preferred stock of any state or national bank doing business in the state. The investment in any one bank stock shall not exceed 5% of the capital of the credit union. No individual credit union may hold more than 15% of the capital stock of any one state or national banking corporation or association. The aggregate investment in bank stocks shall not exceed 25% of the capital of the credit union. [§490.4(e)]

MISSOURI—A credit union may invest in shares of corporations to aid the liquidity of credit unions. [§370.071(4)]

NEW MEXICO—A credit union may acquire the common stock of banks or building and loan associations and may purchase obligations of a corporation chartered by the United States or a state thereof, doing business in the United States, which are approved by the commissioner for investment.
[§48-19-4(A)(9), (B)(3)]

NORTH DAKOTA—A credit union may invest in first lien, public utility, industrial, corporation or association bonds, notes, or other evidences of debt issued by corporations located in the U.S. to the extent authorized by the state credit union board. [§6-06-06(5)(f)]

RHODE ISLAND—A credit union may invest in common or preferred stocks to the extent of not over 5% of shares and deposits for credit unions with assets less than $10,000,000 and to the extent of not over 10% of the shares and deposits for credit unions with assets of $10,000,000 or more. Any such securities, excepting mutual funds, shall be listed on the New York Stock Exchange or its successor; dividends shall have been paid by the corporation issuing such security and any predecessor corporation or corporations for a period of not less than nine of the next prior ten years; the issuing corporation shall have, as shown by its last audited statements, total assets (less allowances for depreciation and amortization) of at least $100,000,000 and a stockholders' equity of not less than 40% of the amount of its total assets. Such security shall also have been approved for investment by the director of business regulation, who shall be required to maintain a list of at least 30 approved securities at all times. The director shall have absolute discretion in approving individual securities, provided they meet the requirements set forth above. No credit union shall invest in securities under this provision unless it has at least $500,000 in total assets as shown by its last annual report. No credit union shall invest more than 1% of its shares and deposits in any one security. [§19-21-27(b)(5)]

UTAH—A credit union may invest in commercial bonds.
[§7-9-16(6)]

VERMONT—A credit union may make any investment legal for Vermont savings banks or trust companies, but in no event may it invest in common stock. [§2079(7)]

VIRGINIA—A credit union may invest in such stock, securities and other obligations as may be approved from time to time by the Commission. [§6.1-216(7)]

ACT IS SILENT:

30 states and Puerto Rico

Other Authorized Investments

CUNA MODEL ACT: Funds not used in loans to members may be invested . . . in loans to any credit union association or corporation, national or state, of which the credit union is a member, except that such investment shall be limited to 2% of the assets of the credit union. [§9.10(8)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT, but such investments are subject to the following limitations:

Montana—2% of assets. [§14-659(7)]

Nevada—1% of shares, deposits and unimpaired surplus. [§678.760(8)]

Oregon—2% of assets. [§723.602(7)]

Vermont—2% of assets. May also make any investment legal for savings banks or trust companies, but in no event common stock. [§2079(7)(8)]

A CREDIT UNION MAY INVEST in any investment legal for savings banks or for trust funds in the state:

Alabama	[§5-17-4(a)(7)]	Oklahoma	[§2006(8)(d)]
Minnesota	[§52.04(5)]		

A CREDIT UNION MAY INVEST in any investments legal for the indicated institutions:

Arkansas—Fiduciaries, savings banks, or trust companies in the state. [§67-925(5)]

Michigan—State banks, subject to the same limitations based on capital as applicable to state banks. Such investments may be made individually or in participation with other credit unions. [§490.4(e)]

New Mexico—Federal credit union. [§48-19-4(B)(5)]

Puerto Rico—Trust funds in Puerto Rico. [§7(e)]

South Carolina—Banks in the state. [§8-668]

Tennessee—Federal credit unions. [§45-1806(3)(g)]

West Virginia—Savings banks. [§31-10-4(e)]

A CREDIT UNION MAY INVEST in any other types of investments approved by the official or agency indicated:

Georgia—Department of Banking and Finance provided such investments shall not in the aggregate, exceed 10% of the shares, deposits and surplus of the investing credit union. [§41A-3101(d)(5)]

Maryland—Commissioner of Banks. [§151]

Mississippi—State Banking Department. [§81-13-11(c)(i)]

Ohio—Supervisor of Credit Unions. [§1733.30(a)]

Virginia—State Corporation Commission. [§6.1-216(7)]

Wisconsin—Commissioner of Credit Unions. [§186.11(1)]

OTHER ACTS:

CALIFORNIA—Credit unions may purchase from the vendor of any personal property, conditional sale agreements covering the sale of such property to its members. The credit union may hold and retain any such conditional sale contract as an investment. [§15102]

COLORADO—A credit union may invest up to 10% of its paid-in capital in securities of religious or educational organizations approved as prudent and sound by bank commissioner. [§11-30-104(1)(e)]

CONNECTICUT—A credit union may invest in bonds legal as investments for savings banks in this state, and may also invest (with the approval of the commissioner) up to 2% of its assets in social purpose investments. [§36-198(g)(1), L.1972, P.A.81]

ILLINOIS—A credit union may invest in obligations of the State of Israel, or obligations fully guaranteed by the State of Israel as to payment of principal and interest. [§496.23(1)(E)]

INDIANA—A credit union may invest in the capital stock of not more than one discount credit corporation which is organized under Indiana law and operated for the use and benefit of credit unions and/or other nonprofit organizations or their members. Not more than 5% of the credit union's capital and reserve fund may be invested in such a corporation without approval from the department of financial institutions. [§28-7-1-9(c)(2)]

LOUISIANA—A credit union may invest in homestead stock, or in the ICU Services Corporation. [§6:644(3)(b),(6)]

MAINE—A credit union may invest in any bonds or bankers' acceptances which are legal investments for savings banks in this state. [§862(2)]

MASSACHUSETTS—A credit union may invest in bonds of governments of countries friendly to the United States, as defined by the U. S. Department of State; or, to the extent authorized by section 3 of chapter 216 of the acts of 1932, in the shares of the Central Credit Union Fund, Inc. [Ch. 171, §21(h),(m)]

NEBRASKA—A credit union may invest in any types of securities approved by the Department of Banking, as well as in bonds of the State of Israel. [§21-1773(8)(b), L.1974, L.B.845]

NEW JERSEY—A credit union may invest in any investments legal for state savings banks. Also, may invest in development bonds of foreign governments or obligations of international development banks as approved by the Comptroller of the Currency and the Commissioner of Banking. Such investments may not exceed 5% of the credit union's capital deposits, surplus and reserves. [§17:13-27(d)]

NEW YORK—A credit union may invest in the securities authorized as investments for savings banks, Section 235, subdivisions 1, 2, 3, 4, 15, and 28a, and where the assets of a credit union are in excess of $3 million in securities enumerated in subdivision 13 and 14 of that section. [§§453(14),456(2)]

NORTH CAROLINA—A credit union may invest in the North Carolina Savings Guaranty Corporation; in debentures which are issued by an agency of the U.S. government; or in the College Foundation in an amount not to exceed 10% of the credit union's shares and unimpaired surplus. [§54-109.82(8)(10)(11)]

RHODE ISLAND—A credit union may invest up to one-third of its aggregate capital, deposits and surplus in securities which are legal for the investment of funds of savings banks of this state, subject to the same limitations and restrictions by which savings banks are governed. Credit unions with assets of less than $10 million or credit unions whose shares and deposits are not insured shall not invest in securities described in section 19-9-12, ("prudent man investments"). Also may invest in any corporation incorporated by CUNA International, Inc., or its successor, or any associated or subsidiary corporation, for the purpose of providing investment opportunity for credit unions, or any investment or interlending program managed or sponsored by any such corporation. Any such deposit or investment shall be subject to approval by the director of business regulation. [§19-21-27(b)(1)(3)]

UTAH—A credit union may invest in securities as would be legal investments for funds of decedents' estates or trusts. [§7-9-16(7)]

WASHINGTON—A credit union may invest in such other investments authorized in accordance with rules and regulations prescribed by the supervisor consistent with chapter 31.12 RCWs as now or hereafter amended: Provided that any such securities shall not be eligible for investment if they have been in default either as to principal or interest within five years prior to date of purchase. [§31.12.260(g)]

ACT IS SILENT:

Arizona	Iowa	New Hampshire
Florida	Kansas	North Dakota
Hawaii	Kentucky	Pennsylvania
Idaho	Missouri	Texas

Sale or Purchase of Assets

CUNA MODEL ACT: A credit union may . . . sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the Director. [§3.10(11)]

FEDERAL CREDIT UNION ACT: In accordance with the rules and regulations of the Board, a federal credit union may sell all or part of its assets to another credit union or purchase all or part of the assets of another credit union. A federal credit union may also purchase notes from a liquidating credit union, so long as the aggregate unpaid balance of such notes does not exceed 5 percent of the unimpaired capital and surplus of the credit union. [§107(14), 107(13)]

ACT SIMILAR TO MODEL ACT:

Kansas	[§17-2229]	Nevada	[§678-470(3)]
Montana	[§14-613(10)]	Oregon	[§723.152(11)]

A CREDIT UNION MAY PURCHASE from a liquidating credit union the notes of members at such prices and terms as agreed upon by the board or liquidating agent of the liquidating credit union and the board of the purchasing credit union, subject to the rules and regulations of the Commissioner where applicable:

California [§15102.2]

Hawaii—Provided that the aggregate unpaid balance of such notes does not exceed 5% of the unimpaired capital and surplus of the credit union. [§410-12(f)(13)]

Louisiana [§6:644(5)]

Texas—Such prices may be agreed to by the commissioner or by the boards of the credit unions. [§8.01(6)]

OTHER ACTS:

CONNECTICUT—A credit union may sell any or all of its outstanding loans to any other lending institution and purchase one or more outstanding loans from any other state or federal credit union located in the state, with or without recourse. Any loan servicing arrangement shall be subject to prior approval of the commissioner. [§36-198(r)]

FLORIDA—A credit union may invest in the assets of liquidating credit unions within the state. [§657.161(11)]

ILLINOIS—A credit union may purchase notes held by any liquidating credit union. [Ch. 32, §496.9(15)]

IOWA—A credit union may invest in notes of liquidating credit unions with the approval of the superintendent of banking. [§533.4(5)(e)]

MAINE—A credit union may acquire all or substantially all of the assets of, or assume the liabilities of, any other credit union authorized to do business in the State, subject to the provisions of sections 355, 357, and 358; and may purchase notes from a liquidating credit union, provided that such purchase shall not exceed 5% of the purchasing credit union's share capital and surplus. [§876, 862(3)]

MICHIGAN—A credit union may purchase the notes receivable of credit unions which are in liquidation or receivership in the state. [§490.4(l)]

NEBRASKA—A credit union may sell and assign loans to the central credit union or other financial institutions without recourse. [§21-1773(12)]

NORTH CAROLINA—A credit union may sell all or substantially all of its assets or purchase all or substantially all of the assets of another financial institution, subject to the approval of the Administrator. [§54-109.21(10)]

ACT IS SILENT:
30 states and Puerto Rico

Discounting Notes

CUNA MODEL ACT: A credit union may discount and sell any eligible obligations, subject to rules and regulations prescribed by the Director. [§3.10(10)]

FEDERAL CREDIT UNION ACT: Any federal credit union may discount with or sell to any federal intermediate credit bank any eligible obligations up to the amount of its paid in and unimpaired capital . . . A federal credit union shall have power to purchase, sell, pledge or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the Board) of its members. [§107(9)(13)]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-613(9)]	North Carolina	[§54-109.21(9)]
Nevada	[§678.470(2)]	Oregon	[§723.152(10)]

OTHER ACTS:

HAWAII—The credit union may discount with or sell to another credit union or any financial institution obligations up to the amount of its paid in and unimpaired capital. [§410-12(f)(9)]

IOWA—A credit union may discount and sell obligations of its members without recourse; it also may purchase the obligations of Iowa credit union members, provided such obligations meet the requirements of the act. [§533.4(16)]

KANSAS—A credit union may discount and sell to the central credit union any real estate loan made by the credit union and held for at least one year. [§17-2204(9)]

MICHIGAN—A credit union may sell, discount or otherwise dispose of, in whole or in part, any eligible obligations, as defined by the commissioner, of its members in accordance with rules set by the commissioner. [§490.4(u)]

PUERTO RICO—A credit union may discount any transferable or negotiable commercial instruments. [§7(g)]

ACT IS SILENT:
37 states

Third Party Payments

(Provision for money orders or other payment services)

CUNA MODEL ACT: A credit union may collect, receive and disburse monies in connection with the sale of negotiable checks, money orders and other money-type instruments, and for such other purposes as may provide benefit or convenience to its members, and charge a reasonable fee for such service(s). [§310(17)]

FEDERAL CREDIT UNION ACT: A credit union may sell to members negotiable checks (including travelers checks) and money orders and may cash checks and money orders for members, for a fee which does not exceed the direct and indirect costs incident to providing such a service. [§107(12)]

ACT SIMILAR TO MODEL ACT, but with no mention of a fee:

Idaho	[§26-2108(q)]	Louisiana	[§6:644(7)]

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-509(17)]	New Mexico	[§48-19-4(A)(8)]
Connecticut	[§36-201]	Oregon	[§723.152(17)]
*Montana	[§14-613(16)]	Texas	[§4.01(18)(19)]
Nevada	[§678.480(2)]		

*"but not including checking account services"

ACT SIMILAR TO FEDERAL ACT:

Hawaii	[§410-12(f)(12)]	New Jersey	[§17:13-27(i)]
Indiana	[§28-7-1-9(m)]	Vermont	[§2054(b)]
Maryland	[§6-307(4), (5)]		

OTHER ACTS:

ARKANSAS—Third party payments are specifically forbidden. [§67-906(1)]

ILLINOIS—A credit union may cash checks or money orders for its members from cash on hand in the normal course of doing business. No special cash fund may be established for this purpose and no fee may be charged for such services. It may also sell money orders, travelers checks and other such instruments to members. [§496.9]

KANSAS—A credit union may enter into agreements with banks for the extension of credit card service and check credit plans to their members. [§14-2204(4)]

MAINE—A credit union may engage directly in the business of selling, issuing or registering checks or money orders to its members. [§823(1)]

MASSACHUSETTS—A credit union may sell negotiable checks drawn by it and payable by or through a trust company or national bank, and sell register checks, travelers checks, and American Express money orders, subject to regulations. It may also cash any check or money order and charge for it. [Ch. 171, §6]

MICHIGAN—A credit union may disburse from the share or deposit account such funds as the member may direct in writing for the following purposes only: Insurance premiums, mortgage, land contract and rent payments, utility bills, debt management disbursements, and support and alimony payments and payments made pursuant to an order or judgment of a court. [§490.4(m)]

MINNESOTA—Upon written authorization from a member, a credit union may make payments to third parties by withdrawals from the members share or deposit accounts or through proceeds of loans made to such members, or by permitting the credit union to make such payments prior to deposit. [§52.04(11)]

MISSOURI—With prior approval of the commissioner, the board of directors may provide such fiscal and financial services, which may include the sale of money orders, for a fee that doesn't exceed the direct and indirect costs incident to such services, to its members and, on a temporary basis, to the members of other credit unions. [§370.070(10)]

NEW HAMPSHIRE—The commissioner may authorize a credit union, under regulations made by him to sell negotiable checks and drafts issued by it or drawn by or on it payable by or through a trust company or a national bank. [§394:5']

NEW YORK—A credit union may sell money orders and travelers checks as agent for any corporation, association, or joint stock company empowered to sell such instruments through agents within New York. [§453(17)]

NORTH CAROLINA—A credit union may sell travelers checks and money orders and charge a reasonable fee for such services, provided the instruments are payable at institutions other than a credit union. [§54-109.21(16)]

PUERTO RICO—A credit union may draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, certificates of deposit and other transferable or negotiable commercial instruments. [§7(g)]

RHODE ISLAND—A credit union may sell to its members negotiable checks drawn by or on it and payable by or through a trust company or national banking association. [§19-21-9]

WISCONSIN—A credit union may issue third party checks upon request of a member, and may collect, receive and disburse monies in connection with the sale of travelers checks, money orders, and credit cards. Funds for issuing own credit union money orders must be segregated. [§186.113(5)(9), 186.33]

ACT IS SILENT:

Alabama	Mississippi	South Carolina
California	Nebraska	Tennessee
Colorado	North Dakota	Utah
Florida	Ohio	Virginia
Georgia	Oklahoma	Washington
Iowa	Pennsylvania	West Virginia
Kentucky		

Transaction Accounts

(Authorization for share drafts and/or checking accounts)

CUNA MODEL ACT: A credit union may receive from its members or from another credit union deposits payable on demand, and honor requests for withdrawals of such deposits in any form, provided that the credit union maintains such reserves as are required by the Director. [§3.10(7)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT AUTHORIZES DEMAND DEPOSITS:

Nevada [§678.470(1)]

Rhode Island—Only insured credit unions with shares and deposits of $1,000,000 or more, subject to the specified conditions. [§19-21-9.1]

ACT AUTHORIZES SHARE DRAFTS AND/OR NOW ACCOUNTS:

Idaho—A credit union may provide for its members, share and deposit accounts from which the member may withdraw funds by the use of a negotiable instrument. [§26-2108(1)]

Maine—"Personal demand deposits" are payable on demand and subject to withdrawal by negotiable or transferable instruments. [§131(31)] "NOW Account" means a deposit or account from which withdrawals may be made by negotiable or transferable instruments for the purpose of making transfers to third parties, and on which interest or dividends are paid. [§131(29)]

Massachusetts—With the prior written approval of the commissioner and under such conditions as he may prescribe, a credit union may authorize negotiable withdrawal order accounts that allow withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties. [Ch. 167, §16A]

Tennessee—A credit union may permit its members to withdraw either shares or funds in members' special accounts through a remote withdrawal system utilizing drafts drawn against the member's credit union and payable through a bank, and may engage in any and all other share or fund withdrawal activities authorized for federally chartered credit unions. [§45-1806(6)]

continued

Vermont—A credit union may honor requests for withdrawal of shares in any manner approved by the credit union board of directors and by the commissioner who will establish regulations consistent with prudent banking practices. [§2054(6)]

ACT PROHIBITS DEMAND DEPOSITS AND/OR CHECKING ACCOUNTS:

Arkansas	[§67-906(1)]	Montana	[§14-613(16)]
Georgia	[§41A-3101(a)]	Washington	[§31.12.260(g)]

OTHER ACTS:

CALIFORNIA—Although the Act does not specifically authorize transaction accounts, such authorization is implied by mention of share accounts in the provision dealing with charges for special overdraft services. [§14901]

CONNECTICUT—Under regulations of commissioner, any credit union may sell to members negotiable checks or drafts drawn by or on it and payable through any bank accepting commercial deposits. [§36-201]

HAWAII—A credit union may issue third-party checks upon request of the member. [§410-39(5)]

IOWA—Each credit union which had share draft accounts in operation as of June 28, 1978 may continue to provide that service until terminated by order of the Superintendent of Banking or the Credit Union Administrator. All such programs which are not terminated by order shall end on April 15, 1979. Credit unions providing such services must comply with the reserve requirements established by this provision. [L.1978, H.F.2467]

MINNESOTA—Upon written authorization from a member, a credit union may make payments to third parties by withdrawals from the member's share or deposit accounts or through proceeds of loans made to such members, or by permitting the credit union to make such payments prior to deposit. A credit union may permit draft withdrawals from member accounts, but may not establish demand deposits (checking accounts). [§52.04(11)]

NEW HAMPSHIRE—The commissioner may authorize a credit union, under regulations made by him to sell negotiable checks and drafts issued by it or drawn by or on it payable by or through a trust company or a national bank. [§394:51]

OREGON—A credit union may receive from its members or from another credit union deposit accounts or shares payable on nonnegotiable request. [§723.152(7)]

ACT IS SILENT: 28 states and Puerto Rico

Group Life Insurance

(Authority to provide life savings and credit life to members)

CUNA MODEL ACT: A credit union may purchase or make available insurance for its members in amounts relative to their respective ages, shares, deposits or loan balances or to any combination of them. [§8.10.1]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Montana	[§14-613(20); 14-656]	Oregon	[§723.572(1)]
No. Carolina	[§54-109.75(a)]		

CREDIT UNION MAY PROVIDE INSURANCE on the lives of its members in amount equal to their respective share and loan balances or any or all of them:

Arkansas	[§67-905(h)]	Nevada	[§678.750(1)]
Idaho	[§26-2108(h)]		

CREDIT UNION MAY PURCHASE or provide life insurance for the benefit of its members:

Illinois	[§496.9(10)]	Texas	[§4.01(9)]
Louisiana	[§6.644(9)]		

THE LIVES OF A GROUP MAY BE INSURED under a policy issued to a credit union to insure eligible members for the benefit of persons other than the credit union or its officials, subject to the following requirements:

(1) All members of the credit union shall be eligible for the insurance (except those for whom evidence of individual insurability is not satisfactory) or all of any class or classes of members determined by conditions relating to age or membership in the credit union or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the credit union's funds, or partly from the funds and partly from funds contributed by the insured members, specifically for their insurance. No policy shall be issued for which the entire premium is to be derived from funds contributed by the insured member specifically for their insurance.

(3) The policy must cover at least 25 members when issued.

(4) The amount of insurance under the policy shall be based on the amount of the total shares and deposits of the member in or with the credit union up to $2,000 of total shares and deposits:

Utah—[§31-23-4.5]

West Virginia—Except amount of insurance shall be based on same plan which precludes individual selection either by the members or by the credit union, the credit unions, or trustees. [§33-14-5a]

OTHER ACTS:

ARIZONA—A credit union may provide insurance on the lives of its members in an amount equal to their respective share, special investment account, loan balance or any or all of them. The policy, which must be paid for by the policyholder and which cannot be for the benefit of the credit union or its officials, must cover at least 25 members at date of issue. [§§6-509(8),20-1251.01]

CONNECTICUT—A credit union may contract for loan protection insurance on the lives of its borrowing members and for life savings insurance on its members' shares. [§36-198(e)]

INDIANA—A credit union may purchase life savings and loan protection insurance for the benefit of the credit union and its members, provided that such coverage be placed with an insurance company licensed in Indiana. [§28-7-1-9(L)]

IOWA—Credit unions may purchase insurance or make the purchase of insurance available for members. [§533.4]

MASSACHUSETTS—A credit union may provide group life insurance for its employees, officers, and directors. The commissioner may establish regulations therewith. [Ch. 167, §57]

MICHIGAN—A credit union may purchase at the discretion of the directors life savings and loan protection insurance for member shareholders, member depositors, and member borrowers. [§490.4(j)]

MINNESOTA—A credit union may contract with any licensed insurance company or society to insure the lives of members to the extent of their share accounts, in whole or in part, and to pay all or a portion of the premium therefor. [§52.04(9)]

MISSOURI—A credit union may purchase insurance for the benefit of the credit union and its members. Credit unions may also contract for group insurance plans, approved by the state, on behalf of members who wish to participate. [§§370.070(6),370.071(2)]

NEBRASKA—A credit union may purchase insurance for its members, which insurance shall in no event exceed neither the share balance nor savings account balance of such member, nor $2,500. [§21-17,116]

NEW YORK—In the event that the credit union insures a borrower under a group life insurance policy, group accident insurance policy, or group health and accident insurance policy or requires insurance on personal property securing a loan, the credit union may charge an amount not in excess of the premiums chargeable in accordance with rate schedules then in effect and on file with the superintendent of insurance. [§453(5)(a)]

OHIO—A credit union may purchase group savings life insurance and group credit life insurance. [§1733.04(A)(5)]

PENNSYLVANIA—A credit union may purchase group insurance at reasonable rates on the lives of its members in an amount not to exceed the share balances of such members. [§12305(11)]

TENNESSEE—A credit union may provide life and disability insurance as collateral at the expense of its borrower, and at the option of such borrower, provided that such insurance shall not exceed the original face amount of the note nor the term of the loan. [§45-1806(5)]

VERMONT—A credit union may purchase insurance on the lives of its members in an amount equal to their respective share, deposit, and loan balance or any or all of them. [§2054(8)]

ACT IS SILENT:

Alabama	Maine	Oklahoma
California	Maryland	Puerto Rico
Colorado	Mississippi	Rhode Island
Florida	New Hampshire	South Carolina
Georgia	New Jersey	Virginia
Hawaii	New Mexico	Washington
Kansas	North Dakota	Wisconsin
Kentucky		

Electronic Funds Transfer Activities

(Authority for credit unions to engage in EFT activities)

MODEL CREDIT UNION ACT: Act is silent.

FEDERAL CREDIT UNION ACT: Act is silent.

NCUA regulation permits credit unions, associations of credit unions and other interested parties to submit pilot programs relating to electronic funds transfer through remote service units, loan programs, and other operational systems to the NCUA for evaluation and approval. [12 CFR §721.3]

OTHER ACTS:

ALABAMA—The Superintendent of Banks is authorized to expand the powers of state banks, credit unions and savings and loan associations to assure their ability to be responsive to the needs and conveniences demanded by consumers and businesses through on-premise, as well as off-premise operations. Financial institutions seeking to exercise such expanded power must have prior authorization from the Superintendent. [§5-17-4.5]

COLORADO—State and federal credit unions and savings and loan associations may participate in electronic funds transfer systems and may be members of automated clearing houses. Sharing of communications facilities by like institutions is mandatory; permissive for dissimilar ones. [§11-48-102; 11-48-107]

CONNECTICUT—A credit union having assets of $2 million or more, or a federal credit union having its main office in the state and having assets of $2 million or more may use or share satellite devices and point of sale terminals. Credit unions chartered by other states are excluded from using such systems in the state. [§36-193(a),(f)]

FLORIDA—Any state bank, national bank, savings and loan association, or credit union having its principal office in Florida may use or participate in remote financial service units, including point-of-sale terminals and remote service terminals. Sharing of such facilities is permissive. [§659.062]

*IDAHO—A credit union may participate in systems which allow the transfer of credit union funds or the shares or deposits of members by electronic means and hold membership in automated clearing house associations or corporations. [§26-2108(u)]

IOWA—A credit union may, upon approval of the administrator, utilize, establish, or operate alone or with other credit unions, banks, savings and loan associations, or third parties, electronic funds transfer facilities. Sharing of facilities is mandatory for like institutions. [§533.4(18)]

*MAINE—A credit union, with prior written approval of the superintendent, may issue to its members cards or other devices permitting such members to gain access to or participate in an established electronic funds transfer system. [§824]

MASSACHUSETTS—A credit union may, by vote of its board of directors or trustees, and subject to approval by and regulations of the commissioner of banks, purchase, install, operate, lease, use or share with any other bank, credit union, national banking association or federal savings and loan association, remote, automated, unmanned facilities for the disbursement of funds by electronic processing. [Ch. 167, §65]

MICHIGAN—State and federal credit unions may establish electronic funds transfer terminals anywhere in the state. Unless they are located at the credit union's main office or an approved branch, such terminals must be shared with other financial institutions upon request and payment of reasonable fees. [L.1978, H.B.4553]

MINNESOTA—State credit unions need the commissioner's approval to set up electronic funds transfer systems. Federal credit unions do not need such permission. Numerous specific requirements and limitations are established by the statute. Sharing of facilities is mandatory for like institutions. [§52.04(2.10)]

MONTANA—With prior approval of the supervisor, a credit union may participate in a system which allows for the debiting of a customer's account in a financial institution and the crediting of a merchant's account for goods or services. Sharing of facilities is mandatory for all institutions. [Ch. 503, Laws of 1977]

*NEBRASKA—A credit union may establish, operate, maintain, or participate by agreement in the establishment, operation and maintenance of electronic transmission terminals and systems for transmitting credit union transactions authorized by law for its members and terminating within Nebraska. Loans may not be initiated by electronic transmission transactions without specific prior approval of the credit unions involved. Sharing of facilities is permissive. [§21-1773(13)]

NEW MEXICO—State and federal banks, savings and loan associations, and credit unions may establish point-of-sale terminals and automated teller machines in a county in which the financial institution has its main office or a branch. Sharing is mandatory for like institutions within the same county with respect to point-of-sale terminals. [Ch. 359, Laws 1977]

continued

RHODE ISLAND—Every financial institution may establish customer bank communication terminals to the same extent and only during such periods of time that competing financial institutions, chartered and regulated by the federal government and domiciled within this state are legally permitted to provide. Sharing of terminals permitted, but not required. [§19-29-1]

SOUTH CAROLINA—Banks, savings banks, savings and loan associations, and state and federal credit unions may establish unmanned automatic teller and point-of-sale electronic funds transfer terminals anywhere in the state upon approval by the appropriate regulatory authority. [No. 375, Laws of 1975]

*WISCONSIN—Credit unions are authorized to transact business electronically by means of remote terminals. Such terminals shall be available to other credit unions and financial institutions in the state on a non-discriminatory basis. [§186.113(16)]

**Authorization for EFT activities is part of the credit union act*

ELECTRONIC FUNDS TRANSFER ACTIVITIES AUTHORIZED for other financial institutions, but not credit unions:

Arkansas	New Hampshire	Oregon
Georgia	New Jersey	South Dakota
Illinois	New York	Tennessee
Kansas	North Carolina	Virginia
Louisiana	North Dakota	Washington
Maryland	Oklahoma	

League or Association Membership

CUNA MODEL ACT: A credit union may hold membership in other credit unions organized under this act or other acts, and in associations and organizations composed of credit unions. [§3.10(15)]

FEDERAL CREDIT UNION ACT: Act is silent.

ACT SIMILAR TO MODEL ACT:

Arizona	[§6-509(13)]	Montana	[§14-613(14)]
Arkansas	[§67-905(1)]	Nevada	[§678.490(1)]
Colorado	[§11-30-104(1)(g)]	Oregon	[§723.152(15)]
Idaho	[§26-2108(l)]	Texas	[§4.01(14)]

PROVISION IN ACT STATES credit union associations are authorized to use the words "credit union" in their names:

Maryland	[§6-328(b)]	Ohio	[§1733.44]
Nebraska	[§21-1771]	Oregon	[§7]
New Hampshire	[§394.2]	Utah	[§7-9-5]
New Mexico	[§48-19-3]	Virginia	[§6.1-224]
North Carolina	[§54-109.5]	Wisconsin	[§186.03]

REFERENCE IN ACT TO specific State Credit Union League:

Alabama	[§5-17-25]	Rhode Island	[§19-21-53]
Iowa	[§533.3]	South Carolina	[§8-652]
Mississippi	[§81-13-13]	Vermont	[§2053]
New York	[§450(2)]		

PROVISION IN ACT ALLOWING credit unions to pay dues to leagues:

California	[§14805.5]	New Jersey	[§17:13-48]
Florida	[§657.04]	North Dakota	[§6-06-16]

OTHER ACTS:

KANSAS—The council, its administrator, and all employees may give information secured from or about credit unions to the Kansas Credit Union League and its affiliates. [§17-2227]

MASSACHUSETTS—Massachusetts CUNA Association and the Credit Union League of Massachusetts and such of their employees as may be provided by bylaw shall be eligible for membership in the Credit Union Employee Retirement Association. [Ch. 171, §31]

MICHIGAN—Provision in act defines a league as a trade association of credit unions. [§490.1a(c)]

MISSOURI—Act provides for investments in shares of credit union associations or a credit union financial agency. [§370.075(5)]

PUERTO RICO—Five or more credit unions organized in Puerto Rico under the commonwealth or federal act may establish the Puerto Rico Federation of Credit Unions for the purpose of rendering services in common to the credit unions belonging. The federation shall have towards the federated credit unions the same purposes and duties that the credit unions have towards their members and it may also engage in any activity necessary to encourage the credit union movement in Puerto Rico and make loans to members of federated credit unions. [§36]

ACT IS SILENT:

Connecticut	Kentucky	Oklahoma
Georgia	Louisiana	Pennsylvania
Hawaii	Maine	Tennessee
Illinois	Minnesota	West Virginia
Indiana		

Payroll Deductions

(Allotments for Public Employees' Credit Unions)

MODEL CREDIT UNION ACT: Act is silent.

FEDERAL CREDIT UNION ACT: Act is silent.

R.S. §3620, however, mandates that the head of a federal agency shall, upon the written request of an employee to whom a payment for wages or salary is to be made, authorize a disbursing officer to make such payment in the form of one, two, or three checks to be sent to a credit union designated by the employee for credit either to his checking account or to his savings account or for the purchase of shares.

AT THE DIRECTION OF AN EMPLOYEE, a public employer shall make designated payroll deductions for the purpose of payments to credit unions composed of public employees:

Iowa	[§533.32]	*Missouri	[§33.103]
*Massachusetts	[Ch. 149, §178B]	*Rhode Island	[§36-6-16]

AT THE DIRECTION OF AN EMPLOYEE and with the approval of the proper government agency, a public employer shall make designated payroll deductions for the purpose of payments to credit unions composed of public employees:

*Delaware	[Title 29, §5106]	*South Dakota	[§3-10-8]
*Georgia	[§89-924]		

AT THE DIRECTION OF AN EMPLOYEE, a public employer shall make designated payroll deductions for the purpose of payments to credit unions:

*Arizona	[§23-351]	*Ohio	[§9.43]
*Louisiana	[R.S.42:456]	*Pennsylvania	[Title 7, §§6121,6122]
*Nebraska	[§48-224]		

AT THE DIRECTION OF AN EMPLOYEE, any employer may make designated payroll deductions for the purpose of payments to credit unions:

*California	[Labor Code, §213(d)]	Utah	[§34-28-3]
Colorado	[§8-4-102]		

OTHER ACTS AND STATUTES:

*CONNECTICUT—When, in the opinion of the comptroller, a sufficient number of state employees who are members of a credit union organization of state employees desires to have payroll deductions for credit union savings, the comptroller may deduct and remit the amounts so deducted to the treasurer of such organizations. (Sec. 5-261)

ILLINOIS—Any system of record keeping may provide for accumulating payroll deductions received for a member's account during the month for posting and crediting once monthly as having been received at that time. (Ch. 32, Sec. 496.31) A state employee or annuitant may authorize the withholding of a portion of his salary, wages or annuity for deposit in any credit union, the majority of the membership of which is composed of state employees. (Ch. 127, Sec. 354) Any local government employer may make payroll deductions from the compensation of employees. (Ch. 85, Sec. 502)

INDIANA—A borrower may repay the credit union by payroll deduction, subject to the consent of the employer of the borrower, and upon written request therefor from the employee to such employer. State, county, township and municipal governmental agencies may provide a payroll deduction when requested by an employee. Any employee may request that any part of or full amount of net pay due him in lieu of being paid by check drawn to his order, be paid to him regularly by check drawn in favor of a credit union for credit to his account. (Sec. 28-7-1-23)

*MARYLAND—If any loan made to a credit union member is to be repaid by means of payroll deductions authorized by the member from the member's wages or earnings, or if the guarantor or comaker of a member's loan is to repay the loan by means of payroll deductions from the comaker's or guarantor's wages or earnings, the payroll deductions shall remain in full force and effect and shall not be cancelled, voided or terminated by the member until the loan balance has been repaid in full, provided the amount of the payroll deduction does not exceed the amount of any attachment permitted under Sec. 31 of Article 9.

*MINNESOTA—The heads of various departments of the government of the state of Minnesota are authorized by and with the written consent of any employee such sum or sums as may be agreed to by such employee for the payment of any moneys to any state employees' credit union, or to any organization contemplated by the provisions of Sec. 179.65, of which the employee is a member; provided that where an employee is a member of more than one such credit union or more than one such organization, only one credit union and one organization may be paid money by payroll deduction from the employee's salary; and provided further, that no deduction shall be made from the salary of any state employee for payment to any credit union or organization unless there are at least 100 state employees who have deductions made from their salaries for payment to such credit union or organization. (Minn. Statutes, 1969, Sec. 10.39)

*NORTH CAROLINA—The State Board of Education may authorize any county or city board of education, the trustee of any community college or technical institute, or other governing authority within the state, to establish a voluntary payroll deduction plan for amounts authorized by employees to be deposited with certain credit unions, and loans made to teachers by credit unions. (Sec. 115-153.2)

*OREGON—An employer and employee may agree to authorize an employer to deposit without discount wages due the employee in the employee's account in a bank, national bank, mutual savings bank, or credit union or savings and loan association in this state. (Sec. 652.110)

1) Upon receipt by him of the request in writing of a state officer or employee to do so, the state officer authorized to disburse funds in payment of the salary or wages of such officer or employee each month shall deduct from the salary or wages of such officer or employee the amount of money indicated in such request, for payment thereof to a state or federally chartered credit union for public employees designated by such officer or employee to receive it.

2) Such state official each month shall pay such amount so deducted to a single central depository designated by participating credit unions to receive payments on their behalf. Such central depository shall be a state or federally chartered credit union for public employees which has agreed to accept payments in behalf of similar credit unions.

3) Upon receipt by him of the request in writing of such officer or employee to do so, such state official shall cease making such deductions and payments. (Sec. 292.067)

*WISCONSIN—Any state officer or employee may request in writing through the state agency in which he is employed that a specified part of his salary be deducted and paid by the state to a payee designated in such request for any of the following purposes:

4. Other group or charitable purposes approved by the Governor and the Department of Administration under the rules of the Department of Administration. (Sec.20.921(1)(a))

**Statute other than credit union act.*

Lien on Member Accounts

CUNA MODEL ACT: The credit union shall have a lien on the shares, deposits and accumulated dividends or interest of a member in his individual, joint or trust account, for any sum past due the credit union from said member or for any loan endorsed by him. [§6.40]

FEDERAL CREDIT UNION ACT: A federal credit union has the power to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him. [§107(11)]

ACT SIMILAR TO MODEL ACT:

*Alabama	[§5-17-14]	*Minnesota	[§52.12]
*Colorado	[§11-30-112]	*New Mexico	[§48-19-12]
*Florida	[§657.12]	North Carolina	[§54-109.59]
Georgia	[§41A-316.5]	*North Dakota	[§6-06-16]
*Iowa	[§533.12]	Oregon	[§723.436]
*Michigan	[§490.12]	Puerto Rico	[§17]

*Omits reference to dividends or interest.

ACT SIMILAR TO FEDERAL ACT:

*Arizona	[§6-509(15)]	*Nevada	[§678.530(2)]
Arkansas	[§67-905(n)]	*New York	[§453(11)]
California	[§14803(a)(3)]	*Oklahoma	[§2006(12)]
Hawaii	[§410-12(f)(11)]	Texas	[§4.01(16), 6.02(b)]
*Idaho	[§26-2108(o)]	*Vermont	[§2054(14)]
Indiana	[§28-7-1-19]		

*Also includes deposits and accumulated dividends.

continued

A CREDIT UNION SHALL HAVE A LIEN on the shares and dividends of a member to the extent of any loans made to him or sums payable by him:

*Connecticut	[§36-200(i)]	Missouri	[§370.250]
*Illinois	[§496.18]	Montana	[§14-645]
Kansas	[§17-2212]	*Pennsylvania	[§12315]
Kentucky	[§290.160]	Tennessee	[§45-1822]
Louisiana	[§6:652]	Virginia	[§6.1-206]
Maryland	[§6-308(d)]	West Virginia	[§31-10-12]
Mississippi	[§81-13-35]		

*Omits reference to dividends.

OTHER ACTS:

MASSACHUSETTS—A credit union may transfer the funds of a depositor or shareholder in order to offset a debt to the credit union; provided that written notice of such transfer is sent by certified mail. [Ch. 167, §67]

WISCONSIN—A credit union may deduct any amount due from the shares of an expelled or withdrawn member. [§186.14]

ACT IS SILENT:

Maine	New Jersey	South Carolina
Nebraska	Ohio	Utah
New Hampshire	Rhode Island	Washington

Prohibited Activities

CUNA MODEL ACT: Act is silent.

FEDERAL CREDIT UNION ACT: Act is silent.

NO CREDIT UNION SHALL PAY ANY commission or compensation for securing members or for the sale of its shares:

Arkansas	[§67-906(2)]	Louisiana	[§6:652]
California	[§14851]	Maryland	[§6-308(g)]
Connecticut	[§36-199]	Mississippi	[§81-13-35]
Indiana	[§28-7-1-6(a)]	Nebraska	[§21-1794]

OTHER ACTS:

ARIZONA—Except as otherwise provided in this chapter, credit unions are prohibited from purchasing, holding, owning or acquiring real property. [§6-510]

ILLINOIS—A credit union is prohibited from engaging in the banking business, the business of a trust company, currency exchange, building and loan association, and from making loans upon the security of any interest or equity in real estate, except a credit union with assets over $1,000,000 may make such loans. [§496.10]

IOWA—No credit union may accept moneys for deposit or may have any business transaction with the administrator or any employee of the credit union department. [L.1978,S.F.137,Sec.13(4)]

NEW YORK—No credit union shall pay any commission or compensation for securing members or for the sale of shares. No credit union shall retain physical possession of a passbook or other evidence of membership. [§454(1)(10)]

OHIO—No credit union may pay any commission or compensation for securing members or for the sale of its shares. Credit unions may neither establish branches nor acquire property except under certain conditions. [§1733.04(B)(2,3,4)]

TENNESSEE—Credit union shares shall in no event be sold at a premium by any credit union to its members. [§45-1817]

WASHINGTON—No credit union shall carry on a banking business or carry any demand, commercial or checking accounts, nor issue any time or demand certificates of deposit. [§31.12.260(g)]

ACT IS SILENT:

31 states and Puerto Rico

Formation of Central Credit Unions

(Includes Corporate Centrals or Other Liquidity Facilities)

CUNA MODEL ACT: Any central credit union may be organized and operated under this Act and subject to all such provisions not inconsistent with this article. Such credit union shall use the term "central" in its official name. [§12.10]

FEDERAL CREDIT UNION ACT: Act authorizes the creation of the National Credit Union Central Liquidity Facility whose purpose is to meet the liquidity needs of member credit unions. Membership in the Facility is open to credit unions primarily serving natural persons and, upon the Administrator's approval, to a credit union or a group of credit unions primarily serving other credit unions. [§§303,304]

ACT SIMILAR TO MODEL ACT:

Arkansas	[§67-902(4)]	Montana	[§14-668]
Florida	[§657.245]		

A CENTRAL CREDIT UNION may be organized under the credit union act:

Colorado	[§11-30-103(1)]	New Mexico	[§48-19-5(A)]
Connecticut	[§36-196(1)(b)]	Oklahoma	[§2007]
Hawaii	[§410-37]	Vermont	[§2056(a)]
Missouri	[§370.365(2)]	Washington	[§31.13.020]

ACT IMPLIES AUTHORITY to form a central credit union by including a definition of a central credit union:

California [§14008]

ACT IMPLIES AUTHORITY to form a central credit union by authorizing membership in a central credit union:

Louisiana	[§6:645(B)(D)]	Nebraska	[§21-17.117]
Mississippi	[§81-13-13]	New York	[§451(2)]

ACT IMPLIES AUTHORITY to form a central credit union by authorizing investment in a central credit union:

Michigan	[§490.4(d)]	North Dakota	[§6-06-08(4)]
Minnesota	[§52.04(8)]	Pennsylvania	[§12305(B)(13)]

ACT AUTHORIZES FORMATION of a corporate central credit union:

Idaho—Idaho Corporate Credit Union [§26-2171]

Iowa—And other central credit unions for specific purposes. [L.1978, S.F.137, §17] [§533.38]

Oregon—And other central credit unions. [§723.730, 723.702]

Puerto Rico—Federation of Savings and Credit Unions [§36]

Rhode Island—Rhode Island Credit Union League Corporate Credit Union [§19-21-53]

Utah—[§7-9-31]

ACT AUTHORIZES FORMATION of a central credit union, with functions essentially of a corporate central credit union:

Kansas	[§17-2204(7)]	North Carolina	[§54-110]
Massachusetts	[Ch.216,§1]	South Carolina	[§34-27-50]
Nevada	[§678.850(1)]		

OTHER ACTS:

ILLINOIS—A central credit union may be incorporated under the act primarily to make loans to other credit unions and to officials and employees of other credit unions. [§496.3(4)]

INDIANA—A credit union may invest in a state discount credit corporation operated for the use and benefit of credit unions and/or other nonprofit organizations. [§28-7-1-9(c)(2)]

KENTUCKY—The officers, directors and committee members of state and federal credit unions in Kentucky may form a central credit union. [§290.080(3)]

NEW JERSEY—100 or more state or federal credit unions operating in this state may organize a single central credit union. [§17:13-73]

OHIO—Credit unions qualified to do business in the state and their officers, directors, committee members, and employees have a common bond of association for the purpose of forming a central credit union. [§1733.05(e)]

TENNESSEE—15 or more credit unions may organize and operate as a central credit union upon approval by the commissioner. A proposed central credit union must meet certain other criteria. [§45-1802(c),(d)]

TEXAS—A credit union may operate as a central credit union, with the approval of the commissioner. [§4.01(21)]

WISCONSIN—Act provides for the formation of a central credit union and for the formation of the Credit Union Finance Corporation. [§186.32(1), 186.22]

ACT IS SILENT:

Alabama	Maine	Virginia
Arizona	Maryland	West Virginia
Georgia	New Hampshire	

Membership in Central Credit Unions

(Refer also to "Small Employee Groups")

CUNA MODEL ACT: Membership in such central credit union may include, but not be limited to:

(1) Credit unions organized and operating under this Act or under any other credit union act.

(2) Officers, directors, committee members and employees of such credit unions; officials and employees of any association of credit unions; and employees of federal or state government agencies responsible for the supervision of credit unions in this state.

(3) Organizations and associations of those persons or organizations enumerated in subsections (1) or (2).

(4) Employees of an employer with insufficient numbers to form or conduct the affairs of a separate credit union.

(5) Persons in the field of membership of liquidated credit unions or of credit unions which have entered into or are about to enter into voluntary or involuntary liquidation proceedings.

(6) Members of the immediate families of all members qualified above. [§12.20]

FEDERAL CREDIT UNION ACT: A federal credit union may invest in share or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the federal credit union making the investment. [§107(8)(G)] Membership in the National Credit Union Central Liquidity Facility is open to credit unions which serve primarily natural persons upon their purchase of capital stock of the Facility in an amount equal to not less than one-half of one per cent of the subscribing credit union's paid-in and unimpaired capital and surplus. With the approval of the Administrator and upon compliance with the special requirements of this Section, a credit union or group of credit unions which primarily serves other credit unions may become a member of the Facility. [§304]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-669]	Tennessee	[§45-1802(d)]
Oregon	[§723.706]		

ANY CREDIT UNION AUTHORIZED TO OPERATE in the state is eligible for membership in the central credit union; and such others as indicated:

Colorado—Also officers and committeemen of such credit unions, and actual or potential members of credit unions within the state involved in liquidation proceedings. [§11-30-103(1)]

Kansas—[§17-2204(7)]

Massachusetts—Also the Massachusetts Credit Union Share Insurance Corporation, other Massachusetts credit union organizations as provided in the bylaws and entities which serve as investment vehicles or provide liquidity for credit unions. [Ch. 216, §3]

New Mexico—Also officers and committeemen of such credit unions. [§48-19-5(A)]

Ohio—Also officers, directors, committemen and employees of such credit unions. [§1733.01(B)]

Wisconsin—Also credit unions located in other states. [§186.32(1)]

CREDIT UNIONS ORGANIZED UNDER THE STATE'S LAW or the federal credit union act and operating in the state are eligible for membership in a central credit union; and such others as indicated:

Idaho—Also credit union subscribers to the articles of incorporation and organizations or associations of credit unions who have met requirements specified in the articles of incorporation or bylaws. [§26-2174]

Kentucky—Also officers, directors and committeemen of such credit unions. [§290.080(3)]

Nebraska—Also officials of such credit unions and organizations to further credit union activities and their employees. [§21-17,117]

New Jersey—Also employees of the central credit union and of the New Jersey Credit Union League; members of credit unions in the state which have or are about to enter into dissolution or liquidation; children of members of state credit unions for educational loan purposes; credit union service corporations; and central credit unions. [§17:13-73]

Utah—Also credit union leagues and affiliates. [§7-9-31]

Vermont—Also officers, directors, committeemen and employees of such credit unions; the members of liquidating credit unions; and the Vermont Credit Union League and its employees. [§2056]

OTHER ACTS:

ARIZONA—Membership in a central credit union is restricted to credit unions, organizations owned by or composed of credit unions and corporations or associations which primarily serve credit unions. [§6-501(2)]

continued

ARKANSAS—Membership of a central credit union shall be limited to state and federal credit unions, employees of the credit union or the state league, current members of the credit union if it is converting to a central credit union, and a member of a credit union who has reached the share, loan, or life savings insurance limits at his credit union. The central may also accept members of a liquidating credit union or small employee groups, and the Supervisor may waive the common bond requirements with respect to such groups. [§67-907(4)]

CALIFORNIA—A central credit union's membership may include, but not be limited to, other credit unions, members of credit unions, credit union employees, employees of organizations serving credit unions and the families of such members. [§14008]

CONNECTICUT—The business of the central credit union shall be divided into two operating divisions. Membership in the "member credit union division" shall be limited to credit unions having their principal place of business in the state, central credit unions organized under any other law, and organizations and associations of the foregoing. Membership in the "individual member division" shall be limited to officers, directors, and committeemen of such credit unions; employees and consultants of Connecticut Credit Union League; federal and Connecticut examiners of credit unions; employees of the central; organizations and associations of the above; members or persons within the field of membership of credit unions which have entered into liquidation or merged into the central; and members of the immediate family of persons listed above. [§36-196-(1)(b)]

FLORIDA—A central credit union shall be chartered primarily to serve elected officials and employees of credit unions, associations and organizations serving credit unions, individuals within the common bond of a liquidating credit union within this state and select groups with a common bond of employment of not more than 250 employees and not less than 7 employees, provided they are approved by the board of the central credit union and reviewed by the department. Common bond groups that exceed 250 employees shall not be taken into the field of membership of a central credit union unless they are approved by both the department and the board of the central credit union. [§657.245]

GEORGIA—A central credit union may be organized to serve a field of membership consisting primarily of other credit unions operating under this act or the Federal Credit Union Act. In addition, the field of membership may include members of credit unions which are members of the central; officials and employees of any organization or association of credit unions and of the central; employees of the Department of Banking, or of the National Credit Union Administration; organizations and associations of persons or credit unions included in the foregoing; members of a credit union that has entered into voluntary or involuntary dissolution or are indebted to such a credit union or a non-member depositor of such a credit union. [§41A-3120]

HAWAII—Membership of central credit union consists primarily of other credit unions organized under Hawaii or federal law; officials, committeemen or employees of such credit unions. Any resident of Hawaii not eligible for membership in any credit union in the state also is eligible for membership in the central. [§410-2,37]

ILLINOIS—Membership of a central credit union consists primarily of directors, officers, committee members and employees of other credit unions. Credit unions investing in shares of a central are eligible for membership. Also persons who were members of liquidated credit unions. [§496.3(4), .6, .23(4)]

IOWA—All credit unions, the credit union leagues, and its affiliates in the state are eligible for membership in the corporate central credit union. [§533.38] Membership in other central credit unions is open to members of dissolved credit unions, officers and employees of credit unions, and certain employee groups and such other persons as the administrator may approve. [L.1978, S.F.137, Sec.17]

LOUISIANA—Members of a federal or state chartered credit union in liquidation in Louisiana, who are residents, are eligible for membership in a central-type credit union. [§6:645(D)]

MINNESOTA—Credit unions chartered under laws of any state or any federal credit union may become member of a Minnesota credit union. [§52.05]

MISSISSIPPI—One central credit union sponsored by the Mississippi Credit Union League may accept as members those credit unions that belong to the league, members of those credit unions, their immediate families, employees of Mississippi Credit Union League and their immediate families, organizations or associations of such persons, and other persons living in Mississippi who do not have services of a credit union available to them. [§81-13-13]

MISSOURI—Membership is limited to credit unions, associations of credit unions and other persons expressly identified in the bylaws. [§370.365(2)]

NEVADA—The membership of a central credit union may consist of credit unions, the Nevada Credit Union League and organizations affiliated with the League. [§678.860]

NEW YORK—Membership in a central credit union shall be limited to credit unions authorized to operate in New York, the New York State Credit Union League and its employees and members of their immediate families; any member of a credit union which has entered into liquidation. [§451(2-a)]

NORTH CAROLINA—The membership of a central credit union shall be institutional and only local credit unions can become members unless the bylaws otherwise prescribe. [§54-110(b)]

OKLAHOMA—Members of existing credit unions operating under Oklahoma or federal law may belong to a central credit union, as may such credit unions. [§2007]

PENNSYLVANIA—Credit unions may invest their funds in shares and become members of any insured central-type credit union organized either under the laws of Pennsylvania or the United States. [§12305(B)(13)]

PUERTO RICO—Credit unions organized under Puerto Rico or federal law may establish the Puerto Rico Federation of Credit Unions which shall have the same purposes and duties that the credit unions have toward their members. [§36]

RHODE ISLAND—The corporate central credit union consists of the members of the executive committee of the Rhode Island Credit Union League. [§19-21-53]

SOUTH CAROLINA—Credit unions, their officers, and other members affiliated with the South Carolina Credit Union League and organizations under South Carolina law may associate together in the one authorized statewide credit union. [§34-27-50]

WASHINGTON—Central credit union defined as corporation organized under Washington or federal law to serve credit unions within the state and their directors and committeemen. [§31.12.010,31.13.010]

ACT IS SILENT:

Alabama	Michigan	Texas
Indiana	New Hampshire	Virginia
Maine	North Dakota	West Virginia
Maryland		

Powers of Central Credit Unions

(Includes Central Liquidity Facility)

CUNA MODEL ACT: (1) A central credit union shall have all of the rights and powers of any other credit union organized under this Act and the additional rights and powers specified in this section, notwithstanding any limitations or restrictions found elsewhere in this Act.

(2) A central credit union may make loans to other credit unions; purchase shares of and make deposits in other credit unions; and obtain or acquire the assets and liabilities of any credit union operating in this state which enters into liquidation.

(3) A central credit union may invest in and grant loans to associations of credit unions, central funds of credit unions or organizations chartered to provide service to credit unions.

(4) A central credit union may borrow money and accept demand deposits from any source, and issue notes or debentures. [§12.30]

FEDERAL CREDIT UNION ACT: Pursuant to its primary function of seeing to the liquidity needs of its members, the National Credit Union Administration Central Liquidity Facility has, through its Administrator, the power to: (1) borrow funds from specified sources in specified amounts; (2) guarantee performance of member financial obligations; (3) purchase assets from members; (4) invest in obligations of the U.S. or its agencies; (5) make deposits in federally insured financial institutions and make investments in shares or deposits of credit unions; (6) sue and be sued; (7) acquire and dispose of property; (8) enter into contracts; (9) lend funds to certain non-member entities; (10) do other acts specifically enumerated in this section. [§307]

ACT SIMILAR TO MODEL ACT, with no reference to demand deposits:

Montana	[§14-671]	Oregon	[§723.716]
Nevada	[§678.850(2)]		

OTHER ACTS:

CONNECTICUT—A central credit union may purchase shares of and make deposits in other credit unions, may borrow funds in an amount not exceeding 50% of its paid-in and unimpaired capital and surplus, and may invest surplus funds in any central credit union organized under any other law.
[§36-196(1)(b), 36-198(g)(5)]

FLORIDA—A central credit union shall have all the rights and powers of any credit union chartered within the state, and such incidental powers and rights as deemed necessary or requisite to enable it to carry out effectively the business for which it is incorporated, pursuant to rules promulgated by the department.
[§657.246]

HAWAII—A central credit union may pay dividends to the accounts of member credit unions at rate determined by the board of directors. [§410-37]

IDAHO—The Idaho Corporate Credit Union shall have the general rights and powers of any other credit union organized under this act, and in addition may deposit in federally insured state and national banks and deposit with or invest in shares of or loans to the U.S. Central Credit Union; receive investments from members in the form of shares or corporate deposits; pay and return on shares, share certificates and deposits; borrow from any source except individuals; make loans and participate with the U.S. Central Credit Union in making loans to members of the corporate credit union; make deposits in any member credit union in the state and the U.S. Central Credit Union; purchase the fixed assets of a member credit union; develop and enter into agreement for the purpose of participation in any governmental agency liquidity or interlending system among credit unions and for the purpose of aiding credit unions in establishing concentrated lines of credit with other financial institutions, and act as a depositor and transmitter of funds to carry out this power; accept deposits from the U.S. Central Credit Union. [§26-2173]

ILLINOIS—A central credit union may make loans to members and to other credit unions, and may invest in shares and deposits of other central credit unions. [§496.3(4), 496.23(4)]

IOWA—A corporate central credit union shall have all the powers, rights, restrictions, and obligations of credit unions established under the act, except: (1) It shall not be required to transfer to the legal reserve of the corporation more than 5% of the corporations net income for the year. (2) It may buy or sell investment securities and corporate bonds which are evidences of indebtedness, with certain specified limitations. [§533.38]

KANSAS—A central credit union may buy and sell investment securities which are evidence of indebtedness; purchase student loans from credit unions; purchase real estate loans from credit unions; purchase any obligation of the United States government or any federal agency; receive deposits from credit unions; the power of the central credit union to borrow is increased by the amount of investments of such credit union in government securities, and the administrator may authorize borrowing in excess thereof. [§17-2204(3)(7)(8)(9)(10), 17-2215(a)]

MASSACHUSETTS—The Central Credit Union Fund may make loans to other credit unions, borrow money and accept deposits from any source. It may invest in securities which are legal investments for savings banks and trust companies as well as in common trust unit plans described in Ch.172 §21, in state or federally regulated entities serving as investment vehicles or providing liquidity for credit unions and in deposits in national banks located in the state. The Fund may make and adopt such by-laws as it may consider necessary to carry out this Act. [Ch. 216, §1,3,4,5]

MICHIGAN—A credit union whose capital consists mainly of funds from other credit unions can borrow up to 75% of its paid-in and unimpaired capital. Commissioner must approve sums in excess of 75%. [§490.15]

MISSOURI—A central credit union may invest in the shares of other credit unions including other central credit unions; purchase loans from credit unions; borrow up to 5 times its capital, surplus and reserve fund; lend to each member no more than 25% of its assets; be required to insure its deposits when so ordered. [§370.365(2)]

NEBRASKA—A central credit union may purchase the assets, assume the liabilities and accept the membership of a credit union or cooperative credit association. Members may borrow from and in-

continued

vest in the central credit union. The central may purchase all or part of loans originated by member credit unions.
[§21-1773(8)(d),(12)] [L. 1973 L.B. 166, §22, 23]

NEW JERSEY—A central credit union shall have all of the rights and powers of any other credit union organized under the act; obtain or acquire the assets and liabilities of any credit union operating in the state which enters into liquidation; invest in and grant loans to associations of credit unions or central credit unions; issue notes or debentures; invest in stock issues of agencies, associations or corporations organized to service or assist credit unions. [§17:13-73(c),(d),(e),(f)]

NEW YORK—A central credit union is not restricted to loan limits set forth for other state-chartered credit unions; no loan shall be made to member credit unions in excess of 20% of holdings of central credit unions. [§454(2),(12)(b),(13)]

NORTH CAROLINA—A central credit union shall have all of the rights and powers of any other credit union organized under this Act; make loans to other credit unions; borrow money and accept deposits from any source; issue notes or debentures.
[§54-110(a),(b),(d),(g),(i)]

OHIO—A central credit union shall be required to establish reserves only on loans to individual members and on net earnings derived from individual members' resources. Reserves on corporate member loans shall be established by the superintendent but shall not exceed 3% of gross income from corporate member resources. [§1733.04(C)(1)]

PUERTO RICO—Act provides for formation of the Puerto Rico Federation of Credit Unions, which shall have the same purposes and duties that member credit unions have toward their members. It may make loans to members of member credit unions and borrow money without limitation as to corporate debt or liability. [§36]

RHODE ISLAND—The corporate central credit union shall have all powers, rights, restrictions and obligations of other credit unions, except that it shall not be required to transfer to the legal reserve of the corporation more than 5% of its net income for the year, and it shall have the status of a reserve agent as defined in §19-7-6. [§19-21-53]

SOUTH CAROLINA—A central credit union shall have all of the rights and powers of any other credit union organized under this Act; make loans to other credit unions; purchase shares of and make deposits in other credit unions. [§8-654.1]

TENNESSEE—A central credit union shall have all rights and powers granted credit unions by this chapter. In addition, central credit unions shall have the power to invest in such obligations as are permitted for state banks. [§45-1806(i)] The aggregate total of all loans made by a central credit union to any one credit union shall not exceed 25% of the central credit unions assets. [§45-1821] A central credit union may borrow from any source and is not subject to certain limitations imposed on credit unions. [§45-1823(b)] Central credit unions are not subject to the same limitations regarding dividends as apply to regular credit unions. [§45-1826(f)]

UTAH—The corporate central credit union has all the powers and rights granted credit unions established under this chapter; provided, the maximum loan by a corporate central credit union shall be established by the credit union bylaws. [§7-9-31]

VERMONT—A central credit union may receive the savings of its members in shares or on deposits; may lend its funds to members or borrow money from any source. It may undertake such other activities consistent with the business of the central credit union as its bylaws may authorize. [§2056(a)]

WASHINGTON—A central credit union shall have all the rights and powers of any other credit union organized under the act, and in addition may: offer variable rate certificates to members; borrow money to make loans to members and for payment of debts or withdrawals; lend to member credit unions; establish deposit accounts for member credit unions; enter into agreements with member credit unions to buy or sell any real estate loan made by member credit unions, obligation of the U.S. government owned by member credit unions and student loans made by member credit unions. A central credit union may also exercise any powers conferred on federally chartered credit unions doing business in Washington, if the supervisor finds that exercise of such power serves the interest of credit unions and the public. [§§31.13.030,31.13.040]

WISCONSIN—A central credit union shall have all of the rights and powers of any other credit union organized under this Act and the additional rights and powers specified in this section. Central credit union may issue dividends to accounts of member credit unions with rates and terms guaranteed in advance by the board. [§186.32(1)]

ACT IS SILENT:

Alabama	Kentucky	New Mexico
Arizona	Louisiana	North Dakota
Arkansas	Maine	Oklahoma
California	Maryland	Pennsylvania
Colorado	Minnesota	Texas
Georgia	Mississippi	Virginia
Indiana	New Hampshire	West Virginia

Investment in Central Credit Unions

(Includes Central Liquidity Facility)

CUNA MODEL ACT: A credit union may make deposits in other central-type credit union organizations. [§3.10(13)]

FEDERAL CREDIT UNION ACT: A federal credit union may invest in shares or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the federal credit union making the investment. [§107(7)(G)] The National Credit Union Administration Central Liquidity Facility is authorized to accept investments from credit unions which primarily serve natural persons as well as from credit unions which primarily serve other credit unions. [§304]

ACT SIMILAR TO MODEL ACT:

Montana	[§14-613(12)]	Oregon	[§723.152(13)]
No. Carolina	[§54-109.21(12)]		

OTHER ACTS:

COLORADO—A credit union may invest in the shares and deposits of the central credit union. [§11-30-104(1)(d)]

CONNECTICUT—Investments in the central credit union by members of the member credit union division shall not be deemed to be shares or a part of the share capital of the central credit union. [§36-196(1)(b)]

FLORIDA—A credit union may invest in shares and other savings accounts of the United States Central Credit Union and the Southeast Corporate Federal Credit Union.
[§657.161(12)]

IDAHO—A credit union may make deposits in the Idaho Corporate Credit Union; and invest in shares or deposits of the Idaho Corpo-

rate Credit Union in an amount not to exceed 10% of the Idaho Corporate Credit Union's total outstanding shares, provided that the director may approve an investment in excess of 10%. [§26-2108(k); 26-2127(e)]

ILLINOIS—A credit union may invest in loans to or shares and deposits in credit unions incorporated to make loans (i.e. central credit unions) to credit unions and officers, committee members, and employees of other credit unions. Such investment shall not exceed 25% of the unimpaired capital and surplus of the investing credit union unless approved by the Director. [§496.23(4)]

KANSAS—A credit union may invest in a central credit union located in the state. [§17-2204(3)]

MASSACHUSETTS—No member of the Central Credit Union Fund may invest more than 25% of its total assets (exclusive of accumulated interest) in Fund shares. [Ch.216,§3]

MICHIGAN—A credit union has power to deposit with or invest in shares of or loans to credit unions whose assets consist primarily of funds from other credit unions. [§490.4(d)]

MINNESOTA—Restrictions on a credit union's power to make payments on shares of and deposits with other credit unions shall not apply to share accounts of Minnesota Central Credit Union in U.S. Central Credit Union. [§52.04(8)]

MISSOURI—A credit union may invest in shares of credit union associations incorporated under the laws of this state, or of the U.S., including shares of a credit union financial agency organized under the laws of this state, or of the U.S., with the prior approval of the commissioner. [§370.075(5)]

NEBRASKA—Member credit unions may invest up to an amount specified by the board of the central credit union, but not more than 10% of the total assets of the member credit union or $500, whichever is greater. [L. 1973, L.B. 166, §23]

NEW HAMPSHIRE—A credit union may invest up to the insured amount in any corporate central credit union insured by the National Credit Union Administration. [§394:17(II)]

NEW JERSEY—A credit union may deposit in central funds of credit unions or in central credit unions organized under the federal or New Jersey law. [§17:13-27]

NEW YORK—A credit union may invest up to 20% of its total capital in shares of the central credit union. [§454(11)(a)]

NORTH DAKOTA—A credit union may deposit in central credit unions authorized to receive deposits. [§6-06-06(4)]

OHIO—A credit union may invest in the shares of a central credit union, subject to the regulations of such central credit union. [§1733.30(A)]

PENNSYLVANIA—A credit union may deposit its funds in insured central-type credit union organizations. [§230-5(B)(6)] A credit union may also invest its funds in shares of any central credit union organized under the laws of either Pennsylvania or the U.S. to the extent the value of such shares is insured by the N.C.U.A. [§12305(B)(13)]

PUERTO RICO—A credit union may make deposits in the Puerto Rico Federation of Credit Unions. [§7(d)]

TENNESSEE—A credit union may invest in any central credit union (state or federal), approved for such investments by the commissioner of banking, in an amount not to exceed 25% of the shares, members' special accounts and reserve funds of the investing credit union or of the credit union in which the investment is made, whichever is smaller. [§45-1806(c)]

TEXAS—A credit union may make deposits in central-type credit union organizations, and may invest in loans to any credit union association or corporation, national or state, of which the credit union is a member; provided the investment in any one such association or corporation may not exceed an aggregate amount of 5% of the credit union's total assets or the amount of its reserve fund, whichever is less. [§4.01(13), 8.01(1)]

VERMONT—A credit union may make deposits in credit union organizations; and invest in shares and deposits of a central credit union. [§2054(11), 2079(4)]

WASHINGTON—A central credit union empowered to establish deposit accounts for its member credit unions, under conditions set by board. [§31.13.040(4)]

WISCONSIN—A credit union may invest in central credit unions. [§186.11(1)]

ACT IS SILENT:

Alabama	Iowa	New Mexico
Arizona	Kentucky	Oklahoma
Arkansas	Louisiana	Rhode Island
California	Maine	South Carolina
Georgia	Maryland	Utah
Hawaii	Mississippi	Virginia
Indiana	Nevada	West Virginia

Appendix

Credit Union Laws Enacted in 1978

As of December 1, 1978

FEDERAL CREDIT UNIONS

"The Financial Insitutions Regulatory and Interest Rate Control Act of 1978" (HR 14275) passed Congress on October 15, 1978, was approved by President Carter on November 10, as Public Law 95-630. The Act contains 21 titles and is primarily designed to reform and restructure the nation's financial regulatory machinery for commercial banks, savings and loan associations, mutual savings banks, and credit unions. Title V restructures the National Credit Union Administration and Title XVIII creates a central liquidity facility for credit unions. Several other titles affect credit union regulation also.

NCUA Restructure—Creates the three-member National Credit Union Administration board, appointed by the President with the advice and consent of the Senate. Board members serve for six-year terms on a staggered basis, and may not succeed themselves. A chairman of the board is to be designated by the President, and will determine each board member's area of responsibility, and act as primary spokesman for the agency. Provides for a single fee schedule payable by federal credit unions to support the agency. In determining the fee schedule, the board is directed to take into consideration the operating expenses of the NCUA and the ability of credit unions to pay.

Central Liquidity Facility—Creates a Central Liquidity Facility for credit unions to meet the short term, temporary and emergency liquidity needs of a credit union. Membership in the facility is voluntary, and an individual credit union may become a regular member of the facility by subscribing to capital stock in an amount not less than ½ of 1 percent of the credit union's paid-in capital and surplus.

Credit unions that interact with member corporate centrals may automatically become members and will be assessed accordingly. Credit will be extended or refused to a member credit union within five working days after giving due consideration to the creditworthiness of the institution. The borrowing authority of the CLF shall not exceed twelve times the subscribed capital stock. In the event that the facility does not have the funds to meet the liquidity needs of credit unions, the Administrator is authorized to borrow up to $500,000,000 from the Treasury.

Regulatory Controls—Federal regulatory agencies, including the National Credit Union Administration, given additional powers over the institutions they regulate. May assess severe money penalties against institutions or individuals for violation of law or regulation. May issue cease and desist orders against individuals or institutions who either violate law or regulations or engage in unsafe or unsound business practices. Agencies empowered to remove officers or directors when the individual has evidenced personal dishonesty or demonstrated wilful disregard for the safety and soundness of the institution.

Management Interlocks—Prohibits interlocking directors among banks, savings and loan associations, mutual savings banks, and credit unions, which are located within the same Standard Metropolitan Statistical Area or in the same city, town or village. Grants an exemption to a credit union being served by an official of another credit union, but a credit union director may not serve on the board of a commercial bank, savings and loan association, or a savings bank.

Examination Council—Creates the Federal Financial Institutions Examination Council, composed of the Comptroller of the Currency, chairman of the Federal Deposit Insurance Corp., a governor from the Federal Reserve, chairman of the Federal Home Loan Bank Board, and chairman of the National Credit Union Administration Board. The purpose of the council is to establish standards in examination and reporting and to develop innovative procedures.

Insurance Limits—Increases the federal share and deposit insurance limits for individual retirement accounts and Keogh accounts in federally insured institutions, including credit unions, to $100,000.

Electronic Fund Transfers—Provides new rules governing the issuance of EFT cards, disclosure of terms and conditions of transfers, content and frequency of required periodic statements, error resolution procedures, documentation of transfers, liability of consumer and financial institutions for unauthorized uses of EFT. Also grants Federal Reserve Board regulatory authority and NCUA enforcement authority.

ALABAMA

Mandatory Share Insurance—Requires credit unions to be insured by the NCUA within 1½ years of effective date. Supervisor may extend time and permit other acceptable insurance coverage. Credit unions must maintain same reserves as federally insured credit unions. Supervisor may also require special reserves.

Expands authority of Credit Union Board and requires its concurrence in proposed credit union regulations. Board to be appointed by the governor with consent of senate. One member from each state congressional district. List of nominees to be submitted by state credit unions. State to solicit credit union comments on proposed rules. Public hearing required on request.

Sets further procedures for suspension and revocation of credit union's certificate of authority for violation of law or insolvency. Provides for electing a president who is not a director, and electing a chairman of the board. Repeals restriction on method of determining dividend credit on shares purchased during the dividend period. Revises definition of credit union, deleting reference to "provident purposes" in making loans. *(S. 181; Approved 4/20)*

ARIZONA

Examination Fees—Increases credit union examination fees. *(H. 2048; approved 6/1)*

Corporate Central—Defines corporate central credit union as one in which membership is restricted to credit unions, organizations owned by or composed of credit unions and corporations or associations primarily serving credit unions.

Repeals five-year maturity limit on unsecured loans. Repeals provision that borrower may repay loan at any time the credit union office is open for business, so as to accommodate use of automated terminal machines. Authorizes any financial institution to accept direct deposits of net pay for state, county, municipalities or school districts. Requires only one appraisal on real estate loans (was two). *(H. 2254; approved 5/18)*

CALIFORNIA

Disbursing Agents- Permits a county to designate state and federal credit unions as disbursing agents for persons whose salaries are paid from the county treasury. *(S. 1919; approved 6/21)*

Disciplinary Actions—Authorizes commissioner to censure, suspend, or bar any officer, director, or employee of a credit union for willful or caused violations of the law or regulations. Credit union may waive hearing in an action by the commissioner to take possession where credit union is unsound *(A. 3187; approved 9/15).*

Incidental Charges—A charge for special services applied to shares in connection with an overdraft on a share draft account is not a charge incidental to making a loan. Also revises surety bond requirements for any credit union treasurer or assistant treasurer. *(A. 3360; approved 9/13).*

CONNECTICUT

Electronic Fund Transfers—Includes credit unions with assets of $2 million or more in the definition of "banking institutions" for the purpose of authorizing banking institutions to use or share a satellite device or a point-of-sale terminal. Credit unions chartered by other states and out-of-state federals are excluded from using such a device in the state. *(S. 227; approved 4/27)*

Broker Exemption—Excludes various institutions, including credit unions, from definition of agent and broker-dealer under the Uniform Securities Act. *(Substitute H. 5121; approved 3/22)*

Voluntary Liquidation—Requires notice to the Bank Commissioner within 3 days on a voluntary dissolution resolution by board of directors. Commissioner may appoint share insurance body as liquidating agent. *(H. 5516; approved 4/11)*

FLORIDA

Guaranty Corporation—Revises the enabling law of the Florida Credit Union Guaranty Corporation. *(S. 1222; approved 5/31)*

GEORGIA

Crimes of Officers—Any director, officer, agent or employee who wilfully engages in the business of a credit union before receiving a permit to do so is guilty of a felony. *(H. 1511; approved 4/3)*

ILLINOIS

Reverse Mortgages—Authorizes credit unions to make "reverse mortgage" loans to persons 65 years of age or older to pay real estate taxes on homestead property. *(PA 80-1290; approved 8/1)*

IOWA

Independent Agency—Creates an independent credit union department within the state government, consisting of an administrator, a seven-member review board and additional officers and employees as needed. The administrator is appointed by the governor with consent of the senate, and must have at least five years of credit union experience.

The credit union review board also appointed by the governor, with the approval of senate. Board may adopt, amend, and repeal rules and must also approve any rules adopted by administrator. The board and the administrator may advise the Iowa Credit Union League of distressed credit unions.

Credit unions to pay an annual filing fee based upon the actual operating cost of department. Also to pay actual costs of examination.

After December 31, 1980, every credit union required to acquire and maintain share and deposit insurance from either the NCUA or other approved insurer. Credit unions authorized to establish one or more service offices with approval of administrator. Also authorized to make second mortgage loans and to sell, participate in, or discount obligations of members without recourse.

Field of membership expanded to include persons related to a member of the first or second degree, including foster children and adopted children. With approval of the administrator, credit union may serve an employee group having insufficient number of members to form its own credit union. No requirement for existence of a common bond relationship between the small employee group and the credit union extending the service.

Maturity limit on home mortgage loans extended to 30 years, and the aggregate amount of such loans by any one credit union may now be established by the administrator. Credit union empowered to purchase insurance or make purchase available to members. *(SF 137; approved 6/26)*

Share Drafts—Allows credit unions to continue processing share drafts until April 15, 1979. Establishes special reserves for them. Also creates interim study committee to consider need for permanent share draft legislation. *(HF 2467; approved 8/3)*

KANSAS

Dividends—Repeals prohibition against paying dividend on shares more frequently than quarterly. *(H. 2857; approved 5/4)*

Tax Exemption—Exempts intangible personal property of feder-

continued

al credit unions from property and ad valorem taxes. Also codifies existing exemption from state income tax. *(S. 954; approved 4/18)*

KENTUCKY

Absentee Ballot—Permits members to vote by absentee ballot if credit union bylaws so provide. Each credit union is to establish its own fiscal year (was December 31). A majority vote of the entire membership is required to overrule action of board. Board to set the membership fee.

Credit union may charge a fee of up to $5 on "temporary" loans and impose additional charges on delinquent borrowers, as provided in the bylaws, but not to exceed $5 on any one installment. Provides greater flexibility in declaring dividends and interest refunds. A credit union may merge with any other state or federal credit union, with approval of commissioner. *(H. 36; approved 3/29)*

Blanket Bonds—Requires notice to the banking department whenever any licensed company writing blanket bonds intends to cancel, terminate or not renew the bond of a bank or credit union. *(H. 4; approved 2/24)*

LOUISIANA

Dual Chartering—Encouragement of credit union development under the dual chartering system is declared a public policy of the state of Louisiana. The Office of Financial Institutions is authorized and requested to use its resources in the promotion and development of credit unions chartered under the state law.

Also increases the unsecured loan limit to $5,000; boosts the maturity limit on secured loans to 12 years and authorizes government-guaranteed loans under the terms and conditions of the guaranty agency. The new federal credit union two-tiered reserve formula is also adopted. *(S. 347; approved 7/10)*

MARYLAND

Federal Powers—With authorization of bank commissioner and Maryland Credit Union Insurance Corporation, a state credit union may engage in any additional activity or related services under the same conditions or limitations as are applicable or permitted for federal credit unions. Establishes the new two-tiered reserve formula of federal credit unions and adopts the federal definition of risk assets. *(S. 499; approved 5/2)*

Unsecured Loan Limit—Increases the unsecured loan limit to $3,500 (was $400). Limits the total of all loans any one member may have directly or indirectly from the credit union to 10% of the credit union's paid-in and unimpaired capital and surplus. Makes certain types of loan security subject to the approval of the Commissioner. *(S. 121; approved 5/2)*

State Employees—Permits employees of the State Banking Department to make loans from credit unions up to the amount of their share balance. *(S. 597; approved 5/2)*

MASSACHUSETTS

Recreational Vehicles—Increasing the amount and time limit for making loans on recreational vehicles by a credit union. *(H. 5287; approved 4/7)*

Real Estate Loans—Increasing the amount a credit union may lend on real estate mortgages, not exceeding ninety percent of the value of the real estate. *(H. 254; approved 4/7)*

Liquidity—Qualifying certain investments as meeting a credit union's liquidity requirements of five percent of total assets. *(H. 5260; approved 4/10)*

Meeting Notices—Requiring credit unions to post notices of annual meetings of shareholders and depositors in the lobby of the credit union. *(H. 256; approved 4/7)*

Securities—Increases the amount which a credit union may loan on certain securities. *(H. 261; approved 4/7)*

Personal Loans—Increases the maximum amount of personal loans made by a credit union. *(H. 5286; approved 4/7)*

Participation Loans—Increases the amount a credit union may make in participation loans on real estate. *(H. 262; approved 4/7)*

Federally Insured Loans—Increases the percentage of total assets that may be invested by banks and credit unions in loans insured by federal housing agencies. *(H. 263; approved 4/7)*

Pledge of Security—Increases the amount and time limit of loans evidenced by a pledge or security interest in satisfactory collateral which may be made by credit unions. *(H. 265; approved 4/7)*

Profit-Sharing Plan—Authorizing a credit union to act as a trustee or custodian under a qualified profit-sharing plan of a person or corporation. *(H. 266; approved 4/18)*

Central Credit Union Fund—Membership in the Massachusetts Central Credit Union Fund is broadened to include a state or federally-regulated entity serving as an investment vehicle or providing liquidity for state or federal credit unions. Maximum investment of a member increased to 25% of members' total assets (was 15%). *(H. 5545; approved 5/23)*

Fund also authorized to invest in common trust unit plans and in state or federally regulated entities serving as investment vehicles or providing liquidity for state or federal credit unions. Also permitted to make deposits in national banks located in the state. *(H. 5344; approved 5/23)*

Repeals requirement that written approval of Commissioner of Banks be obtained for bylaws, regulations, or amendments thereto. *(H. 5348; approved 5/23)*

Joint Accounts—Relating to the payment of joint accounts by credit unions. *(H. 5772; approved 7/3)*

Reserve Formula—The reserve formula for delinquent loans is revised to exclude certain loans in the computation of the amount to be set aside. *(H. 270; approved 6/1)*

CPA Audit—Requiring that examination or audit of a credit union with assets over $5 million shall be

made by a certified public accountant or public accountant not connected with the credit union. Requirement previously applied to all credit unions. *(S. 1534; approved 6/9)*

MICHIGAN

State Funds Referendum—Provides for a referendum for the purpose of amending the state constitution to permit investment of state and local public funds in credit unions and savings and loan associations. *(HJR GG; passed House and Senate in May)*

Central Credit Union—Increases the borrowing power of a central credit union to 75% of paid-in and unimpaired capital (was 50%). Borrowing beyond the 75% limit permitted if approved by the supervisor.

Allows credit unions to lease automobiles or other tangible personal property to members; expands the power of loan officers, permitting them to approve line-of-credit loans and extension agreements on non-delinquent loans. Authorizes credit unions to purchase, sell, pledge, or discount eligible obligations of members and to receive funds from a public employee retirement system or plan as shares or deposits.

Credit union may impose fines on delinquent loan installments if permitted in bylaws. Reduces from two years to one year the waiting period for credit unions to escheat to the state small accounts of $5 or less. *(H. 6148; approved 6/29)*

Escheat Law—Companion bill to H. 6148, reducing from two years to one year and waiting period for escheating small accounts. *(H. 6147; approved 6/29)*

Retirement Systems—Authorizes public employee retirement systems or plans to invest funds of federally insured state or federal credit unions. *(H. 6146; approved 6/29)*

Electronic Funds—Permits banks, savings and loan associations, and credit unions to establish automated teller machines at remote sites, such as shopping centers, on a state-wide-basis. Sharing of such terminals is mandated where a competing institution asks for access and agrees to pay reasonable fees. The law also prescribes standards for reliability of services, protection of privacy and antitrust safeguards. *(H. 4553; approved 7/7)*

MINNESOTA

Lines of Credit—Authorizes credit union to approve lines of credit and make advances up to the limit with no additional applications. *(H. 2147; approved 3/28)*

Regular Reserve—Establishes two-tiered reserve formula of federal credit unions for state credit unions. *(H. 1998; approved 3/28)*

Removal of Officers—Establishes procedure for issuance of orders for removal of officers of financial institutions, including credit unions. *(H. 842; approved 3/23)*

Electronic Funds—Authorizes and regulates use of electronic funds transfer system by financial institutions, including credit unions. *(H. 1180; approved 3/2)*

Public Funds—Authorizes credit unions to accept and maintain U.S. Treasury tax and loan accounts and to pledge collateral to secure such accounts, in accordance with Treasury regulations. *(H. 1227; approved 4/5)*

NEBRASKA

Federal Powers—Updates existing provision allowing state credit unions to exercise powers and privileges of a federal credit union as of effective date of new act (was September 2, 1977). *(L.D. 772; approved 3/21)*

NEW YORK

Investment in CU Organizations—Authorizes credit unions to invest funds in and make loans to credit union organizations, approved by the board of directors, up to 1% of shares and deposits, or 10% of surplus, whichever is less. Aggregate of all such loans and investments may not exceed 2% of shares and deposits, or 20% of surplus, whichever is less. "Credit union organization" is defined as any organization established primarily to serve the needs of its member state and federal credit unions, and whose business relates to the daily operation of credit unions. *(H. 10602; approved 5/23)*

Appointment of Committees—If bylaws permit, the credit committee and the supervisory committee may be appointed by the board of directors. Where such committees are so appointed, any subsequent vacancies are to be filled by the board. *(S. 8174; approved 6/19)*

Tear Gas—Permits financial institutions, including credit unions, to use tear gas as a security device. *(S. 7649; approved 6/19)*

Share Certificates—Credit union may issue share certificates to members with varying dividend rates and maturities, subject to any regulations promulgated by the NCUA on such certificates and limitations on shareholdings and withdrawals in the New York Credit Union Act. *(A. 10636; approved 6/19)*

OHIO

Credit Union Division—Creates a division of credit unions within the Commerce Department, headed by a superintendent of credit unions. All monies collected from credit unions to be consigned to a special rotary fund for use by division.

Increases loan limit for corporate members to 10% of unimpaired capital and surplus or total value of pledged shares, whichever is greater. Also removes some limits on shareholdings by such members.

Reveals prohibition on Ohio Credit Union Guaranty Corp. guaranteeing shares or deposits owned by another credit union. Requires state to give corporation 30 days advance notice of suspension of a member credit union.

Also authorizes the Superintendent to issue regulations granting state credit unions any right, power, or privilege possessed by a federal credit union located in state. Such a rule expires within 30 months if legislature fails to enact it into law. *(H. 356; approved 6/9)*

OKLAHOMA

Executive Officers—Board of directors to elect an executive

continued

officer who may be designated chairman of the board or president, and a vice-chairman of the board or vice president. The board may also employ an officer in charge of operations who may be titled either president or general manager, or in lieu thereof, may designate the treasurer or assistant treasurer to act as general manager. *(S. 543; approved 3/15)*

PENNSYLVANIA

Central System—Authorizes: loans to other credit unions anywhere in the United States; deposits in legally chartered financial institutions, including centrals; and membership in central-type credit union organizations, state or federal.

Also revises credit union internal operations by allowing: 1) appointment of an executive committee to act on behalf of the board; 2) changing titles of officials; and 3) prohibiting directors and treasurer or assistant treasurer from serving on supervisory committee.

Repeals $750 limit on approval authority of loan officers, and authorizes them to approve share withdrawals, releases and substitutions of security within limits specified by credit committee. Requires only an annual examination of affairs of the credit union by supervisory committee. Liberalizes officer borrowing privileges.

Allows credit union to act as issuing agent for Treasury savings bonds. Gives credit union right to refuse withdrawals pending a determination of the rights of all parties involved. Provides penalties for anyone representing themselves unlawfully as a credit union. *(H. 1659; approved 6/23)*

Mandatory Share Insurance—Requires all credit unions to obtain share insurance through the National Credit Union Administration or some other approved insurance fund within two years. *(S 1457; approved 10/5)*

RHODE ISLAND

Corporate Central—Excludes the RICUL Corporate Credit Union from the state tax on deposits and also from the mandatory share insurance provision. *(S. 2157; approved 5/4)*

SOUTH CAROLINA

Statewide Credit Union—Allows the name of the Statewide Credit Union to be changed with the approval of the State Board of Financial Institutions. *(H. 3976; approved 6/9)*

Share Certificates—Authorizes credit unions to issue share certificates subject to the same withdrawal penalty, maximum dividend rates and minimum dollar requirements as NCUA sets for federal credit unions. Also establishes federal regular reserve formula for state credit unions. *(H 3881; effective 7/25)*

TENNESSEE

Conversion—In conversion of state credit union to a federal credit union, approval by the majority of the entire membership of the state credit union is required in person or in writing. *(S. 1971; approved 3/17)*

Share Insurance Corporation—Removes prohibition against State Credit Union Share Insurance Corporation operating in states where the insurance regulatory laws apply to it. Gives SCUSIC authority to adjust level of membership fees. *(S. 1973; approved 3/6)*

Central Credit Unions—Defines powers, organization, examination, loan and dividends of central credit unions. Authorizes state credit unions to accept deposits of U.S. Treasury Tax and Loan accounts. *(S. 1975; approved 3/6)*

VERMONT

Mandatory Share Insurance—Requires credit unions not insured by NCUA to apply for insurance coverage within one year of act's effective date. Bases regular reserve formula on gross income instead of net, and clarifies procedures for merger of credit unions. *(H. 477; approved 4/5)*

WISCONSIN

Dormant Accounts—Authorizes credit unions to make an annual maintenance charge, not to exceed 50¢ a month, against accounts of less than $25 in which there has been no activity for 36 months, and mailings to the account holders are returned to the credit union marked "address unknown." *(S. 322; approved 5/5)*

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RESEARCH BASED ON CREDIT UNION GUIDE

The research in the *Comparative Digest of Credit Union Acts* is based on the texts of 46 state credit union laws and the Puerto Rico and Federal Credit Union Acts found in the *Credit Union Guide*, a law service published by Prentice-Hall, Inc. Those laws reflect amendments through December 1, 1978.

Except for the Model and Federal Credit Union Acts, all statutory provisions in the *Comparative Digest* are in summary form or are quoted in substance only. The statutes cited on this page should be consulted for the full law text.

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The only course . . .

"The credit union is consistent with the evolutionary development of economic democracy, and while we may have a battle here and there and a setback occasionally, we are a part of a better tomorrow and will go forward as inevitably as the human race goes forward. The only course of action for us to take is to persistently seek the laws, regulations and rulings we need . . ."

ROY F. BERGENGREN
(1879-1955)

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THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 4, 1979

SUBJECT: Changes Incorporated in the Draft Commerce Committee Substitute for SB 225

TO: The Honorable Brad Bradley

FROM: Ken Humphreys, Senior Policy Analyst J.K.H.

As you requested, the following section-by-section analysis will address changes to SB 225 contained in the attached draft Commerce Committee Substitute. The draft which is analyzed here incorporates the changes suggested in letter of April 23, 1979, to Senator Bradley from David Chatfield.

This analysis is indexed by section numbers in the draft committee substitute; however, when a page and line is referenced without any qualification, it refers to SB 225 as originally introduced. If the only changes in a given section are clearly of a technical nature or only affect drafting style or organization, the section is not mentioned.

Sec. 06.45.010 FORMATION OF CREDIT UNION. The reference to "common bond" (p. 1, line 13) has been deleted and the incorporators now must simply "...meet the requirements of AS 06.45.060 and the requirements of this section...." All membership requirements are now found under AS 06.45.060.

In subsection (b) (p. 1, line 24), the commissioner was required to determine that the "incorporators are fit and of good general character" before he approved the application. The fitness requirement has been removed.

Subparagraph (d) permits credit unions to share office space and to contract for the provision of personnel and facilities. In the original bill, this power was found on p.34, lines 11-13).

Sec. 06.45.020. ARTICLES OF INCORPORATION. Instead of requiring that the "proposed field of membership be specified in detail (p. 2, lines 16-17), the requirements of AS 06.45.060 are referenced (CS, p. 2, lines 27-28) and "specified in detail" is deleted.

Sec. 06.45.030. BYLAWS. Again, conditions relating to the field of membership as set out in the bylaws have been removed and AS 06.45.-060 which now contains all membership requirements is referenced.

Paragraph (6) requires that "the manner in which bylaws may be adopted, amended or repealed" be prescribed in the bylaws. Originally, it was simply stated that "The members of the credit union may alter, amend or repeal the bylaws or adopt new bylaws." (p. 2, lines 23-24)

It is no longer required that "the method of receipting for money paid on accounts" (p. 3, line 18) be specified in the bylaws.

Sec. 06.45.040. NAME. Prohibits adopting the same name as that of another "credit union doing business in the state" rather than "of any other existing credit union."

Sec. 06.45.070 POWERS. In paragraph (4), property transactions are limited to those "necessary to its operation"; previously it was only "...in part, necessary" (p.4, line 25).

In paragraph (6), the forms in which savings may be received are: share accounts, deposit accounts, share certificate accounts, or special purpose thrift accounts. Formerly it was: shares, deposits, time certificates or special purpose thrift accounts. The new language is consistent and the terms are defined in sec. 06.45.090. There is no clear substantive difference.

In paragraph (8), borrowing is permitted "...to meet operational needs..." rather than just for "share withdrawals" (p.5, line 5).

Paragraph (9) permits the discounting and sale of eligible obligations; formerly this power was found in sec. 06.40.070(8).

Paragraph (11) permits membership in any central credit union, not just one "...organized under this chapter..." (p.5, line 17).

Paragraphs (16) and (17) which permit acting as a servicing agent for credit union loans and as fiscal agent for any corporation, trust, or similar entity, are new.

Sales and purchases of assets under paragraph (19) are no longer "subject to the approval of the commissioner" (p.6, line 4).

In paragraph (20) "deposits" has been changed to "savings" and the types of accounts are as "authorized by this chapter" rather than as "approved by the administrator of the National Credit Union Administration for federally chartered credit unions...." (p.6, lines 6-8).

Paragraph (22) has been reworked by inserting language from sec. 06.40.-440 of the original bill to provide for facilitating the "voluntary" purchase of goods and services "...in the interest of improving economic and social conditions of the members" rather than "...which promotes the purposes of the credit union" (p.6, lines 16-17). Sec. 440, Group Purchasing, was apparently superfluous and was deleted.

Sec. 06.45.080. MEMBERS' MEETINGS. Members are no longer allowed to vote by proxy and a majority is no longer required to conduct the annual meeting. Formerly at least a simple majority had to be present or represented by proxies, although proxies would be divided equally among those present (p.6, lines 24-27).

Sec. 06.45.120. SUPERVISORY COMMITTEE. In subsection (a), the supervisory committee is required to make an annual, rather than semi-annual, audit. The committee is no longer required to verify passbooks, only accounts.

Sec. 06.45.140. SUPERVISION AND FEES. Generally, this section has been changed to more closely approximate the requirements for banks set out in AS 06.01.010. Under subsections (d) and (e), actual expenses of investigations and examinations are charged in accordance with AS 06.01.010.

Formerly, investigation expenses charged for the issuance of a certificate of approval were limited to $100 (p.11, line 23). Supervision fees were to be charged on the basis of assets rather than expenses and a credit union was not liable for a supervision fee for the first year in which it operated if the charter was issued after June 30 (p.11, line 19; p.12, line 15).

Sec. 06.45.150. EXAMINATIONS. Subsection (a) no longer requires that the board of directors make a copy of the annual examination report available to all members (p.13, lines 1 & 2). This change probably reflects the fact that confidential material relating to the character and personal finances of members may be contained in the report.

Sec. 06.45.180. CENTRAL CREDIT UNION. In subsection (a), membership in the central credit union is limited to credit unions chartered in this state, another state or under the federal credit union act. In the original version, membership was also open to a broad category of individuals associated with credit unions as well as "employees of a common employer with insufficient numbers to form or conduct the affairs of a separate credit union..." (p.15, lines 5-6).

Sec. 06.45.190. SHARES. Subsection (a) no longer contains a prohibition against issuing a certificate to denote the ownership of shares (p.16, lines 3-4). This is apparently consistent with the definition of "share certificate account" in sec. 06.45.490(5).

In (c), a credit union whose total assets amount to less than 90 percent of the amount due shareholders is required to immediately notify the department. In the original version, if assets fell below 100 percent of the amount due shareholders, the credit union was required to immediately advise the department, but, in addition, this condition constituted grounds for proportionately reducing the value of shares to cover the loss (p.16, lines 13-19).

Sec. 06.45.200. MULTIPLE PARTY ACCOUNTS. Subsections (a) and (b) are similar to those in sec. 06.40.200 of the original bill; however, subsections (c)-(f) and the next three sections, sec. 06.40.210-230, from the original bill have been deleted. These were procedural provisions relating to multiple party accounts. These were protective provisions designed to free the credit union from having to examine the factual relationship between the multiple parties.

Sec. 06.45.240. LOANS. In subsection (a) loan maturities of up to 15 years, instead of 10 (p.21, line 11), are permitted when the loan is secured by something other than improved real estate. Permits loans to "other credit unions and credit union organizations," not just to members.

In (b), financial information about the guarantor of every loan is required; in the original, this applied only to loans in amounts over $2000 (p.21, line 16).

In (d), the "disclosure of terms" is expressly required.

There are several changes in subsection (e) on real estate loans. In the original bill, real estate loans were, generally, "...under rules and regulations that apply to federally chartered credit unions...." with certain additional provisions. In (e)(1), a residential loan is no longer required to be for the "principal" (p.22, line 24) residence of a member. In (e)(1)(B), loans are permitted for up to 80 percent of the appraised value instead of up to "150 percent of the median sales price of residential real property situated in the geographical area..." (p.22, lines 26-27). Subparagraph (B) allows the 80 percent limit to be relaxed if the loan is insured.

In (e)(2), the limit placed on the total dollar amount of real estate loans outstanding is 25 percent of the assets of the credit union. In the original bill, the limit was "...50 per cent of the paid-in capital of the credit union" (p.23, lines 12-13).

Paragraph (e)(3) is new and requires that a credit union with assets of less than $3,000,000 secure the prior written consent of the commissioner to make real estate loans.

Subsection (f) applies the maximum interest rate under AS 45.45.010(b) (the general usury statute) to all loans, not just when "...applicable for real estate loans..." (p.21, lines 3-4); the rate in other cases was "...one per cent per month on the unpaid balance..." (p.21, line 1).

In (h), loans to directors or committee members which exceed $5,000 plus pledged shares must be approved by the board of directors; the limit was formerly $2,500 (p.22, lines 8-9).

Subsection (i) added trusts and political subdivisions to the list of those who may participate with a credit union in making loans to its members.

Sec. 06.45.280. INSURANCE. In subsection (b), the commissioner no longer establishes the amounts of loss to be protected or guaranteed (p.24, lines 26-28).

Sec. 06.45.290. INVESTMENTS. In (4), the limit on the total amount of loans to or shares or deposits of other credit unions is increased from 10 to 25 per cent of the paid-in capital (p.25, lines 20-21).

In (6), deposits in the National Credit Union Central Liquidity Facility have been added. The U. S. Central Credit Union is correct, not United States Central Credit Union (p.25, line 26).

Sec. 06.45.300. RESERVE ALLOCATIONS. In (a)(1), the less stringent reserve schedule formerly applicable to all credit unions with assets of more than $500,000 would now be applied to those larger credit unions only with the written approval of the commissioner.

Subsection (c) is new. In the original there was no provision to allow the commissioner to decrease a reserve requirement.

In (d)(9), the commissioner's approval of an investment as a non-risk investment is required in order for the accrued interest on that investment to be considered a nonrisk asset.

Sec. 06.45.320. MERGER. In subsection (a), the fees required for a merger are "in accordance with AS 06.01.010," rather than as established by regulation (p.28, lines 4-5). This change is consistent with others which align the supervision of credit unions with that of banks.

Sec. 06.45.340. SUSPENSION. When the commissioner issues an order to take possession of an insolvent credit union, the provisions in AS 06.01.030(a) are referenced: further alignment with the banking code.

Sec. 06.45.350. DISSOLUTION AND LIQUIDATION. In subsection (a), a member not present at a meeting held to consider dissolution is granted 90 days, rather than 20 (p.30, line 9), to vote by signing a form.

Subsection (c) gives the order in which obligations are to be discharged by a liquidating credit union. "Corporate liabilities" have been substituted for "any liability due nonmembers" (p.31, line 2) in third place. In (4), "share certificate accounts as provided in this chapter" has been substituted for "deposits and savings club accounts as provided in this chapter."

***Sec. 06.40.375. SLANDER AND LIBEL OF CREDIT UNION. This section, from the original bill (p.32, line 21 - p.33, line 1), has been deleted.

Sec. 06.45.450. BRANCH OFFICE FACILITIES. Consistent with other changes, subsection (a) refers to AS 06.01.010 for the payment of costs of investigation associated with an application to establish a branch office.

Sec. 06.85.490. DEFINITIONS. Paragraphs (3) - (6) define the types of accounts. In the original, the terminology was somewhat different and definitions were not provided, but there is no clear substantive difference.

KH:jm

STATE OF ARIZONA

WALTER C. MADSEN, Superintendent of Banks, State Banking Department, 1601 West Jefferson, Phoenix, Arizona 85007.

Walter Madsen is currently serving a four-year term as Arizona Superintendent of Banks. Prior to this appointment, Madsen served for three years as senior vice president of Great Western Bank and Trust in Phoenix, where he supervised 14 banking officers with primary emphasis on loan functions, operations and personnel. Prior to 1973, Madsen worked with the FDIC for ten years. He began as a trainee bank examiner in San Francisco and advanced through various positions, spending eight years in the Salt Lake City field office examining banks in Utah, Idaho and Nevada. In 1971, Madsen came to Phoenix with the FDIC as examiner in charge of the Arizona field office. In this position, he supervised examination of all state insured non-member banks in Arizona.

With a staff of 26, Madsen's agency supervises 64 financial institutions, including credit unions, savings and loans, banks, mortgage brokers, and debt management. Total assets have risen from $145,570,684 in January, 1977, to $193,527,659 in January, 1978.

Madsen's department was instrumental in the recent passage of mandatory insurance legislation. All new credit unions now have insurance through the National Credit Union Administration. Existing credit unions have one year to secure insurance through the National Credit Union Administration.

STATE OF CALIFORNIA

EDWARD J. DOLAN, Assistant Commissioner, Department of Corporations, 600 South Commonwealth Avenue, Suite 1600, Los Angeles, California 90005.

Edward Dolan has worked for the State of California for 32 years, including 11 years in his present position of Assistant Commissioner in the Department of Corporations. The department has 376 employees, and administers all activities dealing with the following statutes: credit union law, small loan law, check sellers and cashiers law, and other credit union/banking - related laws.

Dolan and his staff of 101 in the Lender-Fiduciary Division supervise 556 credit unions. Under his direction, total assets rose from $2,332,994,000 in January, 1977, to over $2,851,000,000 in January, 1978.

STATE OF ARKANSAS

HARVEY L. BELL, Securities Commissioner, Credit Union and Savings and Loan Association Supervisor, Secretary of Cemetery Board, Suite 1428, Donaghey Building, Seventh and Main Streets, Little Rock, Arkansas 72201.

Harvey Bell has been Securities Commissioner and State Credit Union and Savings and Loan Association Supervisor for the State of Arkansas since October, 1974. Prior to his appointment, he was associated with Davidson, Plastiras & Horne, Ltd., of Little Rock, whose law practice dealt predominately in corporate, tax and securities matters.

Bell's office supervises a variety of institutions: credit unions, savings and loan associations, securities, broker-dealers, mortgage loan companies, perpetual care cemeteries, loan brokers, prepaid funeral organizations, sale of checks companies. Bell's 23 employees supervise 61 financial institutions. Under Bell's guidance, total assets rose from $35,828,138 in January, 1977, to $39,737,907 in January, 1978.

CUNA

Credit Union National Association, Inc.
1617 SHERMAN AVE. · BOX 431 · MADISON, WI 53701 · 608-241-1211

RECEIVED
JAN 9 1979
Alaska League Services, Inc.

January 5, 1979

Mr. David Chatfield
Managing Director
Alaska Credit Union League
2509 Eide Street, Suite 4
Anchorage, Alaska 99503

Re: Number of State Supervisory Personnel

Dear Dave:

Bill Drohan of the National Association of State Credit Union Supervisors informs me that his organization surveyed each supervisor last September relative to the number of personnel employed on credit union supervision. He also asked about the number of credit unions, their assets, etc. The findings were compiled and distributed at the NASCUS annual meeting in October, and I enclose a photocopy of the pertinent material.

Drohan noted that each agency was asked to list only its personnel working exclusively on credit unions, but a few misunderstood or could not provide such a breakout. So in a few instances you will find that the employment figures reflect personnel who supervise other financial institutions in addition to credit unions.

Nonetheless, I think you will find the information helpful in your efforts to dispel misgivings about the number of employees needed to supervise state credit unions.

Another suggestion you may want to consider: contacting Glen Reese of the Nevada League and the new Commissioner of Credit Unions in Nevada, Norman Okada. As you know, the Nevada Act was enacted only three years ago, and they had to start from scratch. There are now ten credit unions chartered under the Nevada Act. The situation there is not too unlike what might obtain should Alaska pass a credit union law. Okada can be reached at:

Commissioner of Credit Unions
State of Nevada
Nye Building
Carson City, Nevada 89710
Tel: (702) 885-4251

Dave, I hope this information will be of some help to you in your work on behalf of the credit union bill. I will write you soon on the other matters mentioned in your telephone call on Wednesday.

Sincerely,

RWD:hjb
Attachs

Robert W. Davis, Director
State Governmental Affairs

STATE OF ALABAMA

C. W. SAULS, JR., Supervisor, Bureau of Credit Unions, 750 Washington Avenue, Room 305, Montgomery, Alabama 36130.

First employed by the Alabama State Banking Department in 1959 as a Bank Examiner, Mr. Sauls was instrumental in organizing the Bureau of Credit Unions in 1972, and has served as the Bureau's Supervisor since its inception.

Mr. Sauls is presently responsible for the supervision of 127 unions ranging in size from under $100,000 assets to $60,000,000.

Mr. Sauls' office, which is a division of the State Banking Department also regulates finance companies and other lenders for compliance with consumer credit and usury laws. The Credit Union Bureau currently employs five persons, including three examiners.

RECEIVED
JAN 9 1979
Alaska League Services, Inc.

STATE OF COLORADO

MERLE E. ALBRECHT, Chief Deputy State Bank Commissioner, Division of Banking, 325 State Office Building, Denver, Colorado 80203.

Merle Albrecht has been associated with the Division of Banking since July, 1960. He served as Bank Examiner until September, 1973, when he was appointed to his present position as Chief Deputy State Bank Commissioner. Prior to 1960, he worked for eight years with commercial banks.

The Colorado State Bank Commission, a sub-department of the Division of Banking, employs 7 people, including four credit union examiners. Albrecht and his staff supervise 149 credit unions, as well as commercial banks, industrial banks, and trust companies. Total assets rose from $389,215,463 in January, 1977, to $438,234,237 in January, 1978.

STATE OF FLORIDA

GERALD A LEWIS, Comptroller of Florida and Head, Department of Banking and Finance, The Capitol, Tallahassee, Florida 32304.

Gerald Lewis led a varied career before entering the banking industry. Moving to Florida in 1960, he was chosen by the citizens of Dade County in 1966 to serve the county in the Florida House of Representatives. He was re-elected in the special reapportionment election of 1967, and again in 1968.

In 1970 Lewis was elected to the Florida Senate. There he served as Vice-Chairman of the Senate Judiciary Committee (Civil), and was a member of the Joint House-Senate Committee that drafted the new Judiciary Article of the 1968 State Constitution.

Lewis has held the position of Comptroller of Florida for three and a half years. During his first year in office, he generated a securities "strike force" to combat the massive land-securities-mortgage fraud, which resulted in criminal prosecution of perpetrators of "White Collar Crime." He also lifted the traditional shroud of secrecy from the bank chartering process and took immediate steps to strengthen the Comptrollers's responsibilities as watchdog of the public treasury.

Lewis and his staff of 14 regulate approximately 288 financial institutions, including credit unions, state chartered banks, savings and loan associations, and trust companies. Assets totaled $647,733,000 in January, 1977, and $766,517,000 in January, 1978.

STATE OF GEORGIA

CHARLES W. BURGE, Director, Thrift Institutions Division, Department of Banking and Finance, 148 International Boulevard, N.E., Suite 640, Atlanta, Georgia 30303.

Charles Burge recently assumed the position of Director of the Thrift Institutions Division. Prior to his appointment to this position, he served as Division Director for the Georgia Department of Banking and Finance. As Division Director, he supervised 60 banks and 10 examiners.

With a staff of 7, the Thrift Institutions Division supervises 189 financial institutions, including credit unions, savings and loan associations, and licensed money order companies. Total assets have increased in the past year from $368,000,000 in January, 1977, to $448,000,000 in January, 1978.

Burge reports that Georgia now requires that member accounts of all credit unions be insured for $40,000 by either NCUA or GCUDIC.

STATE OF IDAHO

TOM D. McELDOWNEY, Director of Finance, Department of Finance, Statehouse Mail, Boise, Idaho 83720.

Tom McEldowney has been with the Idaho Department of Finance since 1958, when he joined the agency as chief clerk. He became assistant bank examiner in 1959, bank examiner in 1960, and two years later was appointed deputy commissioner and chief examiner. By 1971, he had assumed the Commissioner-ship temporarily, and this appointment was made permanent in August of that year.

McEldowney and his staff of 26 supervise 96 credit unions. The total assets of these credit unions in January, 1977 was $76,219, 814. By January, 1978, total assets had risen to $97,546,219.

McEldowney reports that during the past year Idaho credit unions obtained statutory authorization to allow their members to withdraw funds from share accounts by the use of negotiable instruments. At present, this authority has been used by credit unions to offer money order draft (MOD) accounts to their members.

STATE OF ILLINOIS

CHARLES W. FILSON, Supervisor, Credit Union Division, Department of Financial Institutions, 160 North La Salle Street, Chicago, Illinois 60601.

Charles Filson assumed the position of Supervisor of the Credit Union Division in August, 1977. Prior to his appointment, he worked in the International Department of the First National Bank of Chicago for four years. Before his involvement with the banking industry, Filson led interesting careers in the U.S. Navy and as an administrator at Harvard University.

Filson's Credit Union Division is one of four divisions in the Department of Financial Institutions. A staff of 33 oversees 1080 credit unions. Total assets have risen from $1.5 billion in January, 1977, to $1.8 billion in January, 1978.

In the past year, Filson's agency has dealt with such issues as legislation, investments, the continual problems of poorly run institutions, and personnel changes.

JAMES M. DOYLE, Supervisor, Division of Credit Unions, Department of Financial Institutions, 1024 State Office Building, Indianapolis, Indiana 46204.

James Doyle has been associated with the Department of Financial Institutions of the State of Indiana since September, 1970. During that time, he has held positions as Bank Examiner, Electronic Data Processing Supervisor, and Credit Union Supervisor. In October, 1973, he completed a six-week course in E.D.P. Evaluation Techniques, conducted by the national auditing firm of Peat, Marwick, Mitchell and Company, designed specifically for the Department. In May, 1974, he was requested to serve as a member of the E.D.P. Subcommittee of the Supervisory Procedures Committee of the Conference of State Bank Supervisors (CSBS). He was appointed to his present position four years ago. Prior to employment with the Department, he was employed for two years by the Gibson County Bank, Princeton, Indiana, where he served as general teller and later as loan teller in the installment loan program.

Doyle's Credit Union Division is one of six divisions of the Indiana Department of Financial Institutions. The Department's staff of 90 supervise 791 financial institutions, plus approximately 12,000 U.C.C.C. registrants. Total assets of these institutions rose from $12,566,114,000 in January, 1977, to $13,445,742,000 in January, 1978.

STATE OF KANSAS

LOVELLE FRAZIER, Administrator, Kansas Department of Credit Unions, 535 Kansas Avenue, Room 1008, Topeka, Kansas 66603.

Lovelle Frazier was appointed administrator of the Kansas State Department of Credit Unions in September, 1975. His credit union career began as treasurer of the newly organized Super Chief Credit Union in March, 1950. He has also served as a chapter president and vice president/director of the Kansas Credit Union League, and has been active on many of the committees of the League.

The Kansas State Department of Credit Unions was created by the 1968 legislative Session. There are several positions in the department: five financial examiners, one secretary, one clerk typist, and the administrator's position is 1/4 time. The principal duties of this department are to conduct thorough examinations of state chartered credit unions on an annual basis, approve certificated of organization, issur certificated of approval, make semi-annual reports of conditions, survey for each credit, collect fees for examination and other matters relating to the supervision of credit unions.

Frazier supervises 195 credit unions ranging in size from $14,707 to $480,060,386.

STATE OF KENTUCKY

JOHN L. WILLIAMS, JR., Commissioner, Kentucky Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

John Williams began his banking career as a cashier with Citizens Bank in New Castle, Kentucky in 1946. Nine Years later he captured the office of Vice President of Farmers Bank and Trust Company in Princeton, moving up to President of that company in 1960. He has served in his present position ofr two years.

Williams works closely with the Cabinet for Public Protection and Regulation. Together they have a staff of 66 people. Other institutions supervised by his offic are state-chartered banks, savings and loan associations, industrial and consumer loans and various other institutions.

Williams supervises 126 credit unions. They range in size from $20,000 assets to $12,000,000. Total assets as of January, 1976 were listed as $113,500,000. On June 30, 1978 the total assets were $147,094,455.62.

STATE OF LOUISIANA

GERALD O. THOMPSON, Supervisor, Credit Union Division, Office of Financial Institutions, P.O. Box 44095, Capitol Station, Baton Rouge, Louisiana 70804.

Prior to assuming his current position as Supervisor of the Credit Union Division, Gerald Thompson worked for seven and a half years as a bank examiner and six years as a commercial banker.

The Credit Union Division's staff of four supervise 102 credit unions. Under Thompson's guidance, total assets have risen in the past year from $91,931,022 in January, 1977, to $103,770,958 in January, 1978.

STATE OF MAINE

JOHN A. DURHAM, Superintendent, Bureau of Banking, State Office Building, Augusta, Maine 04333.

John A. Durham was the first official to be confirmed by the Maine Legislature after the demise of the Executive Council in that state. He was sworn to office just this past March. Not long before taking his present position, Durham had been with the U. S. Marine Corps. His Last Assignment was with the First Marine Division was as Chief Finance Officer.

The Bureau of Banking is part of the Department of Business Regulation which also includes nine other bureaus. Durham's division supervises 29 credit unions in addition to 26 trust companies, 30 savings banks and 16 savings and loan associations supervision range in size from $25,000 to $15,000,000 in assets.

PROVINCE OF MANITOBA

ARTHUR BEARDMORE, Supervisor, 28 Farwell Bay, Winnipeg, Manitoba, Canada R3T057.

Arthur Beardmore formerly led a career as a peace officer. He turned accountant and joined the banking industry. He gained his present position through the Canadian Civil Service and has retained his post for the past 13 years.

Beardmore's present staff is 52 but only one is engaged in the inspection of credit unions. Most prominent is the Cooperative Section which employs four Northern Development Officers, three Southern Development Officers, three Housing Officers and one Day Care Officer. Additional Personnel are all administrative staff.

Beardmore supervises 180 credit unions ranging in size from $80,000 to $52,000,000.

STATE OF MISSISSIPPI

JAMES H. MEANS, State Comptroller, Department of Bank Supervision, 1206 Woolfolk State Office Building, P.O. Box 731, Jackson, Mississippi 39205.

James Means was appointed State Comptroller by Governor Waller of Mississippi, taking his oath of office on January 2, 1973. He began his banking career 30 years ago at the First National Bank of Jackson, Mississippi, and at the time of his present appointment was Vice President of that institution.

Means and his 34 staff members are responsible for the regulation and supervision of 72 credit unions in addition to 148 state chartered banks, 610 finance companies, and various other financial institutions. Total assets of these financial institutions was $4,802,328,000 as of December 31, 1976, and $4,940,624,100 as of December 31, 1977.

STATE OF MISSOURI

JOHN S. LEWIS, Director, Division of Credit Unions, P.O. Box 1235, Jefferson City, Missouri 65102.

John Lewis was a postal employee when he first became involved with credit unions. From 1953 until 1960 he was treasurer of the St. Joseph Postal Employees Credit Union. In 1960 he accepted the full-time position of manager of the Missouri Central Credit Union in Kansas City. He was appointed Director of the Credit Union Division for the State of Missouri in May, 1977.

The Credit Union Division's staff of thirteen includes the Director and Deputy Director. Examiners work out of three different Missouri cities. Lewis supervises 375 credit unions. Total assets rose last year from $600,000,000 in January, 1977, to $700,000,000 in January, 1978.

Lewis reports that in the past year his agency has expanded credit union membership base by allowing credit unions to extend services to outside employee groups. He has also reduced reserve requirements for some credit unions to the Federal schedule as a minimum.

L. W. ALKE, Administrator, Financial Division, 805 N. Main Street, Helena, Montana 59601.

Alke started his career in banking in 1936 with the Union Bank and Trust Co. of Helena, where he was employed until 1947, with time out for 3 1/2 years Army services. From until he accepted employment with the office of Superintendent of Banks. He became Chief Examiner in 1956, a position held until the reorganization of Montana's governmental agencies. When the Banking Department became the Financial Division of the Department of Business Regulation in November, 1971, he was appointed Administrator of that division, a position he still holds. In 1975 he qualified with the National Society of Financial Examiners as a certified Financial Examiner.

The Financial Division is one of four under the Department of Business Regulation and it charters and supervises banks, savings and loan associations, consumer loan licenses and sales finance companies in addition to credit unions. Alke's staff consists of four officer personnel plus 16 field examiners.

Alke and his staff supervise 25 credit unions ranging in size from $20,000 to $37,000,000.

STATE OF NEW HAMPSHIRE

ARLAN S. MacKNIGHT, Deputy Bank Commissioner, New Hampshire Banking Deparcment, 97 North Main Street, Concord, New Hampshire 03301.

Arlan MacKnight has served as New Hampshire's Deputy Bank Commissioner since 1969. Prior to his appointment, he served as Assistant Bank Commissioner. In his earlier career, MacKnight served as bank examiner in both New Hampshire and Massachusetts. He is a graduate of Bentely College.

MacKnight's department is independent of any other state agency, and supervises 39 credit unions in addition to savings and loan and commercial banks, savings banks, and other financial institutions. He has a staff of 25, including 14 examiners. As of January, 1977, the credit unions under his supervision had assets of $73,691,000. In January, 1978, their assets were $84,486,000.

STATE OF NEW JERSEY

JOHN J. MINTON, Assistant Chief, Consumer Credit Bureau, Department of Banking, 36 West State Street, Trenton, New Jersey 08625.

John J. Minton joined the New Jersey Department of Banking in 1941 and has been with it ever since except for a stint in the Army from 1942 to 1946. He was appointed examiner in December, 1955, and promoted to his current position of Assistant Chief in October, 1963.

Minton has a variety of departments under his jurisdiction, including the Consumer Credit Bureau. The Consumer Credit Bureau has a staff of 13, including 7 field examiners. The Consumer Credit Bureau supervises 58 credit unions, as well as 575 other financial institutions. Total assets of the credit unions rose from $65,532,741 in January, 1977, to $79,682,876 in January, 1978.

STATE OF NEW MEXICO

SNIDER CAMPBELL, Savings and Loan Supervisor, Financial Institutions Division, Commerce and Industry Department, Santa Fe, New Mexico 87503.

Snider Campbell joined the state banking department in 1959, after working in private business for 10 years. During his tenure with the department, he held several supervisory posts until being appointed Savings and Loan Supervisor in 1971. Campbell is a graduate of Texas Tech.

Campbell and his staff of 21 employees supervise 53 credit unions and 25 savings and loans, as well as collection agencies, endowed care cemeteries and money order licensees. Total assets of the credit unions have risen from $100,662,000 in January, 1977, to $118,248,000 in January, 1978. Total assets of the savings and loans have risen from $756,898,000 in January, 1977, to $987,990,000 in January, 1978.

BERNARD GASSMAN, Deputy Superintendent of Banks, Thrift Institutions Division, New York State Banking Department, Two World Trade Center, New York, New York 10047.

Bernard Gassman's association with the banking industry has been a long one. Employment with a finance company and a commercial bank preceded almost four years as a bank examiner for the Federal Deposit Insurance Corporation. In 1956 Mr. Gassman left the FDIC to accept appointment as an examiner of the New York State Banking Department. He was promoted to Senior Bank Examiner in 1961, Principal Bank Examiner in 1965, Supervising Bank Examiner in 1967, and Deputy Superintendent in 1968, as a result of competitive civil service examinations. Mr. Gassman is a certified financial examiner. In 1977 he was put in charge of the Thrift Institutions Division.

Gassman has a staff of 547, including approximately 300 bank examiners, to help in the supervision of 493 financial institutions, including credit unions, savings banks, savings and loan associations, commercial banks, sale finance companies, and even several foreign banks. Five bank examiners are assigned to supervise credit unions, of which there are approximately 97. Total assets of these credit unions have risen from $414,000,000 in January, 1977, to $457,000,000 in January, 1978.

Gassman reports that in the past year legislation has been enacted in New York authorizing share certificates; loans to credit union organizations; and, if bylaws so provide, appointment of credit and supervisory committees by directors

STATE OF NORTH CAROLINA

ROY D. HIGH, Administrator, Credit Union Division, Dobbs Building, P.O. Box 25249, Raleigh, North Carolina 27611.

Roy High assumed his duties as administrator of the Credit Union Divisio.. in October, 1977. He has been employed with the State of North Carolina for over eighteen years, serving in a variety of positions and departments: Department of Administration, Personnel Analyst and Personnel Supervisor; Department of Agriculture, Accountant; and the Department of Revenue.

High's department is one of 17 divisions within the Department of Commerce. It consists primarily of regulatory agencies and has a staff of twelve. By North Carolina law, the Administrator has broad authority and responsibility for supervising and regulating the management, organization, business practices and operations of credit unions.

High supervises 215 credit unions. Total assets of these amounted to $472,175,796 in December, 1976, and $575,817,580 in December, 1977. By June, 1978, total assets had risen to $630,775,000.

High reports that by the end of 1977, all credit unions had obtained mandatory insurance to cover members' shares and deposits. In addition, new rules and accounting procedures were adopted to strengthen the supervisory and examination process. High also reports that North Carolina has developped, tested, and implemented a modified automated examination system (AES) which will aid in the examination of credit unions with EDP systems.

STATE OF NORTH DAKOTA

LEROY GILBERTSON, Commissioner, 1301 State Capitol, Bismarck, North Dakota 58505.

Leroy Gilbertson would appear to some to be young for the position he holds. However, his experience shows him to be exceptionally qualified for the post. From 1964 to 1968 he worked for Idwest Federal Savings and Loan, where he held two positions as Assistant Appraiser and Assistant Accountant. From 1968 to 1969 he worked for the State of Wisconsin as Supervisor of Assessors. From 1969 through late 1975, he worked at the Bank of North Dakota, where he held a number of offices. From Loan Officer, he was promoted to Assistant Vice President and later to Vice President in charge of the Loan and Correspondent Departments. From late 1975 through June 1977, Gilbertson took a break from the banking industry and served as Finance Specialist for the Basin Electric Power Cooperative in Bismarc. In July, 1977 Gilbertson was appointed to his present position of Commissioner.

Gilbertson and his staff of 22 execute all laws relating to credit unions, state banks, trust companies, building and loan associations, and other financial corporations doing business under the laws of North Dakota. They supervise 75 credit unions, whose total assets rose from $106,869,761 in December, 1976, to $136,498,501 in December, 1977.

Gilbertson reports that during the past year, in order to meet code requirements, a majority of the credit unions in North Dakota have obtained NCUA insurance.

AK. MED.

Bd.

A PERFORMANCE REVIEW
OF THE
ALASKA STATE MEDICAL BOARD

October 30, 1978

A PERFORMANCE REVIEW
OF THE
ALASKA STATE MEDICAL BOARD

October 30, 1978

Commissioner of the Department of Commerce and Economic Development	H. Phillip Hubbard
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Alaska State Medical Board

Chairman	Hilbert J. Hendrickson, MD
Secretary	Janette Anasiak
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Member	Hugh Gellert
Member	Thomas Harrison
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31-G1LH

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU 99801

October 30, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
ALASKA STATE MEDICAL BOARD

October 30, 1978

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Alaska State Medical Board was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Alaska State Medical Board should be reestablished. The law currently specifies that this Board will terminate on June 30, 1979, but will continue until June 30, 1980 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) Interviews with Board members and questionnaires sent to the Board;

(3) Interviews with health agencies and professional association;

(4) Tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) Interviews with OL employees;

(6) Complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency, and the Equal Employment Opportunity Office;

(7) Other states' statutes and regulations; and

(8) Questionnaires sent to persons regulated by the Medical Board.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090.

(2) The Division of Occupational Licensing has not adequately collected, recorded and maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

The State Medical Board is a regulatory board with seven members - five licensed physicians, and two public members with no direct financial interest in the health care industry. It is preferable that the licensed physicians reside in as many separate Alaska judicial districts as possible.

The function of the Board is to determine the minimum quality of medical care in the State by:

1. Examining and issuing licenses to qualified applicants.

2. Establishing or amending rules and regulations necessary and desirable to enforce the statutes of the State.

3. Hold hearings in order to revoke, annul or suspend the license of a person violating the medical statutes and regulations.

The Board regulates the following groups engaged in medical practice in Alaska: physicians, osteopaths, physician assistants (PA's), podiatrists, chiropodists, advanced nurse practitioners (ANP's), and acupuncturists. Most licensing requirements are established by statute. However, statutes have granted power to waive some requirements in favor of conditions concerning special licenses - those by endorsement, those for temporary licensure up to eight months or until the Board meets to consider the application, whichever occurs first, and a temporary locum tenens permit which is valid for 120 consecutive days.

Applicants for registration as a medical practitioner must have passed an examination given by the National Board of Medical Examiners or the Federation of State Medical Boards of the United States. An oral interview is also administered by a member of the Board. Foreign medical graduates who are graduated from medical colleges not recognized by the American Medical Association or one of its agencies must be certified by the Educational Council of Foreign Medical Graduates or be licensed by examination in another state or territory of the United States or a province in Canada.

Licensure by a temporary permit allows a practitioner the opportunity to practice medicine when all other requirements are met. It is renewable only once, thereafter reapplication must be made.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the State Medical Board should be reestablished with consideration given to our recommendations that the Board be reorganized to provide a greater public awareness on the Board.

The practices of medicine, osteopathy, and acupuncture by physicians, osteopaths, paramedics, podiatrists, chiropodists, and physician assistants is regulated by the Alaska State Medical Board. In addition, the Medical Board jointly regulates the practice of medicine by advanced nurse practitioners with the Board of Nursing. Because these occupations affect the public health, safety and welfare, in our opinion they should be subject to regulations and controls. Establishing minimum educational experience requirements provides the public reasonable assurance that persons licensed are qualified. In addition, an active investigation of complaints from the public and other practitioners assures the public that those licensed continue to practice in a competent manner.

In our opinion, these functions are needed for the protection of the public. However, we do not believe the Medical Board has effectively accomplished these functions. We are making recommendations which should be implemented in order for the State Medical Board to effectively serve the Alaska public.

We recommend a reorganization to prevent one occupational group from acting to the detriment of another and to provide a greater assurance that the public's interest is considered (see Recommendation No. 7).

We have recommended that the Board act in a timely manner to pass regulations needed to protect the public. The emergence of the mid-range medical profession has not been effectively handled. After four years, the Board has not passed regulations establishing the qualifications and scope of practice of the mid-range health care practitioner (see Recommendation No. 1).

We have recommended that consumer complaints be examined on the basis of merit. Regulations are needed to define improper business practices engaged in while practicing medicine as a violation of the licensing law. Presently, consumer complaints are either not examined or referred to the Alaska State Medical Association's grievance committees (see Recommendation No. 2).

The Board has not effectively policed the profession. This is primarily due to the fact that the Division of Occupational Licensing (OL) has not provided the required investigations for the Board. However, the Board has powers defined under the Administrative Procedures Act, which could be used to investigate instances involving the threat of life or severe public harm (see Recommendation No. 3).

We have also recommended possible statutory amendments in areas where such changes increase the effectiveness of the Board (see Recommendations No's. 4 and 8).

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 8 are addressed to the State Medical Board. Findings and Recommendations No. 9 and 10 are addressed to the Division of Occupational Licensing (OL) and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978", issued under a separate cover.

Recommendation No. 1

The Alaska State Medical Board should adopt necessary regulations to protect the public in a more timely manner.

In 1974 AS 08.64.107 was passed which required the Board to adopt regulations for physicians' assistants (PA's), establishing their qualifications and scope of activities. In 1973 AS 08.68.410(5) was passed which required the State Medical Board to jointly pass regulations with the State Board of Nursing for advanced nurse practitioners (ANP's). The emergence of these new mid-range practitioners caused confusion in the medical community regarding their role in providing health services. In addition, the Board did not recognize the trained physician's assistant as a health care professional. Some physicians were concerned that the emergence of physicians' assistants as professionals would threaten the existence of the traditional physician-helper or health aide. Defining the role of the physician's assistant and the type of relationship that should exist between him/her and the supervising physician appears to be the primary difficulty of the State Medical Board in passing regulations controlling the minimum qualifications of the physician assistant.

In our opinion, the Board should have passed regulations defining the minimum qualifications of mid-range health practitioners working independently or in an extended relationship from the supervising physicians. Because the Board took over four years to pass these regulations, there are presently persons providing health services who have questionable qualifications to do so. In questionnaires returned by the medical profession, we found: 75% believed PA's are needed, 76% believed ANP's are needed, 89% believed regulations should be established to assure that both PA's and ANP's have obtained technical competency, and 31% were aware of PA's or ANP's that may have not achieved such technical competency (see Appendix E).

The Board on September 22, 1978 proposed regulations which should provide the framework for the mid-range medical professions. This occurred after a Letter of Intent for SB 556 from the Alaska Legislature strongly urged the Board to pass regulations for physicians' assistants (see Appendix B), and after considerable lobbying on the part of both the

profession and concerned members of public and private groups.

The proposed regulations passed for ANP's and PA's have some potential problems:

A) There are inequities in the legal treatment of PA's and ANP's which could place an economic hardship on the physician's assistant. For example, the PA must work under a more restrictive supervision arrangement than the ANP.

B) The Board requires supervising physicians to visit rural clinics every two weeks unless a waiver is granted. If waivers are not freely granted many rural clinics will not be economically feasible, reducing the health care available in rural Alaska.

C) The regulations do not address the prescribing authority for physician's assistants, and the prescribing authority regulations for advanced nurse practitioners are vague. Regulations should specify whether mid-range practitioners are licensed to prescribe drugs and define any limitations on their prescribing authority.

D) The regulations do not address malpractice insurance. The regulations should require physicians' assistants and advanced nurse practitioners to demonstrate, before licensure, that they are covered by the supervising physician insurance policy or that they have obtained malpractice insurance on their own.

E) There is no requirement that the physician assistant identify himself or herself as a physician's assistant rather than as a medical doctor. The Pharmacy Board has noted that this is already a problem because the public at times is unaware that they have seen a physician's assistant rather than a medical doctor.

F) Proposed regulations for physician's assistants attempt to establish a license fee schedule in conflict with AS 08.64.315 in which license fees to be changed are set.

G) Since rural health clinic services are mandatory under Title XIX of the Medicaid regulations and since these clinics are to use the services of PA's and ANP's, if regulations for the qualifications of the PA's and ANP's are not promulgated by the Board, the U. S. Department of Health, Education and Welfare could withhold all or part

of Alaska's Medicaid funding. In FY'79 the Medicaid appropriation is $38,000,000 (see Appendix C).

Legislation may be needed to assure public access to qualified health care practitioners if the problems discussed above are not addressed by the State Medical Board in a timely manner.

Recommendation No. 2

Regulations are needed to ensure that consumer complaints receive an impartial examination on the basis of merit.

Presently only complaints filed by physicians are investigated. Consumer complaints have not been properly examined for merit. The State Medical Board has resolved that all consumer complaints are to be sent to the Alaska State Medical Association's local grievance committees. These committees, composed of local physicians, are informal and have no regulatory powers. Therefore, to assure an impartial review, consumer complaints should not be sent to the Alaska State Medical Association, and the State Medical Board should rescind this resolution.

We recommend the Board establish regulations defining economic actions to be considered improper and not in the best interest of the public. Presently consumer complaints are not examined because they address economic issues. Economic improprieties by licensed persons should be considered unprofessional conduct subject to licensure revocation or disciplinary action by the Board. The licensed person has a greater responsibility for self-restraint because the consumer does not always have the technical knowledge or the ability to make a choice of providers.

Regulations should be established to ensure that improper acts and practices by the profession are considered licensing violations. They should include, but not be limited to:

A. Entering into fee sharing agreements or kick-back arrangements.

B. Refusing to provide services to any group of people or organization based on race, religion, creed or ethnic background.

C. Engaging in false or misleading advertising. The present statute AS 08.64.380 (D) prohibiting advertising is unconstitional based on an Attorney General's opinion and a U.S. Supreme Court decision.

D. Engaging in unfair business practices which are deceptive, fraudulent or not in the best interests of the public's economic welfare.

The auditors were informed that the Board's past action on consumer complaints resulted from the Board's inability to have extremely serious problems investigated by the Division of Occupational Licensing. We agree that the Division has not provided the necessary support, and we also agree that it is better to have the Alaska State Medical Association examine consumer complaints than to have no action taken at all.

A preferred method would be to have an impartial review of complaints made on the basis of merit, regardless of who files the complaint. In a performance review of the Division of Occupational Licensing we have made recommendations which, if implemented, should provide the investigative and clerical support needed to review consumer complaints.

Recommendation No. 3

The State Medical Board needs to more effectively police those persons regulated by the Board.

The Board has not been able to effectively police persons regulated by the Board because they have not received the required investigative support prescribed by AS 08.01.050(19). In a performance review of the Division of Occupational Licensing (OL) we make recommendations which if implemented should provide this support.

During the last 4 years the Board has demanded prompt action on the part of the investigative staff, but they were informed there was insufficient manpower or that the investigators were busy on other cases. The performance review of the Division noted 24 cases classified as life threatening or which pose a severe threat to the public; 14 of these cases had received no investigative action by the Division.

However, the Board is granted substantial authority to investigate and enforce statutes and regulations effecting the Board by the Admisistrative Procedures Act. If proper investigative assistance is not provided, then the Board, in serious cases, should exercise the powers granted to it.

In addition, investigations are hindered by the lack of regulations promulgated by the Board for the enforcement of Medical Board Statutes. The Board should identify violations and penalties for business and professional actions of persons licensed by the Board which are not in the best interest of the Alaska public, as discussed in Recommendation No. 2.

Recommendation No. 4

Hospitals should be required to notify the State Medical Board when a practitioner's hospital privileges are refused or restricted because that person is a real or potential danger to the public. This may require a statutory change.

Under AS 08.64.336 physicians are required to report to the Medical Board any patient who practices medicine and who represents a real or potential danger to the public.

However, there is no requirement for a hospital to report a practitioner who is a possible danger to the public. Because a hospital normally refuses or restricts a practitioner's hospital privileges when a practitioner is a possible danger to the hospital's patients, such restrictions should be reported to the Board for investigation. In some cases, the investigative unit of the Division of Occupational Licensing has not been able to provide a timely investigative effort because they were unaware of existing problems.

If hospitals were to report such actions, the Medical Board could initiate an investigation to determine if a questionable practitioner should retain his license.

Recommendation No. 5

The State Medical Board should establish formal goals, objectives and quantifiable measures which should be included in the OL's budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL establishes its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured, neither the Governor's Office nor the Legislature can evaluate the Board's performance.

In addition, AS 08.64.140 requires that the Board furnish an annual report on the Board's activities for the preceeding year. This has not been done.

Recommendation No. 6

Regulations are needed to enact the continuing education requirements established by statute.

In 1976, the Legislature required the Board to promote a high degree of competency in the practice of medicine by requiring every licensed physician to fulfill continuing education requirements to be established by the board. This is a commendable objective and should be required of all persons who are regulated by the Board.

The Board approved, on September 22, 1978, continuing education requirements. These regulations will not be finalalized until they have been reviewed by the Attorney General and have gone to public hearings. We encourage the Board to enact the regulations proposed to promote continued competency.

In questionnaires returned by the profession, a substantial majority believed continuing education for all occupations should be established. The delay in establishing these regulations does not appear to have had an adverse effect on the qualifications of the profession. Ninety-eight percent (98%) of the practitioners stated they had attended continuing education classes or seminars within the last two years. The average classroom hours attended was 87 (see Appendix E).

Recommendation No. 7

The Board should record oral interviews with applicants seeking licensure.

The Board presently does not record oral interviews with applicants. AS 08.64.255 requires each applicant for a license by endorsement to have an interview in person with at least one Board member. The interview is required to be recorded, and the record preserved. If an applicant is denied licensure on the basis of the interview, he must be so informed in writing.

To protect the rights of the applicant and to assure that possible allegations of improper questions, grading or favoritism can be refuted by the Board, a record of the interview should be made. This record should then be placed into the custody of OL to be preserved.

Recommendation No. 8

A statutory change should be considered which will allow all persons regulated by the Board and the public to be adequately represented on the State Medical Board.

The Board regulates physicians, osteopaths, physician assistants, paramedics, podiatrists, and advanced nurse practitioners. The Board is currently composed of five physicians and two public members.

Allowing participation of all occupations regulated by the Board would ensure that one occupational group does not promote its interests over the interests of a non-represented occupational group. In questionnaires returned by the medical profession, 8% believed the Medical Board discriminated in licensing or investigative actions and 6% believed the Board discriminated in licensing minority groups. Some respondents commented that the Board had discriminated in licensing PA's and ANP's or in licensure of non-United States physicians.

Because the regulations and policies of the State Medical Board have a substantial impact on the health, welfare and ultimately the medical costs paid by the public, the use of additional public members is desirable. Knowledgeable active public members provide a valuable point of view otherwise absent on a board on which a substantial majority of the members are license holders. Public members represent the consumer's view, and are therefore more likely to be concerned with consumer complaints.

To assure uniformity in the practice of medicine in Alaska, it would be desirable to have as a member an advanced nurse practitioner. This person could work as a liaison between the Board of Nursing and the Medical Board. In our examination of the Board's performance, we noted that a formal means of communication between the two Boards will be necessary if there are to be meaningful regulations and continuity in the practice of medicine in Alaska.

In questionnaires returned by the profession 56% believed persons regulated by the Board should be represented, 33% did not, and 11% had no opinion. We asked if the Board had operated in the public's best interest; only 48% said yes, 20% said no, and 32% had no opinion. We asked how the membership of the Board should be structured; 61% wanted a majority of physicians, 31% wanted an equal number of public members and only 6% wanted a majority of public members on the Board.

Recommendation No. 9

The Division of Occupational Licensing should issue licenses only after Alaska State Medical Board approval as required by AS 08.64.130.

Our review of licenses issued between 1975 and 1978 found the Division issued licenses without evidence of Board approval documented in the minutes, or in the licensees' files

as required by statute. Some files were reviewed by two Board members but there is no evidence of Board approval.

The lack of documented Board approval for licensees may raise questions as to the legality of licenses issued. To assure that those persons in possession of non-approved licenses are qualified, we recommend the Board review those licenses and verify their validity.

The Board is required by AS 08.64.130 to preserve a record of all applicants. This function is a Division responsibility which has not been performed. OL should establish procedures to assure that only licensees approved by the Board receive licenses.

Recommendation No. 10

The Division of Occupational Licensing should collect, record and maintain for five year periods files and statistics of license and testing applicants and related workload of the licensing examiner.

The Division needs relevant facts and statistics for evaluating the performance of its personnel and Board activity. Many past records have not been collected and maintained, such as:

1. Number of persons licensed by the Board in past years;

2. Records of those applicants failing the examination;

3. Numbers of applicants denied the chance to take the examination due to lack of qualifications;

4. Number of complaints and criticisms about the performance of the Board and its staff;

5. Correspondence workload of license examiners; and

6. Number of persons requesting applications.

It is to the advantage of the Division to keep these records in order to support its budget request, evaluate its personnel and keep the Board informed as to its progress. Also, feedback from the Board and the public should be encouraged to determine whether staff performance is adequate (see the OL Performance Audit Report).

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative attainments as Board activities relate to the public need factors defined in the "Sunset" law. These analyses are not intended to be comprehensive in nature, but address those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

A. The following demonstrate the Board's performance in the public's best interest:

1. The Board has held an average of 4 meetings a year in various locations in Alaska.

2. In 1974, the Board held public hearings on proposed regulations for phusicians' assistants.

3. The Board provides an examination twice a year for candidates.

4. On Nobember 8, 1975, the Board established regulations for midwives.

B. The following conditions and activities existed which could not be demonstrated to be in the public's best interest:

1. Although the Board held hearings in 1974 on physicians' assistants, no regulations were promulgated. This has raised accusations the Board is functioning in a restrictive manner. In addition, because these regulations were not passed persons with questionable qualifications are practicing medicine (see Recommendation No. 1).

2. In questionnaires returned by the profession, 20% believed the Board has not acted in the public's best interest, although 72% believed the Board was necessary (see Appendix E).

3. There has been no examination of complaints by consumers because AS 08.64.380 does not specify unethical economic or business practices as unprofessional conduct (see Recommendation No. 2 and the OL Performance Audit Report).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource and personnel matters.

A. The following enhanced the performance of the Medical Board.

1) The Board received funding and support from OL in the amount of $43,300 (see Appendix A).

2) The Board believes that they usually receive competent support from the clerical staff of OL (see Appendix D).

B. The following practices have impeded the Board's performance:

1) The Division of Occupational Licensing (OL) has not maintained updated records, files, and statistics for Board use (see Recommendation No. 10 and the OL Performance Audit Report).

2) The Division has not provided necessary investigation required by AS 08.01.025(19); and the Board has not provided regulations covering unethical or improper actions on the part of licensees (see Recommendation No. 3 and the OL Performance Audit Report).

3) One Board member believes the Board needed telephone credit cards to allow members to do Board business without excessive personal cost (see Appendix D).

4) Two Board members believe that having a full-time clerical support position would enhance the Board's performance and that high turnover in the clerical support position has hindered the Board's performance.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The following statutory changes were recommended by the Board:

1) Resolved that AS 08.64.311 be changed to allow relicensure every three years.

2) Resolved that a proposed statute change which would have allowed optometrists to prescribe drugs not be passed.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. Encouragement of persons to report to the Board is demonstrated by the following:

1. In 1974, public hearings were held on the use of PA's in Alaska.

2. Since 1974, extensive testimony and numerous statements have been presented to the Board concerning licensure and regulations for PA's. These include regulations drafted by the Physician's Assistant Academy, regulations drafted by the State Board of Pharmacy, letters from public and private groups and a letter of intent from the Legislature (see Appendix B).

3. In July 1978, the State Board of Nursing presented regulations and testimony to the Medical Board on the need to regulate advanced nurse practitioners.

4. In July 1978, proposed regulations for paramedics were presented with testimony on the need to regulate paramedics. These regulations were approved for public hearings.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

A. The Board's meetings, examinations and public hearings are advertised in newspapers by OL to encourage public participation. In some cases, OL has placed the advertisements for examinations after the deadline to submit an application (see the OL Performance Audit Report).

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

A. One complaint has been filed with the Ombudsman's office concerning the length of time the Board has taken to present regulations for PA's. The complaint was found justified. The Board has approved for public hearings regulations for PA's (see Recommendation No. 1).

B. Public complaints have not been efficiently handled (see Recommendation No. 2 and 3 and the OL Performance Audit Report).

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. The following demonstrate the Board's performance in the past 4 years in presenting qualified applicants, and assuring their continued competence:

1. The Board has issued 220 licenses and 217 temporary licenses since June of 1976.

2. The Board has requested several investigations based on complaints from physicians. In addition, the Board has taken action by way of resolution and discussions wiht OL's personnel in attempts to have investigations pursued (see Recommendation No. 3 and the OL Performance Audit Report).

3. The Board has requested the submission of one licensee's license, and has revoked one temporary license.

4. The Board has demonstrated a liberal policy of licensing by endorseing physicians from other states.

B. The following conditions and activities existed which could not be demonstrated as presenting qualified applicants, and assuring their continued competence.

1. During 1978, there were 14 investigative open files, which should be classified as life threatening or posing a severe threat to the public, that were not investigated by OL (see the OL Performance Audit Report).

2. The Board has resolved to turn over consumer complaints to the Alaska State Medical Association's grievance committees for review. We recommend procedures be established to ensure impartial review of all complaints (see Recommendation No. 2 and the OL Performance Audit Report).

3. The Medical Board was unable to examine a complaint against a PA because the Board had not established standards for PA's performance. The complaint was referred to the Academy of Physician Assistants.

4. The Medical Board did not establish continuing education requirements as required by statute. These regulations have been approved for public hearings.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interst.

A. Applications require unnecessary information such as an applicant's picture, race, and sex. This is a violation of Equal Employment Opportunity requirements (see the OL Performance Audit Report).

B. In questionnaires returned by the profession, there were statements the Board had discriminated in actions with the non-physician occupations regulated, and had discriminated in the licensure of graduates of foreign medical schools (see Appendix E).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

A. The Division of Legislative Audit has recommended a review of the following statutes for possible revision

1. A statutory change for AS 08.64.010 should be considered to allow all occupations regulated by the Board, to be represented on the Board (see Recommendation No. 8).

2. A statutory change for AS 08.64.336 should be considered to require hospitals to report to the Medical Board, when a practitioners hospital privileges are refused or restricted, because that person poses a danger to the public (see Recommendation No. 4).

B. The Division of Legislative Audit recommended the Medical Board consider regulations to protect the public in the following areas:

1. Regulations are needed to assure that mid-range medical persons working in an extended medical role are qualified to do so (see Recommendation No. 1).

2. Regulations are needed to make actions on the part of licensed persons, which are unethical, improper and not in the best interest of the welfare of the public violations of the licensing act (see Recommendation No. 2).

APPENDIXES

APPENDIX A

STATE MEDICAL BOARD
REVENUES COMPARED WITH EXPENDITURES
FISCAL YEAR 1978
(UNAUDITED)

Average Revenue (see Schedule 1 and Note 1)	$39,800
Expenditures (see Note 2)	43,300
Excess of Expenditures over Revenues	($3,500)

Schedule 1
Types of Revenues

Revenues		Amount	Collection Time
Application Fee		$ 25	With application
Examination Fee		125	With application
Endorsement Fee		100	With application
Temporary Permits		25	With issuance of permit
Locum tenens Permits		25	With issuance of permit
Renewal, Active		100	Biennially
Renewal, Inactive		25	Biennially
Reexamination fee:			
(1) Part I	$15		With application
(2) Part II	20		With reapplication
(3) Part III	40	75	With reapplication
(4) Part I & II by individual subject		10	With reapplication

Revenues	Amount	Collection Time
Physician's Assistant (see Note 3)		
Application Fee	$50	With application
Renewal Fee, Active	50	Biennially
Renewal Fee, Inactive	50	Biennially

Note 1

Most of the medical revenues are composed of renewal registration fees. These fees are collected once every two years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in fiscal years 1977 and 1978 in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures included those made by Board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board and OL.

Note 3

This data is not presently effective. It is a segment of proposed regulations with regards to Physicians' Assistants adopted by the Alaska State Medical Board, and is in conflict with the licensing fees established by statutes (see Recommendation No. 1).

APPENDIX B

LETTER OF INTENT FOR SENATE BILL 556

House of Representatives

Committee on

Health, Education & Social Services

"LETTER OF INTENT FOR SENATE BILL 556

Upon review of Senate Bill 556, the House Health, Education & Social Services Committee has been informed that regulations regarding physician assistants have not been promulgated. Although AS 08.64.107 was passed in 1974 requiring the State Medical Board to adopt regulations, and there has been ample time to promulgate them, no regulations have appeared. This Committee strongly urges the State Medical Board, in conjunction with the Division of Occupational Licensing, to adopt regulations regarding the registration of physician assistants in Alaska. Copies of this letter shall be sent to the State Medical Board and the Division of Occupational Licensing.

Charles H. Parr, Chairman
May 1978"

The Finance Committee's letter of intent on SB 556 am appears as follows:

HOUSE FINANCE COMMITTEE
LETTER OF INTENT
FOR
SB 556 am

The House Finance Committee concurs in the Letter of Intent for SB 556 am adopted by the House Health Education and Social Services Committee.

Steve Cowper, Chairman
House Finance Committee

APPENDIX C

LETTER FROM THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; MEDICAID

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGION X
ARCADE PLAZA BUILDING
1321 SECOND AVENUE
SEATTLE, WASHINGTON 98101

HEALTH CARE FINANCING ADMINISTRATION
Medicaid

OCT 6 1978

Keith Busch, CPA
Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Busch:

This is in response to your letter of September 5, 1978. In it you requested an analysis of Alaska's need for regulations regarding qualifications of nurse practitioners and physician assistants under Medicaid. You also asked if there is a possible fiscal impact on Medicaid funds if regulations are not promulgated concerning the practice of these mid-range professionals.

Public Law 95-210 amended Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act to provide payment for rural health clinic services staffed by mid-level professionals, i.e. nurse practitioners and physician assistants. The definitions of nurse practitioners and physician assistants are found in Section 1861 (aa)(3) of the Social Security Act which states "The term 'physician assistant' and the term 'nurse practitioner' mean a physician assistant or nurse practitioner who performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law), and who meets such training, education, and experience requirements (or any combination thereof) as the Secretary may prescribe in regulations."

The minimum qualifications as prescribed by the Secretary are found in 42 CFR 481.2(b) for Nurse Practitioner and 42 CFR 481.2(d) for Physician Assistant and read as follows:

> (b) "Nurse practitioner" means a registered professional nurse who is currently licensed to practice in the State, who meets the State's requirements governing the qualifications of nurse practitioners, and who meets one of the following conditions:
>
> (1) Is currently certified as a primary care nurse practitioner by the American Nurses' Association or by the National Board of Pediatric Nurse Practitioners and Associates; or

(2) Has satisfactorily completed a formal one academic year educational program that:

(i) Prepares registered nurses to perform an expanded role in the delivery of primary care;

(ii) Includes at least four months (in the aggregate) of classroom instruction and a component of supervised clinical practice; and

(iii) Awards a degree, diploma, or certificate to persons who successfully complete the program; or

(3) Has successfully completed a formal educational program (for preparing registered nurses to perform an expanded role in the delivery of primary care) that does not meet the requirements of paragraph (b)(2) of this section, and has been performing an expanded role in the delivery of primary care for a total of 12 months during the 18 month period immediately preceding the effective date of this subpart.

(d) "Physician assistant" means a person who meets the applicable State requirements governing the qualifications for assistants to primary care physicians, and who meets at least one of the following conditions:

(1) Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(2) Has satisfactorily completed a program for preparing physician assistants that:

(i) Was at least one academic year in length;

(ii) Consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(iii) Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(3) Has satisfactorily completed a formal educational program (for preparing physician assistants) that does not meet the requirements of paragraph (d)(2) of this section and has been assisting primary care physicians for a total of 12 months during the 18 month period immediately preceding the effective date of this subpart.

Both the Federal law and regulations make reference to State laws or regulations governing the qualifications of the practitioners as a requirement for certification of Rural Health Clinics.

Since Rural Health Clinic services are mandatory under Title XIX, a question of compliance could be raised if regulations governing the qualifications of the practitioners are not promulgated by the State.

In such a situation the HCFA Administrator pursuant to 45 CFR 201.6(a) could withhold, in whole, or in part, Federal payment made for Title XIX expenditures until the compliance question is resolved.

I understand that the Medical Board and Board of Nursing approved practitioner regulations at their September meeting and that these regulations are currently being processed through the State's hearing and adoption process. In view of this action, we believe the entire issue will be resolved shortly.

If you have any further questions please contact us.

Sincerely,

Carl R. Coggins
for Albert J. Benz
Regional Medicaid Director

APPENDIX D

QUESTIONNAIRE SENT TO BOARD MEMBERS
(see Note 1)

Please answer the following questions as completely as possible. The answers will help us to evaluate the Board's activities.

1. What do you believe to be the goals and objectives of the Medical Board?

   A. To serve the public interest by assuring qualified persons are licensed.

   B. To protect the public through regulating the medical profession.

   C. To stimulate the expansion of medical care in areas of need.

   D. To perform the duties imposed on the Board through legislation.

2. How does the Board measure its progress in meeting its goals and objectives?

   A. There were no known formal methods for measuring the Board's progress or the quality of health care in Alaska.

   The Board members suggested the following measurements:

   B. Measurements of the Board performance be made by observing the quality of the occupation in the State.

   C. The Board's performance could be measured by determining whether regulations that extend medical care are passed.

   D. The Board's performance could be measured by the extent to which it polices the the profession and acts on enforcement cases.

3. Is the staff from the Department of Commerce and/or other departments adequate to perform and enforce all laws and regulations relating to the Medical Board Examiners? What staff support services are provided adequately/inadequately? Are investigations performed adequately/inadequately?

A. Clerical and secretarial support of the Division is commendable.

B. The Board has not received needed investigative support requested.

C. The investigative staff needs to be increased so the Board may take action against serious cases.

4. What evidence exists demonstrating that the absence of medical regulations and/or the Board would be detrimental to the public's best interest?

A. It is the personal conviction of the responding Board members that there is a need to regulate the medical profession.

B. That the public wants the medical profession regulated to provide adequate public protection.

C. The function could be performed by the Division of Occupational Licensing.

D. The fact that the majority of the Board members are physicians raises some question on the impartiality of the Board.

5. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restrictive, and/or inadequate to provide the Board with the responsibility and power to properly govern the purpose and activities of the Board? Please list and explain.

A. Two Board members were unaware of any such statutes.

B. One member believed that temporary licensure as it is presently administered does not provide the Board sufficient time for a background check.

C. One member believed that a licensee should be required to demonstrate he/she has a sufficient grasp of the English language to be able to effectively communicate in the medical community.

6. What changes could be made to the Board which would improve its service to the medical profession and/or the public?

A. Having a majority of the Board members be public members would be beneficial to the public.

B. Establish Board responsibility to the consumer of the medical profession.

C. Board members should have a telephone credit card to offset the personal expense of doing Board business long distance.

7. In your opinion is/are the licensing of the following professionals in the Alaska medical community beneficial to the Alaskan public:

		Number no's	Number Yes's	Number of no response
A.	Physicians' Assistants?	-0-	3	4
B.	Emergency Care Paramedics?	-0-	3	4
C.	Advanced Nurse Practitioners?	-0-	3	4

8. If in your opinion one or more of the above professionals is/are needed:

A. What degree of physician supervision is needed in each case?

1. Physician's Assistant (PA's):

a. A PA should work closely with the supervising physician, with at least bi-weekly on-site supervision.

2. Emergency Care Paramedic:

a. The paramedic should work with the supervising physician or should be in radio contact with him.

3. Advanced Nurse Practitioner (ANP's):

a. ANP's should work closely with the supervising physician, with at least bi-weekly on-site supervision.

b. In one member's opinion, because the ANP had more classroom training, they should be allowed more independence than the PA.

B. What degree of medical responsibility should be assigned to each:

1. Physician's Assistant?

a. Should perform those duties assigned by the supervising physician, within the

scope of practice of the supervising physician.

b. Actions on the part of the PA not in the best interests of the public should be the responsibility of the PA.

2. Emergency Care Paramedic?

a. Should perform life-sustaining measures only under the supervision of a physician. The physician should therefore be considered the responsible party.

3. Advanced Nurse Practitioner?

a. Should perform those duties assigned by supervising physician within the scope of practice of the supervising physician.

b. The ANP is by statute legally responsible for his or her acts.

9. Do you believe there is a conflict of duties or function between the Medical Board and the State-Wide Health Coordinating Council, and/or the Advisory Council on Emergency Medical Services, and/or any other State Board or Council?

A. The members stated that they were unaware of any conflicts of duties or functions.

Note 1

A digest of the Board members comments was prepared by the Auditors. Three of the 7 Board members assisted us by answering our questions, and by supplying us with supplemental information. One Board member believed our questionnaire was subjective and information provided would serve to confuse rather than enlighten. We received no response from three of the members.

APPENDIX E

QUESTIONNAIRE SENT TO REGULATED PERSONS
(see Auditors Notes 1 & 2)

		(See Notes 1 & 2) As a % of Responses		
		Yes	No	No Response
1.	Have you been able to attend any continuing education seminars or classes within the last two years?	98%	1%	1%
2.	If so, how many hours of classes have you had? Average	87		
3.	Do you believe that State laws should require continuing education before the following licenses are renewed:			
	A. Physician Medical?	78%	21%	1%
	B. Physician Assistant?	81%	18%	1%
	C. Osteopathic Physician?	78%	21%	1%
	D. Intensive Care Paramedics?	81%	18%	1%
	E. Practitioners of Podiatry?	72%	21%	1%
4.	Have you ever had any contact with the State Medical Board?	55%	44%	1%
5.	If so, was it concerning:			
	A. applicant interview?	42%	57%	1%
	B. new regulations?	17%	82%	1%
	C. Board policy?	12%	87%	1%
	D. new legislation?	18%	81%	1%
	E. investigations?	6%	93%	1%
	F. other (please specify)?	7%	92%	1%

		(See Notes 1 & 2) As a % of Responses		
		Yes	No	No Response
6.	Do you believe the State Medical Board has operated in the public's best interest?	48%	20%	32%
7.	Would the absence of the Board be detrimental to the public's best interest?	72%	11%	17%
8.	Do you believe the Board should be made up of:			
	A. a majority of physicians?	61%	19%	20%
	B. an equal number of physicians and public members?	31%	27%	42%
	C. a majority of public members?	6%	42%	52%
9.	Do you believe the osteopathic physicians, practitioners of podiatry, physicians assistants and paramedics should be allowed to serve on the Board?	56%	33%	11%
10.	Are there any statutes or regulations that are obsolete, vague, unduly restrictive?	24%	13%	63%
	Please specify: A) Regulations are needed for PA's, and podiatrists. B) Statutes are needed for the improper practice of medicine. C) One should not be required by law to join the State Medical Association to be a member of the AMA.			
11.	Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce?	22%	48%	30%
	Please specify: A) A number of persons believed that OL was to slow in issuing licenses. B) Meetings are not timely announced by OL.			

	(See Notes 1 & 2) As a % of Responses		
	Yes	No	No Response
12. Do you believe that all geographic areas within the State have adequate access to health care?	20%	57%	23%
If no, note areas you believe need more care:			
A) Remote or bush areas need additional care.			
B) PA's and ANP's should be used in rural areas.			
C) All of Alaska has specific specialist shortages.			
13. The Alaska Legislature has provided for the use of physician assistants, advanced nurse practitioners, and required the State Medical Board to adopt regulations regarding the registration and services which could be performed. To this issue, would you please answer the following?			
A. In your opinion, is the use of physician assistants to provide mid-range medical services in the best interest of the Alaska public?	75%	17%	8%
B. In your opinion, is the use of advanced nurse practitioners to provide mid-range medical services in the best interest of the Alaska public?	76%	12%	12%
C. In your opinion, is it necessary to eatablish regulations to assure that physician assistants and advanced nurse practitioners have obtained technical competency?	89%	3%	8%
D. Are you aware of physician assistants or advanced nurse practitioners practicing who may not have technical competency?	31%	52%	17%

		(See Notes 1 & 2) As a % of Responses		
		Yes	No	No Response
	Additional Comments: There was general consensus that PA's and ANP's are needed, but that standards were needed for training and scope of practice. It was also noted that some doctors also lack technical competence but that there are PA's and ANP's who lack technical competence.			
14.	Are you aware of any discriminatory practices involving licensing or investigations of the Board?	8%	81%	11%
15.	In your opinion, is the requirement that an applicant receive not less than a weighted average 75% on the Flex examination too restrictive?	9%	55%	36%

Additional Comments Provided by Respondants:

A) Some Board members lack objectivity, and have a personal conflict of interest in Board dealings with PA's. B) The Board has discriminated in licensing of PA's and ANP's allowing unqualified persons to practice. C) The Board has not pursued actions against Doctors who have been brought before the Board for practicing bad medicine.

Note 1

A digest of comments, provided by the profession, was made by the Auditors. Also, members of the profession supplied us with additional information to be considered in this review.

Note 2

Number of questionnaires sent	192
Number of questionnaires returned	136
Response rate	71%

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED
JAN 11 A.M.
LEGISLATIVE
AUDIT

January 9, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary reports as shown below:

1. Board of Examiners in Optometry
2. Board of Dispensing Opticians
3. Board of Psychologist and Psychological Associate Examiners
4. Board of Chiropractic Examiners
5. Alaska State Medical Board
6. Board of Veterinary Examiners
7. State Physical Therapy Board
8. Board of Pharmacy
9. Board of Nursing
10. Board of Nursing Home Administrators
11. Board of Dental Examiners
12. Alaska Transportation Commission

We view these reviews of agency programs and activities which are specifically subject to termination in a manner different from those made of State departments or agencies. Usually we in the Executive Branch endeavor to respond directly to each finding and recommendation. However, in regard to the Boards and Commissions, the Executive Branch agency during a public hearing shall demonstrate a public need for its continued existence or the discontinuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

The Executive Branch of Alaska Government has made an extensive study of the above Boards and the Alaska Transportation Commission. We are continuing to study those entities, their origin, their present and future potential, and other related subjects in conjunction with Alaska statutes 24 and 44 (Sunset Legislation). As prescribed in AS 44.66.050 one or more legislative hearings are to be held to receive testimony from the public, the Commissioner of the department having administrative responsibility for each, and the members of the Boards or Commission involved. During those hearings we will present our findings and recommendations affecting each of the foregoing Boards and the Alaska Transportation Commission.

Accordingly, we are presenting this in addition to the responses from the Department of Commerce, Department of Law, and the individual Board or Commission members and others on an interim basis.

Sincerely,

Michael Harper
Administrative Assistant
to the Governor

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

December 15, 1978

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Alaska State Medical Board, as submitted by the Division of Legislative Audit.

Recommendation No. 1. Agreed. The division recommends regulations be adopted to protect the public from incompetent practitioners, and practices. A cautious approach should be taken whenever regulations of such great importance to the public and the profession are to be promulgated. We agree there are many potential problems within the proposed regulations. The public hearings brought forth many of these same comments. The Medical Board and the Board of Nursing will consider all public testimony prior to finalizing these regulations. The division will assist the boards in every possible way in order to solve this problem.

Recommendation No. 2. Complaints are not sent to the board until fully investigated and all due process requirements are fulfilled; unless, investigation reveals it is not within the division's jurisdiction but could be possibly handled by the board or a peer review committee. In any case, complaints should always be referred to or filed with the division, not the board. There have been some instances whereby complaints have reached the board prematurely, although in error. Every precaution is being taken to eliminate this in the future. The promulgating of regulations would be one method of handling these problems.

Recommendation No. 3. We agree with the general recommendation. You refer to the review of the division where you make recommendations which if implemented should provide investigative support. Managerial controls and clerical support are valid recommendations and will contribute to this goal.

08-H8LH

Recommendation No. 4. Hospitals should be required to report the loss of hospital privileges to the division for investigation. Upon full investigation, if needed, the matter would be presented to the board.

Recommendation No. 5. Agreed. All boards will be contacted in March or April, 1979 for input into the division's budget for FY 1981. This input will address the board's goals, objectives and financial needs.

Recommendation No. 6. Agreed. The Medical Board agrees with this recommendation and has taken the steps necessary leading to formal adoption of these regulations.

Recommendation No. 7. Agreed. The division will recommend to the board that all statutory requirements will be complied with as a safeguard to the applicant and the board member.

Recommendation No. 8. The present board consists of two public members and five members from the medical profession. Of these five, two are engaged in the practice of internal medicine, and one each in the practice of general practice, ophthalmology, and otolaryngology. We believe the present membership adequately represents the medical profession.

Recommendation No. 9. Agreed. Corrective action was taken at the last meeting of the board to include licensee names in the board minutes. Further issuance of licenses will conform to this recommendation.

Recommendation No. 10. Agreed. Complete reorganization of files and procedures within the agency are expected to be accomplished by the end of calendar year 1979. Some changes have recently been initiated by the agency.

I appreciate the time and efforts expended by your staff.

Yours truly,

H. Phillip Hubbard
Commissioner

Ophthalmology
Diseases and Surgery of the Retina

Thomas J. Harrison, M.D.
A Professional Corporation

3500 LaTouche
Anchorage, Alaska 99504
(907) 277-4151

December 20, 1978

Byron Perkins
Licensing Examiner
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811

Dear Mr. Perkins:

The Legislative Audit (preliminary report) directed to the Board of Medical Examiners has errors which may (should) prove embarrassing to the Division of Legislative Audit if not corrected.

I personally approve of the report and believe it reflects many of my own frustrations developed over four years of Board membership. I am anxious that the report be corrected to aid its final credibility and effectiveness.

Note: Some errors are repeated throughout the report. For brevity they will be mentioned at their most significant place.

Error #1: [Page 5, Third paragraph, lines number 3 and 4.]

The State Medical Board does not regulate Advanced Nurse Practitioners. This is done by the Board of Nursing. The Medical Board, as per Statute 08.68.410 #5 (page 11), shall jointly promulgate regulation only as they pertain to "acts of medical diagnosis, or the prescription of medical therapeutic or corrective measures." Once these regulations are promulgated

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the State Medical Board has no more statutory authority.

This precept is less incorrectly stated on page 6, third paragraph, beginning line 4, but continues to make the error that the Medical Board has continuing statutory authority to regulate Advanced Nurse Practitioners.

Error #2: [Page 8, Under Recommendation #1, Paragraph #2, beginning line #4.]

"Because the Board took over four years to pass these regulations, there are presently persons providing health services who have questionable qualifications to do so."

The present statutes place physician assistants under the direct supervision of a physician AS 08.64.170 (a) (1) "A physician assistant may examine, diagnose or treat persons under the supervision, control and responsibility of either a physician licensed under this chapter or a physician exempted from licensure."

The new regulations will merely regulate practitioners who wish to attain a level of proficiency known as a Physician Assistant. Their job description and proper names are now established giving them job protection. There will remain many people who assist physicians in levels other than the PA. They will remain under AS 08.64.170. If the PA regulations become comprehensive there will be some 300 Native Health Aides

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in violation of the law! The Attorney General's office is now considering this point.

Error #3:

The opinion poll (see Appendix E) described in the report is vague, nonspecific and without description as to sample technique, population selection, statistical methods, etc.

Error #4: Page 9, #B.

The two week visit by a physician to a rural clinic is a Federal Regulation. (See Appendix A).

[Rural Health Clinics: Conditions for Certification
Action Transmitted / HCFA-AT-14 (MMB;MAB) Feburary 8, 1978
Page #2, Second column, line #16.]

As the report pointed out (page 9, #G) the State can loose $38,000,000 if the two week criteria is not met.

In addition, this specific criteria was insisted on by the lay members of the Board (see minutes of 1978 Juneau meeting).

#B coupled with #G indicates a failure to comprehensively read the Federal Regulations.

Error #5: [Page 9, #C.]

The Pharmacy Board has developed comprehensive prescribing regulations which not only will cover PA's and NP's but the inevitable emergence of future midlevel health practitioners.

[Please refer to David Creekman, Regulation writer, for a copy of these Pharmacy Board regulations.]

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Error #6: [Page 9, #D.]

The new malpractice laws have made this item obsolete.

Error #7: [Page 9, #G. Please see Error #4 above.]

Error #8: [Page 10, Recommendation #2.]

"Presently only complaints filed by physicians are investigated." THIS IS SIMPLY NOT TRUE. A call to the Anchorage Division of Occupational Licensing (12/18/78) revealed that many consumer complaints are being investigated. I personally know of one from a lawyer and another from a hospital.

This impression comes from an incomplete review of the Board minutes. On January 14, 1977, as a response to inadequate investigative activities from the Department of Occupational Licensure, the Board suggested using the local grievance committees to investigate consumer grievances by:

> "RESOLVED that all consumer grievances relevant to medical care should be first taken to a specific local medical society grievance committee or the nearest available, for resolution. If the local grievance committee cannot satisfy the problem the consumer should then take it to the State Medical Society Grievance Committee. If no resolution can be found, it should then be presented to the State Medical Board."

However after discussion with Sharon Andrew, Director, the resolution was modified to read (minutes of April 22, 1977):

"RESOLVED that all complaints go through the Department of

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Commerce and Economic Development and all complaints which do not appear to be a licensing violation will be referred to the local grievance committee of the State Medical Association. All actions taken by the department will be reviewed by the Board at the following board meeting."

Error #9: [Page 10, last two paragraphs.
Page 11, last paragraph.]

What statutory authority does the Board have to develop economic regulations for medical care, with the exception of fee splitting?

Error #10: [Page 12, Recommendation N4, paragraph one, 2nd line.]

Is the word "patient" correct here?

Error #11: [Page 15, top two lines.]

By Department of Occupational Licensure direction it was resolved April 7, 1978, "that two members of the Board are sufficient for approving a candidate for licensure." Again an incomplete review of the Board's minutes.

Error #12: [Page 20, VIII, A.]

To protect the public from fake credentials the most important factor is to connect the person with the credentials. A notarized photo is the best way to do this. Of added interest is that in order to assure minority quotas for Federal assistance Race and Sex are now being included on application forms.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
HEALTH CARE FINANCING ADMINISTRATION
WASHINGTON, D.C. 20201

REGULATION

ACTION TRANSMITTAL
HCFA-AT-78-14 (BEB:MAB)
February 8, 1978

TO : STATE ADMINISTRATORS AND OTHER INTERESTED AGENCIES AND ORGANIZATIONS

SUBJECT : Rural Health Clinics: Conditions for Certification

REGULATION REFERENCE : 42 CFR Part 481

ATTACHMENT : Regulations establishing the conditions that rural health clinics must meet in order to be certified as suppliers of services under Medicare and Medicaid.

EFFECTIVE : February 8, 1978. However, comments received by March 27, 1978, will be considered with a view of revising regulations. Send comments to Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P. O. Box 2382, Washington, D.C. 20013.

INQUIRIES TO: Acting Regional Medicaid Directors
Acting Regional Medicare Directors

Administrator
Health Care Financing Administration

[4110-35]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 431—CERTIFICATION OF CERTAIN HEALTH FACILITIES

Rural Health Clinics: Conditions for Certification

AGENCY: Health Care Financing Administration (HCFA), HEW

ACTION: Final rule.

SUMMARY: These regulations establish the conditions that rural health clinics must meet in order to be certified as suppliers of services under Medicare and Medicaid. They implement some of the provisions of the Rural Health Clinic Services Act of 1977 (Pub. L. 95-210) which is effective on March 1, 1978, for Medicare, and on July 1, 1978, for Medicaid. The intent is to increase the availability of medical care and services to residents of rural areas that have a shortage of health manpower.

EFFECTIVE DATE: February 8, 1978. Although notice of proposed rulemaking has been waived, we will welcome written comments, suggestions, or objections received by (45 days) with a view to revising these regulations. Please refer to HSO-47-RC. Agencies and organizations are requested to submit comments in duplicate.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, P.O. Box 2332, Washington, D.C. 20013. Comments will be available for public inspection, beginning approximately 2 weeks after publication, in room 5225 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. 202-245-0950.

FOR FURTHER INFORMATION CONTACT:

Lorraine Kyttle, Health Standards and Quality Bureau, HCFA, Rm. 349, 6401 Security Boulevard, Baltimore, Md. 21235, 301-594-9748.

SUPPLEMENTARY INFORMATION: Many isolated rural communities have not been able to attract or retain physicians and residents of these areas needing medical care must rely on clinics that cannot follow the traditional model of physician delivery of medical services. These clinics are, in many instances, staffed by nurse practitioners and physician assistants who are specially trained to provide medical care traditionally furnished by physicians. Although there is physician supervision, it is often indirect rather than "over-the-shoulder."

The Rural Health Clinic Services Act of 1977 (Pub. L. 95-210, December 13, 1977) extends Medicare and Medicaid coverage for medical services, furnished by a rural health clinic that meets the terms and conditions of the Act, which would otherwise be covered if furnished by a physician or incident to a physician's services.

The regulation sets forth the requirements which a clinic must meet in order to be certified for participation in Medicare or Medicaid. The Department will soon be issuing two more regulations to implement Pub. L. 95-210. One will govern coverage and reimbursement under Medicare, and will become effective for services furnished by a certified rural health clinic beginning March 1, 1978. The other will govern coverage and reimbursement under Medicaid, for which certified rural health clinics become eligible beginning July 1, 1978.

A rural health clinic interested in becoming certified under this regulation can obtain further information and application forms from the State agency responsible generally for certifying providers and suppliers of medical services for participation in Medicare and Medicaid. Typically, this is the State Health Department.

In drafting these regulations, the Department has tried to heed the clear legislative intent that the requirements for these clinics take into account their unique circumstances and be more flexible and less complex than requirements applicable to hospitals and other large institutions. (See House Report 95-548, Part II, p. 10.) The Department intends to implement these regulations in the same spirit.

MAJOR PROVISIONS

1. Location of the clinic. In order to be certified, a clinic must be located in

an area that has been designated by the U.S. Bureau of the Census as rural and has been designated by the Secretary of [illegible] as having a shortage of personal health services or primary medical care manpower. For convenience, the criteria for such designations are summarized in section 481.5 of the regulation, but the governing requirements are not reproduced in their entirety. A rural area is any area not designated as an urbanized area. Anyone who wishes to determine whether an area in question falls within the Bureau of Census criteria could inquire at the nearest public library.

Determinations of shortage areas are made by the Secretary under two alternative provisions. One is section 1302(7) of the Public Health Services Act, for which the responsibility within HEW has been given to the Bureau of Community Health Services, Health Services Administration. The most recent listing of shortage areas under this section was published on October 15, 1976 in volume 41 of the FEDERAL REGISTER, page 45716.

The other provision for designating shortage areas is section 332(a)(1)(A) of the Public Health Services Act, for which responsibility lies with the Bureau of Health Manpower, Health Resources Administration. Designations under this section are set forth at volume 42, page 1583 of the FEDERAL REGISTER (January 10, 1973).

The statute sets forth two "grandfather" provisions, under which a clinic may obtain or retain certification, even if the conditions for being in a rural, shortage area are not met. First, if a facility qualifies as a rural health clinic but the area in which it is located subsequently loses its designation as rural or as a shortage area, the clinic will remain qualified. Second, a private, nonprofit clinic that was operating on July 1, 1977 in a rural area which is not designated as a shortage area, but which the Secretary determines to have an insufficient supply of physicians, can qualify for certification. These two provisions are spelled out in section 481.5 of the regulation.

2. Staffing requirements. The major innovation accomplished by P.L. 95-210 is to provide Medicare and Medicaid coverage for medical services furnished by a qualified physician assistant or nurse practitioner. Although a clinic must still have one or more physicians available to provide medical direction and carry out other specified responsibilities, the clinic's [illegible] may be furnished by a nurse practitioner or physician assistant. [illegible] terms are defined in the regulation. Moreover, every clinic must have at least one nurse practitioner or physician assistant on the staff, irrespective of how many hours a physician, in fact, is present at the clinic. [illegible] is a statutory requirement and [illegible] that rural health clinics can be [illegible] only if the State permits—that [illegible] does not explicitly prohibit—the [illegible] of primary health care by a nurse practitioner or a physician assistant. The clinic staff may also [illegible] health professionals, such [illegible] mid-wives and other nurse [illegible] ers who specialize in a [illegible] of services.

The respective responsibilities of physicians and the physician assistants or nurse practitioners are specified in section 481.8. In brief, a physician must provide medical supervision and guidance for the physician assistant and nurse practitioners, prepare medical orders, and review periodically the services furnished by the clinic. A physician must be present at the clinic for sufficient periods of time to fulfill these responsibilities and must be available at all other times, by direct means of communication, for advice and assistance on patient referrals and medical emergencies. In order to assure the presence of a physician on a regular, but only minimally necessary basis, the regulation requires that a physician be present at the clinic at least once in every two week period, subject to extraordinary circumstances. A clinic operated by a nurse practitioner or physician assistant may satisfy these requirements through agreements with one or more physicians.

In addition to furnishing clinic services, the nurse practitioners and physician assistants participate in developing and administering the clinic's patient care policies, assure proper maintenance of patient records [illegible] arrange for patients to receive [illegible] services not furnished by the [illegible]

In accordance with the [illegible] authorization to establish [illegible] cation and experience [illegible] for nurse practitioners and [illegible] assistants, this regulation [illegible] alternative, minimum credentials [illegible] the definition of those terms. [illegible] are aware that there are gradua[illegible] spe-

Box 386E, SRA
Anchorage, AK 99507

Jan. 4, 1979

JAN 6 1 02 PM '79
OCCUPATIONAL LICENSING

Mr. Byron Perkins, Licensing Examiner
Division of Occupational Licensing
Pouch D
Juneau, AK 99811

Dear Byron:

Despite our recent discussion, I felt that the press of time forces me to pass my comments regarding the Legislative Audit report through you so that they may go simulataneously to Dr. Hendrickson and the Division of Legislative Audit. I would add to Dr. Harrison's Dec. 20th letter, with which I basically concur, the following comments.

1) Page 9, Par. E. I believe the draft regulations for Physicians Assistants do set up penalties for for Physicians' Assistants falsely identifying themselves, and I think a PA posing as a doctor would come under the provision of AS 08.64.360 governing practicing medicine without an appropriate license.

2) It would be helpful to expand on the comment in the second to last paragraph on Page 11 regarding the Board's exercising its powers to investigate.

3) A similar comment would apply to Recommendation No. 7 on Board members' recording interviews.

4) I continue to be strongly opposed to putting representatives of every segment of the medical professions on the Board(Page 14). Such persons, I believe, would tend to view themselves as having been put on the Board mainly to protect the interests of their constituencies. The representation of the public interest would suffer badly from such a move.

5) The analysis of the professional respondents (Last paragraph, Recommendation 8, Page 14) is extremely naive.

6) Page 18, No. V. I think advertising of Board meetings requires considerable improvement. Meetings in Anchorage have been publicized in papers other than in Anchorage and left out of local ones. Often ads are put in the legal notices instead of more noticed places where other state board meetings are advertised.

7) Recommendation No. 2, Page 10. This should be put on our agenda for the next meeting to see whether the Board wants to pass regulations, recommend any necessary statute changes, etc.

I hope I'm not putting too much of a burden on you to distribute this. Thanks for your help.

Regards,

Hubert J. Gellert, Member
State Medical Board

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

January 12, 1979

Members of the
Legislative Budget and Audit Committee:

We have reviewed the Medical Board's responses to the Performance Review of the Alaska State Medical Board dated October 30, 1978. We believe the following clarification of the Board's responses as they relate to our report is needed.

Response Error #1

We do not believe we have made an error. The Board states:

> "The State Medical Board does not regulate Advanced Nurse Practitioners. This is done by the Board of Nursing. The Medical Board, as per Statute 08.68. 410(5) and (9), shall jointly promulgate regulation only as they pertain to "acts of medical diagnosis, or the prescription of medical therapeutic or corrective measures.""

The act of promulgating regulations for Advanced Nurse Practitioners (ANP's) and the Medical Board's sole responsibility for promulgating regulations defining the types of relationships physicians may enter into with ANP's, in our opinion, constitutes authority to regulate ANP's.

Response Error #2

We do not believe we have made an error. The Board states:

> "The present statutes place physician assistants under the direct supervision of a physician AS 08.64.170 (a) (1) "A physician assistant may examine, diagnose or treat persons under the supervision, control and responsibility of either a physician licensed under this chapter or a physician exempted from licensure.""

However, in addition to this statute AS 08.64.107 provides:

> "The Board shall adopt regulations regarding the registration of physician assistants and physician-trained mobile intensive care paramedics and the medical service

that each may perform, including but not limited to (1) the educational and other qualifications (2) the application and registration procedures (3) the scope of activities authorized and (4) the responsibilities of the supervising or training physician."

In our opinion the Medical Board is responsible for providing reasonable assurances that physician assistants are qualified to practice medicine.

We can find no basis for the Board's statement that:

"If the physician assistant regulations become comprehensive there will be some 300 Native Health Aids in violation of the law!"

The term physician assistant is defined under public law 95-210 and Federal Register VOOL 43, No 27 § 481.2(d) as the following:

""Physician assistant" means a person who meets the applicable State requirements governing the qualifications for assistants to primary care physicians, and who meets at least one of the following conditions:
(1) Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or
(2) Has satisfactorily completed a program for preparing physician's assistants that:
(i) Was at least 1 academic year in length;
(ii) Consisted of supervised clinical practice and at least 4 months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care: and
(iii) Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or
(3) Has satisfactorily completed a formal educational program that does not meet the requirements of paragraph (d)(2) of this section and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceeding the effective date of this subpart."

It is our opinion the term physician assistant used in AS 08.64.107 referred to the above defined profession, and that regulations establishing qualifications for the physician assistant would have no effect upon the use of health aids or other "physician-helpers".

Response Error #3

Our questionnaire was sent to approximately 33% of the persons holding active licenses. The sample was drawn by selecting every third item on an alphabetical list provided by Occupational Licensing. In addition, we selected a sample of non-urban physicians, and a sample of physician assistants. Our sample size was 192; 136 were returned giving us a response rate of 71%. We would like to note had we used a statistical sampling with a 90% confidence level and a precission of ± 4% we would only have had to question 70 license holders.

Response Error #4 and Error #7

As noted by the response the physician visit every two weeks to a rural clinic is a Federal requirement for certification. However, the Federal regulation also make provision for less frequent visits in extraordinary circumstances. In discussions with the U. S. Department of Health, Education and Welfare, Region X, personnel we were informed that the economic and physical difficulties of visiting every two weeks to many rural Alaska areas could be considered extraordinary circumstances.

Response Error #5

We concur that the Pharmacy Board acted in a commendable manner in developing comprehensive prescribing regulations in a timely manner. However, there is a legal question whether the Pharmacy Board has legal authority for physicians, physician assistants, and advanced nurse practitioners as regulation of these professions is the responsibility of the Medical Board, and in the case of the ANP's the joint responsibility of the Medical Board and Nursing Board.

Response Error #6

We concur SLA 1978 Chapter 177 removed requirements that health care professionals have malpractice insurance.

Response Error #8

We concur it is the present policy of the Division of Occupational Licensing (OL) to review consumer complaints on the basis of merit. However, during the period under review consumer complaints were not properly examined (see the OL Performance Audit Report).

We reaffirm our recommendation the State Medical Board rescind their resolution to send confidential complaints received from the public to the Alaska State Medical Association, a private organization.

Response Error #9

We were informed by legal council from Legislative Affairs and the Attorney General's Office that the Board has the authority to develop regulations concerning unethical acts, including business practices engaged in in a professional capacity which are deceptive, fraudulent and not in the best interests of the public's economic welfare.

Response Error #10

We believe the word patient is correct. AS 08.64.336 states:

> "A physician who professionally treats a person licensed to practice medicine and surgery or osteopathy in this state for alcoholism or drug addiction, or for mental, emotional or personality disorders, shall report it to the board if he feels that the person may constitute a danger to the health and welfare of his patients or the public if he continues in practice. The report shall state the name and address of the person and the condition found."

Response Error #11

The Board states that they resolved April 7, 1978, "that two members of the Board are sufficient for approving a candidate for licensure."

In our review of the Board's minutes we found they had resolved "that the Division of Occupational Licensing would ascertain that two members of the Board are sufficient for approving a candidate for licensure."

To our knowledge OL did not seek legal advice regarding this resolution. However, our primary concern is that licenses should not be issued by OL without Board approval.

Response Error #12

The Board states:

> "To protect the public from fake credentials the most important factor is to connect the person with the credentials. A notarized photo is the best way to do this."

The Equal Employment Opportunity standards allow the use of a photo, questions on race, sex and ethnic background if it can be demonstrated such information is necessary and not used for discriminatory purposes. We recommend the Board

discuss its identification needs with the Division of Occupational Licensing. In the performance review of OL we have recommended it review all licensing applications to assure that they comply with Equal Employment Opportunity guidelines.

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

STATE OF ALASKA

STATE MEDICAL BOARD

CENTRALIZED LICENSING STATUTE, AS 08.01.

MEDICINE, AS 08.64

REGULATIONS, 12 AAC 40

Department of Commerce & Economic Development

Division of Occupational Licensing

Pouch D

Juneau, Alaska 99811

Printed - January, 1979

CHAPTER 64. MEDICINE

Article
1. State Medical Board (secs 08.64.010-08.64.160)
2. Licensing (secs 08.64.170-08.64.350)
3. Unlawful Acts (sec 08.64.360)
4. Miscellaneous Provisions (secs 08.64.365-08.64.368)
5. General Provisions (secs 08.64.370-08.64.380)

Article 1. State Medical Board.

Section
10. Creation and membership of State Medical Board
20. State Medical Board term of office
30. Substitution of members
40. Removal of members
50. Oath of office
60. Seal
70. Officers
80. (Repealed)
90. Quorum
100. Power of board to adopt regulations
105. Regulation of abortion procedures
107. Regulation of physician assistants and intensive care paramedics
110. Per diem and expenses
120. (Repealed)
130. Board records
140. Annual report to governor
150. (Repealed)
160. Applicability of Administrative Procedure Act

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five licensed physicians, residing in as many separate Alaska judicial districts as possible, and two persons with no direct financial interest in the health care industry. (sec 35-3-82 ACLA 1949; am sec 1 ch 148 SLA 1970; am sec 11 ch 102 SLA 1976)

Sec. 08.64.020. STATE MEDICAL BOARD TERM OF OFFICE. Members shall be appointed for a term of four years, subject to confirmation by a majority of the members of the legislature in joint session, and shall hold office until their successors are appointed and qualified. The terms of the public members of the board shall be staggered so that they do not expire at the same time. (sec 35-3-82 ACLA 1949; am sec 1 ch 148 SLA 1970; am sec 12 ch 102 SLA 1976)

Sec. 08.64.030. SUBSTITUTION OF MEMBERS. (a) If impracticable, a member of the board residing in another judicial district is not obligated to attend meetings of the board.

(b) If a member is unavoidably prevented from attending a meeting of the board, the governor may appoint a substitute examiner to serve pro tem with the same duties and responsibilities as a regular member. (secs 35-3-82, 35-3-84 ACLA 1949; am sec 2 ch 148 SLA 1970)

Sec. 08.64.040. REMOVAL OF MEMBERS. The governor may remove a member of the board for cause. (sec 35-3-84 ACLA 1949)

(7) arrange space for holding examinations;
(8) notify applicants of results of examinations;
(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;
(10) issue duplicate licenses or certificates upon proof of loss of the original and payment of a fee of $2;
(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;
(12) compile and maintain current a register of licenses;
(13) answer routine inquiries;
(14) maintain files relating to individual licensees;
(15) arrange for printing and advertising;
(16) purchase supplies;
(17) employ secretarial help when needed;
(18) perform other services which may be requested by the board;
(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in sec. 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned.

Sec. 08.01.060. APPLICATION FOR LICENSE. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department.

Sec. 08.01.070. ADMINISTRATIVE DUTIES OF BOARDS. Each board shall perform the following duties in addition to those provided in its respective law:

(1) keep minutes and records of all proceedings;
(2) hold a minimum of one meeting each year;
(3) hold at least one examination each year;
(4) request, through the department, investigation of violations of its laws and regulations;
(5) prepare and grade examinations;
(6) pass on qualifications of applicants for examination and license;
(7) forward minutes of meetings to the department within 20 days;
(8) forward results of examinations to the department;
(9) notify the department of meeting dates at least 15 days before meeting.

Sec. 08.01.080. DEPARTMENT REGULATIONS. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;
(2) what is contained in application forms;
(3) how a person applies for an examination or license.

Sec. 08.01.087. POWERS AND DUTIES OF DEPARTMENT. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in sec. 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in sec. 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or

reversing the temporary order is issued or until 15 days after the person receives th notice and has not requested a hr.ring by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 da after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in sec. 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require license by a board listed in sec. 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents.

Sec. 08.01.090. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings held under this chapter, except those under AS 08.01.087(b).

Sec. 08.01.100. LICENSE RENEWAL, LAPSE AND REINSTATEMENT. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

Sec. 08.01.105. PENALTY FOR IMPROPER PAYMENT. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor.

Sec. 08.01.110. DEFINITIONS. In this chapter

(1) "board" includes the boards and commissions listed in sec. 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic developme

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in sec. 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in sec. 10 of this chapter.

CHAPTER 01. CENTRALIZED LICENSING

Section		Section	
10.	Applicability of chapter	80.	Department regulations
20.	Board organization	87.	Powers and duties of department
25.	Public members	90.	Applicability of the Administrative Procedure Act
30.	Quorum	100.	License renewal, lapse and reinstatement
40.	Transportation and per diem	105.	Penalty for improper payment
50.	Administrative duties of department	110.	Definitions
60.	Application for license		
70.	Administrative duties of boards		

Sec. 08.01.010. APPLICABILITY OF CHAPTER. This chapter applies to the

(1) Board of Public Accountancy;
(2) Board of Barber Examiners;
(3) Repealed by sec. 6 ch 32 SLA 1971.
(4) Board of Chiropractic Examiners;
(5) Board of Hairdressing and Beauty Culture Examiners;
(6) Board of Dental Examiners;
(7) Board of Electrical Examiners;
(8) State Board of Registration for Architects, Engineers and Land Surveyors;
(9) State Medical Board;
(10) Board of Nursing;
(11) Board of Examiners in Optometry;
(12) Board of Pharmacy;
(13) Real Estate Commission;
(14) Board of Veterinary Examiners;
(15) Board of Psychologist and Psychological Associate Examiners;
(16) Collection Agency Board;
(17) Board of Welding Examiners;
(18) Board of Marine Pilots;
(19) Board of Dispensing Opticians;
(20) Guide Licensing and Control Board.

Sec. 08.01.020. BOARD ORGANIZATION. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members.

Sec. 08.01.025. PUBLIC MEMBERS. No public members of a board may:

(1) be engaged in the occupation which the board regulates;
(2) be associated by legal contract with a members of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
(3) have a direct financial interest in the occupation which the board regulates.

Sec. 08.01.030. QUORUM. A majority of the membership of a board constitutes a quorum unless otherwise provided.

Sec. 08.01.040. TRANSPORTATION AND PER DIEM. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180.

Sec. 08.01.050. ADMINISTRATIVE DUTIES OF THE DEPARTMENT. (a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;
(2) maintain records and files;
(3) issue and receive application forms;
(4) notify applicants of acceptance or rejection of applicants as determined by the board;
(5) designate dates examinations are to be held and notify applicants;
(6) publish notice of examination;

Sec. 08.64.050. OATH OF OFFICE. Each member shall take an oath of office. The oath shall be filed and preserved in the division of occupational licensing of the department. (sec 35-3-83 ACLA 1949; am sec 1 ch 77 SLA 1969; am sec 1 ch 101 SLA 1974)

Sec. 08.64.060. SEAL. The board shall adopt a seal. (sec 35-3-83 ACLA 1949)

Sec. 08.64.070. OFFICERS. The board shall elect a president and secretary from among its members. The president and secretary may administer oaths. (sec 35-3-83 ACLA 1949; am sec 2 ch 77 SLA 1969)

Sec. 08.64.080. MEETINGS OF THE BOARD.
Repealed by sec 3 ch 59 SLA 1966.

Sec. 08.64.090. QUORUM. Four members of the board constitute a quorum for the transaction of all business properly before the board. (sec 35-3-83 ACLA 1949; am sec 3 ch 148 SLA 1970; am sec 13 ch 102 SLA 1976)

Sec. 08.64.100. POWER OF BOARD TO ADOPT REGULATIONS. The board may prescribe and establish rules and regulations necessary to carry into effect the provisions of this chapter. (sec 35-3-95 ACLA 1949)

Sec. 08.64.105. REGULATION OF ABORTION PROCEDURES. The State Medical Board shall adopt regulations necessary to carry into effect the provisions of AS 11.15.060 and shall define ethical, unprofessional or dishonorable conduct as related to abortions, set standards of professional competency in the performance of abortions and establish procedures and set standards for facilities, equipment and care of patients in the performance of an abortion. (sec 2 ch 103 SLA 1970)

Sec. 08.64.107. REGULATION OF PHYSICIAN ASSISTANTS AND INTENSIVE CARE PARAMEDICS. The board shall adopt regulations regarding the registration of physician assistants and physician-trained mobile intensive care paramedics, and the medical services that each may perform, including but not limited to (1) the educational and other qualifications, (2) the application and registration procedures, (3) the scope of activities authorized, and (4) the responsibilities of the supervising or training physician. (sec 2 ch 101 SLA 1974)

Sec. 08.64.110. PER DIEM AND EXPENSES. The members of the board are entitled to per diem and expenses authorized by law. (sec 35-3-95 ACLA 1949)

Sec. 08.64.120. COVERAGE OF FUNDS AND WARRANTS FOR EXPENSES.
Repealed by sec 3 ch 59 SLA 1966.

Sec. 08.64.130. BOARD RECORDS. The board shall preserve a record of its proceedings, which shall contain the name, age, residence and duration of residence of each applicant for a license, the time spent by him in medical study, the place of medical study, and the year and school from which degrees were granted. The record shall also show whether the applicant was granted a license or rejected. (sec 35-3-84 ACLA 1949)

Sec. 08.64.140. ANNUAL REPORT TO GOVERNOR. The board shall report annually to the governor, furnishing an itemized account of all money received and disbursed, with a complete record of the proceedings of the board for the preceding year. (sec 35-3-84 ACLA 1949)

Sec. 08.64.150. BOND OF SECRETARY-TREASURER. Repealed by sec 28 ch 77 SLA 1969.

Sec. 08.64.160. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT. The board shall comply with the Administrative Procedure Act (AS 44.62)

Article 2. Licensing

Section		Section	
170.	License to practice medicine or osteopathy	272.	Residency and internship
180.	Application for license	275.	Temporary permit for locum tenens practice
190.	Contents of application	280.	Record of license
200.	Qualifications of physician applicants	290.	Examination fee
205.	Qualifications for osteopath applicants	300.	(Repealed)
207.	Qualifications for acupuncture applicants	310.	(Repealed)
209.	Qualifications for podiatry applicants	311.	Biennial license renewal
210.	Examination required	312.	Continuing Education Requirements
215.	Insurance required	313.	Inactive license
220.	Contents of examination and grading	315.	Fees
225.	Foreign medical graduates	320.	Disposition of fees
230.	License granted	325.	Limit or conditions on license; discipline
240.	License refused	330.	Grounds for revocation of license
250.	Licensure by endorsement	332.	Automatic suspension for mental incompetency surrender
255.	Interview required	334.	Voluntary surrender
260.	Re-examination	336.	Duty of physicians to report
270.	Temporary permits	340.	Statement of grounds of refusal or revocation of license
		350.	Certification of revocation

Sec. 08.64.170. LICENSE TO PRACTICE MEDICINE OR OSTEOPATHY. (a) No person may practice medicine, podiatry, osteopathy or acupuncture in the state unless he is licensed under this chapter, except that

(1) a physician assistant may examine, diagnose or treat persons under the supervision, control, and responsibility of either a physician licensed under this chapter or a physician exempted from licensure under sec. 370 of this chapter;

(2) a physician-trained mobile intensive care paramedic may render emergency lifesaving service;

(3) a person licensed under ch. 36 of this title may perform acupuncture in the regular practice of dentistry, subject to the regulations of the Board of Dental Examiners.

(b) Repealed by sec 4 ch 101 SLA 1974.

(c) A chiropodist practicing in the state on May 16, 1972 is exempt from this section.

(d) A podiatrist practicing in the state on March 26, 1976 is exempt from this section, and shall be issued a license without examination if application is made within one year of March 26, 1976. (sec 35-3-81 ACLA 1949; am sec 4 ch 148 SLA 1970; am sec 1 ch 5 SLA 1972; am sec 1 ch 21 SLA 1974; am secs 3, 4 ch 101 SLA 1974; am sec 2 ch 24 SLA 1976)

Sec. 08.64.180. APPLICATION FOR LICENSE. A person who desires to practice medicine, osteopathy or acupuncture in the state shall apply in writing to the department for a license. (sec 35-3-85 ACLA 1949; am sec 1 ch 22 SLA 1960; am sec 4 ch 143 SLA 1968; am sec 3 ch 77 SLA 1969; am sec 2 ch 21 SLA 1974)

Sec. 08.64.190. CONTENTS OF APPLICATION. The application shall state the name, age, residence, the duration of residence, the time spent in medical or osteopathy study, the place, year and school in which degrees were granted, and other information the board considers necessary. The application shall be made under oath. (sec 35-3-85 ACLA 1949; am sec 1 ch 22 SLA 1960; am sec 4 ch 77 SLA 1969)

Sec. 08.64.200. QUALIFICATIONS OF PHYSICIAN APPLICANTS. Except for foreign medical graduates as specified in sec. 225 of this chapter, each physician applicant shall

(1) be of good moral character;

(2) submit a certificate of graduation from a legally chartered medical school accredited by the Association of American Medical Colleges and the Council on Medical Education of the American Medical Association;

(3) submit a certificate from a recognized hospital certifying that the applicant has satisfactorily performed the duties of resident physician or intern for a period of one year;

(4) not have a license to practice medicine in another state, province, or territory which is currently suspended or revoked for disciplinary reasons; and

(5) be a citizen of the United States or be lawfully admitted for permanent residence. (sec 35-3-85 ACLA 1949; am sec 1 ch 22 SLA 1960; am sec 1 ch 18 SLA 1963; am sec 5 ch 77 SLA 1969; am secs 5, 6 ch 148 SLA 1970; am sec 1 ch 85 SLA 1972; am sec 5 ch 101 SLA 1974)

Sec 08.64.205. QUALIFICATIONS FOR OSTEOPATH APPLICANTS. Each osteopath applicant shall meet the qualifications prescribed in sec. 200(1), (4) and (5) of this chapter and shall

(1) submit a certificate of graduation from a legally chartered school of osteopathy approved by the board;

(2) submit a certificate from a hospital approved by the American Medical Association or the American Osteopathic Association

which certifies that he has satisfactorily completed and performed the duties of intern or resident physician for one year;

(3) take the examination required by sec. 210 of this chapter or be certified to practice by the National Board of Examiners for Osteopathic Physicians and Surgeons. (sec 1 ch 56 SLA 1966; am sec 6 ch 77 SLA 1969; am sec 7 ch 148 SLA 1970; am sec 6 ch 101 SLA 1974)

Sec. 08.64.207. QUALIFICATIONS FOR ACUPUNCTURE APPLICANTS. Each acupuncture applicant shall meet all of the qualifications prescribed in sec. 200 of this chapter and shall meet those requirements of experience or education in the practice of acupuncture as may be required by the board. (sec 3 ch 21 SLA 1974)

Sec. 08.64.209. QUALIFICATIONS FOR PODIATRY APPLICANTS. (a) Each applicant who desires to practice podiatry shall meet the qualifications prescribed in sec. 200(1) and (4) of this chapter and shall

(1) submit a certificate of graduation from a legally chartered school of podiatry approved by the board;

(2) take the examination required by sec. 210 of this chapter; the State Medical Board shall call to its aid a podiatrist of known ability who is licensed to practice podiatry to assist in the examination and licensure of applicants for a license to practice podiatry;

(3) meet other qualifications of experience or education which the board may require.

(b) The provisions of secs. 180-190, 220, and 230-380 of this chapter relating to the practice of medicine or osteopathy apply to the application procedure, testing, and practice of podiatry, as appropriate. (sec 3 ch 24 SLA 1976)

Sec 08.64.210. EXAMINATION REQUIRED. (a) The applicant shall take examinations in subjects the board considers necessary, unless excused under provisions of sec. 250 of this chapter.

(b) The application for examination shall be submitted to the board at least 40 days before the examination date. (sec 35-3-85 ACLA 1949; am sec 1 ch 22 SLA 1960; am sec 7 ch 77 SLA 1969; am sec 8 ch 148 SLA 1970)

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person shall maintain insurance issued by the Medical Indemnity Corporation of Alaska against liability to patients for medical malpractice in limits of not less than $200,000 per occurance and $600,000 aggregate liability per year. This requirement is satisifed if a person's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska in the required amounts.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those

specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first. (sec 14 ch 102 SLA 1976)

Sec. 08.64.220. CONTENTS OF EXAMINATION AND GRADING. (a) The board shall make the examination written and oral and sufficient to test the applicant's fitness to practice medicine or osteopathy.

(b) Repealed by sec 27 ch 148 SLA 1970.

(c) The examinations, answers and scores shall be preserved and filed. (sec 35-3-85 ACLA 1949; am sec 1 ch 22 SLA 1960; am secs 8, 9 ch 77 SLA 1969; am secs 9, 27 ch 148 SLA 1970)

Sec. 08.64.225. FOREIGN MEDICAL GRADUATES. Applicants who are graduates of medical colleges not accredited by the American Medical Association or one of its agencies shall meet the requirements of sec. 200(1), (3), (4) and (5) of this chapter and must have passed an examination and be certified by the Educational Council on Foreign Medical Graduates, or be licensed by examination in another state or territory of the United States or province of Canada. (sec 10 ch 77 SLA 1969; am sec 10 ch 148 SLA 1970; am sec 7 ch 101 SLA 1974)

Sec. 08.64.230. LICENSE GRANTED. (a) If the physician applicant passes the examination and meets the requirements of sec. 200 of this chapter, the board shall grant a license to him to practice medicine in the state.

(b) If the osteopath applicant passes the examination and meets the requirements of sec. 205 of this chapter, the board shall grant a license to him to practice osteopathy in the state.

(c) Each license shall be signed by the secretary and president of the board, and have the seal of the board affixed to it. (sec 35-3-85 ACLA 1949; am sec 1 ch 22 SLA 1960; am sec 11 ch 77 SLA 1969)

Sec. 08.64.240. LICENSE REFUSED. If the applicant fails the examination, or is determined by the board to be morally or professionally unfit to practice medicine or osteopathy in this state, or fails to comply with any of the other requirements of this chapter, the board shall refuse to grant the license. (sec 35-3-85 ACLA 1949; am sec 1 ch 22 SLA 1960; am sec 12 ch 77 SLA 1969; am sec 11 ch 148 SLA 1970)

Sec. 08.64.250. LICENSURE BY ENDORSEMENT. The board may waive the examination requirement and license by endorsement if the physician applicant meets the requirements of sec. 200 of this chapter, pays the required fee and has

(1) an active license from a board of medical examiners established under the laws of a state or territory of the United States or a province of Canada issued after thorough examination; or

(2) passed an examination given by the National Board of Medical Examiners or the Federation of State Medical Boards of the United States. (sec 35-3-85 ACLA 1949; am sec 1 ch 22 SLA 1960; am sec 13 Ch 77 SLA 1969; am sec 8 ch 69 SLA 1970; am sec 12 ch 148 SLA 1970)

Sec. 08.64.255. INTERVIEW REQUIRED. All applicants for a license under sec. 250 of this chapter shall be interviewed in person by at least one member of the board before a license will be issued. The interview shall be recorded, and, if the application is denied on the basis of the interview, the denial shall be stated in writing with the reasons for it, and the record shall be preserved. (sec 14 ch 77 SLA 1969; am sec 13 ch 148 SLA 1970)

Sec. 08.64 260. RE-EXAMINATION. (a) If the applicant fails the examination, he may, on the same application and payment of a re-examination fee, take another examination not less than six months nor more than two years after the date of the first examination. If the applicant fails a second examination, he may, after a year or more of further study or training approved by the board, make a new application for licensure.

(b) Applicants failing every portion of the examination shall retake the entire examination and pay the full examination fee.

(c) Applicants failing portions of part I or part II of the examination may retake the portions failed at a prorated fee prescribed in the regulations by the board.

(d) Applicants failing part III of the examination shall retake the entire part at a prorated fee prescribed in the regulations by the board. (sec 35-3-92 ACLA 1949; am sec 15 ch 77 SLA 1969; am sec 14 ch 148 SLA 1970)

Sec. 08.64.270. TEMPORARY PERMITS. (a) The board may issue a temporary permit to an applicant who meets the requirements of sec. 200 or 205 of this chapter and pays the required fee.

(b) A temporary permit is valid for eight months or until the board meets to consider the application, whichever occurs first.

(c) A temporary permit may be renewed at the board's discretion one time only. (sec 35-3-96 ACLA 1949; am sec 16 ch 77 SLA 1969; am sec 15 ch 148 SLA 1970; am secs 2, 3 ch 85 SLA 1972; am sec 8 ch 191 SLA 1974)

Sec. 08.64.272. RESIDENCY AND INTERNSHIP. For the limited purpose of doing residency or internship work, the board may issue a temporary permit to an applicant without examination if the applicant meets the requirements of sec. 200(1) and (2) of this chapter, pays the required fee, and has been accepted by an eligible institution in the state for the purpose of doing residency or internship work. (sec 16 ch 148 SLA 1970)

Sec. 08.64.275. TEMPORARY PERMIT FOR LOCUM TENENS PRACTICE. (a) A member of the board may grant a temporary permit to a physician or osteopath for the purpose of substituting for another physician or osteopath licensed in this state. The permit is valid for 120 consecutive days. If circumstances warrant, an extension of the permit may be granted by the board.

(b) A physician applying under (a) of this section shall pay the required fee and shall meet the requirements of sec. 200 of this chapter. In addition, he shall submit evidence of holding a license to practice medicine in a state or territory of the United States or in a province of Canada.

(c) An osteopath applying under (a) of this section shall pay the required fee and shall meet the requirements of sec. 205 of this chapter. In addition, he shall submit evidence of holding a license to practice in a state or territory of the United States or in a province of Canada.

(d) Within 10 days from the granting of the permit, the board member shall forward the fee to the department with a report of the issuance of the permit. (sec 17 ch 77 SLA 1969; am secs 17-19 ch 148 SLA 1970)

Sec.08.64.280. RECORD OF LICENSE. (a) Before engaging in the practice of medicine or osteopathy, the licensee shall file the license or a certified copy of it with the clerk of the superior court in the judicial district in which he intends to practice medicine. The clerk shall file the certificate in his office and enter a memorandum of it in a book provided for that purpose containing the date of the license, the ground upon which it is issued, and the name and address of the licensee. The certificate and memorandum are open to public inspection.

(b) The clerk shall give the secretary of the board notice of all licenses recorded.

(c) If a licensee moves to another judicial district he shall file his license as provided in (a) of this section.

(d) Proof of failure to file the license is prima facie evidence of a violation of this chapter. (sec 35-3-91 ALCA 1949; am sec 20 ch 148 SLA 1970)

Sec. 08.64.290. EXAMINATION FEE. The examination fee shall be paid at the time of applying for examination. The board may refund the examination fee only if the applicant is unavoidably prevented from making the examination. (sec 35-3-86 ACLA 1949; am sec 18 ch 77 SLA 1969)

Sec. 08.64.300. FEE FOR LICENSE BY RECIPROCITY.
Repealed by sec 19 ch 77 SLA 1969.

Sec. 08.64.310. ANNUAL LICENSE FEE.
Repealed by sec 20 ch 77 SLA 1969.

Sec. 08.64.311. BIENNIAL LICENSE RENEWAL. Licenses shall be renewed biennially. (sec 20 ch 77 SLA 1969; am sec 21 ch 148 SLA 1970)

Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence to the board that continuing education requirements prescribed by regulations adopted by the board have been met.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five-year period. (sec 14 ch 102 SLA 1976)

Sec. 08.64.313. INACTIVE LICENSE. A licensee residing outside Alaska may renew his license as inactive. If he practices intermittently in Alaska, he may not hold an inactive license. (sec 21 ch 148 SLA 1970)

Sec. 08.64.315. FEES. The following fees are imposed under this chapter:

(1) application	$25
(2) license by examination	125
(3) license by endorsement or waiver of examination	100
(4) temporary permit	25
(5) locum tenens permit	25
(6) license renewal, biennial, active	100
(7) license renewal, biennial, inactive	25
(8) license by re-examination	75

(sec 21 ch 77 SLA 1969; am sec 22 ch 148 SLA 1970)

Sec. 08.64.320. DISPOSITION OF FEES. Fees collected by the board shall be deposited in the general fund. (sec 35-3-86 ACLA 1949)

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE: DISCIPLINE. (a) In addition to action under sec 330 of this chapter, upon a finding reason of demonstrated problems of competence, experience, education, or health the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (sec 14 ch 102 SLA 1976)

Sec. 08.64.330. GROUNDS FOR REVOCATION OF LICENSE. (a) A license may be revoked for failure to pay the license renewal fee prescribed in sec. 315 of this chapter. If the fee is not paid within the time provided, the department shall give written notice to the licensee that he is in default. Notice may be served on him personally or by registered mail addressed to his last known residence. If he fails to pay the fee within three months after notice of default, the secretary shall revoke his license on behalf of the board and notify the licensee of the revocation by mail or by personal service of the revocation.

(b) After a hearing, a license may be suspended, limited, revoked or annulled, or the licensee may be reprimanded, censured or disciplined by the board for

(1) unprofessional or dishonorable conduct as defined in sec. 380(3) of this chapter,

(2) professional incompetence, or

(3) a violation of this chapter or a regulation adopted under it. (sec 35-3-89 ACLA 1949; am sec 22 ch 77 SLA 1969; am sec 9 ch 101 SLA 1974)

Sec. 08.64.332. AUTOMATIC SUSPENSION FOR MENTAL INCOMPETENCY OR INSANITY. Notwithstanding AS 44.62.330-44.62.640, if a person holding a license to practice medicine and surgery or osteopathy under this chapter is adjudged mentally incompetent or insane by any final order or adjudication by a court of competent jurisdiction or by voluntary commitment to an institution for the treatment of mental illness, his license shall be automatically suspended by the board. The suspension shall continue in effect until the licensee is found or adjudged by the court to be restored to reason or until he is determined to be restored to reason by a licensed psychiatrist approved by the board. (sec 10 ch 101 SLA 1974)

Sec. 08.64.334. VOLUNTARY SURRENDER. The board, at its discretion, may accept the voluntary surrender of a license. No license may be returned unless the board determines, under regulations established by it, that the licensee is competent to resume his practice. However, no license may be returned to the licensee if the voluntary surrender resulted in the dropping or suspension of civil or criminal charges against the physician. (sec 10 ch 101 SLA 1974)

Sec. 08.64.336. DUTY OF PHYSICIANS TO REPORT. (a) A physician who professionally treats a person licensed to practice medicine and surgery or osteopathy in this state for alcoholism or drug addiction, or for mental, emotional or personality disorders, shall report it to the board if he feels that the person may constitute a danger to the health and welfare of his patients or the public if he continues in practice. The report shall state the name and address of the person and the condition found.

(b) Upon receipt of a report under (a) of this section, the board shall investigate the matter and, upon a finding of reasonable cause, may appoint a committee of three qualified physicians to examine the licensee and report their findings to the board.

(c) If the board finds that the licensee is unable to continue to practice medicine and surgery or osteopathy with reasonable safety to his patients or the public, it shall initiate action to suspend, revoke, limit or condition his license to the extent determined necessary for the protection of the public. (sec 10 ch 101 SLA 1974)

Sec. 08.64.340. STATEMENT OF GROUNDS OF REFUSAL OR REVOCATION OF LICENSE. If the board refuses to issue a license or revokes a license, it shall file a brief and concise statement of the grounds and reasons for the action in the office of the secretary of the board and in the department. The statement, together with the written decision of the board, shall remain of record in the department. (sec 35-3-89 ACLA 1949; am sec 23 ch 77 SLA 1969)

Sec. 08.64.350. CERTIFICATION OF REVOCATION. When a license is revoked, the fact of revocation shall be certified by the secretary of the board to the clerk of the superior court in the judicial district where the license is on file. The clerk shall endorse the fact of revocation and the date of revocation on the face of the license or a certified copy of it which is on file. The same information shall be noted in the registry book provided for in sec. 280 of this chapter. (sec 35-3-94 ACLA 1949; am sec 24 ch 77 SLA 1969)

Article 3. Unlawful Acts.

Section
360. Penalty for practicing without a license or in violation of chapter

Sec. 08.64.360. PENALTY FOR PRACTICING WITHOUT A LICENSE OR IN VIOLATION OF CHAPTER. Except for a physician assistant and a physician-trained mobile intensive care paramedic under sec. 170 of this chapter, a person practicing medicine or osteopathy in the state without obtaining and filing an appropriate license is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $50 nor more than $100, or by imprisonment for not less than 10 days nor more than 90 days, or by both. Evidence that the defendant has failed to file a license with the clerk of the court is prima facie evidence that the defendant is not licensed. Each day of illegal practice is a separate offense. (sec 35-3-93 ACLA 1949; am sec 25 ch 77 SLA 1969; am sec 2 ch 5 SLA 1972; am sec 11 ch 101 SLA 1974)

Article 4. Miscellaneous Provisions.

Section
365. (Repealed)
366. Liability for services rendered by a physician-trained mobile intensive care paramedic
368. (Repealed)

Sec. 08.64.365. PHYSICIANS ACTING UNDER EMERGENCY CIRCUMSTANCES. Repealed by sec 46 ch 102 SLA 1976.

Sec. 08.64.366. LIABILITY FOR SERVICES RENDERED BY A PHYSICIAN-TRAINED MOBILE INTENSIVE CARE PARAMEDIC. No act or omission of a physician-trained mobile intensive care paramedic done or omitted in good faith while rendering emergency lifesaving service to a person who is in immediate danger of loss of life shall impose any liability upon the physician-trained mobile intensive care paramedic, the supervising physician, a hospital, the officers, members of the staff, nurses, or other employees of a hospital or upon a federal, state, borough, city or other local governmental unit or upon other employees of a governmental unit; however, this section does not relieve a physician or a hospital of a duty otherwise imposed by law upon the physician or hospital for the designation or training of a physician-trained mobile intensive care paramedic or for the provision or maintenance of equipment to be used by the physician-trained mobile intensive care paramedic. (sec 14 ch 101 SLA 1974)

Sec. 08.64.368. PERMITS FOR ISOLATED AREAS. Repealed by sec 27 ch 148 SLA 1970.

Article 5. General Provisions.

Section 370. Persons not affected
Section 380. Definitions

Sec. 08.64.370. PERSONS NOT AFFECTED. This chapter does not apply to

(1) officers in the regular medical service of the armed services of the United States or the United States Public Health Service while in the discharge of their official duties;

(2) a physician or osteopath, who is not a resident of this state, who is asked by a physician or osteopath licensed in this state to help in the diagnosis or treatment of a case;

(3) the practice of the religious tenets of a church;

(4) Repealed by sec 13 ch 127 SLA 1974.

(5) a person while serving as a student, intern, resident physician, or fellow at a hospital, clinic, or medical facility in the state;

(6) a physician in the regular medical service of the United States Public Health Service or the armed services of the United States volunteering his services without pay or other remuneration to a hospital, clinic, medical office, or other

medical facility in the state. (sec 35-3-97 ACLA 1949; am sec 4 ch 93 SLA 1965; am sec 26 ch 77 SLA 1969; am secs 23, 24 ch 148 SLA 1970; am secs 1,2 ch 88 SLA 1972; am sec 13 ch 127 SLA 1974)

Sec. 08.64.380. DEFINITIONS. As used in this chapter

(1) "board" means the State Medical Board;

(2) "practice of medicine" or "practice of osteopathy" means

(A) maintaining an office or place of business for the purpose of treating the sick or injured for pay; or

(B) the public display of one's name and the letters "M.D.", "M.B." or "D.O." or the words "physician" or "osteopath" or "osteopathic physician", or "osteopathic surgeon", or "osteopathic physician and surgeon", or a specialist designation such as "surgeon" or "dermatologist", "psychiatrist", or the like; or

(C) the assumption or promulgation of a title which tends to show that the person is willing or qualified to diagnose or treat the sick or injured; or

(D) for a fee prescribing, directing or recommending for the use of a person, a drug or medicine for the treatment, cure or relief of a disease, infirmity, bodily injury or defect; or

(E) for a fee performing a surgical operation for the cure, relief or reduction of disease, bodily injury, deformity, or defect; or

(F) Repealed by sec 1 ch 117 SLA 1971.

(3) "unprofessional or dishonorable conduct" means

(A) a violation of the provisions of AS 11.15.060 or regulations lawfully adopted by the State Medical Board concerning abortion procedures and practice;

(B) habitual overuse of alcoholic beverages or depressant, hallucinogenic or stimulant drugs, as defined in AS 17.12.150(3), or addiction to the use of drugs as defined under AS 17.10.230(13);

(C) conviction of an offense involving moral turpitude;

(D) advertising professional services to the public except for notice of opening, closing, or removing practice, and except for directories listing physicians in a community on a uniform and nondiscriminatory basis, containing only factual, truthful descriptions of physicians and their services;

(E) making untruthful or fraudulent statements in the application for examination, or deceiving or cheating during the examination for license, or procuring a license by deceit or fraud;

(F) violating the Controlled Substances Act, (P.L. 91-513; 84 Stat. 1242) or any other federal law pertaining to medical practice and drugs;

(G) violating the principles of medical ethics of the American Medical Association and of the Alaska State Medical Association;

(4) Repealed by sec 27 ch 148 SLA 1970.

(5) "department" means Department of Commerce;

(6) "acupuncture" means a medical practice to cure disease or relieve pain, alter function or induce anesthesia by piercing portions of the body with needles;

(7) "physician-trained mobile intensive care paramedic" means a person who

(A) has successfully completed the advanced first aid course prescribed by the board;

(B) is trained by a licensed physician

(i) to carry out all phases of cardiopulmonary resuscitation,

(ii) to administer drugs under written or oral authorization of a licensed physician; and

(C) has been examined and certified as a physician-trained mobile intensive care paramedic by the board or by the board's designated representatives;

(8) "emergency lifesaving service" means medical assistance given to a person whose physical condition, in the opinion of a reasonably prudent person, is such that his life is endangered.

(9) "practice of podiatry" means the medical, mechanical, and surgical treatment of ailments of the foot, the muscles and tendons of the leg governing the functions of the foot, and superficial lesions of the hand other than those associated with trauma; the use of preparations, medicines, and drugs as are necessary for the treatment of these ailments; the treatment of the local manifestations of systemic diseases as they appear in the hand and foot, except that

(A) a patient shall be concurrently referred to a physician or osteopath for the treatment of the systemic disease itself;

(B) general anaesthetics may be used only in colleges of podiatry approved by the State Medical Board and in

hospitals approved by the joint commission on the accreditation of hospitals, or the American Osteopathic Association, and

(C) the use of X ray or radium for therapeutic purposes is not permitted. (secs 35-3-94, 25-3-38 ACLA 1949; am sec 27 ch 77 SLA 1969; am sec 3 ch 103 SLA 1970; am secs 25-27 ch 148 SLA 1970; am sec 9 ch 32 SLA 1971; am sec 1 ch 117 SLA 1971; am sec 4 ch 85 SLA 1972; am sec 4 ch 21 SLA 1974; am secs 12, 13 ch 101 SLA 1974; am sec 1 ch 127 SLA 1975; am sec 4 ch 24 SLA 1976)

TITLE 12. PROFESSIONAL AND VOCATIONAL REGULATIONS

CHAPTER 40. STATE MEDICAL BOARD

Article
1. Licensing (12 AAC 40.101 - 12 AAC 40.050)
2. Abortions (12 AAC 40.060 - 12 AAC 40.140)
3. General Provisions (12 AAC 40.150 - 12 AAC 40.160)

ARTICLE 1. LICENSING

Section
10. License by endorsement
20. License by examination
30. Re-examination fees
40. Recognized hospital
50. Biographical data required

12 AAC 40.010 LICENSE BY ENDORSEMENT. An applicant for license by endorsement shall submit evidence satisfactory to the board that he has passed an examination in the medical and basic science subjects. (Eff. 12/20/70, Register 36)

Authority: AS 08.64.250

12 AAC 40.020 LICENSE BY EXAMINATION. (a) The written examination will be the FLEX examination administered in Alaska.

(b) The oral examination required under AS 08.64.220 will be given in conjunction with the written examination.

(c) An applicant for license by examination must attain a FLEX weighted average of not less than 75% on his examination. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.100
AS 08.64.220

12 AAC 40.030 RE-EXAMINATION FEES. The following fees will be charged for re-examination where applicable:

(1) Part I. $15

(2) Part II 20

(3) Part III. 40

(4) Part I and II by individual subject . . 10
(Eff. 12/20/70, Register 36)

Authority: AS 08.64.260

12 AAC 40.040 RECOGNIZED HOSPITAL. For the purpose of AS 08.64.200(3) a recognized hospital is one which has been approved for internship or residency training by the Council on Medical Education of the American Medical Association or the Canadian Medical Association. (Eff. 12/20/70, Register 36)

Authority: AS 08.64.100
AS 08.64.200

12 AAC 40.050. BIOGRAPHICAL DATA REQUIRED. (a) The department will request biographical data from the American Medical Association on each applicant for licensure by examination or endorsement, and no application will be considered complete until the form entitled "Biographical Data on Physicians" is on file.

(b) The department will request data from the United States Department of Justice, Bureau of Narcotics and Dangerous Drugs, on each applicant for licensure by examination or endorsement, and no application will be considered complete until the report is on file. (Eff. 8/29/73, Register 47)

Authority: AS 08.64.190

ARTICLE 2. ABORTIONS

Section
60. Termination of pregnancy
70. Informed consent
80. Medical procedures
90. Evaluation
100. Consultation requirements
110. Abortion procedures
120. Standards for hospitals and facilities
130. Records
140. Limitation

12 AAC 40.060 TERMINATION OF PREGNANCY. Termination of pregnancy must be requested by the pregnant woman, unless she has been adjudged mentally incompetent or is unmarried and under eighteen years of age, in which case the request must be made by her parent or guardian. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 11.15.060(a)(3)
AS 08.64.105

12 AAC 40.070. INFORMED CONSENT. Unless otherwise provided in section 60, a written informed consent shall be obtained from the patient or from any other person whose consent is required before termination of a pregnancy. Such written informed consent shall be on the patient's chart. The patient and other persons whose consent is required shall be advised of the medical implications and the possible emotional and physical

sequelae of the procedure. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.080. MEDICAL PROCEDURES. The patient shall be examined by a physician licensed in Alaska, and a written record of the patient's physical and emotional health shall be prepared before performing an abortion procedure as set out in section 110 of this chapter. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.090. EVALUATION. The attending physician shall make an evaluation of the patient and an estimation of the duration of gestation based upon the patient's history, examination and test results. This information shall be recorded on the patient's chart. (Eff. 12/20/70, Register 36)

Authority: AS 08.64.105

12 AAC 40.100. CONSULTATION REQUIREMENTS. Abortions interrupting a pregnancy up to and including the twelfth week of gestation may be performed without consultation. Abortions performed after the twelfth week of gestation shall be preceded by consultation with another physician. The consultation shall include an opinion as to the preferred method of termination of pregnancy. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.110. ABORTION PROCEDURES. During the second or third trimester of a pregnancy, acceptable procedures include dilitation and curettage, suction aspiration of the uterus, injection of pharmacological agents, hysterectomy and hysterotomy. The exact procedure to be used will depend upon the patient's total health, age, associated disease and pathology, and anomalies such as skeletal defects and other medical indications. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.120. STANDARDS FOR HOSPITALS AND FACILITIES. (a) During the second or third trimester of a pregnancy, abortions shall be performed under sterile conditions. A bed and a registered nurse shall be available for a minimum recovery period of one-half hour. A registered nurse shall be present during the procedure.

(b) During the second or third trimester of a pregnancy, blood, blood derivatives, blood substitutes or plasma expanders shall be immediately available when an abortion is performed, and an operating room appropriately staffed and equipped for major surgery in accordance with regulations adopted under AS 18.20.060 shall be immediately available. (Eff. 12/20/70,

Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.130. RECORDS. During the second or third trimester of a pregnancy, the attending physician shall record a medical history, findings of the physical examination, operative report of the abortion procedure and pathology report as part of the clinical record to be maintained by the hospital or facility. The physician and hospital or facility shall treat the patient's identity and medical record as confidential information. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.140. LIMITATION. A fetus which has not developed beyond 150 days after the first day of the last menstrual period may be considered non-viable for purposes of AS 11.15.060(a). In the performance of an abortion after that date, the physician shall be guided by a reasonable judgment as to whether the fetus is viable in fact. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 11.15.060(a)
AS 08.64.105

ARTICLE 3. GENERAL PROVISIONS

Section
150. Professional incompetence
160. Definitions

12 AAC 40.150. PROFESSIONAL INCOMPETENCE. As used in AS 08.64.330(b), "professional incompetence" means lacking in sufficient knowledge or skills or both, in that field of practice in which the physician concerned engages, to a degree likely to endanger the health of his patients. (Eff. 8/29/73, Register 47)

Authority: AS 08.64.330(b)

12 AAC 40.160. DEFINITIONS. In this chapter:

(1) "department" means Department of Commerce;

(2) "pharmacological agents" means saline, glucose, prostaglandins and pitocin;

(3) "board" means State Medical Board;

(4) "FLEX examinations" means the written examinations prepared by the Federation of State Medical Boards of the United States. (Eff. 8/29/73, Register 47)

Authority: AS 08.64.100

(Standard application)

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
STATE MEDICAL BOARD
POUCH D
JUNEAU, ALASKA 99811

PROCEDURE FOR OBTAINING A LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF ALASKA

GENERAL INSTRUCTIONS: All copies of documents must be certified by a Notary Public to be true copies of the original documents. Copies no larger than 8 1/2" by 11" are preferred. Your application and supporting credentials will be returned if they are not complete and in proper form. Non-citizens must have permanent resident status in the United States. All applicants for licensure must be interviewed by a member of the Medical Board prior to licensure. (List of Board members is enclosed.) If you have previously received a temporary permit, your interview for the permit may serve as your interview for permanent licensure. If you have previously received a locum tenens permit and decide to apply for permanent licensure, your interview for the permit may serve as your interview for permanent licensure at the discretion of the Board member who issued your permit.

FOREIGN MEDICAL GRADUATES: You must either (1) be certified by the Educational Commission for Foreign Medical Graduates (ECFMG) or (2) be licensed by examination in a state or territory of the United States or a province of Canada. In addition, you must have completed a full year in an internship or residency program approved by the American Medical Association or the Canadian Medical Association. If you meet the foregoing requirements you may be licensed on substantially the same basis as graduates of U. S. and Canadian medical schools. Please follow the applicable licensing procedure below. Note that all copies of foreign-language credentials must be certified by a Notary Public and must be accompanied by certified translations by a recognized translator. If you hold the ECFMG certificate, you must submit a certified copy for permanent filing. Once your application is complete it will be reviewed by the Medical Board.

LICENSURE BY EXAMINATION: The State Medical Board offers the Federation Licensing Examination (FLEX) twice yearly in June and December on dates established by the Federation of State Medical Boards. You must take the examination in Alaska; you cannot be proctored by another state. FLEX is a three day examination and consists of the following: Part I - Anatomy, Physiology, Biochemistry, Microbiology, Pharmacology and Pathology; Part II - Medicine, OB-Gyn, Pediatrics, Preventive Medicine and Public Health, Psychiatry and Surgery; Part III - Clinical Competence. A booklet describing the examination is available upon request. Applications for examination must be complete and on file 40 days in advance of the examination date. The following items must be on file:

1. Completed application - including items 1 through 33
2. Certified copy of your medical school diploma.
3. Certified copy of your certificate internship or residency.
4. Verification of the status of your license in all states, territories or provinces to which you hold or have held licenses. Three forms are enclosed. A sheet listing the addresses of all state boards of medical examiners is also enclosed for your use.
5. Fee: $150 - includes a nonrefundable $25 application fee and $125 examination fee.

AMA Biographical Data and Narcotics clearance - Upon receipt of your application this office will request a review of your credentials through the AMA and clearance from the Drug Enforcement Administration. This review takes approximately a month.

-Over-

08-449 (Rev. 7/75)

DO NOT SUBMIT YOUR APPLICATION UNTIL IT IS COMPLETE. Once your application has been approved you will receive an admittance card which lists the date, time and location of the examination and your State Identification Number. This card must be surrendered to the monitor at the time of your examination. A FLEX weighted average of 75% is required to pass the exam. Upon successful completion of the exam and oral interview, your permanent certificate will be awarded.

LICENSURE BY ENDORSEMENT: The State Medical Board may waive their written examination and license you by endorsement if you either (1) hold an active license issued after examination in a state or territory of the United States or a province of Canada or (2) are a Diplomate of the National Board of Medical Examiners or have passed the Federation Licensing Examination with a FLEX weighted average of 75%. The following items must be on file:

1. Completed application - including items 1 through 34. NOTE: #34 must be completed. In order for you to be eligible for waiver of our examination, we must have evidence that you were examined in the clinical and basic sciences. The verification of licensure form is not acceptable in lieu of #34.
2. Certified copy of your medical school diploma.
3. Certified copy of your certificate of internship or residency.
4. Verification of the status of your license in all states, territories or provinces in which you hold or have held licenses. Three forms are enclosed. A sheet listing the addresses of all state boards of medical examiners is also enclosed for your use.
5. Fee: $125 - includes a nonrefundable $25 application fee and $100 endorsement fee.

AMA Biographical Data and Narcotics clearance - Upon receipt of your application this office will request a review of your credentials through the AMA and clearance from the Drug Enforcement Administration. This review takes approximately a month, and as a result it will be to your advantage to submit your application well in advance of the date you intend to start practicing to ensure that this office has adequate time to request the review. If any part of your application is incomplete at the time you intend to start practicing, it will be necessary for you to apply for a temporary permit. The Board will not review your application until all necessary information has been received.

DO NOT SUBMIT YOUR APPLICATION UNTIL IT IS COMPLETE. Once it has been approved and you have been interviewed and recommended for licensure by a member of the Board, your permanent certificate will be awarded.

TEMPORARY PERMIT: Any member of the Medical Board may issue you a temporary permit providing you intend to apply for permanent licensure by examination or endorsement. Temporary permits are issued as a courtesy to allow you to practice while you are completing your application for permanent licensure. Board members interview all candidates for temporary licensure and require that the following be submitted:

1. Certified copy of your medical school diploma.
2. Certified copy of your certificate of internship or residency.
3. Fee: $25 - cannot be credited toward fees for permanent licensure.

PLEASE NOTE: (1) If you are applying for examination your permit will remain valid until the results of the first examination for which you are scheduled are available. If you fail to take the first examination for which you are scheduled, your permit will automatically be revoked on the day of the examination. (2) If you are applying for endorsement your permit will remain valid for eight months or until the Board meets to consider your application, whichever occurs first.

LOCUM TENENS PERMIT: Any member of the Medical Board may issue you a locum tenens permit which will allow you to provide temporary coverage for a physician licensed in Alaska. Board members interview all candidates for such permits and require that the following be submitted:

1. Certified copy of your medical school diploma.
2. Certified copy of your certificate of internship or residency.
3. Certified evidence of current licensure in a state or territory of the U. S. or a province of Canada. Evidence of current licensure must be in the form of a renewal certificate or the like unless your original certificate has just been issued and you have not been required to renew it.
   Fee: $25.

PLEASE NOTE: Your locum tenens permit will remain valid for 120 consecutive days. If circumstances warrant the Board may grant an extension. Obtaining a locum tenens permit does not obligate you to apply for permanent licensure.

GENERAL INFORMATION: Once your license has been issued it must be filed with the Clerk of the Superior Court in the judicial district in which you intend to practice. Should you move to another district it must again be filed as above.

All permanent licenses must be renewed by December 31 of even-numbered years. Initial licensing fees are not related to renewal fees, and your license will remain valid only until the renewal following issuance. Notification of the necessity to renew will be mailed to each licensee approximately 30 days before the renewal date. Failure to receive a renewal notice is not considered an excuse for nonrenewal. A license which is not renewed by the due date lapses. In order to reinstate a license which remains lapsed for more than 60 days, a $10 penalty fee must be submitted along with the renewal fee. Fees are as follows: $100 - active renewal; $25 - inactive, out of state renewal. You must reside and practice outside Alaska to be eligible for inactive renewal. If you practice in state intermittently you must renew on an active basis. Should you renew on an inactive basis and subsequently come to Alaska to practice, you must activate your license by payment of a $75 fee.

NOTE: It is illegal to practice on a lapsed license. It is your responsibility to keep this office advised of your current address at all times to enable us to send renewal notices to you.

FOR INFORMATION ON PRACTICE OPPORTUNITIES PLEASE CONTACT: Alaska State Medical Association, 1135 West 8th Avenue, Anchorage, Alaska 99501.

08-481

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
Pouch "D"
Juneau, Alaska 99811

STATE MEDICAL BOARD

I HEREBY APPLY for a license to practice medicine and surgery in the State of Alaska by EXAMINATION ( ), by ENDORSEMENT ( ).

THIS APPLICATION MUST BE COMPLETED IN FULL. If any section does not apply, please write N/A in the space provided. TYPE OR PRINT ALL INFORMATION.

IF APPLYING FOR LICENSURE BY ENDORSEMENT, upon what State or Provincial License or Certificate do you base this application?_____
Certificate No._____issued effective_____

1. Name in full_____S.S. No._____
2. Mailing address_____Zip Code_____
3. Residence address_____Zip Code_____
4. Place of birth_____Date of birth_____Age_____
   Are you a citizen of the U. S.? Yes ( ), No ( ). If yes, by birth_____, by naturalization_____. If no, what is your status?_____
5. PREMEDICAL EDUCATION

Name of School	Location	Month	Year	Month	Year
_____		From_____		to_____	
_____		From_____		to_____	
_____		From_____		to_____	

   Did you receive a degree from any of the above mentioned colleges or universities? Yes ( ), No ( ). If so, give name of institution_____
   _____, title of degree_____date of degree_____

6. MEDICAL EDUCATION

Name of School	Location	Month	Year	Month	Year
_____		From_____		to_____	
_____		From_____		to_____	
_____		From_____		to_____	

   Graduated from_____Exact date on diploma_____
7. List all states, territories and foreign countries in which you hold or have held licenses_____
8. Are you currently applying for a license to practice medicine and surgery in any other state? Yes ( ), No ( ). If so, give details_____
   _____
9. What is your specialty?_____Board eligible____
   Board certified____.

10. Where did you complete your internship? (Give name and address of hospital and period of service_____

_____

11. Where did you complete your residency? (Give name and address of hospital and period of service_____

_____

12. Have you ever served as a staff member in any hospital? Yes ( ), No ( ). If so, give name and address of hospital and period of service_____

_____

13. To what county, district or state medical societies have you belonged? (If you have never been a member of a society, indicate reasons below. If you are or have been a member of a society, #33 must be completed.)

Name_____ Address_____

Name_____ Address_____

Name_____ Address_____

14. Do you hold a license in any of the other healing arts? Yes ( ), No ( ).

15. Have you ever taken the Alaska Medical Board Examination? Yes ( ), No ( ). If so, give details_____

16. Have you ever served in the Armed Forces? Yes ( ), No ( ). If so, Date of commission_____ Date of discharge_____

17. Are you suffering from any ailment communicable to others? Yes ( ), No ( ).

If any of the following answers are yes, explain fully in a signed affidavit.

	YES	NO
18. Have you ever been called before any state board for interrogation concerning any violation of the Medical Practice Act or unethical conduct?.....	( )	( )
19. Have you ever been denied a certificate by, or the privilege of taking an examination before any State Medical Board?.....	( )	( )
20. Have you ever had a license to practice medicine revoked or suspended?.....	( )	( )
21. Have you ever been charged or convicted of a violation of a U.S. or State Statute, excluding minor traffic violations?.....	( )	( )
22. Have you ever been addicted to or excessively used alcohol, narcotics, barbiturates or habit-forming drugs?.....	( )	( )
23. Are you now or have you ever been emotionally or mentally ill?....	( )	( )
24. Have you ever been treated for mental or emotional illness, drug addiction or inebriety?.....	( )	( )
25. Have you ever applied for and been denied a Narcotic Tax Stamp?...	( )	( )
26. Have you ever surrendered your Narcotic Tax Stamp?.....	( )	( )
27. Have you ever been charged with or convicted of a violation of any Federal or State Narcotic laws?.....	( )	( )
28. Have you ever made an offer to compromise in connection with the Harrison Narcotic Law or any Narcotic Law?.....	( )	( )

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29. If you are currently residing outside Alaska, when do you anticipate establishing your practice in the State?_____.

30. Have you decided upon a location for your practice? Yes ( ), No ( ). If so, where?_____.

I HEREBY CERTIFY that the information contained in this application is true and correct to the best of my knowledge. I further certify that all credentials supplied by me are true and correct and that the photograph which appears below is a true likeness of myself taken within the past sixty days. I understand that any false information or falsification of credentials may result in failure to obtain a license to practice medicine and surgery in the State of Alaska.

ATTACH PHOTOGRAPH
No larger than 3" x 3"

_____
Signature of applicant

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of_____

_____this_____day of

_____, 19_____.

_____
Notary Public

_____
My Commission expires

NOTARY SEAL

31. CERTIFICATE OF MORAL CHARACTER

THIS CERTIFIES that I have been personally acquainted with_____ _____for_____years and that I know him to be of good moral character, not addicted to the use of habit-forming drugs or intemperance, and I recommend him to the Board of Medical Examiners, State of Alaska, as being entirely worthy to be licensed to practice medicine in Alaska pursuant to law.

Name_____

Address_____

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of_____, this_____day of_____, 19___.

_____
Notary Public

NOTARY SEAL

_____
My Commission expires

32. CERTIFICATE OF DEAN OF MEDICAL SCHOOL - I HEREBY CERTIFY that the degree, Doctor of Medicine, was conferred upon_____, dated_____by_____School of Medicine.

_____
Signature of Dean

SCHOOL SEAL

Date_____

OVER

33. CERTIFICATE OF ETHICAL AND MORAL CHARACTER FROM PRESIDENT OR SECRETARY OF COUNTY, DISTRICT OR STATE MEDICAL SOCIETY.

I HEREBY CERTIFY that Dr._____of_____ _____is or has been a member in good standing of the _____medical society and that he is an ethical practitioner and of good moral character.

_____
President or Secretary

SOCIETY SEAL
(If society has no seal, notarization must be completed.)

Address_____

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of _____, this_____day of_____, 19_____.

_____
Notary Public

NOTARY SEAL

_____
My Commission expires

---

34. ENDORSEMENT CERTIFICATION: If completed by the National Board of Medical Examiners or the Federation of State Medical Boards - delete those portions which you are unable to certify.

I,_____Secretary of_____

certify that_____was granted License or Certificate No._____effective_____. I further certify that_____after written examination before this Board obtained a general average of_____percent, (Passing grade _____) in the following subjects: (Subjects and grades must be stated in full.)

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

I further certify that the applicant's License or Certificate is current and that there are not now nor have there ever been charges or complaints filed against the holder of said License or Certificate, and that so far as the records in this office show, he is of good moral character and worthy of professional recognition and licensure by endorsement to practice medicine and surgery in the State of Alaska.

_____
Signature of Secretary

BOARD SEAL

Date_____

34. CERTIFICATE OF DEAN OF MEDICAL SCHOOL - I HEREBY CERTIFY that the degreem Doctor of Medicine, was conferred upon _____, dated _____ by _____ School of Medicine.

SCHOOL SEAL

_____
Signature of Dean

_____
Date

08-480

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
STATE MEDICAL BOARD
POUCH D
JUNEAU, ALASKA 99811

Sir: VERIFICATION OF LICENSURE

I am applying for a certificate to practice medicine and surgery in the State of Alaska. The State Medical Board requires that this form be completed by each jurisdiction in which I hold or have held licenses. Please complete the form and return it to me at the address below. Thank you.

Name_____

Address_____

_____

PLEASE DO NOT DETACH

. . . . . .

State of_____

Name of Licensee_____

Graduate of_____

License No._____issued effective_____

By reciprocity/endorsement_____by examination_____

License is current_____lapsed_____

Has the applicant's license ever been suspended or revoked?_____If so, for what reason?

_____

Derogatory information, if any_____

Comments, if any_____

_____

Signed_____

[BOARD SEAL]

Title_____

State Board_____

Date_____

08-480

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
STATE MEDICAL BOARD
POUCH D
JUNEAU, ALASKA 99811

Sir:

VERIFICATION OF LICENSURE

I am applying for a certificate to practice medicine and surgery in the State of Alaska. The State Medical Board requires that this form be completed by each jurisdiction in which I hold or have held licenses. Please complete the form and return it to me at the address below. Thank you.

Name_____

Address_____

_____

PLEASE DO NOT DETACH

. . . . . .

State of_____

Name of Licensee_____

Graduate of_____

License No._____issued effective_____

By reciprocity/endorsement_____by examination_____

License is current_____lapsed_____

Has the applicant's license ever been suspended or revoked?_____If so, for what reason?

_____

Derogatory information, if any_____

Comments, if any_____

_____

Signed_____

[BOARD SEAL]

Title_____

State Board_____

Date_____

Board or Commission	Appointee	Term

STATE MEDICAL BOARD
AS 08.64 - 7 members; 4 year term; serves until new member is appointed and qualified

Jeffrey A. Partnow SR 3, Box 31473 Fairbanks, Alaska 99701	November 6, 1980
Thomas J. Harrison, MD 3500 LaTouch, Suite 250 Anchorage, Alaska 99501 333-4513 (home) 277-4151 (work)	July 8, 1980
Thomas Stengl, MD Box 1059 Auke Bay, Alaska 99821 586-7466 (work) 789-0805 (home)	January 12, 1980
Hilbert J. Henrickson, MD (Chairman) 3612 N. Tongass Ave. Ketchikan, Alaska 99901 225-5858 (home) 225-5146 (work)	April 21, 1982
Winthrop Fish, MD 1249 Bannister Anchorage, Alaska 99504	April 21, 1981
Mrs. Janette Adasiak 108 6th Street Juneau, AK 586-6273 (Home)	[redacted]
Hugh Gellert Box 386 E. SRA Anchorage, Alaska 99507 344-3240 (home) 272-4922 (work)	January 19, 1981

STATE BOARDS OF MEDICAL EXAMINERS

ALABAMA	P.O. Box 946 Montgomery 36102
ALASKA	Dept. of Commerce Div. of Occupational Licensing, Pouch D Juneau 99801
ARIZONA	810 W. Bethany Home Road Phoenix 85103
ARKANSAS	P.O. Box 102 Harrisburg 72432
CALIFORNIA	Room 434 1020 N Street Sacramento 95814
CANAL ZONE	Health Director Balboa Heights 00101
COLORADO	715 Republic Bldg. 1612 Tremont Place Denver 80202
CONNECTICUT	79 Elm Street Hartford 06115
DELAWARE	Room 233 Jesse S. Cooper Bldg. Dover 19901
D. C.	Dept. of Economic Dev. Room 114 614 H Street, N.W. Washington 20001
FLORIDA	901 Los Olas Bldg. 305 S. Andrews Ave. Fort Lauderdale 33301
GEORGIA	116 Pryor Street, S.W. Atlanta 30303
GUAM	Guam Memorial Hospital P.O. Box AX Marianas Islands Agana 96910
HAWAII	P.O. Box 3469 Honolulu 96801
IDAHO	407 W. Bannock Street Boise 83702
ILLINOIS	628 E. Adams Street Springfield 62786
INDIANA	1375 West 16th Street Indianapolis 46202
IOWA	910 Insurance Exchange Bldg. 505 Fifth Street Des Moines 50309
KANSAS	292 New Brotherhood Bldg. Kansas City 66101
KENTUCKY	3532 Ephraim McDowell Drive Louisville 40205
LOUISIANA	621 Hibernia Bank Bldg. New Orleans 70112
MAINE	222 Main Street Waterville 04901
MARYLAND	201 W. Preston St., 5th floor Baltimore 21201
MASSACHUSETTS	1511 Leverell Saltonstall Bldg. 100 Cambridge Street Boston 02202
MICHIGAN	1033 S. Washington Street Lansing 48926
MINNESOTA	203 Minn. State Bank Bldg. 200 S. Robert Street St. Paul 55107
MISSISSIPPI	P.O. Box 1700 Jackson 39205
MISSOURI	P.O. Box 4 Jefferson City 65101
MONTANA	LaLonde Building Helena 59601
NEBRASKA	Lincoln Bldg., 2nd floor 1003 O Street Lincoln 68508
NEVADA	1281 Terminal Way, #211 Reno 89502
NEW HAMPSHIRE	61 S. Spring Street Concord 03301

NEW JERSEY	28 W. State Street Trenton 08625
NEW MEXICO	210 E. March St., Ste 10 Santa Fe 87501
NEW YORK	99 Washington Avenue Albany 12210
NORTH CAROLINA	Suite 214 222 N. Person Street Raleigh 27601
NORTH DAKOTA	P.O. Box 1198 Bismark 58501
OHIO	21 West Broad Street Columbus 43215
OKLAHOMA	730 United Founders Tower Oklahoma City 73112
OREGON	1002 Loyalty Bldg. 317 S. W. Alder Portland 97204
PENNSYLVANIA	P.O. Box 2649 Harrisburg 17120
PUERTO RICO	P.O. Box 3271 San Juan 00904
RHODE ISLAND	104 Health Dept. Bldg. 75 Davis Street Providence 02908
SOUTH CAROLINA	1315 Blanding Street Columbia 29201
SOUTH DAKOTA	711 North Lake Avenue Sioux Falls 57104
TENNESSEE	1826 Clinch Avenue, S.W. Knoxville 37916
TEXAS	900 Southwest Tower 211 E. 7th Street Austin 78701
UTAH	330 East Fourth South Salt Lake City 84111
VERMONT	2 Park Street Barre 05641
VIRGIN ISLANDS	Charlotte Amalie St. Thomas 00801
VIRGINIA	200 Professional Bldg. Portsmouth 23704
WASHINGTON	P.O. Box 649 Olympia 98504
WEST VIRGINIA	State Office Building 1800 Washington St. Charleston 25305
WISCONSIN	201 E. Washington Ave. Madison 53702
WYOMING	State Office Building Cheyenne 82002

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
STATE MEDICAL BOARD
POUCH D
JUNEAU, ALASKA 99811

PROCEDURE FOR OBTAINING A LICENSE TO PRACTICE PODIATRY IN THE STATE OF ALASKA

GENERAL INSTRUCTIONS: All copies of documents must be certified by a Notary Public to be true copies of the original documents. Copies no larger than 8 1/2" by 11" are preferred. Your application and supporting credentials will be returned if they are not complete and in proper form. Non-citizens must have permanent resident status in the United States. All applicants for licensure must be interviewed by a member of the Medical Board prior to licensure. (List of Board members is enclosed.) If you have previously received a temporary permit, your interview for the permit may serve as your interview for permanent licensure. If you have previously received a locum tenens permit and decide to apply for permanent licensure, your interview for the permit may serve as your interview for permanent licensure at the discretion of the Board member who issued your permit.

LICENSURE BY ENDORSEMENT: The State Medical Board may waive their written examination and license you by endorsement if you are a Diplomate of the National Board of Podiatry Examiners. The following items must be on file:

1. Completed application - including items 1 through 33.
2. Certified copy of your medical school diploma.
3. An original or certified copy of your score report from N.B.P.E.
4. Verification of the status of your license in all states, territories or provinces in which you hold or have held licenses. Three forms are enclosed.
5. Fee: $125 - includes a nonrefundable $25 application fee and $100 endorsement fee.

LICENSURE BY EXAMINATION: Applications for examination must be complete and on file 40 days in advance of the examination date. The Following items must be on file:

1. Completed application - including items 1 through 33
2. Certified copy of your medical school diploma
3. Verification of the status of your license in all states, territories or provinces in which you hold or have held licenses. Three forms are enclosed.
4. Fee: $150 - includes a nonrefundable $25 application fee and $125 examination fee.

TEMPORARY PERMIT: Any member of the Medical Board may issue you a temporary permit providing you intend to apply for permanent licensure by examination or endorsement. Temporary permits are issued as a courtesy to allow you to practice while you are completing your application for permanent licensure. Board members interview all candidates for temporary licensure and require that the following be submitted.

1. Certified copy of your medical school diploma.
2. Fee: $25 - cannot be credited toward fees for permanent licensure.

PLEASE NOTE: (1) If you are applying for examination your permit will remain valid until the results of the first examination for which you are scheduled are available. (2) If you are applying for endorsement your permit will remain valide for eight months or until the Board meets to consider your application, whichever occurs first.

LOCUM TENENS PERMIT: Any member of the Medical Board may issue you a locum tenens permit which will allow you to provide temporary coverage for a podiatrist licensed in Alaska. Board members interview all candidates for such permits and require that the following be submitted:

1. Certified copy of your medical school diploma.
3. Certified evidence of current licensure in a state or territory of the U.S. or province of Canada. Evidence of current licensure must be in the form of a renewal certificate of the like unless your original certificate has just been issued and you have not been required to renew it.
4. Fee: $25

PLEASE NOTE: Your locum tenens permit will remain valid for 120 consecutive days. If circumstances warrant the Board may grant an extension. Obtaining a locum tenens permit does not obligate you to apply for permanent licensure.

GENERAL INFORMATION: Upon receipt of your application this office will request clearance from the Drug Enforcement Administration. This review takes approximately a month, and as a result it will be to your advantage to submit your application well in advance of the date you intend to start practicing to ensure that this office had adequate time to request the review. If any part of your application is incomplete at the time you intend to start practicing, it will be necessary for you to apply for a temporary permit. The Board will not review your application until all necessary information has been received. DO NOT SUBMIT YOUR APPLICATION UNTIL IT IS COMPLETE. Once your application is complete and you have been interviewed and recommended for licensure by a member of the Board your file will be ready for Board review at their next scheduled meeting. Meetings are held every 3 - 4 months.

Once your license has been issued it must be filed with the Clerk of the Superior Court in the judicial district in which you intend to practice. Should you move to another district it must again be filed as above.

All permanent licenses must be renewed by December 31 of even-numbered years. Initial licensing fees are not related to renewal fees, and your license will remain valid only until the renewal following issuance. Notification of the necessity to renew will be mailed to each licensee approximately 30 days before the renewal date. Failure to receive a renewal notice is not considered an excuse for nonrenewal. A license which is not renewed by the due date lapses. In order to reinstate a license which remains lapsed for more than 60 days, a $10 penalty fee must be submitted along with the renewal fee. Fees are as follows: $100 - active renewal; $25 - inactive, out of state renewal. You must reside and practice outside Alaska to be eligible for inactive renewal. If you practice in state intermittently you must renew on an active basis. Should you renew on an inactive basis and subsequently come to Alaska to practice, you must activate you license by payment of a $75 fee.

PLEASE NOTE: It is illegal to practice on a lapsed license. It is your responsibility to keep this office advised of your current address at all times to enable us to send renewal notices to you.

08-481

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
Pouch "D"
Juneau, Alaska 99811

STATE MEDICAL BOARD

I HEREBY APPLY for a license to practice podiatry in the State of Alaska by EXAMINATION ( ), by ENDORSEMENT ( ).

THIS APPLICATION MUST BE COMPLETED IN FULL. If any section does not apply, please write N/A in the space provided. TYPE OR PRINT ALL INFORMATION.

1. Name in full_____S.S. No._____
2. Mailing address_____Zip Code_____
3. Residence address_____Zip Code_____
4. Place of birth_____Date of birth_____Age_____
   Are you a citizen of the U. S.? Yes ( ), No ( ). If yes, by birth_____, by naturalization_____. If no, what is your status?_____
5. PREMEDICAL EDUCATION

   Name of School Location Month Year Month Year

   _____From_____to_____
   _____From_____to_____
   _____From_____to_____

   Did you receive a degree from any of the above mentioned colleges or universities? Yes ( ), No ( ). If so, give name of institution_____, title of degree_____date of degree_____
6. MEDICAL EDUCATION

   Name of School Location Month Year Month Year

   _____From_____to_____
   _____From_____to_____
   _____From_____to_____

   Graduated from_____Exact date on diploma_____
7. List all states, territories and foreign countries in which you hold or have held licenses_____
8. Are you currently applying for a license to practice medicine and surgery in any other state? Yes ( ), No ( ). If so, give details_____
   _____
9. Do you have a specialty?_____

. Where did you complete your internship? (Give name and address of hospital and period of service_____

_____

. Where did you complete your residency? (Give name and address of hospital and period of service_____

_____

. Have you ever served as a staff member in any hospital? Yes ( ), No ( ). If so, give name and address of hospital and period of service_____

_____

. To what county, district or state medical societies have you belonged? (If you have never been a member of a society, indicate reasons below. If you are or have been a member of a society, #33 must be completed.)

Name_____Address_____

Name_____Address_____

Name_____Address_____

4. Do you hold a license in any of the other healing arts? Yes ( ), No ( ).

5. Have you ever taken the Alaska Medical Board Examination? Yes ( ), No ( ). If so, give details_____

6. Have you ever served in the Armed Forces? Yes ( ), No ( ). If so, Date of commission_____Date of discharge_____

7. Are you suffering from any ailment communicable to others? Yes ( ), No ( ).

f any of the following answers are yes, explain fully in a signed affidavit.

	YES	NO
8. Have you ever been called before any state board for interrogation concerning any violation of the Podiatry Practice Act or unethical conduct?.....	( )	( )
9. Have you ever been denied a certificate by, or the privilege of taking an examination before any State Medical Board?.....	( )	( )
0. Have you ever had a license to practice medicine revoked or suspended?.....	( )	( )
1. Have you ever been charged or convicted of a violation of a U.S. or State Statute, excluding minor traffic violations?.....	( )	( )
2. Have you ever been addicted to or excessively used alcohol, narcotics, barbiturates or habit-forming drugs?.....	( )	( )
3. Are you now or have you ever been emotionally or mentally ill?....	( )	( )
4. Have you ever been treated for mental or emotional illness, drug addiction or inebriety?.....	( )	( )
5. Have you ever applied for and been denied a Narcotic Tax Stamp?...	( )	( )
6. Have you ever surrendered your Narcotic Tax Stamp?.....	( )	( )
7. Have you ever been charged with or convicted of a violation of any Federal or State Narcotic laws?.....	( )	( )
8. Have you ever made an offer to compromise in connection with the Harrison Narcotic Law or any Narcotic Law?.....	( )	( )

---

9. If you are currently residing outside Alaska, when do you anticipate establishing your practice in the State?_____

0. Have you decided upon a location for your practice? Yes ( ), No ( ). If so, where?_____

I HEREBY CERTIFY that the information contained in this applicat is true and correct to the best of my knowledge. I further certify that credentials supplied by me are true and correct and that the photograph which appears below is a true likeness of myself taken within the past sixty days. I understand that any false information or falsification of credentials may result in failure to obtain a license to practice Podiatry in the State of Alaska.

ATTACH PHOTOGRAPH
No larger than 3" x 3"

_____
Signature of applicant

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of_____

_____this_____day of

_____, 19_____.

_____
Notary Public

_____
My Commission expires

NOTARY SEAL

31. CERTIFICATE OF MORAL CHARACTER

THIS CERTIFIES that I have been personally acquainted with_____

_____for_____years and that I know him to be of good moral character, not addicted to the use of habit-forming drugs or intemperance, and I recommend him to the Board of Medical Examiners, State of Alaska, as being entirely worthy to be licensed to practice Podiatry in Alaska pursuant to law.

Name_____

Address_____

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of_____, this_____day of_____, 19___.

_____
Notary Public

NOTARY SEAL

_____
My Commission expires

32. CERTIFICATE OF DEAN OF PODIATRY SCHOOL - I HEREBY CERTIFY that the degree, Doctor of Podiatry, was conferred upon_____, dated_____by_____School of Podiatry.

_____
Signature of Dean

SCHOOL SEAL

Date_____

OVER

33. CERTIFICATE OF ETHICAL AND MORAL CHARACTER FROM PRESIDENT OR SECRETARY OF COUNTY, DISTRICT OR STATE MEDICAL SOCIETY.

I HEREBY CERTIFY that Dr._____of_____
_____is or has been a member in good standing of the
_____medical society and that he is an ethical practitioner and of good moral character.

_____
President or Secretary

SOCIETY SEAL
(If society has no seal, notarization must be completed.)

Address_____

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of _____, this_____day of_____, 19_____.

_____
Notary Public

NOTARY SEAL

_____
My Commission expires

08-480

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
STATE MEDICAL BOARD
POUCH D
JUNEAU, ALASKA 99811

VERIFICATION OF LICENSURE

I am applying for a certificate to practice podiatry in the State of Alaska. The State Medical Board requires that this form be completed by each jurisdiction in which I hold or have held licenses. Please complete the form and return it to me at the address below. Thank you.

Name_____

Address_____

_____

PLEASE DO NOT DETACH

. . . . . .

State of_____

Name of Licensee_____

Graduate of_____

License No._____issued effective_____

By reciprocity/endorsement_____by examination_____

License is current_____lapsed_____

Has the applicant's license ever been suspended or revoked?_____If so, for what reason?

_____

Derogatory information, if any_____

Comments, if any_____

_____

Signed_____

[BOARD SEAL]

Title_____

State Board_____

Date_____

08-480

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
STATE MEDICAL BOARD
POUCH D
JUNEAU, ALASKA 99811

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Address_____

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PLEASE DO NOT DETACH

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State of_____

Name of Licensee_____

Graduate of_____

License No._____issued effective_____

By reciprocity/endorsement_____by examination_____

License is current_____lapsed_____

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_____

Derogatory information, if any_____

Comments, if any_____

_____

Signed_____

[BOARD SEAL]

Title_____

State Board_____

Date_____

08-480

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DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
STATE MEDICAL BOARD
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State of_____

Name of Licensee_____

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By reciprocity/endorsement_____by examination_____

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Has the applicant's license ever been suspended or revoked?_____If so, for what reason?

_____

Derogatory information, if any_____

Comments, if any_____

_____

Signed_____

[BOARD SEAL]

Title_____

State Board_____

Date_____

*Section 1. AS 08.64.270(c) is amended to read:

(a) The board may issue a temporary permit to an applicant who meets the requirements of § 200 [OR] , 205 or 209 of this chapter.

*Section 2. AS 08.64.250 is amended to read:

Sec. 08.64.250. LICENSURE BY ENDORSEMENT. The board may waive the examination requirement and license by endorsement if the physician or podiatry applicant meets the requirements of § 200 or 209 of this chapter, pays the required fee and has

(1) an active license from a board of medical examiners established under the laws of a state or territory of the United States or a province of Canada issued after thorough examination; or

(2) passed an examination given by the National Board of Medical Examiners or the Federation of State Medical Boards of the United States or , in the case of a podiatry applicant , the National Board of Podiatry Examiners.

*Section 3. AS 08.64.360 is amended to read:

Sec. 08.64.360. PENALTY FOR PRACTICING WITHOUT A LICENSE OR IN VIOLATION OF CHAPTER. (a) Except for a physician assistant and a physicina-trained mobile intensive care paramedic under § 170 of this chapter, a person practicing medicine or osteopathy in the state without obtaining and filing an appropriate license is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 [$50] nor more than $500 [$100], or by imprisonment for not less than 10 days nor more than 90 days, or by both. Evidence that the defendant has failed to file a license with the clerk of the court is prima facie evidence that the defendant is not licensed. Each day of illegal practice is a separate offense.

(b) Any person , who practices or attempts to practice , or who holds himself out as practicing any system or mode of treating the sick or afflicted in this state , or who diagnoses , treats , operates for , or prescribes for any ailment , blemish , deformity , disease , disfigurement , disorder , injury or other mental or physical condition of any person , without having at the time of so doing a valid unrevoked or suspended license , authorization or certificate as privided in this chapter , or without being authorized to perform such acts pursuant to a license , authorization or certificate obtained in accordance with some other provision of law , is guilty of a misdemeanor .

*Section 4. AS 08.64.390(3)(G) is amended to read:

(3)(G) violating the principles of medical ethics of the American Medical Association , excepting that association's prohibitions against advertising , and of the Alaska State Medical Association.

*Section 5. AS 08.64.380(5) is amended to read:

(5) "department" means the Department of Commerce and Economic Development.

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ALCOHOL
BEV. CON.
BOARD

A PERFORMANCE REVIEW OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

November 3, 1978

A PERFORMANCE REVIEW
OF THE
ALCOHOLIC BEVERAGE CONTROL BOARD

November 3, 1978

Commissioner of the Department of Revenue	Sterling Gallagher
Deputy Commissioner of the Department of Revenue	John R. Messenger
Acting Deputy Commissioner of the Department of Revenue	Pete Bushre

Members of the
Alcoholic Beverage Control Board

Chairman	Timothy G. Middleton
Member	Elvin Elkins
Member	Albert P. Adams
Member	Robert J. Gonze
Member	John Kohler

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

November 3, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
ALCOHOLIC BEVERAGE CONTROL BOARD

November 3, 1978

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

1-Q1LH

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Alcoholic Beverage Control Board was conducted to determine whether there is a demonstrated need to continue liquor regulation in its present form. To determine that need we reviewed Board activities to see if the Board has been operating in an efficient and effective manner.

AS 44.66.010(1) specifies that the Alcoholic Beverage Control Board will terminate on June 30, 1979 but will continue until June 30 of the following year for the purpose of concluding its affairs. This report shall be considered during the legislative oversight function in determining whether the Board should be allowed to terminate, be reestablished in its present form or be reestablished in a modified form.

Scope

The major areas reviewed were the Board's program, licensing, enforcement, administration and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and regulations;

(2) Questionnaires sent to Board members;

(3) Interviews with, and questionnaires to, ABC Board employees;

(4) Interviews with and reports by the consulting attorney for the Alaska Code Revision Commission;

(5) Tests of records and documents of the Alcoholic Beverage Control Board;

(6) Tests of records and documents of the Office of the Governor on appointments to the ABC Board;

(7) Questionnaires to Alaska law enforcement agencies;

(8) Questionnaires to 1978 Alaska Municipal League Members;

(9) Questionnaires to 206 current licensees of the Alcoholic Beverage Control Board;

(10) Correspondence with the Commissioners of the Departments of Public Safety and Commerce and Economic Development;

(11) A review of studies and major Alaska Supreme Court decisions concerning the Board;

(12) Observation of two ABC Board meetings;

(13) Observation of meetings with the Attorney General's Office, District Attorney's Office, and the Alaska Code Revision Commission; and

(14) Complaints filed with the Ombudsman's Office.

Scope Constraints

This review was hampered by the following constraint: The Alcoholic Beverage Control Board had not adequately collected, recorded and maintained files and/or statistics on enforcement activity of the Board prior to October 1977.

ORGANIZATION AND FUNCTION

In 1933 the Territorial Legislature created the Board of Liquor Control with full power, authority and control to prescribe (1) rules and regulations to govern the manufacture, barter, sale and possession of intoxicating liquors, (2) qualifications of those engaged in that business, and (3) license fees and excise taxes. The present Alcoholic Beverage Control Board (hereinafter referred to as the ABC Board or the Board) was established in 1959, and the same broad powers and duties conferred on the Board of Liquor Control were transferred to the new ABC Board at that time.

Members are appointed for three-year terms by the Governor and serve at his pleasure subject to confirmation by the Legislature. Membership is limited by statute to five persons (two liquor industry representatives, three non-industry representatives). A director, also appointed by the Governor, serves as executive officer and is responsible for enforcement of Title 4 liquor laws and rules and regulations developed by the Board. Although he is not a member of the Board, the director may cast a tie-breaking vote.

Under Title 4 of the Alaska Statutes the ABC Board is charged with the general duties, powers and responsibilities involved in the control of alcoholic beverages, including the promulgation of rules and regulations and the hearing of appeals. Its authority is mostly discretionary. Provisions of AS 04.05.030 direct the Board to issue, reissue, revoke, transfer or suspend liquor licenses in accordance with what the Board considers to be the public's best interests. Concerning its general powers of regulation AS 04.05.030 states:

> "The Board may control the manufacture, barter, sale and possession of intoxicating liquors in the State, and may adopt necessary rules and regulations in a manner that will protect the public health, safety and welfare."

Title 4 prescribes the types of licenses, fees and specific activities allowed under each license classification (see schedule of license types and fees in Appendix B). Fees are payable at the time of application and are not reduced or prorated in any way for periods less than the statutory calendar year. To renew an already existing liquor license the application must be filed (and the corresponding fees paid) on or before February 28.

The staff of the ABC Board is divided into three major functions: administration, licensing and enforcement. A brief description of the services provided by those functions follows:

Administration. The director of the ABC Board provides all administrative support needed by the Board including overseeing all staff functions, preparing budget documents, and directing the preparation and implementation of administrative and public hearings, and directing special enforcement investigations.

Licensing. The licensing staff currently consists of three full-time employees responsible for issuing and receiving application forms, maintaining records and files for all licenses, collecting fees, issuing all licenses and permits authorized by the Board, and answering inquiries from the general public on routine licensing matters.

Enforcement. The ABC Board currently employs five investigators; three operating from the Anchorage central office and two operating from the Fairbanks field office. Services provided include (1) routine surveillance and inspections of licensed premises, (2) investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations, and (3) assisting the licensing staff in handling inquiries from the general public.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of the policy changes can be evaluated.

Report Conclusion

In our opinion, the Alcoholic Beverage Control Board should continue to regulate and license those persons engaged in the liquor industry. Title 4 of the Alaska Statutes established the Alcoholic Beverage Control Board to control the manufacture, barter, sale and possession of intoxicating liquors to protect the public's health, safety and welfare. Because of the growing body of knowledge on the potential dangers of alcohol and its attendant social and economic costs, we concur that the public need for this type of regulation continues to exist.

However, certain changes need to be implemented for the ABC Board to more effectively execute its mandated responsibilities. Enforcement responsibilities of the Board should be transferred to a special investigative unit within the Department of Public Safety. This shift in responsibility would correct the existing deficiencies in ABC Board enforcement. The three elements of ABC enforcement, routine inspections, investigations and licensing assistance, are deficient in the following ways:

Routine Inspections:

- they are not performed on a regular, timely basis,
- ratings assigned are not based on a uniform set of standards,
- ABC inspections duplicate, to a large extent, Division of Public Health inspections, and
- discrepancies noted during these inspections are seldom followed up.

Investigations:

- documentation on enforcement activity is not accurate and not maintained in a current manner,

- the Notice of Violation procedures are ineffective because they are not issued in sufficient quantity, do not always result from original ABC work, are not always followed up, and carry no penalty,

- ABC enforcement officers do not have sufficient authority.

Licensing Assistance:

- ABC enforcement staff spend approximately 15% of their time assisting the licensing staff, when 100% of their time should be devoted to enforcement efforts.

A transfer of responsibility would remove the State from a position of potential liability which results since the ABC enforcement officers are not commissioned, and are not employed by a "police agency", yet act as agents of the State (see Recommendation No. 1).

If enforcement responsibilities are transferred to the Department of Public Safety, the ABC Board will be left with five full-time employees: two administrative staff members and three licensing staff members. A transfer of the licensing responsibilities to the Department of Commerce and Economic Development, Division of Occupational Licensing would eliminate the need for the administrative positions and would result in an annual savings to the State of approximately $54,000 (see Recommendation No. 2).

Our review of the licensing function revealed the following. Renewals of liquor licenses currently take longer to process than new issuances because of all licenses being renewed at the same time and conflicting statutory requirements. Public notice requirements under AS 04.10.270 have hindered the Board from automatically renewing licenses as provided under AS 04.10.350. The need for public notice for license renewals should be reviewed as municipalities and boroughs have used it only as a tax collection service for unpaid local taxes (see Recommendation No. 5).

We also noted that the need for the $2,500 cash or surety bond required for a beverage dispensary license is obsolete. The requirement was established by a 1939 amendment as a penal sum to be forfeited upon revocation. Its penal impact has diminished in the 39 years since it was established and a forfeiture has not been imposed by the Board in at least five years (see Recommendation No. 6).

We also reviewed Board activity, composition and appointments and found the following. The ABC Board currently spends the majority of its meeting time in routine issuances, transfers, and renewals of unprotested licenses. The Board should adopt a regulation delegating the authority to the Director of the Division of Occupational Licensing to perform those routine administrative functions as authorized by AS 04.05.040. This action would result in (1) the need for fewer meetings, (2) reduction in processing time of unprotested applications, and (3) more economical and efficient use of existing funds and manpower (see Recommendation No. 3).

Alcoholic beverage industry representation on the ABC Board should be reduced from the required two members to one member. This action would eliminate the possibility of an industry quorum when the minimum number of members needed for a quorum attend a meeting, and two of those three members are industry representatives. This situation could introduce an unfavorable bias into the Board's actions and its ability to act in the public's best interests (see Recommendation No. 4).

A review of Board appointment activity performed by the Office of the Governor pointed out two problem areas: (1) vacant ABC Board seats have not been filled in a timely manner, and (2) have not been staggered. The establishment of a talent pool by the Office of the Governor for all Board appointments would allow for the immediate appointment of Board members when terms expire or a position is vacated (see Recommendation No. 7).

In conclusion, the Alcoholic Beverage Control Board should analyze and evaluate the purpose of the Board and take the necessary actions needed to perform and fulfill its responsibilities to the public.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Enforcement responsibilities for the Alcoholic Beverage Control Board should be transferred to a special ABC enforcement unit within the Department of Public Safety.

The enforcement staff for the Alcoholic Beverage Control Board is currently responsible for:

A. Routine surveillance and inspection of licensed premises,

B. Investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations, and

C. Assisting the licensing staff by handling inquiries from the general public on regulations, procedures and licensing requirements.

We reviewed these three functions and noted the following deficiencies in each:

A. Routine Surveillance and Inspection

1. Licensed premise inspection reports are prepared subjectively.

The ABC Board developed the check-off list to be used in routine inspections as recommended in a previous Legislative Audit report. The licensed premise is evaluated in 9 categories (e.g. exterior, interior, overall appearance, etc.) and rated as excellent, good, satisfactory or unacceptable. However, no uniform written standards have been developed to explain the specific requirements necessary to receive a given rating.

No written standards have been developed in conjunction with the check-off list used in routine inspections and, therefore, each report reflects the subjective judgment of the inspector preparing it. For standardized reports to be useful and fair they must be prepared uniformly and objectively which can only occur when each report is based on an accepted common set of standards.

2. Licensed premises are not being inspected on a regular or timely basis.

The ABC Board has not adopted a policy on frequency of routine inspections needed to assure compliance with licensing regulations, or established a procedure for assuring that all licensed premises receive inspections in a timely manner

We reviewed a random sample of 100 license files which excluded initial inspections and licenses issued in 1978, to determine frequency of routine inspections and found the following:

Time last routine inspection performed		No. of Licenses
a.	within the last 6 months	13
b.	6 months to one year ago	16
c.	one year to two years ago	31
d.	over two years ago	3
e.	never	37
	Total	100

As can be noted above 71% of the licenses in our sample had not been inspected in the last year.

3. The enforcement staff of the Alcoholic Beverage Control Board does not follow-up on unacceptable ratings given or discrepancies noted during routine inspections.

Our review of the 100 files noted in 2 above disclosed five which contained unacceptable ratings. There was no evidence of any following action taken on those cases in the files. ABC management indicated the cause to be a lax attitude towards follow-up.

4. One of the primary purposes of ABC's routine inspections is to verify conformance with sanitary requirements also inspected by the Department of Health and Social Services, Division of Public Health - an obvious duplication of effort.

   The Department of Health and Social Services is mandated by AS 18.35.120 with the enforcement of these requirements by means including but not limited to periodic inspections. There is, therefore, no obvious need for this duty to also be performed by the enforcement staff of the Alcoholic Beverage Control Board.

B. Investigations

1. There is insufficient managerial control over documentation of enforcement activity of the ABC Board.

   A review of the license files and enforcement files maintained by the ABC revealed that neither is accurate as to amount or type of investigation activity or maintained in a current manner.

   We attempted to locate and review all Notices of Violation and criminal complaints reported as issued in the October 1977 through July 1978 monthly activity reports, and found the following:

   a. of the 56 Notices of Violations reported as issued only 38 (68%) could be located, and

   b. of the 13 criminal complaints reported as issued only 6 (46%) could be located.

   This lack of control over enforcement documentation has two serious effects. The major effect is limitation of the ABC Board's effectiveness in protecting the public's heath, safety and welfare by assessing penalties against violators of the ABC laws and regulations. The Board cannot adequately accomplish this goal without accurate, timely information on the nature and type of violations occurring on licensed premises. Where penalties for violations increase with number of offenses it becomes important that the information their decisions are based on be accurate.

The secondary effect is the loss to management of an effective measurement tool of the staff's performance level. For performance reports, such as the ABC Board's monthly activity report, to be useful, the information contained in them must be accurate and properly supported.

2. Notices of Violation issued by ABC enforcement staff have limited effectiveness in reducing the number of violations occurring.

   a. Notices of violation are not issued in sufficient quantity to provide a meaningful deterrent to violations. As noted in the previous findings we were only able to verify 38 Notices of Violation being issued in a nine-month period by five full-time enforcement staff members. This is an average of less than one enforcement action per month per individual.

   b. These Notices of Violation which have been issued are not necessarily the result of original investigative work by ABC enforcement staff. Of the 38 Notices of Violation located in our test period, 24 (63%) resulted from copies of arrest reports sent to ABC by local law enforcement agencies. These notices then required a minimum amount of effort on the part of ABC and served only to duplicate the work of the local law enforcement agency.

   c. ABC enforcement staff does not provide adequate follow-up on Notices of Violation. Of the 38 Notices located in our test period only 3 (8%) resulted in further action--two leading to criminal complaints being filed and one leading to a formal letter of accusation. There was no evidence available to indicate any follow-up action being taken on the balance of the cases or any indication that the violations were ever corrected.

   d. Notices of Violation carry no penalty, either singly or based on an accumulation of them.

As may be seen by the findings listed above the Notices of Violation system employed by the Alcoholic Beverage Control Board serves only to notify the licensee of a violation and carries no threat of subsequent action by the enforcement staff or by the Board. This system is an ineffective method of enforcement and has only

limited effectiveness in deterring violations from occurring.

3. ABC enforcement officers do not have sufficient authority to enforce liquor law violations.

   At present, penalties (suspension or revocation of a license) are only assessed against licensees for violations of liquor laws as a result of convictions for those violations. Thus, the most effective enforcement effort that could be used by the ABC Board would be any effort that led to a conviction. Without minimum police powers, (i.e. powers of arrest, search and seizure authority, right to carry weapons) however, any effort to accumulate sufficient evidence to lead to a criminal conviction is severely hindered.

   The amount of authority of the present enforcement staff has been under debate for several years. ABC regulation 15 AAC 20.060 gave the director and all persons employed by the Board for the administration and enforcement of Title 4 all the powers of peace officers. However, an informal opinion rendered by the Attorney General's office stated that because peace officer status was not specifically given in Title 4, agents of the ABC Board could not be considered peace officers.

   The reaction to this situation by ABC administration has been a verbal directive to enforcement staff to not exercise any police powers on their own, but to coordinate all enforcement efforts with local law enforcement agents. This enforcement approach has obvious practical limitations. Local law enforcement agents cannot accompany ABC agents on all investigative work. Therefore, when ABC agents are working without the assistance of a commissioned police officer and encounter a violation in progress, they are powerless to take immediate action. Any action that might be taken could place the ABC agent in personal danger and the State in a position of liability because of the confusion over this agent's legal authority.

C. Assistance to Licensing Staff

1. ABC enforcement staff spend approximately 15% of their time assisting the licensing staff.

   Included in the description of duties for an ABC Investigator is the duty of assisting the licensing staff by handling inquiries from the

general public on regulations, procedures and licensing requirements. Because enforcement staff is required to have specialized training in law enforcement or investigative work, their time should be spent exclusively on those duties, rather than on licensing duties which require a lesser degree of specialization.

In addition to the underutilization of specialized staff, another problem arises from enforcement staff advising licensees on licensing issues. This is the natural reluctance that would develop on the part of the licensee to question an enforcement agent on what might be a violation or problem.

Summary

The Alcoholic Beverage Control Board has been ineffective in its mandated responsibility of enforcement of ABC laws and regulations. Routine inspections are not made on a regular or timely basis. When they are performed, the ratings assigned are not based on a uniform, objective set of standards and duplicate, to a large extent, the inspections being performed by the Department of Health and Social Services, Division of Public Health. Additionally, when discrepancies are noted during these inspections, they are seldom followed up.

Investigations leading to Notices of Viclation are ineffective as Notices of Violation carry no penalty or threat of subsequent action by enforcement staff or by the Board. The most effective enforcement effort that could be employed by the staff is that effort which leads to convictions. The enforcement staff has been able to accomplish this goal to a limited extent, but could be much more effective if given sufficient authority. Finally, specially trained enforcement staff should not be used for routine, administrative tasks such as licensing assistance.

To correct these deficiencies, we recommend that the enforcement responsibilities of the Alcoholic Beverage Control Board be transferred to the Department of Public Safety. A special ABC investigative unit should be established within that Department with the dual responsibilities of (a) investigations of ABC law violations, and (b) sharing of their specialized knowledge of ABC laws with other law enforcement agents through an organized training program.

There is support for this recommendation by the Commissioner of the Department of Public Safety, Richard L. Burton, ABC enforcement officers, and other law enforcement agents. The Commissioner concurred that ABC enforcement officers should

be replaced by state troopers. He also pointed out that because non-commissioned enforcement agents are not employed by a "police agency" they do not have to meet the licensing certification requirement for police officers, yet they act as agents of the State thereby placing the taxpayers of the State in a liability situation.

The responses to our questionnaire to the Alaska law enforcement agencies (Appendix C) supported our finding that ABC enforcement as organized is ineffective, and that there is a need for greater enforcement activity. Several respondents volunteered the suggestion that a transfer of enforcement staff to Public Safety would help accomplish that goal. Transferring the enforcement staff would provide continuing managerial control, proper training and supervision, and insulate the officers from possible Board influence. An organizational change such as this would also logically result in increased cooperation between ABC enforcement agents and other law enforcement agents by equalizing their professional status and clarifying their role in liquor law enforcement.

The alternative to this recommendation, retention of the Alcoholic Beverage Control Board enforcement section under the Department of Revenue, should only be considered in conjunction with the following recommendations: (1) ABC enforcement agents should be commissioned as special police officers with full police powers and authority to effectively enforce the alcoholic beverage control laws, and (2) responsibility for routine inspections to fulfill initial license requirements should be transferred to local law enforcement agencies, and (3) all other routine surveillance inspection activities should be curtailed. We believe, however, that this is a weak alternative to our primary recommendation as the effectiveness of the enforcement staff will always be limited while under the control of a non-enforcement oriented management.

Recommendation No. 2

The Alcoholic Beverage Control Board should be placed under the administrative control of the Department of Commerce and Economic Development, with administrative and licensing responsibilities transferred to the Division of Occupational Licensing.

The Alcoholic Beverage Control Board is the only regulatory Board now operating under the administrative control of the Department of Revenue. The support staff for the Board provides three types of services: administrative, licensing and enforcement. The licensing staff of the ABC Board provides the following services: issues and receives application forms; collects license fees; maintains records and files for all licenses; notifies applicants of acceptance or rejection; issues, renews and transfers licenses and permits; and answers general inquiries on licensing procedures.

These services are the same as the services being provided to the 21 regulatory boards under the administrative control of the Department of Commerce and Economic Development by the Division of Occupational Licensing.

If Recommendation No. 1, transfer of enforcement responsibilities to Department of Public Safety, is implemented, the ABC Board will be left with five full-time employees, three licensing staff members and two administrative staff members. The need for two full-time administrative staff members to oversee three licensing staff members at an annual cost to the State of approximately $54,000 is not justified. We therefore recommend transfer of the licensing responsibilities to Department of Commerce and Economic Development, Division of Occupational Licensing and elimination of the two administrative positions.

Recommendation No. 3

The Alcoholic Beverage Control Board should adopt a regulation delegating authority to the director of the Division of Occupational Licensing for the routine issuance, transfer and renewal of unprotested licenses.

During our review we noted that the majority of issues discussed at ABC Board meetings during our audit period, (January 1, 1974 to June 30, 1978) were the routine issuance, transfer and renewal of unprotested licenses. The Board automatically issues a new license, or a transfer or renewal of an existing license, if it meets the following criteria:

(1) the local governing body does not protest the issuance of the license, and (2) there are not grounds for denial of the license based on state statutes or regulations.

The power of Alcoholic Beverage Control Board, as defined by AS 04.05.040, specifically includes "...providing for the delegation to the director of routine administrative functions and powers, including the issuance, transfer and renewal of licenses and permits where there is no contest or protest".

Effecting this delegation of power would logically produce the following results: (1) The need for fewer meetings. The Board currently meets an average of eleven times per year, but is only mandated to meet four times per year. (2) A reduction in processing time of all uncontested, routine applications, and (3) More economical and efficient use of existing funds and manpower.

The Board is currently revising the alcoholic beverage control regulations and is considering this delegation of authority in that process. We recommend that the regulation be adopted and implemented as soon as possible.

Recommendation No. 4

No two members of the Alcoholic Beverage Control Board should be engaged in the same business, occupation or profession.

A 1970 amendment to AS 04.05.010 increased ABC Board membership from three to five members and correspondingly increased the number of industry representatives from one to two. That amendment also changed the number of members necessary to comprise a quorum for the conduct of business from two to three. It is evident from these changes that the legislature wished to retain the alcoholic beverage industry representation on the Board in a minority position.

What has occurred, however, is the creation of a situation where just the opposite can occur. When the minimum number of members necessary for a quorum attend a meeting, and two of those three members are engaged in the alcoholic beverage industry, then Board business can be conducted by an industry majority.

A review of 48 meetings held during the period of January 1, 1974 to June 30, 1978 shows that this situation did occur a minimum of 5 times.

There are several alternatives available to correct this situation. One alternative is elimination of industry representation from the Board and allowing for the creation of a non-voting advisory group of industry representatives.

However, although this would be an uncompensated group, the State would be responsible for travel expenses and per diem for more individuals and may be undesirable from a purely economic viewpoint.

A second alternative is a statutory increase in the number of members necessary to constitute a quorum. However, whereas the ABC Board is a voluntary board serving without compensation except for travel and per diem, it would be unreasonable to expect all members to attend all meetings. A review of attendance at the 48 meetings from 1/1/74 to 6/30/78 supports this theory as full Board membership was in attendance for only 16 (33%) of those meetings.

The third alternative to the current situation is to amend AS 04.05.010 so that no two members of the ABC Board have similar interests or background and be in the same business, occupation or profession. This would retain the necessary input from the liquor industry while not affording an opportunity for imbalance in decision-making. This alternative was also supported by the Analysis of Alcohol Problems

Project, Dennis Kelso, Ph.D., Project Director in Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975.

Recommendation No. 5

Renewals of licenses should be made in a timely manner.

A review of 99 renewals indicated that the average processing time is 70 days, ten days longer than the average processing time for new applications. We were able to determine two major causes of this delay. One is due solely to volume for although the application process for renewal of licenses is almost identical for the application process for new licenses, all alcoholic beverage licenses are renewed at the same time each year, thus causing a large backlog for several months each year.

The second cause for the delay results from conflicting statutory requirements for renewing licenses. AS 04.10.270 requires the Board to transmit written notice of its intent to approve the renewal of a license to the local governing body (city or borough), allowing it 30 days in which to protest its issuance. However, AS 04.10.350 requires the Board to renew licenses automatically if the fee is paid except in the case of conviction of the licensee or protest of a license that is outside a municipality.

ABC licensing staff estimated that of the approximately 1300 licenses renewed in 1978 only 50 were protested by local governing bodies and most, if not all of these protests, were for non-payment of local property taxes. The need for causing the processing delay of all applications to accomplish this tax collection service should be reviewed for its merits. If found to be without merit, AS 04.10.270 should be amended to exclude renewals from the section.

If found to be of merit, however, the following alternative should be considered to reduce processing delays: blanket notification to municipalities or boroughs prior to the renewal period of the ABC Board's intent to renew all liquor licenses in their jurisdiction subject to receipt of application and fees. This would allow the protest period to run concurrent with, rather than subsequent to, the renewal period, thus allowing for automatic renewal unless a protest has been received.

Recommendation No. 6

The requirement for a $2500 cash or surety bond for a beverage dispensary license should be eliminated from AS 04.10.040.

The requirement of a cash or surety bond in the amount of $2500 for beverage dispensary license was established by a 1939 amendment to the Laws of Alaska. At that time beverage dispensary licenses had no economic value and the amount of the bond was established as a penal sum to be forfeited upon revocation of a license.

Since 1939, however, beverage dispensary licenses have gained economic value in areas where the quota for that type of license has been reached. Thus, the revocation of a beverage dispensary license is a financially penalizing action in its own right. Additionally, with the rate of economic growth experienced in Alaska in the last 39 years it is obvious that $2500 no longer has the penal impact it did in 1939.

A review of the ABC Board records disclosed no evidence of the Board requiring forfeiture of the bond in the past five years. The bond requirement does, however, create additional work for the licensing staff and occasional delays in the application process. The need for this cash or surety bond requirement has become obsolete.

Recommendation No. 7

The Office of the Governor should keep appointments of members of the Alcoholic Beverage Control Board current and stagger them as required by AS 39.05.060.

During our review of ABC Board appointments during the period of January 1, 1974 to June 30, 1978, we noted the following exception. The ABC Board was allowed to operate without a five-member complement as required by law during the following periods:

1. February 1, 1974 through February 27, 1974: one vacancy for 27 days.

2. March 14, 1974 through March 23, 1975: one vacancy for 336 days, two vacancies for 35 days, three vacancies for 4 days. Total time period: 375 days.

3. November 20, 1976 through January 17, 1977: one vacancy for 59 days.

4. February 1, 1978 through February 8, 1978: three vacancies for 8 days.

As a result of these vacancies, the ABC Board was not in compliance with AS 04.05.010 which created it. Additionally, the ratio of public representation to industry representation established by AS 04.05.010 was upset allowing a possible unfavorable bias to enter into the Board's decision-making process.

Per AS 39.05.060, initial appointments were to be made for one, two, three, four and five years and each vacancy occurring during a term of office is filled in the same manner as the original appointment and is made for the balance of the unexpired term. During our review, however, we noted that there are currently three ABC Board memberw whose terms expire on the same day: January 31, 1981. This is an obvious violation of the intent of AS 39.05.060.

We recommend that the Office of the Governor appoint new members or reappoint current members to vacant ABC Board seats in a timely manner and stagger appointment terms as required by AS 39.05.060.

We further recommend that the Office of the Governor consider establishing a talent pool for Board appointments. The concept of a talent pool is to have a list of persons available and desiring to serve as a Board member. Many sources exist in the State to establish such a pool. Liquor industry associations could be requested to provide a list of members who would like to serve as the industry representative on the Board. Retired citizens offer an excellent pool of potential talent for public member appointments and should be contacted for possible inclusion in the talent pool.

An established talent pool, updated at reasonable intervals, would allow for immediate appointment of Board members when terms expire or a position is vacated.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicated both positive and negative attainments of the ABC Board and how its activities relate to the public need factors defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature. It has been limited by the scope of our review and the constraints placed on this review as mentioned in the scope section of this report.

I. The extent to which the board, commission or program has operated in the public interest.

Public protection gained through licensing to control liquor manufacture and traffic has been adequately provided by the ABC Board. However, the Board is also charged with enforcement of the alcoholic beverage control laws, rules, and regulations and, as previously documented in this report, has not demonstrated any effectiveness in this area. Thus, the Board has not met one of its statutory responsibilities in protecting public health, safety, and welfare (see Recommendation No. 1).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personal matters.

The operation of the ABC Board has been impeded by current statutes. The Legislature acknowledged in Senate Concurrent Resolution No. 88 (1978) that the laws in Title 4 are in serious disarray as a result of patchwork amending over several decades. Those laws are currently under review for revision by a joint interim committee of the Legislative Council and by the Alaska Code Revision Commission.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

There was no evidence available of any activity on the part of the current ABC Board to recommend statutory changes.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The ABC Board has met an average of eleven times a year, at least once in each of the four judicial districts. Each meeting has been adequately advertised and open to all interested persons. The staff of the ABC Board is located in both Anchorage and Fairbanks and is available to answer inquiries of the general public during all normal business hours. We believe this has provided an adequate forum for allowing public input on Board regulations and decisions.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

As noted above, the Board has provided an adequate forum for obtaining public input in general. The Board is currently in the process of rewriting its regulations which have not been revised since 1963. We cannot, therefore, draw any conclusions on the extent of public participation in the process.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

The majority of complainants of ABC Board decisions requesting hearings under the Administrative Procedures Act in the past year have dropped their request for those hearings. Delays in holding a hearing under that Act have resulted primarily from delays in appointing hearing officers by the Office of the Governor.

The ABC Board also has the authority to hold its own hearings on protests which it has begun exercising with greater frequency. Hearings held in this manner have been accomplished in a timely manner because of the frequency of regular Board meetings.

VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

Our review of licensing activity of the ABC Board to determine whether all statutory qualifications of licensees were being met revealed no exceptions. The Board has therefore, presented qualified applicants to serve the public.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

No material discrepancies were noted during our review of the ABC Board affirmative action program. Additionally, our survey of current licensees of the ABC Board elicited only one complaint on discriminatory practices of the Board which was found to be without grounds.

IX. The extent to which statutory, regularory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

ALCOHOLIC BEVERAGE CONTROL BOARD
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978

(UNAUDITED) [1]

Revenue (See Schedule 1 and Note 1)	$1,006,275
Expenditures	345,441
Excess of Revenue Over Expenditures	$ 660,834

Schedule 1
Collected Revenues

Types of License	Number Issued	Total Collected
Liquor license application	-	$ 76,250
Pub	1	300
Brewery	1	100
Distillery	-0-	-0-
Beverage Dispensary	590	490,625
Club	53	21,300
Common Carrier	60	14,900
Restaurant	114	35,850
Roadhouse	19	3,050
Retail	424	255,350
Retail stock sale	1	100
Wholesale general	18	71,250
Wholesale malt beverage	7	16,350

Miscellaneous [2]	9	$ 20,850
Total	1297	$1,006,275

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with ABC Board personnel. The records were not audited by us and accordingly we do not express an opinion on the ABC Board Revenues Compared with Expenditures.

Note 2

Includes recreational-site licenses and a conditional contractor's permit.

APPENDIX B

ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES

Type	Description	Annual Fee	
Filing Fee	For each license application.	$ 50	
Pub	To sell beer and wine on campus.	300	
Brewery	To operate brewery where beer is mfg., or bottled for sale.	100	
Distillery	To operate distillery where intox. liquor is mfg. or bottled for sale.	100	
Beverage Dispensary	To sell or serve on premises beer, wine & hard liquor for consumption on the premises only.	500 1000	(Unincorp. comm. pop less than 1500) (population greater 1500)
Club	Right to sell intox. liquor to club members & families in club rooms.	200 400	(sales less $5000) (sales greater $5000)
Common Carrier	To sell liquor on a boat, aircraft, or railroad buffet car.	250	(per vessel, aircraft, or railroad car)
Restaurant	To sell beer & wine in a restaurant with meals.	300	
Roadhouse	Licensed premises not less than 18 miles from Corp. city limits and serves food, may sell bee and wine.	150	

Retail	To sell in establishment intox. liquor in orig. packages & wine in bulk.	$600 (sales greater $20,000) 300 (sales less $20,000)
Retail Stock Sale	To sell bulk quantities, but not to consumer, the entire stock of former retail store.	100 (90 days only)
General Wholesale	To sell liquor in original pkgs. to holders of licenses, not to consumer.	500 (plus $250-$5000 based on sales)
Wholesale Malt Bev. & Wine	To sell malt bev. & wine in original pkgs. to holders of licenses, not to consumer.	100 (plus $50-$4950 based on sales)

Misc. permits & fees:

Caterer's	Right to sell intox. beverages at conventions, picnics, social gatherings, sporting events, or similar affair where the premises are not otherwise licensed.	25
Special Events	To give non-profit organ. right to sell beer at retail for consumption on designated premises for a specific occasion & limited time period.	25 (per day)
Conditional Contractor's:	Right to sell beer on specified premises located within boundaries of military reservation or in remote area as designated by Board.	300 (annual)
Duplicate Bev. Disp.	For holders of Bev. Disp. licenses who have on a specified premise more than one room in which there is regularly maintained a fixed counter or bar where beverages are served.	(an amount equal to the original license fee).

APPENDIX C

QUESTIONNAIRE SENT TO STATE OF ALASKA LAW ENFORCEMENT AGENCIES

Please answer the following questions as completely as possible.

1. Are you aware of the existence of the Alcoholic Beverage Control Board, its operation and its role in the enforcement of ABC laws, rules and regulations?

Number of respondents commenting	
26	Yes
2	Enforcement role is not well known
1	Aware of Board but have never seen any enforcement
1	Not aware of its role in enforcement
30	

2. Do you feel that the enforcement staff of the ABC Board complements, duplicates or conflicts with the efforts of your law enforcement personnel? (if you can cite specific instances please do so.)

Number of respondents commenting	
8	None of the above, not enough involvement so as to make a difference.
7	No
5	Conflicts
3	Complements
3	It should complement
1	Duplicates
4	Other
31	

3. Are you notified when an ABC Inspector/Enforcement Officer is operating within your jurisdiction? Do you accompany him on his inspections and/or enforcement activities?

Number of respondents commenting - Part I

11	No
7	Yes
6	Never see any ABC investigators
5	Occasionally, sometimes
2	Other
31	

Number of respondents commenting - Part II

10	No
5	Yes
2	Seldom or occasionally
1	Only transport prisoners
1	Only when requested
19	

4. Do you have any cooperative working agreements with the ABC Board such as sharing information, notifying them of arrests made on licensed premises, etc.?

Number of respondents commenting

11	No
11	ABC sent copies of liquor related arrests and reports
4	Only on a rare occasion, small amount
3	ABC is notified but no response comes back
2	Yes
1	Not any more
32	

5. What evidence exists demonstrating that the absence of the Board would result in less effective enforcement of alcoholic beverage control laws or be detrimental to the public's best interest in any other manner?

Number of respondents commenting	
13	None, no effect
3	Enforcement should be under Public Safety
3	Board may suspend or revoke the license
2	Little effect
2	Provides needed control
6	Other
29	

6. Are there any existing alcoholic beverage control laws you believe are obsolete, vague, unduly restrictive and/or inadequate?

Number of respondents commenting	
16	Yes
9	No
3	Inadequate because of the lack of enforcement
1	Not generally
29	

7. What changes could be made to these laws or to the present system of enforcing them which would enable your agency to better serve the public?

Number of respondents commenting	
8	More enforcement is necessary
7	Complete code revision needed.
4	Reduce hours bars can be open
4	Place enforcement under Public Safety
4	Impose stronger penalties
3	Licensee should bear responsibility for minor on premises
3	Minors should not be allowed in non-food premises
2	Investigators should be better trained
2	None
5	Other
42	

8. Any additional comments.

Number of respondents commenting	
7	Laws and enforcement are inadequate or not effective
3	Take politics out of the ABC Board
3	Enforcement section is a joke, a paper tiger
3	Transfer enforcement to Public Safety
3	Enforcement staff is too small to be effective
2	Board has been cooperative
1	Eliminate present ABC enforcement but retain the issuance of licenses.
1	Rewrite liquor laws and do away with the Board

1	Board should not have any liquor industry representatives
1	Enforcement staff should work more closely with local police.
1	More restrictive liquor laws are needed
26	

Note 1

Number of questionnaires sent to law enforcement agencies	56
Number of law enforcement agencies who responded	30
Response rate	54%

Note 2

Number of respondents comments does not always equal 30 as some respondents had more than one comment and some had no comments.

APPENDIX D

QUESTIONNAIRE SENT TO 1978
ALASKA MUNICIPAL LEAGUE MEMBERS

1. Is your city or borough given adequate notice by the ABC Board of proposed issuances of new licenses and/or transfers of existing licenses?

   Yes 77% No 23%

2. Has the city or borough ever protested the issuance of a new or renewal license or the transfer of a license?

   Yes 29% No 71%

   If yes, what criteria does the city or borough use to protest a license?

3. Have all protests lodged by the city or borough resulted in a hearing by the Board or by a hearing officer appointed by the Governor?

   Yes 40% No 60%

4. Is the current system of notification/protest/hearing adequate in allowing local government input into the licensing process?

   Yes 27% No 73%

   If no, should local governing bodies be

   100% more involved in the licensing process?

   -0- less involved in the licensing process?

   Please explain.

5. Should the quota for beverage dispensary licenses be

   a. increased (to more than 1500 people per license)? 8%

   b. decreased (to less than 1500 people per license)? 8%

   c. eliminated? 42%

   d. kept the same? 42%

6. Should the local governing body have the authority to increase or decrease the quota within its jurisdiction?

   Yes 75% No 25%

   Please explain.

7. Are there any existing alcoholic beverage control laws you believe are obsolete, vague, unduly restrictive and/or inadequate?

   Number of respondents commenting

   6 Yes

   1 No

   7 No response

8. What changes could be made to these laws which would enable your local governing body to better serve its constituency?

   Number of respondents commenting

   2 More municipal control

   1 None

   1 Population quotas increased

   1 Eliminate restrictive licenses - ex. beer & wine only

   1 Bootlegging penalties should be stricter

   8 No response

9a. What do you feel the responsibility of state government should be in controlling the manufacture and sale of alcoholic beverages?

Number of respondents commenting

2	Regulate in areas not incorporated
2	Licensing
1	Minimal
1	None
1	Assist local governments
1	Total control
7	No response

b. What do you feel the responsibility of local government should be in controlling the manufacture and sale of alcoholic beverages?

Number of respondents commenting

3	Establish rules more restrictive than the state
2	None
1	Enforce fire, health and building codes
1	Minimal
1	Allow for the voice of the community to be heard
1	Total control
5	No response

10. Do you feel that abolishing the ABC Board would have an impact on your community? On the State?

Number of respondents commenting	
10	Yes
1	Abolish the Board would help
3	No response

11. Additional comments:

Note 1

Number of questionnaires sent to Municipal League Members	46
Number of Municipal League Members who responded	14
Response rate	30%

APPENDIX E

QUESTIONNAIRE SENT TO CURRENT LICENSEES OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

	% Responses (see Note 1)		
	Yes	No	No Opinion
1. Do you believe that the Alcoholic Beverage Control Board has operated in the publics best interest?	81%	10%	9%
Comments: _____			
2. Do you believe that Alaska's requirements for obtaining alcoholic beverage licenses are adequate and effective in ensuring that the public is protected?	89%	7%	4%
Comments: _____			
3. Do you believe that the ABC Board's procedures for processing the following types of applications are adequate:			
a. new applications?	76%	14%	10%
b. transfers of ownership?	65%	25%	10%
c. transfers of location?	71%	17%	12%
d. renewals?	75%	19%	6%
Please comment on specific problems you have encountered with the application process. _____			
4. Are you aware of any discriminatory practices involving licensing of minority groups?	5%	90%	5%

5. Do you believe that the population quota (one type of license per 1500 people) should be

a. increased (to more than 1500 people per license)	3%
b. decreased (to less than 1500 people per license)	9%
c. eliminated?	20%
d. kept the same?	68%

Please explain. _____

	% Responses (see Note 1)		
	Yes	No	No Opinion
6. Do you belive that routine inspections of your licensed premises serve a useful purpose to			
a. the licensee?	66%	26%	8%
b. the public?	73%	23%	4%
Comments: _____			
7. When was the last time your licensed premise received a routine inspection by an ABC Board Investigator?			
a. within the past 6 months? 42%			
b. within the past year? 28%			
c. within the past 2 years? 6%			
d. over two years ago? 12%			
e. never? 12%			
8. Have you ever been notified of a violation occurring on your licensed premise by an ABC Board Investigator?	10%	90%	-0-
Comments: _____			
9. If yes, was the violation clearly explained?	100%	-0-	-0-
Comments: _____			
10. Was there any follow-up by the ABC Board to make sure the violation had been corrected?	66%	17%	17%
Comments: _____			
11. Do you believe that the current penalties prescribed by the ABC Board against licensees for convictions are			
a. too harsh 13%			
b. fair 80%			
c. too lenient 7%			
Comments: _____			

	% Responses (see Note 1)		
	Yes	No	No Opinion
12. Would any of the following help prevent alcoholic beverage control law violations from occurring:			
a. mandatory license suspension and/or fine for each conviction?	24%	50%	26%
b. mandatory license revocation after a set number of convictions?	68%	17%	15%
c. commissioning the ABC Board Investigators as special police officers?	11%	67%	22%
Comments: _____			
13. Are you aware of any discriminatory practices of the ABC Board in suspending or revoking licenses?	2%	95%	3%
Comments: _____			
14. Are you aware of any licensed premise in Alaska that has allowed violations to occur and has not had any action taken against it by the ABC Board, local police or State Troopers?	10%	81%	9%
Comments: _____			
15. Are there any existing alcoholic beverage control laws you believe are obsolete, vague, unduly restrictive and/or inadequate?	26%	44%	30%
Please explain. _____			
16. Do you have any complaints concerning the service provided by the support staff of the Alcoholic Beverage Control Board?	12%	81%	7%
Please explain. _____			

17. Additional Comments:

Note 1

Number of questionnaires sent to current licensees	206
Number of current licensees who responded	59
Response rate	29%

04-D3LH

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH S – JUNEAU

February 6, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811

Dear Mr. Wilkerson:

This letter responds to the preliminary report as a result of your sunset review of the Alcoholic Beverage Control Board. My response to each finding follows:

Recommendation No. 1

Enforcement responsibilities for the Alcoholic Beverage Control Board should be transferred to a special ABC enforcement unit within the Department of Public Safety.

We disagree.

You might find this disagreement ironic in view of the fact that I proposed moving the Alcoholic Beverage Control function to the Department of Public Safety four years ago. When I first became Commissioner I wanted to concentrate the department's efforts in taxation and treasury matters. Accordingly, I proposed transferring the Motor Vehicle Division and the Alcoholic Beverage Control Board to the Department of Public Safety. Although the Legislature accepted our proposal with regard to the Motor Vehicle Division it rejected our proposed transfer of the Alcoholic Beverage Control Board.

Since that time I have come to believe that it is not as important which agency a particular division resides in as it is how it functions. In particular, I believe that if there are problems in the enforcement area, those

problems should be dealt with directly rather than with the superficial answer of transferring between agencies. I also think that splitting the division between two agencies would be disastrous and would lead to confusion, lack of communication and direction. All parts of the Alcoholic Beverage Control program must be coordinated and work together.

Again, as I have said, it is far less important which agency is responsible for the program as is the commitment by the particular agency to make the program work. I believe that the Department of Revenue has the commitment to making the ABC program work well and to solve its problems. To solve problems in the enforcement area we have been working on several fronts. First of all we have been seeking additional enforcement staff to increase our enforcement effort and have had some success. We have been working to get our enforcement staff properly trained and have been able to secure investigator training at the State Trooper Academy for several of our enforcement officers. We have also been working on establishing uniform enforcement procedures and regulations. Our first step in that direction was the adoption of a procedures manual, and we are now near completion of a comprehensive set of regulations on all phases of Alcoholic Beverage Control including enforcement related topics. We will continue our efforts in obtaining adequate staffing and training for the staff and uniform rules of conduct which will be followed by the enforcement staff. In particular in our regulation effort we are attempting for the first time to set out in specific terms the rules of substantive conduct for licensees and their licensed premises. When we are finished we hope to have a full explanation as to what conduct is prohibited, what is needed to prove a violation and what penalty will be assessed for a particular violation. With these comprehensive rules our enforcement efforts will be many times more successful. Although the enforcement program still needs improvement I believe it has come a long way in just the last couple of years.

The thrust of this recommendation seems to be aimed at criminal enforcement, which is why I assume you are are most concerned that the enforcement officers carry weapons and have the power of arrest. Criminal enforcement, however, is only one aspect of the total enforcement program. Only a portion of the violations rise to the level of criminal behavior. Most violations are of a civil nature and demand civil action in the form of license suspension, revocation, premises closure, or other monetary penalty. Enforcement officers must be able to deal in the full range

of enforcement activities whether civil or criminal. In all areas they should be equipped to put together the necessary evidence and documentation to insure compliance with the law, but you certainly don't need to carry weapons to have a successful enforcement program. If criminal behavior is present the enforcement officers should work closely with the local police and the state troopers as they have in the past. Several criminal complaints have been filed in the past year through the coordinated work of our enforcement officers and police agencies. We should not forget however the important area of civil enforcement and enforcement officers must be trained and motivated in this enforcement area as well.

In summary, I believe that problems in the enforcement area should be dealt with directly through adequate funding, training and uniform procedures, all of which we have been working towards. I do not believe that transferring the enforcement program to a police agency is the answer, and I believe that substantial progress is being made to upgrade our enforcement program.

Recommendation No. 2

The Alcoholic Beverage Control Board should be placed under the administrative control of the Department of Commerce and Economic Development with administrative and licensing responsibilities transferred to the Division of Occupational Licensing.

We disagree.

As I mentioned in response to Recommendation No. 1, nothing is to be gained from transferring Alcoholic Beverage Control to another agency. I also think it would be especially bad to separate licensing, administration and enforcement because a total coordinated approach is needed for Alcoholic Beverage Control. Enforcement, licensing and administration and Board activity depend upon each other and separation between agencies would make this coordination difficult.

With regard to your recommendation for separating the enforcement functions from the rest of the ABC program, I am particularly puzzled by the statement in the report that the enforcement officers should be insulated from the influence of the board. I do not understand this statement since it is the board which the Legislature has given the authority and policy making power for Alcoholic Beverage Control. They should not only influence enforcement efforts, they should direct

enforcement efforts through their enforcement policy decisions. Enforcement officers, as any of the staff, should be accountable to the board for their actions in following or not following board policy.

Recommendation No. 3

The Alcoholic Beverage Control Board should adopt a regulation delegating authority to the director for the routine issuance, transfer and renewal of unprotested licenses.

We agree. As you mentioned the board is considering a regulation which will do this very thing. We made this suggestion to the board several months ago in our regulation effort and they agreed that it made sense. Just this one change will help to insure that the board is able to conduct its true function as the body which sets basic policy through the adoption of regulations and insures that its policy is being correctly carried out by making the final decision in appeals of actions taken by the staff. This action will streamline the licensing program tremendously.

In making this delegation, however, we want to make sure that there are careful checks and controls to avoid abuses and insure that the board's public policy is being carried out.

Recommendation No. 4

No two members of the Alcoholic Beverage Control Board should be engaged in the same business, occupation or profession.

We agree.

Recommendation No. 5

Renewals of licenses should be made in a timely manner.

We agree with the statement that renewals should be made in a timely manner. We disagree, however, with your assumptions and your conclusions regarding municipal input during the renewal process. In summary, we believe that there are efficiencies which could be made to shorten the renewal process but we don't think that full and deliberate municipal comment should be sacrificed simply for the sake of efficiency.

First, it should be noted that the notice of renewal requirement to municipalities is not a tax collection service. It provides an annual review by the public and municipal officials at the municipal level of liquor establishments within their boundaries with the right to protest a renewal if the municipality believes it woul not be in the public interest. There are several reasons other than the nonpayment of taxes

for a municipality to protest the renewal of a license including the health, safety and general welfare of its citizens.

I believe the public interest of allowing full and deliberate review and input by the public and municipal officials in renewing licenses, far outweighs shortened renewal time.

Recommendation No. 6

The requirement for a $2,500 cash or surety bond for a beverage dispensary license should be eliminated from AS 04.15.090.

We disagree that the penal bond for a beverage dispensary license should be eliminated but believe instead that it should be increased and applied to all other licenses.

Although in some areas of the state the quota of licenses has been reached so that licenses have become valuable in their right, other areas of the state have not reached that point.

In addition, a cash or surety bond provides a form of security to satisfy any claims that the state may have against a licensee. We agree, however, that because of inflation $2,500 may be unrealistically low today. Therefore we believe that it should be raised to $10,000 and perhaps applied to all licensees.

Recommendation No. 7

The Office of the Governor should keep appointments of members of the Alcoholic Beverage Control current and stagger them as required by AS 39.05.060.

We understand that the Governor's Office has already responded to this recommendation and therefore no further comment is necessary.

Sincerely,

Sterling Gallagher
Commissioner

February 6, 1979

Mr. Gerald Wilkerson, Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99801

Dear Mr. Wilkerson:

This letter is to be in response to your preliminary "Performance Review of the Alcoholic Beverage Control Board", dated November 3, 1978. Please also consider my letter of November 13, 1978 as a response as well, where applicable.

I could only agree with the statements concerning routine inspections, as I have no evidence to the contrary. I cannot, as Board Member, conduct the kind of review to determine if such inspections are made except to ask about specific cases.

Your comments about Notices of Violation have been made several times by me at Board meetings. They may have a "limited" utility in getting the attention of a licensee, otherwise they have no teeth. Due process probably dictates that such "Notices" absent a conviction could not be used in a future disciplinary action. However, they could be the basis of whether or not to take action on a license, if they are subsequent to the latest renewal. The same goes for information transmitted by a local police unit. If the local police observes illegal activity it should prosecute and if possible obtain a conviction - not merely forward information to the ABC Board staff.

Yes, enforcement staff should spend their time in enforcement, not assisting the licensing staff. Given the size of the staff and the need often to answer questions quickly, I think 15% is not unreasonable as a factor of time spent by enforcement.

The major deficiency is that the ABC investigator has limited authority. As I understand it, the Department of Revenue does not support the idea that an investigator should have police officer authority, despite my efforts at persuasion. This problem would be cured by transfer to the Department of Public Safety. However, this alone may not be sufficient to take care of the deficiencies you have

noted. I am sure that greater manpower is necessary to adequately regulate and police 1,300 establishments. The Department of Public Safety would be foolish to accept this responsibility without making a very strong pitch for more than five personnel. I have said before I am neither enthusiastic of the transfer nor firmly in opposition. Perhaps such a change would be dramatic enough to accomplish a useful purpose, simply because it is a change.

Obviously, an alternative is a bigger and better trained staff with greater authority and better cooperation with local and state police.

Recommendation #2 is really part of #1. The two together raise serious and legitimate questions as to the current administrative structure. The Board is appointed by the Governor with certain powers over regulation of the liquor industry. The staff is hired by the Department of Revenue (including the Director) with no voice from the Board. The Board presumably has some authority over the staff, yet there little real authority, and the Board, because of its part-time status can not really supervise closely.

Yet, historically, control and regulation of liquor was deemed important enough to establish an independent agency with nothing else to do.

Recommendation #3 is now and has been a part of the regulations in the adoption process. These have been needed for several years, as the ones in existence are often poorly written, vague or out of date. This project is one we have been working since I came on the Board two years ago. We did get additional money in the budget to pay for it. This must be the number one priority for the Board. Included in regulations adopted should be the standards you earlier referred to. Regulations can also give the public notice as to what is required for licensure or protest.

The next priority must be a complete re-write of Title 4. Title 4 creates many many problems just in its own interpretation. Piecemeal amendments must stop until this is accomplished. I urged this to a luncheon meeting of the Senate Alcoholism Committee chaired by Senator Colletta in November, 1977. I am delighted the project is underway.

Recommendation #4 is not really that important. See my response of November 13, 1978 for a complete response. This change would have no real impact and is probably going to raise emotions unnecessarily. The text suggests "industry" domination of the Board is possible. I suspect on only a very few issues, if any, has there been an "industry" position.

Recommendation #5 is hard to argue with - but I don't think we ought to remove the notice to the local government, so it can protest. However, we should find a way to speed up renewals. Perhaps by delegating renewals and licenses issuances to the Director we could speed up the process. Also, as in all municipal protests, there should be a clear protest set forth with specific reasons, not necessarily including non-payment of taxes. (As an aside, we should also review the merits of requiring creditors be satisfied prior to transfer.)

Recommendations #6 and #7, are meritorious.

An area of specific concern to me is the so called hotel-motel license exception to the population quota. This section could result in the elimination of the small neighborhood bar.

In summary, the number one priority of the legislature should be a complete and sensible re-write of Title 4, the other suggestions will not be of much use unless that is accomplished. Indeed, if only your suggestions are adopted, the problem of enforcement of ABC laws will be exacerbated, because there will be a feeling the problem is solved. The priority of the Board should be adoption of a comprehensive set of regulations.

Thank you for an opportunity to comment on your report.

Yours truly,

Timothy G. Middleton

Timothy G. Middleton

TGM/lh

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

November 3, 1978

SUMMARY OF: A Performance Review of the Alcoholic Beverage Control Board.

PURPOSE OF THE REVIEW

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Alcoholic Beverage Control Board was conducted to determine whether there is a demonstrated need to continue liquor regulation in its present form. To determine that need we reviewed Board activities to see if the Board has been operating in an efficient and effective manner. The major areas reviewed were the Board's program, licensing, enforcement, administration and affirmative action functions.

REPORT CONCLUSION

In our opinion, the Alcoholic Beverage Control Board should continue to regulate and license those persons engaged in the liquor industry. Because of the growing body of knowledge on the potential dangers of alcohol and its attendant social and economic costs, we concur that the public need for this type of regulation continues to exist.

However, certain changes need to be implemented for the ABC Board to more effectively execute its mandated responsibilities. Enforcement responsibilities of the Board should be transferred to a special investigative unit within the Department of Public Safety. This transfer would eliminate the deficiencies in the ABC enforcement operation which render it ineffective and would provide continuing managerial control, proper training and supervision, and insulate the enforcement staff from possible Board influence.

The transfer of enforcement responsibilities to the Department of Public Safety would reduce the ABC staff to a size too small to justify maintaining a separate agency. We therefore recommend that the Alcoholic Beverage Control Board be placed under the administrative control of the Department of Commerce and Economic Development.

Administrative and licensing responsibilities of the Board should be transferred to that Department's Division of Occupational Licensing with authority for routine issuances, transfers and renewals of unprotested licenses delegated by the Board to the Director of the Division.

Other possible amendments to Title 4 which would improve the efficiency of the licensing function are: (1) removal of the requirement for public notice to local governing bodies on renewals of liquor licenses in AS 04.10.270 which is used primarily as a tax collection service for unpaid local taxes, and (2) removal of the requirement for the $2,500 surety or cash bond in AS 04.10.040 which has become obsolete since its enactment in 1939.

Liquor industry representation on the Alcoholic Beverage Control Board should be limited to one member to eliminate the possibility of an industry majority comprising a quorum of the Board and conducting its business. Appointments of all members of the Board when terms expire or positions are vacated should be made by the Office of the Governor in a timely manner and terms should be properly staggered as required by AS 39.05.060.

In conclusion, the Alcoholic Beverage Control Board should analyze and evaluate its purpose and methods and take the necessary actions needed to perform and fulfill its responsibilities to the public.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

December 29, 1978

SUMMARY OF: A Review of the Alaska Industrial Development Authority.

PURPOSE OF THE REVIEW

In accordance with the provision of Title 24 and 44.61.200 of the Alaska Statutes, a review of the Alaska Industrial Development Authority (AIDA) was conducted to determine if the financial statements for the fiscal year ended June 30, 1978 are fairly presented.

FINANCIAL STATEMENTS

It is our opinion that the financial statements present fairly the financial position and results of operations for the year ended June 30, 1978.

STATE OF ALASKA

DEPARTMENT OF REVENUE

ALCOHOLIC BEVERAGE CONTROL BOARD

JAY S. HAMMOND, GOVERNOR

201 E. 9TH AVE.
ANCHORAGE, AK. 99501

May 9, 1979

The Alcoholic Beverage Control Board has written new regulations for public hearing and review. As an interested party a copy of the proposed regulations are enclosed for your review. A copy of the notice of public hearing is also enclosed. Please note page 3 and 4 of the notice for new topics not previously covered by regulation.

Your comments will be welcome and appreciated. If you have any questions, please do not hesitate to contact this office.

Sincerely,

Patrick L. Sharrock

Patrick L. Sharrock
Director

PLS:vk
Enc.

PROPOSED REGULATIONS

OF

THE ALCOHOLIC BEVERAGE CONTROL BOARD

May 1, 1979

[Proposed comprehensive set of regulations to replace all present regulations in Title 15, Chapter 20 of the Alaska Administrative Code and to implement and clarify Title 4 of the Alaska Statutes titled "Alcoholic Beverages"]

PROPOSED REGULATIONS

(These proposed regulations are subject to revision by the Alcoholic Beverage Control Board.)

Title 15. Revenue

Chapter 20. Alcoholic Beverage Control Board

ARTICLE I.

ADMINISTRATION

Section

10. Offices
20. Staff
30. Delegation of Authority
40. Public Meetings
50. Information Bulletins

Sec. 10. Offices

(a) The central office of the Alcoholic Beverage Control Board shall be at Anchorage, Alaska. All applications, petitions, protests and other correspondence and communications of a formal nature shall be submitted in writing, upon prescribed forms if appropriate, to the board at its central office, and shall not be considered properly or timely filed unless and until received there.

(b) The board may maintain such other field offices as the board deems appropriate, and copies of relevant statutes, regulations, prescribed forms and other directives or instructions as may be necessary and appropriate will be made available at such offices as well as the central office.

Sec. 20. Staff

(a) The director of the board is responsible for the management of the board's offices and the administration of the board's functions. The director shall enforce the statutes relating to alcoholic beverages and the rules and regulations promulgated by the board. The director shall issue all licenses provided for by law.

(b) The director shall employ and supervise such clerical and investigative personnel as necessary and appropriate to the administration of the board functions and office management, and shall prescribe their duties and authority.

Sec. 30. Delegation of Authority

(a) All duties, powers and authorities of the board, except those specifically retained by the board in subparagraph (b), are delegated to the director, including without limitation the power and authority to approve or deny applications for new licenses or permits and for renewals, transfers, or relocations of existing licenses; to issue licenses and permits; and to prescribe the forms of applications, reports and other documents necessary and proper to the administration of board functions.

(b) The board retains the power and authority to adopt rules and regulations; to issue policy directives; to prescribe the fees to be paid for licenses and permits where no fees are prescribed by statute or regulation; to hear and adjudicate administrative appeals from the decisions of the director approving or denying applications for new licenses or permits and for renewals, transfers or relocations of existing licenses; and to hear and adjudicate administrative proceedings for the suspension or revocation of a license.

Sec. 40. Public Meetings

(a) The board shall meet at least once each year in each of the four judicial districts of the state, as it determines, and shall conduct public meetings from time to time at the call of the director. All meetings of the board are open to the public except as otherwise provided in accordance with law, and the director shall give reasonable public notice of the board's meetings.

(b) To the extent and in the manner that the efficient conduct of business will allow, the board will receive public comment upon items of agenda business and other issues of public interest as it relates to alcoholic beverages, including the conduct of business by licensees and the compliance by licensees and others with the statutes and regulations relating to alcoholic beverages. Public comment may also be submitted to the board in writing by any person at any time.

(c) The notice and right to be heard provided for in this section is not an administrative remedy for persons interested in or aggrieved by board action.

Sec. 50. Information Bulletins

From time to time as it deems necessary and appropriate the board may issue to licensees, municipalities and the public and maintain as official records, information bulletins regarding matters of importance with respect to the statutes and regulations relating to alcoholic beverages and the board's policies and procedures relating thereto. Information bulletins do not have the force and effect of law but rather are intended to be of guidance and assistance to licensees and the public in their dealings with the board regarding the statutes and regulations relating to alcoholic beverages.

ARTICLE II.

LICENSING

Section

10. Applications
20. Petitions
30. Public Notice
40. Public Comment
50. Protests
60. Action Upon Application
70. Issuance of Licenses
80. Grounds for Denial of Application
90. Renewals
100. Transfers
110. Licensed Premises
120. Extension and Reduction of Premises
130. Surrender of Licenses
140. Transfer or Relocation After Loss of Premises
150. Management Agreements
160. Death or Dissolution of a Licensee

Sec. 10. Applications

(a) All applications for new licenses and for renewals, transfers and relocations of existing licenses shall be upon forms prescribed by the director.

(b) Any application which is incomplete or in any respect insufficient shall be returned to the applicant, together with whatever fee, if any, was tendered with the application.

(c) An application fee is required for all applications submitted to the board in accordance with the fee schedule adopted by the board which shall be available at each board office. Except for renewal applications, the license fee is not required to be submitted until the application is granted.

Sec. 20. Petitions

(a) When required by statute or regulation, a petition is a necessary part of an application for a new license, and for renewal, transfer or relocation of an existing license, and an application submitted without the required petition is insufficient. All petitions must be submitted upon a form prescribed by the director, which shall be available at all board offices. Petition signatures are invalid unless obtained within the 90-day period immediately preceding the submission of the application. Once a petition has been filed with the board, the petition is considered finalized.

(b) Persons signing petitions relating to licenses must be 19 years of age or older. In addition, the person must be a permanent resident of the geographical area relevant to the petition and must have been so for 30 days immediately prior to signing.

Sec. 30. Public Notice

(a) At least 30 days before filing an application for a new license or for transfer or relocation of an existing license, an applicant must commence public notice, which shall be bilingual when necessary, as determined by the director. Notice shall be given in a form prescribed by the director.

(b) Notice shall be given by posting, for a period of at least 10 days, a true copy of the application at the location of the proposed premises, at the post office nearest to the proposed location, and at one other conspicuous location in the area of the proposed premises; and by an announcement published once a week for three consecutive weeks in a newspaper of general circulation in the area, or broadcast between the hours of 8:00 A. M. and 8:00 P. M. twice a week for three consecutive weeks by a radio or television station serving the area.

(c) Proof of posting and of publication shall be made by affidavit which must be attached to the application

(d) The application must be filed with the board within 60 days of commencement of the publication of the notice.

Sec. 40. Public Comment

Any person who is a resident of Alaska may submit written comment to the board regarding an application for a new license or for renewal, transfer or relocation of an existing license, which will be considered in determining whether to approve or deny the application.

Sec. 50. Protests

(a) Any interested person who is a resident of Alaska may protest the approval or denial of an application for a new license or for the renewal, transfer or relocation of an existing license and invoke a formal hearing prior to a final decision by the board in accordance with the adjudication procedures of Article VI of these regulations.

(b) Within 30 days of receipt of the notice of intent to approve from the director, a municipality may protest the approval of an application and invoke a formal decision-making proceeding in accordance with the adjudic tion procedures of Article VI of these regulations. It will then be the protesting municipality's responsibility to prosecute the case at this hearing. In the event the protesting municipality does not prevail at the hearing, the board in its discretion may approve the application.

(c) If for any reason the governing body requires more than 30 days for consideration of the issue as set forth in (b) above, it may request an extension of time from the director.

Sec. 60. Action Upon Application

(a) The director shall approve or deny applications as appropriate in accordance with law and these regulations.

(b) The director may conduct an informal public hearing, at his discretion, before taking final action upon an application.

(c) Before taking final action upon an application within a municipality, the director shall transmit written notice of the intent to approve the application to the city governing body if the application is for premises within an incorpo: ated city, or to the borough assembly if the application is for premises within the area of an organized borough outside the boundaries of an incorporated city.

(d) The director may not take final action upon an application until at least 30 days after transmitting notice to a municipality.

(e) Notice to a municipality of the director's intent to approve an application does not vest in the applicant any right to the approval of the application and is without prejudice to the director's right to deny the application.

(f) Upon receipt of a formal protest of an application in accordance with the adjudication procedures of Article VI of these regulations, the director may not take final action upon the application.

(g) Upon denial of an application, the director shall notify the applicant in writing the reasons for the denial and inform the applicant of the right to an administrative appeal.

(h) At any time prior to making a final decision regarding a license, the director may reconsider and may reverse his previous decision.

Sec. 70. Issuance of Licenses

Upon approval of an application for a new license or the renewal, transfer, or relocation of an existing license, and upon payment of the prescribed license fee, and upon receipt by the board of necessary public health and public safety approvals, and upon inspection by an enforcement agent of the board, the director shall issue an appropriate license.

Sec. 80. Grounds for Denial of Application

The following, without limitation, are grounds for denial of an application for new license or for transfer or relocation of an existing license:

(1) Granting the application would be contrary to the public interest;

(2) Denial of the application is required by law or regulation;

(3) The application contains a false statement of material fact.

Sec. 90. Renewals

(a) Applications for renewals of licenses shall be filed on or before December 31 of each calendar year. Except as set forth below, all applications will be automatically renewed on or before February 28 of each calendar year and shall be accompanied by payment of the required license fee.

(b) Pending the outcome of a board hearing or judicial determination as to the legality of issuing a license, a license is not automatically renewable.

(c) A license is not automatically renewable in the case of a conviction of the licensee for a violation of law, regulation or municipal ordinance relating to alcoholic beverages.

(d) A license which has been revoked is not renewable, and any subsequent application shall be treated as an application for new license.

(e) A license is renewable upon application after December 31, and on or before February 28, of each calendar year upon payment of a penalty fee which shall be equal to the annual license fee or $50, whichever is less.

(f) A license which has not been renewed on or before February 28 of each calendar year is automatically forfeited and may only be reissued upon application filed during the six-month period beginning February 28, upon a showing of good cause for the failure to timely renew and upon payment of the license fee plus a penalty equal to the annual license fee or $50, whichever is less.

(g) Licenses are automatically forfeited for premises at which business has not been conducted at least 30 days per calendar year for a minimum of eight hours per day. The burden of proof for this requirement rests with the licensee.

Sec. 100. Transfers

(a) Transfers of licenses require the prior written approval of the board upon application of the transferor.

(b) An application for a transfer of a license, or of any interest in a license, shall also contain information from the transferee as required by the board.

Sec. 110. Licensed Premises

(a) A license is issued for a specific area which is the licensed premises, and which shall be clearly designated in a line drawing accompanying the application. The principal address of the licensed premises and the business name under which the licensee is doing business at that address shall be indicated on the license.

(b) The licensee shall post the license conspicuously on the licensed premises.

(c) A licensee shall not alter the area of the licensed premises nor change the business name under which he is doing business upon the licensed premises without the prior written approval of the board.

(d) When a licensed premises is directly adjacent to an unlicensed area, the licensee must notify the public by conspicuously placed signs which area is licensed ("wet") and which is unlicensed ("dry"). Areas designated as "wet" or "dry" remain so at all times and for all purposes.

(e) When the licensed premises consists of more than one room in which alcoholic beverages are served for consumption therein, the board shall issue to the licensee a copy of the original license issued by the board to be displayed in each such separate room.

(f) A licensee doing business in separate rooms under separate business names, whether or not at the same general location and at the same principal address, shall be considered to be doing business upon separate premises which must be separately licensed accordingly, except as set out in Article VII, Section 50.

Sec. 120. Extension and Reduction of Premises

(a) A licensee may reduce or extend the area of the licensed premises only upon approval of the director.

(b) The director may reduce the area of the licensed premises described in an application for a license where, in the judgment of the director, a reduction in area is in the best interests of the public or where a reduction in area is necessary to insure adequate control over the sale or consumption of alcoholic beverages on the premises.

Sec. 130. Surrender of Licenses

(a) Upon loss of the licensed premises, for whatever reason, or upon ceasing to conduct business upon the licensed premises for a period of one week or more, a licensee shall surrender the license to the board, to be reissued upon request when the conduct of business is resumed or the license is transferred or relocated with the approval of the board.

(b) If at any time the licensee ceases personally or through his employees or agents to exercise the authority and responsibility for the conduct of business upon the licensed premises, the licensee shall surrender the license to the board. Unless and until the licensee surrenders the license and so long as business is conducted upon the licensed premises, the licensee is solely responsible and liable therefor, and no other person may acquire or be permitted to acquire a direct or indirect financial interest in the conduct of the business without transfer of the license upon approval of the board.

Sec. 140. Transfer or Relocation After Loss of Premises

(a) When a licensee loses the premises to which a license attaches, whether the loss is voluntary or involuntary, the licensee must within 90 days of the loss of the premises:

(1) apply for a relocation or for a transfer;

(2) submit to the board a written statement of intent to reestablish operations at the original premises; or

(3) request an extension of time for filing the application or statement as set out in (1) and (2) above.

(b) Failure of a licensee to comply with (a) above is grounds for the director to begin proceedings for revocation of the license under Article VI of these regulations.

(c) All licensees who wish to relocate under AS 04.10.220 must qualify under the population criteria for their new location to be found acceptable under the statute.

Sec. 150. Management Agreements

(a) A management agreement may be entered into between a licensee and another party who is not a salaried employee of the business or does not participate in any way in the proceeds of the business. Customarily these agreements are entered into pending transfer of ownership of a license and licensed premises with the proposed transferee acting as manager and receiving a flat fee for his services. All management agreements must be reviewed and approved by the director prior to the time the manager becomes obligated to perform under the agreement.

(b) The request for approval of the management agreement must establish that financial responsibility and primary responsibility for operation and control of the business remain with the licensee.

(c) Any manager of a licensed premises who is remunerated on the basis of a percentage of the proceeds of the business must be a named licensee on the license.

Sec. 160. Death or Dissolution of a Licensee

(a) Upon the death of an individual who was the sole licensee of licensed premises, and upon the dissolution of a corporate licensee, the license shall be immediately surrendered to the board, and no business may thereafter be conducted upon the licensed premises unless and until a new license is issued or the license is reissued or transferred with the approval of the board.

(b) Upon written request made by the legal representative of the estate of a deceased individual licensee, the director may grant permission to the representative to operate the business upon the licensed premises for a reasonable time pending legal disposition of the estate and arrangements for transfer of the license, and upon terms and conditions specified by the director. This request must be made within 90 days of the death of the licensee.

ARTICLE III

LICENSES

Section

10. Restaurant and Roadhouse Licenses
20. Club License
30. Common Carrier Dispensary Licenses
40. Community Liquor License
50. Beverage Dispensary License
60. Hotel-Motel/Tourism License under Section 260

Sec. 10. Restaurant and Roadhouse Licenses

(a) The entire business conducted on the licensed premises of a restaurant or roadhouse must be under the sole operation and control of the licensee.

(b) Prior to the issuance of a restaurant license, the applicant must provide evidence to the board in the form of a menu sufficient to establish that meals are presently available and being furnished to the public on the premises or that they will be available prior to operation under the license. No restaurant license may be issued until such meals are available.

(c) Prior to the issuance of a roadhouse license, the applicant must provide evidence to the board establishing that food is available to be served to the public or that it will be available prior to operation under the license. No roadhouse license may be issued until such food is available.

(d) Holders of a restaurant license may serve beer or wine only to a person who has purchased a meal.

(e) Failure by the holder of a restaurant license to furnish meals to patrons or by the holder of a roadhouse license to have food available to be served to patrons is grounds for the board to suspend or revoke the license.

Sec. 20. Club License

(a) A member of a club which is the holder of a club license is defined as a person who has a paid-up membership in the organization and who has all voting rights and full membership privileges. Persons who previously were spouses of deceased members may be accorded club privileges.

(b) A guest is a person who enters the club premises on the invitation of a member. A guest may be served alcoholic beverages when accompanied personally by said member. A guest shall be required to leave the premises immediately upon the departure of the member who extended the invitation of entry.

(c) All alcoholic beverages served are for consumption on the premises only.

(d) The issuance of a club license is a privilege extended to certain qualified organizations which do not traffic in alcoholic beverages for profit and are operated solely for social, recreational, political, benevolent or athletic purposes, but not for pecuniary gain.

(e) Service of alcoholic beverages to the general public upon a club's premises requires a caterer's permit by a qualified beverage dispensary licensee.

Sec. 30. Common Carrier Dispensary License

(a) Any concessionaire who sells and dispenses alcoholic beverages within Alaska on a common carrier must be licensed under this title.

(b) Any common carrier, whether belonging to an individual or to a business or governmental entity, and whether involved in intrastate, interstate or international travel, may purchase alcoholic beverages within the state only if it is the holder of a common carrier dispensary license.

Sec. 40. Community Liquor Licenses

(a) After receipt of a proper petition, the governing body of a first or second class city which qualifies for a community liquor license under AS 04.10.139 shall place upon a separate ballot at the next municipal election the following questions: "For the issuance of a community liquor license . . . (yes or no)" and "If the above proposal is approved, the city should apply for either: a beverage dispensary license . . . (yes or no) or for a retail (package store) license . . . (yes or no)". If the proposal is approved by a majority of the voters and if all statutory requirements are met, the board may issue such a license.

(b) The voters of an incorporated city which is also a first or second class city may petition for an election designated a local option election, to prohibit the sale of alcoholic beverages by private persons within the city, and at the same time for a vote for the city to acquire a community liquor license. After receipt of such a petition, the governing body of the city shall place upon a separate ballot at the next municipal election the following question: "For prohibition of the sale of alcoholic beverages by private persons and for the city to acquire a community liquor license . . ." (yes or no) If the proposal is approved and if all statutory requirements are met, the board may issue the community liquor license.

(c) Following approval by the board of a community liquor license to a city, the board may not approve any other new license within the city except a license excepted under AS 04.10.430(c), for a minimum period of one year from the date of issuance of the community license and until the voters, in accordance with AS 04.10.430(a) at a subsequent election, vote to cancel the community license or the city council decides to not renew it. Licenses already issued within the city and licenses on premises outside the boundaries of a city are not affected by the issuance of a community liquor license unless the city has also voted under AS 04.10.430(a) to not permit the sale of alcoholic beverages by private licensees.

Sec. 50 Duplicate Beverage Dispensary License

(a) No further duplicate beverage dispensary licenses shall be issued following adoption of these regulations except as set forth under (c)(2) below.

(b) A licensee who holds a duplicate beverage dispensary license at the time of adoption of these regulations may submit application to the board for an extension of premises to incorporate the premises presently designated in the duplicate license into the principal licensed premises.

(c) If the premises currently designated under the duplicate license are found by the board to be too remote or disconnected from the principal licensed premises to be incorporated into them as an extension of premises, the licensee shall

(1) apply for a new beverage dispensary license for the premises previously covered by the duplicate license; or

(2) In the event the population criteria prevents a new beverage dispensary license from being granted at the location of the present premises, apply for a revised duplicate beverage dispensary license. This revised license shall contain a notation that the duplicate license is granted to protect the "grandfather rights" of the licensee and that although it may be renewed, it may not be transferred to any other owner, in whole or in part.

(d) Holders of "grandfather rights" duplicate beverage dispensary licenses shall be granted priority in applying for new beverage dispensary licenses as openings in the class occur.

(e) All duplicate beverage dispensary licenses remaining under "grandfather rights" provisions shall be subject to the following:

(1) a duplicate license must be conspicuously displayed in the room for which it is issued;

(2) the fixed counter or service bar in the duplicate premises must be staffed at all times when the duplicate premises are open to the public;

(3) the duplicate premises must be in operation for a minimum of 30 days each year in order for the duplicate license to be renewed;

(4) the license fee shall be in an amount equal to the fee for the license for the principal licensed premises;

(5) the status of a duplicate license is subject to the principal licensed premises; any suspension or revocation of either a principal or a duplicate license affects the principal and all duplicate licenses related to it.

Sec. 60. "Hotel-Motel/Tourism" License Under Section 260

(a) No new license may be issued outside the population quota under the exception set out in AS 04.10.260 if the population quota permits the license to be regularly issued.

(b) The board may approve the issuance of a license under Section 260 only when it is clear that the license would encourage tourism and also would be in the best interest of the permanent residents of the locality.

(c) No license issued under Section 260 may be automatically renewed when the board acquires evidence that the issuance of the license is not encouraging tourist trade.

(d) Only one license may be issued under Section 260 to any one tourist facility.

(e) If a tourist facility has more than one license which was originally issued under AS 04.10.260, the number of licenses issued under Section 260 shall be reduced by reissuing one of those licenses whenever an opening occurs within the class of one of the existing licenses, permitting the issuance of a regular license of that class.

(f) With the exception of a license granted to an airport terminal facility, any license issued under Section 260 must always exist with room and eating accommodations for the public, the license cannot be transferred to another licensee without transfer of the total facility, and the licensee must be the operator of the total facility.

(g) No license issued under Section 260 may be transferred to another location.

ARTICLE IV

GENERAL PROVISIONS REGARDING LICENSEES AND LICENSED PREMISES

Section

10. Public Health and Public Safety
20. Adulteration, Misbranding and False Advertising
30. Warehousing and Transporting
40. Prohibited Conduct
50. Refusal to Admit Minors
60. Determining if Patron is a Minor
70. Designation of "Restaurant Premises"
80. Credit Sales
90. Credit Purchases
100. Liability of Joint Licensees
120. Percentage Leases
130. Sale on Federal Property
140. Contraband
150. Reporting Requirements
160. Record Keeping Requirements
110. Satisfaction of Business Debts Prior to Transfer

Sec. 10. Public Health and Public Safety

All licensed premises must meet applicable public health and public safety standards, and no license for a new premises may be issued until appropriate approvals are obtained.

Sec. 20. Adulteration, Misbranding and False Advertising

Adulteration, misbranding and false advertising of alcoholic beverages is prohibited.

Sec. 30. Warehousing and Transporting

(a) A licensee may not stock, warehouse or otherwise store alcoholic beverages in a place other than upon the licensed premises without a permit from the board, and no person may stock, warehouse or otherwise store alcoholic beverages on behalf of a licensee unless the licensee has obtained a permit from the board. [See Article VIII, Sec. 50]

(b) Alcoholic beverages shall not be sold or consumed at an approved storage facility, nor shall they be dispensed from the facility except at the explicit direction of the licensee.

(c) Vehicles used to transport alcoholic beverages must be secured against public access at all times.

Sec. 40. Prohibited Conduct

Licensees, their employees and agents, may not engage in the following prohibited conduct on or about the licensed premises:

(a) Serving or permitting the serving of, alcoholic beverages to apparently intoxicated persons, or allowing apparently intoxicated persons to remain upon the licensed premises;

(b) Serving or permitting the service of, alcoholic beverages to minors, or by minors, or allowing minors illegally on the premises to remain upon the licensed premises;

(c) Permitting or refusing to prohibit solicitation for prostitution, possession or use of illegal narcotics, illegal gambling, or lewd conduct or obscene display;

(d) Permitting any employee to encourage a patron to purchase alcoholic beverages for the employee or for any other person;

(e) Permitting or refusing to control disorderly conduct and disturbance of the peace on or about the licensed premises;

(f) Consuming alcoholic beverages while on duty;

(g) Refusing to cooperate with and assist upon request peace officers and investigative agents of the board;

(h) Permitting the removal of alcoholic beverages from the licensed premises when such beverages were sold for consumption on the premises only.

Sec. 50. Refusal to Admit Minors

A licensee, at his discretion, may refuse entry to that part of the licensed premises wherein alcoholic beverages are being sold, served or consumed to any or all persons under the age of 19, even though such person is accompanied by a parent, spouse over the age of 19 years, or legal guardian. The licensee may refuse any service to

such persons under the age of 19 years and may require them to leave the portion of the licensed premises wherein alcoholic beverages are sold, served or consumed.

Sec. 60. Determining if Patron is a Minor

If a licensee, or the agent or employee of a licensee, asks a patron to verify his or her age and the patron does not show identification sufficient under AS 04.15.065, or if there is some question of the validity or accuracy of the identification shown, then the licensee, or the agent or employee, shall require the patron to sign a statement that he or she is over the age of 19 years. It is the responsibility of the licensee to have blank statement forms available and to retain completed forms for 30 days available for inspection.

Sec. 70. Designation of "Restaurant Premises"

(a) A license who wishes to have a restaurant designation to permit minors on his premises under AS 04.15.020(d) must apply to the director for such a designation.

(b) The director may grant a restaurant designation for the premises of a licensee who is the holder of a beverage dispensary or a restaurant license when the premises qualify for such a designation under AS 04.15.020(d) and the director finds it is in the best interest of the public to grant such a designation.

(c) The director must be in receipt of a written approval from the local governing body prior to granting a restaurant designation for a licensed premises.

(d) A licensee with a restaurant designation on his premises must reapply annually to keep the status of the designation. The application for the continuance of the restaurant designation shall be submitted to the board each year with the license renewal application.

(e) If the holder of a license for a premises with a restaurant designation is found to be in violation of any of the provisions relating to minors in Title 4 or these regulations, the restaurant designation may be withdrawn.

Sec. 80. Credit Sales

(a) With the exception provided in AS 04.15.085(a), a purchaser of alcoholic beverages on a retail basis must pay for the beverage in cash or its equivalent at the time the beverage is received by the purchaser, or may place the charge on a bill which must be paid prior to the time the purchaser leaves the licensed premises.

(b) A wholesale, distillery, brewery, winery, or bottling works licensee may sell alcoholic beverages to other licensees, for resale, other than for cash, but all accounts receivable must be paid within 90 days thereafter.

Sec. 90. Credit Purchases

(a) A holder of a retail license may not purchase alcoholic beverages, for resale, on credit except upon credit terms which require the payment in full of all accounts payable within 90 days of purchase.

(b) Consignment of alcoholic beverages by a wholesaler to a retailer is prohibited.

(c) Holders of licenses who sell on a retail basis and holders of permits may return to a wholesaler from whom purchases were made unopened containers of alcoholic beverages for credit or refund.

Sec. 100. Liability of Joint Licensees

All persons whose names appear as licensees upon a license are liable for the debts incurred for the operation of the business. No person who is a joint licensee may free himself of these responsibilities by oral or written agreement with any other joint licensee or any other person without a formal transfer.

Sec. 110. Satisfaction of Business Debts Prior to Transfer

(a) An application for a transfer must be accompanied by an affidavit from the transferor setting out all debts of the business. Even if there are debts of the business for which the transferor asserts he has no personal liability, they shall be listed in the affidavit.

(b) Prior to approval of the transfer by the director, all debts of the business must be paid or the creditors satisfied with the security arrangement. If all debts of the business are not paid, the transferor has the responsibility of providing the director with a written acknowledgement from each creditor that the creditor is satisfied the claim is adequately secured. For purposes of this section, "all debts of the business" includes any unpaid taxes and includes all debts listed by the transferor in his affidavit and any other unpaid debt of which the director is aware, but does not include obligations for the purchase of real property.

(c) Within three months of receipt by the director of an application for a transfer of a license, all the debts of the business must be paid or the creditors satisfied as required by statute, or the director may deny the application.

Sec. 120. Percentage Lease

A licensee who wishes to enter into a percentage lease, or its equivalent, must obtain the written approval of the board. An approved percentage lease shall not be deemed to constitute a direct or indirect financial interest of a lessor in the conduct of business upon a licensed premises.

Sec. 130 Sale on Federal Property

Any premises located upon federal property at or in which alcoholic beverages are served to the general public must be licensed under Title 4.

Sec. 140. Contraband

(a) Alcoholic beverages, whether in the possession of a licensee or another person, purchased within the state other than from a licensee, alcoholic beverages possessed by unlicensed persons other than for private consumption or for transport by a licensed common carrier, alcoholic beverages stored other than on licensed premises or approved storage facilities, alcoholic beverages brought into the state for sale other than to licensees, and alcoholic beverages possessed for sale or sold in violation of local option are contraband and subject to confiscation and sale by the board.

(b) Alcoholic beverages seized by the board as contraband shall be sold at public sale and the proceeds deposited in the general fund.

Sec. 150. Reporting Requirements

(a) Any corporation holding any license under Title 4 shall report to the board within ten days.

(1) any transfer of stock which results in a change of the controlling interest;

(2) any change of its corporate officers or its board of directors.

(b) Any corporation holding any license under Title 4 shall report to the board within ten days of the transfer, any transfer of its corporate stock involving ten percent or more of said stock, unless the corporation is required to file periodic reports with the Securities Exchange Commission, or its stock is listed on a stock exchange, or the stock is held by any bank, trust company, financial institution or title company in a fiduciary capacity.

(c) All holders of a retail license who request a refund of a portion of their license fee based on their gross sales, shall provide to the board with their request for the refund an affidavit stating the gross receipts from the sale of alcoholic beverages in the year for which the refund is requested.

Sec. 160. Record Keeping Requirements

(a) All licensees shall retain records sufficient to indicate satisfaction of the statutory requirement that the license has been actively exercised for 30 days during the preceding calendar year.

(b) All licensees shall keep on the premises a copy of the description and the drawing of the licensed premises approved by the board for their current license.

(c) Any licensee who permits a person other than a named licensee to operate the business shall keep on the premises a copy of a document, such as a management agreement or a record of employment, setting out the business relationship between the licensee and the person actually operating the business.

(d) All licensees who sell alcoholic beverages on a retail basis shall retain for ninety days copies of completed age verification forms.

(e) Any licensee who sells alcoholic beverages on a retail basis and who fills and delivers or ships orders for alcoholic beverages based on written or telephone orders shall retain for six months copies of the order forms, the records verifying the age of the purchaser, and the shipping documents, unless the order is shipped to an area where local option is in effect in which case the licensee shall retain the records for one year.

(f) All holders of a wholesale license shall retain for three years a record of all sales made in the conduct of their business.

(g) All holders of a retail license who request a refund of a portion of their license fee based on their gross sales, shall retain for three years a record of the sales of all alcoholic beverages made under their license in the year for which the refund is requested.

ARTICLE V

ENFORCEMENT

Section

10. Powers of ABC Investigative Personnel
20. Complaints
30 Inspection
40. Notices of Violation
50. Cease and Desist Orders
60. Suspension and Revocation of License
70. Effect of Revocation
80. Civil Penalties

Sec. 10. Powers of ABC Investigative Personnel

ABC investigative personnel have the power and authority to:

(1) Execute search warrants of licensed premises or premises suspected of being in violation of Title 4 or these regulations;

(2) Exercise power of arrest for violations of Title 4 or these regulations observed on licensed premises;

(3) Serve subpoenas issued by a hearing officer in an ABC administrative proceeding;

(4) Conduct inspections and investigations of licensees and licensed premises;

(5) Issue Notices of Violation to licenses.

Sec. 20. Complaints

Any person who has cause to complain concerning the conduct of a licensed business or the compliance by licensees with the statutes, regulations and municipal ordinances relating to alcoholic beverages may do so to the board in writing or in person at any of the board's offices.

Sec. 30. Inspection

(a) Licensees shall be deemed to consent to the entry upon the licensed premises and inspection thereof by investigative agents of the board, at all reasonable times and in a reasonable manner acting in their official capacity for the purpose of enforcing the statutes and regulations relating to alcoholic beverages.

(b) Licensees shall do all things reasonably necessary and appropriate to cooperate with investigative agents and employees of the board, acting in their official capacity, engaged in the enforcement of the statutes and regulations relating to alcoholic beverages, including without limitation permitting entry upon and inspection of the licensed premises and providing access, upon request at reasonable times, to the financial and other business records of the licensee relating to the conduct of business upon the licensed premises.

(c) Investigative agents of the board may make regular routine inspections of all licensed premises and will prepare a written Inspection Report of each such inspection, copies of which shall be delivered to the licensee and placed in the board's files.

(d) The director shall coordinate with local law enforcement agencies and state police to assist in keeping them knowledgeable of the requirements of Title 4 and to assure that civil and criminal sanctions, as appropriate, are taken against licensees and members of the public who violate the provisions of Title 4.

Sec. 40. Notices of Violation

(a) Investigative agents of the board may issue a Notice of Violation to a licensee whenever a violation of the statutes, regulations or municipal ordinances relating to alcoholic beverages is observed on or about a licensed premises or there is probable cause to believe that such a violation has occurred. Copies of the Notice of Violation shall be delivered to the licensee and filed with the board.

(b) Upon receipt of a Notice of Violation, a licensee shall have the right to appear within 10 days before the director and be heard regarding the Notice of Violation.

(c) Upon receipt of a Notice of Violation, the director shall take whatever action is deemed appropriate under the circumstances in accordance with the statutes and regulations relating to alcoholic beverages.

Sec. 50. Cease and Desist Orders

(a) The director may issue a Compliance Order to a licensee requiring that the licensee, or employees and agents of the licensee, cease and desist engaging in prohibited conduct or otherwise violating statutes and regulations relating to alcoholic beverages, or that the

licensee cease and desist engaging in such other conduct or allowing such conduct upon the licensed premises as the board reasonably deems contrary to the public interest.

(b) A licensee who is the recipient of a Compliance Order issued by the director as provided above must file with the director, within the time specified in the order, a compliance report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the order.

(c) Upon receipt of the report required above, or after the time period specified for it has elapsed, the director may issue a Final Order, which shall be served personally or sent by certified mail to the licensee.

(d) Within 15 days after receipt of a Final Order, a licensee may request a hearing before the director to review the Cease and Desist Order. Failure to request a hearing within 15 days after the receipt of a Final Order constitutes a waiver of the licensee's right of review of the Final Order under this section.

(e) The director shall hold an informal hearing within 20 days after receipt of a request, and may rescind, modify or affirm the order thereupon.

Sec. 60. Suspension and Revocation of Licenses

(a) In accordance with the administrative adjudication procedures of Article VI of these regulations, the board may suspend or revoke a license on the following grounds:

(1) violation by a licensee, or an employee or agent of a licensee, of any statute, regulation or municipal ordinance relating to alcoholic beverages;

(2) Failure of a licensee to comply with a Cease and Desist Order issued by the board;

(3) Tax delinquency arising out of conduct of a licensed business;

(4) For cause, when such action is reasonably deemed by the board to be in the public interest.

(b) Without a formal adjudication proceeding, but upon notice and opportunity to be heard afforded the licensee, the board may suspend or revoke a license upon the conviction of the licensee, or employee or agent of the licensee, for a violation of a statute, regulation or municipal ordinance relating to alcoholic beverages, as provided in AS 04.15.100(b).

(c) The licensee is responsible for the acts of his agents and employees that constitute violations of (a) above when such acts are performed by the agent or employee in an official capacity. Even though the agent or employee may be liable criminally for the violation, the licensee additionally may suffer the consequences of the violation under the provisions of AS 04.15.100(b).

Sec. 70. Effect of Revocation

A person whose license is revoked by the board may not apply for a license of any type until at least one year after the effective date of the revocation.

Sec. 80. Civil Penalties

Without admitting wrongdoing, a licensee may be permitted to pay a civil penalty in an amount specified by the board in lieu of filing a Notice of Defense in response to an Accusation filed in accordance with the administrative adjudication procedures of Article VI of these regulations seeking the suspension or revocation of a license. If this option is provided a licensee, and he elects it, upon payment of the civil penalty specified, the accusation shall be dismissed and no further proceedings shall be had thereunder.

ARTICLE VI

ADJUDICATION PROCEDURE

Section

10. Administrative Remedy
20. Admministrative Appeal
30. Formal Protest
40. Accusation
50. Intervention and Consolidation
60. Judicial Review

Sec. 10. Administrative Remedy

(a) A formal administrative hearing to determine whether an application should be granted or denied, or to determine whether a license should be suspended or revoked, and all proceedings relating thereto, shall be governed by the Administrative Procedure Act (AS 44.62.330, et seq.) The summary proceeding set out in Article V, Section 60(b) is outside this requirement.

(b) A formal administrative hearing is an administrative remedy which must be exhausted before an aggrieved applicant or an interested party may obtain judicial review of board action.

Sec. 20. Administrative Appeal

A person whose application for a new license, or the renewal, transfer or relocation of an existing license is denied by the director may invoke a formal administrative hearing by filing a Notice of Defense within 15 days of receipt of a Statement of Issues.

Sec. 30. Formal Protest

(a) Any interested person who is a resident of Alaska may formally protest an application for a new license or the renewal, transfer, or relocation of an existing license, and initiate a formal administrative hearing by filing a Statement of Issues before the director takes final action upon the application. If the application protested against is for premises within an incorporated city or unified municipality, the individual's protest must be filed within five days from the expiration of the protest period granted to the local governing body; if the premises are outside an incorporated or unified municipality, the individual's protest must be filed within 15 days of the last date of publication of notice by the applicant.

(b) A municipality may formally protest an application for a new license, or the renewal or transfer of an existing license and initiate a formal administrative hearing by filing a Statement of Issues within 30 days of receipt of the director's Notice of Intent to approve the application.

Sec. 40. Accusation

Any interested person who is a resident of Alaska may initiate a formal hearing to determine whether an existing license should be suspended or revoked by filing an Accusation.

Sec. 50. Intervention and Consolidation

Any interested person may intervene in a formal administrative hearing upon written notice, and formal administrative proceedings may be consolidated as appropriate.

Sec. 60. Judicial Review

Any party aggrieved by a formal administrative adjudication may obtain judicial review by appeal to the superior court.

ARTICLE VII

SPECIAL PROVISIONS

Section

10. Applicant Assistance in Determining Population Criteria
20. Applying the Population Criteria
30. Processing Applications for Licenses in a Previously Filled Class
40. Local Control
50. Community Prohibitions on Alcoholic Beverages
60. Third Party Purchases
70. Written Orders for Alcoholic Beverages
80. Security Interests
90. Restraints for Payment of Taxes
100. Hours on Election Day
110. Possession by Minors
120. Alcoholic Substances
130. Zoning Restrictions
140. Bottle Clubs

Sec. 10. Applicant Assistance in Determining Population Criteria

In preparing an application for a license in an area outside an incorporated city or unified municipality, an applicant shall assist in the determination of the population criteria by submitting the following information with their application for a new license or for transfer or relocation of an existing license:

(1) certification of population total of the applicable area provided by an official governing body if such is available;

(2) a United States Geodetic Survey map showing the population circle under consideration within the applicable area required by statute or regulation, with the proposed premises as center of the circle and the radius required extending therefrom;

(3) a narrative of how the estimated population was determined within the applicable circle;

(4) a graphic designation on a map of the location of each presently existing license of a like class within the applicable circle that was counted by the applicant;

(5) if a petition is required, a graphic designation on a map showing a population circle for the applicable area and showing the general area where petition signatures were obtained.

Sec. 20. Applying the Population Criteria

(a) Unless otherwise notified by the incorporated city or unified municipality, the director shall use the annual population figures published by the Department of Community and Regional Affairs in establishing a population figure for purposes of approval of licenses, which figure shall be made a matter of official record. Once a population figure for an area is established, it remains in effect until officially revised by the director. In the event of a change in population in an area, the new population figure would not go into effect for purposes of calculating quotas for the approval of licenses until a formal communication is received by the director from the local governing body verifying the new figure.

(b) The board shall maintain an official record of the total of licensed premises of each class within an established village, incorporated city or unified municipality. The board shall make available upon request its determination whether the statutory population criteria would allow the approval of a license within a class.

(c) In determining whether the population criteria would allow the approval of a license, the board shall count all licenses in the class in the appropriate area, regardless of whether any license was issued under an exception to the population criteria under Title 4 or these regulations.

(d) In determining the population criteria for an area outside an incorporated city, only persons residing within the circle established by statutory designation of a radius and who also reside outside an incorporated city are counted.

(e) Signatures for petitions regarding licensed premises located outside an incorporated city may be obtained from persons residing within the circle established by statutory designation of a radius whether or not such persons reside within or outside of an incorporated city.

(f) For purposes of determining how many signatures are required for a petition, all persons residing within the radius and qualified to sign the petition shall be counted.

(g) Except as set out in Section 30 below, applications for new licenses which are mutually exclusive because of the statutory population criteria shall be considered by the director (1) if received more than 30 days apart, in order of priority determined by the date that a sufficient application is received; (2) if received within 30 days of each other, each application shall be considered on its own merits, and if more applications are tentatively approved than can be granted, then an impartial drawing shall be held to select the application or applications which shall be granted a license; if a tentatively approved application is formally protested, the drawing will be delayed until resolution of the protest.

Sec. 30. Processing Applications For Licenses in a Previously Filled Class

When any class of license has been issued such that the population criteria set out in AS 04.10.210 has been met or exceeded, and the population in the area is then increased or a previously granted license is terminated so that an additional license or licenses in the previously filled class may be granted, the board shall publish a notice to the public of the fact that applications for a new license in the previously filled class will be accepted for a specific limited time, and that the applications will be processed and considered by the board, not on a first-come/first-serve basis, but as a group, and the board shall process and consider in the manner set out in the public notice all applications properly and timely submitted.

Sec. 40. Local Control

(a) Under Title 4 there are four statutory schemes for granting local control over the distribution of alcoholic beverages within a community. These four schemes are:

(1) Local option elections by incorporated cities under AS 04.10.430(a), with special provisions for some incorporated cities under 430(d);

(2) Local protest and election by established villages and their immediate environs under AS 04.10.300(b);

(3) Approval of a community liquor license to a qualified first or second class city under AS 04.10.139 and 430(c);

(4) passage by a city of local ordinances under AS 04.15.0.0.

A city which elects a local option status under (1) may also utilize (4) to make the sale of alcoholic beverages a misdemeanor. A city which qualifies under both (1) and (3) may utilize both these schemes.

(b) A license for a premises within a city, or within an established village or two miles of the boundaries of the village, when in a local election the city or village voted against the issuance of licenses or sale of alcoholic beverages, remains in effect only until midnight of December 31 of the year for which the license is issued.

(c) A license for a premises outside of but within five miles of the boundaries of a city which has voted against the sale of alcoholic beverages continues in effect, and may be considered for renewal by the board; however, the board may not issue a new beverage dispensary or retail license within this five-mile area.

Sec. 50. Community Prohibitions on Alcoholic Beverages

(a) The barter, sale, possession for sale or trafficking in alcoholic beverages is prohibited:

(1) within the boundaries of an established village or within the area two miles from the boundary of such village when a majority of the voters have voted against the issuance of liquor licenses in this area under the provisions of AS 04.10.300(b);

(2) within the boundaries of an incorporated city when a majority of the voters have voted against the sale of alcoholic beverages in this area under the provisions of AS 04.10.430(a);

(3) within the boundaries of an incorporated city which qualifies as a "dry" community under the provisions of AS 04.10.430(d).

(b) Section (a) above does not apply to licensees within the area affected by a local election during the period following the election and prior to the expiration of their valid license, to employees of a city which has a community liquor license when in the scope of their employment relating to the license, nor to premises specifically excepted under AS 04.10.430(c).

(c) The board shall maintain an official record available to all licensees and the public of the established villages and incorporated cities within which the barter, sale, possession for sale, or trafficking in alcoholic beverages is prohibited as provided in (a) above.

Sec. 60. Third Party Purchases for Consideration

(a) It is prohibited for any person for consideration charged for the act of making the purchase rather than for the cost of the product, to purchase or solicit the sale of alcoholic beverages on behalf of a consumer.

(b) It is prohibited for any person other than a licensee or a licensed common carrier to transport or to store during transport of alcoholic beverages for consideration.

Sec. 70. Written Orders for Alcoholic Beverages

(a) To comply with statutory requirements, a retail licensee may sell alcoholic beverages in response to a written order only as follows. The order must be in writing from a legally qualified purchaser. The order must be accompanied by the equivalent of cash from the person making the written order. The order must be (1) filled, boxed, addressed and shipped by the licensee to the purchaser and must be shipped by licensed common carrier to the purchaser; or (2) immediately delivered on the licensed premises to an individual specifically authorized by name by the purchaser in the written order to receive the purchase and to deliver it to the purchaser.

(b) In a mail order sale made in response to a written order as in (a) above, title to the alcoholic beverages passes to the purchaser at the time the alcoholic beverages are packed and identified to the purchaser, and these actions are sufficient to constitute a sale on the premises under AS 45.05.126 and Title 4.

(c) No telephone orders may be filled or mailed from any premises unless paid for on the licensed premises prior to delivery.

Sec. 80. Security Interests

(a) Licensees and secured parties must file with the board all instruments creating, or purporting to create, security interests in licenses.

(b) Insofar as security interests may be created in liquor licenses, such interests are subject to the requirement that the board approve the transfer of any license or interest therein upon application by the transferor, who may be the licensee or the secured party, and the transferee, who may be the secured party or a third party, respectively.

(c) Any secured party who deprives a licensee of a license shall immediately surrender the license to the board.

(d) Any licensee who loses his license to a secured creditor must close the licensed premises.

(e) Any secured party who shall force the involuntary transfer of an existing license shall bear the responsibility for the satisfaction of creditors as provided by statute.

(f) A secured party who legally deprives a licensee of a license pursuant to a security interest does not acquire any right, title or interest in the license or the conduct of business upon the licensed premises, except the right to apply to the board for approval of transfer of the license.

(g) Upon approval granted by the director, a secured party legally in possession of a license may make application for the transfer of ownership without the approval or signature of the licensee.

(h) A secured party who legally deprives a licensee of a license and the licensed premises may be given approval for the interim conduct of business upon the licensed premises for a reasonable time, upon terms and conditions approved by the board, pending tranfer of the license.

(i) Unless a license itself is mentioned as a security interest, foreclosure by a secured party of the licensed premises does not affect the licensee's interest in his license.

(j) A secured party should not be named on a licensed merely to protect a security interest. However, any secured party who is involved in the operation, management or profits of a business must be named on the license as a licensee.

Sec. 90. Destraint for the Payment of Taxes

State and federal taxing authorities with the power of destraint of licenses for the payment of taxes shall exercise that authority in accordance with the provisions of these regulations governing security interests.

Sec. 100. Hours on Election Day

(a) In unorganized areas of the state and in those organized areas which have not by ordinance overruled the provisions of AS 04.15.020(c), all premises licensed under this title shall close at 5:00 A. M. on the day designated as an election day under the statute and shall remain closed until 8:00 P. M. that night. After all polls have closed at 8:00 P. M., licensed premises may open. Hotels, motels, restaurants and roadhouses may be open on election day for business purposes other than selling alcoholic beverages and which are not in violation with the statute.

(b) In unorganized areas of the state, the provisions of (a) above shall apply to all state and local elections, whether a candidate is running for public office or otherwise.

Sec. 110. Possession by Minors

Any person under the age of 19 years is prohibited from possessing any alcoholic beverages, except as provided under AS 04.15.080(b).

Sec. 120. Alcoholic Substances

Every alcoholic substance, whether dehydrated, powdered, or otherwise, is subject to the provisions of Title 4 and the rules and regulations pertaining thereto.

Sec. 130. Zoning Restrictions

(a) Each local government entity shall inform the board of any zoning regulations or ordinances which prohibit the sale or consumption of intoxicating liquors within their jurisdiction.

(b) When a municipality denies a license due to zoning regulations or ordinances, the applicant's recourse is to request the entity to reconsider its refusal to grant a zoning exception or other relief from the restriction, prior to the matter coming before the director for a final decision.

Sec. 150. Bottle Clubs

No person may maintain, operate or lease any room for the purpose of providing therein, for a consideration, a place for the consuming of alcholic beverages by members of the public or of a club, corporation or association unless the person is a licensee or permit holder under Title 4 or these regulations. As used herein, consideration includes cover charge, the sale of food, ice, mixers or other liquid or non-liquid accessories used with alcoholic beverage drinks, or the furnishing of glassware or other containers for use in the consumption of alcoholic beverage drinks.

ARTICLE VIII

PERMITS

Section

10. General Requirements
20. Caterer's Permit
30. Special Events Permit
40. Conditional Contractor's Permit
50. Warehousing Permit
60. Special Use Permit

Sec. 10. General Requirements

(a) Applications for permits must meet the requirements of Article II, Section 10.

(b) The grounds for denial of an application set out in Article II, Section 80, also apply to permits.

(c) All permits must be applied for by submitting to the board the proper application forms, together with the application fee and permit fee. The application form must include a description of the proposed premises, a drawing designating which areas are to be "wet" or "dry" and which areas are for storage, service, and consumption, specific hours of intended operation, a copy of the approval from the proper authority, and such other information as is required by the board.

(d) Once a permit is issued, it only applies to the premises designated in the application and accompanying drawing and is only effective for the time period specifically designated. No permit is transferrable.

(e) The holder of a permit is required to comply with all laws, rules and regulations pertaining to the sale or dispensing of alcoholic beverages.

Sec. 20. Caterer's Permit

(a) Upon appropriate application, the director may issue a caterer's permit to a beverage dispensary licensee authorizing the sale and possession for sale of alcoholic bevera[illegible] for consumption on the premises only at conventions, picn[illegible] social gathers, sporting events and similar affa[illegible] subject to the terms and conditions specified by t[illegible]oard.

(b) The applicant must obtain written approval for the permit from the appropriate police authority, with the request for such approval submitted at least one week in advance of the date of the proposed event. A copy of the approval must accompany the application to the board.

(c) A caterer, or an employee or agent of the caterer, must be present on the catered premises at all times alcoholic beverages are being served or consumed.

(d) Any violation by the licensee/permit holder of any provision of law or regulation pertaining to beverage dispensary licenses may be grounds for suspension or revocation of the licensee/permit holder's beverage dispensary license.

(e) The fee for a caterer's permit shall be $25 per event and $10 for each day following the initial day.

(f) No caterer's permit fee is required for a beverage dispensary licensee who caters a fund-raising function open to the general public for a non-profit charitable organization.

Sec. 30. Special Events Permit

(a) Upon appropriate application, the director may issue a special events permit to any person authorizing the holder thereof to sell or dispense or to possess for sale or dispensing beer and wine for consumption on designated premises for a special event which is open to the public, subject to the terms and conditions specified by the board.

(b) No special events permit is required for a function held in a private home.

(c) The applicant for a special events permit must obtain written approval for a permit from the appropriate police authority at least 10 days in advance of the date of the proposed event. A copy of the approval must accompany the application to the board.

(d) A maximum of three special events permits may be granted to any person in any one calendar year.

(e) The fee for a special events permit shall be $25 per event and $10 for each day following the initial day.

Sec. 40. Conditional Contractor's Permit

(a) Upon appropriate application, the director may issue conditional contractor's permit which gives to the holder thereof the right to sell beer and wine upon specified premises located within the boundaries of a military reservation, or in a large construction site in a remote area specifically designated by the director.

(b) The permit shall specify that alcoholic beverages may be served for cash either in a beverage dispensary facility for consumption on the licensed premises only or on a retail package store basis for consumption off the licensed premises only.

(c) If sales are for consumption off the licensed premises, consumption is limited to the area within the boundaries of the military reservation or the designated remote area. In this case, the holder of the permit must post in a conspicuous place on the premises a notice to the public of the specific area within which consumption may take place.

(d) A holder of this permit may sell alcoholic beverages only to an employee of the contractor.

(e) It shall be grounds for suspension of this permit or for refusal to grant the permit upon reapplication, if the Board finds evidence that alcoholic beverages sold by a holder of this permit are being consumed outside the boundaries or the designated area, are being sold to non-employees. /or

(f) An applicant for this permit must obtain written approval from the commanding officer of said military reservation or the prime contractor of the remotely situated project. A copy of the approval must accompany the application to the board. Permission must be obtained yearly and submitted upon reapplication for the permit. Lack of permission is grounds for suspension or for denial of the permit. The permit may also be suspended upon the discretion of the director.

(g) In no event shall a conditional contractor's permit be transferable, nor shall it be valid after the completion of the permit holder's contract or closing of said military reservation.

(h) The conditional contractor's permit fee shall be $300.00 per year.

Sec. 50. Warehousing Permit

(a) Upon appropriate application, the director may issue a warehousing permit authorizing the holder thereof to stock, warehouse or otherwise store alcoholic beverages in a place other than the original licensed premises. A separate permit is required

for each separate storage facility. The application for the permit must set out the location of the storage facility and the security provisions for protecting goods stored within from becoming accessible to any person other than the licensee/permit holder and his employees and agents.

(b) The warehousing permit shall be displayed in a conspicuous place at the storage facility.

(c) If any product other than alcoholic beverages is stored in one facility, the premises containing the alcoholic beverages must be secured from any area where the other storage takes place;

(d) A warehousing permit is only available to a licensee with a current active license under Title 4;

(e) The warehousing permit fee shall be $50.00 per year.

Sec. 60. Special Use Permit

Upon appropriate application, the director may issue a special use permit as deemed necessary and appropriate under the circumstances.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Sec. 10. Forms

The director has the authority to prescribe all forms for use by the board.

Sec. 20. Fees

The director has the authority to set fees for administrative procedures.

Sec. 30. Definitions

(a) "board" means the Alcoholic Beverage Control Board or their designated representative.

(b) "director" means the executive director of the Alcoholic Beverage Control Board.

(c) "licensed premises" means the premises covered by the current license as approved by the board and as designated in the license file of the board.

NOTICE OF THE PROPOSED CHANGES

IN THE REGULATIONS OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE IS HEREBY GIVEN that the Alcoholic Beverage Control Board, under authority vested by AS 04.05.020 and 04.05.030(e), proposes to adopt a comprehensive set of regulations in Title 15 of the Alaska Administrative Code to implement and clarify Title 4 of the Alaska Statutes titled "Alcoholic Beverages"; and to repeal in its entirety the present set of regulations designated as 15 AAC 20.010 through 15 AAC 20.270.

NOTICE IS ALSO GIVEN that any interested person may present oral or written statements or arguments relevant to the proposed action. Written comments may be made by mailing them to the Alcoholic Beverage Control Board at 201 East Ninth Avenue, Anchorage, Alaska 99501. Written comments should be received at the Board's Anchorage office by MAY 31, 1979.

The ABC Board will hold public hearings over the Legislative Tele-Conferencing Network on TUESDAY, MAY 22, 1979. All interested persons are invited to attend at the following locations:

Ketchikan Information Office
415 Main Street, Room 301
(11 a.m.-8 p.m. Pacific Time)

Juneau:
Capitol Building, Room 123
(11 a.m.-8 p.m. Pacific Time)

Anchorage Information Office
1024 W. Sixth Avenue
(9 a.m.-6 p.m. Alaska Time)

Fairbanks Information Office
Building F, Room 250
101 College Road
(9 a.m.-6 p.m. Alaska Time)

Nome Information Office
Governor's Conference Room
State Office Building (2nd Floor)
(8 a.m.-5 p.m. Bering Time)

Public comment from all communities will be heard at all locations.

Oral comment may be presented to the ABC Board during the hearing at the above locations according to the following schedule:

Ketchikan:	11:00 a.m. - 12:30 p.m.	Pacific Time
Juneau:	12:45 p.m. - 2:15 p.m.	Pacific Time
Lunch Break:	2:15 p.m. - 3:15 p.m.	Pacific Time
(one hour)	12:15 p.m. - 1:15 p.m.	Alaska Time
	11:15 a.m. - 12:15 p.m.	Bering Time
Anchorage:	1:15 p.m. - 3:00 p.m.	Alaska Time
Fairbanks:	3:15 p.m. - 4:45 p.m.	Alaska Time
Nome:	5:00 p.m. - 6:00 p.m.	Bering Time

Persons wishing to present oral comment should notify in advance the moderator of their local teleconference center and advise of the length of time they expect to take. Requests for permission to comment should be directed to the following offices:

Ketchikan Information Office
415 Main Street, Room 301
Ketchikan, Alaska 99901
Phone: 225-9675

Legislative Affairs Agency
Teleconference Network
Pouch Y
Juneau, Alaska 99811
Phone: 465-4980

Anchorage Information Office
1024 W. Sixth Avenue
Anchorage, Alaska 99501
Phone: 278-3668

Fairbanks Information Office
Building F, Room 250
101 College Road
Fairbanks, Alaska 99701
Phone: 452-4449

Nome Information Office
Box 25
Nome, Alaska 99762
Phone: 443-2770

Persons who do not notify the moderator in advance may, if time allows and with the permission of the moderator, be permitted to comment after all scheduled persons from their locality have finished.

PLEASE TAKE NOTE: Oral comment for an individual is limited to 10 minutes; a person speaking on behalf of an organization may have up to 15 minutes. Unscheduled persons may speak within the time limit set by the moderator.

Copies of the draft of the proposed regulations may be obtained by writing to the ABC Board, 201 East Ninth Avenue, Anchorage, Alaska 99501. Copies are also available for review at all Department of Revenue field offices at the following locations:

103 State Office Building
415 Main Street
Ketchikan, Alaska 99901

240 South Franklin Street
Juneau, Alaska 99801

675 Seventh Avenue
Fairbanks, Alaska 99701

United Airlines Building
2033 Sixth Avenue, Suite 770
Seattle, Washington 98121

Copies have also been mailed to municipal managers/clerks of all incorporated cities.

The proposed set of regulations contains nine articles, titled as follows: Administration, Licensing, Licenses, General Provisions Regarding Licensees and Licensed Premises, Enforcement, Adjudication Procedure, Special Provisions, Permits, and Miscellaneous.

New topics not previously covered by regulation and changes in regulation are as follows:

Authority delegated to director increased (p. 2)

Any interested person may invoke a formal administrative hearing regarding approval or denial of a license (p. 6)

License must be surrendered when conduct of business ceases or licensee ceases to exercise authority (p. 10)

Licensee has 90 days to notify board of plans whenever premises are lost (p. 10)

Management agreements clarified (p. 11)

Applicants for restaurant license must submit a menu (p. 12)

Clarifies procedures for obtaining a community liquor license (p. 14)

Phase-out of duplicate beverage dispensary licenses (p. 15)

New licenses under AS 04.10.260 may be granted only when population quota in class is full (p. 16)

Storage and warehousing security required (p. 17)

Prohibits employees from drinking while on duty (p. 18)

Provides for designation of "restaurant premises" under AS 04.15.020(d) (p. 20)

Clarifies transfer proceedings regarding debts of business (p. 20)

Clarifies role of percentage leases (p. 21)

Clarifies contraband (p. 21)

Establishes reporting and record keeping requirements for licensees (pp. 22-23)

Provides for notices of violation and for cease and desist orders to be issued against licensees who violate Title 4 (p. 25).

Clarifies procedures for civil enforcement under the Administrative Procedure Act for suspensions and revocations of licenses (pp. 26-29)

Clarifies procedure for applying the population criteria to granting of licenses and signing of petitions (p. 31)

Establishes procedure for granting licenses when a class previously filled becomes open (p. 32).

Prohibits purchase of alcoholic beverages for someone else for a fee (p. 34)

Prohibits anyone but licensees and licensed common carriers from transporting alcoholic beverages (p. 34)

Sets out requirements for telephone and mail order sales (p. 34)

Clarifies duties and responsibilities of secured creditors (pp. 34-35)

Sets hours for business on election days in unorganized areas of state (p. 36)

Exempts caterers of non-profit charitable organizations' fund-raisers from the permit fee (p. 39)

Revises special events permit to provide that any person may apply (p. 39)

Establishes a warehousing permit (p. 40)

Establishes a special use permit (p. 41)

Present regulations retained in general substance within the proposed regulations are as follows:

15 AAC 20.010 - Art. V §60, .030 - Art. V §60(a)(3), .040 - Art. VII §150,
.060 - Art. V §10, .080 - Art. IV §40(d),
.090 - Art. IV §130, .100 - Art. VII §120,
.110(b) - Art. IV §50, .120 - Art. VII §80,
.130 - Art. IV §150, .140 - Art. IV §150,
.150 - Art. III §10, .170 - Art. III §20,
.180(a) - Art. II §110, .190 - Art. II §§110 & 120,
.200 - Art. IV §40(h), .210 - Art. II §130,
.220 - Art. VIII §20, .230 - Art. VIII §30,
.240 - Art. VIII §40, .260 - Art. III §50,
.270 - Art. IV §160(g)

Present regulations not retained in the proposed regulations are as follows:

15 AAC 20.020, .050, .070, .110, .160, .180(b) and .250.

The ABC Board, upon its own motion at any time after the completion of the hearings and June 15, 1979, may adopt any or all of the proposed regulations substantially as described above without further notice or may decide to take no action on them.

DATED: May 1, 1979.

Patrick L. Sharrock
Executive Director
Alcoholic Beverage Control Board

BOARD OF CHIROPRACT. EXAM.

A PERFORMANCE REVIEW OF THE BOARD OF CHIROPRACTIC EXAMINE

October 16, 1978

A PERFORMANCE REVIEW
OF THE
BOARD OF CHIROPRACTIC EXAMINERS

October 16, 1978

Commissioner, Department of Commerce and Economic Development	H. Phillip Hubbard
Deputy Commissioner, Department of Commerce and Economic Development	Bertram Wagnon

Members of the Board
of Chiropractic Examiners

President	Keith B. Godfrey, D.C.
Vice-President	Lee Burger, D.C.
Secretary	Adrian Barber, D.C.
Member	Linnea Burmeister
Member	Locke Jacobs

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

October 16, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
BOARD OF CHIROPRACTIC EXAMINERS

October 16, 1978

Gerald L Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

31-01LH

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Board of Chiropractic Examiners was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Chiropractic Examiners should be reestablished. The law currently specifies that this Board will terminate on June 30, 1979 but will continue until June 30, 1980 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) Interviews with Board members;

(3) Questionnaires to Board members and licensed members of the profession and analysis of responses;

(4) Discussions with the Division of Occupational Licensing (OL) employees;

(5) Tests of records and documents of the Board and the Division of Occupational Licensing, Department of Commerce and Economic Development;

(6) Complaints filed with OL, Ombudsman's Office, Consumer Affairs Agency, Equal Employment Opportunity Office and the Office of the Governor;

(7) Discussions with the Federation of Chiropractic Licensing Boards, National Board of Chiropractic Examiners and the Council on Chiropractic Education;

(8) Review of other states' licensing requirements; and

(9) Discussions and meetings with various licensed chiropractors.

Scope Constraints

This review was conducted with the following restrictions:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050;

(2) The Board has not developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090;

(3) The Division of Occupational Licensing has not adequately collected, recorded or maintained the necessary files and statistics regarding the Board to effectively and efficiently carry out their administrative responsibilities; and

(4) Board meeting minutes were not adequately prepared to be relied upon as being representations of Board actions.

ORGANIZATION AND FUNCTION

Created in 1939, the Alaska Board of Chiropractic Examiners is a regulatory board comprised of five members - three chiropractors and two public individuals - appointed by the Governor.

The underlying reasons for this Board are fourfold. First, the Board is responsible for reviewing the applications of individuals desiring to enter the chiropractic profession in Alaska. Secondly, the Board has the responsibility of administering an examination to test the applicant's ability. Third, the Board is responsible for the adoption of regulations regarding the standards of professional practice in Alaska and fourth, to investigate and act upon complaints filed against members of the regulated profession.

The Board of Chiropractic Examiners determines and controls the quality of chiropractic care in Alaska by:

1. Determining and implementing statutory and regulatory definitions of chiropractic care;

2. examining applicants and issuing licenses to qualified candidates for licensure; and

3. having the authority - within statutory boundaries - to hold hearings for the consideration of revoking or suspending the license of a person violating the chiropractic statutes or regulations.

To assist the Board, it has the staff support of OL in the Department of Commerce and Economic Development which is comprised of two sections. The licensing section, which processes applications, maintains license files, gathers and collects statistics and answers inquiries, provides administrative help to the Board. The other section provides investigative services to the Board in the event of consumer or other professional complaints.

To practice chiropractic in Alaska, the applicant must first receive licensure from the Board. Licensure may be made by one, or more, of three means.

One method of licensure is by tempory permit. The Board may, in its determination, issue a permit to an apparently qualified applicant to practice chiropractic only until the next examination at which time the permit is terminated and the applicant sits for the Board exam.

The second catagory of licensure is the Associate License. This license is issued when all licensing requirements, inclusive of passing the State examination, have been met with the exception of completing two years liberal arts or science studies. This license is valid for three years during which time the associate license holder must satisfy the two years undergraduate studies requirement. Associate license holders must be a contracted employee of a fully licensed chiropractor during this period.

The third license issued by the Board is full licensure. This is issued to the applicant who has successfully passed the State examination and has met all licensing and educational requirements.

Applicants for Alaskan licensure must first pass a nationally administered examination. After the required national test has been completed, the applicant takes a State written and clinical examination. The State written examination tests the applicant in areas tested previously at the national level and the clinical examination tests the applicant in the areas of X-ray identification and interpretation, and places the examinee in a case situtation where testing of adjustive techniques are made.

All applicants, except those issued temporary permits, must first pass the State examination prior to practicing chiropractic in Alaska.

REPORT CONCLUSIONS

Policy Issues

This review contains policy issues raised as a result of our evaluation of Board practices. The final policy decisions affecting these practices are not within the scope of this review but requires legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report so that the potential impact of policy changes can be evaluated.

Report Conclusions

Based upon our review, we recommend the Board of Chiropractic Examiners be reestablished, as the practice of chiropractic in Alaska affects the public's health, safety and welfare and should be subject to control and regulation. It is a matter of public interest - and concern - that the chiropractic profession receive the confidence of the public through a fair and representative regulating authority - the Board of Chiropractic Examiners. We believe that when regulation of professions is necessary to protect consumers, as is chiropractic, government involvement should be minimized. However, evidence of abuses by regulatory boards should be considered in determining whether government supervision is desirable.

Changes need to be made in the Board of Chiropractic Examiners operations to make the Board more effective in the protection of the public.

Current Board licensure policies and actions are restricting the entry of qualified Doctors of Chiropractic in Alaska, which is detrimental to the public's best interest. For example, the Board requires applicants for Alaskan licensure to first pass a nationally administered written examination. The applicant is then tested at the State level with another written and a clinical examination. The State written examination, which is subjective, tests the applicant on areas previously examined at the national level (see Recommendation No. 1).

The Board has no reciprocity or endorsement agreements with other states. Qualified Doctors of Chiropractic from outside Alaska with years of experience may avoid Alaska because of the Board's nonrecognition of licenses from other jurisdictions (see Recommendation No. 3). Using calendar year 1977 figures, the State of Alaska has a chiropractor: resident ratio of 1:10,436 compared to a national average of 1:7,138 (see Appendix D). Current Board licensing policies may be a contributing factor to this disparity between Alaska and national averages.

Actions of the Board (in some cases lack of action) and actions of some individual Board members do not truly represent the public's best interest. For example, there are no formal grading procedures which the Board should follow when reviewing an examination. This results in an apparent flexible grading policy which provides for dissension amongst the professional Board members (see Recommendation No. 4). The Board also permits the two divergent theories of chiropractic application to affect its responsibilities in governing the profession in Alaska (see Recommendation No. 6).

The Board has given almost no guidance concerning license violations. The public, as well as the chiropractic profession, would be better protected from unscrupulous activities if regulations concerning license violations were better defined by the Board.

The Board needs to evaluate present statutes and regulations for relevancy, legality and protection of the public. For instance, associate licensee contract requirements appear to permit unnecessary control over associates through possibly unenforceable contract provisions (see Recommendation No. 2). Chiropractic license violation statutes restrict advertising which is unconstitutional as established by the United States Supreme Court (see Recommendation No. 9). There are no statutes requiring continuing education for chiropractors. Post-graduate educational requirements help prevent professional obsolescence and would provide an effective control over the quality of chiropractic in the State (see Recommedation No. 7).

In conclusion, the Board of Chiropractic Examiners should analyze and evaluate the purpose of the Board from the point of view that regulation should not unreasonably restrict the entrance of all qualified persons into the profession. The Board should take the necessary actions needed to perform and fulfill their responsibilities to the public.

FINDINGS AND RECOMMENDATIONS

The following Findings and Recommendations are addressed to the Board of Chiropractic Examiners and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978" issued under separate cover.

Recommendation No. 1

The Board of Chiropractic Examiners should eliminate Part I (written) of the State examination.

The Alaska State Board of Chiropractic Examiners has recognized the National Board examination by adopting through proposed regulation "persons applying for a chiropractic license by examination in the State of Alaska, graduating after January 1, 1978, are required to submit a Diplomate Certificate from the National Board of Chiropractic Examiners". The Diplomate Certificate is certification that the applicant has taken Parts I and II of the National Board and indicates the areas tested and examination results. The following areas of chiropractic are tested at the National level: anatomy, physiology, chemistry, bacteriology, hygiene, diagnosis, gynecology, x-ray, geriatrics, principles of chiropractic, jurisprudence and ethics, pathology and physiotherapy and the examination questions are objective in nature.

In addition to the requirement that the applicant provide the Board with the Diplomate Certificate, the State Board administers a State examination which basically consists of three parts. Part I, is a written examination consisting mostly of subjective type questions. Part II, involves X-ray identification and interpretation and Part III, consists of practical application of chiropractic technique. While Parts II and III of the State examination involve physical application of the applicants knowledge through oral testing and actual adjustive techniques in case situations, the merits of the written examination (Part I) are questionable.

The State written examination, Part I, tests the applicant on topics previously examined at the National Board level, such areas as anatomy, physiology, physiotherapy, chiropractic, diagnosis and x-ray. Also, in a 1971 opinion, the Attorney General has stated that "the Board of Chiropractic Examiners has the authority to require an applicant to demonstrate competence only in those subjects not covered by the National Board".

Therefore, considering the redundancy of the State written examination over the National Board, the Attorney General's opinion on the topic and the State requirement of the applicant to take the National Board, we recommend the discontinuance of the State written examination.

Recommendation No. 2

The Board of Chiropractic Examiners should take an active role in complying with the Administrative Regulations governing associate licensees' employment contracts.

Under 12 AAC 16.210(2) of the Alaska Administrative Code (AAC), the associate must "execute a contract with a supervising chiropractor which provides for a definite salary and not fee splitting..." and 12 AAC 16.210(3)(b) states "The board will deny the practice of an associate if in the opinion of the board the contract permits unfair advantage to be taken of the associate".

Several Doctors of Chiropractic were licensed under the associate provisions and accordingly executed employment contracts with various established, fully licensed chiropractors.

From documentation available, these employment contracts have certain provisions which clearly do not serve the public's best interest and are unfair to the associate chiropractor.

The contracts we examined included the following terms:

(1) The contract prohibits the associate from establishing a practice in a wide radius of the employing chiropractor (25-30 miles) within two years after the associate ceases employment under the contract;

(2) the contract provides for substantial payments to the previously employing chiropractor if a practice is established within two years in the restricted area; and

(3) the contract establishes a compensation schedule based upon monthly cash receipts.

In the opinion of the Legislative Affairs Agency, Division of Legal Services, certain legal problems exist with these type contracts and that courts may decline to enforce such an agreement. The payments required for establishing a practice within a specific area and during a specified period are oppressive and punitive and "courts routinely refuse to enforce contracts calling for punitive damages".

The opinion further states that compensation schedules based upon a percentage of monthly gross receipts appears to be fee-splitting and the monthly salary of an associate under such an agreement is not definite but ascertainable only after monthly cash receipts are known. This is in violation of 12 AAC 16.210(2).

We recommend the Board of Chiropractic Examiners exercise its responsibilities under 12 AAC 16.210(3)(b) and review the associate contracts in light of the facts stated above and promulgate regulations setting out what may or may not be in the contracts of associates.

Recommendation No. 3

The encouragement of additional chiropractic services in Alaska should be made through more flexible licensing policies by introducing legislation to repeal certain statutes.

Data compiled from the United States Department of Commerce for 1977 and the Directory published by the Federation of Chiropractic Licensing Boards reveal a shortage of chiropractors in Alaska exists. These figures show a chiropractor: resident ratio of 1:10,436 while the national average is 1:7,138 (see Appendix D).

Licensing policies of the Board should be to get the much needed health services to the pubic and at the same time maintain the high standards and quality of the profession.

To meet the need of chiropractic services in Alaska - and yet maintain these standards of quality - the Board should implement changes in its licensing policies to permit the full licensure of experienced, licensed Doctors of Chiropractic (D.C.), from other licensing jurisdictions. It is recommended this type of licensure be made, regardless of whether the currently licensed and experienced D.C. has met the preprofessional academic requirements as experience far outweighs the completion of liberal arts or science studies. The full licensure should also be made on the basis of individual ability and experience, not on the consideration of does the other licensing jurisdiction afford the same to Alaska.

Seventy percent (70%) of the respondents to our questionnaire felt that chiropractors should be licensed on a reciprocity basis (see Appendix B). In addition, 67% and 54% believed the issuance of temporary permits and associate licenses, respectively, were in the public's best interest (see Appendix B).

Most of the states shown on Appendix D have more flexible licensing policies than Alaska and accordingly have a better chiropractor to resident ratio than does Alaska. Most of these states permit the National Board examinations to be used in lieu of a state written and have a more liberal "reciprocal" licensing arrangement than Alaska.

To encourage additional chiropractic services in Alaska, we recommend the introduction of legislation to repeal the portions of AS 08.20.140 that prevents reciprocity type licensure.

Recommendation No. 4

The Board of Chiropractic Examiners should establish examination guidelines, examination grading procedures and examination controls.

Presently, there are no formal examination procedures to control the examination process. The Board should adopt written procedures as to how the examination is to be administered and outlining the grading process.

From information available and discussions with various D.C.'s, we were informed that without grading procedures and adherence to specific examination answers, the Board was able to exercise considerable flexibility in the grading of exams. In one case the Board, after considerable delay and non-agreement amongst themselves in the grading, failed an examinee by 1%. It is also alleged that some members of the Board, for personal and interprofessional political reasons could not objectively grade the examination. As a result, the examinee, a licensed chiropractor from another jurisdiction, left Alaska to practice in another state.

Also, allegations were made regarding distribution of the State written examination prior to the testing date to at least one applicant for licensure by examination. These allegations were forwarded to the Department of Law for their review.

Recommendation No. 5

The Board of Chiropractic Examiners should adhere to the Administrative Procedures Act when license violations and suspension are being considered.

Title 44 Chapter 62 of the Alaska Statutes, known as the Administrative Procedures Act, applies to most agencies, boards and commissions of the State. In particular, AS 44.62.330-630 ("Administrative Adjudication") applies to the Board of Chiropractic Examiners. This section of the Act provides the guidelines which the Board must follow in the

process of considering the "revoking, suspending, limiting or conditioning" of a license.

From documentation available it is alleged that the Board President took it upon himself to temporarily suspend an assoicate license. Also, the Board terminated a temporary permit of an applicant who was waiting to take the State examination. Temporary permits are valid only until the next examination subsequent to the issuance of the permit. However, it appears that due to the loss of an examination application by the Board on two separate occassions, the permit holder was not allowed to take the examination. As a result of this the temporary permit was terminated. Since, from all appearances, the Board was responsible for the loss of the application that nullified the applicants right to examination, the temporary permit should have remained valid until the next examination.

Also, in each of these examples, Board meeting minutes do not show a formal decision which justified these actions.

Recommendation No. 6

The Board of Chiropractic Examiners should restructure the membership of the Board.

The basic purpose of the Board is the regulation of chiropractic to serve the public's best interest in the licensing of chiropractors.

The science of chiropractic is composed of two schools of thought, the "mixers" and "straights". The current Board is composed of a majority of one "school of thought" which results in inadequate representation of both chiropractic theories on the Board.

Therefore, we recommend the introduction of legislation to repeal the current statutory Board make-up. Accordingly, we recommend a Board of seven individuals; four chiropractors and three lay members. A majority of the professional members should not be graduated from the same chiropractic college and Southeastern, Interior and South Central Alaska representation - at a minimum - should be on the Board.

In addition, Board meeting minutes do not indicate a re-election of Board officers as required by AS 08.20.040.

Recommendation No. 7

Legislation should be introduced requiring continuing education for Chiropractors as a provision for license renewal.

The underlying purpose of continuing education is to permit professional education on a post-graduate level and allow for the maintenance and upgrading of professional competency.

According to the most recent figures provided by the Federation of Chiropractic Licensing Board's, thirty-nine states require some form of continuing education for license renewal. In December of 1977 the Alaska Chiropractic Society notified the Board of Chiropractic Examiners of its unanimous endorsement of a requirement of continuing education for license renewal. Of more significance, 94% of the respondents to the questionnaire were in favor of such a requirement and 78% knew of workshops or seminars that may qualify as continuing education that were in the respondents locality (see Appendix B).

From information available, it appears the Board expressed interest in a continuing education requirement in early 1977. We recommend that this worthwhile interest be regenerated towards implementing a sound post-graduate education requirement tied to the biennial license renewal. Accordingly, regulations should be promulgated for the administration of such a program by the Board.

Recommendation No. 8

The Board of Chiropractic Examiners should adopt a Code of Ethics binding upon the members of the profession in Alaska.

12 AAC 16.010(b) states that the board will adhere to the Code of Ethics of either the American Chiropractic Association or the International Chiropractic Association as a basis for determining what comprises the duties and obligations of the chiropractor to the public. This appears not to be a binding Code of Ethics for practitioners in Alaska, but rather an either/or situation should a violation of professional responsibility occur.

In the opinion of the Legislative Affairs Agency, Divison of Legal Services, it is arguable that both codes represent not a binding Code of Ethics for practitioners in Alaska but rather general norms against which individual conduct will be measured. In such a situation, an accusation against a chiropractor will succeed only if it is based on conduct not meeting the rules in either Code of Ethics.

Therefore, we recommend the Board of Chiropractic Examiners develop and adopt a binding single Code of Ethics surrounding the definition of Chiropractic in AS 08.20.220.

Recommendation No. 9

We recommend the Board of Chiropractic Examiners review its regulations on advertising and eliminate, by legislation, unconstitutional prohibitions.

The United States Supreme Court ruling on John Bates and Van O'Steen V. State Bar of Arizona established that many advertising restrictions of professionals were unconstitutional.

The Alaska Administrative Code (12 AAC 16.240) provides definitions of unprofessional conduct, most of which center around the advertising by a chiropractor.

In an Attorney General's opinion addressed to the Commissioner of the Department of Commerce and Economic Development on March 15, 1978, it was stated:

> "In order to avoid future litigation...it is suggested that the commissioner request the various licensing boards to undertake, in conjunction with this department, a review of all price advertising restrictions pertaining to both products and services for the purpose of recommending appropriate legislative or regulatory amendments as soon as possible."

Recommendation No. 10

The Board of Chiropractic Examiners should establish formal goals, objectives and quantifiable measures which should be included in the OL's budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishements can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL establishes its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured, both the Governor's Office and the Legislature cannot evaluate the Board's performance (see the OL Performance Audit Report).

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative attainments as Board activities relate to the public need factors defined by "Sunset" law. These analyses are not intended to be comprehensive but address those areas covered in the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. The Board of Chiropractic Examiners has not developed regulations or formal procedures for the grading of examinations (see Recommendation No. 4).

2. The Board did not comply with the Administrative Procedures Act when suspending an associate's license (see Recommemdation No. 5).

3. The per capita ratio of chiropractors to population in Alaska is 1:10,436 versus a national ratio of 1:7,138 indicating a shortage of chiropractic services (see Appendix D).

4. The Board has inadequate controls over the written examination. In addition, the written examination requirement is redundant of required National Board examinations, resulting in two testings of Alaskan applicants (see Recommendations No. 1 and No. 4).

5. The Board should do more to assure that "not to compete provisions" in associate employee employment contracts are not unduly restrictive (see Recommendation No. 2).

6. There are no stated Board objectives relating to the public's best interest either by statute or in the budget documents (see Recommendation No. 10 and see the OL Performance Audit Report).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and any other matter, including budgetary, resource, and personnel matters.

1. The Division of Occupational Licensing (OL) has not provided updated records, files and statistics for Board use (see the OL Performance Audit Report).

2. Current statutory Board make-up permits inter-professional opinion differences to effect Board operations (see Recommendations 4 and 6).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. The Board has proposed regulations in an attempt to standardize professional education requirement.

2. The Board has not adopted reciprocity or continuing education amendments to its enabling legislation.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulation and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. No documentation was available to us to determine the extent of the Board's solicitation of interested party input to its regulatory effects.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. By statute the Board is to publish notices of its meetings and examinations to encourage public participation. The Board holds its meetings on the same date of examinations so there are no individual public notices relating to examinations and meetings. We found the following adverstisements were published during the last two and one-half years.

Number of Meetings and Examinations	7
Number of Advertisements	19
Average Advertisements per Newspaper	1

The average per newspaper publication of meeting and examination notices is based upon the use of four papers, one in Ketchikan, Fairbanks, Juneau and Anchorage. The breakdown of meetings, and notices, is as follows:

Meeting of	Newspapers Used
11/75	1
01/76	2
06/76	4
01/77	4
07/77	4
01/78	3
06/78	1

For the June 1978 examination, notice was published in one paper specifying the examination application deadline was May 10, 1978. The one time notice was published May 10, 1978 (see the OL Performance Audit Report).

2. Meetings minutes for the past two and one-half years indicate no public participation or attendance.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. According to the Department of Commerce and Economic Development records, five complaints have been filed with the Department and/or the Board. Of the five complaints, only two were considered as closed files at August 29, 1978. The remaining three complaints (2 filed April 1977 and 1 filed December 1977) remained open as of August 29, 1978 (see the OL Performance Audit Report).

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. A low number of complaints are on file with Occupational Licensing against chiropractic practitioners for a total of six over the past three years.

2. However, allegations and statements by practitioners - some of which are under review - cast a doubt over the present methods used in determining an applicants qualifications. Some of these are:

   a. Use of a State written examination redundant of required National Board exams (see Recommendation No. 1).

b. Unwritten examination grading procedures used by the Board (see Recommendation No. 4).

c. The use of questionable employment contracts, previously unscrutinized by the Board, containing restrictive not-to-compete provisions (see Recommendation No. 2).

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. Overall, the Board has not engaged in discriminatory practices. However, Chiropractic examination applications require unnecessary information such as age, date of birth, place of birth, original surname (if changed) and a picture of the applicant. These application requirements - if not justifiable by the Board - may be in violation of Equal Employment Opportunity requirements (see the OL Performance Audit Report).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section - Findings and Recommendations - for detail on recommended changes to enable the Board to better serve the public interest.

APPENDIXES

APPENDIX A

BOARD OF CHIROPRACTIC EXAMINERS
REVENUES COMPARED WITH EXPENDITURES
(UNAUDITED)

Average Revenue, (see Schedule 1 and Note 1)	$ 1,500
Expenditures (Note 2)	11,900
Excess of Expenditures over Revenues	$(10,400)

Schedule 1
Type and Amount of Revenues

Revenue Type	Amount	Collection Time
Exam Application Fee	$25	With application
Re-examination Fee	10	With application
Temporary Permit	25	With permit issuance
License Fee	50	With license issuance
Renewal Fee	50	Biennially
Associate License	30	With license issuance

Note 1

Most of the Boards revenue is generated from license issuance and renewal. These revenues are collected once every two years, which causes revenues to be greater in one year than revenues of the next year. Therefore, we calculated and reported an average of the revenues collected in fiscal years 1977 and 1978 to obtain an accurate representation of Board revenues.

Note 2

Expenditures included those made by Board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board and OL.

APPENDIX B

QUESTIONNAIRE SENT TO CHIROPRACTORS

		Response (Note 1)		
		Yes	No	No Opinion
1.	Do you believe Alaska's licensing requirements for permanent chiropractor's licenses are adequate and effective in insuring that the public is protected? Yes No	82%	15%	3%
2.	Do you believe that the Board of Chiropractic Examiners is operating in the public's best interests? Yes No	91%	6%	3%
3.	Do you feel that the absence of the Board would be detrimental to the public's best interests? Yes No.	100%	0%	0%
4.	Do you feel that the examination given by the Board is a fair and reasonable test of a chiropractor's professional knowledge and ability? Yes No	100%	0%	0%
5.	Do you think that the issuance of associate chiropractor's licenses is in the best public interest? Yes No	54%	46%	0%
6.	Do you believe that the issuance of temporary permits is in the best public interest? Yes No	67%	33%	0%
7.	Do you feel that continuing education relating to chiropractic should be required before the following licenses are renewed:			
	A. Chiropractor Yes No	94%	6%	0%
	B. Chiropractor Associate Yes No	76%	9%	15%
8.	Do you know of any classes, workshops or seminars that have been offered in your area which relate to chiropractic and would qualify for continuing education? Yes No	78%	19%	3%
9.	Do you feel that chiropractors should be licensed by Alaska on a reciprocity basis with other states? Yes No	70%	30%	0%
10.	Are you aware of any discriminatory practices involving licensing of minority groups? Yes No	0%	97%	3%

		Response (Note 1)		
		Yes	No	No Opinion
11.	Do you think the Board of Chiropractic Examiners should be made up of:			
	A. a majority of chiropractors.	A. 85%		
	B. an equal number of chiropractors and public members.	B. 9%		
	C. a majority of public members.	C. 0%		
	Please circle one.	NO OPINION		6%
12.	Have you had any contact with the Board of Chiropractic Examiners? Yes No	82%	18%	0%
13.	Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce? Yes No	18%	79%	3%

Note 1

Number of questionnaires mailed to Alaskan licensed chiropractors.	45
Number of chiropractors who responded.	33
Questionnaire response rate.	73%

APPENDIX C

QUESTIONNAIRE SENT TO BOARD MEMBERS

1. What do you believe to be the goals and objectives of the Board of Chiropractic Examiners?

Summary	Number of Board Member Responses (Notes 1 and 2)
Examine applicants for technical and clinical skills.	4
Serve best interest of the public.	1
Fulfill administrative duties and function within Alaska Statutes.	2
Determine applicants meet State requirements.	2
Keep aware of changes in the profession.	3
Make recommendations to Department of Commerce and Economic Development and the Governor.	1

2. Do you believe that the Board is achieving its goals as you perceive them in question number 1? Please show how the goals and objectives are or are not being achieved.

Summary	Number of Board Member Responses
Yes, Board is Achieving its goals.	4
Through:	
Examinations and practical demonstrations.	2
Actions at Board meetings.	1
Referral of investigative and legal topics to Department of Commerce and Economic Development.	1
Creation of goals.	1

3. Is the staff from the Department of Commerce and Economic Development and/or other departments adequate to perform the administrative and enforcement duties necessary for the operation of the Board? What staff support services are provided adequately/inadequately?

Summary	Number of Board Member Responses
Support Services provided are adequate.	3
No reduction in support staff should be made.	1
Investigative and enforcement services slow and/or inadequate.	3
Board should assume more routine functions.	1

4. What evidence exists demonstrating that the absence of regulations governing chiropractors and/or the Board would be detrimental to the public's best interest?

Summary	Number of Board Member Responses
Lose identity of Chiropractic as a health care provider	1
No one to consider public complaints.	1
Leave public in hands of untrained people.	1
Allow uncontrolled practice without recourse.	1

5. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restrictive, and/or inadequate to provide the Board with the responsibility and power to properly govern the purpose and activities of the Board? Please list and explain.

Summary	Number of Board Member Responses
Repeal of Associate License law.	2
Associate laws will "die" naturally.	1

5. (Cont'd.)

Summary	Number of Board Member Responses
Consideration of and possible amendments to advertising restrictions.	2
Statutes regarding examination grading are vague.	1
Amend statutes to reflect number of members of Board.	1

6. Do you think continuing education requirements should be adopted by the Board? Why or why not.

Summary	Number of Board Member Responses
Yes, Adoption of requirement should be made.	4
To:	
Be exposed to changes and trends in profession.	3
For intraprofessional contact.	1
Chiropractic profession is moving towards such a requirement.	1

7. Do you think the Board should grant licenses by reciprocity to chiropractors holding licenses from other states? Why or why not.

Summary	Number of Board Member Responses
Reciprocity is OK but requires continual monitoring at additional expense.	1
Not unless other States reciprocate with Alaska.	1
May reduce standards in Alaska.	1
Only if a common standard or universal method is adopted.	1
Through National Board examinations.	1

8. What changes could be made to the Board which would improve its service to the public?

Summary	Number of Board Member Responses
Lay members add open healthiness at additional expense.	1
Eliminate Associate License Laws.	1
Reciprocate with states who reciprocate with Alaska.	1
Improved follow-up on complaints by the Department of Commerce and Economic Development.	1

Note 1

Number of Board members.	5
Number of Board member responses.	4
Board member response rate.	80%

Note 2

Four out of five Board members responded to each question with several answers. Thus, total responses for each question may exceed the number of Board members.

APPENDIX D

COMPARISON OF WESTERN REGION STATES CHIROPRACTOR vs. RESIDENT RATIOS

	Population (Note 1)	Number of Chiropractors (Note 2)	State Ratio:Chiropractor to Resident
Western Region (Note 3)			
Montana	761,000	171	1: 4,451
Idaho	857,000	121	1: 7,083
Wyoming	406,000	72	1: 5,639
Colorado	2,619,000	392	1: 6,682
New Mexico	1,190,000	306	1: 3,889
Arizona	2,296,000	591	1: 3,885
Utah	1,268,000	174	1: 7,288
Nevada	633,000	231	1: 2,741
Washington	3,658,000	719	1: 5,088
Oregon	2,376,000	401	1: 5,926
Alaska	407,000	39	1:10,436
California	21,896,000	4,292	1: 5,102
Hawaii	895,000	96	1: 9,323
Regional Totals	39,262,000	7,605	1: 5,163
National Totals	216,330,000	30,308	1: 7,138

Note 1

Population figures as provided by the United State's Department of Commerce for year ended June 30, 1977.

Note 2

Number of chiropractors according to the 1978-1979 Directory published by the Federation of Chiropractic Licensing Boards. Figures are for calendar year ending December 31, 1977.

Note 3

Western Region composition as determined by the United State's Department of Commerce and used in their reports.

JAY S. HAMMOND
GOVERNOR

RECEIVED
JAN 11 A.M.
LEGISLATIVE AUDIT

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary reports as shown below:

1. Board of Examiners in Optometry
2. Board of Dispensing Opticians
3. Board of Psychologist and Psychological Associate Examiners
4. Board of Chiropractic Examiners
5. Alaska State Medical Board
6. Board of Veterinary Examiners
7. State Physical Therapy Board
8. Board of Pharmacy
9. Board of Nursing
10. Board of Nursing Home Administrators
11. Board of Dental Examiners
12. Alaska Transportation Commission

We view these reviews of agency programs and activities which are specifically subject to termination in a manner different from those made of State departments or agencies. Usually we in the Executive Branch endeavor to respond directly to each finding and recommendation. However, in regard to the Boards and Commissions, the Executive Branch agency during a public hearing shall demonstrate a public need for its continued existence or the discontinuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

The Executive Branch of Alaska Government has made an extensive study of the above Boards and the Alaska Transportation Commission. We are continuing to study those entities, their origin, their present and future potential, and other related subjects in conjunction with Alaska statutes 24 and 44 (Sunset Legislation). As prescribed in AS 44.66.050 one or more legislative hearings are to be held to receive testimony from the public, the Commissioner of the department having administrative responsibility for each, and the members of the Boards or Commission involved. During those hearings we will present our findings and recommendations affecting each of the foregoing Boards and the Alaska Transportation Commission.

Accordingly, we are presenting this in addition to the responses from the Department of Commerce, Department of Law, and the individual Board or Commission members and others on an interim basis.

Sincerely,

Michael Harper

Michael Harper
Administrative Assistant
to the Governor

08-H2LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER / POUCH D – JUNEAU 99811

December 15, 1978

RECEIVED
JAN 11 AM
LEGISLATIVE AUDIT

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the performance review of the Board of Chiropractic Examiners as submitted by the Division of Legislative Audit.

Recommendation No. 1. Agreed. Discussions will be held with the board concerning this recommendation as AS 08.20.130 mandates board authority in this area.

Recommendation No. 2. We agree. The division has referred this particular problem to the Attorney General's office for a legal opinion. It will also be discussed at the next meeting of the board scheduled for January 6, 1979.

Recommendation No. 3. Agree. However, statute changes would have to be considered for applicant qualifications and licensure of out-of-State individuals. AS 08.20.140 clearly addresses license by reciprocity rather than by endorsement. We believe either method of licensure is acceptable, but would favor licensure by endorsement over licensure by reciprocity.

Recommendation No. 4. Agreed. Regulations adopted by the board in 1971 will be updated to reflect these recommendations. Discussions will be held with the board on January 6, 1979 concerning revision of regulations.

Recommendation No. 5 Agreed. The board president temporarily suspended an associate license under interpretation of 12 AAC 16.210(c).

The board president was notified to adhere to the Administrative Procedures Act and that the actions would have to be taken by the full board.

It should be noted the board realized a possible error in the loss of an application and, in fact, held a special examination in August 1978 for the benefit of this candidate.

Recommendation No. 6. I do not recommend increased board membership. Five members is sufficient to conduct board duties in a fair and impartial manner. Discussions will be held with the board on January 6, 1979 concerning the composition of the board.

Recommendation No. 7. We agree that continuing education is desirable and needed as a condition for relicensure, however, quality control of education programs would be established. Again, discussions will be held with the board concerning legislation in this area.

Recommendation No. 8. Agreed. A single code of ethics should be agreed upon by the full board.

Recommendation No. 9. Agreed. The division is addressing this matter for all boards through introduction of legislation to eliminate unconstitutional restrictions on advertising.

Recommendation No. 10. Agreed. This board as well as all boards, will be contacted in March or April 1979 for input into the division's budget for FY '81. This input will address the boards goals, objectives, and financial needs.

I appreciate the time and efforts expended by your staff.

Yours truly,

H. Phillip Hubbard
Commissioner

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

CENTURY PLAZA
142 E. 3RD AVENUE
ANCHORAGE, ALASKA 99501
PHONE: (907) 277-3623

January 8, 1979

RECEIVED
JAN 9 A.M.
LEGISLATIVE
AUDIT

State of Alaska
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Attn: Mr. Robert Bilden, Auditor

Gentlemen:

The following comments contain the Board of Chiropractic Examiners response to the Legislative Audit committee's preliminary report.

Recommendation #1
Currently an applicant is not given Part I or Part II of the state examination when he/she has successfully completed the National Board exam, Part I and Part II. When the applicant does not have the National Board, the state is obligated to test the competency of the chiropractor in the basic science and chiropractic discipline subjects.

Recommendation #2
The board has undertaken extensive changes in the regulations relating to the associate chiropractor regulations which should clarify this problem.

Recommendation #3
Since 1975 twenty-four applicants have been examined for licensure with only two failing. This equals less than a 10% failure rate compared to other states failure rates of 25-50%.

The Chiropractic Board has taken steps to simplify application and examination procedures and made changes in the regulations to clarify the procedures an applicant takes to obtain licensure in the State of Alaska.

The Board has requested the Division of Occupational Licensing to contact other state chiropractic licensing boards to establish endorsement or reciprocal licensing agreements.

Recommendation #4
The Board considered current procedures relating to grading and examination procedures during its January 5-6, 1979 meeting. The

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Board has set the direction for innovative changes to insure uniform grading and examination procedures will occur in future exams. The Division of Occupational Licensing will be sharing their input in a proposed manual for testing and grading procedures.

Recommendation #5
The Board concurs with this recommendation.

Recommendation #6
It is felt that the present make-up of the board satisfactorily corresponds with state demographics.

Recommendation #7
The Board unanimously concurs with this recommendation.

Recommendation #8
It was the Board's decision to allow sections of the statutes and regulations relating to grounds for suspension and revocation of license to act as the code of ethics.

Recommendation #9
In order to bring the regulations in compliance with current legal opinions, the board took at its January 5-6, 1979 meeting appropriate action to eliminate unconstitutional prohibitions.

Recommendation #10
The Board concurs with this recommendation.

Sincerely,

Keith Godfrey, D.C., President
Board of Chiropractic Examiners

Lee Q. Burger, D.C., Vice President
Board of Chiropractic Examiners

Adrian Barber, D.C., Secretary
Board of Chiropractic Examiners

Locke Jacobs, Member
Board of Chiropractic Examiners

Linnea Burmeister, Member
Board of Chiropractic Examiners

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

January 11, 1979

Members of the
Legislative Budget and Audit Committee:

We have reviewed the Board of Chiropractic Examiners response to our report dated October 16, 1978. Our comments on the response follow:

Recommendation No. 1

The Board stated that "currently an applicant is not given Part I or Part II of the State examination when he/she has successfully completed the National Board Exam, Part I and Part II".

It is our belief the response was in reference to the Board not administering the National Examination when the applicant has previously satisfied the National Board Examination requirements, and the Board will continue with the administering of a State written examination, redundant of the National Examination.

Implementation of Recommendation No. 1 will permit the Board to test the applicant using examinations obtained from the National Board for the areas the applicant is deficient in at the National level and will give the Board the flexibility to test, at the State level, through oral and clinical (adjustive technique) situations while eliminating the subjective and redundant State written examination.

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

31-Q1LH

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF CHIROPRACTIC EXAMINERS
POUCH D
JUNEAU, ALASKA 99811

CHIROPRACTIC INFORMATION SHEET

No person may practice chiropractic in the state without a license (Sec. 08.20.100, Alaska Statutes).

NOTE: IT IS THE RESPONSIBILITY OF THE APPLICANT FOR LICENSURE TO OBTAIN AND FURNISH, WITH HIS/HER APPLICATION, ALL NECESSARY DOCUMENTS AND DATA REQUIRED. DOCUMENTS AND TRANSCRIPTS ARE TO BE CERTIFIED AS TRUE OR THEY WILL BE RETURNED.

The following must be on file before you will be considered for certification of licensure by reciprocity or examination:

1. Completed and notarized application.

2. The appropriate fee(s) enclosed. No cash please.

3. Certified copies of your:
   a. Liberal Arts transcripts.
   b. Transcripts from Chiropractic College.

4. The National Board of Chiropractic Examiners transcript of grades with the appropriate seal. Persons applying for licensure by examination, graduating after January 1, 1978, are required to submit a diplomate certificate from the National Board of Chiropractic Examiners.

5. Additional information required by the examining board to complete your application, if necessary.

FEES

1.	Application for examination	$25.00
2.	Application for re-examination.	$10.00
3.	Issuance of temporary permit.	$25.00
4.	Initial and renewal biennial license.	$50.00
5.	Associate license	$30.00

Please send your application completed in its ENTIRETY, along with necessary documents and fee, to:

The Department of Commerce & Economic Development
Division of Occupational Licensing
Board of Chiropractic Examiners
Pouch D
Juneau, Alaska 99811

MEMBERS OF THE STATE BOARD OF CHIROPRACTIC EXAMINERS

Keith Godfrey, D.C., President
Lee O. Burger, D.C., Vice President
Adrian Barber, D.C., Secretary
Linnea Burmeister, Public Member
Locke Jacobs, Public Member

Do not send any portions of your application for licensure to any individual board member. Those applications will be returned to you to be mailed to the above address.

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
BOARD OF CHIROPRACTIC EXAMINERS
POUCH D
JUNEAU, ALASKA 99811
Phone (907) 465-2580

Attach
Photograph
Here

NOTE: TO BE ELIGIBLE FOR THE EXAMINATION, THIS APPLICATION MUST BE IN THIS OFFICE (SEE ADDRESS ABOVE) AT LEAST THIRTY [30] DAYS BEFORE THE DATE OF THE EXAMINATION.

1. Name _____ Age _____ Years
(full name)
Date of Birth _____ Place of Birth _____
(month-day-year) (city-state)
Present Residence _____
(street) (city-state-zip code)
Are you a citizen of the U.S.A.? _____ If naturalized, give date and place of naturalization _____
Has your surname ever been changed? _____ If so give date and place of change _____
Original surname _____

2. High School _____
(name) (location) (date of graduation)
If not a high school graduate, what equivalent educational qualification do you have? _____

3. List names and addresses, of liberal arts or science colleges, studies, and credits earned.

_____

_____

_____

4. Are you presently in practice? _____ If yes, give location _____
(street) (city-state-zip code)
Number of years _____
Has any license to practice chiropractic issued to you ever been revoked, suspended, recalled or cancelled? _____ If yes, explain on separate paper and submit with this application.
Have you ever been convicted of, or indicted for, any crime? _____ If yes, give details on separate paper and submit with this application.
Are you free from contagious or infectious disease? _____
Have you ever been denied examination for licensure to practice chiropractic? _____ If yes, give details on a separate paper and submit with this application.
Have you ever held an Alaska license to practice chiropractic? _____
If yes, give details on a separate paper and submit with the application.

5. NATIONAL CHIROPRACTIC BOARD EXAMS:
I hereby apply for the Alaska Chiropractic license based on the National Chiropractic Examination dated __/__/__, numbered _____. Submit

a certified copy of your grades from the National Board of Chiropractic Examiners. All copies of grades from the National Board must have the appropriate seal.

NOTE: Persons applying for a license by examination, graduating after January 1, 1978, are required to submit a diplomate certificate from the National Board of Chiropractic Examiners.

---

6. ASSOCIATE LICENSE:

I hereby apply for the Alaska Chiropractic license as an Associate under AS 08.20.133.

If applying under AS 08.20.135 as an Associate, who will be employing you?

_____ (print name of employer)

_____ (address of where you will be employed)

_____ (city-state-zip code)

State of _____ Borough or County _____

ss

I hereby swear (or affirm) that the foregoing statements are true and correct to the best of my knowledge and belief.
I also understand that any false statement made in this application or connived at in any clause is good cause for rejection or revocation of license after license has been granted.

_____ (Signature of applicant)

_____ (Date)

_____ being duly sworn says that he/she is
(name of applicant)
the person referred to in this application and that the statements herein contained are true in every respect, and that the attached photograph is a true likeness of himself/herself taken within the last six months.

Subscribed and sworn before me this _____ day of _____, 19_____.

Witness my hand and seal hereunto attached

(SEAL)

_____ (signature of notary public)
My commission expires _____

08-444 revised 2/78

S T A T E O F A L A S K A

STATUTES
BOARD OF CHIROPRACTIC EXAMINERS

Printed: October 1978

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Chapter 01. Centralized Licensing.

Section
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40. Transportation and per diem
50. Administrative duties of department
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70. Administrative duties of boards
80. Department regulations
87. Powers and duties of department
90. Applicability of the Administrative Procedure Act
100. License renewal, lapse and reinstatement
105. Penalty for improper payment
110. Definitions

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

(1) Board of Public Accountancy;

(2) Board of Barber Examiners;

(3) Repealed by § 6 ch 32 SLA 1971.

(4) Board of Chiropractic Examiners;

(5) Board of Hairdressing and Beauty Culture Examiners;

(6) Board of Dental Examiners;

(7) Board of Electrical Examiners;

(8) State Board of Registration for Architects, Engineers and Land Surveyors;

(9) State Medical Board,

(10) Board of Nursing;

(11) Board of Examiners in Optometry;

(12) Board of Pharmacy;

(13) Real Estate Commission;

(14) Board of Veterinary Examiners;

(15) Board of Psychologist and Psychological Associate Examiners;

(16) Collection Agency Board;

(17) Board of Welding Examiners;

(18) Board of Marine Pilots;

(19) Board of Dispensing Opticians;

(20) Guide Licensing and Control Board;

(21) State Physical Therapy Board. (§ 1 ch 59 SLA 1966; am § 2 ch 136 SLA 1967; am § 2 ch 101 SLA 1968; am § 2 ch 143 SLA 1968; am § 2 ch 151 SLA 1968; am § 1 ch 106 SLA 1970; am § 6 ch 32 SLA 1971; am § 4 ch 179 SLA 1972; am § 2 ch 45 SLA 1973; am § 14 ch 65 SLA 1973; am § 1 ch 43 SLA 1975; am § 1 ch 43 SLA 1977)

Effect of amendments. — The first 1973 amendment added paragraph (19).

The second 1973 amendment inserted "and Psychological Associate" in paragraph (15).

The 1975 amendment added paragraph (20).

The 1977 amendment added paragraph (21).

Editor's note. — Section 2, ch. 59, SLA 1966, provides: "The Department of Commerce shall provide for the orderly transfer of the service functions which are to be performed by the department under this chapter."

Section 4, ch. 59, SLA 1966, provides: "A provision in existing law which conflicts with this Act is superseded by this Act."

Legislative committee reports. — For report on ch. 143, SLA 1968 (HB 707), see 1968 House Journal, p. 836. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 08.01.020. Board organization. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members. (§ 1 ch 59 SLA 1966)

Sec. 08.01.025. Public members. No public member of a board may:

(1) be engaged in the occupation which the board regulates;

(2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or

(3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 253 SLA 1976)

Sec. 08.01.030. Quorum. A majority of the membership of a board constitutes a quorum unless otherwise provided. (§ 1 ch 59 SLA 1966)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (§ 1 ch 59 SLA 1966)

Sec. 08.01.050. Administrative duties of department. (a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;

(2) maintain records and files;

(3) issue and receive application forms;

(4) notify applicants of acceptance or rejection of applicants as determined by the board;

(5) designate dates examinations are to be held and notify applicants;

(6) publish notice of examination;

(7) arrange space for holding examinations;

(8) notify applicants of results of examinations;

(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;

(10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of $2;

(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;

(12) compile and maintain current a register of licenses;

(13) answer routine inquiries;

(14) maintain files relating to individual licensees;

(15) arrange for printing and advertising;

(16) purchase supplies;

(17) employ secretarial help when needed;

(18) perform other services which may be requested by the board;

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in § 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned. (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment added paragraph (19) of present subsection (a).

The second 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the introductory paragraph of present subsection (a).

The third 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, substituted "department" for "Department of Commerce" and "when appropriate" for "for the boards" in the introductory language and inserted "by the licensee" in two places in paragraph (10). The amendment also added subsection (b).

While none of the amendments gave effect to the others, this section is set out as it appears in ch. 258, SLA 1976, with the inclusion of paragraph (19) of subsection (a) added by ch. 102, SLA 1976.

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law:

(1) keep minutes and records of all proceedings;

(2) hold a minimum of one meeting each year;

(3) hold at least one examination each year;

(4) request, through the department, investigation of violations of its laws and regulations;

(5) prepare and grade examinations;

(6) pass on qualifications of applicants for examination and license;

(7) forward minutes of meetings to the department within 20 days;

(8) forward results of examinations to the department;

(9) notify the department of meeting dates at least 15 days before meeting. (§ 1 ch 59 SLA 1966)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;

(2) what is contained in application forms;

(3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

Sec. 08.01.087. Powers and duties of department. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by a board listed in § 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (§ 3 ch 258 SLA 1976)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (§ 1 ch 59 SLA 1966; am § 4 ch 258 SLA 1976)

Effect of amendment — The 1976 amendment added "except those under AS 08.01.087(b)" to the end of the section.

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968)

Sec. 08.01.105. Penalty for improper payment. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (§ 3 ch 258 SLA 1976)

Sec. 08.01.110. Definitions. In this chapter

(1) "board" includes the boards and commissions listed in § 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in § 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in § 10 of this chapter. (§ 1 ch 59 SLA 1966; am § 40 ch 218 SLA 1976; am § 5 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

The second 1976 amendment added paragraphs (3) through (6).

Chapter 02. Miscellaneous Provisions.

Section

10. Professional designation requirements
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) A person licensed in the state as a chiropractor as defined in AS 08.20.220, a dentist as defined in AS 08.36.360, a medical practitioner or osteopath as defined in AS 08.64.380, a professional nurse as defined in AS 08.68.410, an optometrist as defined in AS 08.72.300(3), a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall professionally identify

himself by the use of appropriate letters or a title after his name which represents his specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays his professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and identifies himself by using the letters "M.D." or the title "doctor" or "physician" or any other title which tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of his noncompliance by his appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, his noncompliance continues, the board may suspend or revoke his license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1973)

Sec. 08.02.020. Limitation of liability for members of licensing boards. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976)

Chapter 03. Termination, Continuation and Reestablishment of Regulatory Boards

Section
10. Termination, continuation and reestablishment of regulatory boards

Cross reference. — As to review of the activities of agencies, boards and commissions, see AS 44.66.010 et seq.

Editor's note. — Section 1, ch. 149, SLA 1977, provides: "The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government, and that there is need for an effective and regular system of scrutiny of the programs and activities of all agencies, boards and commissions. The legislature further finds that the establishment of a system for periodic review by the public and the executive and legislative branches of certain state agencies, boards and commissions will help the governor and the legislature to determine the need for the continued existence of each of the agencies, boards and commissions."

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

(1) Board of Chiropractic Examiners (AS 08.20.010);

(2) Board of Dental Examiners (AS 08.36.010);

(3) State Medical Board (AS 08.64.010);

(4) Board of Nursing (AS 08.68.010);

(5) Board of Dispensing Opticians (AS 08.71.010);

(6) Board of Examiners in Optometry (AS 08.72.010);

(7) Board of Pharmacy (AS 08.80.010);

(8) Board of Veterinary Examiners (AS 08.98.010);

(9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);

(10) Board of Nursing Home Administrators (AS 08.70.010);

(11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

(1) Board of Public Accountancy (AS 08.04.010);

(2) Board of Barber Examiners (AS 08.12.010);

(3) Collection Agency Board (AS 08.24.011);

(4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);

(5) Board of Electrical Examiners (AS 08.40.010);

(6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);

(7) Guide Licensing and Control Board (AS 08.54.010);

(8) Board of Marine Pilots (AS 08.62.010);

(9) Real Estate Commission (AS 08.88.011);

(10) Board of Welding Examiners (AS 08.99.010);

(11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

Chapter 20. Chiropractors.

Article
1. Board of Chiropractic Examiners (§§ 08.20.010 — 08.20.090)
2. Licensing and Regulation (§§ 08.20.100 — 08.20.190)
3. Unlawful Acts and Penalties (§§ 08.20.200 — 08.20.210)
4. General Provisions (§ 08.20.220)

Article 1. Board of Chiropractic Examiners.

Section
10. Creation and membership of Board of Chiropractic Examiners
20. Members of board
30. Members' terms; vacancies
40. Organization of board
50. Power of officers to administer oaths and take testimony
55. Board regulations
60. Power of board to adopt seal
70 — 80. [Repealed]
90. Quorum of board

Sec. 08.20.010. Creation and membership of Board of Chiropractic Examiners. There is created the Board of Chiropractic Examiners consisting of five members appointed by the governor. (§ 35-3-23 ACLA 1949; am § 2 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "five members" for "three members."

Am. Jur., ALR and C.J.S. references. — 41 Am. Jur., Physicians and Surgeons, § 27.

Constitutionality of statute prescribing conditions of practicing medicine as affected by discrimination against chiropractors, 37 ALR 680; 51 ALR 600.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 ALR 630.

70 C.J.S. Physicians and Surgeons §§ 1, 8, 10, 12, 15.

Sec. 08.20.020. Members of board. Three members of the board shall be licensed chiropractic physicians who have practiced chiropractic in this state not less than two years. Two members of the board shall be persons with no direct financial interest in the health care industry. Each member serves without pay but is entitled to per diem and travel expenses allowed by law. (§§ 35-3-23, 35-3-30 ACLA 1949; am § 3 ch 102 SLA 1976)

Revisor's note. — This section relating to per diem and expenses was impliedly amended by § 1, ch. 130, SLA 1953, as amended by § 1 ch. 34, SLA 1960.

Effect of amendment. — The 1976 amendment substituted "Three members" for "Each member" and "licensed chiropractic physicians who" for "a licensed chiropractic physician and shall" in the first sentence and added the present second sentence.

Sec. 08.20.030. Members' terms; vacancies. Members serve for staggered terms of three years. The terms of the public members of the board may not expire at the same time. Vacancies on the board shall be filled for the unexpired term. (§ 35-3-23 ACLA 1949; § 4 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment rewrote this section.

Sec. 08.20.040. Organization of board. Every two years, the board shall elect from its membership a president, vice president and secretary. (§ 35-3-24 ACLA 1949)

Sec. 08.20.050. Power of officers to administer oaths and take testimony. The president and the secretary may administer oaths in conjunction with the business of the board. (§ 35-3-24 ACLA 1949)

Sec. 08.20.055. Board regulations. The board shall adopt substantive regulations necessary to effect the provisions of this chapter. (§ 1 ch 102 SLA 1960)

Sec. 08.20.060. Power of board to adopt seal. The board shall adopt a seal and affix it to all licenses issued. (§ 35-3-24 ACLA 1949)

Sec. 08.20.070. Secretary.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.20.080. Records, reports and accounts of board.
Repealed by § 3 ch 59 SLA 1966.

Sec. 08.20.090. Quorum of board. A majority of the board constitutes a quorum for the transaction of business (§ 35-3-24 ACLA 1949)

Article 2. Licensing and Regulation.

Section		Section	
100.	Practice of chiropractic without license prohibited	150.	Recording of license
110.	Application for license	160.	Temporary permits
115.	Malpractice insurance	170.	Grounds for suspension, revocation or refusal to issue a license
120.	Qualifications for license	175.	Limits or conditions on license; discipline
130.	Examinations	180.	Fees
135.	Associate	190.	Disposition of fees
140.	Out-of-state licenses		

Sec. 08.20.100. Practice of chiropractic without license prohibited. No person may practice chiropractic in the state without a license. (§ 35-3-21 ACLA 1949)

Cited in Territory of Alaska v. Hawkins, 9 Alaska 573 (1939).

Am. Jur. reference. — 41 Am. Jur., Physicians and Surgeons, §§ 15, 16, 27.

Sec. 08.20.110. Application for license. A person desiring to practice chiropractic shall apply in writing to the board. (§ 35-3-26 ACLA 1949)

Sec. 08.20.115. Malpractice insurance. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 5 ch 102 SLA 1976)

Sec. 08.20.120. Qualifications for license. An applicant shall be issued a license to practice chiropractic if he

(1) Repealed by § 25 ch 245 SLA 1970.

(2) has had a high school education or its equivalent;

(2) has successfully completed at least two academic years of study in a college of liberal arts or sciences;

(4) is a graduate of a legally chartered accredited school or college of chiropractic, approved by the board, which requires for graduation a residence course of instruction of not less than four years of nine months each;

(5) passes an examination given by the board;

(6) Repealed by § 8 ch 32 SLA 1971.

(7) passes to the satisfaction of the board Part I and Part II of the examination of the National Board of Chiropractic Examiners. (§ 35-3-25 ACLA 1949; am § 1 ch 55 SLA 1955; am § 1 ch 91 SLA 1965; am § 25 ch 245 SLA 1970; am § 8 ch 32 SLA 1971; am § 1 ch 84 SLA 1972)

Revisor's note (1972). — In ch. 84, SLA 1972, the apparently necessary word "examination" was omitted from AS 08.20.120(7). It has been added here.

Legislative committee reports. — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 08.20.130. Examinations. (a) Examinations for a license to practice chiropractic may be held in the time and manner fixed by the board.

(b) The examination may include practical demonstration and oral and written examination in those subjects usually taught in accredited chiropractic schools.

(c) A general average rating of 75 per cent is a passing grade on the examination.

(d) An applicant may take a re-examination within one year after failing the examination upon payment of a fee of $10. (§ 35-3-27 ACLA 1949; am § 2 ch 91 SLA 1965)

Am. Jur. reference. — 41 Am. Jur., Physicians and Surgeons, §§ 40, 41.

Sec. 08.20.135. Associate. A person who complies with § 120 (1), (2), (4), (5), and (6) of this chapter, shall, pending compliance with (3) of § 120 of this chapter, be licensed to serve as an associate in an existing chiropractic clinic or office under the direct supervision of a licensed chiropractor for a period not to exceed three years. (§ 3 ch 91 SLA 1965)

Editor's note. — Paragraphs (1) and (6) of § 120, referred to in this section have been repealed.

Sec. 08.20.140. Out-of-state licenses. The board may issue a license without examination to an applicant presenting satisfactory proof of the possession of a license or certificate of registration in a state or territory of the United States, or a foreign country, if the requirements for

registration at the date of his license are considered by the board as equivalent to those in this chapter, and if the licensing jurisdiction extends the same privilege to those holding a license from this state. (§ 35-3-25 ACLA 1949; am § 1 ch 53 SLA 1955)

Sec. 08.20.150. Recording of license. Each licensee shall record his license with the clerk of the superior court in the judicial district in which he is practicing his profession. (§ 35-3-28 ACLA 1949)

Sec. 08.20.160. Temporary permits. Temporary permits may be issued to persons apparently qualified until the next regular meeting of the board. (§ 35-3-28 ACLA 1949)

Sec. 08.20.170. Grounds for suspension, revocation or refusal to issue a license. (a) The board may refuse to issue, or may suspend or revoke a license upon any of the following grounds:

(1) malpractice;

(2) misrepresentation;

(3) unprofessional conduct;

(4) habitual intemperance, or addiction to the use of narcotics;

(5) conviction of a felony or misdemeanor involving moral turpitude;

(6) violation of any provision of this act.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board for the suspension or revocation of a license.

(c) Any person whose license is suspended or revoked may within two years from date of suspension apply for reinstatement, and if the board is satisfied that the applicant should be reinstated, it shall order reinstatement. (§ 35-3-29 ACLA 1949)

Am. Jur. *reference.* — 41 Am. Jur., Physicians and Surgeons, §§ 44 to 46.

Sec. 08.20.175. Limits or conditions on license; discipline. (a) In addition to action under § 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 6 ch 102 SLA 1976)

Sec. 08.20.180. Fees. The board shall impose and collect the following fees:

(1) upon the filing of an application for examination, $25;

(2) upon application for re-examination, $10;

(3) for issuance of temporary permit, $25;

(4) initial and renewal biennial license, $50;

(5) associate license, $30. (§ 35-3-30 ACLA 1949; am § 1 ch 13 SLA 1968)

Sec. 08.20.190. Disposition of fees. All fees collected by the board shall be paid into the general fund of the state. (§ 35-3-30 ACLA 1949)

Article 3. Unlawful Acts and Penalties.

Section
200. Violation of § 100 of this chapter
210. Fraudulent certificates

Sec. 08.20.200. Vilation of § 100 of this chapter. A person who violates § 100 of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $1,000, or by imprisonment for not more than a year, or by both. In prosecutions under this section, evidence that the defendant has failed to file his certificate of registration with the board is prima facie evidence that he is not a licensed chiropractor. (§ 3 ch 53 SLA 1955)

Revisor's note. — This section introduces a requirement which does not exist in this chapter, viz., filing a certificate with the board. It is the board's duty to keep a registry.

Sec. 08.20.210. Fraudulent certificates. Any person who obtains or attempts to obtain a chiropractic certificate by dishonest or fraudulent means, or who forges, counterfeits, or fraudulently alters any such certificate is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both. (§ 4 ch 53 SLA 1955)

Article 4. General Provisions.

Section
220. Chiropractic defined

Sec. 08.20.220. Chiropractic defined. Chiropractic is the science of locating and correcting interference with nerve energy transmission and expression within the human body, and the employment and practice of drugless therapeutics, including physiotherapy, hydrotherapy, mechanotherapy, phytotherapy, electrotherapy, chromotherapy, thermotherapy, thalmotherapy, correcting and orthopedic gymnastics, and dietetics which includes the use of foods and those biochemical tissue building products and cell salts found within the normal human body, without the use of drugs or surgery. (§ 35-3-22 ACLA 1949)

Prescription of drugs or medicine illegal. — It is illegal and criminal for a chiropractor, without additional qualifications, to prescribe drugs or medicine to sick or injured persons. 1961 Op. Att'y Gen., No. 23.

Expenditures from fishermen's fund for medicine prohibited. — Money cannot

be expended from the fishermen's fund for the payment of charges for medicines prescribed by chiropractors. 1961 Op. Att'y Gen., No. 23.

Am. Jur. and ALR references. — 41 Am. Jur., Physicians and Surgeons, § 27.

Chiropractors as within term "physician" in rule as to privileged communications, 68 ALR 177.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 ALR 630.

BOARD OF CHIROPRACTIC EXAMINERS

REGULATIONS

BOARD OF CHIROPRACTIC EXAMINERS

ARTICLE 2. LICENSING

Section
30. Application for examination
40. Evaluation
50. Notification
60. Schedule
70. Basis of questions
80. Identity of applicant
90. Method of examination
100. Materials
110. Leaving examination room
120. Disturbance
130. Questions
140. Grades
150. Re-examination
160. Time
170. Special examination
180. Reconsideration of papers
190. Certificates
200. Temporary permits
210. Associates
220. Duplicate licenses
230. Misrepresentation
240. Unprofessional conduct

12 AAC 16.030. APPLICATION FOR EXAMINATION. No applicant may take the examination unless he

(1) applies on the board approved form for application for licensure,

(2) complies with all the forms requirements and any additional requests for information by the secretary of the board when necessary to complete the applicant's credentials,

(3) submits to the board, written proof of meeting all requirements of AS 08.20,

(4) pays the required fees for application, and

(5) applies no less than 30 days before a scheduled examination. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055
AS 08.20.130

12 AAC 16.040. EVALUATION. Evaluation of an applicant's credentials in work for liberal arts or science (2 years liberal arts and science college) shall be made from a course of study from an institution equivalent to those of the University of Alaska or acceptable to the regional accrediting agencies for approved colleges of liberal arts or sciences. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055

BOARD OF CHIROPRACTIC EXAMINERS

12 AAC 16.050. NOTIFICATION. An applicant will be notified of his passing or failing of an examination or the acceptance or denial of his application for examination within a reasonable time from the date of examination or the receipt of application for examination. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055

12 AAC 16.060. SCHEDULE. The board will when possible, regularly examine applicants on the second Saturday and/or Sunday of January and June at a time and place determined by the board. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.070. BASIS OF QUESTIONS. All examination questions will be based upon material contained in standard text books used in chiropractic schools or colleges. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055

12 AAC 16.080. IDENTITY OF APPLICANT. An applicant for examination will be designated by a number instead of a name, so that the identity is not disclosed to the examiners until the papers are graded. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055

12 AAC 16.090. METHOD OF EXAMINATION. The paper of an applicant will be identified by numbers as follows:

(1) each envelope will be numbered and will contain a blank sheet of paper with a number on it which the applicant shall write his name and address on the blank and return it to the envelope which shall be sealed and delivered to the director;

(2) each applicant shall place on his examination paper the number given to him. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.100. MATERIALS. No applicant may have on his examination table any paper or object other than the examination questions, examination paper, blotter, pencil, pens and ink, eraser, and a watch. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055
AS 08.20.130(a)

BOARD OF CHIROPRACTIC EXAMINERS

12 AAC 16.110. LEAVING THE EXAMINATION ROOM. No candidate may leave the examination room for any reason unless accompanied by a proctor or board member. (Eff. 3/8/71 Register 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.120. DISTURBANCE. No applicant may communicate with another applicant during the examination. A disturbance on the part of the applicant will cause him to be required to leave the examination room. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.130. QUESTIONS. An applicant shall rely solely on his own judgement for the meaning of each question and on his own knowledge of the subject in answering each question. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055

12 AAC 16.140. GRADES. An applicant failing to make the required grade average will be credited for the subjects passed.

(b) An applicant failing to attain a general average rating of 75 per cent after two examinations is required to produce evidence of refresher courses in the subjects failed before he is allowed a re-examination. (Eff. 3/8/71 , Register 37)

Authority: AS 08.20.055
AS 08.20.130

12 AAC 16.150. RE-EXAMINATION. (a) An applicant may apply for re-examination by

(1) informing the board of his intention at least 30 days before the next regularly scheduled examination, and

(2) paying the re-examination fee. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055

12 AAC 16.160. TIME. An applicant will be allowed to proceed at his own speed on each subject given in the examination, within the time specified. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055
AS 08.20.130(a)

BOARD OF CHIROPRACTIC EXAMINERS

12 AAC 16.170. SPECIAL EXAMINATION. A special examination of an applicant may be allowed if all members of the board agree and notice of 30 days in writing is given to the board and the applicant has complied with the provisions of this chapter and AS 08.20. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055

12 AAC 16.180. RECONSIDERATION OF PAPERS. The examining board will not reconsider an applicant's examination papers unless the applicant presents his reason in writing to the board. The applicant is bound by the decision of the board. (Eff. 3/8/71. Register 37)

Authority: AS 08.20.055

12 AAC 16.190. CERTIFICATES. The board shall issue one form of license to those passing the examination for licensure. The license shall be designated "License to Practice Chiropractic". The license authorizes its holder to practice chiropractic in the state, and shall be signed by all board members. All certificates shall be numbered consecutively. (Eff. 3/8/71, Register 37)

Authority: As 08.20.055

12 AAC 16.200. TEMPORARY PERMITS. (a) Temporary permits are subject to termination by the board at any time if, in the board's determination, the holder of the permit is violating ethical behavior or law after being warned by the board that this action in regard to him was being contemplated.

(b) Temporary permits shall be displayed in a conspicuous place in the office where the holder practices chiropractic.

(c) It is the duty of the permitee to inform the board of any change in his mailing and practicing address. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055
AS 08.20.160

12 AAC 16.210. ASSOCIATES. (a) No associate may treat or diagnose a patient professionally unless:

(1) he furnishes the board periodic evidence that he is pursuing reasonable academic study to fulfill the two years liberal arts or science requirements within the three-year period;

(2) he executes a contract with the supervising chiropractor which provides for a definite salary and no fee splitting, and provides that no remuneration may be made except under terms of the contract;

BOARD OF CHIROPRACTIC EXAMINERS

(3) the supervising chiropractor assumes liability for all malpractice of the associate.

(b) The board will deny the practice of an associate if in the opinion of the board the contract permits unfair advantage to be taken of the associate.

(c) The associate shall inform the board of any changes in his current mailing address and contemplated changes in his contract.

(d) The associate shall openly display his license in the office in which he practices and on the license shall be stamped in an conspicuous place on the face, the words, "associate" or "as the associated chiropractor licensed under statute".

(e) The board will revoke the license of an associate at any time it reasonable appears impossible for the associate to complete the specified curricula within three years from the date of license issued.

(f) The licensed associate shall use the word "associate" after his name to inform the public of his status. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055
AS 08.20.135

12 AAC 16.220. DUPLICATE LICENSES. The board shall, upon request, issue a duplicate license in place of the original if the original is destroyed or lost, or if the licensee legally changes his name. The duplicate license shall have on the face in a conspicuous place the word "duplicate". (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055

12 AAC 16.230. MISREPRESENTATION. As used in AS 08.20.170(2) "misrepresentation" means

(1) the use of any advertising in which untruthful exaggerated, improper, misleading or deceptive statements are made;

(2) the advertising of techniques of modalities to infer or imply superiority of treatment or diagnose by their use;

(3) impersonation of another practitioner of like or different name;

(4) advertising either in his own or under the name of another person or clinic, or concern, actual or pretended, in any newspaper, pamphlet, circular or other written or printed paper or document, professing superiority to or a greater skill than that possessed by fellow chiropractic physicians;

(5) the advertising or holding oneself out to treat diseases or other abnormal conditions of the human body by any secret formula, method or procedure;

(6) knowingly permitting or allowing any person to use his certificate in the practice of any system or mode of treating the sick or afflicted. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055

12 AAC 16.240. UNPROFESSIONAL CONDUCT. In AS 08.20.170 (3) "unprofessional conduct" means

(1) aiding the practice of any of the healing arts by an unlicensed person;

(2) the use of his name under the designation "Doctor", "Dr.", "Chiropractor", "Chiropractor Physician", or "Ph.C." or any similar designation with reference to the commercial exploitation of any goods, wares or merchandise;

(3) advertising which contains offers, premium gifts or cut rates for the purpose of attracting or retaining patients; or which is not in accordance with sec. 250 of this chapter;

(4) mention of either (A) superiority to other members of the chiropractic profession or (B) of the school from which the advertising chiropractor was graduated;

(5) the use of handbills for the purpose of attracting patients:

(6) advertising the prices for which services are available;

(7) dishonorable conduct of degradation by a license relating to the occupation. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055
AS 08.20.170

ARTICLE 3. GENERAL PROVISIONS

Section
250. Violations
260. Advertising
270. Definitions

12 AAC 16.250. VIOLATIONS. It is the duty of all members of the board to report to the Division of Occupational Licensing, instances of alleged violations of AS 08.20.100. The secretary shall informa a new licensee in that state that it is his duty to report all instances of suspected unlicensed

practice of chiropractic known to him to the board. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055
AS 08.20.100

12 AAC 16.260. ADVERTISING. (a) Upon the opening, reopening or removal of an office for the practice of chiropractic, the chiropractor may publish, in local newspapers, an announcement, which shall be limited to a statement of his name, title, profession, degrees, address, telephone number and office hours. The announcement may not be published for more than 90 days after the opening, reopening, or removal of the office. The announcement may not exceed eight square inches in area.

(b) When a chiropractor transfers his established practice to a successor, the successor shall, within a reasonable time, remove from all signs, cards, stationery and directories connected with the practice he has acquired or is acquiring, all such words or phrases as "successor to" or words of like import. Under no circumstances may these signs, cards, stationery or advertising continue for a period of more than two years. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055

12 AAC 16.270. DEFINITIONS. In this chapter

(1) "board" means the Board of Chiropractic Examiners as established by AS 08.20.010. (Eff. 3/8/71, Register 37)

Authority: AS 08.20.055

PUBLIC NOTICE

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

The Department of Commerce & Economic Development hereby announces the initiation of a "sunset" review of all state health care boards.

The review is based upon "sunset" legislation enacted in 1977 in response to public dissatisfaction at the substantial increase in the number of state boards. All state health care boards will be terminated on June 30, 1979 unless public need and worthiness can be determined. These boards include:

- Chiropractic Examiners
- Dental Examiners
- Medical Board
- Nursing
- Examiners in Optometry
- Pharmacy
- Psychologist and Psychological Associates
- Veterinary Examiners
- Physical Therapists
- Dispensing Opticians
- Nursing Home Administrators

The public is invited and encouraged to assist the department and participate in this review process by submitting comments, in writing, to:

Department of Commerce & Economic Development
Sunset Review
Pouch D
Juneau, Alaska 99811

H. Phillip Hubbard
Commissioner

Publish: Aug. 22, 24, 1978

VERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

S. DEPARTMENT

DEPT. NO.	A.O. NO.
AO- 08	1215

VENDOR NO.

DATE OF A.O.

PUBLISHER

Southeast Alaska Empire
235 Second Street
Juneau, Alaska 99801

DATES ADVERTISEMENT REQUIRED:

Please print 1 column by 3". One time only immediately upon receipt.

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.

FROM

Department of Commerce & Economic Development
Division of Occupational Licensing

BILLING ADDRESS:

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
ADMINISTRATIVE SERVICES, FISCAL
Pouch D, Juneau, Alaska 99811

ADVERTISEMENT

STATE OF ALASKA

PUBLIC NOTICE
BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given of the forthcoming examination and meeting:

The Department of Commerce & Economic Development has announced that the Board of Chiropractic Examiners will be holding an examination and meeting on June 9-10, 1979, beginning at 9:00 a.m., at the Alaska Chiropractic Center, 3800 Lake Otis Parkway, Anchorage, Alaska 99504. The deadline for applications is May 10, 1979.

Anyone wishing to obtain additional information should contact the Department of Commerce & Economic Development, Division of Occupational Licensing, Pouch D, Juneau, Alaska 99811, (907) 465-2580.

Charles R. Webber (ca)

Charles R. Webber, Commissioner

4/19/79

Date

TO BE COMPLETED BY ORDERING DEPARTMENT

TRANS.	DEPT.	DIV. & PROG.	FUNCTION	SUB FUNCTION	OBJECT RECEIPT	HWY. FUNCT.	PROJECT LEDGER	PER CENT OR ITEM NO.
	08	53	5	012	101			

PAGE NO. 1 OF 1 PAGES

TOTAL ALL PAGES $

REQUISITIONED BY

DIVISIONAL APPROVAL

I HEREBY CERTIFY THAT THE UNENCUMBERED BALANCE IN THE APPROPRIATION CITED HEREON IS SUFFICIENT TO COVER THIS PURCHASE AND THAT THIS PURCHASE IS AUTHORIZED HEREUNDER.

CERTIFYING OFFICER

DATE ENTERED

VOUCHER NUMBER

AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA
STATE OF ALASKA
FOURTH DISTRICT } SS.

STATE OF ALASKA
PUBLIC NOTICE
BOARD OF CHIROPRACTIC EXAMINERS

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Anyone wishing to obtain additional information should contact the Department of Commerce & Economic Development, Division of Occupational Licensing, Pouch D, Juneau, Alaska 99811, (907) 465-2580.

Charles R. Webber, Commissioner
Date: April 11, 1979
AO-08-1214

Before me, the undersigned, a notary public, this day personally appeared Jean Eloranto, who, being first duly sworn, according to law, says that he/she is an Advertising Clerk of the Fairbanks Daily News-Miner, a newspaper published at Fairbanks, in said Fourth District and State, and that the advertisement, of which the annexed is a true copy, was published in said paper on the following day(s),

April 18, 1979

AO-08-1214

, and that the rate charged thereon is not in excess of the rate charged private individuals, with the usual discounts.

Jean Eloranto

Subscribed and sworn to before me this 23rd day of April, 1979

Lois D. Philip
Notary Public in and for the State of Alaska.

My commission expires April 10, 1981

$18.06

ADVERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

DEPT. NO.	A.O. NO.
AO-	

PUBLISHER:
Anchorage Daily Times
P.O. Box 40
Anchorage, Alaska 99510

VENDOR NO.

DATE OF A.O.
May 3, 1979

DATES ADVERTISEMENT REQUIRED:
In LEGAL section on May 7, 1979.

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.

FROM:
Dept. of Commerce and Economic Development
Division of Occupational Licensing

BILLING ADDRESS:
Department of Commerce and Economic Development
Administrative Services---Fiscal
~~Pouch D, Juneau, Alaska 99811~~

ADVERTISEMENT

STATE OF ALASKA

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT, BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given that the Department of Commerce and Economic Development, Board of Chiropractic Examiners, under authority vested by AS 08.20.055 proposes to amend, adopt and repeal regulations in Title 12 of the Alaska Administrative Code to implement AS 08.20 as follows:

12 AAC 16 is amended by:

(1) rewording sections relating to board responsibilities, licensing and general provisions so that those sections being reworded read more smoothly and are more applicable;
(2) repealing restrictive and outdated sections relating to the board, associate chiropractors, contracts between associate chiropractors and chiropractors, unprofessional conduct and advertising; and
(3) adopting a new section dealing with associate chiropractors which requires the establishment and documentation of a supervisory relationship with a licensed chiropractor, requires proof of progress toward fulfillment of the educational requirement of AS 08.20.120(3) and establishes post licensure procedures to be followed by an associate chiropractor.

Notice is also given that any person interested may present written statements or arguments relevant to the action proposed by mailing them so that they are received by 4:30 p.m. (P.S.T.) on June 7, 1979 to:

TO BE COMPLETED BY ORDERING DEPARTMENT

TRANS	DEPT.	DIV. & PROG.	FUNCTION	SUB FUNC. TION	OBJECT RECEIPT	HWY. FUNCT.	PROJECT LEDGER	PER CENT OR ITEM NO.
	08	53	[illegible]	12	101			

PAGE NO. 1 OF 2 PAGES

TOTAL ALL PAGES $

REQUISITIONED BY

DIVISIONAL APPROVAL

DATE ENTERED

I HEREBY CERTIFY THAT THE UNENCUMBERED BALANCE IN THE APPROPRIATION CITED HEREON IS SUFFICIENT TO COVER THIS PURCHASE AND THAT THIS PURCHASE IS AUTHORIZED HEREUNDER.

CERTIFYING OFFICER

VOUCHER NUMBER

ADVERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

5. DEPARTMENT

DEPT. NO.	A.O. NO.
AO-08	

PUBLISHER:
Anchorage Daily Times
P.O. Box 40
Anchorage, Alaska 99510

VENDOR NO.

DATE OF A.O.: May 3, 1979

DATES ADVERTISEMENT REQUIRED:
May 7, 1979 in LEGAL section

THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.

FROM:
Dept. of Commerce & Economic Development
Division of Occupational Licensing

MAILING ADDRESS:
Department of Commerce and Economic Development
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Juneau, Alaska 99811

ADVERTISEMENT

STATE OF ALASKA

Department of Commerce and Economic Development
Board of Chiropractic Examiners---Regulations
Pouch D
Juneau, Alaska 99811

Copies of the proposed regulations may be obtained by writing to the above address and requesting them.

The Department of Commerce and Economic Development, Board of Chiropractic Examiners, upon its own motion or at the instance of any interested person, may thereafter adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Dated: May 3, 1979

Charles R. Webber,
Commissioner

TO BE COMPLETED BY ORDERING DEPARTMENT

TRANS.	DEPT.	DIV. & PROG.	FUNCTION	SUB FUNCTION	OBJECT RECEIPT	HWY. FUNCT.	PROJECT LEDGER	PER CENT OR ITEM NO.
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PUBLISHER
Anchorage Daily Times
P.O. Box 40
Anchorage, Alaska 99510

VENDOR NO.

DATE OF A.O.
May 3, 1979

FROM
Dept. of Commerce & Economic Development
Division of Occupational Licensing

DATES ADVERTISEMENT REQUIRED:
May 7, 1979 in LEGAL section

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BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Laura A. Lee WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Legal Clerk OF The Anchorage Times PUBLISHED AT Anchorage IN SAID DIVISION third AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 7th DAY OF May 19 79 AND THEREAFTER FOR 0 CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE ____ DAY OF ____ 19__, AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

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Laura A. Lee

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THIS 9th DAY OF May 19 79

Mary L Russell

NOTARY PUBLIC FOR STATE OF Alaska
MY COMMISSION EXPIRES May 1st 1982

STATE OF ALASKA

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT, BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given that the Department of Commerce and Economic Development, Board of Chiropractic Examiners, under authority vested by AS 08.20.055 proposes to amend, adopt and repeal regulations in Title 12 of the Alaska Administrative Code to implement AS 08.20 as follows:

12 AAC 16 is amended by:

(1) rewording sections relating to board responsibilities, licensing and general provisions so that those sections being reworded read more smoothly and are more applicable;
(2) repealing restrictive and outdated sections relating to the board, associate chiropractors, contracts between associate chiropractors and chiropractors, unprofessional conduct and advertising; and
(3) adopting a new section dealing with associate chiropractors which requires the establishment and documentation of a supervisory relationship with a licensed chiropractor, requires proof of progress toward fulfillment of the educational requirement of AS 08.20.120(3) and establishes post licensure procedures to be followed by an associate chiropractor.

Notice is also given that any person interested may present written statements or arguments relevant to the action proposed by mailing them so that they are received by 4:30 p.m. (P.S.T.) on June 7, 1979 to:

Department of Commerce and Economic Development
Board of Chiropractic Examiners — Regulations
Pouch D
Juneau, Alaska 99811

Copies of the proposed regulations may be obtained by writing to the above address and requesting them.

The Department of Commerce and Economic Development, Board of Chiropractic Examiners, upon its own motion or at the instance of any interested person, may thereafter adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Dated: May 3, 1979

/s/ Charles R. Webber
Commissioner

Pub: May 7, 1979

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ADMINISTRATIVE SERVICES, FISCAL
Pouch D, Juneau, Alaska 99811

ADVERTISEMENT

STATE OF ALASKA

PUBLIC NOTICE
BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given of the forthcoming examination and meeting:

The Department of Commerce & Economic Development has announced that the Board of Chiropractic Examiners will be holding an examination and meeting on June 9-10, 1979, beginning at 9:00 a.m., at the Alaska Chiropractic Center, 3800 Lake Otis Parkway, Anchorage, Alaska 99504. The deadline for applications is May 10, 1979.

Anyone wishing to obtain additional information should contact the Department of Commerce & Economic Development, Division of Occupational Licensing, Pouch D, Juneau, Alaska 99811, (907) 465-2580.

Charles R. Webber, Commissioner

Date

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STATE OF Alaska } ss
Juneau DIVISION.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Jeff A. Wilson WHO, BEING FIRST DULY SWORN, ACCORDING TO LAW, SAYS THAT HE/SHE IS THE Gen. Mgr. OF S.E. AK Empire PUBLISHED AT Juneau IN SAID DIVISION _____ AND STATE OF Alaska AND THAT THE ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WAS PUBLISHED IN SAID PUBLICATION ON THE 27th DAY OF April 19 79 AND THEREAFTER FOR Ø CONSECUTIVE DAYS, THE LAST PUBLICATION APPEARING ON THE _____ DAY OF _____ 19__, AND THAT THE RATE CHARGED THEREON IS NOT IN EXCESS OF THE RATE CHARGED PRIVATE INDIVIDUALS.

Jeff A. Wilson

SUBSCRIBED AND SWORN TO BEFORE ME THIS 25th DAY OF May 19 79

Donna J. Greenow

NOTARY PUBLIC FOR STATE OF _____
MY COMMISSION EXPIRES _____

STATE OF ALASKA
PUBLIC NOTICE
BOARD OF
CHIROPRACTIC EXAMINERS

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Anyone wishing to obtain additional information should contact the Department of Commerce & Economic Development, Division of Occupational Licensing, Pouch D, Juneau, Alaska 99811 (907) 465-2580.
Charles R. Webber, Commissioner
Date - 4/11/79
Publish: April 27, 1979

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STATE OF ALASKA

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Anyone wishing to obtain additional information should contact the Department of Commerce & Economic Development, Division of Occupational Licensing, Pouch D, Juneau, Alaska 99811, (907) 465-2580.

Charles R. Webber

Charles R. Webber, Commissioner

4/19/79

Date

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STATE OF ALASKA
FOURTH DISTRICT
} SS.

STATE OF ALASKA

PUBLIC NOTICE

BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given of the forthcoming examination and meeting:

The Department of Commerce & Economic Development has announced that the Board of Chiropractic Examiners will be holding an examination and meeting on June 8-10, 1979, beginning at 9:00 a.m. at the Alaska Chiropractic Center, 3800 Lake Otis Parkway, Anchorage, Alaska 99504. The deadline for applications is May 10, 1979.

Anyone wishing to obtain additional information should contact the Department of Commerce & Economic Development, Division of Occupational Licensing, Pouch D, Juneau, Alaska 99811, (907) 465-2580.

Charles R. Webber, Commissioner
Date: April 11, 1979

AO-08-1214

Before me, the undersigned, a notary public, this day personally appeared Jean Elorrito, who, being first duly sworn, according to law, says that he/she is an Advertising Clerk of the Fairbanks Daily News-Miner, a newspaper published at Fairbanks, in said Fourth District and State, and that the advertisement, of which the annexed is a true copy, was published in said paper on the following day(s),

April 18, 1979

AO-08-1214

, and that the rate charged thereon is not in excess of the rate charged private individuals, with the usual discounts.

Jean Elorrito

Subscribed and sworn to before me this 23rd day of April, 1979

Notary Public in and for the State of Alaska.

My commission expires April 10, 1981

Bd of
DENTAL
EXAM.

A PERFORMANCE REVIEW
OF THE
BOARD OF DENTAL EXAMINERS

August 9, 1978

Commissioner of the Department of Commerce and Economic Development	H. Phillip Hubbard
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Board of Dental Examiners

President	Arthur Hansen, D.D.S.
Secretary	John Kobylarz, D.D.S.
Member	Leonard Yuknis, D.D.S.
Member	John Beard
Member	Jana Varratie, R.D.H.
Member	Claud Rick, D.D.S.
Member	Wayne Putman, D.D.S.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU 99801

August 9, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW OF
THE BOARD OF DENTAL EXAMINERS

August 9, 1978

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Board of Dental Examiners was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Dental Examiners should be reestablished. The law currently specifies that this Board will terminate on June 30, 1979, but will continue until June 30, 1980 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) Interviews with Board members and questionnaires sent to the Board;

(3) Interviews with health agencies and professional associations;

(4) Tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) Interviews with OL employees;

(6) Complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency, and the Equal Employment Opportunity Office;

(7) Questionnaires sent to 15 dental schools;

(8) Questionnaires sent to State licensed dentists and dental hygienists; and

(9) Review of other states' licensing requirements.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090.

(2) OL has not adequately collected, recorded or maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

The Board of Dental Examiners was first created in 1906. Today, it is a regulatory board with seven members - five dentists, one dental hygienist and one public member. The purpose of the Board and dental regulations is defined by an editor's note to AS 08.36.010:

> "The practice of dentistry in the state is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists be permitted to practice dentistry in the state. All provisions of this chapter relating to the practice of dentistry and dental hygiene and to the registration of dental laboratories shall be liberally construed to carry out these objects and purposes."

Basically, the Board determines the minimum quality of dental care in the State by:

1. Examining and issuing licenses to qualified applicants;

2. Establishing or amending rules and regulations necessary and desirable to enforce State statutes;

3. Holding hearings in order to revoke, annul or suspend the license of a person violating the dental statutes and regulations.

In addition, the Board has staff support from OL which is composed of two sections. The licensing section which processes applications is supposed to maintain license files, gather and collect statistics, answer inquiries and provide other administrative help to the licensing boards. The other section provides investigative services to the Board in the event of consumer or other professional complaints.

The Board regulates three groups of dental practitioners in the State: dentists, dentists specializing in specific fields and dental hygienists who perform limited dental services. Most licensing requirements are established by statute. However, statutes have granted the power of waiving the dental examination if applicants have certain qualifications. In addition, Alaska Statutes allow the Board to grant special permits for the practice of dentistry without taking the clinical examination. One is a temporary permit for applicants waiting to take the examination.

The permit limits the area of practice to areas where there are currently no dentists practicing and is valid for one year. Another special permit is granted to those federal agencies that supply dentistry to critical shortage areas.

The clinical examination given by the Board to prospective dentists tests two areas: oral diagnosis and operative dentistry. The operative dentistry section is graded by Board members. The oral diagnostic test is composed and graded by a national organization. All dental applicants, except those given special permits, must take the clinical examination before practicing dentistry in Alaska.

Dental hygienists are required to take a clinical examination. However, reciprocity is allowed if applicants meet certain requirements. Dental specialists are licensed if applicants have certain qualifications. They are not required to take a test, although they must be Alaska licensed dentists.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Dental Examiners should continue to regulate and license dental professionals. The regulation and licensing of these professionals is necessary to protect the public's health, safety and welfare.

However, certain changes need to be implemented in order for the Board of Dental Examiners to effectively perform its duties. Presently there is a dental manpower shortage noted in several areas of Alaska. Board policies are restricting the entry of qualified dentists and are not in the public's best interest. For example, the Board has no reciprocity or endorsement agreements with other states. Also, the Board's clinical examination required for licensing is given only once a year. Because of these policies and a low pass rate for dental applicants on the last clinical examination of 48%, the dental manpower shortage has not improved (see Recommendation No. 1).

In addition, the Board's clinical examination has several deficiencies with its procedures and examination subjects. The deficiencies, first noted several years ago in hearings to evaluate the fairness of the clinical examination, have not been corrected (see Recommendation No. 2).

The Board has given almost no guidance concerning license violations. The public, as well as the dental profession, would be better protected if regulations concerning license violations were better defined by the Board (see Recommendation No. 4).

The Board needs to evaluate present Alaska Statutes for relevancy and protection of the public. For instance, temporary dental permit statutes establish a double standard of public protection in rural and urban areas (see Recommendation No. 3). Dental license violation statutes restrict advertizing which is unconstitutional as determined by the United States Supreme Court (see Recommendation No. 7).

There are no statutes requiring continuing education for dentists, dental hygienists and dental specialists. This requirement would help prevent professional obsolescence and may provide an effective control over the quality of dentistry in the State (see Recommendation No. 5).

In conclusion, the Board of Dental Examiners should analyze and evaluate the purpose of the Board and take the necessary actions needed to perform and fulfill their responsibilities to the public.

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 6 are addressed to the Board of Dental Examiners. Findings and Recommendations No. 7 through No. 10 are addressed to the Division of Occupational Licensing (OL), and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978", issued under separate cover.

Recommendation No. 1

The Board of Dental Examiners should institute changes in its procedures and regulations which will encourage more dental services to be provided in Alaska.

Presently there is a shortage of dental manpower in several areas of Alaska. This has been substantiated by studies conducted by two nonprofit, federally-funded agencies - the Southeast Alaska Health Systems Agency and the South Central Health Planning and Development Agency. In addition, the federal government on July 25, 1978, listed 14 divisional areas in Alaska as dental manpower shortage areas (Appendix J). Also, 24 of 56 dentists responded to a Legislative Audit questionnaire (Appendix H) that they believed rural areas of Alaska are not adequately serviced by dentists in private practice.

Several of the Board's policies have not helped solve this problem. For instance, even though Alaska statutes allow the Board to establish reciprocity agreements with other states, the Board has not chosen to do so. Fifty-seven percent of those State dentists responding to a Legislative Audit survey believe that Alaska should establish reciprocity agreements for dentists with other states. Also, the clinical examination for dentist licenses is given only once a year. In addition, there is a potential conflict of interest that exists when Alaska Board members who are practicing dentists grade the performance of applicants who represent potential competition. However, no instances of deliberate grading bias have been noted.

In order to encourage more qualified dentists to practice in Alaska, we recommend that the Board attempt to join a regional testing board and establish reciprocity agreements with participating states. For instance, the Western Regional Testing Board is comprised of the states of Arizona, Utah, and Oregon. Their clinical examinations are given at least twice a year and comply with all of Alaska statutory requirements (See Recommendation No. 2). They allow Board members to participate in the grading and will pay transportation and per diem costs for participating Board members.

Also, the Board should promptly institute regulations which allow dental paraprofessicnals, such as dental hygienists, to provide many needed services to Alaska's rural areas without the direct supervision of dentists. During the 1978 legislative session, the Alaska Legislature approved a bill to expand the duties that dental hygienists may perform within the State. Committee Substi ute House Bill 809 established that the Board of Dental Examiners will promulgate regulations defining the expanded duties performed by qualified dental hygienists without the direct supervision of a dentist.

In various completed studies including one by the National Task Force on State Dental Policies, a committee composed of various officials from several states, it was found that many dental hygienists were qualified to perform more dental functions than currently allowed by statutes. The Board will better serve and protect the public and encourage more dental services to be provided in Alaska by instituting regulations which will allow an expansion of dental hygienists' duties.

Recommendation No. 2

In the event Recommendation No. 1 is not implemented, the Board of Dental Examiners should change test procedures and content for examining dental and dental hygiene applicants in order to comply with legal requirements.

In the last three years, the Board of Dental Examiners has made improvements on its dental and dental hygiene clinical examinations. However, there are still many weaknesses and problems with the test. For example:

1. The clinical test for dentists does not test applicants' knowledge of prosthetic dentistry as required by Alaska Statute 08.36.160.

2. Board members do not inquire about the general health of patients used for the practical examination. Although applicants provide the patients, the Board should make certain that patients have good health and are not allergic to the anesthesia given.

3. The Board has no policy of restricting unsupervised visitors talking to applicants during the examination. A local dentist who was not connected with the examination process was observed talking to applicants without a Board member monitoring or supervising his presence.

4. The Board has no written examination procedures for either the dental or dental hygienist clinical examination. During the last examination, conflicting instructions were given to a dental hygienist applicant by different Board members.

5. Grade sheets and information sheets issued to dental hygienists contain conflicting grade information.

6. The Board has not formally established or communicated to dental hygiene applicants the minimum passing grade for the examination.

7. The Board requires that an outside laboratory be used in the casting of an applicant's work for the clinical examination for dentists. However, the applicant's grade can be affected by the laboratory's work. Such grading is unfair to the applicant and does not give him due process consideration.

A questionnaire and a copy of the Board's regulations describing the clinical examination for dentists was sent to 15 dental schools throughout the United States (Appendix F). Nine schools responded that they thought Alaska's test did not adequately measure the competency of prospective dentists. The most prevalent criticism was that the examination was not comprehensive enough. Thirteen of the 15 schools mentioned that the practical examination conducted in their states included the testing of an applicant's knowledge in prosthetic procedures.

In addition, dentists licensed in Alaska responded to a questionnaire in which 28 out of 56 dentists said that the clinical examination was not valid or useful as a tool for measuring the competency of dental applicants.

Twice in the last three years, dental applicants have filed complaints with the Board of Dental Examiners about the fairness of the clinical examination. Independent hearing officers were appointed by the Governor. Each time the officers found several deficiencies in the testing subjects, procedures and regulations. As a result the Board wrote regulations outlining the test subjects and made procedural changes. However, some problems were not corrected and may cause future costly litigations.

In order to correct the noted problems, we recommend that the following be implemented.

1. The clinical examination for dentists should include a section on prosthetic dentistry.

2. The Board should create a test manual including testing and grading procedures outlined for Board members who will grade applicants and for the examiner from OL. Also, any facts and studies demonstrating the relevancy of testing subjects and measuring the consistency and quality of grading by Board members should be collected and included in the test manual.

3. The Board should establish additional regulations for examination. Such regulations should include:

   a. Grading criteria for the testing of dental hygiene applicants;

   b. A minimum passing grade for the dental hygiene examination;

   c. A requirement for applicants to furnish medical histories of dental patients; and

   d. A requirement that people not taking or grading the examination must have prior Board approval to attend the examination and will be supervised. This regulation should be strictly enforced.

4. The Board should give the option to applicants taking the dentist clinical examination to do all of their own laboratory work or use a professional laboratory.

Recommendation No. 3

Legislation should be introduced to amend the temporary permit statutes for dentists in order to alleviate the double standard found in the current law.

Alaska statutes allow temporary permits to be given to qualified applicants who are applying to take the clinical examination and who will practice in those areas which have no practicing dentists. The Board believes that temporary permit requirements with those provisions establish a double standard of quality of public protection against incompetent dentists in rural and urban areas and has stopped granting permits. This restriction may also be in violation of State and federal anti-trust laws.

The implementation of Recommendation No. 1, which provides more frequent tests and allows reciprocity, will increase the speed and frequency of the application process. Amending AS 08.36.280, which is the legal basis for temporary permits for dentists, will prevent double standards of the quality of public protection in rural and urban areas.

In the event our Recommendation No. 1 is not considered as a viable solution to the dental manpower shortage problem in Alaska, we recommend an alternative would be to amend the temporary permit statute relaxing the use of permits throughout the State.

Recommendation No. 4

The Board of Dental Examiners, in conjunction with the Attorney General, should compose formal regulations which define and list examples of license violations.

Alaska Statute 08.36.310 outlines dental license violations which are grounds for the suspension o revocation of a dental license. The list includes vague terms such as "moral turpitude" and "unprofessional conduct", which many dentists probably would not understand without a lawyer's advice.

Presently the Board has not clarified or given examples of violations of "moral turpitude" or "unprofessional conduct" in its regulations. The public and dentistry profession would be better protected if licensed professionals had better guidance as to what are prohibited acts.

For instance, unsanitary conditions of dental offices is not specifically listed as a license violation. Listed in the responses to a questionnaire sent to state dentists and dental hygienists, there were five noted observations of unsanitary offices. Although unsanitary conditions may be covered under the term "unprofessional conduct", the condition should be specifically identified in the regulations as a license violation.

Recommendation No. 5

Legislation should be introduced requiring continuing education for dentists, dental hygienists and dental specialists.

Dental practitioners are acutely aware of the public trust that they maintain their professional competency. Required continuing education is one means of fulfilling that trust. In addition, a program of continuing education will recognize individual interests and efforts, avoid professional obsolescence and keep practitioners aware of changes taking place in the profession.

According to the Council of State Governments, a nonprofit organization which studies state practices, eight states have required continuing education for dentists. Twenty-eight of 56 dentists (50%) and 22 of 25 dental hygienists (88%) responded to a Legislative Audit questionnaire that they believed continuing education should be required of their professions.

Recommendation No. 6

Board of Dental Examiners should submit an annual report to the Governor's office and to the Alaska Dental Society in accordance with AS 08.36.070.

The Board of Dental Examiners issued its last annual report in 1975. AS 08.36.070 requires that these reports be submitted annually to the Governor's office and the Alaska Dental Society. Without this report, the Governor and the public cannot adequately evaluate the performance of the Board.

We recommend that the Board include, at a minimum, the following information in its report.

1. Board's purpose, goals and measures.

2. Receipts and disbursements related to the Board's operations.

3. Board member participation (based on Board minutes, one Board member has missed over forty percent of the meetings).

4. Number of investigations of dental license violations started and completed.

5. New dental regulations and statutes.

Recommendation No. 7

Legislation should be introduced to delete license violations which are unconstitutional and not in the public's best interest.

The United States Supreme Court ruling on John Bates and Van O'Steen vs. State Bar of Arizona established that many advertising restrictions of professionals were unconsitutional. AS 08.36.310 lists many license violations which prohibit advertising. For example, grounds for revocation of license under AS 08.36.310 include:

> (14) advertises prices for professional service;...
> (17) advertises by a medium other than the carrying or publishing of a modest professional card or the display of a modest window or street sign at the licensee's office containing the name, address, profession, office hours, telephone number and speciality;

(16) permits the use of his name as a dentists by others in the sale or advertisement of products;...

Number (14) is unconstitutional and (17) and (18) are not in the public's best interest to have restricted. These statutes restrict the free flow of information and may increase the cost of dental care to the public.

In an Attorney General's opinion addressed to the Commissioner of the Department of Commerce and Economic Development on March 15, 1978, it was stated:

> "In order to avoid future litigation...it is suggested that the commissioner request the various licensing boards to undertake, in conjunction with this department, a review of all price advertising restrictions pertaining to both products and services for the purpose of recommending appropriate legislative or regulatory amendments as soon as possible."

Recommendation No. 8

The Board of Dental Examiners should establish formal goals, objectives and quantifiable measures which should be included in the OL's budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL establishes its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without each Board's goals and measures being identified or measured, both the Governor's Office and the Legislature cannot evaluate a Board's performance (see the OL Performance Audit Report).

Recommendation No. 9

The Division of Occupational Licensing should collect, record and maintain for five year periods, files and statistics of license and testing applicants and related workload of the licensing examiner.

The Division needs relevant facts and statistics for evaluating the performance of its personnel and Board activity. Many past records have not been collected and maintained, such as:

1. Number of dentists and dental hygienists licensed in past years;

2. Records of those applicants failing the examination;

3. Numbers of applicants denied the chance to take the examination due to lack of qualifications;

4. Number of complaints and criticisms about the performance of the Board and its staff;

5. Correspondence workload of license examiners; and

6. Number of persons requesting applications.

It is to the advantage of the Division to keep these records in order to support its budget request, evaluate its personnel and keep the Board informed as to its progress. Also, feedback from the Board and the public should be encouraged to determine whether staff performance is adequate.

Recommendation No. 10

Legislation should be pursued which will allow all interest groups to be adequately represented on the Board of Dental Examiners.

The Board regulates dentists, dental hygienists and dental specialists for the purpose of public protection. The Board is currently composed of five dentists, one dental hygienist and one public member.

There are numerous dental specialist fields such as orthodontics and oral surgery. The statutory qualification requirements for specialists are more restrictive than for dentists, by requiring at least two years of advanced education in the specialty. By requiring that a dental specialist be on the Board, the State ensures that the views of the specialists are adequately represented.

In addition, the public should have its views represented on the Board since the purpose of the Board is for public protection. It is questionable whether one public member adequately represents the public interests. The State of California, through its 1977 Public Members Act requires that one-third (1/3) of all health related Board members be represented by the public. California feels that the public's confidence and well-being have been enhanced by this law.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative attainments as Board activities relate to the public need factors defined in the "Sunset" law. These analyses are not intended to be comprehensive in nature, but address those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. The Board of Dental Examiners has composed regulations governing the administration of general anesthesia. Regulations were also drafted to describe the dental clinical examination subjects and grading. However, because the examination regulations were not filed in accordance with the Administrative Procedures Act, they did not go into effect and will have to be refiled by the Board.

2. In the larger urban areas of Alaska, the per capita ratio of dentists to population is equal to or less than the national average of 1 dentist to 2,000 population. However, in the rural areas, the ratio is much higher (see Appendix J) which demonstrates a shortage of dentists in these areas.

3. The Board of Dental Examiners has held an average of four meetings per year, only one clinical examination per year, and started 28 investigations in the last five years of which ten have been completed.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. The Division of Occupational Licensing (OL) has not maintained updated records, files, and statistics for Board use (see Recommendation No. 9 and the OL Performance Audit Report).

2. Investigations of dental complaints have not been made in a timely manner. The investigative section of OL had spent an average of 12.8 months on each of eighteen (18) unresolved cases as of July 30, 1978 (see the OL Performance Audit Report).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. The only statutory change which the Board evaluated before their July 1978 meeting was to increase the grade for passing part of the clinical examination. It is highly questionable whether this would be in the public's interest.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. The Board has held special meetings to listen to dental applicants and evaluate special cases.

2. The Board received and reviewed a report from the Southeast Alaska Health Association concerning dental manpower shortages in southeast communities. Because of the report, the license examiner from OL was authorized by the Board to tell prospective dental applicants about the shortages.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. The Board advertises in newspapers to encourage public participation and also sends notices to interested associations. During the last two and a half years, approximately one advertisement was published per newspaper for a meeting. Slightly more advertisements were published for examinations, and one advertisement was published for the Board's regulations. This complies with the requirements of the Administrative Procedures Act.

2. During the past five years, six persons other than Board members and state employees were present during Board meetings as recorded by Board minutes.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. Three complaints about the fairness of the Board's clinical examination were recorded with OL and adjudicated by independent hearing officers in favor of the complainant. Some of the officers' findings have not been corrected (see Recommendation No. 2).

2. One complaint filed with the Ombudsman's Office concerned a license decision by the Board. The complaint was found justified and was quickly corrected by the Board.

VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

1. A total of 25 complaints in four years are on file with CL against state dental practitioners.

2. However, the dental clinical examination does not adequately test an applicant's competence as supported by the following:

   a. The test does not comply with statutory requirements;

   b. In a questionnaire, 9 of 15 dental schools evaluated the test as inadequate;

   c. Most other states test additional subjects.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. Dental and dental hygiene applications require unnecessary information such as an applicant's picture, race, and sex. This is a violation of Equal Employment Opportunity requirements (see the OL Performance Audit Report).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

BOARD OF DENTAL EXAMINERS
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Average Revenue (See Schedule 1 and Note 1)	$ 10,200
Expenditures (See Note 2)	22,000
Excess of Expenditures Over Revenues	$(11,800)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Dental Hygienist		
Application Fee	$25	With application
Registration Fee	20	Biennially
Reinstatement Fee	25	With reinstatement
Late Fee Fine	10	With late payment
Dentists		
License Fee	30	With issuance of license
Temporary Permits	25	With issuance of permit
Out of State Registration	40	Biennially
Registration	40	Biennially
Branch Office Registration	40	Biennially
Examination Fee	50	With taking examination
Specialty License	30	With issuance of license

Note 1

Most of the dental revenues are composed of renewal registration fees. These fees are collected once every two years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated

and reported an average of the revenues collected in fiscal years 1977 and 1978 in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures include those made by Board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board and OL.

APPENDIX B

PRACTICAL EXAMINATION

Description

The operative section of the dental examination is comprised of three parts:

1. Preparation and finishing of amalgams;
2. Preparation and finishing of gold inlays; and
3. Preparation and finishing of gold foils.

A dental applicant must furnish his/her own patient and many of the tools. The examination has recently been given in the Teamster's Clinic in Anchorage.

The oral diagnostic examination is a multiple choice test created and graded by the American Association of Dental Examiners. In this test, an applicant views a slide and question and registers the grade on a grade sheet.

The dental hygiene clinical examination grades the abilities of removing calcifications from teeth and other dental abilities by the applicant. Applicants must also furnish his/her own patient and tools.

Alaska Dental Examination Statistics

	1978	1977	1976	1975	Pass Rate Four-Year Average
Dental Applicants	25	28	31	33	
Number of Fails	13	5	6	17	
Number of Passes	12	23	25	16	
Percentage Pass Rate	48%	82%	81%	48%	64%

1976 National Average of Dental Licensure	82%[1]
1975 National Average of Dental Licensure	85%[1]

(1) Statistics obtained from the American Dental Association.

Dental Hygiene Examination Statistics

	1978	1977	1976[1]	1975	Pass Rate Three-Year Average
Examination Applicants	15	28	N/A	9	
Number of Fails	0	0	N/A	1	
Number of Passes	15	28	N/A	8	
Percentage Pass Rate	100%	100%	N/A	89%	96%

Note: National averages for the dental hygiene examination are not available.

(1) 1976 figures are not available due to lack of records.

APPENDIX C

ANALYSIS OF FILED COMPLAINTS AGAINST DENTISTS AND DENTAL HYGIENISTS

	1978[1]	1977	1976	1975	1974	Total
Malpractice Complaints	0	5	2	0	0	7
Administrative Complaints	3	6	3	1	1	14
Practicing without Licenses	0	1	2	1	0	4
Unfair practical examination given by Board	0	0	1	2	0	3
Total	3	12	8	4	1	28

(1) Statistics as of June 30, 1978

APPENDIX D

ADMINISTRATIVE STATISTICS

Licensed Dental Practitioners	As of July 10, 1978
Dentists licensed and working in State	256
Out of State dentists licensed in State	89
Dental Hygienists	146
Dental Specialists	23
Board Meetings:	
Average number of meetings per year (excluding telephone conferences)	4 meetings
Average time length per meeting	4 hours

APPENDIX E

QUESTIONNAIRE SENT TO BOARD MEMBERS

1. What do you believe to be the goals and objectives of the Board of Dental Examiners?

Description	Number of Board Members' Responses (See Note 1 and 2)
To regulate and assure quality practitioners.	4
To protect consumers and citizens of the State.	3
To conduct examinations for dentists and dental hygienists.	4
To acknowledge and investigate suspected violations of dental applicants.	3
To interpret dental acts, to write regulations and establish policies and guidelines.	1
To prevent unqualified persons from engaging in dentistry and dental hygiene.	1

2. How does the Board measure its progress in meeting its goals and objectives?

Description	Number of Board Members' Responses
No established goals and measures.	5
Refuse to license those who do not pass examinations and investigate complaints.	1
Feedback from dental community, the public and the Legislature.	1
Write regulations.	1
Review rules and regulations in State Dental Practice Act.	1

3. Is the staff from the Department of Commerce and/or other departments adequate to perform and enforce all laws and regulations relating to the Board of Dental Examiners? What staff support services are provided adequately? Inadequately?

Description	Number of Board Members' Responses
Administrative and secretarial services are adequate.	5

3. (Cont'd.)

Description	Number of Board Members' Responses
Investigatory services are adequate.	2
Investigatory services are inadequate.	4
No opinion.	1

4. Are the dental procedures used in the clinical examination pertinent and relevant to the dental profession being regulated? Are the questions on the written examination pertinent and relevant? Please mention any studies and/or other support backing your opinion.

Description	Number of Board Members' Responses
Examination procedures and subjects are relevant.	6
Doubt on one part of exam.	1

5. What evidence exists demonstrating that the absence of dental regulations and/or the Board would be detrimental to the public's best interest?

Description	Number of Board Members' Responses
Legislature's implied conclusion.	2
Observation of dental patients shows dental work in other states falls below minimum standard.	1
Observation of clinical examination.	2
Court cases.	1
A set standard of care.	1

6. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restrictive, and/or inadequate to provide the Board with the responsibility and power to properly govern the purpose and activities of the Board? Please list and explain.

Description	Number of Board Members' Responses
None.	1
Advertising restriction.	1
No ability to revoke licenses without legal involvement.	1
Examination statutes need to be clarified.	1
Repeal of dental temporary permit statutes.	2

7. What changes could be made to the Board which would improve its service to the public?

Description	Number of Board Members' Responses
None.	3
Board should be given more direct investigatory, regulatory, and disciplinary authority.	2
Biannual examination.	1
More exposure to public.	1
Allow anyone who wishes to, to practice dentistry. Certify those applicants who take and pass the test.	1

Note 1

Number of Board Members	7
Number of Board Member Responses	7
Response Rate	100%

Note 2

Each Board member responded to each question with several answers. Therefore, total responses for each question may exceed the number of Board members.

APPENDIX F

QUESTIONNAIRE SENT TO DENTAL SCHOOLS
(see Note 2)

		Percentage (See Note 1)	
		Yes	No
1.	Do you believe that dental school graduates will understand the enclosed regula ns and requirements describing the tested edures?	86%	14%
2.	Are these clinical procedures taught at your school?	100%	0%
3.	Do you believe these procedures test basic principles that could be easily performed by your graduates?	93%	7%
4.	Do you believe that practicing dentists actually perform these procedures?	93%	7%
5.	In your opinion, does the testing of those procedures adequately measure the competency of a prospective dentist?	40%	60%
6.	Does your state have a required clinical examination that covers similar subjects as Alaska's?	100%	0%

Note 1

Number of Schools sent questionnaires	16
Number of Schools responding	15
Response Rate	93%

Note 2

We enclosed a copy of the Alaska Administrative Code regulations describing the dental examination given by the Alaska Board of Dental Examiners, with this questionnaire.

APPENDIX G

QUESTIONNAIRE SENT TO DENTAL HYGIENISTS

NAME: _____

		(See Note 1) % Responses		
		Yes	No	No Opinion
1.	Have you been able to attend any dental hygienist seminars or classes within the last two years?	96%	4%	0%
2.	If so, how may hours of classes have you had?_____	Average 25 hrs.		
3.	Do you believe that State laws should require continuing education before the the following licenses are renewed:			
	A. dentists?	92%	4%	4%
	B. dental hygienists?	88%	12%	0%
4.	Do you believe that the practical examination given by Alaska's Board of Dental Examiners is valid and useful as a tool for measuring the competence of a dental hygienist?	56%	16%	28%
5.	Have you ever had any contact with the Board of Dental Examiners?	36%	64%	0%
6.	If so, was it concerning:			
	A. new regulations?	8%	12%	80%
	B. Board policy?	0%	16%	84%
	C. new legislation?	8%	12%	80%
	D. investigations?	0%	16%	84%
	E. other (please specify)?	8%	12%	80%
	_____			
	_____			
	_____			
7.	Do you believe that the Board of Dental Examiners has operated in the public's best interest?	72%	12%	16%
8.	Do you believe that Alaska's licensing requirements for temporary and permanent licenses are adequate and effective in insuring that the public is protected?	56%	28%	16%

		(See Note 1) % Responses		
		Yes	No	No Opinion
9.	Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce?	16%	80%	4%
	Please specify: _____			
	_____			
	_____			
	_____			
10.	Have you been aware of any dental facility in Alaska that has had unsanitary conditions which could have harmed the patients' health?	4%	92%	4%
11.	Do you feel public health inspections should be performed on a regular basis of all dental facilities?	44%	52%	4%
12.	Are you aware of any discriminatory practices involving licensing of minority groups?	4%	92%	4%
13.	Additional Comments:			

_____

Note 1

Number of questionnaires sent to State licensed dental hygienists	66
Number of dental hygienists who responded	25
Response rate	37%

APPENDIX H

QUESTIONNAIRE SENT TO DENTISTS

		(See Note 1) % Responses		
		Yes	No	No Opinion
1.	Have you been able to attend any dental seminars or classes within the last two years?	96%	4%	0%
2.	If so, how may hours of classes have you had?	Average 61 hrs.		
3.	Do you believe that state laws should require continuing education before the following licenses are renewed:			
	A. dentists?	50%	48%	2%
	B. dental hygienists?	45%	50%	5%
4.	In your practice, do you frequently perform the following:			
	A. Class V Gold Foil Restoration?	7%	93%	0%
	B. Class II Mod Gold Inlay?	46%	54%	0%
	C. Class II Mod Amalgam?	89%	11%	0%
5.	Do you believe that the gold foil clinical examination given by Alaska's Board of Dental Examiners is valid and useful as a tool for measuring the competence of a dental applicant?	50%	50%	0%
6.	Are there other procedures that you believe are more relevant and useful for testing the abilities of a dental applicant?	52%	23%	25%
	Please specify: _____			
	_____			
	_____			
	_____			
7.	Do you believe that dentists in other states are as qualified as the dentists in Alaska?	68%	20%	12%
8.	Do you believe that Alaska should establish reciprocity agreements for dentist, with other states?	57%	34%	9%
9.	Have you ever had any contact with the Board of Dental Examiners?	64%	32%	4%

		(See Note 1) % Responses		
		Yes	No	No Opinion
10.	If so, was it concerning:			
	A. new regulations?	21%	21%	58%
	B. Board policy?	39%	13%	48%
	C. new legislation?	23%	16%	61%
	D. investigations?	25%	18%	57%
	E. other (please specify)?	14%	13%	73%
	_____			
	_____			
	_____			
11.	Do you believe that the Board of Dental Examiners have operated in the public's best interest?	86%	11%	3%
12.	Do you believe that Alaska's licensing requirements for temporary and permanent licenses are adequate and effective in insuring that the public is protected?	77%	21%	2%
13.	Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce?	11%	82%	7%
	Please specify: _____			
	_____			
	_____			
	_____			
14.	Do you believe that all geographical areas within the State are adequately serviced by dentists in private practice?	50%	43%	7%
15.	If not, please specify: _____			
	_____			
	_____			
	_____			
16.	Have you been aware of or heard of any dental facility in Alaska that has had unsanitary conditions which could have harmed the patients' health?	7%	91%	2%

		(See Note 1) % Responses		
		Yes	No	No Opinion
17.	Do you believe that health inspections should be performed on a regular basis of all dental facilities?	20%	75%	5%
18.	Are you aware of any discriminatory practices involving licensing of minority groups?	0%	98%	2%
19.	Additional comments:			

Note 1

Number of questionnaires sent to state licensed dentists	116
Number of dentists who responded	56
Response rate	48%

APPENDIX I

COMPARISON OF ALASKA DENTAL COSTS TO NATIONAL AVERAGES

Schedule 1 - Dental Cost Comparison

	Alaska[1]	U. S.[2]
1) Examination	$ 23	$ 15
2) Single Root Tooth Canal	179	150
3) 2 Surface Amalgan Filling	48	21
4) 3 Surface Amalgan Filling	56	29
5) 2 Surface Inlay	180	125
6) 3 Surface Inlay	204	150
7) Molar Cast Gold Crown	249	200
8) Porcelain Crown	266	225
9) Full Upper Dentures	370	300
10) Entire Series of 14 Films of Radiology	27	30
Total	$1,602	$1,245
Percentage of U.S.	1.28%	100%

Note 1

Alaska's average was acquired from a Legislative Audit poll of dental offices in Anchorage, Fairbanks and Juneau.

Note 2

U. S. average was acquired from Blue Cross and Blue Shield Association - 1976 factored through 1978 for inflation.

APPENDIX J

DENTAL MANPOWER SHORTAGE AREAS

Division and Area	Population to Dentist Ratio (see Note 1)
Aleutian Islands	4896 To 0
Bethel	6918 To 1
Bristol Bay Borough	7164 To 0
Kobuk	3022 To 1
Kuskokwim	2247 To 0
Nome	5704 To 1
Outer Ketchikan	2019 To 0
Prince of Wales	2639 To 0
Southeast-Fairbanks	4100 To 0
Upper Yukon	1114 To 0
Valdez-Chitina-Whittier	9905 To 0
Wade-Hampton	3387 To 0
Yukon-Koyukuk	4240 To 0
National Average	1915 To 1

Note 1

Figures from a letter, July 25, 1978, drafted by Public Health Service of the Department of Health, Education and Welfare. The National Average was obtained from a report by the Southeast Alaska Health System Agency.

JAY S. HAMMOND
GOVERNOR

RECEIVED
JAN 11 AM
LEGISLATIVE
AUDIT

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary reports as shown below:

1. Board of Examiners in Optometry
2. Board of Dispensing Opticians
3. Board of Psychologist and Psychological Associate Examiners
4. Board of Chiropractic Examiners
5. Alaska State Medical Board
6. Board of Veterinary Examiners
7. State Physical Therapy Board
8. Board of Pharmacy
9. Board of Nursing
10. Board of Nursing Home Administrators
11. Board of Dental Examiners
12. Alaska Transportation Commission

We view these reviews of agency programs and activities which are specifically subject to termination in a manner different from those made of State departments or agencies. Usually we in the Executive Branch endeavor to respond directly to each finding and recommendation. However, in regard to the Boards and Commissions, the Executive Branch agency during a public hearing shall demonstrate a public need for its continued existence or the discontinuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

The Executive Branch of Alaska Government has made an extensive study of the above Boards and the Alaska Transportation Commission. We are continuing to study those entities, their origin, their present and future potential, and other related subjects in conjunction with Alaska statutes 24 and 44 (Sunset Legislation). As prescribed in AS 44.66.050 one or more legislative hearings are to be held to receive testimony from the public, the Commissioner of the department having administrative responsibility for each, and the members of the Boards or Commission involved. During those hearings we will present our findings and recommendations affecting each of the foregoing Boards and the Alaska Transportation Commission.

Accordingly, we are presenting this in addition to the responses from the Department of Commerce, Department of Law, and the individual Board or Commission members and others on an interim basis.

Sincerely,

Michael Harper
Administrative Assistant
to the Governor

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

December 15, 1978

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Board of Dental Examiners submitted by the Division of Legislative Audit.

Recommendation No. 1. We agree there may be a shortage of dental manpower in several areas of Alaska. The majority of these shortages are in rural areas; however, it is our belief the main reason is purely economic and may not be a function of "encouraging . . . dentists to become licensed in Alaska."

The board should explore the possibility of licensing out-of-State applicants by reciprocity, although licensing by endorsement is considered to be more desirable. We agree that examinations should be given more often, provided the number of applicants warrants such a practice. The potential conflict of interest is noted, yet the inference that board members may act in restraint of competition is a charge of a serious nature. However, AS 08.36.130 would have to be changed as it states . . . the board shall appoint from its membership an examination committee.

The participation in regional examinations will be discussed, again, with the board at a future meeting.

Regulations governing expanded duties of dental hygienists have been discussed and are presently being promulgated by a sub-committee of the board for its consideration at the next meeting.

08-H8LH

Recommendation No. 2. Agreed. This recommendation has been discussed with the board. The evaluation of the Regional Testing Board should also provide answers to most, if not all, of these recommendations.

Recommendation No. 3. Agreed. The temporary permit provision should be retained and permits should be issued to qualified applicants, regardless of where in the State they wish to practice dentistry.

Recommendation No. 4. Agreed. However, great care must be taken in defining moral turpitude and unprofessional conduct. A list of violations that could be interpreted as all inclusive would be difficult to compile. Any violation not listed would still be an infraction, but difficult to enforce.

Recommendation No. 5. We agree that continuing education is a step toward improving quality dental care.

Recommendation No. 6. Agreed. The board is aware of this requirement and is preparing its report for FY '78.

Recommendation No. 7. Agreed. Legislation has been introduced concerning unconstitutional advertising restrictions.

Recommendation No. 8. Agreed. Discussions will be held with the board at future meetings and appropriate steps taken to include this information in the budget documents for the division.

Recommendation No. 9. Agreed. Complete reorganization of files and improved procedures within the agency are expected to be accomplished by the end of calendar year 1979. Some gathering of data is currently being initiated.

Recommendation No. 10. Disagree. Legislation requiring representation of all professional areas would be cumbersome to administer. Present statutory provisions do not preclude membership of any licensed dentist. We agree that public membership could be increased, but would oppose an increase in total membership of the board.

We appreciate the time and efforts expended by your staff.

Sincerely,

H. Phillip Hubbard
Commissioner

ARTHUR S. HANSEN, D.D.S.
"A PROFESSIONAL CORPORATION"

January 3, 1979

The following is my response to the State of Alaska Division of Legislative Audit Performance Review of the Board of Dental Examiners.

Report Conclusion

Pg. 7
Paragraph 3--No substantiation for statement that there is a man power shortage in Alaska. There may be a man power distribution problem, but this is because of human preference in life style as documented by the A.D.A. Presently there are adequate numbers of dentists within the state who are willing to cover more remote and sparsely populated areas as evidenced by a listing of these dentists kept by the Alaska Dental Society. Use of the list is infrequent, indicating that perhaps it is the consumer of dentistry who is not interested in the services available and not the fact that the man power isn't available. It is the Board's opinion that a man power shortage does not exist and therefore this factor should not be used as a reason for more than one clinical examination in a year.

Paragraph 3--The Board is presently working on the reciprocity statute as it relates to licensing dentists who are licensed in another state. The Board will in most likelihood recommend to the legislature a change in this statute to one of licensing by credential since there have been no reciprocal agreements made with another state over the past several years. Licensure by credentials would allow for licensing without reciprocity and also allow for close Board scrutiny of an applicant, thus assuring the same degree of quality.

Paragraph 3--The low pass rate for dental applicants is not an indication of the Board's reluctance to pass, as the report seems to indicate, but an indication of the lessoning of the quality of the dentist being produced. This low rate is not unique to Alaska. For instance, Washington State failed over 50% of the University of Washington Dental Students last year. I believe Utah passed less than 30% of it's applicants.

Paragraph 4--The Board is and has been attempting to correct deficiencies in it's examinations. However, due to procedural errors and a constant and rapid change in the dental environement, the Board has had some difficulty in this area. This combined with the lack of funding for sufficient meeting time has led to constant delays and postponement of this important area of the Board's activities.

Paragraph 5--No activity has been forth coming concerning license violations many due to lack of funding and lack of meeting time to undertake this task.

Paragraph 6--The Board is presently evaluating the Alaska Statutes and attempting to formulate recommendations to the legislature for statute changes it deems necessary to make them more responsive to consumer as well as the dental profession. Once again, funding for meetings and a lack of time and information concerning suggested changes has hampered the Board's activities.

3487 AIRPORT WAY FAIRBANKS, ALASKA 99701 TELEPHONE 479-2100

Findings and Recommendations

Rec. #1

Paragraph #1--The Board views the federal studies with reservations since: 1. Conditions change rapidly, 2. The federal government is trying to establish its HMO concept in Alaska (with the resultant loss of state supervision and control of such a program), 3. The Alaska Dental Society surveys contradict the federal and even the A.D.A. statistics, 4. The Alaska Dental Society list for rural areas is rarely used.

Paragraph #2--As far as the Board is concerned, there is no conflict of interest in the grading system. This is a serious charge to make especially by a lay person regarding a profession he know little or nothing about. The Board is only interested in seeing that the public receives qualified dentistry.

Rec. #2

The Board is trying to rectify all of the areas mentioned in this recommendation plus many others it recognizes as potential problems. Lack of funding and time are the primary elements working to the Board's disadvantage in trying to cope with these problems. Attempts are being made to take the necessary steps to answer to our known problems.

Rec. #3

The Board is on record to remove the permit from the statutes. It's now up to the legislature to do so. This will be included in the Board's recommendations for statute changes.

Rec. #4

We agree something should be done here. In addition the Board should have greater power with less red tape to carry out judgements on offenses.

Rec. #5

Although the concept of requiring continuing education is good, there are some inherent drawbacks. First of all, attendance must be assured. Secondly, the quality of the courses being offered must be such that it will benefit the student (dentist) as well as the public. Thirdly, the courses offered must be readily available so that requirements can be met. This is not easy in Alaska, let alone for those working in the bush. Fourthly administration of such programs is astronomical. California just recently has dropped its continuing education requirements primarily because of the administrative problems with it.

Dr. Hansen's report from the National A.A.D.E. meeting in October which is included in the Board's minutes has information pro and con for this recommendation and should be reviewed.

Rec. #6

For some reason this has been overlooked in the past, but attempts are being made to rectify this.

Rec. #7
The Board recognizes this problem and is in the process of reviewing the statutes in order to make recommendations, but funds, time, and lack of meetings make this a somewhat impossible task.

Rec. #8
Good idea.

Rec. #9
Good idea.

Rec. #10
The Board currently has a specialist on it though it doesn't think this is necessary. The statutes give the Board the power to enlist the services of specialists or general practitioners for that matter, when it deems their help necessary in order to carry out it's functions.

Additional public members would not be objectionable as long as they have an interest in dentistry and can contribute to the public's well being. The Board presently consists of five dentists and two public members, one of whom is a dental hygienist. Additional public members would thus exceed the 1/3 you are recommending.

With public hearings and the capability of the board to call on the public for additional comment and information, the Board feels the present composition adequately represents the public interests.

Analysis # VIII

This information is necessary so that the examining officer can identify the applicant as the person taking the examination. The Board members only know the applicants by exam number, thus have no means of assuring the examinee is the person who applied.

Generally the Board is trying to be fulfilling it's obligations to the public. However, it is greatly hampered due to limited funds, which in turn limits meeting times and lengths of meetings. Admittedly past records from the Board are not the best, but attempts are being made to rectify this situation.

The Board is presently gathering information concerning points presented in the audit plus several others that are not mentioned. Sufficient time has not past to gather all of the information the Board feels it needs to make or propose necessary legislative and regulatory changes. In addition, insufficient funding and meeting time has not allowed the Board to review and sort out materials it has gathered. The Board is willing to do the job it is charged with, but it needs help in doing it.

I am sure there are many areas I have briefly touched on that could be discussed in much greater detail. If it is the desire of the legislature

to make the Board more effective, I would suggest you solicit their help, but remember they are a volunteer Board. They must be compensated in some way or their participation will be limited due to their professional responsibilities to their patients, not to mention the tremendous financial losses incurred while serving in a Board capacity at a meeting, Etc.

Respectfully submitted,

Arthur S. Hansen, D.D.S.
President
Alaska Board of Dental Examiners

JOHN F. KOBYLARZ, D.M.D.
BOX 830
SOLDOTNA, ALASKA 99669

Rec. #1

I disagree with this recommendation on the grounds that no where in 08.36.32 of 08.36.30 is the Board charged with encouraging dentists to practice in Alaska. I think the State in its powers should protect the consumer, not try to coddle the citizen from birth to death. I do not believe it is the intent of the State or its agencies to regulate the supply and demand of the marketplace. As for the reported manpower shortage presented by the Southeast Alaska Health System Agency and South Central Health Planning and Development Agency, they are as best as I can tell addressing shortage in care for public funded health programs, (I.H.S.) and community health centers that would be handled by the Public Health Service. The Alaska Dental Society has a list of dentists that will go out into the bush when these services are needed.

The Board has discussed joining regional testing services but the consensus of opinion at this time is to not do so. The primary reason for this posture is the loss of ascertainment of quality of the clinical operator being judged by non-residents of this state.

Reciprocity is addressed in the State as statute under 08.36.210 and 08.36.22.

Rec. #2

(1) Agree. Will remedy in the future.
(2) A Health question has been included for this examination. I believe it has been incorporated in the regulations.
(3) Agree.
(4) The Board had written exam procedures for hygeinists. They were given them with their applications at the meeting the night before the exam started.
(5) Standardization is now being worked on.
(6) Agree.
(7) An understanding of casting principles will clarify this utilization of commercial laboratories.

JOHN F. KOBYLARZ, D.M.D.
BOX 830
SOLDOTNA, ALASKA 99669

Rec. #3

(3) Agree.
(4) Agree.
(5) Agree.
(6) Agree.
(7) Agree.
(8) Agree. Being done at this time.
(9) Agree.
(10) Agree
(11) We have a specialist but not by statute.

July 6, 1979

Jana Varrati
730 Foothill Drive
Anchorage, AK 99504

Dear Ms. Varrati:

The Department of Commerce and Economic Development is proposing to adopt several changes in the Alaska Administrative Code relative to the Board of Dental Examiners.

I have enclosed a copy of their Notice in order to make you aware of these amendments. I would be interested in knowing if you are in agreement with this action.

My interim office address in Anchorage is:

Senate Commerce Committee
1016 W. 6th Avenue, Suite 201
Anchorage, AK 99501
Telephone: 278-1581

If I may be of further assistance, please do not he itate to contact me.

Sincerely,

Brad Bradley
Chairman
Senate Commerce Committee

Enclosure

STATE OF ALASKA

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF DENTAL EXAMINERS

Notice is hereby given that the Department of Commerce and Economic Development, Board of Dental Examiners, under authority vested by AS 08.32.110(b), proposes to adopt regulations in Title 12 of the Alaska Administrative Code to implement AS 08.32, as follows:

12 AAC 28 is amended by adding sections which:

(1) permit certification of a dental hygienist to administer nitrous oxide-oxygen sedation and local anesthetic agents under specified conditions;

(2) establish minimum educational and procedural requirements for a dental hygienist applying for certification and for board approval of a college or university holding a course of instruction in the administration of nitrous oxide-oxygen sedation or local anesthetic agents; and

(3) establish provisions relating to expiration and renewal of certifications, suspension and revocation of certifications, registers of board approved courses of instruction and of certified dental hygienists and definitions of various terms used in the proposed regulations.

Notice is also given that any person interested may present written statements or arguments relevant to the action proposed by mailing them so that they are received by 4:30 p.m. on July 31, 1979 to:

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
Board of Dental Examiners - Hygiene Regulations
Pouch D
Juneau, Alaska 99811

Copies of the proposed regulations may be obtained by writing to the above address.

The Department of Commerce and Economic Development, Board of Dental Examiners, upon its own motion or at the instance of any interested person, may thereafter adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Charles R. Webber
Commissioner

6/26/79
Date

July 6, 1979

Joshua Wright, D.D.S.
3401 Denali
Anchorage, AK 99502

Dear Dr. Wright:

The Department of Commerce and Economic Development is proposing to adopt several changes in the Alaska Administrative Code relative to the Board of Dental Examiners.

I have enclosed a copy of their Notice in order to make you aware of these amendments. I would be interested in knowing if you are in agreement with this action.

My interim office address in Anchorage is:

Senate Commerce Committee
1016 W. 6th Avenue, Suite 201
Anchorage, AK 99501
Telephone: 278-1581

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Brad Bradley
Chairman
Senate Commerce Committee

Enclosure

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF DENTAL EXAMINERS
POUCH D
JUNEAU, ALASKA 99811

PROCEDURE FOR OBTAINING LICENSURE AS A DENTAL HYGIENIST IN ALASKA

No person may practice, offer or attempt to practice, or advertise or announce himself as prepared or qualified to practice dental hygiene without a license.

LICENSURE BY EXAMINATION:

The following documents must be on file before you will be considered for examination:

1. Completed and notarized application
2. Certified copy of dental hygiene diploma
3. Certified copy of any state license now held
4. Photograph
5. Certificate from the National Board Dental Hygiene Examination (Note: If you have not passed the National Boards, you will be required to take the written exam given by the Board of Dental Examiners)
6. Application fee of $25

The registration fee of $20 may be submitted before the examination and must be submitted before you will be issued a license.

LICENSURE BY WAIVER OF EXAMINATION:

A dental hygienist who holds a certificate from a school accredited by the American Dental Association and who has had two years of practical experience is qualified to practice in the state without examination upon registering with the Board.

The following documents must be on file before you will be considered for licensure by waiver of examination:

1. Completed and notarized application
2. Certified copy of dental hygiene diploma
3. Certified copy of any state license now held
4. Proof of two years practice in dental hygiene
5. Photograph
6. Fees: (a) Application fee of $25
   (b) Registration fee of $20
7. Certified copy of National Board Dental Hygiene Examination scores or certificate.

PLEASE NOTE: ALL EVIDENCE SUPPORTING YOUR APPLICATION MUST BE SUBMITTED WITH YOUR APPLICATION. ALL COPIES OF DOCUMENTS OR LICENSES MUST BE CERTIFIED BY A NOTARY PUBLIC TO BE TRUE COPIES OF THE ORIGINAL DOCUMENT OR LICENSE.

YOUR APPLICATION AND SUPPORTING DOCUMENTS WILL BE RETURNED IF THEY ARE NOT COMPLETE AND IN PROPER FORM.

08-2520

ALASKA BOARD OF DENTAL EXAMINERS

Application for Examination to Practice Dental Hygiene in the State of Alaska

This application must be in the hands of the Secretary of the Board of Dental Examiners of Alaska at least thirty days before the date of the examination

I hereby make application for a license to practice Dental Hygiene in the State of Alaska, and submit the following statements, under oath and herewith enclose the required application fee of $25.00

ALL INFORMATION REQUESTED IN THIS APPLICATION MUST BE SUPPLIED.
IF APPLICATION IS NOT COMPLETE, IT WILL BE RETURNED OR REJECTED.

Every false statement knowingly made by the applicant in this paper, or connived at in any clause in this application, is good cause for rejection or for revocation of license after license has been granted

➤→The Applicant Must Give Full Answers to the Following:

Name ..... **Age** .....**years**
Full name

Date of birth..... **Place of birth**.....
Month Day Year City County State

Present residence .....
Street Address City County State

Permanent address .....
Street Address City County State

PHYSICAL DESCRIPTION OF APPLICANT

Race ..... **Sex**..... **Native of**..... **Complexion**.....

Color of hair..... **Color of eyes**..... **Height**.....

{Stout / Medium / Thin} **Weight**..... **Marks**.....

Cross out words not answering description

HIGH SCHOOL

.....
City State School Name Year graduated

I have High School Certificate No..... issued on the..... day of..... 19.....

by the Superintendent of Public Instruction of.....
State or Territory

I have credit for..... of college work. I received the degree of.....
No. majors, semester hours, or clock hours

from..... on the..... day of....., 19.....
College or University

I was granted a Diploma as a Dental Hygienist by.....

located at....., State of..... on the..... day of....., 19.....

I agree that if I fail to appear (on time) for the examination, at the place stated that the fee shall not be returned, but that I may file a new application (without fee) and take the next regular examination. In failing to appear on time for that examination I agree that the fee shall be forfeited.

I also agree to present my Dental Hygiene Diploma, and, any state licenses I may hold for the inspection of the board at the time of, and before I start the examination.

(CERTIFIED COPIES OF PHOTOSTATS OF SUCH DOCUMENTS WILL BE ACCEPTED)

I also agree to come to the examination equipped with all instruments and materials necessary to perform any practical examination the board may assign me

An applicant who has a diploma from a Dental Hygiene school that is accredited by the American Dental Association and who can present proof of two years' practice in Dental Hygiene, may secure a certificate without examination.

I hold an unrevoked license to practice Dental Hygiene in the following states of the United States and have practiced under such licenses the number of years following each state: (Give date and number of each license)

.....

.....

.....

Give names and addresses of all dentists for whom you have worked as a dental hygienist during the past five years:

.....

.....

.....

Are you a citizen of the United States,..... Native born or naturalized?.....

If naturalized, give date and place of naturalization.....

Has your surname ever been changed?..... If so, give date and place of such change.....

Give original surname.....

Have you ever practiced dental hygiene illegally?..... Have you ever been convicted of, or indicted for, any crime?.....

If so, state facts in the case.....

.....

.....

Are you free from contagious or infectious disease?.....

I hereby expressly waive all provisions of law forbidding any physician or other person who has attended or examined me, or who may hereafter attend or examine me, from disclosing any knowledge or information which he thereby acquired, and I hereby consent that he may disclose such knowledge or information to the Board of Dental Examiners of Alaska.

AFFIDAVIT

State of .....
} ss.
County of .....

....., being duly sworn, says that ....he is the person referred to in this application and that the statements herein contained are true in every respect, and that the attached photograph is a true likeness of h....self taken within the last six months.

(Signature of Applicant) .....

Subscribed and sworn to before me this .....day of ..... , 19

Witness my hand and seal hereunto attached

(Seal)

Signature of Notary Public

My commission expires_____

Secretary, Alaska Board of Dental Examiners

An unmounted bust photograph, 3" x 3", of applicant, taken not more than six months before the date of application, must be pasted in this space and must not be larger than the space provided.

For Dental Hygienists who meet the requirements of over two years of practical experience and qualify to practice by registration:

This certifies that I am practicing Dentistry in the State of..... and that .....has been working for me as a Dental Hygienist for.....years and that ..... is worthy of receiving a license to practice Dental Hygiene in the State of Alaska.

Name..... .....
Signature of Dentist

Address..... .....

Subscribed and sworn to before me this.....day of..... ....., 19.. .....

.....

Notary Public in and for the State of .....

Residing at .....

CERTIFICATE OF DEAN OF DENTAL COLLEGE GRANTING DEGREE

I Hereby Certify, That .....

matriculated in the .....Dental College on the day of

and attended ...courses of instruction, graduating with the degree of Dental Hygienist on the day of ....., 19 ..

I Further Certify, That the photograph as appears in this application is the likeness of the said .....and the identical person to whom the said diploma was originally issued.

(Signature of Dean)

(SEAL OF COLLEGE OR UNIVERSITY)

CERTIFICATE OF MORAL CHARACTER

(To be signed by a reputable businessman)

This Certifies that I am acquainted with ..... that I believe .....to be of good moral character and I hereby recommend..... .....as entirely worthy to receive the license for which.....he has applied.

Name.....

Address.....

Subscribed and sworn to before me this.....day of....., 19.....

(Seal)

.....

Notary Public for the State of .....

Residing at .....

My commission expires .....

CERTIFICATE OF SECRETARY OF BOARD OF DENTAL EXAMINERS OF THE STATE IN WHICH APPLICANT IS NOW PRACTICING

I, ..., Secretary of .....
Official Name of Board

hereby certify that.....

was granted State Certificate No.....to practice..... ..... in the State of.....

on the.....day of....., 19....., on the basis of.....

.....

.....

I further certify that the preliminary and professional education as outlined on Page 1 of this application was verified by this Board prior to the examination of the applicant.

Acting in behalf of the.....
Official name of Board

I hereby certify to the reputability of.....

as appears of record in this office, and recommend him to the Board of Dental Examiners of Alaska as a fit and proper person to receive a license.

I also certify that the photograph as appears in this application is the likeness of the said .....and the person named in the above endorsement.

(SEAL)

Secretary

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF DENTAL EXAMINERS
POUCH D
JUNEAU, ALASKA 99811

PROCEDURE FOR OBTAINING A LICENSE AS A DENTIST IN ALASKA

No person, except those specifically exempted from the Alaska Statutes pertaining to the practice of dentistry in Alaska, may practice or attempt to practice dentistry without a license or permit, and a current certificate of registration. All applicants for a license must pass an examination before the Alaska State Board of Dental Examiners. Alaska has no reciprocity.

GENERAL INSTRUCTIONS:

All copies of documents must be certified by a Notary Public to be true copies of the original documents. Copies no larger than 8 1/2" by 11" are preferred. Your application and supporting documents will be returned if they are not complete and in proper form.

The examination fee is $50 and must be paid by certified check or money order only. The complete and notarized application, supporting documents and fee must be in the hands of the Department at least thirty (30) days before the date fixed for the examination. This fee shall in no case be refunded if the applicant is found to be eligible. A noncitizen must have declared his/her intention to become a U.S. citizen. An applicant must be a graduate of a dental school approved by the Council on Dental Education of the American Dental Association at the time of graduation.

LICENSURE BY EXAMINATION:

Examinations are held at least once a year. The next examination will be held beginning: June 13, 1979 Application deadline: May 13,1979

at: Fairbanks, Alaska

the following must be on file at least thirty days before the date scheduled for an examination before you will be considered for examination:

1. Completed and notarized application form.
2. Certified copy of your dental school diploma.
3. Certified copy of any state license now held.
4. Verification of the status of your license in all states in which you hold or have held licenses. Two forms are enclosed.
5. Autographed photograph.
6. Examination fee of $50.
7. Certified copy of your National Board Certificate.

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
POUCH D
JUNEAU, ALASKA 99811

BOARD OF DENTAL EXAMINERS

I HEREBY APPLY for a license to practice Dentistry in the State of Alaska, and submit the following statements, under oath, and herewith enclose the required documents and fees.

INSTRUCTIONS TO APPLICANT

All information requested in this application must be supplied by the applicant. Each question must be answered fully, truthfully, and accurately. Any omissions, or inaccuracies are grounds for disapproval and rejection. Section 08.36.310(1) of the Dental Practice Act provide that deceit, fraud, or wilful misrepresentation of a material fact is cause for suspension, revocation or annulment of licensure. If the space for any answer is insufficient, the applicant may complete his answer on a rider signed by him and specifying the number of the question to which it relates. Type or print all requested data.

TEMPORARY PERMIT

If applying for a temporary permit according to AS 08.36.280, please list the area(s) in which you wish to practice._____

APPLICANT

1. Name in full_____S. S. No._____

2. Present residence_____Zip Code_____

3. Permanent residence_____Zip Code_____

4. Place of birth_____Date of Birth_____Age_____

5. Are you a citizen of the United States?_____Native born or naturalized_____
   If naturalized, give date and place of naturalization_____

6. Has your surname ever been changed?_____If so, give date and place of such change
   _____Give original surname_____

7. Color of hair_____Color of eyes_____Sex_____
   Height_____Weight_____Marks_____

PREDENTAL EDUCATION

8. High School_____City and State_____Year_____

9. College or University_____City and State_____

   Years of attendance_____Semester hours_____Degree_____

DENTAL EDUCATION

10. Dental College_____City and State_____

    Degree (DDS or DMD)_____Exact date on diploma_____

11. A candidate must have passed both parts of the National Board examinations or he will be required to take the Alaska Dental Board written examination.
Part I passed_____ Part II passed_____
Date Date

12. Have you ever served in the Armed Forces?_____If so, branch of service_____,

date of commission_____, date of discharge_____, rank_____

_____, serial number_____. If separated from the service, state nature of separation and, if other than honorable, specify type and circumstances surrounding your release. Give full particulars as to any conviction by court-martial while serving in the armed forces._____

_____

13. Other states in which licensed. List state, license number, date of issuance, and years of practice in each state._____

_____

14. Give addresses of all locations with dates showing length of time spent in each location in which you have practiced during the last 10 years._____

_____

During this period, did you always maintain your own office?_____ If not, give names and addresses of dentists by whom you were employed._____

_____

15. Has any license entitling you to practice dentistry in any state or territory ever been suspended, revoked, or otherwise disciplined?_____ If so, give full details.

_____

_____

16. Are you free from contagious or infectious disease?_____

17. If any of the following answers are YES, explain fully in a signed affidavit.

		YES	NO
a.	Have you ever practiced dentistry illegally?.....	( )	( )
b.	Have you ever been convicted of, or indicted for, any crime?....	( )	( )
c.	Do you have any criminal charges pending against you?.....	( )	( )
d.	Have you ever been adjudicated an incompetent or an insane person by any court?.....	( )	( )
e.	Have you ever been a voluntary patient in any sanitarium, hospital or mental institution for treatment of mental illness?.	( )	( )
f.	Are you now, or have you ever been, addicted to, or have you undergone treatment for the use of narcotics or drugs or the excessive use of intoxicating liquors?.....	( )	( )
g.	Are there any unsatisfied judgments against you resulting from the practice of dentistry?.....	( )	( )

_____
Secretary
Alaska Board of Dental Examiners

I HEREBY CERTIFY that the information contained in this application is true and correct to the best of my knowledge. I further certify that all credentials supplied by me are true and correct and that the photograph which appears below is a true likeness of myself taken within the past six months. I understand that any false information or falsification of credentials may result in failure to obtain a license to practice Dentistry in Alaska.

_____ _____
Signature of applicant

An unmounted bust photograph, 3" x 3", of applicant, taken not more than six months before the date of the application, must be pasted in this space and must not be larger than the space provided.

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of _____ this _____ day of _____,19____.

_____
Notary Public

_____
My Commission expires

(NOTARY SEAL)

_____

18. CERTIFICATE OF MORAL CHARACTER (To be signed by a reputable businessman)

This certifies that I am acquainted with _____, that I believe him/her to be of good moral character and I hereby recommend him/her as entirely worthy to receive the license for which he/she has applied.

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of _____ this _____day of_____,19____

_____
Name

_____
Address

_____
Name

(NOTARY SEAL)

_____
My Commission expires

19. CERTIFICATE OF DEAN OF DENTAL COLLEGE GRANTING DEGREE

I hereby certify that _____ matriculated in the _____ _____ _____Dental College on the _____ day of _____ and attended _____ courses of instruction, graduating with the degree of D.D.S./D.M.D. on the _____ day of _____,19_____. I further certify that the photograph as appears in this application is the likeness of the said_____ and the identical person to whom the said diploma was originally issued.

_____
Signature of Dean

(SEAL OF COLLEGE OR UNIVERSITY)

20. RECOMMENDATIONS OF PRESIDENT OR SECRETARY OF COUNTY, DISTRICT, OR STATE SOCIETY

_____, President, or _____, Secretary,

of the _____Dental Society, certify that _____

is a member in good standing of the _____Dental Society, and that he/she is personally known to me, and that he/she is an ethical practitioner and is of good moral and professional character.

I further certify that the said _____ has been engaged in the reputable and ethical practice of his profession in the State of _____ for _____ years immediately preceding the date of this application, and that he has never been an itinerant or advertising practitioner during the period he has practiced in this State. I have carefully reviewed all the statements made by the applicant herein and believe them to be true in every respect.

I also certify that the photograph as appears in this application is the likeness of the said _____. I hereby recommend the said applicant to the Alaska Board of Dental Examiners for a license to practice in Alaska.

(SEAL OF THE SOCIETY)

_____
President or Secretary

(Note: If society has no seal the signatures must be acknowledged before a notary)

21. CERTIFICATE OF SECRETARY OF BOARD OF DENTAL EXAMINERS OF THE STATE IN WHICH THE APPLICANT IS NOW LICENSED (Provide the following certification from the last state in which you attained licensure)

I, _____, Secretary of _____,
(Official name of Board)
hereby certify that _____ was granted State Certificate Number

_____ to practice _____ in the State of _____ on the

_____ day of _____, 19_____, on the basis of _____

_____.

I further certify that the preliminary and professional education as outlined on Page 1 of this application was verified by this Board prior to the examination of the applicant.

Acting in behalf of the_____
(Official name of Board)

I hereby certify to the reputability of _____ as appears of record in this office, and recommend him to the Board of Dental Examiners of Alaska as a fit and proper person to receive a license.

I also certify that the photograph as appears in this application is the likeness of the said _____ and the person named in the above endorsement.

(SEAL)

_____
Secretary

08-1485

8-480

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
STATE MEDICAL BOARD
POUCH D
JUNEAU, ALASKA 99811

Sir:

VERIFICATION OF LICENSURE

I am applying for a certificate to practice medicine and surgery in the State of Alaska. The State Medical Board requires that this form be completed by each jurisdiction in which I hold or have held licenses. Please complete the form and return it to me at the address below. Thank you.

Name_____

Address_____

_____

PLEASE DO NOT DETACH

. . . . . .

State of_____

Name of Licensee_____

Graduate of_____

License No._____issued effective_____

By reciprocity/endorsement_____by examination_____

License is current_____lapsed_____

Has the applicant's license ever been suspended or revoked?_____If so, for what reason?

_____

Derogatory information, if any_____

Comments, if any_____

_____

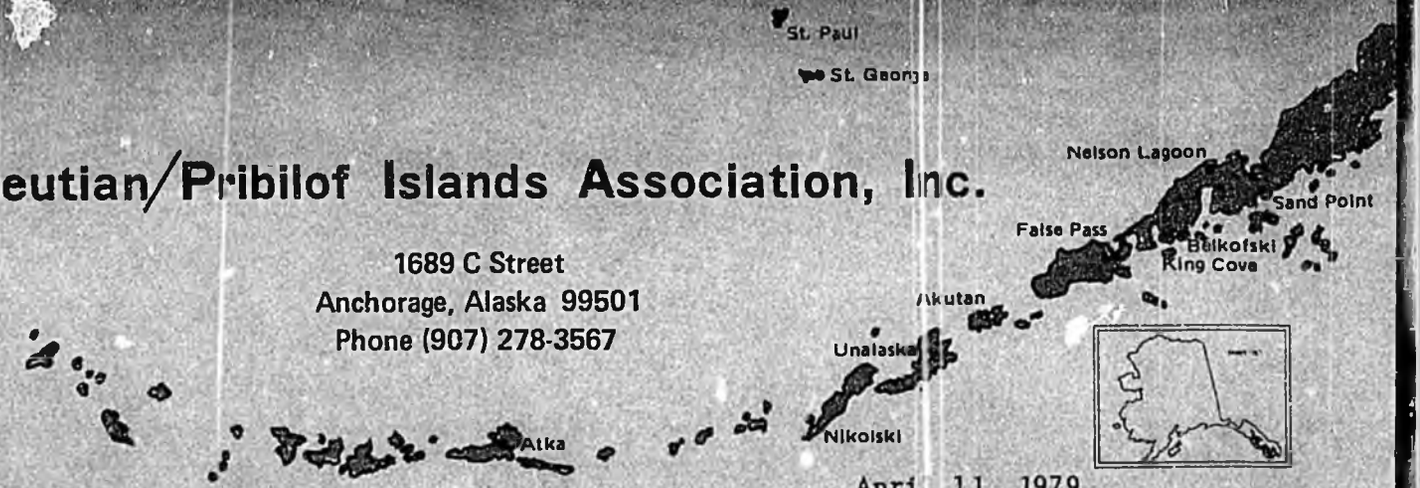
Signed_____

[BOARD SEAL]

Title_____

State Board_____

Date_____



Aleutian/Pribilof Islands Association, Inc.

1689 C Street
Anchorage, Alaska 99501
Phone (907) 278-3567

April 11, 1979

W. E. "Brad" Bradley
Pouch V
Juneau, Alaska 99811

Subject: Support H.B. 401

Dear Mr. Bradley:

You may already be aware of the efforts of the Aleutian/Pribilof Island Association to bring adequate dental health care to the people of the Aleutian Islands, but we want you to know more about our mobile dental clinic and the problems we have had in getting authorization from the State Dental Board needed to allow our volunteer dentists and dental students in training to offer their services in Alaska. The Dental Board wants no permits to practice issued even though the present law specifies they are to issue permits - as a matter of fact, they refuse to issue any permits at all.

Last summer we had 22 volunteers standing by waiting to get permission to volunteer their services - we finally ran the program through the United States Public Health Service. The present law and contrived conditions which exist in Alaska prevent any volunteer who would fix kids teeth without charge from practicing.

Representative Osterback has submitted a bill this session which will exempt volunteer dental personnel from permit requirements thus paving the way for a new summer program of dental health care aboard the mobile unit. Your support of H.B. 401 is essential to the health care of all bush Alaskans. Your Yes vote on this measure is essential this session.

Thousands of Alaskans go to work every day of their lives with a tooth ache or in need of dental care because the cost of dentistry is prohibitive. Some fly to Europe for dental work because it's cheaper than staying home and having the work done by an Alaskan dentist.

Eventually of course, over pricing, indifference and greed will move the citizenry to action - and dentistry will become a publicly supported element of our society. In the meanwhile we need your support now of H.B. 401 so we can bring in the sensitive socially conscious volunteers who want to come to Alaska for a few weeks to improve the overall dental health of our people.

Sincerely yours,

Patrick Plettnikoff

Patrick Plettnikoff
Executive Director
alp

BOARD OF NURSING

Alaska Nurses Association

~~620 W. Eighth Avenue~~
~~Suite 111~~ 1172 Gambell
Anchorage, Alaska 99501
(907) 274-0827

. . . a constituent of American Nurses' Association

February 20, 1979

Senator Bill Bradley
Chairman Senate Commerce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Sir

The Legislative Committee of the Alaska Nurses Association has given testimony in favor of the activities of the Board of Nursing. We are in definite agreement with the continuation of the Board of Nursing for the regulation, maintenance and education in the area of professional nursing.

The following is a specific response regarding each of the proposed recommendations by the legislative audit committee.

1. Mandatory Continuing Education. We support what the Board of Nursing must do in response to the legislative audit report. We do recommend that the necessary statutory changes be given careful and serious thought and the input be gained from various sources regarding how the changes should be made. Simply implementing mandatory continuing education without quality, control and specific, clearly delineated implementation plans will not be the answer to improving nursing practice. The Alaska Nurses Association will be polling members regarding specific suggestions and hopefully specific implementation recommendations can be made as a result of the June 1979 State Convention. We further caution that an effective date for implementation could not be before 1982. It will be especially important to consider the added responsibility for implementing mandatory continuing education in terms of necessary resources and financial backing.

2. Representation. We clearly support this recommendation regarding the board consistency.

3. Foreign graduates. Considering the high failure rate of foreign graduates on the State Boards, the Legislative Committee of the Alaska Nurses Association can not completely support the issuance of temporary permits to all graduates. The suggestion of the Board of Nursing regarding the issuance of temporary permits according to the scoring on the International Nursing Exam given in foreign countries seems like a feasible one.

4,5 & 6 Define license violation, Goals & Objectives and Duty of Executive Officer. We support these recommendations.

Please feel free to call on us for any further information or questions regarding the above.

Sincerely

Susan Moch

Susan Moch
Co-Chairman
Alaska Nurses Association
Legislative Committee

A PERFORMANCE REVIEW OF THE BOARD OF NURSING

October 6, 1978

A PERFORMANCE REVIEW OF THE BOARD OF NURSING

October 6, 1978

Commissioner of the Department of Commerce and Economic Development	H. Phillip Hubbard
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the Board of Nursing

Chairman	Eileen Montano, R.N.
Secretary-Treasurer	Kandace Henry
Member	Marjorie Van Kooten, R.N.
Member	Norma J. Frank, R.N.
Member	Betty Hodo, R.N.
Member	Carol Ann Verga, R.N., C.N.M.
Member	Erna Rasmussen

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

October 6, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
BOARD OF NURSING

October 6, 1978

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Board of Nursing was conducted to determine if the Board has been operating in an effective, efficient and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Nursing should be re-established. The law currently specifies that this Board will terminate on June 30, 1979, but will continue until June 30, 1980 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) Interviews with Board members and questionnaires sent to the Board;

(3) Correspondence with health agencies and professional associations;

(4) Tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) Interviews with OL employees;

(6) Complaints filed with OL, the Ombudsman's Office, the Equal Employment Opportunity Office and the Human Rights Commission;

(7) Questionnaires sent to State licensed nurses; and

(8) Review of other states' licensing requirements.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported formal financial and program plans as required by AS 37.

07.050 nor has it developed and reported performance irformation regarding its effectiveness and accomplishments as required by AS 37.07.090.

(2) OL has not adequately collected, recorded or maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out their administrative responsibilities.

ORGANIZATION AND FUNCTION

The Board of Nursing, created in 1941, is a regulatory board composed of seven members - five registered nurses and two public members. The primary purpose of the Board is to protect the public's health, safety and welfare through the regulation of nursing practice.

The Board determines the minimum quality of nursing care in the State by:

1. Establishing or amending rules and regulations necessary and desirable to enforce State statutes;

2. Approving curricula, adopting standards and accrediting nursing education programs;

3. Examining and issuing licenses to qualified applicants; and

4. Holding hearings in order to revoke, suspend or take other action on the license of a person violating the nursing statutes and regulations.

In addition, the Board has staff support from OL. The Division employs an Executive Officer of the Board who is statutorily responsible for performing administrative duties, carrying out regulations and policy decisions of the Board and assisting the Board in conducting examinations and educational programs.

OL is composed of two sections. The licensing section processes applications, prepares license files, collects fees, issues licenses and permits as authorized, answers inquiries and provides other administrative assistance to the Board. The other section provides investigative services to the Board in the event of consumer or other professional complaints.

The Board currently regulates the practice of professional nursing (RNs), practical nursing (LPNs) and nurse midwifery. In 1973, the Legislature amended AS 08.68. 410(5) to allow practice as an advanced nurse practitioner (ANP). An ANP is a registered nurse who by virtue of specialized education and experience, has become certified to perform acts of medical diagnosis, and prescription of medical, therapeutic or corrective measures. The 1973 amendment required ANP regulations to be promulgated jointly by the Board of Nursing and the State Medical Board. In September of 1978, after commendable efforts by the Board of Nursing and little cooperation from the State Medical Board, proposed regulations

were approved by the Boards for public hearing which will allow registered nurses to perform an expanded role in the delivery of health care.

Most licensing requirements are established by statute. Nurses are licensed by either examination or endorsement. The Board of Nursing recognizes and uses the State Board Test Pool Examination, a national test prepared by the National League of Nurses. Licenses by endorsement are issued to nurses licensed in other states that have licensing requirements acceptable to the Board of Nursing. In addition, temporary permits are issued to applicants awaiting examination or license by endorsement if they meet certain requirements..

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusions

In our opinion, the Board of Nursing is operating in the public's best interest and should continue to regulate the practice of nursing. This control is necessary to protect the public's health, safety and welfare.

However, certain changes should be made to improve the Board's responsibility to the public. Legislation is needed in two areas - continuing education and Board makeup and qualifications. Currently, there are no continuing education requirements for licensed nurses. The underlying purpose of continuing education is to permit professional education on a postgraduate level and allow for the maintenance and upgrading of professional competency. Legislation should be enacted enabling the Board to promulgate continuing education requirements (see Recommendation No. 1).

In addition, legislation should be enacted to ensure that licensed practical nurses and advanced nurse practitioners are adequately represented on the Board. The current qualification statute requires Board members, except public members, to be registered nurses and the Board makeup statute does not require a member to be an advanced nurse practitioner (see Recommendation No. 2).

The Board of Nursing should discontinue its policy of requiring foreign nurse graduates to have one year of work experience before a temporary permit can be issued. This policy, related to applications for examination, discriminates against foreign graduates. Once a foreign graduate qualifies for examination, he/she is on equal status with all qualified applicants and temporary permits should be issued consistantly without further restrictions on the foreign graduate (see Recommendation No. 3).

FINDINGS AND RECOMMENDATIONS

Recommendations No. 1 through No. 5 are addressed to the Board of Nursing. Recommendation No. 6 is addressed to the Division of Occupational Licensing (OL) and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978", issued under separate cover.

Recommendation No. 1

Legislation should be introduced requiring continuing education for nurses as a provision for license renewal.

The underlying purpose of continuing education (CE) is to permit professional education on a postgraduate level and allow for the maintenance and upgrading of professional competency.

As stated in a continuing education brochure of the Alaska Nurses Association, "People in the United States today view health care as a fundamental right. Nursing care is a major component of health care. Full participation of well-prepared nurses who systematically build upon their basic preparation through life-long learning is vital to improving the quality of health services. The Alaska Nurses Association believes that continuing education is an essential means by which nurses maintain professional competence".

In response to Legislative Audit questionnaires (see Appendixes D and E), six of the seven members of the Board of Nursing believe that the absence of CE is detrimental to the public's best interest; 73% of the licensed nurses responded that they had attended some form of CE seminars or classes in the past two years; and 57%, 53% and 68% of the nurses favored CE requirements for RNs, LPNs and ANPs respectively.

The Alaska Nurses Association currently has a voluntary CE program for registered nurses. Furthermore, the University of Alaska's School of Nursing has been designing CE programs in preparation for a mandatory requirement. These programs, if implemented, would provide CE classes throughout the State. The Board of Nursing should encourage and fully support the efforts of the School of Nursing.

A legislative continuing education requirement will necessitate the promulgation of regulations for the proper administration of such a program by the Board. In drafting these regulations, the Board should consider:

1. An effective date that will allow adequate time for the establishment of proper CE programs so as not to place an unnecessary hardship on the Alaska nurse;

2. Reviewing and approving CE programs offered in Alaska that meet Board requirements;

3. A provision allowing waivers of the CE requirement if undue hardship is justified; and

4. Approval of out-of-state CE programs that, in the opinion of the Board, meet Alaska's requirements."

Recommendation No. 2

A statutory amendment is needed to ensure that all regulated nurses are adquately represented on the Board of Nursing.

The Board presently regulates LPNs, RNs and ANPs. AS 08.68.060, which defines the qualifications of Board members, restricts the membership to RNs only. Therefore, LPNs cannot be assured of adequate representation. In addition, although all advanced nurse practitioners must be RNs and a current member of the Board is an ANP, AS 08.68.010 does not specify that a member of the Board be an ANP. Therefore, ANPs cannot be assured that they will be represented in the future. This is of particular importance considering the Board has regulations in the formal approval process that will expand existing ANP regulations to include all areas of specialization.

We recommend the Board consist of three RNs, one ANP, one LPN and two public members. By amending the current Board makeup and qualification statutes, all nurses will be assured of adequate representation.

Recommendation No. 3

The Board of Nursing should discontinue its policy of requiring foreign nurse graduates to have one year of work experience before a temporary permit can be issued.

Graduates of foreign nursing education programs applying for license by examination are required to meet the same basic qualifications required of United States nursing graduates. However, once these requirements are met, the U. S. graduate may be granted a temporary permit to practice nursing until the next examination is given. The foreign graduate, having met the same requirements, may only be issued a temporary permit if they have had one year of successful employment in the United States.

As is evident by examination statistics (see Appendix B), foreign graduates historically have had difficulty passing the examination. The Board recognized this and in an attempt to protect the public, adoped this temporary permit policy.

However, this policy requirement discriminates against the foreign graduate. Once a foreign graduate qualifies for examination, he/she is on equal status with all qualified applicants.

Instead, we recommend the Board more closely review the original application for license by examination to ensure the foreign graduate meets the minimum qualifications.

According to OL personnel, the possible cause of the foreign graduates' examination difficulty is not thoroughly understanding the English language. If so, we recommend the Board consider requiring the successful completion of an English comprehension exam as an initial qualification. The State of New Jersey recognizes the Test of English as a Foreign Language offered by the Educational Testing Service. An alternative the Board should consider is the Foreign Graduate Examination discussed by the Board at its May 1978, meeting.

In general, the Board's attention is needed to identify the cause of the low foreign graduate pass rate and take the proper and legal actions necessary to protect the Alaska public.

However, once the foreign graduate qualifies for examination, temporary permits should be issued consistantly to all requesting applicants without further restrictions on the foreign graduate.

Recommendation No. 4

The Board of Nursing, in conjunction with the Attorney General, should compose formal regulations which define and list examples of license violations.

As 08.68.270 outlines nursing license violations which are grounds for denial, suspension or revocation of a license. The list includes vague terms such as "moral turpitude" and "unprofessional conduct" which many nurses probably would not understand without a lawyer's advice. To date, the Board has not clarified or given examples of these terms.

The public and the nursing profession would be better informed and protected if they had better guidance as to what are illegal acts.

Recommendation No. 5

The Board of Nursing should refine their formal goals and objectives, include quantifiable measures and submit a performance report as required by AS 37.07.

Objectives describe what an agency or board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without measurable goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

The Board has formally adopted certain desirable goals and objectives. However, several are not capable of being measured. The Board should refine their goals and objectives so that they can be measured. Assistance, if needed, should be obtained from OL and/or the Office of the Governor's Division of Budget and Management. The refined goals, objectives and measures should be included in OL's budget documents to allow the Governor and the Legislature to properly evaluate the Board's performance.

The Executive Budget Act requires each State agency to submit a performance report to the Division of Budget and Management no later than September 1, for the preceding fiscal year. The Division of Budget and Management has not requested nor has the Board and OL prepared the required report.

In the 1977 Session, the Legislature, in conjunction with sunset legislation, amended the performance reporting statute (AS 37.07.090) to require agencies to specifically address eight criteria. The report, based on those criteria, would provide a useful tool for evaluating the Board in the future (see the OL Performance Audit Report).

Recommendation No. 6

The Division of Occupational Licensing (OL) should comply with the Board of Nursing resolution requiring the Executive Officer to review and approve all applications for license by endorsement.

During our review, we found that OL's licensing examiner for the Board has been reviewing and approving applications for license by endorsement without the formal authorization of the Board. OL also recognized this and requested the Board to formally authorize this procedure. At the September, 1978 meeting, the Board resolved that, although the current licensing examiner is more than adequately providing the review, they prefer that the Executive Officer, a professional nurse, perform the review and approval function.

To date, the transfer of responsibilities to the Executive Officer has not occurred. We recommend that OL complete this transfer to keep the review and approval process within authorized and legal bounds.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative attainments as Board activities relate to the public need factors defined in the "Sunset" law. These analyses are not intended to be comprehensive in nature, but address those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. The Board of Nursing has promulgated regulations governing nurse midwifery.

2. As a result of Board efforts, advanced nurse practitioner regulations which will allow registered nurses to perform an expanded role in the delivery of health care are presently in the formal approval process.

3. The Board accredits and periodically surveys Alaska nursing education programs to ensure educational standards are maintained.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. OL's investigative performance was not sufficient to provide adequate public protection (see the OL Performance Audit Report).

2. The Board was impeded in their efforts to compose and approve advanced nurse practitioner regulations by the State Medical Board which was jointly responsible for the promulgation of the regulations (see "A Performance Review of the Alaska State Medical Board, October 30, 1978", issued under a separate cover).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. The Board is currently considering revisions to the Nurse Practice Act.

2. The Board frequently notifies, usually by an official letter, legislators, legislative committees and professional associations of their support or nonsupport of legislation affecting the practice and licensing of nurses.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. The Board has, on occasion, assisted nursing applicants who had failed the examination in obtaining tutoring or refresher courses.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. The Board advertises meetings and examinations in newspapers in Anchorage, Fairbanks, Juneau and Ketchikan. This complies with the requirements of the Administrative Procedures Act (see the OL Performance Audit Report).

2. During the past three years, approximately 40 persons other than Board members and state employees were present during Board meetings as recorded by Board minutes.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. OL's investigative performance was not sufficient to provide adequate public protection (see the OL Performance Audit Report).

2. Two complaints filed with the Ombudsman's Office concerning licensure of foreign nurses were found to be unsupported.

3. One complaint filed with the Human Rights Commission concerning discrimination due to national origin was found to be unsupported.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. In the past three years, the Board has issued approximately 1,900 licenses and 1,300 temporary permits to practice nursing in Alaska. Approximately 85% of the licenses issued are through the Board's statutory and regulatory endorsement procedures (see Appendix C).

2. However, the Board has not adopted regulations requiring continuing education for the nursing profession (see Recommendation No. 1).

3. All nursing examinations are given in Anchorage. This places an unnecessary hardship on nursing applicants from other areas of the State.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. Nursing applications require unnecessary information such as an applicant's photograph, marital status and spouse's name. This is in violation of Equal Employment Opportunity requirements (see the OL Performance Audit Report).

2. A Board policy concerning temporary permits for foreign nursing graduates is discriminatory (see Recommendation No. 3).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

BOARD OF NURSING
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Average Revenue (See Schedule 1 and Note 1)	$ 56,500
Expenditures (see Note 2)	98,600
Excess of Expenditures Over Revenues	$(42,100)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Registered Nurse		
Application Fee	$20	With application
License by Examination Fee	20	With application
License by Endorsement Fee	20	With application
License Renewal Fee	15	Biennially
Late Fee Fine	10	With late payment
Licensed Practical Nurse		
Application Fee	$15	With application
License by Examination Fee	15	With application
License by Endorsement Fee	15	With application
License Renewal Fee	15	Biennially
Late Fee Fine	10	With late payment

Note 1

Most of the nursing revenues are composed of license renewal fees. These fees are collected once every two years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in fiscal year 1977 and 1978 in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures included those made by Board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, assisting the Board and OL.

APPENDIX B

EXAMINATION STATISTICS

Description

The State Board Test Pool Examination is prepared by the National League of Nurses with input from the fifty State Boards of Nursing.

It is used by all fifty states to test nursing applicants for licensure.

The test is composed of five parts: psychiatric, obstetric, surgical, medical and nursing for children.

A grade of 350 on each part is considered a passing grade by all states except Hawaii.

Alaska Registered Nurse Examination Statistics

1978[1]	Alaska Graduates	Other State's Graduates	Foreign Graduates	Total
Passed	37	32	1	70
Failed	8	3	11	22
Total	45	35	12	92
% Pass Rate	82%	91%	8%	76%
1977[2]				
Passed	33	24	3	60
Failed	7	5	14	26
Total	40	29	17	86
% Pass Rate	83%	83%	21%	70%

Alaska Registered Nurse Examination Statistics (cont'd.)

1976 [3]	Alaska Graduates	Other State's Graduates	Foreign Graduates	Total
Passed	44	25	6	75
Failed	7	4	4	15
Total	51	29	10	90
% Pass Rate	86%	86%	60%	83%

Alaska Licensed Practical Nurse Examination Statistics [4]

1977 [2]	Alaska Graduates	Other State's Graduates	Foreign Graduates	Total
Passed	28	12	1	41
Failed	2	-0-	2	4
Total	30	12	3	45
% Pass Rate	93%	100%	33%	91%
1976 [3]				
Passed	15	9	2	26
Failed	5	1	1	7
Total	20	10	3	33
% Pass Rate	75%	90%	67%	79%

Note 1

Statistics from the Executive Officer of the Board of Nursing.

Note 2

Statistics from the Board of Nursing's Annual Report, 1977.

Note 3

Statistics from the Board of Nursing's Annual Report, 1976.

Note 4

Results of the October 1978 examination are not available at this time.

APPENDIX C

ADMINISTRATIVE STATISTICS

	1978[1]			1977[2]			1976[3]		
	RN	LPN	Total	RN	LPN	Total	RN	LPN	Total
Licenses Issued:									
by Endorsement	310	93	403	485	153	638	440	146	586
by Examination	70	1	71	60	39	99	75	26	101
Total Licenses Issued	380	94	474	545	192	737	515	172	687
Permits Issued:									
Awaiting Endorsement	167	44	211	293	94	387	306	129	435
Awaiting Examination	69	22	91	70	25	95	81	22	103
Total Permits Issued	236	66	302	363	119	482	387	151	538
Active Licenses:									
In-State Address	2,231	602	2,833	2,497	761	3,258	1,610	461	2,071
Out-of-State Address	359	119	478	520	161	681	195	71	266
Total Active Licenses	2,590	721	3,311	3,017	922	3,939	1,805	532	2,337

Note 1

Statistics from OL personnel and available records through September.

Note 2

Statistics from the Board of Nursing's Annual Report, 1977.

Note 3

Statistics from the Board of Nursing's Annual Report, 1976.

APPENDIX D

QUESTIONNAIRE SENT TO BOARD MEMBERS

1. What do you believe to be the goals and objectives of the Board of Nursing?

To protect citizens of Alaska from unsafe and unqualified practitioners. In addition the Board has established written objectives and Board philosophy.

2. How does the Board measure its progress in meeting its goals and objectives?

Methods used to make this measurement include public and professional input, results of examinations and board experiences in other states. The Board of Nursing can then review, evaluate and modify, as necessary, activity plans relating to long and short term objectives and goals.

3. Is the staff from the Department of Commerce and/or other departments adequate to perform and enforce all laws and regulations relating to the Board of Nursing? What staff support services are provided adequately? Inadequately? Are investigations performed adequately/inadequately?

Staff support of the licensing section is presently adequate. In the past, however, staff turnover and secretarial support was a problem. Investigative support is inadequate.

4. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restrictive, and/or inadequate to provide the Board with the responsibility and power to properly govern the purpose and activities of the Board? Please list and explain.

The Board intends to revise the Nursing Practice Act. Areas of concern include:

1. Rules and regulations that must be promulgated with the State Medical Board.

2. Board make-up.

3. License fees set by statute.

5. What evidence exists demonstrating that the absence of nursing regulations and/or the Board would be detrimental to the public's best interest?

The Nursing Board, using nursing statutes and regulations, determines the minimuim level of competence for a nurse. The limits and controls on the qualifications, licensure and practice of a nurse assures the public that a practicing nurse has met this minimum level of competence.

6. What changes could be made to the Board which would improve its service to the nursing profession and/or the public?

The Nursing Board would like to hold more meetings in different locations. This would increase visibility and interaction between the Board and the public.

An increase in staff support would also improve services.

A change in the statutes concerning adding a L.P.N. to the Board, better liason with the State Medical Board and timely replacement of Board members would improve services.

7. Do you belive that the absence of continuing education requirements is detrimental to the public's best interest? Please explain.

Six Board members agree and one member disagrees that the absense of continuing education requirements is detrimental to the public's best interest.

8. Do you believe that the issuance of temporary permits to non-licensed nursing applicants is in the public's best interest? Please explain.

All Board members believe it is in the public's best interest to issue temporary permits to applicants if statutory and regulatory requirements are met.

9. Do you believe that the ratio of two public members to five nurses on the Board of Nursing is adequate for the Board to perform its duties?

Five of the Board members believe that the ratio of two public members to five nurses on the Board is adequate for the Board to perform it's duties. Of the two members who disagree, one member wants less public members while the other member wants more public members.

9. (cont'd.)

In answering, the members noted the importance of having nurses on the Board and that new members should have more orientation.

10. Do you believe there is a nurse shortage in Alaska? If yes, in what areas?

Most Board members believe there is a shortage of nurses at the baccalaureate level, at hospitals, and in the bush areas.

Other Board members feel there might not be a shortage of nurses, but rather a distribution problem or that nursing jobs are not as attractive as others, so nurses are taking jobs outside the nursing field.

11. If you answered yes to No. 10 above, what steps are or should the Board take to correct the nurse shortage?

Nursing standards should not be lowered. Applications should be handled in a more timely manner. More refresher courses and classes should be offered to help nurses in the bush.

12. Any additional comments.

The Board is hampered in performing its duties by outside factors such as inadequate support in the area of investigations, inadequate funds and untimely appointments to the Board.

APPENDIX E

QUESTIONNAIRE SENT TO NURSES

		% Responses (see Note 1)		
		Yes	No	No Opinion
1.	Have you been able to attend any nursing seminars or classes within the last two years?	73%	27%	0%
2.	If so, how many hours of classes have you had?	Average 57.6 hr.		
3.	Do you believe that state laws should require continuing education before the following licenses are renewed:			
	A. professional nurse?	57%	38%	5%
	B. practical nurse?	53%	43%	4%
	C. advanced nurse practitioner?	68%	27%	5%
4.	Have you ever had any contact with the Board of Nursing?	28%	66%	6%
5.	If so, was it concerning:			
	A. new regulations?	7%	24%	69%
	B. Board policy?	4%	22%	74%
	C. new legislation?	3%	24%	73%
	D. investigations?	2%	23%	75%
	E. other (please specify)?	12%	16%	72%
	_____			
	_____			
	_____			
6.	Do you believe the Board of Nursing has operated in the public's best interest?	80%	7%	13%
7.	Would the absence of the Board be detrimental to the public's best interest?	79%	7%	14%

		% Responses (see Note 1)		
		Yes	No	No Opinion
8.	Do you believe the Board should be made up of:			
	A. a majority of nurses?	66%		
	B. an equal number of nurses and public members?	34%		
	C. a majority of public members?	0%		
9.	Do you believe that Alaska's licensing requirements are adequate and effective in insuring that the public is protected?	83%	10%	7%
10.	Are there any statutes or regulations that are obsolete, vague, unduly restrictive?	4%	51%	45%
	Please specify: _____			
11.	Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce?	10%	80%	10%
	Please specify: _____			
12.	Do you believe that all geographical areas within the State are adequately serviced by nurses?	20%	26%	52%
	If not, please specify: _____			
13.	Are you aware of any discriminatory practices involving licensing of minority groups?	2%	96%	2%
14.	Do you believe that the issuance of temporary permits to non-licensed nursing applicants is in the public's best interest?	71%	22%	7%

	% Responses (see Note 1)		
	Yes	No	No Opinion
15. Do you believe that the creation of advanced nurse practitioners within the nursing profession is in the public's best interest?	90%	5%	5%
16. Do you believe there is a need to adopt regulations concerning the qualifications and practice of advanced nurse practitioners?	92%	3%	5%

Note 1

Number of questionnaires sent to State licensed nurses.	300
Number of nurses who responded.	122
Response rate.	41%

JAY S. HAMMOND
GOVERNOR

RECEIVED
JAN 11 A.M.
LEGISLATIVE
AUDIT

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson

We have reviewed your preliminary reports as shown below:

1. Board of Examiners in Optometry
2. Board of Dispensing Opticians
3. Board of Psychologist and Psychological Associate Examiners
4. Board of Chiropractic Examiners
5. Alaska State Medical Board
6. Board of Veterinary Examiners
7. State Physical Therapy Board
8. Board of Pharmacy
9. Board of Nursing
10. Board of Nursing Home Administrators
11. Board of Dental Examiners
12. Alaska Transportation Commission

We view these reviews of agency programs and activities which are specifically subject to termination in a manner different from those made of State departments or agencies. Usually we in the Executive Branch endeavor to respond directly to each finding and recommendation. However, in regard to the Boards and Commissions, the Executive Branch agency during a public hearing shall demonstrate a public need for its continued existence or the discontinuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

The Executive Branch of Alaska Government has made an extensive study of the above Boards and the Alaska Transportation Commission. We are continuing to study those entities, their origin, their present and future potential, and other related subjects in conjunction with Alaska statutes 24 and 44 (Sunset Legislation). As prescribed in AS 44.66.050 one or more legislative hearings are to be held to receive testimony from the public, the Commissioner of the department having administrative responsibility for each, and the members of the Boards or Commission involved. During those hearings we will present our findings and recommendations affecting each of the foregoing Boards and the Alaska Transportation Commission.

Accordingly, we are presenting this in addition to the responses from the Department of Commerce, Department of Law, and the individual Board or Commission members and others on an interim basis.

Sincerely,

Michael Harper
Administrative Assistant
to the Governor

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

December 15, 1978

RECEIVED
JAN 11 A.M.
LEGISLATIVE AUDIT

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Board of Nursing, as submitted by the Division of Legislative Audit.

Recommendation No. 1. Agreed. Mandatory continuing education is one method of attempting to insure that practitioners maintain some level of competence. Remote areas of the state should not be exempt from such requirements, but special compliance provisions may have to be made by the board.

Recommendation No. 2. Agreed. The only category of nurse presently excluded from membership is the LPN which is specifically excluded by statute. As you are no doubt aware, the only currently licensed ANP in the state is a board member.

Recommendation No. 3. Agreed. This subject will be discussed by the board at its next regular meeting and appropriate procedures or recommendations will be implemented.

Recommendation No. 4. Agreed. Licensing violations for all boards should be more clearly defined, however, a list of examples should not imply that it is all-inclusive.

Recommendation No. 5. Agreed. The board's objectives and goals will be incorporated within the division's budget document. This board, and all others, will be contacted in March or April, 1979 for input into the FY 1981 budget.

08-H8LH

Recommendation No. 6. Agreed. This recommendation has been discussed with the board and has been implemented by the division.

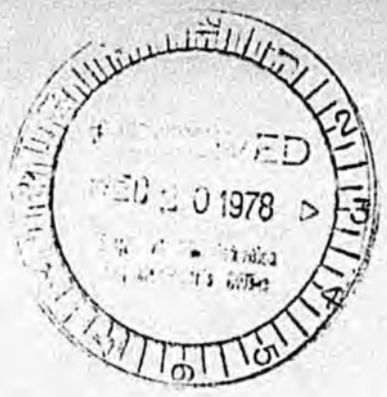
I appreciate the time and efforts expended by your staff.

Yours truly,

H. Phillip Hubbard
Commissioner

1.5 mi. Chena Ridge
Fairbanks, Alaska 99701
December 18, 1978

RECEIVED
JAN 11 A.M.
LEGISLATIVE AUDIT



Gerald L. Wilkerson C.P.A.
Legislative Auditor
Division of Legislative Audit
Pouch W
Alaska Office Bldg.
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Thank you for your report of October sixth on the Board of Nursing. The Board has looked forward to this report and is basically in agreement with your recommendations. Below follow our comments on each of your suggestions.

Recommendation No. 1 - Legislation should be introduced requiring continuing education for nurses as a provision for license renewal.
Except for one member, we are in favor of mandatory continuing education. As you have noted within your report, we are planning to introduce statute changes in the 1980 legislative session. Continuing education requirements will be incorporated into these proposed changes. It should be noted that the present nurse practitioner regulations do have a mandatory continuing education requirement.

The one member of the Board who was not in favor of mandatory continuing education felt that continuing education offerings are not widely available within the state. The Board would like to see funds appropriated to the School of Nursing for additional administrative and teaching staff in their Continuing Education Department. I understand that the director of the school, Dr. Glair Martin, has currently drafted a budget request for the next fiscal year for this purpose.

Continuing education credits may be earned through independent study modules. Many of these are available through nursing journals, and the School of Nursing presently is developing four. These may assist nurses who are in remote areas to partially fulfill their requirement. However, the Board is willing to consider an exception where c.e. may constitute hardship for a licensee and/or perhaps deprive the public of needed nursing care.

Your suggestion that the Board review and approve continuing education programs is impractical. It might cause a time delay in offering courses as well as place a heavy time burden on Board members. What we would do is to approve an approval mechanism. The voluntary continuing education (CEAR?) program, for instance, is functioning well and has been recently awarded national accreditation as an approval and recognition mechanism.

Recommendation No. 2 - A statutory amendment is needed to ensure that all regulated nurses are adequately represented on the Board of Nursing.
The board is in agreement that an LPN and an advanced nurse practitioner should be represented on the board. One member of the board would like the Board to consist of four RNs, one advanced registered nurse practioner, one LPN and one rather than two public members. All of the other members of the board who responded, however, were in agreement with three RNs, one advanced nurse practitioner, one LPN and two public members.

Again, legislation to this effect will be introduced in 1980 with our proposed statute changes.

Recommendation No. 3 - The Board of Nursing should discontinue its policy of requiring foreign nurse graduates to have one year of work experience before a temporary permit can be issued.

OL personell may agree that the possible cause of the FNG's examination difficulty is English. The Board agrees that this may contribute to the low pass rate, but several other factors enter into it. These include a difference in the length and focus of foreign programs. American nursing programs place a great deal of emphasis on psycho-social aspects of nursing care, for instance. Most foreign programs do not. Many foreign programs do not address all the subject areas tested for by the SBTPE - obstetrical and psychiatric nursing are two examples.

In the past, the Board has tried to evaluate the programs of foreign nurse graduates. This proved to be very difficult - due to differences in language, terminology, inavailability of transcripts, etc. It was due to this that the policy of requiring some indication of proficiency (1 year work experience) developed.

COGFNS (The Committee on Graduates of Foreign Nursing Schools) has developed a proficiency exam for foreign nurses to take in their homeland as an indicator of whether or not they are able to pass the SBTPE. This, if made available in the United States, could serve as a basis for issuance of a temporary permit.

Until that time, the Board is faced with a dilemma. If it is unable to evaluate foreign nursing programs, how is it to be assured that a person is a safe practitioner even if they can speak English? Should a nurse who speaks English well, but has never had a course in obstetrical nursing, be given a temporary permit which allows the practice of nursing in this specialty?

This has been placed on the agenda for discussion at the next meeting and the Executive Officer has been directed to gather data from other states in the hopes of finding a solution to this problem.

Recommendation No. 4 - The Board of Nursing, in conjunction with the Attorney General, should compose formal regulations which define and list examples of license violations.

The board is heartily in agreement with this recommendation and would welcome assistance from the Attorney General's Office. We had planned to address this area in our statute revision.

The Board has drafted legal standards but we have not formally adopted these due to other priorities. These need discussion and refining, but they are a beginning.

Recommendation No. 5 - The Board of Nursing should refine their formal goals and objectives, include quantifiable measures and submit a performance report as required by AS 37.07.

Health care is becoming more concerned with outcomes. Nursing care plans (required by the Joint Commission on Accreditation of Hospitals to be done on each patient) necessitate that a measurable objective which includes evaluation criteria be written for each patient problem identified. Educational institutions require learning objectives be written for courses and lessons taught.

The Board of Nursing includes five nurses, and four educators. Goals and objectives are formulated and utilized by us almost daily in our professional careers.

We have attempted to write goals and objectives for the Board at various times (see enclosures from March and September meetings) to serve as guidelines and, in retrospect, of evaluation. They have not always been as refined as those we use as educators and nurses. The Board is heartily in agreement that this be done. We will write formal goals annually and review them each year. They will contain evaluation criteria and be specific and measureable.

The Board prepares an annual report for the governor. We are presently preparing a report to addressthe Sunset Act criteria, (See minutes enclosed.) The report is currently in draft form - being reviewed by Board members after the Executive Officer compiled a draft from their input. We are on schedule as outlined in our minutes.

We have never been informed of any other reporting requirements. If we had, we would have been pleased to comply.

Recommendation No. 6 - The Division of Occupational Licensing (OL) should comply with the Board of Nursing resolution requiring the Executive Officer to review and approve all applications for license by endorsement.
The Executive Officer has been reviewing and making the final decision on all licenses for about the past month. Therefore, OL has complied with this recommendation.

There are other areas in the report that deserve comment. The Board agrees that reference to marital status should be deleted on the application. However, we wish to retain the photograph requirement. In the past, it has helped us to identify false applications. It also is helpful for identification for testing.

The Board agrees that fees should not be set in the statutes or regulations. I believe this has been noted in past Board minutes.

Offering the SBTPE in areas other than Anchorage presents some problems. It would be more costly to offer at two test sites. The security of the exam necessitates that an experienced, highly reliable individual monitor the entire procedure. We have always required the Executive Officer to do this. A break in security could jeopardize our ability to hold future exams in the state, as well as the exam scores of nurses taking it at that time both in Alaska and nationwide.

One area I personally wished to see addressed was the amount of time this Board spends on review of test questions for the SBTPE. This is most time consuming - usually necessitates the review of about one thousand questions at each meeting several times per year.

The time periodallowed for me to address this report has been too short. The report was received December third. At my own expense it was duplicated and sent express to Anchorage to be distributed to Board members. As of today, I have received replies from all of the nurses on the Board. (The public members have not responded.) I have drafted this from the comments of the Board members who replied, as well as my own opinions. There has not been the opportunity to send it out to Board members for final approval. Please be aware of this when reading the report. I suggest more time be alloted for a reply in future audits.

In summary, the Board is pleased with the report, feels it was well done, and is in agreement with most of the recommendations. We look forward to future evaluations of the Board's effectiveness.

Yours truly,

Eileen Montano

Eileen Montano, R.N., M.S.N.
Chairman, Board of Nursing

Enclosures

Regulations Specialist, who called with some minor changes, which are indicated in hand writing, prior to being sent to the Division Director in Juneau for approval in order that the Board may then distribute copies of same to the Medical Board for collaborative efforts.)

POLICY ITEM: It was moved, seconded and carried unanimously that it be:

> RESOLVED that the Board of Nursing will not compromise if the Medical Board insists upon writing in "total supervision" in the rules and regulations.

BOARD REPRESENTATION AT MEDICAL BOARD MEETING: it was moved, seconded and carried unanimously following discussion, that it be:

> RESOLVED that Board Members Sister Carol, Jean Frank, Betty Hodo and the Executive Officer, Ruth McMahan, attend the July Medical Board meeting in Ketchikan to present the draft of the rules and regulations for the Advanced Nurse Practitioner.

ITEM WRITERS: The Executive Officer is to write UAA and ACC for nominations for item writers for the SBTPE who will then be considered at the August Board of Nursing meeting.

NEXT BOARD MEETING: The next Board meeting is tentatively set for August 10, 11, 12, 1978 in Fairbanks. This will provide some overlap with the AaNA State Convention to be held in that same city on August 9, 10, 11, 1978.

GOALS AND AGENDA ITEMS:

1. Continue reviewing and revising ANP rules and regulations, presenting same to Board of Medicine and initiating public hearings at the appropriate time.
2. Review and revise the Nurse Practice Act.
3. Review and revise those sections of the Board Members Handbook still in need of change.
4. Prepare for the Sunset Review.
5. Consideration of difficult license applications.
6. Consideration of other office activity.

PA ORDERS:

Data including Attorney General opinions and Board opinions from other states was considered. Discussion followed. Carol then formulated the following motion in response to the inquiry from a medical board member. A letter to all medical board members addresses this Board's opinion regarding nurses following Physician's Assistants and Nurse Practitioner orders. It was moved, seconded and carried, that it be:

RESOLVED to incorporate the following statements in a letter to the members of the Medical Board:

OPINION REGARDING FOLLOWING ORDERS:

"It is the opinion of the Board of Nursing that nurses may administer medicines and treatments prescribed by health care providers who are authorized by the State of Alaska to prescribe such medications and treatments."

1. Nurses, in this context, means both RN's and LPN's.

2. This opinion, expressed by the Alaska Board of Nursing, is rendered in anticipation of the implementation of proposed changes in regulations and/or statutes by the Medical Board and Board of Nursing.

3. The foregoing assumes that nurses will continue to use judgment, skill and knowledge in the administration of medications and treatments.

Discussion followed on whether the opinion could be disseminated. It was agreed that if other states, individuals, etc., make inquiry, the "OPINION REGARDING FOLLOWING ORDERS" may be distributed.

MEETING:

The next meeting is tentatively scheduled for January 31, February 1, 2, (Wednesday/Thursday/Friday) 1979 in Kodiak if Juneau ok's the budget expenditure. The Executive Officer will initiate the inquiry.

APPLICATION:

The Executive Officer was directed to draft an application form for ANP's.

SELF-EVALUATION:

Mid-year evaluation of the goals and objectives established by the board at its May 1978 meeting.

1. Review, revise and present to the Medical Board, the ANP regulations. -- Achieved.

2. Nurse Practice Act - continue identification of problem areas. The board members have each been assigned a portion of the Nurse Practice Act to do an in-depth study and report back at next meeting.

3. Revision of Board Handbook. Substantial revision has been done - continue to update and have complete by May 1979. The Executive Officer will write to Juneau for those sections relating to the department.

4. Sunset Review. Substantial review time has been devoted to meeting with the legislative auditors and the department auditor and in completing questionnaires. At this meeting the board decided to set a time schedule for individual members and the Executive Officer to prepare written testimony.

    a) Questions relating to Sunset mailed to board immediately following this meeting.

    b) Return to Executive Officer by October 30, 1978.

    c) Executive Officer to compile a preliminary report by November 30 and distribute to board for editing/ approval.

    d) Return to Executive Officer by December 15.

    e) Final draft to board first week in January.

    f) To Division by mid-January 1979.

5. Consideration of difficult licenses - ongoing

6. Consideration of other office activity - ongoing.

NPA ASSIGNMENTS:

Article 1 - Carol Verga + Centralized licensing
Article 2 - Eileen Montano
Article 3 - Betty Hodo
Article 4 - Kandy Henry
Article 5 - Jean Frank

The Executive Officer will provide appropriate data to members to assist in revising data.

OBJECTIVES TO BE MET BY THE BOARD OF NURSING

1. Review, revise, and prepare Nurse Practice Act revisions for presentation to the 1980 legislature.

2. Prepare a Board of Nursing proposed budget to be submitted to the Division Director, Don Hostak following the January 31, 1979 board meeting.

3. Draft and submit to the division by mid-January 1979, written testimony required by the Sunset Review Legislative Audit team.

4. Review applications for Item Writers for the SBTPE. Submit board nominations to the National Council of State Boards of Nursing by December 1, 1978.

5. At least one board member to attend each Public Hearing related to the Advanced Nurse Practitioner Rules and Regulations.

6. Construct the application form for authorization of Advanced Nurse Practitioners and review each ANP application submitted to the board.

7. Review the criteria utilized by National Certifying bodies for issuing certificates. Maintain a list of Alaska Board of Nursing approved National Certifying bodies for distribution upon request.

8. Continue to refer complaints regarding the legal practice of nursing to the Division investigative section and to take action as necessary on cases presented to the Board of Nursing by the division investigative section.

9. Annually, review the reports presented by the Nursing programs for continuation of accreditation status making site visits as deemed necessary by the board.

10. Continue to examine, license and renew licenses of qualified applicants, maintaining a compilation of basic statistical information.

11. Participate, as a Board of Nursing, through National League of Nursing in the Annual review of draft questions related to the RN and LPN State Board Test Pool Examination observing all security requirements contained in the contract between Alaska and National League of Nursing.

12. To continue to hold four (4) meetings a year of three days each; to publicize the meetings well and encourage attendance by consumers as well as professionals.

12/10/79
Proposed Legislation

*Section 1. AS 08.68.010 is amended to read:

Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING. There is created a Board of Nursing, consisting of seven members appointed by the Governor. One member shall be an actively licensed practical nurse [CURRENTLY INVOLVED IN INSTITUTIONAL NURSING SERVICE], one member an advanced nurse practitioner [IN COMMUNITY OR PUBLIC HEALTH NURSING] , one member from basic professional nursing education [AND] two members from service areas in nursing [IN BASIC OR CONTINUING NURSING EDUCATION, ONE NURSE AT LARGE], and two persons who have no direct financial interest in the health care industry.

*Section 2. AS 08.68.060 is amended to read:

Sec. 08.68.060. QUALIFICATIONS OF RN AND LPN BOARD MEMBERS. The five members of the board who are nurses shall be licensed by [PROFESSIONAL NURSES IN] the state, and shall have been actively engaged in nursing for not less than four years before appointment, three [TWO] years of which were within the five years immediately preceding appointment. At least two of the members who are professional nurses shall hold a baccalaureate degree or higher .

*Section 3. AS 08.68.070 is amended to read:

Sec. 08.68.070. ELECTION OF OFFICERS. The board shall annually elect a chairperson [CHAIRMAN] and secretary-treasurer from among its members.

*Section 4. AS 08.68.080 is amended to read:

Sec. 08.68.080. MEETINGS. The board shall meet at least four times [ONCE] a year.

*Section 5. AS 08.68.100 is amended to read:

Sec. 08.68.100. DUTIES AND POWERS OF BOARD. The board shall

(1) adopt rules and regulations necessary to make this chapter effective and , when necessary, adopt additions to or changes in [RULES AND] regulations of the board [BY A QUORUM VOTE BY MAIL, THESE ADDITIONS TO OR CHANGES IN THE RULES AND REGULATIONS WHICH ARE MADE BY MAIL AND THE VOTE ON THEM TO BE ENTERED IN THE MINUTES OF THE BOARD AT ITS NEXT MEETING];

(2) repealed.

(3) approve curricula and adopt standards for

(A) educational programs preparing persons for licensure and/or authorization to practice under this act , and

(B) basic and graduate degree educational programs in nursing [LICENSING AND PROVIDE FOR SURVEYS OF THESE PROGRAMS IN THE STATE AT THE TIMES IT CONSIDERS NECESSARY];

(4) accredit[S] educational programs which meet the requirements of this chapter and [THE STANDARDS] of the board and deny , revoke or suspend [OR WITHDRAW] accreditation from educational programs for failure to meet board requirements [STANDARDS];

(5) examine, license, and renew the licenses of qualified applicants [, AND CONDUCT HEARINGS UPON CHARGES AND ADMINISTER OATHS TO PERSONS GIVING TESTIMONY AT HEARINGS];

(6) prescribe requirements to validate competency to continue or reenter practice ; [KEEP A RECORD OF ITS PROCEEDINGS, AND SUBMIT ANNUAL REPORTS TO THE GOVERNOR AND LEGISLATURE.]

(7) issue subpeonas , compel the attendance of witnesses and administer oaths to persons giving testimony at hearings ; and

(8) conduct hearings upon charges of alleged violations of this chapter or regulations adopted under it ;

(9) invoke disciplinary action against a licensee after compliance with the Administrative Procedure Act (AS 44.62);

(10) keep a record of its proceedings, and submit annual reports to the governor and legislature ;

(11) define the duties of the executive secretary and delegate such authority of the board to the executive secretary as may be necessary for the conduct of board business .

*Section 6. AS 08.68.111 is amended to read:

Sec. 08.68.111. EXECUTIVE SECRETARY [OFFICER] OF BOARD. (a) The Department of Commerce and Economic Development, in consultation with the Board of Nursing, shall employ a licensed, professional [REGISTERED] nurse, who is not a member of the board, to serve as executive secretary [OFFICER] of the board.

(b) The executive secretary [OFFICER] shall be a nurse having a bachelor's degree or higher , in nursing , currently licensed in the State and shall meet other qualifications as established by board regulations [WITH NOT LESS THAN FIVE YEARS OF ACTIVE NURSING EXPERIENCE OF WHICH NOT LESS THAN TWO YEARS WITHIN THE PRECEDING FIVE YEARS SHALL HAVE BEEN IN AN ADMINISTRATIVE OR A TEACHING CAPACITY IN AN ACCREDITED INSTITUTION ACCEPTABLE TO THE BOARD. IF A LICENSED PROFESSIONAL NURSE HOLDING A BACHELOR'S DEGREE IS NOT AVAILABLE TO FILL THE POSITION OF EXECUTIVE OFFICER, THE BOARD MAY WAIVE THE REQUIREMENT FOR A BACHELOR'S DEGREE AND APPOINT A LICENSED PROFESSIONAL NURSE POSSESSING OTHER QUALIFICATIONS IN EDUCATION AND ADMINISTRATIVE EXPERIENCE WHICH THE BOARD CONSIDERS ACCEPTABLE. HOWEVER, THE APPOINTEE SHALL COMPLETE THE REQUIREMENTS FOR THE AWARD OF A BACHELOR'S DEGREE IN FOUR YEARS AFTER APPOINTMENTS TO THE POSITION OF EXECUTIVE OFFICER. ANNUALLY, THE APPOINTEE SHALL OFFER THE BOARD EVIDENCE OF SATISFACTORY PROGRESS TOWARD AWARD OF A BACHELOR'S DEGREE. IF AFTER THE ANNUAL REVIEW THE BOARD BELIEVES THAT THE APPOINTEE HAS NOT MADE SATISFACTORY PROGRESS TOWARD AWARD OF A BACHELOR'S DEGREE, THE DEPARTMENT MAY DISMISS THE APPOINTEE, NOTWITHSTANDING THE PROVISIONS OF AS 39.25.170].

(c) The executive secretary [OFFICER] shall:

(1) perform the administrative duties as required by the statutes and the department, including the preparation of minutes of board meetings ,

(2) carry out regulations and policy decisions, consistent with law, made by the board of nursing, [AND]

(3) review and approve applicants for licensure who meet board standards , [ASSIST THE BOARD IN THE CONDUCTING OF EXAMINATIONS, EDUCATIONAL PROGRAMS, PREPARATION OF MINUTES AND OTHER BOARD ADMINISTRATIVE WORK.]

(4) bring before the board those applications which are irregular and require full board consideration ,

(5) conduct licensure examinations for qualified candidates ,

(6) assist the department in informing licensees of the necessity to renew licenses ,

(7) communicate with other state boards and educational institutions regarding licensure of candidates and related concerns ,

(8) refer complaints alleged against licensees to the investigative officer of the department ,

(9) prepare periodic and special reports and surveys as required , including the annual report to the governor and legislature ,

(10) Collect, compile , analyze and distribute data relating to nursing education and licensure ,

(11) respond to communication relating to nursing licensure , the nurse practice act , nursing education and other related matters ,

(12) direct communications requiring full board action to the board ,

(13) interpret and explain the nurse practice act , board regulations and policies , trends in nursing and nursing education to the public , those in the profession, schools , and other allied groups ,

(14) participate in educational program surveys ,

(15) refer educational program reports to the board ,

(16) assist the board and the division in the preparation of the annual budget ,

(17) prepare and distribute the agenda for board meetings ,

(18) collect and make available to the board all pertinent information on issues before the board ,

(19) assist the division in the orientation of new board members .

*Section 7. AS 08.68.170 is amended to read:

Sec. 08.68.170. QUALIFICATIONS OF PROFESSIONAL OR PRACTICAL NURSE APPLICANTS. An applicant for a license to practice professional or practical nursing shall submit to the board on forms and in the manner prescribed by the board, written evidence, verified by oath, that the applicant has [COMPLETED AN APPROVED FOUR YEAR HIGH SCHOOL COURSE OF STUDY OR THE EQUIVALENT AS DETREMINED BY THE APPROPRIATE EDUCATIONAL AGENCY, AND HAS] successfully completed (1) a professional or practical nursing education program accredited by the board; or (2) a professional or practical nursing education program outside the state which, in the opinion of the board, meets the minimum requirements of the board for an accredited program of study in this state at the time the applicant graduated; or (3) a professional or practical nursing education program accredited by the National League for Nursing at the time the applicant graduated.

*Section 8. AS 08.68.180 is repealed.

*Section 9. AS 08.68.190 is amended to read:

Sec. 08.68.190. LICENSE BY EXAMINATION. The applicant shall pass a written examination as prescribed by the [IN THE SUBJECTS WHICH THE] board [PRESCRIBES]. The board shall issue a license to an applicant who passes the examination to practice professional or practical nursing [OR PRACTICAL NURSING] provided the other qualifications outlined in section [S] 170 [AND 180] of this chapter are also met. The board shall conduct examinations annually and as often as considered necessary.

*Section 10. AS 08.68.200 is amended to read:

Sec. 08.68.200. LICENSE BY ENDORSEMENT. The board may issue a license by endorsement to practice professional or practical nursing [OR TO PRACTICE PRACTICAL NURSING], whichever is appropriate, to an applicant who (1) is licensed as either a professional or practical nurse [OR A PRACTICAL NURSE] under the laws of

another state or territory, if in the opinion of the board the applicant meets the qualifications required for licensing in the state, and meets the requirements of [EITHER] section 170 [OR SECTION 180] of this chapter [, WHICHEVER IS APPLICABLE] ; or

(2) has successfully completed the Canadian Nurses' Association Testing Service (CNATS) examination when comparable to the examination administered by this State and meets the requirements of Section 170 of this chapter .

*Section 11. AS 08.68.210(a)(2) is amended to read:

(2) meets the requirements of [EITHER] section 170 [OR SECTION 180] of this chapter, [WHICHEVER IS APPLCABLE,] and

*Section 12. AS 08.68.210(b) is amended to read:

(b) The board may issue a nonrenewable permit to an applicant for license by examination [IF HE MEETS THE QUALIFICATIONS OF SECTION 170 OR SECTION 180 OF THIS CHAPTER, WHICHEVER IS APPLICABLE, AND PAYS THE REQUIRED FEE]. The permit will be valid for a period not extending beyond the time when the results are published of the first examination the applicant is eligible to take after the permit is issued if

(1) the applicant meets the qualifications of section 170 of this chapter , or

(2) the applicant is a graduate of a foreign school of nursing and has successfully completed the examination administered by the Commission on Graduates of Foreign Nursing Schools (CGFNS).

*Section 13. AS 08.68.220 is amended to read:

Sec. 08.68.220. FEES. The following fees shall be imposed under this chapter when applicable:

(1) for professional [OR REGISTERED] nursing

(A) application fee..... $40 [$20]
(B) [LICENSE BY] examination fee..... $20 [$20]
(C) license by endorsement fee..... $20 [$20]
(D) biennial license renewal fee..... $20 [$15]

(2) for practical or vocational nursing

(A) application fee..... $30 [$15]
(B) [LICENSE BY] examination fee..... $10 [$15]
(C) license by endorsement fee..... $10 [$15]
(D) biennial license renewal fee..... $20 [$15]

*Section 14. AS 08.68.251 is amended to read:

Sec. 08.68.251. LAPSED LICENSES. (a) A lapsed license may be reinstated if it has not remained lapsed for more than three [FIVE] years by payment of delinquent license fees.

(b) If a [THE] license is lapsed for more than three [FIVE] years and the board has reason to believe that the person applying for reinstatement of his license no longer has sufficient knowledge to carry out the duties of a licensed nurse, the board shall [MAY] require the applicant to [TAKE AND PASS THE EXAMINATION GIVEN UNDER SECTION 190 OF THIS CHAPTER OR] complete a course of study [REFRESHER COURSE] approved by the board or take and pass an examination and pay all delinquent license fees.

*Section 15. AS 08.68.260 is repealed.

*Section 16. AS 08.68 is amended by adding a new section to read:

Sec. 08.68.261. INACTIVE NURSES UNDER PREVIOUS LAW. A nurse who holds an inactive license issued under previous law on the license renewal date in 1982 shall either

(1) activate the license or

(2) permit the license to lapse.

*Section 17. AS 08.68.270 is amended to read:

Sec. 08.68.270. GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION. The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, suspend or revoke the license of a person who

(1) has obtained or attempted to obtain a license to practice nursing by fraud or deceit;

(2) has been convicted of a felony;

(3) has been convicted of any misdemeanor [CRIME INVOLVING MORAL TURPITUDE] which bears directly on the fitness of the person to practice nursing;

(4) [IS] habitually abuses alcoholic beverages or depressants or illegally uses hallucinogenic or stimulant drugs as defined by AS 17.12.150(3) or narcotic drugs as defined by AS 17.10.230(13) [INTOXICATED OR IS ADDICTED TO THE USE OF NARCOTICS];

(5) has impersonated a professional or practical nurse;

(6) is guilty, in the opinion of the board, of negligence which has resulted in a significant risk to the health or safety of a patient or has resulted in [SERIOUS] injury to a patient;

(7) attempts to practice nursing while afflicted with physical or mental illness , deterioration or disability to such an extent that such an affliction interferes with the individual's performance of nursing functions [IS MENTALLY ILL OR MENTALLY INCOMPETENT];

(8) is guilty of unprofessional conduct;

(9) has willfully or repeatedly violated any of the provisions of this chapter;

(10) is considered by the board to be professionally incompetent;

(11) denies care or treatment to a patient or person seeking assistance if the sole reason for the denial is the failure or refusal of the patient or person seeking assistance to execute an agreement to arbitrate a dispute, controversy, or issue arising out of the care or treatment as provided in AS 09.55.535(a).

*Section 18. AS 08.68 is amended by adding a new section to read:

Sec. 08.68.276. CONTINUING COMPETENCE REQUIRED. No license to practice nursing shall be renewed unless the nurse has complied with continuing competence requirements which may be established by the board through regulation.

Section 19. AS 08.68.280 is amended to read:

Sec. 08.68.280. NURSING EDUCATION PROGRAM PROHIBITED UNLESS ACCREDITED. No person, institution or agency may conduct a nursing education program preparing persons for examination , licensure , authorization for specialized practice or a graduate degree [FOR PROFESSIONAL OR PRACTICAL NURSES] unless the program is accredited by the board. All such programs shall be established in an accredited post secondary educational institution within the State .

Section 20. AS 08.68.290 is amended to read:

Sec. 08.68.290. APPLICATION FOR ACCREDITATION BY BOARD. An institution desiring to conduct a nursing education program to prepare professional [OR PRACTICAL] nurses at the associate , baccalaureate and higher degree levels or to prepare a nurse to perform in an expanded role as an advanced nurse practitioner or to prepare practical nurses shall apply to the board and submit evidence that (1) it is prepared to carry out the curriculum which meets standards and requirements required by law and [APPROVED BY] the board for professional nursing , [OR] for practice as an advanced nurse practitioner or for practical nursing [AS THE CASE MAY BE,] and that (2) it is prepared to meet other standards established by law and by the board.

*Section 21. AS 08.68.300 is amended to read:

Sec. 08.68.300. SURVEY AND ACCREDITATION BY THE BOARD. The board shall designate a survey team [THE EXECUTIVE OFFICER, A BOARD MEMBER, OR A CONSULTANT TO SURVEY THE INSTITUTION APPLYING FOR ACCREDITATION] to determine if the standards and requirements required by law and the board are met. The board may survey a nursing education program in the State at any time. Written reports of the surveys shall be filed and retained by the board [AND RETAINED BY IT].

*Section 22. AS 08.68 is amended by adding a new section to read:

Sec. 08.68.325. EDUCATIONAL PROGRAMS OR COURSES OF STUDY VALIDATING CONTINUING PRACTICE COMPETENCY FOR PURPOSES OF MEETING STATE REQUIREMENTS. No program or course of study will be recognized as satisfying state requirements without board approval.

*Section 23. AS 08.68.330 is amended to read:

Sec. 08.68.330. LIST OF ACCREDITED AND APPROVED PROGRAMS. The board shall prepare, maintain [,] and periodically [FROM TIME TO TIME] publish a list of accredited nursing education programs preparing nurses to practice and programs or courses of study which are approved to validate competency or to prepare a nurse for authorization to practice as an advanced nurse practitioner or to obtain a graduate level degree [IN THE STATE].

*Section 24. AS 08.68.350 is amended to read:

Sec. 08.68.350. PUNISHMENT FOR MISDEMEANOR. A person who violates section 340 of this chapter is punishable by imprisonment for not less than six months [10 DAYS] nor more than one year, or by a fine of not less than $1,000 [$10] nor more than $5,000 [$500] , or by both.

*Section 25. AS 08.68.360 is amended to read:

Sec. 08.68.360. UNLICENSED PRACTICE A PUBLIC NUISANCE. The practice of professional or practical nursing for compensation by a person who is not licensed [OR, WHOSE LICENSE IS SUSPENDED, OR REVOKED, OR EXPIRED,] is declared to be inimical to the public welfare and to constitute a public nuisance.

*Section 26. AS 08.68.400 is amended to read:

Sec. 08.68.400. EXCEPTIONS TO APPLICATION OF CHAPTER. (a) This chapter does not apply to

(1) a qualified nurse licensed in another state employed by the United States Government or a bureau, or agency, or division of the United States Government while in the discharge of his official duties; or

(2) nursing service given temporarily in the event of a public emergency , epidemic or disaster; or

(3) the practice of nursing by a student enrolled in a nursing education program accredited by the board when the practice is in connection with the student's course of study; or

(4) the practice of nursing by an individual [A NURSE] enrolled in an approved program or course of study for purposes of meeting competency re-entry requirements [REFRESHER COURSE].

*Section 27. AS 08.68.410 is amended to read:

Sec. 08.68.410. DEFINITIONS. As used in this chapter

(1) "board" means the Board of Nursing;

(2) "licensed professional nurse" is equivalent to the common title registered nurse and the name suffix abbreviation R.N.;

(3) "licensed practical nurse" is equivalent to the title licensed vocational nurse and the name suffixes L.P.N. or L.V.N.;

(4) repealed

(5) "practice of professional nursing" means the performance for compensation or personal profit of acts of professional service requiring [OF OBSERVATION, CARE AND COUNSEL OF THE ILL, INJURED, OR INFIRM, OR THE MAINTENANCE OF HEALTH OR PREVENTION OF ILLNESS OF OTHERS, THE SUPERVISION AND TEACHING OF PERSONNEL; OR THE ADMINISTRATION OF MEDICATIONS AND TREATMENTS PRESCRIBED BY A LICENSED PHYSICIAN OR DENTIST WHICH REQUIRE] substantial specialized knowleuge , judgement and skill based upon [ON KNOWLEDGE AND APPLICATION OF] the principles of biological, physiological , behavioral and sociological sciences in assessing and responding to actual or potential health needs of individuals, families or communities through such services as : [PHYSICAL, AND SOCIAL SCIENCE: BUT THE FOREGOING DO NOT INCLUDE ACTS OF MEDICAL DIAGNOSIS, OR THE PRESCRIPTION OF MEDICAL THERAPEUTIC OR CORRECTIVE MEASURES UNLESS AUTHORIZED BY REGULATIONS PROMULGATED JOINTLY BY THE STATE MEDICAL BOARD AND THE BOARD OF NURSING AND AS IMPLEMENTED BY THE BOARD OF NURSING;]

(A) assessment , problem identification , counsel , and health teaching :

(i) in the maintenance of health or in the prevention of illness of others ; and

(ii) in the care of the ill , injured , or infirm ;

(B) administration , supervision , delegation and evaluation of nursing practice ;

(C) teaching of nursing ;

(D) execution of a medical regimen as prescribed by a health care provider authorized by the State to perform acts of medical practice ;

(E) performance of such additional acts requiring education and training and which are recognized by the nursing profession as properly performed by registered professional nurses .

(F) performance of acts of medical diagnosis and the prescription of medical therapeutic or corrective measures when authorized by regulations promulgated and implemented by the board .

(6) "advanced nurse practitioner" is a registered professional nurse authorized in the state who by virtue of specialized education and experience, has become certified to perform acts of medical diagnosis , and prescription of medical , therapeutic or corrective measures as authorized by regulations promulgaged under (5) (F) of this section.

(7)[6] "practice of practical nursing" means the performance for compensation or personal profit of selected acts in the [CARE OR] prevention of illness, and in the care of the ill, injured, or infirm under the direction of a licensed professional nurse or a licensed physician or a licensed dentist not requiring the substantial specialized skill, judgement and knowledge required in professional nursing;

(8)[7] an "accredited nursing education program" is a program having curricula and standards which meet the requirements established by the board;

(9)[8] "endorsement" is the licensing or registering of an applicant without examination through the acceptance of a license or registration issued by any state or territory after a

comprehensive examination which is equivalent to the examination offered in this state, and providing the applicant meets all other qualifications required by law;

(10) Unprofessional conduct shall include but not be limited to the following acts which are contrary to the accepted standards of the nursing profession :

(A) failure to utilize appropriate judgement in administering safe nursing practice based upon the level of nursing for which the individual is educationally prepared and licensed ;

(B) failure to exercise technical competence in carrying out nursing care ;

(C) failure to follow policies or procedures implemented in the practice situation to safeguard the client ;

(D) failure to safeguard the client's dignity and right to privacy ;

(E) violating the confidentiality of information or knowledge concerning the client ;

(F) verbally or physically abusing clients ;

(G) performing new nursing techniques or procedures without proper education and preparation ;

(H) using alcohol or other drugs to the extent that such usage interferes with nursing functions ;

(I) making any disposition of prescription drugs or narcotics other than that ordered or prescribed by persons authorized by this state to do so ;

(J) falsifying client's records or intentionally charting incorrectly ;

(K) violating state or federal laws relative to drugs by forging prescriptions or by making drugs available to self , friends , or family members ;

(L) delegating nursing care , functions, tasks and/or responsibilities to others contrary to the Alaska statutes governing nursing and/or to the detriment of client safety ;

(M) assuming duties and responsibilities, on repeated occasions , without adequate training or when competency has not been maintained ;

(N) aiding , abetting or assisting any other person to violate or circumvent any law or duly promulgated rule or regulation intended to guide the conduct of a nurse ;

(O) permitting or allowing another person to use his/her nursing license or permit for any purpose ;

(P) failure to report through the proper channels the incompetent , unethical , or illegal practice of any person who is providing health care ;

(Q) failure to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensed professional ;

(R) leaving a nursing assignment without properly notifying appropriate personnel ;

(S) committing any act which endangers client welfare.

(T) failure to perform acts within the nurse's scope of competence which are necessary for the client's welfare.

(11) "professional incompetence" means that the nurse does not possess the skills , knowledge and awareness of his limitations and abilities to safely continue the practice of nursing .

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

December 10, 1979

The Honorable Brad Bradley
Senate Commerce Committee
P.O. Drawer 8-Q
Anchorage, Alaska 99508

Dear Senator Bradley:

Enclosed, please find copies of all division and board prepared rough drafts of legislation for possible introduction in the upcoming session of the Legislature. Of these drafts, only the ones relating to construction contractor bonding requirements and the Board of Nursing will be introduced as Executive Branch Legislation.

Please also find enclosed copies of all written correspondance between this division and the boards regarding legislation for the upcoming session.

If you have any questions, please feel free to either write or give me a call at 465-2534.

Sincerely,

David Creekman

David Creekman
Regulations Specialist

cc: Mr. Christian Basler

08-H8LH

STATE OF ALASKA

BOARD OF NURSING

CENTRALIZED LICENSING STATUTE. AS 08.01.
MISCELLANEOUS PROVISIONS, AS 08.02
NURSING STATUTES CHAPTER AS 08.68.
AND
NURSING REGULATIONS 12 AAC 44

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DEPARTMENT OF COMMERCE

& ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH "D"

JUNEAU, ALASKA 99811

PRINTED: August 17, 1978

CHAPTER 01. CENTRALIZED LICENSING

Section
10. Applicability of chapter
20. Board organization
25. Public members
30. Quorum
40. Transportation and per diem
50. Administrative duties of department
60. Application for license
70. Administrative duties of boards
80. Department regulations
87. Powers and duties of department
90. Applicability of the Administrative Procedure Act
100. License renewal, lapse and reinstatement
105. Penalty for improper payment
110. Definitions

Sec. 08.01.010. APPLICABILITY OF CHAPTER. This chapter applies to the

(1) Board of Public Accountancy;
(2) Board of Barber Examiners;
(3) Repealed by sec. 6 ch 32 SLA 1971.
(4) Board of Chiropractic Examiners;
(5) Board of Hairdressing and Beauty Culture Examiners;
(6) Board of Dental Examiners;
(7) Board of Electrical Examiners;
(8) State Board of Registration for Architects, Engineers and Land Surveyors;
(9) State Medical Board;
(10) Board of Nursing;
(11) Board of Examiners in Optometry;
(12) Board of Pharmacy;
(13) Real Estate Commission;
(14) Board of Veterinary Examiners;
(15) Board of Psychologist and Psychological Associate Examiners;
(16) Collection Agency Board;
(17) Board of Welding Examiners;
(18) Board of Marine Pilots;
(19) Board of Dispensing Opticians;
(20) Guide Licensing and Control Board.

Sec. 08.01.020. BOARD ORGANIZATION. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members.

Sec. 08.01.025. PUBLIC MEMBERS. No public members of a board may:

(1) be engaged in the occupation which the board regulates;
(2) be associated by legal contract with a members of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
(3) have a direct financial interest in the occupation which the board regulates.

Sec. 08.01.030. QUORUM. A majority of the membership of a board constitutes a quorum unless otherwise provided.

Sec. 08.01.040. TRANSPORTATION AND PER DIEM. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180.

Sec. 08.01.050. ADMINISTRATIVE DUTIES OF THE DEPARTMENT. (a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;
(2) maintain records and files;
(3) issue and receive application forms;
(4) notify applicants of acceptance or rejection of applicants as determined by the board;
(5) designate dates examinations are to be held and notify applicants;
(6) publish notice of examination;

(7) arrange space for holding examinations;
(8) notify applicants of results of examinations;
(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;
(10) issue duplicate licenses or certificates upon proof of loss of the original and payment of a fee of $2;
(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;
(12) compile and maintain current a register of licenses;
(13) answer routine inquiries;
(14) maintain files relating to individual licensees;
(15) arrange for printing and advertising;
(16) purchase supplies;
(17) employ secretarial help when needed;
(18) perform other services which may be requested by the board;
(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in sec. 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned.

Sec. 08.01.060. APPLICATION FOR LICENSE. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department.

Sec. 08.01.070. ADMINISTRATIVE DUTIES OF BOARDS. Each board shall perform the following duties in addition to those provided in its respective law:

(1) keep minutes and records of all proceedings;
(2) hold a minimum of one meeting each year;
(3) hold at least one examination each year;
(4) request, through the department, investigation of violations of its laws and regulations;
(5) prepare and grade examinations;
(6) pass on qualifications of applicants for examination and license;
(7) forward minutes of meetings to the department within 20 days;
(8) forward results of examinations to the department;
(9) notify the department of meeting dates at least 15 days before meeting.

Sec. 08.01.080. DEPARTMENT REGULATIONS. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;
(2) what is contained in application forms;
(3) how a person applies for an examination or license.

Sec. 08.01.087. POWERS AND DUTIES OF DEPARTMENT. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in sec. 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in sec. 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or

reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in sec. 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require license by a board listed in sec. 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents.

Sec. 08.01.090. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings held under this chapter, except those under AS 08.01.087(b).

Sec. 08.01.100. LICENSE RENEWAL, LAPSE AND REINSTATEMENT. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

Sec. 08.01.105. PENALTY FOR IMPROPER PAYMENT. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor.

Sec. 08.01.110. DEFINITIONS. In this chapter

(1) "board" includes the boards and commissions listed in sec. 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in sec. 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in sec. 10 of this chapter.

CHAPTER 68. NURSING

Article
1. Board of Nursing (secs. 08.68.010-08.68.150)
2. Examination and Licensing (secs. 08.68.160-08.68.275)
3. Nursing Education Programs (secs. 08.68.280-08.68.330)
4. Unlawful Acts (secs. 08.68.340-08.68.390)
5. General Provisions (secs. 08.68.400-08.68.410)

Article 1. Board of Nursing

Section
10. Creation and membership of Board of Nursing
20. Term of office
30. Limitation on term of service
40. (Repealed)
50. Removal from office
60. Qualifications of board members
70. Election of officers
80. Meetings
90. Quorum
100. Duties of board
110. (Repealed)
111. Executive officer of board
120. (Repealed)
130. (Repealed)
140. Applicability of Administrative Procedure Act
150. Expenses

Sec. 08.68.010. Creation and membership of Board of Nursing. There is created a Board of Nursing, consisting of seven members appointed by the governor. One member shall be currently involved in institutional nursing service, one member in community or public health nursing and two members in basic or continuing nursing education, one nurse at large, and two persons who have no direct financial interest in the health care industry. (sec 3 ch 90 SLA 1957; am sec 1 ch 67 SLA 1973; am sec 15 ch 102 SLA 1976)

Sec. 08.68.020. Term of office. Members serve staggered terms of five years and until their successors are appointed. The terms of the public members on the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term. (sec 3 ch 90 SLA 1957; am sec 16 ch 102 SLA 1976)

Sec. 08.68.030. Limitation on term of service. A board member may not serve more than two consecutive terms. Time served in filling an unexpired vacancy of two years or less is not considered a term. (sec 3 ch 90 SLA 1957)

Sec. 08.68.050. Removal from office. The governor may remove any board member for neglect of duty required by law, or for unprofessional or dishonorable conduct after a fair and impartial hearing. (sec 3 ch 90 SLA 1957)

Sec. 08.68.060. Qualifications of board members. The five members of the board who are nurses shall be licensed professional nurses in the state, and shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment. (sec 4 ch 90 SLA 1957; am sec 17 ch 102 SLA 1976)

Sec. 08.68.070. Election of officers. The board shall annually elect a chairman and secretary-treasurer from among its members. (sec 5 ch 90 SLA 1957)

Sec. 08.68.080. Meetings. The board shall meet at least once a year. (sec 5 ch 90 SLA 1957)

Sec. 08.68.090. Quorum. A majority of the board constitutes a quorum. (sec 5 ch 90 SLA 1957)

Sec. 08.68.100. Duties of board. The board shall

(1) adopt rules and regulations necessary to make this chapter effective and when necessary, additions to or changes in rules and regulations of the board by a quorum vote by mail, these additions to or changes in the rules and regulations which are made by mail and the vote on them to be entered in the minutes of the board at its next meeting;

(2) make available, upon request, copies of this chapter and the regulations adopted for administering it;

(3) approve curricula and adopt standards for educational programs preparing persons for licensing and provide for surveys of these programs in the state at the times it considers necessary;

(4) accredits educational programs which meet the requirements of this chapter and the standards of the board, and deny or withdraw accreditation from educational programs for failure to meet board standards;

(5) examine, license, and renew the licenses of qualified applicants, and conduct hearings upon charges and administer oaths to persons giving testimony at hearings;

(6) keep a record of its proceedings, and submit annual reports to the governor and the legislature. (sec 6(1) (2) (3) ch 90 SLA 1957)

Sec. 08.68.111. Executive officer of board. (a) The Department of Commerce and Economic Development, in consultation with the Board of Nursing shall employ a licensed, registered nurse, who is not a member of the board, to serve as executive officer of the board.

(b) The executive officer shall be a nurse having a bachelor's degree or higher, currently licensed in the state and with not less than five years of active nursing experience, of which

not less than two years within the preceding five years shall have been in an administrative or a teaching capacity in an accredited institution acceptable to the board. If a licensed professional nurse holding a bachelor's degree is not available to fill the position of executive officer, the board may waive the requirement for a bachelor's degree and appoint a licensed professional nurse possessing other qualifications in education and administrative experience which the board considers acceptable. However, the appointee shall complete the requirements for the award of a bachelor's degree in four years after appointment to the position of executive officer. Annually, the appointee shall offer the board evidence of satisfactory progress toward award of a bachelor's degree. If after the annual review the board believes that the appointee has not made satisfactory progress toward award of a bachelor's degree, the department may dismiss the appointee, notwithstanding the provisions of AS 39.25.170.

(c) the executive officer shall:

(1) perform the administrative duties as required by the statutes and the department,

(2) carry out regulations and policy decisions, consistent with law, made by the Board of Nursing, and

(3) assist the board in the conducting of examinations, educational programs, preparation of minutes and other board administrative work. (sec 1 ch 47 SLA 1967; am sec 1 ch 81 SLA 1969; am sec 2 ch 67 SLA 1973; am sec 1 ch 129 SLA 1974; am sec 49 ch 218 SLA 1976)

Sec. 08.68.140. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62)

Sec.08.68.150. Expenses. Members of the board are entitled to the per diem and travel expenses allowed by law. (sec 7 ch 90 SLA 1957)

Article 2. Examination and Licensing

Section
160. License required
170. Malpractice Insurance
180. Qualifications of professional nurse applicants
180. Qualifications of practical nurse applicants
190. License by examination
200. License by endorsement
210. Temporary permits
220. Fees
230. Use of title and abbreviation
240. Nurses licensed or holding temporary permits under previous law
250. (Repealed)
251. Lapsed licenses
260. Inactive nurses
270. Grounds for denial, suspension or revocation.
275. Limits or conditions on license; discipline

Sec. 08.68.060. Qualifications of board members. The five members of the board who are nurses shall be licensed professional nurses in the state, and shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment. (sec 4 ch 90 SLA 1957; am sec 17 ch 102 SLA 1976)

Sec. 08.68.070. Election of officers. The board shall annually elect a chairman and secretary-treasurer from among its members. (sec 5 ch 90 SLA 1957)

Sec. 08.68.080. Meetings. The board shall meet at least once a year. (sec 5 ch 90 SLA 1957)

Sec. 08.68.090. Quorum. A majority of the board constitutes a quorum. (sec 5 ch 90 SLA 1957)

Sec. 08.68.100. Duties of board. The board shall

(1) adopt rules and regulations necessary to make this chapter effective and when necessary, additions to or changes in rules and regulations of the board by a quorum vote by mail, these additions to or changes in the rules and regulations which are made by mail and the vote on them to be entered in the minutes of the board at its next meeting;

(2) make available, upon request, copies of this chapter and the regulations adopted for administering it;

(3) approve curricula and adopt standards for educational programs preparing persons for licensing and provide for surveys of these programs in the state at the times it considers necessary;

(4) accredits educational programs which meet the requirements of this chapter and the standards of the board, and deny or withdraw accreditation from educational programs for failure to meet board standards;

(5) examine, license, and renew the licenses of qualified applicants, and conduct hearings upon charges and administer oaths to persons giving testimony at hearings;

(6) keep a record of its proceedings, and submit annual reports to the governor and the legislature. (sec 6(1) (2) (3) ch 90 SLA 1957)

Sec. 08.68.111. Executive officer of board. (a) The Department of Commerce and Economic Development, in consultation with the Board of Nursing shall employ a licensed, registered nurse, who is not a member of the board, to serve as executive officer of the board.

(b) The executive officer shall be a nurse having a bachelor's degree or higher, currently licensed in the state and with not less than five years of active nursing experience, of which

Sec. 08.68.160. License required. A person practicing or offering to practice professional or practical nursing in the state shall submit evidence that he is qualified to practice, and shall be licensed under this chapter. (sec 1 ch 90 SLA 1957)

Sec. 08.68.165. Malpractice Insurance. If medical malpractice insurance for nurses becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of nursing services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (sec. 18 ch 102 SLA 1976)

Sec. 08.68.170. Qualifications of professional nurse applicants. An applicant for a license to practice professional nursing shall submit to the board on forms and in the manner prescribed by the board, written evidence, verified by oath, that the applicant has completed an approved four year high school course of study or the equivalent as determined by the appropriate educational agency, and has successfully completed (1) a professional nursing education program accredited by the board; or (2) a professional nursing education program outside the state which, in the opinion of the board, meets the minimum requirements of the board for an accredited program of study in this state at the time the applicant graduated; or (3) a National League for Nursing at the time the applicant graduated. (sec 8 ch 90 SLA 1957; am sec 2 ch 129 SLA 1974; am sec 1 ch 105 SLA 1976)

Sec. 08.68.180. Qualifications of practical nurse applicants. (a) An applicant for a license to practice practical nursing shall submit to the board on forms prescribed by the board written evidence, verified by oath, that the applicant has completed the tenth grade or its equivalent as determined by the appropriate educational agency, is not less than 18 years of age, and has successfully completed (1) a practical nursing education program accredited by the board; or (2) a practical nursing education program outside the state which, in the opinion of the board, meets the minimum requirements of the board for an accredited program of study in this state.

(b) A qualified student of the Mt. Edgecumbe School of Practical Nursing who was graduated before January 1, 1959, and had eighth grade pretraining is eligible for a license. (sec 9 ch 90 SLA 1957; am sec 3 ch 129 SLA 1974; am sec 2 ch 105 SLA 1976)

Sec. 08.68.190. License by examination. The applicant shall pass a written examination in the subjects which the board prescribes. The board shall issue a license to an applicant who passes the examination to practice professional nursing or practical nursing provided the other qualifications outlines in sections 170 and 180 of this chapter are also met. The board shall conduct examinations annually and as often as considers necessary. (sec 10 ch 90 SLA 1957)

Sec. 08.68.200. License by endorsement. The board may issue a license by endorsement to practice professional nursing or to practice practical nursing, whichever is appropriate, to an applicant who is licensed as either a professional nurse or a practical nurse under the laws of another state of territory, if in the opinion of the board the applicant meets the qualifications required for licensing in the state, and meets the requirements of either section 170 or section 180 of this chapter, whichever is applicable. (sec 11 ch 90 SLA 1957; am sec 1 ch 37 SLA 1970; am sec 4 ch 129 SLA 1974)

Sec 08.68.210. Temporary permits. (a) The board may issue a temporary permit, nonrenewable and valid for a period not exceeding four months, to an applicant for a license by endorsement if he

(1) submits proof satisfactory to the board that he is currently licensed in another state or territory,

(2) meets the requirements of either section 170 or section 180 of this chapter, whichever is applicable, and

(3) pays the required fee.

(b) The board may issue a nonrenewable permit to an applicant for license by examination if he meets the qualifications of section 170 or section 180 of this chapter, whichever is applicable, not extending beyond the time when the results are published of the first examination the applicant is eligible to take after the permit is issued. (sec 11 ch 90 SLA 1957; am sec 2 ch 37 SLA 1970; am sec 5 ch 129 SLA 1974)

Sec 08.68.220 Fees. The following fees shall be imposed under this chapter when applicable:

(1) for professional or registered nursing

(A) application fee.....$20

(B) license by examination fee..... 20

(C) license by endorsement fee..... 20

(D) biennial license renewal fee..... 15

(2) for practical or vocational nursing

(A) application fee.....$15

(B) license by examination fee..... 15

(c) license by endorsement fee..... 15

(D) biennial license renewal fee..... 15
(sec 13 ch 90 SLA 1957; am sec 1 ch 80 SLA 1960; am sec 5 ch 94 SLA 1968; am sec 2 ch 81 SLA 1969; am secs 3, 4 ch 37 SLA 1970)

Sec. 08.68.230. Use of title and abbreviation. (a) a person licensed to practice professional nursing in the state may use the title "licensed professional nurse," "registered nurse," and the abbreviation "R.N.".

(b) A person licensed to practice practical nursing in the state may use the title "licensed practical nurse," or "licensed vocational nurse," and the abbreviation "L.P.N." or "L.V.N.". (sec 14 ch 90 SLA 1957)

Sec 08.68.240. Nurses licensed or holding temporary permits under previous law. A person holding a license to practice professional or practical nursing in the state under prior law is considered licensed as a professional or practical nurse. (sec 15 ch 90 SLA 1957)

Sec. 08.68.251. Lapsed licenses. A lapsed license may be reinstated if it has not remained lapsed for more than five years. If the license is lapsed for more than five years and the board has reason to believe that the person applying for reinstatement of his license no longer has sufficient knowledge to carry out the duties of a licensed nurse, the board may require the applicant to take and pass the examination given under section 190 of this chapter or complete a refresher course approved by the board. (sec 3 ch 81 SLA 1969; am sec 6 ch 129 SLA 1974)

Revisor's note (1969).-
In ch 81 SLA 1969 this section was numbered as AS 08.68.250.

Sec. 08.68.260. Inactive nurses. A licensed nurse may apply to be placed on inactive status. An inactive nurse may engage in the practice of nursing by submitting an application for renewal and the current biennial renewal fee to the board and receiving a renewal certificate. If the board has reason to believe that the applicant for a renewal certificate no longer has sufficient knowledge to carry out the duties of a licensed nurse, the board may require the applicant to take and pass the examination given under section 190 of this chapter or complete a refresher course approved by the board. (sec 16 ch 90 SLA 1957; am sec 2 ch 80 SLA 1960; am sec 4 ch 81 SLA 1969, am sec 7 ch 129 SLA 1974)

Sec. 08.68.270. Grounds for denial, suspension or revocation. The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, suspend or revoke the license of a person who

(1) has obtained or attempted to obtain a license to practice nursing by fraud or deceit;

(2) has been convicted of a felony;

(3) has been convicted of a crime involving moral turpitude;

(4) is habitually intoxicated or is addicted to the use of narcotics;

(5) has impersonated a professional or practical nurse;

(6) is guilty, in the opinion of the board, of negligence which has resulted in serious injury to a patient;

(7) is mentally ill or mentally incompetent;

(8) is guilty of unprofessional conduct;

(9) has willfully or repeatedly violated any of the provisions of this chapter;

(10) is considered by the board to be professionally incompetent. (sec 20 ch 90 SLA 1957, am sec 8 ch 129 SLA 1974)

Cited in Leege V. Martin, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963)

C.J.S. references.-53 C.J.S. Licenses section 44; 70 C.J.S. Physicians and Surgeons sec 16.

Sec. 08.68.275. Limits or conditions on license; discipline. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason or demonstrated problems of competence, experience, education, or health the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (sec 18 ch 102 SLA 1976)

Article 3. Nursing Education Program

Section
280. Nursing education program prohibited unless accredited
290. Application for accreditation
300. Survey and accreditation by the board
310. Accreditation
320. Denial of accreditation
330. List of accredited programs

Sec. 08.68.280. Nursing education program prohibited unless accredited. No person, institution or agency may conduct a nursing education program for professional or practical nurses unless the program is accredited by the board. (sec 18 ch 90 SLA 1957)

Sec. 08.68.290. Application for accreditation. An institution desiring to conduct a nursing education program to prepare professional or practical nurses shall apply to the board and submit evidence that (1) it is prepared to carry out the curriculum approved by the board for professional nursing or for practical nursing, as the case may be, and that (2) it is prepared to meet other standards established by law and by the board. (sec 17 ch 90 SLA 1957)

Sec. 08.68.300. Survey and accreditation by the board. The board shall designate the executive officer, a board member, or a consultant to survey the institution applying for accreditation to determine if the standards and requirements required by law and the board are met. The board may survey a nursing education program in the state at any time. Written reports of the surveys shall be filed with the board and retained by it. (sec 18 ch 90 SLA 1957)

Sec. 08.68.310. Accreditation. If, in the opinion of the board, the nursing education program meets the requirements established by the board, the board shall accredit it as an approved nursing education program for professional or practical nurses. The graduates of an accredited nursing program are eligible for licenses. (sec 18 ch 90 SLA 1957)

Sec. 08.68.320. Denial of accreditation. The board may deny, revoke or suspend accreditation of a nursing education program if it determines that required standards are not being maintained. (sec 18 ch 90 SLA 1957)

Sec. 08.68.330. List of accredited programs. The board shall prepare, maintain, and from time to time publish a list of accredited nursing education programs in the state. (sec 19 ch 90 SLA 1957)

Article 4. Unlawful Acts

Section		Section	
340.	Violations	370.	Application for injunction
350.	Punishment for misdemeanor	380.	Issuance of injunction
360.	Unlicensed practice a public nuisance	390.	Remedy not exclusive

Sec. 08.68.340. Violations. It is a misdemeanor for a person to

(1) sell or fraudulently obtain or furnish a nursing diploma, license renewal or record, or aid or abet therein; or

(2) practice nursing under cover of a diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or by fraudulent representation; or

(3) practice or offer to practice nursing without a license, except when rendering necessary aid to the ill, injured or infirm in an emergency, or to knowingly employ a person without a license to practice nursing; or

(4) use in connection with his name a designation tending to imply that he is a licensed nurse unless he is licensed; or

(5) practice nursing during the time his license is lapsed, suspended or revoked; or

(6) conduct a nursing education program unless the program has been accredited by the board; or

(7) violate any provision of this chapter. (secs 1, 22 ch 90 SLA 1957, am sec 9 ch 129 SLA 1974)

C.J.S. references.-53 C.J.S. Licenses sections 62 to 65; 70 C.J.S. Physicians and Surgeons section 8.

Sec. 08.68.350. Punishment for misdemeanor. A person who violates section 340 of this chapter is punishable by imprisonment for not less than 10 days nor more than one year, or by a fine of not less than $10 nor more than $500, or by both. (sec 22 ch 90 SLA 1957)

Sec. 08.68.360. Unlicensed practice a public nuisance. The practice of professional or practical nursing for compensation by a person who is not licensed, or whose license is suspended, or revoked, or expired, is declared to be inimical to the public welfare and to constitute a public nuisance. (art VIII ch 90 SLA 1957)

Sec. 08.68.370. Application for injunction. The board may apply for an injunction in a competent court to enjoin a person not licensed or whose license is suspended or revoked, or expired, from practicing professional or practical nursing. The court may issue a temporary injunction enjoining the defend ant from practicing professional or practical nursing. (art VIII ch 90 SLA 1957)

Sec. 08.68.380. Issuance of injunction. If it is established that the defendant has been or is practicing professiona or practical nursing without a license or has been or is practicing nursing after his license has been suspended, or revoked or has expired, the court may enjoin the defendant from further practice. (art VIII ch 90 SLA 1957)

Sec. 08.68.390. Remedy not exclusive. If a person violates an injunction issued under this section, he may be punished for contempt of court. The injunction proceeding is in addition to other penalties and remedies provided in this chapter. (art VIII ch 90 SLA 1957)

Article 5. General Provisions

Section
400. Exceptions to application of chapter
Section
410. Definitions

Sec. 08.68.400. Exceptions to application of chapter. (a) This chapter does not apply to

(1) a qualified nurse licensed in another state employed by the United States Government or a bureau, or agency, or division of the United States Government while in the discharge of his official duties; or

(2) nursing service given temporarily in the event of a public emergency or disaster; or

(3) the practice of nursing by a student enrolled in a nursing education program accredited by the board when the practice is in connection with the student's course of study; or

(4) the practice of nursing by a nurse enrolled in an approved refresher course.

(b) For purposes of this section the word "nurses" includes professional and practical nurses, and the "nursing" means professional and practical nursing. (art IX ch 90 SLA 1957, am sec 10 ch 125 SLA 1974)

Sec. 08.68.410. Definitions. As used in this chapter

(1) "board" means the Board of Nursing;

(2) "licensed professional nurse" is equivalent to the common title registered nurse;

(3) "licensed practical nurse" is equivalent to the title licensed vocational nurse;

(4) "practical nursing" also means vocational nursing;

(5) "practice of professional nursing" means the performance for compensation of observation, care and counsel of the ill, injured, or infirm, or the maintenance of health or prevention of illness of others, the supervision and teaching of personnel; or the administration of medications and treatments prescribed by a licensed physician or dentist which require substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social science; but the foregoing do not include acts of medical diagnosis, or the prescription of medical therapeutic or corrective measures unless authorized by regulations promulgated jointly by the State Medical Board and the Board of Nursing and as implemented by the Board of Nursing;

(6) "practice of practical nursing" means the performance for compensation of selected acts in the care or prevention of illness, and in the care of the ill, injured, or infirm under the direction of a licensed professional nurse or a licensed physician or a licensed dentist not requiring the substantial specialized skill, judgment and knowledge required in professional nursing;

(7) an "accredited nursing education program" is a program having curricula and standards which meet the requirements established by the board;

(8) "endorsement" is the licensing or registering of an applicant without examination through the acceptance of a license or registration issued by any state or territory after a comprehensive examination which is equivalent to the examination offered in this state, and providing the applicant meets all other qualifications required by law;

(9) "advanced nurse practitioner" means a registered professional nurse who by virtue of specialized education and experience, has become certified to perform acts of medical diagnosis, and prescription of medical, therapeutic or corrective measures as authorized by regulations promulgated under (5) of this section. (sec 2 ch 90 SLA 1957; am sec 5 ch 37 SLA 1970; am sec 3 ch 67 SLA 1973, am secs 11, 12 ch 129 SLA 1974)

TITLE 12. PROFESSIONAL AND VOCATIONAL REGULATIONS

CHAPTER 44. BOARD OF NURSING

Article
1. Nursing Education of Professional Nurses
2. Nursing Education of Practical Nurses
3. Examination and Licensure
4. Advanced Nurse Practitioner
5. General Provisions

ARTICLE 1. NURSING EDUCATION OF PROFESSIONAL NURSES

Section
10. Purpose of accreditation
20. Types of Accreditation
30. Survey
40. Establishment of school of professional nursing
50. Discontinuance of program
60. Organization of schools
70. Budget
80. Student clinical experience
90. Faculty
100. Qualifications of director and professional nursing instructors
110. Records
120. School catalogue
130. Curriculum requirements
140. Reports

12 AAC 44.010. PURPOSE OF ACCREDITATION. The purpose of accreditation is

(1) to assure the safe practice of nursing by setting minimum requirements for the conduct of school of professional nursing that prepares the nurse practitioner;

(2) to assure the graduate of their eligibility for admission to the licensing examination for professional nurses in Alaska; and

(3) to encourage within school of professional nursing self-evaluation and study for growth, development and improvement of this program. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100
AS 08.68.290

12 AAC 44.020. TYPES OF ACCREDITATION. (a) Full accreditation is granted a school of professional nursing that has met the requirements as set forth in secs. 10 - 140 of this chapter.

(b) Provisional accreditation is granted a school of professional nursing that has not been in operation long enough to fulfill the standards of accreditation of secs. 10 - 140 of this chapter.

(c) Conditional accreditation is granted a school of professional nursing which has failed to maintain minimum standards and has been notified that it must meet the requirements of the board within one year from date of notice. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.109(1)(3)(4)
AS 08.68.290

12 AAC 44. 030. SURVEY. (a) The completed application for provisional accreditation shall be submitted to the board when the school of professional nursing is ready for a survey visit.

(b) A survey of each school of nursing, including affiliations and extended campus facilities, is required for the purpose of full accreditation and shall be made by one or more representatives of the board and may include a faculty member from an established professional nursing program.

(c) Each school of professional nursing shall permit periodic surveys by the board or their designated representative for the purpose of determining compliance with accreditation standards.

(d) Prior to a survey visit, specific information will be requested by the board.

(e) The information supplied by the school and the written report of the survey will be given to the board. The report and recommendations of the board will be sent to the administrator of the controlling body and the delegated nurse administrator of the program. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)(4)
AS 08.68.300

12 AAC 440.040. ESTABLISHMENT OF SCHOOL OF PROFESSIONAL NURSING. (a) Any university or college wishing to establish a school of professional nursing shall inform the board in writing during the initial planning period.

(b) There shall be information on the availability of clinical facilities and job opportunities for graduates. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)(4)
AS 08.68.300

12 AAC 44.050. DISCONTINUANCE OF PROGRAM. When a school of professional nursing plans on discontinuing its program it shall

(1) notify the board in writing as soon as the decision is made;

(2) give assurances that the educational standards shall be maintained until the last class has graduated or that adequate provisions are made for the transfer of students unable to complete the program; and

(3) make provisions for the preservation of students' records. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)

12 AAC 44.060. ORGANIZATION OF SCHOOLS. (a) There shall be a clear statement of philosophy which shall be filed with the board.

(b) The school of professional nursing shall be an integral part of an accredited institution of higher learning. There shall be a plan of organization and administration of the school of professional nursing with an organization diagram available to all persons concerned with the school of professional nursing. This chart shall indicate responsibilities and lines of communication and show how individuals and units within the school of professional nursing stand in relation to one another and to such groups as the board of control and clinical facilities. The relationships may be direct, advisory, contractual, coordinating or cooperative in nature. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.070. BUDGET. (a) The financial statement of a school of professinal nursing shall be submitted annually to the board and must include assets and liabilities, allowance for fiscal year for faculty salaries, administrative positions, laboratory equipment, maintenance, capital improvement, library.

(b) In addition to the information required in (a) of this section, a school for professional nursing applying for initial, provisional accreditation shall submit a proposed budget for five years which includes projected amounts and sources of funding, and an analysis of projected disbursements. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.080. STUDENT CLINICAL EXPERIENCE. (a) Assignment of students for clinical experience shall be the responsibility of the director of the school of professional nursing and the faculty.

(b) Each school of professional nursing shall include in its curriculum student experience in meeting the physical, emotional and social needs of people of all ages in health and illness for nursing care.

(c) If there is more than one professional nursing progr having clinical experience simultaneously within the same clinical area, each group shall have separate instructors.

(d) In student clinical experience, the clinical instructor-student ratio may not exceed 1:12 at any given time. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.090. FACULTY. The administration and teaching staff shall consist of

(1) a director of the school of professional nursin

(2) nursing instructors prepared in the major broad areas of current nursing practice. (Eff. 10/14/72, Registe 4

Authority: AS 08.68.100(1)(3)

12 AAC 44.100. QUALIFICATIONS OF DIRECTOR AND PROFESSION NURSING INSTRUCTORS. (a) The director of a school of profes- sional nursing shall be a professional nurse and have at least a master's degree in education or nursing, including course wo in curriculum development and counseling, and at least one yea of experience either in instruction or administration of nursi education.

(b) Instructors who are responsible for the development and implementation of curriculum in one of the specialty areas shall have a master's degree in nursing, and have at least one year of clinical nursing experience in that area.

(c) Instructors who supervise nursing practice in a scho of professional nursing shall have at least a baccalaureate degree in nursing and have at least one year of clinical nursi experience in the area in which they are teaching. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.110. RECORDS. The school of professional nursing shall provide for

(1) pre-admission and current records for each student, including information as to the student's knowledge a skills related to the practice of professional nursing; and

(2) the official transcript of each student. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)
AS 08.68.300

PROFESSIONAL AND VOCATIONAL REGULATIONS

12 AAC 44.120. SCHOOL CATALOGUE. In the catalogue of the accredited institution there shall be a current official statement, developed by the nursing faculty, describing the nursing program, which includes

(1) a statement of the philosophy and objectives of the school of professional nursing;

(2) admission and graduation policies and procedures;

(3) the curriculum, course description, and list of faculty members; and

(4) description of physical facilities.
(Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.130. CURRICULUM REQUIREMENTS. Baccalaureate and associate degree programs shall comply with the following minimum curriculum requirements

(1) biological and physical sciences

(A) academic faculty prepared in these areas shall provide this instruction;

(B) subject matter shall relate to structure and function of the human body;

(2) behavioral and social sciences

(A) academic faculty prepared in these areas shall provide this instruction;

(B) subject matter shall include principles of psychology, communications, growth and development, and interpersonal relationships;

(3) nursing science

(A) the school of professional nursing shall provide instruction and clinical experience in the major broad areas of current nursing practice;

(B) it shall provide instruction in allied subjects such as community health, pharmacology, nutrition and diet therapy, history and trends in nursing and professional responsibilities;

(C) theory and laboratory experience shall be concurrent to enable students to develop basic skills in professional nursing;

(D) throughout the program the student shall have experience applying the principles learned by working with the health team in providing nursing services and health education to people of all ages. (Eff. 10/14/72, Register 43)

12 AAC 44.140. REPORTS. By July 1 of each year, schools of professional nursing shall submit to the Board of Nursing reports related to faculty, students and current curriculum as follows

(1) written job descriptions and qualifications for each category of faculty;

(2) names, educational qualifications, and titles of all nursing faculty members;

(3) a count of students admitted, withdrawn, transferred and graduated on forms provided by the board;

(4) a copy of the catalogue;

(5) course outlines for all nursing courses;

(6) budget information required in sec. 70 of this chapter; and

(7) a copy of any written agreement between the school of professional nursing and clinical facilities. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.300

ARTICLE 2. NURSING EDUCATION OF PRACTICAL NURSES

Section		Section	
150.	Purpose of accreditation	220.	Student clinical experience
160.	Types of accreditation	230.	Faculty
170.	Survey	240.	Qualifications of director of practical nursing instructors
180.	Establishment of school of practical nursing	250.	Records
190.	Discontinuance of program	260.	School catalogue
200.	Organization of schools	270.	Curriculum requirements
210.	Budget	280.	Reports

12 AAC 44.150. PURPOSE OF ACCREDITATION. The purpose of accreditation is

(1) to assure safe practice of nursing by setting minimum requirements for the conduct of school of practical

nursing that prepares the practical nurse;

(2) to assure the graduates of their eligibility for admission to the licensing examination for practical nurses in Alaska; and

(3) to encourage within school of practical nursing self-evaluation and study for growth, development and improvement of its program. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100
AS 08.68.290

12 AAC 44.160. TYPES OF ACCREDITATION. (a) Full accreditation is granted a school of practical nursing that has met the requirements as set forth in secs. 150 - 280 of this chapter.

(b) Provisional accreditation is granted a school of practical nursing that has not been in operation long enough to fulfill the standards of accreditation of secs. 150 - 280 of this chapter.

(c) Conditional accreditation is granted a school of practical nursing which has failed to maintain minimum standards and has been notified that it must meet the requirements of the board within one year from date of notice. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.109(1)(3)(4)
AS 08.68.290

12 AAC 44.170. SURVEY. (a) The completed application for provisional accreditation shall be submitted to the board when the school of practical nursing is ready for a survey visit.

(b) A survey of each school of nursing, including affiliations and extended campus facilities, is required for the purpose of FULL accreditation and shall be made by one or more representatives of the board and may include a faculty member from an established practical nursing program.

(c) Each school of practical nursing shall permit periodic surveys by the board or their designated representative for the purpose of determining compliance with accreditation standards.

(d) Prior to a survey visit, specific information will be requested by the board.

(e) The information supplied by the school and their written report of the survey will be given to the board. The report and recommendations of the board will be sent to the

administrator of the controlling body and the delegated nurse administrator of the program. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)(4)
AS 08.68.300

12 AAC 44.180. ESTABLISHMENT OF SCHOOL OF PRACTICAL NURSING. (a) Any college wishing to establish a school of practical nursing shall inform the board in writing during the initial planning period.

(b) There shall be information on the availability of clinical facilities and job opportunities for graduates. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)(4)
AS 08.68.300

12 AAC 44.190. DISCONTINUANCE OF PROGRAM. When a school of practical nursing plans on discontinuing its program it shall

(1) notify the board in writing as soon as the decision is made;

(2) give assurances that the educational standards shall be maintained until the last class has graduated or that adequate provisions are made for the transfer of students unable to complete the program; and

(3) make provision for preservation of students' records. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)

12 AAC 44.200. ORGANIZATION OF SCHOOLS. (a) There shall be a clear statement of philosophy which shall be filed with the board.

(b) The school of practical nursing shall be an integral part of an accredited institution of higher learning. There shall be a plan of organization and administration of the school of practical nursing with an organization diagram available to all persons concerned with the school of practical nursing. This chart shall indicate responsibilities and lines of communication and show how individuals and units within the school of practical nursing stand in relation to one another and to such groups as the board of control and clinical facilities. The relationships may be direct, advisory, contractual, coordinating or cooperative in nature. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.210. BUDGET. (a) The financial statement of a school of practical nursing shall be submitted annually to the

board and must include assets and liabilities, allowance for fiscal year for faculty salaries, administrative positions, laboratory equipment, maintenance, capital improvement, library.

(b) In addition to the information required in (a) of this section, a school of practical nursing applying for initial, provisional accreditation shall submit a proposed budget for five years which includes projected amounts of sources of funding, and an analysis of projected disbursements. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.220. STUDENT CLINICAL EXPERIENCE. (a) Assignment of students for clinical experience shall be the responsibility of the director of the school of practical nursing and the faculty.

(b) Each school of practical nursing shall include in its curriculum, student clinical experience in the areas of medical, surgical, obstetrical, psychiatric and pediatric nursing.

(c) If there is more than one nursing program having clinical experience simultaneously within the same clinical area, each group shall have separate instructors.

(d) In student clinical experience, the clinical instructor-student ratio may not exceed 1:12 at any given time. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.230. FACULTY. The administration and teaching staff shall consist of

(1) a director of the school of practical nursing; and

(2) nursing instructors in each specialty area, medical, surgical, obstetrical, psychiatric and pediatric nursing. (Eff 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.240. QUALIFICATIONS OF DIRECTOR AND PRACTICAL NURSING INSTRUCTORS. (a) The director of a school of practical nursing shall have at least a baccalaureate degree in nursing, including coursework in curriculum development and counseling, and at least one year of experience either in instruction or administration of nursing education and one year clinical nursing experience in the areas in which he is teaching.

(b) Instructors who teach in a school of practical nursing shall be registered nurses with a bachelor's degree who have

at least one year of clinical nursing experience in the area in which they are teaching. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.250. RECORDS. The school of practical nursing shall provide for

(1) pr -admission and current records for each student, including information as to the student's knowledge and skills related to the practice of practical nursing; and

(2) the official transcript of each student.
(Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)
AS 08.68.300

12 AAC 44.260. SCHOOL CATALOGUE. In the catalogue of the accredited institution there shall be a current official statement, developed by the nursing faculty describing the nursing program, which includes

(1) a statement of the philosophy and objectives of the school of practical nursing;

(2) admission and graduation policies and procedures;

(3) the curriculum, course description, and list of faculty members; and

(4) description of physical facilities,
(Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)

12 AAC 44.270. CURRICULUM REQUIREMENTS. The program for a school of practical nursing shall comply with the following minimum requirements

(1) the school of practical nursing shall provide instruction and clinical experience in medical, surgical, obstetrical, pediatric and psychiatric nursing;

(2) the school of practical nursing shall provide instruction in those basic principles of the physical, social and behavioral sciences which relate to the practice of practical nursing;

(3) the school of practical nursing shall provide instruction in the basic concepts of nutrition, pharmacology, communications, history and trends in nursing, and vocational responsibilities;

(4) theory and laboratory experience shall be concurrent to enable students to develop basic skills in practical nursing; and

(5) throughout the program the student shall have experience applying all principles learned by working with the health team in providing basic bedside care to patients.
(Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(3)
AS 08.68.290

12 AAC 44.280. REPORTS. By July 1 of each year, schools of practical nursing shall submit to the board reports related to faculty, students, and current curriculum as follows

(1) written job descriptions and qualifications for each category of faculty;

(2) names, educational qualifications, and titles of all nursing faculty members;

(3) a count of students admitted, withdrawn, transferred and graduated, on forms provided by the board;

(4) a copy of the catalogue;

(5) course outlines for all nursing courses;

(6) budget information required in sec. 210 of this chapter; and

(7) a copy of any affiliation agreement between the school of practical nursing and clinical facilities.
(Eff. 10/14/72, Register 43)

Authority: AS 08.68.300

ARTICLE 3. EXAMINATION AND LICENSURE

Section
290. Application for examination
300. State board examinations
310. Licensure of graduates of foreign schools of nursing
320. Temporary permits

12 AAC 44.290. APPLICATION FOR EXAMINATION. (a) All applicants for license by examination in Alaska shall

(1) make written application on forms provided by the board for permission to be admitted to the licensing examination;

(2) pay the required fee;

(3) provide the board with a complete certified transcript of her nursing education; and

(4) submit a letter of recommendation for examination from the director of the school of nursing.

(b) Application, fee, and all credentials shall be on file in the board office not later than six weeks prior to the date of the examination. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(5)
AS 08.68.190

12 AAC 44.300. STATE BOARD EXAMINATIONS. (a) Candidates shall write the State Board Test Pool Examination.

(b) Registered nurse candidates who receive a standard score of 350 or above in each area of the examination will be issued a license by the Board of Nursing.

(c) Registered nurse candidates who fail one or two areas of the examination need repeat only the areas failed. Candidates who fail three or more areas of the examination shall repeat the entire examination.

(d) Licensed practical nurse candidates who receive a standard score of 350 or above will be issued a license by the Board of Nursing.

(e) Licensed practical nurse candidates who fail the examination shall repeat said examination.

(f) After the third failure both registered nurse and licensed practical nurse candidates shall be required to repeat, at an accredited school of nursing, the theory and practice in the areas failed. The candidate shall provide proof of having fulfilled this requirement. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(5)
AS 08.68.190

12 AAC 44.310. LICENSURE OF GRADUATES OF FOREIGN SCHOOLS OF NURSING. (a) Applicants shall submit all required documents accompanied by certified English translations if the original documents are not in English.

(b) Unless otherwise provided by this section, nurses who have received nursing education outside the United States shall write the State Board Test Pool Examination.

(c) Applicants who have successfully completed the State Board Test Pool Examination elsewhere shall be licensed by endorsement.

(d) If licensed in Canada as a result of passing the national Canadian examination, and having received a score of at least 350 on each part of the examination, an applicant may received a license by endorsement in the manner provided by AS 08.68.200. If the examination did not include all subjects included in the State Board Test Pool Examination, the applicant will be required to examine in those subjects. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.190
AS 08.68.200
AS 08.68.210(a)(b)

12 AAC 44.320. TEMPORARY PERMITS. A temporary nonrenewable permit may be issued to an applicant who has taken the State Board Test Pool Examination one time and the results are pending. This permit will be valid until the results of this examination are published. (Eff. 10/14/72, Register 43; am 6/27/76, Register 58)

Authority: AS 08.68.100(1)(5)
AS 08.68.200
AS 08.68.210(a)(b)

ARTICLE 4. ADVANCED NURSE PRACTITIONER

Section
322. Nurse-midwife

12 AAC 44.322. NURSE-MIDWIFE. (a) A person may not practice or offer to practice as a nurse-midwife in Alaska or use a title or initials signifying that he or she is a nurse-midwife unless authorized to do so by the board.

(b) An applicant for authorization to practice as a nurse-midwife must meet the following requirements

(1) apply on forms provided by the board;

(2) at the time of application, provide written evidence of an established collaborative relationship with a physician or physicians appropriate to the area of practice, at least one physician who must be certified by the American Board of Obstetrics and Gynecology or eligible for certification by that board;

(3) pay a fee of $25, which must accompany the application;

(4) be currently licensed to practice as a professional nurse in Alaska;

(5) be certified by the American College of Nurse-Midwives; and

(6) submit documentary evidence of nurse-midwifery practice within the five years before application.

(c) A person authorized to practice as a nurse-midwife by the board shall immediately report in writing to the board any change in conditions or terms in his or her collaborative relationship.

(d) A nurse-midwife may

(1) manage all in- and out-patient care of a low-risk obstetrical patient, which included the prescription of necessary medical therapeutic or corrective measures, or those patients who meet criteria established by an advisory committee jointly appointed by the board and the State Medical Board; and

(2) provide family planning services.

(e) A nurse-midwife may not

(1) continue to manage a patient if abnormal conditions or complications are apparent or known to exist, except that emergency measures may be performed, if necessary, after summoning a physician but before arrival of a physician;

(2) perform deliveries except within a hospital licensed under AS 18.30.101 - 18.30.130 unless prevented from doing so by unusual or emergency circumstances.

(f) The executive officer of the board will prepare and transmit to the Alaska Board of Pharmacy a listing of all nurse-midwives. The listing will contain

(1) the name and Drug Enforcement Administration number, if issued, of each nurse-midwife;

(2) the beginning and ending dates of the nurse-midwife's authority to prescribe; and

(3) any limitations on the prescribing authority of the nurse-midwife.

(g) The executive officer of the board will notify the Alaska Board of Pharmacy within 24 hours of a termination or any other change in the prescribing authority of the nurse-wife and the reason for the action.

(h) The authority to practice as a nurse-midwife will be denied, revoked or suspended in accordance with AS 08.68.270 and provisions of this chapter. (Eff. 6.27.76, Register 58)

Authority: AS 08.68.100(1)(5)
AS 08.68.111
AS 08.68.410(5)

PROFESSIONAL AND VOCATIONAL REGULATIONS

ARTICLE 5.
GENERAL PROVISIONS

Section
330. License renewal
340. Reinstatement of a suspended license.
Section
350. Reinstatement of a revoked license.
360. Change of name
370. Definitions

12 AAC 44.330. LICENSE RENEWAL. (a) All licenses shall be renewed biennially by June 30. Notice of renewal with inventory questionnaire will be mailed to every currently licensed nurse on or before May 1 of every even-numbered year.

(b) Any licenses not renewed by June 30 will be automatically canceled by July 1 or placed on the inactive list at the request of the licensee.

(c) To retain legal recognition as a nurse-midwife, a license must be renewed biennially by June 30 with

(1) a fee of $20 accompanying the renewal application;

(2) evidence of meeting any existing educational requirements for continued certification by the American College of Nurse-Midwives. (Eff. 10/14/72, Register 43; am 6/27/76, Register 58)

Authority: AS 08.68.100(1)(5)

12 AAC 44.340. REINSTATEMENT OF A SUSPENDED LICENSE. A suspended license may be reinstated at the termination of suspension only if the requirements in the suspension order have been met. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(5)

12 AAC 44.350. REINSTATEMENT OF A REVOKED LICENSE. (a) One year after revocation of a license the licensee may apply to the board in writing for reinstatement of a license.

(b) The applicant for reinstatement may be requested to appear before the board.

(c) The board may request the applicant to work under supervision for a specified length of time in an agency approved by the board as a condition for temporary reinstatement of license.

(d) The applicant shall be responsible for providing a written evaluation from the employing agency regarding his performance and will be evaluated by the board to determine whether or not the license shall be reinstated. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)(5)

PROFESSIONAL AND VOCATIONAL REGULATIONS

12 AAC 44.360. CHANGE OF NAME. The name of a licensed nurse shall be changed on the records when a request is made in writing and accompanied by one of the following

(1) affidavit form supplied by the board;

(2) certified copy of marriage certificate; or

(3) certified copy of court ruling. (Eff. 10/14/72, Register 43)

Authority: AS 08.68.100(1)

12 AAC 44.370. DEFINITIONS. As used in this chapter

(1) "board" means Alaska Board of Nursing;

(2) "shall" indicates a mandatory requirement;

(3) "may" indicates permission at the discretion of the board;

(4) "school" or "program" means a division in a college or university which is responsible for preparing persons for practice of professional or practical nursing;

(5) "clinical facility" means any facility which provides laboratory experience for the education of students in a school of professional or practical nursing;

(6) "accreditation" means the approval granted a school of professional or practical nursing which has met the minimum requirements of the board;

(7) "baccalaureate program" is conducted in a senior college or university and is an academic department, division, school or college of the senior college or university, which prepares persons for a baccalaureate degree in nursing;

(8) "associate degree program" includes general academic and nursing courses, is conducted within a community or junior college, and prepares persons for an associate degree in nursing;

(9) "collaborative relationship" is a working relationship between a nurse and a physician which utilizes their respective areas of expertise to meet the common goal of providing comprehensive care for the patient;

(10) "manage" means select and perform those measures essential to the effective execution of care and treatment regimens;

(11) "low-risk obstetrical patient" is a person who meets the following criteria

(A) general good health;

(B) no major medical disorders, such as diabetes, heart disease, epilepsy, kidney disease, blood dyscrasia;

(C) no previous major obstetrical complications;

(D) parity under six;

(E) not presenting during the course of pregnancy symptoms of toxemis, hydramnois, placenta previa or abrupto, malposition of fetus, multiple pregnancy;

(F) vital signs remaining within normal curve;

(G) labor progressing according to normal curve;

(H) no prolonged rupture of membranes;

(I) no anesthesia, required or desired, other than pudentdal or local; and

(J) acceptance of management of care by a nurse-midwife. (Eff. 10/14/72, Register 43; am 6/27/76, Register 58)

Authority: AS 08.68.100(1)
AS 08.68.410(5)

Chapter 02. Miscellaneous Provisions.

Section
10. Professional designation requirements
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) A person licensed in the state as a chiropractor as defined in AS 08.20.220, a dentist as defined in AS 08.36.360, a medical practitioner or osteopath as defined in AS 08.64.380, a professional nurse as defined in AS 08.68.410, an optometrist as defined in AS 08.72.300(3), a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall professionally identify himself by the use of appropriate letters or a title after his name which represents his specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays his professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and identifies himself by using the letters "M.D." or the title "doctor" or "physician" or any other title which tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of his noncompliance by his appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, his noncompliance continues, the board may suspend or revoke his license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1973)

Sec. 08.02.020. Limitation of liability for members of licensing boards. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976)

Effective date. — Section 50, ch. 102, SLA 1976, makes this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

LPN BY EXAM

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
Division of Occupational Licensing
Board of Nursing
Pouch D
Juneau, Alaska 99811

APPLICATION INFORMATION

AS 08.68.160 states in part that it is unlawful to practice or offer to practice professional or practical nursing without a valid, current license or temporary permit.

ALASKA does not license by waivers nor does it accept licensees from other states who do license by waiver. Licensing laws in Alaska are MANDATORY.

LICENSE RENEWAL occurs every two years on or before June 30 of the even numbered years. Licenses issued earlier in that even-numbered year must still pay the renewal fee.

REQUIREMENTS

LICENSED PRACTICAL NURSES Section 08.68.180 Alaska Statutes

1. Completion of the tenth grade or its equivalent.
2. Not less than 18 years of age.
3. Successful completion of a practical nursing program meeting Alaska requirements. Transcripts from military programs, programs outside the U.S.A. will be individually evaluated.
4. Examination Section 08.68.190.
   a) Graduates of programs within the U.S.A.
      (1) Prior to 1953 - must have passed your State Constructed Exam with a score of 75% or greater.
      (2) Since 1953 - pass the State Board Test Pool Examination (SBTPE) with a score of 350 or better.
   b) Foreign Graduates
      (1) Canada - some Canadian provinces use the CNATS exam for testing "registered nursing assistants". This is acceptable if your educational program is comparable.
      (2) All others must take the SBTPE here, or in another state.
5. Are you licensed elsewhere in the U.S.A.? Have you met all of the above requirements? If your answer is yes, then you may be licensed in Alaska by ENDORSEMENT.

- - - THE EXCEPTION - - -

6. If you have neither worked nor been enrolled in a nursing program within the past five years, the Board may legally require a Refresher Course or approved work experience before issuing a license.

HOW TO SUBMIT YOUR APPLICATION

1. All applicants need:
   a) The blue application form, completed and notarized.
   b) A recent photograph (head and shoulders) signed and dated.
   c) A check, money order or bank draft for $30.00.
      One-half of this fee is non-refundable.
2. For license by ENDORSEMENT - in addition to item 1, submit the following items in this packet: (These forms must be returned by them to the Board of Nursing office in Juneau.)
   a) "Verification of License" - fill in Part I.
      Mail to the state where you took your board exams.
   b) "Verification of Program" - fill in Part I.
      Mail to your practical nursing program. If your school no longer exists, send the form to the State Board of Nursing in that state.
   c) "References" - complete Part I, mail as directed on form. Problems? Contact the Executive Officer at the Anchorage office.

b) Temporary Permit will be issued if you:
   1) Complete item 1, above, and meet Alaska requirements;
   2) Submit a photocopy (notarized) of your current license from another state, and submit a written request.

REMEMBER - Permits are good only for 4 months and are non-renewable. There is no additional charge. They are not automatically issued.

3. For license by EXAMINATION in addition to number 1 above:
   a) "Verification of Program" - send to your nursing program. In addition, request from your school:
      (1) Transcript (in English) sent directly to the Juneau address, and a
      (2) Letter from the Dean, or Director of your school recommending that you be allowed to sit the examination.
   b) Who must be licensed by examination:
      (1) All new U.S.A. graduates or recent graduates who have never taken the SBTPE.
      (2) U.S.A. graduates on or after 1953 who have not taken the SBTPE. This includes:
         (a) Texas LPN's who wrote the exam from 1952-1968(except April & November 1952)
         (b) California LVN's writing the exam after July 1974.
      (3) All graduates of approved schools outside the U.S.A. who have not written the SBTPE in another state.
      (4) If you have taken, but failed, the SBTPE in another state, you may apply to take the examination here or you may be proctored in this state (by request) for another state.
   c) Temporary Permit upon request:
      (1) Issued once you have completed the requirements for examination.
      (2) The T.P. good until exam results are received.
      (3) Is non-renewable.
      (4) You are not eligible for a T.P. if you have previously failed the exam or are one of those persons listed in b) (2), (3), or (4) of this section.

EXAMINATIONS are given each October in Alaska and may be offered in April beginning in 1979. The fee is $30.00. You should be on the list six weeks prior to exam date and your application completed four weeks prior to exams - including the final transcript.

GENERAL INFORMATION

1. All documents, money, etc. must be sent to the Juneau address. All licenses, including temporary permits, are issued from Juneau.
2. Temporary permits require about 10 days from the time you mail to Juneau until you can expect to receive it. It is good for four months.
3. Permanent licenses may take up to four months to be processed.
4. PROBLEMS - QUESTIONS - CONCERNS - write, call or visit the Executive Officer for the Board of Nursing in the Anchorage office.
5. Are you still having problems? Are you interested in trends and issues facing nursing? Attend a Board of Nursing meeting. Write the Anchorage office. Office hours are 8 a.m. to 4:30 p.m.

Ruth McMahan, R.N., Executive Officer
Board of Nursing
142 East Third Avenue
Anchorage, AK 99501 (907) 276-7969

Licensing Examiner
Division of Occupational Licensing
Pouch D, Juneau (907) 465-2544

CRITERIA FOR LICENSING

BY ENDORSEMENT	BY EXAMINATION
Tenth Grade	Tenth Grade
Age 18	Age 18
Completion Approved Program	Completion Approved Program
SBTPE - 350 Score	Completed Application With Fee & Picture
Completed Application With Fee & Picture	Transcript (in English)
Licensed in another state	Letter from Dean

NO LICENSE = NO WORK

10/78

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF NURSING
POUCH D, JUNEAU, ALASKA 99811

PHOTOGRAPH

RECENT PASS-PORT TYPE

HEAD AND SHOULDERS ONLY

APPLICATION FOR PRACTICAL NURSE LICENSE

YOU MAY NOT PRACTICE OR OFFER TO PRACTICE PRACTICAL NURSING IN ALASKA AS DEFINED IN THE NURSING STATUTES, CHAPTER 68, TITLE 8, WITHOUT A CURRENT ALASKA LICENSE.

I HEREBY MAKE APPLICATION FOR PRACTICAL NURSE LICENSURE IN ALASKA BY EXAMINATION [ ] ENDORSEMENT [ ] AND SUBMIT THE FOLLOWING EVIDENCE OF MY QUALIFICATIONS FOR SUCH LICENSE.

PLEASE PRINT OR TYPE

NAME _____
LAST FIRST MIDDLE MAIDEN SPOUSE'S NAME

SOCIAL SECURITY # _____ MALE [ ] FEMALE [ ] SINGLE [ ] MARRIED [ ] DIVORCED [ ] WIDOWED [ ]

PERMANENT ADDRESS _____ _____
STREET CITY STATE ZIP CODE

CURRENT ADDRESS _____
STREET CITY STATE ZIP CODE

DATE OF BIRTH _____ PLACE OF BIRTH _____

EDUCATION

HIGH SCHOOL _____
NAME AND LOCATION HIGHEST GRADE COMPLETED

COMPLETION OF TENTH GRADE, OR EQUIVALENCY TEST REQUIRED FOR PRACTICAL NURSES. IF NOT A TOTAL OF TEN (10) YEARS, SUBMIT NOTARIZED COPY OF G.E.D. TEST RESULTS, OR EXPLAIN ON SEPARATE SHEET.

SCHOOL OF NURSING _____
NAME AND LOCATION

DATE ENTERED _____ DATE COMPLETED _____ LENGTH OF COURSE _____

ADDITIONAL EDUCATION: NURSING COURSES TAKEN AFTER BASIC NURSING PROGRAM.

NAME OF PROGRAM _____ LENGTH OF PROGRAM _____

DATES TAKEN _____ NAME OF INSTITUTION _____

STATE OF ORIGINAL LICENSURE _____ YEAR _____ LICENSE # _____ BY: EXAM [ ] WAIVER [ ]

OTHER STATES IN WHICH CURRENTLY LICENSED _____

IS YOUR APPLICATION FOR LICENSURE PENDING IN ANY OTHER STATE? YES [ ] NO [ ]

IF SO, WHERE? _____

HAVE YOU EVER BEEN LICENSED IN ALASKA? YES [ ] NO [ ]

IF YES, GIVE LICENSE NO. _____

HAVE YOU PREVIOUSLY MADE APPLICATION FOR LICENSURE IN ALASKA? YES [ ] NO [ ]

IF SO, WHEN AND UNDER WHAT NAME? _____

HAVE YOU ACCEPTED A NURSING POSITION IN ALASKA? YES [ ] NO [ ]

IF SO, WHERE? _____

HAS YOUR LICENSE EVER BEEN REVOKED OR SUSPENDED? YES [ ] NO [ ]

HAVE YOU EVER BEEN REFUSED LICENSURE BY ANY STATE? YES [ ] NO [ ]

HAVE YOU HAD ANY MAJOR PHYSICAL OR MENTAL ILLNESS WITHIN THE PAST FIVE (5) YEARS? YES [ ] NO [ ]

HAVE YOU EVER BEEN TREATED FOR DRUG ADDICTION OR INEBRIETY? YES [ ] NO [ ]

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS YES, PLEASE EXPLAIN FULLY, USING A SEPARATE SHEET.

_____

DO NOT WRITE HERE

LICENSE NO. _____

DATE GRANTED _____

NAMES AND ADDRESSES OF LAST FOUR EMPLOYERS

	NAME OF EMPLOYER	ADDRESS & ZIP CODE NO.	TYPE OF WORK	DATES EMPLOYED
1				
2				
3				
4				

CERTIFICATE OF CHARACTER AND ABILITY: Please list three (3) registered nurses, one of whom should be an administrator of nursing service or director of nursing education, who can attest to your professional ability and character.

	NAME	ADDRESS & ZIP CODE NO.	TITLE
1			
2			
3			

AFFIDAVIT: To be signed and sworn to by the applicant in the presence of an officer authorized to administer oaths.

STATE OF _____

COUNTY OF _____

I, BEING DULY SWORN, DECLARE THAT I AM THE PERSON REFERRED TO IN THE FORE GOING APPLICATION, THAT THE INFORMATION SUPPLIED THEREIN IS TRUE TO THE BEST OF MY KNOWLEDGE.

_____

SIGNATURE OF APPLICANT

Sworn to before me this _____ day of _____ ,19 _____

_____

SIGNATURE OF NOTARY

My commission expires _____

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
Division of Occupational Licensing
Board of Nursing
Pouch D
Juneau, Alaska 99811

NURSING PROGRAM VERIFICATION

APPLICANT: Check the statement appropriate to the method by which you are applying for license and mail to your school of nursing.

_____ I am applying for a nursing license in Alaska by examination.

* Please have an official nursing school transcript sent to the above address. Notify me if a fee is required.

* Complete Section II and return this form to the above address at your earliest convenience.

_____ I am applying for a nursing license in Alaska by endorsement.

* Please complete Section II and return this form to the above address at your earliest convenience.

Applicant's signature _____

address _____

_____

My diploma/degree/certificate was granted in 19____ under the name of:

_____

* * * *

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
Division of Occupational Licensing
Board of Nursing
Pouch D
Juneau, Alaska 99811

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_____ I am applying for a nursing license in Alaska by endorsement.

* Please complete Section II and return this form to the above address at your earliest convenience.

Applicant's signature _____

address _____

_____

My diploma/degree/certificate was granted in 19____ under the name of:

_____

* *

SECTION II. For completion and return by School of Nursing.

The above person completed _____ did not complete _____ the required course of study in the professional ____ practical ____ nursing education program at _____

Name of Program

Location _____

Accredited at the time of graduation by:

State Board of Nursing _____

National League for Nursing _____

Other accrediting body _____

Signature _____

Title _____

Date _____

08-2486 Rev. 7/76

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
Division of Occupational Licensing
Board of Nursing
Pouch D, Juneau, Alaska 99811

VERIFICATION OF LICENSURE

APPLICANT: Complete Section I. Mail to the State Board of Nursing or official of the country where you obtained your original license for completion of Section II. (A fee may be required for completion of this form.)

SECTION I

NAME _____ LICENSE NO. _____

ADDRESS _____ PROFESSIONAL _____

_____ PRACTICAL _____

* * * *

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
Division of Occupational Licensing
Board of Nursing
Pouch D
Juneau, Alaska 99811

REFERENCE LETTER

Applicant: Complete the top portion only and mail to your last two employers in the field of nursing and two registered nurses who can attest to your professional ability and character.

I am applying for a license to practice as a professional nurse _____/ practical nurse _____ and hereby authorize you to release information as required on this form. Please return to the above address at your earliest convenience.

Social Security Number _____

Signature _____

Address _____

Employment dates _____

---

1. Employee's position: _____
2. Dates of Employment: _____
3. Clinical Service (Pediatrics, Medical, etc.) _____
4. Your rating of employee's ability in nursing _____
5. Would re-employment be favorable considered? _____
6. Would you recommend for licensure? _____
   If not, reason: _____
7. Other comments: _____

Signature: _____ Title _____

Agency _____ Date _____

City and State: _____

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
Division of Occupational Licensing
Board of Nursing
Pouch D
Juneau, Alaska 99811

APPLICATION INFORMATION

AS 08.68.160 states in part that it is unlawful to practice or offer to practice professional or practical nursing without a valid, current license or temporary permit.

ALASKA does not license by waivers nor accepts licensees from other states licensed by waivers. Licensing laws in Alaska are MANDATORY.

LICENSE RENEWAL occurs every two years on or before June 30 of the even numbered years. Licenses issued earlier in that even-numbered year must still pay the renewal fee.

REQUIREMENTS

PROFESSIONAL NURSES: Section 08.68.170. Alaska Statutes

1. Graduation from (or the equivalent) a high school.
2. Successful completion of a nursing program:
    a) in the USA, the program must be approved by the State Board of Nursing
    b) outside the USA, your transcript will be reviewed to ascertain that your program does meet this board's requirements.
3. EXAMINATION
    a) graduates from schools within the USA who graduated:
        (1) prior to 1953 - pass the examination in your state with grades of 75% or better in all areas;
        (2) since 1953 - you MUST have taken the State Board Test Pool Examination (SBTPE) and passed all five sections with score of 350 or better.
    b) Foreign Graduates
        (1) Canadians - some Provinces have used the SBTPE prior to 1970. You must have taken all five areas and passed with a score of 350 or better in each area;
        (2) The Canadian CNATS examination is acceptable if all five sections were taken and passed with scores of 350 or better.
        (3) All other graduates of schools outside the United States MUST take the SBTPE RN Examination and pass all five sections with scores of 350 or better.
4. Are you licensed elsewhere in the U.S.A.? Have you met all of the above requirements? Then you may be licensed in Alaska by ENDORSEMENT.

--- the exception ---

5. Have you worked in nursing within the past five years? If your answer is NO, then the Board of Nursing may legally require that you complete successfully an approved "Refresher Course" and document this to the board before qualifying for your license.

PROCEDURES

1. Complete the yellow document on both sides, have it notarized, include a picture and your fee of $40.00. Mail this to the Juneau address shown above.
   a) Do you have a current license from another state? Do you wish a Temporary Permit? If yes, then submit with the application in #1, a notarized photocopy of the current license and a signed request asking for the permit. Allow at least 10 days for the permit to reach you.
   b) THE FEE - one-half of your fee ($20.00) is non-refundable. If you change your mind before the temporary permit is issued, you took the exam or the license issued, then you may request a refund of the remaining $20.00.
   c) Applications which are not completed within one year are considered to have been abandoned and will be so filed.
2. VERIFICATION OF LICENSE form - mailed by you to the State Board of Nursing where you took your licensing examination.
3. VERIFICATION OF PROGRAM form - is mailed by you to your school of nursing. If you are being licensed by endorsement, you do not need your transcript.
4. REFERENCES, a) a total of four are required for licensure by endorsement. These forms may be sent to an employer, supervisor, headnurse, peers, or others who know of your nursing ability. b) The NEW GRADUATE or anyone else sitting the examination will need not only the transcript but in lieu of the references you must have a letter of recommendation to sit the exam from the Dean of your School of Nursing.

EXAMINATIONS for RN's are given twice a year. The fee is $40.00 and you must complete steps 1, 3, and the New Graduate part of 4. Applications should be completed at least four weeks prior to the exam date.

GENERAL INFORMATION

1. All documents, money, etc. must be sent to the Juneau address. All licenses, including temporary permits, are issued from Juneau.
2. Temporary permits require about 10 days from the time you mail to Juneau until you can expect to receive it. It is good for four months.
3. Permanent licenses may take as long as four months for all the paperwork to be received and processed.
4. PROBLEMS - QUESTIONS - CONCERNS - write, call or visit the Executive Officer for the Board of Nursing. The office is in Anchorage, the address may be found at the bottom of this page.
5. And finally, are you still having problems or are you interested in trends and issues facing nursing? You are invited to attend a Board of Nursing meeting. The schedule may be obtained by calling or writing the Anchorage office. Office hours are from 8 a.m. to 4:30 p.m.

Ruth Mc Mahan, R.N.
Executive Officer
Board of Nursing
142 East Third Avenue
Anchorage, Alaska 99501 (907) 276-7969

Licensing Examiner
Division of Occupational Licensing
Juneau (907) 465-2544

Board of Nursing
Meets at least four times
per year. Call 276-7969 for information.

CRITERIA FOR LICENSING

HIGH SCHOOL - GRADUATION NURSING PROGRAM - SCORES OF 350 ON SBTPE - REFERENCES
All of the above achieved prior to coming to Alaska equals LICENSE BY ENDORSEMENT.
Minus the SBTPE means you must sit the exam here - LICENSE BY EXAMINATION

NO LICENSE - NO WORK

10/78

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF NURSING
POUCH D, JUNEAU, ALASKA 99811

APPLICATION FOR PROFESSIONAL NURSE LICENSE

PHOTOGRAPH
RECENT PASS-PORT TYPE
HEAD AND SHOULDERS ONLY

YOU MAY NOT PRACTICE OR OFFER TO PRACTICE PROFESSIONAL NURSING IN ALASKA AS DEFINED IN THE NURSING STATUTES, CHAPTER 68, TITLE 8, WITHOUT A CURRENT ALASKA LICENSE.

I HEREBY MAKE APPLICATION FOR PROFESSIONAL NURSE LICENSURE IN ALASKA BY EXAMINATION [ ] ENDORSEMENT [ ] AND SUBMIT THE FOLLOWING EVIDENCE OF MY QUALIFICATIONS FOR SUCH LICENSE.

PLEASE PRINT OR TYPE

NAME _____
LAST FIRST MIDDLE MAIDEN SPOUSE'S NAME

SOCIAL SECURITY # _____ MALE [ ] FEMALE [ ] SINGLE [ ] MARRIED [ ] DIVORCED [ ] WIDOWED [ ]

PERMANENT ADDRESS _____
STREET CITY STATE ZIP CODE

CURRENT ADDRESS _____
STREET CITY STATE ZIP CODE

DATE OF BIRTH _____ PLACE OF BIRTH _____

EDUCATION

HIGH SCHOOL _____
NAME AND LOCATION HIGHEST GRADE COMPLETED

FOUR (4) YEARS OF HIGH SCHOOL OR EQUIVALENCY TEST REQUIRED FOR PROFESSIONAL NURSES. IF NOT A TOTAL OF FOUR (4) YEARS, SUBMIT NOTARIZED COPY OF G.E.D. TEST RESULTS, OR EXPLAIN ON SEPARATE SHEET.

SCHOOL OF NURSING _____
NAME AND LOCATION

DATE ENTERED _____ DATE COMPLETED _____ LENGTH OF COURSE _____

TYPE OF PROGRAM: DIPLOMA _____ ASSOCIATE DEGREE _____ BACCALAUREATE _____

ADDITIONAL EDUCATION: NURSING COURSES TAKEN AFTER BASIC NURSING PROGRAM.

NAME OF PROGRAM _____ LENGTH OF PROGRAM _____

DATES TAKEN _____ NAME OF INSTITUTION _____

STATE OF ORIGINAL LICENSURE _____ YEAR _____ LICENSE # _____ BY: EXAM [ ] WAIVER [ ]

OTHER STATES IN WHICH CURRENTLY LICENSED _____

IS YOUR APPLICATION FOR LICENSURE PENDING IN ANY OTHER STATE? YES [ ] NO [ ]

IF SO, WHERE? _____

HAVE YOU EVER BEEN LICENSED IN ALASKA? YES [ ] NO [ ]

IF YES, GIVE LICENSE NO. _____

HAVE YOU PREVIOUSLY MADE APPLICATION FOR LICENSURE IN ALASKA? YES [ ] NO [ ]

IF SO, WHEN AND UNDER WHAT NAME? _____

HAVE YOU ACCEPTED A NURSING POSITION IN ALASKA? YES [ ] NO [ ]

IF SO, WHERE? _____

HAS YOUR LICENSE EVER BEEN REVOKED OR SUSPENDED? YES [ ] NO [ ]

HAVE YOU EVER BEEN REFUSED LICENSURE BY ANY STATE? YES [ ] NO [ ]

HAVE YOU HAD ANY MAJOR PHYSICAL OR MENTAL ILLNESS WITHIN THE PAST FIVE (5) YEARS? YES [ ] NO [ ]

HAVE YOU EVER BEEN TREATED FOR DRUG ADDICTION OR INEBRIETY? YES [ ] NO [ ]

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS YES, PLEASE EXPLAIN FULLY, USING A SEPARATE SHEET.

DO NOT WRITE HERE

LICENSE NO. _____

DATE GRANTED _____

08-489 Revised 7/76

NAMES AND ADDRESSES OF LAST FOUR EMPLOYERS

	NAME OF EMPLOYER	ADDRESS & ZIP CODE NO.	TYPE OF WORK	DATES EMPLOYED
1				
2				
3				
4				

CERTIFICATE OF CHARACTER AND ABILITY: Please list three (3) registered nurses, one of whom should be an administrator of nursing service or director of nursing education, who can attest to your professional ability and character.

	NAME	ADDRESS & ZIP CODE NO.	TITLE
1			
2			
3			

AFFIDAVIT: To be signed and sworn to by the applicant in the presence of an officer authorized to administer oaths.

STATE OF _____

COUNTY OF _____

I, BEING DULY SWORN, DECLARE THAT I AM THE PERSON REFERRED TO IN THE FOREGOING APPLICATION; THAT THE INFORMATION SUPPLIED THEREIN IS TRUE TO THE BEST OF MY KNOWLEDGE.

_____

SIGNATURE OF APPLICANT

Sworn to before me this _____ day of _____, 19 _____

_____

SIGNATURE OF NOTARY

My commission expires _____

Division of Occupational Licensing
Board of Nursing
Pouch D, Juneau, Alaska 99811

VERIFICATION OF LICENSURE

APPLICANT: Complete Section I. Mail to the State Board of Nursing or official of the country where you obtained your original license for completion of Section II. (A fee may be required for completion of this form.)

SECTION I

NAME _____ LICENSE NO. _____

ADDRESS _____ PROFESSIONAL _____

_____ PRACTICAL _____

* * * *

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
Division of Occupational Licensing
Board of Nursing
Pouch D
Juneau, Alaska 99811

NURSING PROGRAM VERIFICATION

APPLICANT: Check the statement appropriate to the method by which you are applying for license and mail to your school of nursing.

_____ I am applying for a nursing license in Alaska by examination.

* Please have an official nursing school transcript sent to the above address. Notify me if a fee is required.

* Complete Section II and return this form to the above address at your earliest convenience.

_____ I am applying for a nursing license in Alaska by endorsement.

* Please complete Section II and return this form to the above address at your earliest convenience.

Applicant's signature _____

address _____

_____

My diploma/degree/certificate was granted in 19____ under the name of:

_____

* *

SECTION II. For completion and return by School of Nursing.

The above person completed _____ did not complete _____ the required course of study in the professional ____ practical ____ nursing education program at _____

Name of Program

Location _____

Accredited at the time of graduation by:

State Board of Nursing _____

National League for Nursing _____

Other accrediting body _____

Signature _____

Title _____

Date _____

08-2486 Rev. 7/76

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
Division of Occupational Licensing
Board of Nursing
Pouch D
Juneau, Alaska 99811

REFERENCE LETTER

Applicant: Complete the top portion only and mail to your last two employers in the field of nursing and two registered nurses who can attest to your professional ability and character.

I am applying for a license to practice as a professional nurse _____/ practical nurse _____ and hereby authorize you to release information as required on this form. Please return to the above address at your earliest convenience.

Social Security Number _____

Signature _____

Address _____

Employment dates _____

---

1. Employee's position: _____
2. Dates of Employment: _____
3. Clinical Service (Pediatrics, Medical, etc.) _____
4. Your rating of employee's ability in nursing _____
5. Would re-employment be favorably considered? _____
6. Would you recommend for licensure? _____
   If not, reason: _____
7. Other comments: _____

Signature: _____ Title _____

Agency _____ Date _____

City and State: _____

08-1450 Rev. 7/76

HB

447

A PERFORMANCE REVIEW
OF THE
BOARD OF NURSING HOME ADMINISTRATO

October 20, 1978

A PERFORMANCE REVIEW
OF THE
BOARD OF NURSING HOME ADMINISTRATORS

October 20, 1978

Commissioner of the Department of Commerce and Economic Development	H. Phillip Hubbard
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Board of Nursing Home Administrators

Chairperson	Sarah Jane Hanna, R.N.
Member	Roberley R. Potter, LNHA
Member-since June 19, 1978	Donna M. Stephens, LNHA
Member-since October 16, 1978	Dove M. Kull
Member-since October 16, 1978	Leona Bowles

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH W—STATE CAPITOL

JUNEAU, ALASKA 99811

October 20, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
BOARD OF NURSING HOME ADMINISTRATORS

October 20, 1978

Gerald L Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

84-01LH

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Board of Nursing Home Administrators was conducted to review Board activities and accomplishments to determine if the Board has operated in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Nursing Home Administrators should be reestablished. The law currently specifies that this Board will terminate on June 30, 1979, but will continue until June 30, 1980, for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) Interviews with Board members and questionnaires sent to the Board;

(3) Tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(4) Interviews with OL employees;

(5) Complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency, the Human Rights Commission, and the Equal Employment Opportunity Office;

(6) Questionnaires sent to the nursing home administrators currently licensed by the Board;

(7) Other states' licensing requirements;

(8) Interviews with professional associations and personnel from the U. S. Department of Health, Education and Welfare.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090.

(2) OL has not adequately collected, recorded or maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

Federal regulations (United States Code, Title 42, Subchapter XIX, § 1396 a(29)) require a state to license nursing home administrators in order for that state to receive medical assistance from the federal government (Medicaid assistance). Thus, to receive Medicaid funding, a nursing home must be administered by a licensed nursing home administrator.

In response to the federal regulations, the Board of Nursing Home Administrators was created by the Alaska Legislature in 1975. The Board is comprised of five members - two nursing home administrators, one registered nurse and two public members. The purpose of the Board is to establish standards to ensure that nursing home administrators have the knowledge and experience necessary to be competent administrators; to issue licenses to applicants who meet these standards; and to ensure that licensed administrators continue to uphold the standards.

The major duties of the Board are issuing initial licenses to qualified applicants and monitoring continuing education for renewal of licenses. The Board is assisted in these duties by staff support from the Division of Occupational Licensing (OL). OL processes applications, maintains licensing files, answers correspondence dealing with the Board and provides other administrative support as needed by the Board. In addition, OL's Investigations Unit investigates any complaints involving nursing home administrators.

Qualifications for licensure as a nursing home administrator include educational requirements and a passing score on an examination. The exam is given on a nationwide basis and is prepared and graded by a national organization.

If an administrator has taken the exam in another state and has been licensed by that other state as a nursing home administrator, she/he may be licensed in Alaska by endorsement without retaking the exam. The licensing requirements in that other state must be substantially equal to Alaska's requirements.

Before a license can be renewed, the licensee must show that she/he attended a course, seminar or workshop which qualifies for continuing education credit. License renewal is required yearly.

There are currently twelve nursing homes in the state which are required to have licensed administrators.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluations of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Nursing Home Administrators has minimal public value. However, the Board needs to be re-established only because nursing home administrators (NHA's) must be licensed in order to comply with federal regulations. These regulations require nursing homes to be administered by licensed NHA's if the nursing homes are to be eligible to receive Medicaid financial assistance. We are recommending appropriate legislative action to obtain the U. S. Department of Health, Education and Welfare's (HEW) approval to turn the licensing of NHA's over to the Division of Occupational Licensing (OL) (see Recommendation No. 1).

In the event it is determined that the Board of Nursing Home Administrators must be continued, the following recommendations need Board attention. If the Board is not reinstated, OL should implement the procedures where applicable to solve the problems addressed.

We found that certain requirements for licensing are either being ignored or are being applied inconsistently to applicants (see Recommendation No. 2). Provisional licenses are not being used as intended by law (see Recommendation No. 5).

Continuing education requirements for NHAs should be made more reasonable and should be applied consistently to all licensees (see Recommendation No. 3).

Licenses are currently required to be renewed annually. This creates an unnecessary burden on the Board, the Division of Occupational Licensing and the licensees (see Recommendation No. 4).

The Nursing Home Administrator statutes as they now stand do not allow the Board to revoke a NHA's license if the NHA commits an unethical or illegal act (see Recommendation No. 6).

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 6 are addressed to the Board of Nursing Home Administrators. Findings and Recommendations No. 7 and 8 are addressed to the Division of Occupational Licensing (OL) and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978", issued under separate cover.

Recommendation No. 1

We recommend that appropriate action be initiated to obtain U. S. Department of HEW approval to terminate the Board of Nursing Home Administrators and allow the Division of Occupational Licensing (OL) to assume the licensing function without jeopardizing Medicaid funds.

We found no evidence the continuation of the Board of Nursing Home Administrators will benefit the public's safety or welfare. However, federal law U. S. Code, Title 42, Subchapter XIX § 1396 a(29) requires the state to have either a Board of Nursing Home Administrators or an agency of the state responsible for licensing under the Healing Arts Act of the state. Since Alaska does not have a Healing Arts Act, the State is mandated to have a licensing board.

We were informed by the Office of General Counsel, U. S. Department of HEW, Region 10, that the Division of Occupational Licensing (OL) is not eligible to assume the functions of licensing for nursing home administrators (NHA's). If Alaska does not reestablish the Board of Nursing Home Administrators, the Department of HEW could deny Medicaid funds.

The purpose of a licensing board is to protect the public through regulation of licensure. Licensure is necessary when:

1. The unlicensed practice of an occupation poses a serious risk to consumers' lives, health and safety, or economic well-being.

   Nursing home administrators do not, by themselves, pose a serious risk to a patient's health and safety or economic well-being. Economic harm caused by NHAs is possible; however, other persons, such as owners of nursing homes, who are involved in making the decisions regarding financial matters, are not required to be licensed.

2. Potential users of the occupational service can not be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services.

   This is not applicable in the case of nursing home administrators. The qualifications of NHA's do not have a direct relationship on potential users of a nursing home. NHA's are employed by the owners of the nursing homes.

3. Benefits to the public clearly outweigh any potential harmful effects such as a decrease in availability of practitioners, higher costs of goods and services.

   We found no evidence to demonstrate that the licensure of NHA's protects the public.

Furthermore, we believe that as a result of the federal requirements, state laws and regulations governing NHA's have proliferated to the point of unnecessarily restricting entry into the profession.

One example of this is the educational qualifications required by Alaska Administrative Code 12.46.010(b). After December 31, 1979, to be licensed as a nursing home administrator, a person will be required to possess a baccalaureate degree in either health care administration or business administration. If the applicants have a business administration degree, they will be required to have one year of experience in a health care facility.

We believe that requirements like this should be set by the employer, not by state regulation. The State does not attempt to require hotel managers or even hospital administrators to possess certain qualifications - to require a NHA to have a degree appears to restrict entry into the profession, not protect the public's welfare.

The following quote comes from the May 16, 1975 House Journal - it is a Statement of Intent from the House Judiciary Committee relating to SB 132, which created the Board of NHA's:

> "In view of the relatively small number of potential licensees, the committee was reluctant to create another Title 8 licensing board and would have preferred to include the licensing of the nursing home administrators in an already existing medical board. However, federal statutes seem to require a Uniform Healing Arts statute or the creation of a separate board. Since Alaska has no such statute, the new board is necessary to comply with federal law. With the numerous medically related licensing boards already in existence, the committee suggests that a

Uniform Healing Arts licensing statute, which might be placed under the Department of Health and Social Services instead of the Department of Commerce, be drawn up for legislative consideration."

In addition, both the Board members and the Department of Commerce and Economic Development concurred that the Board should not be reinstated. In view of the position of the legal counsel for HEW, we recommend that appropriate action be initiated to obtain HEW's approval to terminate this Board and allow OL to carry on the licensing function without jeopardizing Medicaid funding.

In the event it is determined that the Board of Nursing Home Administrators must be continued, the following recommendations need Board attention. If the Board is not reinstated, OL should implement the procedures where applicable to solve the problems addressed.

Recommendation No. 2

The statutes and regulations which govern the licensing requirements for nursing home administrators should be complied with and should be applied to all applicants on a consistent basis.

In testing individual NHA licensing files in OL we found that certain requirements for licensing are either totally disregarded or are not being applied consistently to all applicants.

The following problems were noted which need special Board attention:

a) The regulations (AAC 12.46.070(1)) require a sworn statement of continued good moral character by an administrator for renewal of a NHA license.

   The renewal forms used for the 1978 renewals did not contain this statement.

b) Educational requirements have not been consistently applied. An associate degree in administration is required for licensure, as of January 1, 1978. Since that date, five persons have been licensed who do not meet this qualification.

c) The Board has not consistently enforced continuing education requirements. Two administrators were denied renewal of their licenses because they did not meet the Board standards. However, other

administrators, in similar situations, were given credit for their continuing education (see Recommendation No. 3).

d) The regulations (AAC 12.46.020(3)) require applicants for licensure to submit official college transcripts. There is a difference of opinion between the licensing examiner at OL and the Board as to what constitutes an "official transcript" - whether the transcript should come to OL directly from the applicant's college or whether a notarized copy from the applicant is sufficient.

e) The Board has violated the Administrative Procedures Act (Alaska Statutes 44.62. 330 - 630) by not notifying the two administrators, whose license renewals were denied, of their right of due process in the reinstatement of their licenses.

A possible explanation for these exceptions is that the regulations are either too vague and leave much room for interpretation, or they are unreasonable. For example, before 1978, a licensee was required to have one year of administrative experience. However, "administrative experience" is not defined in the regulations. The regulation now in effect which requires an associate degree in administration is unduly restrictive. Other degrees, such as nursing, may make the person equally qualified.

We recommend that applicable laws and statutes be strictly and consistently applied to all applicants for licensure. If a statute or regulation cannot be complied with or applied consistently because it is ambiguous or unreasonable, the Board should take the initiative to have the statute or regulation amended.

Recommendation No. 3

Continuing education requirements should be reasonably applied on a consistent basis.

As noted in Recommendation No. 2, continuing education (CE) requirements have not been applied consistently to NHA licensees. The two licensees referred to in the Recommendation were denied renewal for the following reasons: they did not obtain 60-day prior approval of the courses submitted for continuing education credit as required by the Board; they did not provide the Board with proof of attendance at the continuing education course; and/or they did not complete the continuing education requirement in 1977. As pointed out, other administrators in similar situations were given credit for their continuing education.

In addition, one person was granted renewal of his 1978 license even though he had not attended a continuing education course.

Ten of the fourteen responses received to the questionnaires we sent to NHA's indicated that the Board's handling of the continuing education requirement is not satisfactory. Common complaints about the continuing education requirements were as follows: the Board is slow in responding to inquiries about continuing education; requests for approval of continuing education courses were not acknowledged in adequate time to allow the NHA to attend the course; there are no written criteria for acceptable continuing education courses.

We recommend that the Board apply CE requirements consistently to all licensees. In addition, the following recommendations should make the continuing education requirement more equitable:

1. The requirement that non-academic continuing education courses be approved 60 days in advance is unreasonable. Failure to submit an advance request for the approval of a course should not be grounds in itself for denial of the renewal of a license. The Board should establish a system to respond to requests for approval of courses in a timely manner.

2. Responses to the questionnaires indicated that many licensees did not know what the continuing education requirements were. We recommend the Board inform each administrator about the continuing education requirements and the procedures to be followed in fulfilling each requirement.

3. The Board should set down written criteria to outline the types of academic and non-academic courses, workshops and/or seminars which are acceptable to the Board for continuing education credit. These criteria should be added to the regulations.

4. A section should be added to the regulations to allow the Board some latitude in dealing with licensees who absolutely cannot meet the continuing education requirement. Criteria should be set down in the regulations to describe cases where leniency may be required.

Recommendation No. 4

Renewal of nursing home administrator licenses should be required biennially, rather than annually, as currently required by law.

Currently, nursing home administrators are required to renew their licenses annually. This places an undue burden on NHA's and the Board, and is an unnecessary cost to OL.

The yearly renewal increases the paperwork duties of the Board and OL. Since the licensing of NHA's is not a critical matter, this extra paperwork is unnecessary. The other ten health-related boards require only biennial renewal.

Recommendation No. 5

The Board of Nursing Home Administrators should issue provisional licenses in accordance with the statutes.

AS 08.70.130 allows the Board to issue a provisional license to an applicant without examination, if the applicant meets the other requirements for licensure and is needed to fill a vacancy in an administrative position. A provisional license is valid for six months and is nonrenewable. Administrative Code 12 AAC 46.020(d) further states that an applicant for a provisional license shall submit a written statement from his prospective employer of the circumstances of his need to fill the position. Because Alaska Statute 08.70.080 states that only a licensed NHA may be the administrator of a nursing home, an administrator should possess either a provisional or permanent license before he assumes the role of administrator.

We found cases where persons were acting as administrators, but had received neither a provisional nor a permanent license. Three persons were working as administrators and had applied for provisional licenses, but the Board had denied the granting of the provisional licenses.

According to the Board, the granting of provisional licenses has been downplayed by the Board. For Medicaid funding purposes an administrator need only show that he has made an attempt to obtain licensure - the home is not penalized if the administrator has not actually received a license.

In addition to the above problems, we found that where administrators have been granted provisional licenses, the Board has not obtained a letter from the prospective employer as required.

We recommend the Board comply with the statutes and regulations by issuing provisional licenses to nursing home administrators who are working as administrators but are awaiting permanent licensure. Also, the letters from employers should be required.

Recommendation No. 6

An amendment to the regulations is needed to allow license revocation for persons who do not uphold the standards established by the Board.

Presently neither the statutes nor regulations that make actions by nursing home administrators, which are contrary to standards of conduct, grounds for suspension or revocation of a license.

Alaska Administrative Code 12.46.900(5) gives the Board's definition of "good moral character" and is one of the requirements for initial licensure and for license renewal. However, there is nothing expressed in the regulations which makes an act which is contrary to this definition of good moral character a licensing violation.

The Board should comply with Alaska Statute 08.70.050(a)(3) which states:

> The Board shall establish procedures to ensure that licensees continue to uphold the Board's standards; revoke, suspend or refuse to renew licenses of persons who fail to uphold those standards.

In our opinion, certain unethical or illegal acts by nursing home administrators should result in the revocation or suspension of that administrator's license. Examples of such acts are: conviction of a felony relative to work as a nursing home administrator; misconduct in the operation of a nursing home; receiving or paying consideration for solicitation of nursing home patronage.

We recommend an amendment to the regulations making acts of this type grounds for revocation or suspension of a license. The addition should ensure that any proceedings to revoke, suspend, or deny renewal of a license will be carried out according to the Administrative Procedures Act (Alaska Statutes, Title 44.62.330-630).

Recommendation No. 7

The Board of Nursing Home Administrators should establish formal goals, objectives and quantifiable measures which should be included in the OL's budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL established its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured, neither the Governor's Office nor the Legislature can evaluate the Board's performance.

In addition, the Board is required by statute AS 08.70.050(5) to submit annual activity reports to the Governor and the Legislature. Since the inception of the Board in 1975, the Board has not prepared an annual report. We recommend the Board submit these annual reports as required.

Recommendation No. 8

The Division of Occupational Licensing should collect, record and maintain for five years files and statistics of license and testing applicants and related workload of the licensing examiner.

The Division needs relevant facts and statistics for evaluating the performance of its personnel and Board activity. Many past records have not been collected and maintained, such as:

1. Number of nursing home administrators licensed each year and total number of licensed nursing home administrators;

2. Records of those applicants failing the examination;

3. Number of applicants denied the chance to take the examination due to lack of qualifications;

4. Number of complaints and criticisms about the performance of the Board and its staff;

5. Correspondence workload of license examiners;

6. Number of persons requesting applications.

It is to the advantage of the Division to keep these records in order to support its budget request, evaluate its personnel and keep the Board informed as to its progress. Also, feedback from the Board and the public should be encouraged to determine whether staff performance is adequate.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative attainments as Board activities relate to the public need factors defined in the "Sunset" law. These analyses are not intended to be comprehensive in nature, but address those areas we were able to cover within the scope of our review.

In the event it is determined that the Board of Nursing Home Administrators must be continued, the following recommendations need Board attention. If the Board is not reinstated, OL should implement the procedures where applicable to solve the problems addressed.

I. The extent to which the board, commission or program has operated in the public interest.

1. We have determined that no public need for the Board has been demonstrated. The Board was created to comply with federal regulations (see Recommendation No. 1).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. Until June of 1978, the Board was operating with only three members. The Board feels it was greatly hindered by not having a full Board. The lack of appointments is due to the Governor's Office not making timely appointments (see the OL Performance Audit Report).

2. Because of high turnover within the Division of Occupational Licensing, the Board of Nursing Home Administrators has had a number of different licensing examiners. This has caused a lack of continuity in licensing requirements.

3. The statutes require yearly renewal of NHA licenses. The Board agrees that this yearly renewal requirement places an undue burden on the licensing examiner, the Board and the licensees (see Recommendation No. 4).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. The make-up of the Board by statute originally included one NHA, one medical doctor, one nurse and two public members. Because a doctor could not be found to serve on the Board, the Board initiated legislation to change the number of nursing home administrators to two and to delete the requirement of a medical doctor all together.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. The public is invited to attend Board meetings and to give their input about the workings of the Board. Notices of meetings are advertised generally one time only in each of four newspapers throughout the State. We found that often the time between the publishing of the notice and the meeting is not sufficient to allow persons wishing to attend a meeting time to prepare for it. The publishing of the advertisements is handled by the Division of Occupational Licensing (see the OL Performance Audit Report).

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. As stated under criteria IV, the public is invited, by published notices in newspapers, to attend Board meetings to give their input about Board regulations.

2. A public hearing was held on February 21, 1977, for the purpose of allowing the public to testify on proposed regulations. One person gave testimony at the hearing. The hearing was held in Juneau.

3. Written testimony was solicited on more proposed regulations in September of 1978. A notice about the proposed regulations was published once in each of four newspapers. The Division received no responses to the solicitation of written testimony.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

1. Only one complaint involving nursing home administrators has been filed with the Investigations Unit within the Division of Occupational Licensing. The complaint was filed in 1976 and to date, the complaint has not been dealt with (see the OL Performance Audit Report).

2. Two complaints involving individual nursing homes have been filed with the Human Rights Commission. The complaints have been resolved by the Commission.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. The Board has regulated the licensure of nursing home administrators to the point of unnecessarily restricting entry into the profession (see Recommendation No. 1).

2. The Board has not consistently applied these regulations; five persons licensed in 1978 do not meet the educational criteria set down by the Board (see Recommendation No. 2).

3. The Board is not issuing provisional licenses in compliance with the statutes; thus administrators are operating nursing homes before receiving either a provisional or permanent license (see Recommendation No. 5).

4. Alaska Statute 08.70.080 specifically exempts the administrators of the Alaska Pioneers Homes from having to be licensed as NHA's. The State nursing homes do not have to maintain the standards that are expected of private nursing homes.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. We found evidence in the Board's correspondence that the Board considered affirmative action requirements in drawing up the application for

licensure as a NHA. However, the application does contain questions which could lead to discrimination against the applicant (see the OL Performance Audit Report).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

1. The Division of Occupational Licensing in conjunction with the Board should prepare a procedures manual to be used by the licensing examiner in conducting the Board's business.

2. The Board of Nursing Home Administrators should be added to the lists of boards, commissions and/or agencies which come under the Administrative Procedures Act and the Central Licensing Act. This is a technicality since the Board is covered by both acts.

3. Please refer also to the Findings and Recommendations section of this report and the OL Performance Audit Report.

APPENDIXES

APPENDIX A

BOARD OF NURSING HOME ADMINISTRATORS
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Revenues (see Schedule 1)	$ 1,900
Expenditures (see Note 1)	10,000
Excess of Expenditures Over Revenues	$(8,100)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Nursing Home Administrator		
Examination Fee	$25	With taking examination
Investigation Fee	25	With application for licensure
Annual License Fee	50	Annually

Note 1

Expenditures included those made by Board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts that other departments, such as the Department of Law, may have incurred in assisting the Board and OL.

APPENDIX B

ADMINISTRATIVE STATISTICS

Licensed Nursing Home Administrators	As of October 20, 1978
Nursing Home Administrators licensed and working in the State	24
Out-of-state Nursing Home Administrators licensed in State	5
Total Licensed Nursing Home Administrators	29
Board meetings	9
Average number of meetings per calendar year (excluding telephone conferences) (see Note 1)	3 meetings
Number of examinations given (see Note 1)	6 exams

Calendar Year	Passes	Fails
1976	8	5
1977	4	2
1978	4	1

Note 1

A Board meeting and examination is scheduled for late November, 1978. The November meeting and examination are included in the figures above (except for the number of passes/fails - which is not yet known).

APPENDIX C

QUESTIONNAIRE SENT TO BOARD MEMBERS
(see Note 1)

1. What do you believe to be the goals and objectives of the Board of Nursing Home Administrators?

Description

To adopt standards for licensing nursing home administrators.

To examine, license and renew licenses of qualified persons.

To establish procedures to ensure that licensees continue to uphold the Board's standards.

To adopt criteria for educational programs for preparing for the licensing examination and for continuing education for licensees.

To keep a record of its proceedings and submit annual reports to the Governor and the Legislature.

2. Do you believe that the Board is achieving its goals as you perceive them in question number 1? Please show how the goals and objectives are or are not being achieved.

Description

The goals are being met, however, they could be more effectively met with a complete Board.

The objectives are being met by regulations.

Objectives are met by examining applicants twice yearly and licensing and renewing licenses yearly.

Criteria for continuing education programs have been established.

One year, an annual report was written by a Board member while in other years, the Board submitted to the examiner a list of activities and achievements.

3. Is the staff from the Department of Commerce and/or other departments adequate to perform all the administrative and enforcement duties necessary for the operation of the Board? What staff support services are provided adequately/inadequately?

Description

The current examiner and staff are performing all the duties required by the Board.

In the past, many problems were caused by continual staff turnover.

4. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restrictive, and/or inadequate to provide the Board with the responsibility and power to properly govern the purpose and activities of the Board? Please list and explain.

Description

AS.08.70.140(a): yearly renewal is too frequent and the paperwork creates a burden on both the licensee and the Division.

AS. 08.70.150(3): License Fees should be changed to $100 every two years.

AS. 08.70.020: The Board has never had five members because the Office of the Governor has not appointed that number at any one time.

5. Do you think any changes should be made to the current continuing education requirements? If so, please state what changes could be made and why.

Description

Both responses were no. One member did indicate that the 60-day requirement was needed by the Board for prior approval but due to unexpected circumstances on the part of the licensee, it was not always possible.

6. What changes could be made to the Board which would improve its service to the public?

Description

The appointment of a full five-member board is necessary and important to provide sufficient input and representation from all portions of the State.

7. Any other comments?

Description

Criteria is needed for the removal of a Board member for cause - namely, inactivity or nonperformance.

Also, assurance that a timely replacement will be effected is essential due to the small size of the Board. Presently, all members of the Board are necessary for a quorum.

At some future time, the Department may be able to perform the duties now performed by this Board, but until such a time that the regulations are completed and proven through usage, this Board should remain intact.

The Board is more capable of setting standards and monitoring and would have continuing validity for its existance.

Note 1

At the time this questionnaire was mailed from the Division of Legislative Audit there were only three members on the Board of Nursing Home Administrators. Each of the three board members was sent a questionnaire and Legislative Audit received two responses which are summarized above.

APPENDIX D

QUESTIONNAIRE SENT TO NURSING HOME ADMINISTRATORS

	(see Note 1) % Responses		
	Yes	No	No Opinion
1. Do you believe Alaska's requirements for permanent licensure as a nursing home administrator are adequate and effective in ensuring that the public is protected?	86%	14%	0%
If no, please explain:			
2. Do you feel that the absence of the Board would be detrimental to the public's best interests?	93%	0%	7%
3. Do you believe that the Board of Nursing Home Administrators is operating in the public's best interests?	71%	29%	0%
If no, please explain:			
4. Do you feel that the issuance of provisional licenses is in the best interests of the public?	71%	29%	0%
Please comment:			
5. Do you feel that the examination required for licensure as a nursing home administrator is a fair and reasonable test of an administrator's professional knowledge and ability?	86%	14%	0%
6. Do you feel that the continuing education requirements for renewal of a permanent license are reasonable?	57%	43%	0%
If no, please explain:			
7. Do you feel that the current reciprocity policies of the Board of Nursing Home Administrators are fairly and consistently applied to all licensees seeking licensure in Alaska by reciprocity?	57%	0%	43%
If no, please comment:			
8. Are you aware of any discriminatory practices involving licensing of minority groups?	0%	93%	7%

	(see Note 1) % Responses		
	Yes	No	No Opinion
9. Do you think the Board of Nursing Home Administrators should be made up of:			
A. a majority of nursing home administrators?	*21%*		
B. An equal number of nursing home administrators and public members?	*79%*		
C. a majority of public members?	*0%*		
Please circle one.			
10. Do you feel it is advantageous to have a registered nurse on the Board?	*79%*	*14%*	*7%*
11. Have you had any contact with the Board of Nursing Home Administrators?	*50%*	*50%*	*0%*
Please specify:			
12. Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce and Economic Development?	*71%*	*29%*	*0%*

Please discuss:

Continuing staff turnover creates problems;

Unreasonable delays regarding requests for continuing education information, renewal of licenses and the issuance of licenses;

The staff support has been inefficient;

Unreasonable delays in answering correspondence.

Note 1

Number of questionnaires sent to licensed nursing home administrators	31
Number of nursing home administrators who responded	14
Response rate	45%

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED
JAN 11 A.M.
LEGISLATIVE
AUDIT

January 9, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary reports as shown below:

1. Board of Examiners in Optometry
2. Board of Dispensing Opticians
3. Board of Psychologist and Psychological Associate Examiners
4. Board of Chiropractic Examiners
5. Alaska State Medical Board
6. Board of Veterinary Examiners
7. State Physical Therapy Board
8. Board of Pharmacy
9. Board of Nursing
10. Board of Nursing Home Administrators
11. Board of Dental Examiners
12. Alaska Transportation Commission

We view these reviews of agency programs and activities which are specifically subject to termination in a manner different from those made of State departments or agencies. Usually we in the Executive Branch endeavor to respond directly to each finding and recommendation. However, in regard to the Boards and Commissions, the Executive Branch agency during a public hearing shall demonstrate a public need for its continued existence or the discontinuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

The Executive Branch of Alaska Government has made an extensive study of the above Boards and the Alaska Transportation Commission. We are continuing to study those entities, their origin, their present and future potential, and other related subjects in conjunction with Alaska statutes 24 and 44 (Sunset Legislation). As prescribed in AS 44.66.050 one or more legislative hearings are to be held to receive testimony from the public, the Commissioner of the department having administrative responsibility for each, and the members of the Boards or Commission involved. During those hearings we will present our findings and recommendations affecting each of the foregoing Boards and the Alaska Transportation Commission.

Accordingly, we are presenting this in addition to the responses from the Department of Commerce, Department of Law, and the individual Board or Commission members and others on an interim basis.

Sincerely,

Michael Harper

Michael Harper
Administrative Assistant
to the Governor

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

December 15, 1978

RECEIVED

JAN 11 A.M.

LEGISLATIVE AUDIT

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Board of Nursing Home Administrators, as submitted by the Division of Legislative Audit.

Recommendation No. 1. Agreed. We agree that if the board is not a federal requirement to qualify for medicade funds should be allowed to terminate, and the examining and licensing functions should be assumed by the division. We further concur that board policies and regulations are in need of review.

Recommendation No. 2. Agreed. Regulations that are in effect should be complied with. This recommendation will be discussed with the board at its next meeting and appropriate revisions promulgated.

Recommendation No. 3. Agreed. This will be discussed with the board at its next regular meeting.

Recommendation No. 4. Agreed. This would be consistent with renewal requirements for all other boards and will be discussed at the next meeting.

Recommendation No. 5. Agreed. Statutory and regulatory provisions should be utilized uniformly. The board and the division will discuss this and initiate appropriate enforcement procedures.

Recommendation No. 6. Agreed. Such provisions would be consistent with those of other boards and will be discussed.

08-H8LH

Recommendation No. 7. Agreed. The board's objectives and goals will be incorporated within the division's budget document. This board, and all others, will be contacted in March or April, 1979 for input into the FY 1981 budget.

Recommendation No. 8. Agreed. Complete reorganization of files and procedures within the division are expected to be accomplished by the end of calendar year 1979. Some changes have recently been initiated by the division.

I appreciate the time and efforts expended by your staff.

Yours truly,

H. Phillip Hubbard
Commissioner

RECEIVED
JAN 11 A.M.
LEGISLATIVE
AUDIT

RR 3 - Box 3738
Juneau, Alaska 99824
December 18, 1978

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Audit Division
Pouch W - Alaska Office Bldg.
Juneau, Alaska 99801

Through: Mr. B. B. Allen, Commissioner
Department of Administration

Dear Mr. Wilkerson:

Ms. Dove M. Kull and I have reviewed the Preliminary Audit report on A Performance Review of the Board of Nursing Home Administrators, October 20, 1978, sent with your letter of November 20, 1978. Our responses to the report conclusions and recommendations in the report are as follows:

Kull: Report Conclusion.--I question this and request backup reasoning. I recommend licenses be issued for 2 years with the potential (if the nursing home is operating well) of 3 years or even 4 years. The review for the renewal need not be so detailed as the initial licensing.

Recommendation No. 1.--We recommend that appropriate action be initiated to obtain U. S. Department of HEW approval to terminate the Board of Nursing Home Administrators and allow the Division of Occupational Licensing (OL) to assume the licensing function without jeopardizing Medicaid funds.

Hanna: I concur with this recommendation providing the Division of Occupational Licensing is properly staffed to assume the responsibilities of the Board. As of now, they are not staffed to properly provide the support functions we request.

However, I strongly disagree with the reasons set forth in support of this recommendation. I believe the present system of licensing Nursing Home Administration is in the public interest and does provide a measure of protection to the potential users. I do not agree that the employer can be relied upon in all cases to set adequate standards.

Kull: I strongly disagree until I know the rationale for the recommendation.

Recommendation No. 2.--The statutes and regulations which govern the licensing requirements for nursing home administrators should be complied with and should be applied to all applicants on a consistent basis.

Hanna: I agree with this finding. However, this situation again is a reflection on the Division of Occupational Licensing rather than the Board.

Kull: Page 8, paragraph 3. There should be evidence presented to confirm the protection is being provided by the Board.

I do not agree that the employer should set the requirements.

Page 10, paragraph (d). The college transcript should come from the college.

Recommendation No. 3.--Continuing education requirements should be reasonably applied on a consistent basis.

Hanna: I agree with this finding.

1. The Board will address the 60-day advance approval requirement. It appears that after-the-fact approvals may be the appropriate stand.

2. I believe it is incumbent on the licensees to be knowledgeable of the CE requirements.

3. This has been done and is set forth under 12 AAC 46.040.

4. We believe a 2-year licensing period will alleviate this situation.

Kull: Page 11, paragraph 3. I agree the Board should set down written criteria. See comment 3 above.

Recommendation No. 4.--Renewal of nursing home administrator licenses should be required biennially, rather than annually, as currently required by law.

Hanna and Kull: We agree with this finding. Legislation is being drafted to accomplish this.

Recommendation No. 5.--The Board of Nursing Home Administrators should issue provisional licenses in accordance with the statutes.

Hanna: I don't agree with the recommendation as stated. The statutes for provisional licenses as written are too restrictive since examinations are offered only twice a year. I believe the manner in which the Board has dealt with this situation is satisfactory.

Recommendation No. 6.--An amendment to the regulations is needed to allow license revocation for persons who do not uphold the standards established by the Board.

Hanna: I will not quarrel with this recommendation. However, I believe there are adequate provisions to handle such a situation should it occur. To date, the Board has had no problem in this area.

Kull: I agree with this recommendation

Recommendation No. 7.--The Board of Nursing Home Administrators should establish formal goals, objectives, and quantifiable measures which should be included in the OL's budget document.

Hanna: The Board wishes to be on record that it has prepared and made available annual reports to the Division of Occupational Licensing, which have been returned.

Kull: I agree (see above comment).

Recommendation No. 8.--The Division of Occupational Licensing should collect, record, and maintain for 5 years files and statistics of license and testing applicants and related workload of the licensing examiner.

Hanna and Kull: We agree that such records should be kept by the Division of Occupational Licensing and the Board stands ready to cooperate.

Kull: Page 18, paragraph VI-1. This situation raises the question: Why hasn't the complaint been dealt with?

Page 19, 1st paragraph. What are these questions which could lead to discrimination against the applicant?

Page 19, IX - 1 & 2. I agree with these recommendations.

Mrs. Dove Kull has also reviewed the Preliminary Audit Report on a Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development. She offers the following comments, in which I also concur.

Recommendation No. 1.--The Division of Occupational Licensing's investigation unit should be transferred to the Department of Public Safety.

I question this recommendation and request the reasons for it.

Page 7, item 2. Regarding the investigations made: Who investigates nursing home complaints? Are these persons qualified? Are the staff members of the DHSS? If not, they should be. Pertinent data is needed as to the number of investigative staff and the number of hours spent in investigation. Also, why didn't the Division hire the number of investigators authorized? (20 of 43 man-months were vacant during FY78).

In this area, there is no apparent accountability, which should be required. Follow-up should be routine.

Recommendation No. 3.--The Office of the Governor should keep the appointments of members of the occupational licensing boards current.

I believe this is an excellent recommendation.

Page 10. A talent pool is an excellent suggestion. Why not more retired persons who have expertise in the fields needed?

Recommendation No. 4.--Legislation should be enacted limiting the length of service for all board members to two consecutive terms.

This is a good recommendation

Recommendation No. 5.--The Department of Commerce and Economic Development should improve the operation, security and internal control of the 3M-Linolex minicomputer system.

This is also an excellent recommendation. The suggestion of an Operating Procedures Manual under paragraph 7 is especially good.

Recommendation No. 6.--The Department of Commerce and Economic Development should review the license fee structure of all boards and seek appropriate revisions.

I concur in the need for a review of licensing fees.

Page 13. Recommendations No. 7 and No. 8 are very good. Let the Department, Governor's office, the Boards, and the public know the results of licensing, etc.

Recommendation No. 10.--The 11 health-related boards, in conjunction with the Division of Occupational Licensing, should review their applications for licensure and delete any questions which could lead to discrimination against applicants.

This is an excellent recommendation and is needed to remain legal.

Recommendation No. 11.--The Department of Commerce and Economic Development should improve formal board minutes.

I agree. Improvement in formal board minutes is urgently needed.

Recommendation No. 12.--The Department of Commerce and Economic Development and all licensing boards should ensure that public notices of examinations are sufficiently and timely advertised.

This is a good recommendation.

Sincerely yours,

Sarah Jane Hanna

Sarah Jane Hanna (Mrs. G. A.)

*Section 1. AS 08.70.080 is amended to read:

Sec. 08.70.080. LICENSE REQUIRED. Only a licensed nursing home administrator may manage, supervise or be generally in charge of a nursing home unless excepted by this chapter. Only a nursing home which is supervised by a licensed nursing home administrator may operate in Alaska [UNLESS SPECIALLY EXCEPTED BY THE BOARD. THIS SECTION DOES NOT APPLY TO THE ALASKA PIONEERS' HOMES].

*Section 2. AS 08.70.140 is amended to read:

Sec. 08.70.140. EXPIRATION AND RENEWAL. (a) A nursing home administrator's license expires biennially on December 31 of odd numbered years commencing with Decmeber 31, 1981 [THE YEAR ISSUED].

(b) An administrator may apply for renewal of his license by submitting an application for renewal to the board; application forms for renewal are provided by the department.

(c) A person whose license has expired for a period of 24 [12] months or more must apply for a license and be examined in the same manner as an applicant who has not been licensed before.

*Section 3. AS 08.70.150(3) is amended to read:

(3) biennial [ANNUAL] license fee..... $100 [$50]

S T A T E O F A L A S K A

State Nursing Home Administrator's Board

Centralized Licensing Statute, AS 08.01

Miscellaneous Provision, AS 08.02

Nursing Home Administrator's Act AS.08.70

Nursing Home Administrator's Regulations 12 AAC 46

Department of Commerce & Economic Development

Division of Occupational Licensing

Pouch D

Juneau, Alaska 99811

Printed - January 1978

Title 8. Business and Professions.

Chapter 01. Centralized Licensing.

Section
10. Applicability of chapter
20. Board organization
25. Public members
30. Quorum
40. Transportation and per diem
50. Administrative duties of department
60. Application for license
70. Administrative duties of boards
80. Department regulations
87. Powers and duties of department
90. Applicability of the Administrative Procedure Act
100. License renewal, lapse and reinstatement
105. Penalty for improper payment
110. Definitions

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

(1) Board of Public Accountancy;

(2) Board of Barber Examiners;

(3) Repealed by § 6 ch 32 SLA 1971.

(4) Board of Chiropractic Examiners;

(5) Board of Hairdressing and Beauty Culture Examiners;

(6) Board of Dental Examiners;

(7) Board of Electrical Examiners;

(8) State Board of Registration for Architects, Engineers and Land Surveyors;

(9) State Medical Board;

(10) Board of Nursing;

(11) Board of Examiners in Optometry;

(12) Board of Pharmacy;

(13) Real Estate Commission;

(14) Board of Veterinary Examiners;

(15) Board of Psychologist and Psychological Associate Examiners;

(16) Collection Agency Board;

(17) Board of Welding Examiners;

(18) Board of Marine Pilots;

(19) Board of Dispensing Opticians;

(20) Guide Licensing and Control Board. (§ 1 ch 59 SLA 1966; am § 2 ch 136 SLA 1967; am § 2 ch 101 SLA 1968; am § 2 ch 143 SLA 1968; am § 2 ch 151 SLA 1968; am § 1 ch 106 SLA 1970; am § 6 ch 32 SLA 1971; am § 4 ch 179 SLA 1972; am § 2 ch 45 SLA 1973; am § 14 ch 65 SLA 1973; am § 1 ch 43 SLA 1975)

Effect of amendment. — The 1975 amendment, effective May 6, 1975, added paragraph (20).

Editor's note. — Section 2, ch. 59, SLA 1966, provides: "The Department of Commerce shall provide for the orderly transfer of the service functions which are to be performed by the department under this chapter."

Section 4, ch. 59, SLA 1966, provides: "A provision in existing law which conflicts with this Act is superseded by this Act."

Legislative committee reports.— For report on ch. 143, SLA 1968 (HB 707), see 1968 House Journal, p. 836. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 08.01.020. Board organization. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members. (§ 1 ch 59 SLA 1966)

Sec. 08.01.025. Public members. No public member of a board may:

(1) be engaged in the occupation which the board regulates;

(2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or

(3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 258 SLA 1976)

Sec. 08.01.030. Quorum. A majority of the membership of a board constitutes a quorum unless otherwise provided. (§ 1 ch 59 SLA 1966)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (§ 1 ch 59 SLA 1966)

Sec. 08.01.050. Administrative duties of department. (a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;

(2) maintain records and files;

(3) issue and receive application forms;

(4) notify applicants of acceptance or rejection of applicants as determined by the board;

(5) designate dates examinations are to be held and notify applicants;

(6) publish notice of examination;

(7) arrange space for holding examinations;

(8) notify applicants of results of examinations;

(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;

(10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of $2;

(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;

(12) compile and maintain current a register of licenses;

(13) answer routine inquiries;

(14) maintain files relating to individual licensees;

(15) arrange for printing and advertising;

(16) purchase supplies;

(17) employ secretarial help when needed;

(18) perform other services which may be requested by the board;

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in § 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned. (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment added paragraph (19) of present subsection (a).

The second 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the introductory paragraph of present subsection (a).

The third 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, substituted "department" for "Department of Commerce" and "when appropriate" for "for the boards" in the introductory language and inserted "by the licensees" in two places in paragraph (10). The amendment also added subsection (b).

While none of the amendments gave effect to the others, this section is set out as it appears in ch. 258, SLA 1976, with the inclusion of paragraph (19) of subsection (a) added by ch. 102, SLA 1976.

Effective date. — Section 50, ch. 102, SLA 1976, makes the amendment to this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law:

(1) keep minutes and records of all proceedings;

(2) hold a minimum of one meeting each year;

(3) hold at least one examination each year;

(4) request, through the department, investigation of violations of its laws and regulations;

(5) prepare and grade examinations;

(6) pass on qualifications of applicants for examination and license;

(7) forward minutes of meetings to the department within 20 days;

(8) forward results of examinations to the department;

(9) notify the department of meeting dates at least 15 days before meeting. (§ 1 ch 59 SLA 1966)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;

(2) what is contained in application forms;

(3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

Sec. 08.01.087. Powers and duties of department. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by a board listed in § 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (§ 3 ch. 258 SLA 1976)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (§ 1 ch 59 SLA 1966; am § 4 ch 258 SLA 1976)

Effect of amendment. — The 1976 amendment added "except those under AS 08.01.087(b)" to the end of the section.

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968)

Sec. 08.01.105. Penalty for improper payment. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (§ 3 ch 258 SLA 1976)

Sec. 08.01.110. Definitions. In this chapter

(1) "board" includes the boards and commissions listed in § 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in § 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in § 10 of this chapter. (§ 1 ch 59 SLA 1966; am § 40 ch 218 SLA 1976; am § 5 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

The second 1976 amendment added paragraphs (3) through (6).

Chapter 02. Miscellaneous Provisions.

Section
10. Professional designation requirements
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) A person licensed in the state as a chiropractor as defined in AS 08.20.220, a dentist as defined in AS 08.36.360, a medical practitioner or osteopath as defined in AS 08.64.380, a professional nurse as defined in AS 08.68.410, an optometrist as defined in AS 08.72.300(3), a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall professionally identify himself by the use of appropriate letters or a title after his name which represents his specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays his professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and identifies himself by using the letters "M.D." or the title "doctor" or "physician" or any other title which tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of his noncompliance by his appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, his noncompliance continues, the board may suspend or revoke his license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1973)

Sec. 08.02.020. Limitation of liability for members of licensing boards. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976)

Effective date. — Section 50, ch. 102, SLA 1976, makes this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

CHAPTER 70. NURSING HOME ADMINISTRATORS

Section
10. Creation of Board of Nursing Home Administrators
20. Membership board; source of appointments; term of office
30. Election of officers
40. Board meetings; quorum
50. Duties and powers of the board
60. Expenses
70. Applicability of Administrative Procedure Act
80. License required
90. Application
110. Licensing
120. Examination
130. Provisional licenses
140. Expiration and renewal
150. Fees
160. Unlawful acts
170. Penalties
180. Definitions
190. Facilities operated by religious organizations

Sec. 08.70.010. CREATION OF BOARD OF NURSING HOME ADMINISTRATORS. There is established the Board of Nursing Home Administrators. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.020. MEMBERSHIP BOARD; SOURCE OF APPOINTMENTS; TERM OF OFFICE. (a) The board consists of five members: one nursing home administrator licensed under this chapter and practicing in the state, a registered nurse licensed in the state, a physician licensed in the state, and two persons from the general public.

(b) Board members are appointed by the governor.

(c) Board members serve staggered terms of three years or until their successor is appointed, except that a member appointed to a vacated term serves the duration of that term. On the first board two members serve one-year terms, two members serve two-year terms, and one members serves a three-year term. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.030. ELECTION OF OFFICERS. The board shall annually elect a chairperson and a vice-chairperson from its members. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.040. BOARD MEETINGS; QUORUM. The board shall meet at least semiannually. A majority of the board constitutes a quorum. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.050. DUTIES AND POWERS OF THE BOARD. (a) The board shall

(1) adopt standards for licensing nursing home administrators to insure that licensees have knowledge and experience in health care and institutional administration necessary for competent administration, and update the standards when necessary;

(2) examine, license, and renew the licenses of qualified persons;

(3) establish procedures to insure that licensees continue to uphold the board's standards; revoke, suspend, or refuse to renew licenses of persons who fail to uphold the standards;

(4) adopt criteria for educational programs for persons preparing for the licensing examination and for the continuing education of licensees; review the educational programs available in the state and accredit the programs meeting the criteria;

(5) keep a record of its proceedings and submit annual reports to the governor and the legislature.

(b) The board may adopt regulations necessary for the performance of its duties and to meet the requirements of Title 19 of the Social Security Act, the federal rules promulgated under it, and other federal requirements. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.060. EXPENSES. Board members serve voluntarily, except that members are entitled to the travel expenses and per diem allowed by law. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.070. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT. The board shall comply with the Administrative Procedure Act (AS 44.62). (Sec 1 ch 123 SLA 1975)

Sec. 08.70.080. LICENSE REQUIRED. Only a licensed nursing home administrator may manage, supervise or be generally in charge of a nursing home unless excepted by this chapter. Only a nursing home which is supervised by a licensed nursing home administrator may operate in Alaska unless specially excepted by the board. This section does not apply to the Alaska Pioneers' Homes. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.090. APPLICATION. Applicants shall file applications with the Department of Commerce on forms provided by the department. Information requested on the forms shall be given under oath. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.110. LICENSING. (a) The board shall license

(1) applicants who pass the written examination administered by the board and meet the standards established by the board under sec. 50 of this chapter;

(2) persons licensed under emergency regulations 7 AAC 12.045 promulgated in Register 51, July 8, 1974, who have practiced as administrators since licensing.

(b) The board may issue a license without examination to a person holding a current license as a nursing home administrator from another jurisdication, if the board finds that the standards for licensing in the other jurisdiction are substantially equivalent to those in this state, and the person is otherwise qualified. (Sec 1 ch 123 SLA 1975)

Sec. 08.60.120. EXAMINATION. The purpose of the examination is to test the applicant's knowledge of the health and safety standards of the state and his experience in the practice of health care. The board determines the content, scope, format, and grading procedure. Examinations shall be given at least annually, at the time and place chosen by the board. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.130. PROVISIONAL LICENSES. (a) A provisional license may be granted without examination to a person who meets the standards adopted by the board under sec. 50 of this chapter and who is needed to fill a vacancy in an administrative position.

(b) The provisional license is valied for six months and is nonrenewable. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.140. EXPIRATION AND RENEWAL. (a) A nursing home administrator's license expires on December 31 of the year issued.

(b) An administrator may apply for renewal of his license by submitting an application for renewal to the board; application forms for renewal are provided by the department.

(c) A person whose license has expired for a period of 12 months or more must apply for a license and be examined in the same manner as an applicant who has not been licensed before. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.150. FEES. The following fees shall be imposed under this chapter when applicable:

(1) examination fee . . . . . $ 25

(2) investigation fee for person applying for a license under sec. 110(b) of this chapter . . $ 25

(3) annual license fee . . . . . $ 50
(Sec 1 ch 123 SLA 1975)

Sec. 08.70.160. UNLAWFUL ACTS. No person may

(1) sell or fraudulently obtain or furnish a license or aid another in doing so;

(2) practice as a nursing home administrator under cover of a license illegally or fraudulently obtained;

(3) practice as a nursing home administrator or use in connection with his name a designation tending to imply that he is a nursing home administrator unless licensed under this chapter;

(4) practice as a nursing home administrator during the time his license issued under this chapter is suspended or revoked; or

(5) otherwise violate this chapter. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.170. PENALTIES. A person convicted of violating this chapter is punishable by a fine of not more than $500, or by imprisonment for not more than one year, or by both. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.180. DEFINITIONS. In this chapter

(1) "board" means the Board of Nursing Home Administrators;

(2) "department" means the Department of Commerce;

(3) "license" means the certificate awarded by the board to a qualified person which entitles him to be a nuring home administrator in this state;

(4) "licensee" means a person who has been granted a license to be a nursing home administrator in this state by the board;

(5) "nursing home" means a facility which is operated in connection with a hospital or in which nursing care, intermediate care, and medical services are prescribed by or performed under the general direction of persons for the accomodation of convalescents or other persons who are not acutely ill but who do require skilled or intermediate nursing care and related medical services; the term "nursing home" is restricted to those facilities the purpose of which is to provide skilled or intermediate nursing care and related medical services for a period of not less than 24 hours a day to individuals admitted because of illness, disease or physical or mental infirmity;

(6) "nursing home administrator" means a person who manages, supervises, or is in general charge of a nursing home, even though the duties are shared with another person; a member of a board of directors of a nursing home is an administrator only if he also serves in the administrative capacity defined in this paragraph. (Sec 1 ch 123 SLA 1975)

Sec. 08.70.190. FACILITIES OPERATED BY RELIGIOUS ORGANIZATIONS. Nothing in this chapter or in the regulation under this chapter is to be construed as requiring a person who applies for a license as administrator of a facility operated by a religious organization relying on spiritual means alone for healing to have skills in medical techniques or educational qualifications which are not in accord with the care and treatment provided in the facility. (Sec 1 ch 123 SLA 1975)

PROFESSIONAL AND VOCATIONAL REGULATIONS

CHAPTER 46. BOARD OF NURSING HOME ADMINISTRATORS

Section
010. Qualifications of applicant for initial license
020. Application for initial license
030. Examination of applicant
040. Continuing education required for license renewal
050. Accreditation of non-academic continuing education program
060. Activities not eligible for non-academic continuing education accreditation
070. Application for license renewal
900. Definitions

12 AAC 46.010. QUALIFICATIONS OF APPLICANT FOR INITIAL LICENSE. (a) To be eligible for an initial license as a nursing home administrator, a person must be

(1) at least 19 years of age;

(2) of sound physical and mental health;

(3) a high school graduate or the equivalent; and

(4) of good moral character.

(b) In addition to the requirements of (a) of this section, a person applying for a license

(1) before January 1, 1978, must have one year of administrative experience;

(2) after December 31, 1977, must possess an associate degree in administration from an accredited college; and

(3) after December 31, 1979, must possess a

(A) baccalaureate degree in health care administration from an accredited college; or

(B) baccalaureate degree in business administration from an accredited college and have one year of administrative experience in a health care facility.
(Eff. 5/13/77, Register 62)

Authority: AS 08.70.050(a)(1) and (b)

12 AAC 46.020. APPLICATION FOR INITIAL LICENSE. (a) A person applying for an initial license as a nursing home administrator shall submit

(1) a completed application form;

(2) a written statement from a physician attesting to the fact that his or her physical and mental health is adequate to enable him or her to satisfactorily perform the duties involved in nursing home administration; and

(3) after December 31, 1977, an official transcript from his or her college of graduation.

(b) A person applying for an initial license by examination shall submit the documents in (a) of this section, accompanied by the examination fee required by AS 08.70.150(1), at least 30 days before the date of a scheduled examination, in order to be scheduled for that examination.

(c) In addition to the requirements of (a) of this section, a person applying for an initial license without examination shall submit

(1) evidence that he or she has passed the licensing examination for nursing home administrators of the Professional Examination Service or the National Association of Boards of Nursing Home Administrators, Inc. with a score of at least 75%;

(2) a copy of his or her current nursing home administrator license from another jurisdiction; and

(3) the investigation fee required by AS 08.70.150(2).

(d) In addition to the requirements of (a) of this section, a person applying for a provisional license shall submit a written statement from his or her prospective employer of the circumstances of his or her need to fill a vacancy in an administrative position. (Eff. 5/13/77, Register 62)

Authority: AS 08.70.050(b)
AS 08.70.090
AS 08.70.110(b)
AS 08.70.130(a)

12 AAC 46.030. EXAMINATION OF APPLICANT. (a) The examination required by AS 08.70.110(a)(1) is the examination prepared and graded by the National Association of Boards of Nursing Home Administrators, Inc.

(b) A score of 75 percent is required to pass the examination.

(c) The examination is offered semiannually in May and November.

(d) A person who fails to pass the examination within two years of submitting his or her application for licensure shall submit a new physician's statement required by sec. 20(a)(2) of this chapter, along with a new application form. (Eff. 5/13/77, Register 62)

Authority: AS 08.70.050(b)
AS 08.70.120

12 AAC 46.040. CONTINUING EDUCATION REQUIRED FOR LICENSE RENEWAL. (a) Continuing education required to maintain licensure as a nursing home administrator is at least

(1) one semester hour academic credit from an accredited college in a subject relevant to health care administration; or

(2) two continuing education units from the sponsoring organization of a non-academic continuing education program approved by the board.

(b) Continuing education required by (a) of this section must be earned during the calendar year immediately preceding the year for which license renewal is being requested. (Eff. 5/13/77, Register 62)

Authority: AS 08.70.050(a)(3) and (b)

12 AAC 46.050. BOARD ACCREDITATION OF NON-ACADEMIC CONTINUING EDUCATION PROGRAM. (a) In order for a non-academic continuing education program to be accredited by the board, the sponsoring organization must

(1) have an identifiable educational arm with designated professional staff empowered to administer and coordinate an organized schedule of continuing education programs;

(2) maintain, through its educational arm, administrative control of all program elements to assure that both the immediate educational objectives and the requirements of this subsection are met;

(3) provide or arrange, through its educational arm, for appropriate educational facilities, library and reference materials and all necessary instructional aides and equipment consistent with the educational content, format and objectives of each learning experience;

(4) maintain a permanent individual record of participation and make this record readily available to each participant upon request;

(5) plan the program or activity in response to the educational needs of nursing home administrators, including the opportunity for input by representatives of nursing home administrators, as well as by other knowledgeable individuals having content expertise and an appreciation of the educational objectives to be met;

(6) prepare a clear statement of rationale, purposes and goals for each educational activity before the initiation of the program;

(7) directly involve qualified instructional personnel in conducting the educational activity;

(8) establish specific performance requirements for the award of continuing education units to participants before offering the program;

(9) include sufficient detail in participant registration to provide the necessary information for a permanent record of individual participation;

(10) use evaluation procedures determined during the planning process to measure the effectiveness of the program design and operation; and

(11) include in program administration a system for verification of satisfactory completion of the activity by each participant and for providing an approved list of those awarded continuing education units to the office responsible for preparing and maintaining permanent records for individual participants.

(b) An application for accreditation of a continuing education program must state the

(1) manner in which the sponsoring organization meets the requirements of (a) of this section; and

(2) starting date of the program.

(c) A sponsoring organization must apply to the board for accreditation of a continuing education program at least 60 days before the starting date of the program. (Eff. 5/13/77, Register 62)

Authority: AS 08.70.050(a)(4) and (b)

12 AAC 46.060. ACTIVITIES NOT ELIGIBLE FOR NON-ACADEMIC CONTINUING EDUCATION ACCREDITATION. The board will not accredit, for non-academic continuing education,

(1) a program leading to a high school equivalency certificate or diploma;

(2) a program dealing with such internal topics as indoctrination in rights, benefits and responsibilities; organizational structure; on-the-job methods, processes or procedures;

(3) committee activities;

(4) conferences, delegate assemblies or similar meetings for policy-making purposes;

(5) meetings and conventions of societies and associations unless educational activities programmed independently and held concurrently with these meetings meet the requirements of sec. 50(a) of this chapter;

(6) participation in programs delivered through the media such as television, radio and newspapers unless these presentations are an integral part of an educational program which meets the requirements of sec. 50(a) of this chapter;

(7) attendance at lecture series, cultural performances, entertainment or recreational meetings or activities and participation in travel groups unless these activities are an integral part of a larger educational program which meets the requirements of sec. 50(a) of this chapter;

(8) on-the-job training, apprenticeships and other work experience unless structured as part of a planned educational experience which meets the requirements of sec. 50(a) of this chapter;

(9) independent writing of articles or research reports or the presentation of papers outside a planned educational program which meets the requirements of sec. 50(a) of this chapter;

(10) individual, self-directed studies or other forms of independent learning experiences which are not subject to later verification by testing for the acquisition of cognitive or affective skills;

(11) non-educational activities of associations and professional societies, which may otherwise be used to qualify for professional and occupational group membership or certification; or

(12) a program involving less than 10 contact hours of instruction. (Eff. 5/13/77, Register 62)

Authority: AS 08.70.050(a)(4) and (b)

12 AAC 46.070. APPLICATION FOR LICENSE RENEWAL. A person applying for renewal of his or her license as a nursing home administrator shall submit to the department

(1) a completed license renewal application form including a sworn statement that he or she has not violated the provisions of sec. 900(5) of this chapter;

(2) proof of meeting the continuing education requirement of sec. 40 of this chapter in the form of an official college transcript or a letter from the sponsor of a continuing education program, whichever is appropriate; and

(3) the annual license fee required by AS 08.70.150(3). (Eff. 5/13/77, Register 62)

Authority: AS 08.70.050(a)(2) and (3) and (b)

12 AAC 46.900. DEFINITIONS. In this chapter

(1) "accredited college" means an institution that meets the accreditation standards set forth by the Northwest Association of Schools and Colleges or its equivalent;

(2) "board" means the Board of Nursing Home Administrators,

(3) "continuing education unit" means 10 contact hours in an organized continuing education experience under responsible sponsorship, capable direction and qualified instruction;

(4) "department" means the Department of Commerce and Economic Development;

(5) "good moral character" means that a person

(A) has not paid, given, caused to be paid or given or offered to pay or to give a commission or other valuable consideration for solicitation or procurement, either directly or indirectly, of nursing home patronage or has accepted such a payment;

(B) has not committed acts of misconduct in the operation of a nursing home including but not limited to fraud, deceit, or misrepresentation in his capacity as a nursing home administrator;

(C) is not addicted to or dependent upon the use of alcohol, morphine, cocaine or other drugs recognized as producing an abnormal effect;

(D) has not been convicted of a felony relative to work as a nursing home administrator; or

(E) has not engaged in conduct that demonstrates unfitness to practice as a nursing home administrator;

(6) "health care facility" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care of two or more nonrelated individuals suffering from illness, disease, injury or deformity, or a place devoted primarily to providing obstetrical or other medical or nursing care for two or more nonrelated individuals and includes a convalescent home, nursing home, a public health center, and community mental health center and a facility for the mentally retarded. (Eff. 5/13/77, Register 62)

Authority: AS 08.70.050(b)

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
POUCH D
JUNEAU, ALASKA 99811
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PROCEDURE FOR OBTAINING A LICENSE AS A NURSING HOME ADMINISTRATOR

BASIC QUALIFICATIONS

1. Minimum age of 19
2. High school graduation or equivalent
3. An Associate Degree in administration from an accredited college.

LICENSE BY EXAMINATION

The board offers the NAB examination twice annually. Examinations will be offered at dates and locations mutually convenient to the applicants and the Board. The following must be on file before you will be scheduled for the examination:

1. Completed and notarized application form
2. Completed physician's statement
3. Certified copies of any academic degrees held in the field of health care administration or certified copies of transcripts
4. $25 examination fee

The $50 annual license fee may be submitted before the examination and must be submitted before a license will be issued.

LICENSE WITHOUT EXAMINATION

The Board may issue a license without examination to a qualified person holding a current license as a nursing home administrator from another jurisdiction. The applicant must have passed either the NAB or the PES examination for nursing home administrators with a minimum score of 75%. The following must be on file before your application will be reviewed by the Board:

1. Completed and notarized application form
2. Completed physician's statement
3. Certified copies of any academic degrees held in the field of health care administration
4. Certified copy of current license in another jurisdiction
5. $25 investigation fee

The $50 annual license fee may be submitted before the application is reviewed by the Board and must be submitted before a license will be issued.

OVER

PROVISIONAL LICENSE

A provisional license may be granted without examination to a qualified person who is needed to fill a vacancy in an administrative position. The following must be on file before you will be issued a provisional license.

1. Completed and notarized application form
2. Completed physician's statement
3. Certified copies of any academic degrees held in the field of health care administration
4. A written statement from the prospective employer of the circumstances of the need to fill a vacancy

The provisional license is valid for six months and is renewable.

GENERAL INFORMATION

All copies of documents must be certified by a Notary Public to be true copies of the original documents.

All fees are to be paid by check or money order made payable to the Board of Nursing Home Administrators.

Applications for licensure, other than those for provisional licensure, will be reviewed by the Board at its next regularly scheduled meeting.

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF NURSING HOME ADMINISTRTORS
POUCH D
JUNEAU, ALASKA 99811

I HEREBY MAKE APPLICATION FOR A LICENSE AS A NURSING HOME ADMINISTRATOR

1. Name _____
(Last) (First) (Middle) (Maiden)

2. Mailing Address (Home) _____
(Street) (City) (State) (Zip Code)

(Business) _____
(Street) (City) (State) (Zip Code)

3. Telephone Home: Area Code ____ No. _____ Business: Area Code ____ No. _____

4. Date of Birth _____ Place of Birth _____
(City) (State)

5. Social Security No. _____

6. Education

(a) Place X in the box indicating the highest grade completed: (All applicants must have completed high school)

6 10 11 12 13 14 15 16 17 18 19

(b) Degree _____

(c) Other educational training: Name _____

Address: _____
(Street) (City) (State) (Zip Code)

Dates attended (From) _____ (To) _____

Subjects _____

_____

Name _____

Address _____
(Street) (City) (State) (Zip Code)

Dates attended (From) _____ (To) _____

Subjects _____ _____

_____

(Attach certified copies of any certificates held)

IMPORTANT All addresses must be complete, including zip code or your application will be returned.

7. EMPLOYMENT HISTORY FOR PAST 3 EMPLOYERS (Give most recent experience first)

FROM Mo. Yr.	TO Mo. Yr.	EMPLOYERS Name, address, type of business	TITLE AND DESCRIPTION of duties performed

8. Have you been convicted, or is trial pending, for committing a crime, felony or misdemeanor: Yes _____ No _____. If yes, explain _____

_____

9. How many years experience do you have in health care administration? _____

10. Are you currently registered as a Nursing Home Administrator in any other state?

Yes ____ No ____. Name of state(s) _____

Name of State of original license _____

Date of original license _____ License No. _____
(Day) (Month) (Year)

By examination _____ Other _____
(Type of exam)

11. Attach a RECENT (within 90 days) photograph, at least 2" by 3". Type or print your name on the back of the photograph.

AFFIDAVIT OF APPLICATION

I, _____, under oath, do promise and swear that if this application is accepted and I should be granted a license to practice as a Nursing Home Administrator in the State of Alaska, I will obey the laws of the State, the Regulations of the Board of Nursing Home Administrators, and maintain the honor and dignity of the profession.

It is understood and agreed that if I should fail to keep the above agreement, or if I have made any false statements in this application that my license may be suspended or revoked by the Board at any time.

I further state that all statements made by me in this application are true and correct.

_____
(Signature of Applicant)

Sworn to and subscribed before me this _____

day of _____, 19 _____. S

E

_____ A

Notary Public

State of _____ L

My Commission Expires _____

12. CERTIFICATE OF MORAL CHARACTER

THIS CERTIFIES that I have been personally acquainted with _____ _____ for _____ years and that I know him to be of good moral character, not addicted to the use of habit-forming-drugs or intemperance, and I recommend him to the Board of Medical Examiners, State of Alaska, as being entirely worthy to be licensed to practice medicine in Alaska pursuant to law.

Name _____

Address _____

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of _____, this _____ day of _____, 19 _____

_____
Notary Public

NOTARY SEAL

_____
My Commission expires

STATEMENT OF EXAMINING PHYSICIAN

Physicians completing this form must return it directly to:

Department of Commerce & Economic Development
Board of Nursing Home Administrators
Pouch D
Juneau, Alaska 99811

I have examined _____

(PRINT NAME OF APPLICANT)

within the last three months and found him to be in good health and free from contagious disease. To the best of my knowledge he has no physical or mental impairments which would make him unsuitable or unfit to be licensed and to practice as a Nursing Home Administrator.

ADDITIONAL COMMENTS:

DATE: _____ SIGNED: _____

Please print the following information:

Name of Examining Physician: _____

Address: _____

BOARD of PHARMACY

A PERFORMANCE REVIEW OF THE BOARD OF PHARMACY

October 30, 1978

A PERFORMANCE REVIEW OF THE BOARD OF PHARMACY

October 30, 1978

Commissioner of the Department of Commerce and Economic Development	H. Phillip Hubbard
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the Board of Pharmacy

Chairman	Eldon Ulmer
Secretary	Charles R. Rush
Member	Lester E. Elkins
Member	James L. Murphy
Member	James H. McCorcle
Member	Fred Savok
Member	Robert K. Snider

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

October 30, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
BOARD OF PHARMACY

October 30, 1978

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Board of Pharmacy was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determing whether the Board of Pharmacy should be reestablished. The law currently specifies that this Board will terminate on June 30, 1979, but will continue until June 30, 1980 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) Interviews with Board members and questionnaires sent to the Board;

(3) Interviews with health agencies and professional associations;

(4) Tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) Interviews with OL employees;

(6) Complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency, and the Equal Employment Opportunity Office; and

(7) Questionnaires sent to state licensed pharmacists.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor

has it developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090.

(2) The Division of Occupational Licensing has not adequately collected, recorded and maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out their administrative responsibilities.

ORGANIZATION AND FUNCTION

The Board of Pharmacy is a regulatory board with seven members; five pharmacists licensed in the State having 3 three years practical experience, and two public members with no direct financial interest in the health care industry. It is desired to have each of the four judicial districts represented by at least one Board member.

The Board regulates six groups engaged in pharmacy in the State; pharmacists, intern pharmacists, retail pharmacies, wholesale pharmacies, drug rooms, and shopkeepers. The function of the Board is to determine the minimum quality of pharmacy in the State by:

1. Examining and issuing licenses to qualified applicants;

2. Establishing or amending rules and regulations necessary and desirable to enforce State statutes; and

3. Holding hearings in order to revoke, annul or suspend the license of a person violating the pharmacy statutes and regulations.

Applicants for registration as a pharmacist are required to pass an examination by a board of pharmacy approved by the National Association of Boards of Pharmacy (NABP). Those seeking registration in Alaska by examination must also pass a prescription and jurisprudence examination for Alaska. It is required that this segment be graded by a Board member residing in a different judicial district than the applicant.

Statutes have given the Board the power to waive the examination if applicants meet certain qualifications in order to grant a license by endorsement. A temporary license, valid for three months or until the next regular Board meeting, whichever is longer, may be issued upon certification by a Board member of a written or oral exam passage and meeting other certain qualifications. Another waiver is an emergency permit, which requires proof of holding a license in good standing in a state recognized by NABP. This permit is valid for a period not to exceed 60 days.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of out evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report so that the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Pharmacy should continue to be the body that regulates and licenses its profession. The regulation and licensing of the professionals, pharmacies and drug rooms is necessary to protect the public health, safety and welfare.

The practice of pharmacy is regulated by the Alaska State Board of Pharmacy. Also, the Board is required to license shopkeepers dispensing non-prescription drugs. Because the practice of pharmacy affects the public's health, safety and welfare, we believe pharmacists should be subject to regulations and controls. The establishment of minimum educational and experience requirements provides the public with a reasonable assurance that persons licensed are qualified. In addition, an active investigation of complaints assure the public that those licensed continue to practice in a competent manner. In our opinion, these functions have been performed by the Board of Pharmacy.

However, we are making recommendations which, if implemented, will improve the effectiveness of the Board in serving the Alaska public.

We recommend the Board fulfill all of its statutory responsibilities to adopt regulations, report to the Legislature, and to issue shopkeeper permits while seeking changes in the Alaska Statutes (see Recommendation No. 1).

We recommend that qualified pharmacist applicants, who are licensed in another state, but who have not had 540 hours of postgraduate internship, be licensed. In addition, we recommend licensed pharmacists be required to demonstrate continued competency through continuing education or re-examination (see Recommendation No. 2 and 3).

We recommend that the Board comply with statutory requirements for grading examinations and establish internal controls to assure that the administration of examinations is not open to accusations of bias (see Recommendation No. 4).

We recommend legislation be considered to establish an annual inspection of pharmacies by the Board. Presently, some inspections are being performed by the Board. We recommend this program be formalized to provide additional public protection (see Recommendation No. 5).

We recommend a limitation on the consecutive number of terms a Board member can serve. Although we found many examples of commendable public service on the part of Board members, several pharmacists have complained the Board members do not represent all pharmacists (see Recommendation No. 6).

In addition, we recommend the Board promulgate regulations which will define and list examples of acts by pharmacists which should be considered licensing violations (see Recommendation No. 7).

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 8 are addressed to the Board of Pharmacy. Findings and Recommendations No. 9 and No. 10 are addressed to the Division of Occupational Licensing (OL) and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978", issued under separate cover.

Recommendation No. 1

The Board of Pharmacy should fulfill all of its statutory responsibilities while seeking necessary statutory changes.

The Board of Pharmacy has not:

A. Issued a list of potentially dangerous ingredients or preparations that may be sold only under the direct supervision of a licensed pharmacist as required by AS 03.80.040(6).

In 1974, the Board issued proposed regulations which listed potentially dangerous ingredients and preparations which could be sold only under the direct supervision of a licensed pharmacist. The proposed regulations also included a list of non-prescription drugs which could be sold by stores other than licensed pharmacies, provided those stores had a State issued shopkeepers permit.

Due to the potential anti-competive effect of these regulations, they were not approved by the Department of Law. We agree the regulations would have restricted competition and reduced the vailability of non-prescription drugs.

The need for additional controls on non-prescription drugs, preparations and ingredients is questionable. The public protection afforded by additional controls, especially those mandated by AS 08.80.040(6) is not likely to outweigh the anti-competitive effects and the reduced availability of non-prescription drugs. As a result, repeal of AS 08.80.040(6) should be considered.

If state drug laws, in conjunction with Federal drug laws, do not adequately protect the public, revision of those statutes should be considered. This might be accomplished by the adoption of a

uniform Controlled Substances Act, as recommended by the Board of Pharmacy.

If AS 08.80.040(6) is not repealed, the Board of Pharmacy, with the help of the Department of Law, should prepare regulations addressing potentially dangerous ingredients and preparations which are not anti-competive and are consistent with other State and Federal drug laws.

B. Issued shopkeeper permits as required by AS 08.80.040(7).

Currently, the Board is recommending the repeal of the statutes requiring permits for shopkeepers who dispense non-prescription drugs. We agree that this permit is not needed. The issuance of a shopkeepers permit to a grocery store that sells aspirin increases government, business and individual costs while doing little to protect the public.

Repeal of the statutes relating to the issuance of shopkeeper permit should be considered. However, if these statutes are not repealed the Board should begin issuing the shopkeeper permits.

C. Adopted into their regulations a schedule of fines for violation of the substitution statute as required by AS 08.80.460.

Adequate enforcement of protective regulations requires the adoption of penalties for violations. Although the Board approved a schedule of fines in January, 1977, OL did not draft regulations for Board approval and public hearings.

D. Submitted an annual report to the Legislature on the condition of pharmacy within Alaska as required by AS 08.80.040(4).

Although the Board requested OL to prepare the 1976 report the last report submitted was for 1974.

The annual report to the Legislature can be used to advise the Legislature of the Board's goals and achievements as well as the current problems and needs, especially statutory changes needed within the pharmacy profession.

In order to assure that its statutory responsibilities are fulfilled, the Board should follow up on all Board requests for OL action.

Recommendation No. 2

Consideration should be given to statutory changes needed to assure that all qualified applicants are licensed and that all licensed pharmacists remain qualified.

The following areas require consideration:

A. The Board of Pharmacy is recommending a change in the statutes which will require 540 hours of postgraduate internship in order to be licensed by endorsement. This change will make the requirements for licensure by endorsement consistent with the basic licensure requirements. However, since 32 states do not require a postgraduate internship for licensure, the change could restrict qualified licensed pharmacists from other states from obtaining Alaska licensure.

It is the Board's policy to allow licensed work experience to substitute for a postgraduate internship requirement for endorsement purposes. We believe that this substitution provision is necessary. However, the recommendation statute change does not allow for this substitution.

If the Board's recommended changes in the endorsement requirement are adopted, they should be accompanied by a provision which allows licensed work experience to substitute for the internship.

B. The statutes do not require a pharmacist to demonstrate continued competency in order to renew a current license. Although the Board encourages continuing education by pharmacists, it has not recommended continuing education be a requirement for licensure renewal. Nor has the Board recommended any other methods, such as a reexamination, to ensure the continued competency of licensed pharmacists.

Thirty-nine percent of the licensed pharmacists who responded to our questionnaire said they thought continuing education should be a requirement for license renewal (see Appendix F). We believe that some competency indicator is needed. In addition, competency requirements should be consistently applied, unless a hardship can be demonstrated to the Board.

A pharmacist who has not practiced for three or more years, but who has kept his license renewed can begin practicing again without proof of competency. However, if that pharmacist allows

his registration to lapse for 2 or more years AS 08.80.250 requires the pharmacist to satisify the Board of his competence. All pharmacists' license renewals should based on the indication of continued competency.

If continuing educational requirements are established, they should allow the Board some discretionary latitude in the application of these competency requirements. Continuing education requirements may place an undue hardship on certain rural pharmacists. Rather than deny relicensure and reduce pharmaceutical care in rural areas, the Board should be allowed the right to waive this requirement in special cases.

Recommendation No. 3

The Board of Pharmacy should ensure that all qualified applicants are licensed.

In response to our questionnaire, pharmacists stated that the Board is not following the statutes in issuing licenses. The following Board policies either support those statements or make it difficult to determine if unjustified license denial has occurred.

A. Temporary licenses are denied to endorsement applicants contrary to the law. During the October 5, 1978 meeting of the Board, an applicant was denied a temporary license because he did not have 540 hours of postgraduate internship.

Internship is not currently a statutory requirement for licensure by endorsement. However, the Board has interpeted the law in a manner which supports their actions.

We recommend that the Board obtain a legal opinion on this matter before denying any more temporary permits on the basis of an internship requirement.

B. It is Board policy not to accept California, Florida or Hawaii licensure for endorsement. This is because these three states do not grant licenses by reciprocity. The fact that other states restrict licensure should not justify the denial of Alaska licensure by endorsement for qualified applicants from those states. The Board should apply endorsement to qualified applicants from all states. In cases where the applicant can not show proof of qualifications, licensure should not be granted.

C. Currently, applications are being sumitted by applicants directly to Board members for processing.

It is the policy of the Board to forward the original application documents to OL.

Although there is no evidence of improprieties on the part of the Board, there is no assurance all applications are received by OL, or that the Board does not arbitrarily refuse to accept an application for licensure. In addition, because OL does not have data on applicants denied licensure, we can not determine the extent of license denial or if inappropriate denial has occured.

Because AS 08.01.050 places this responsibility on the Department, and in order to reduce the potential for criticism, all applications for licensure should be submitted by the applicant directly to OL. This would also allow OL to generate accurate statistics on pharmacy applications and licensure.

D. License application forms may not comply with Equal Employment Opportunity (EEO) guidelines. The forms currently used request information from the applicant which is not essential to determine an applicants qualifications for licensure. In order to ensure that application forms do not request information which could result in unlawful discrimination of applicants, the Board should, in conjunction with the Division, seek legal council and if necessary review and revise these forms (see the OL Performance Audit Report).

Recommendation No. 4

The Board of Pharmacy should revise examination procedures to ensure conformance with Departmental policy and statutory requirements.

The following examination procedures require the Board's attention:

A. Jurisprudence examinations are administered without the presence of a Department or otherwise independent observer. This practice leaves the Board open to accusations of partiality during the administering of examinations.

B. Jurisprudence examinations are not graded in accordance with AS 08.80.040(1) which requires examinations to be graded by a Board member who resides in a judicial district other than the district in which the applicant resides. Although the Board has stated that the jurisprudence examination is used primarily as an educational tool, the Board has required the passage of this examination for licensure.

The Board is presently recommending the inclusion of the jurisprudence examination as a requirement for licensure by endorsement.

In light of the current use of the jurisprudence examination and the recommended statutory changes, the Board should revise their procedures to conform with the statutes in order to assure the rights of applicants.

Recommendation No. 5

Legislation is needed which establishes an annual inspection of licensed pharmacies, drug rooms and nursing home dispensaries by the Board of Pharmacy.

The Board of Pharmacy has established a pharmacy inspection program. The Board should be commended for initiating this needed program.

The current inspection program is carried out in two ways. First, retail pharmacists inspect their own stores and return a completed inspection form to the Board. Secondly, Board members perform on-site inspections of pharmacies.

In response to our questionnaire several licensed pharmacists have mentioned a need for a more extensive inspection program. Several states, such as Washington, have very extensive pharmacy inspection programs and all states have an annual pharmacy inspection. Inspections help ensure pharmacies are sanitary, sufficiently equipped and that drugs are dispensed according to the law.

The Board could carry on a systematic annual inspection of pharmacies for a reasonable cost. By continuing to utilize Board member expertise, a comprehensive program could be implemented for an estimated $5,500 in per diem and $6,000 in travel expenses. This is substantially less than hiring a full-time pharmacy inspector, at an estimated cost of $60,000.

Specific legislation is needed to clarify the Board's authority to perform and require a pharmacy inspection. A possible method

off-setting the cost of an inspection program would be to require an annual inspection fee from pharmacies doing business in the State.

Recommendation No. 6

Board appointment policies and a code of conduct for Board members should be developed, documented and adopted.

Currently several conditions exist within the Board of Pharmacy which should be noted:

A. Board membership does not represent all segments of the pharmacy profession. Hospital and employee pharmacists are not represented by Board membership.

B. By the time current terms expire, one Board member will have served 20 consecutive years on the Board while two other members will have served fifteen consecutive years. In addition, a previous Board member served for twenty-five consecutive years.

C. Of the members of the Board, two are public members and five are licensed pharmacists.

In response to our questionnaire, several licensed pharmacists said the Board should be more representative of the profession and there should be increased opportunities to serve on the Board. We agree that a regulatory board should have reasonable turnover in membership. This could be accomplished by limiting appointments to two consecutive terms. However, this should not be considered criticism of the individual members. In our review, we found many examples of commendable public service and self-sacrifice on the part of the Board members.

Because the regulations, and policies of the Board of Pharmacy have a substantial impact on the health, welfare, and ultimately the pharmaceutical costs paid by the public, the use of additional public members is desirable. Knowledgeable active public members provide a valuable point of view otherwise absent on a board on which a substantial majority of the members are license holders.

In addition to improving membership appointment policies a code of conduct for Board members needs to be set down in writing by OL. The Board has an unwritten code of ethics within its membership. There is evidence that this code has been adhered to in numerous cases.

The development and adherence to a formal code of ethics is essential for a regulatory board to ensure conflicts of interest do not occur. The Board of Pharmacy has established an example which should be followed by all boards (see the OL Performance Audit Report).

Recommendation No. 7

The Board of Pharmacy, in conjunction with the Attorney General, should compose formal regulations which define and list examples of license violations.

Alaska Statute 08.80.260 outlines pharmacist license violations which are grounds for the suspension of revocation of a license. The list includes vague terms such as "moral turpitude" and "conduct or habits inconsistent with professional standards", which many pharmacists probably would not understand without a lawyer's advice.

Presently, the Board has not clarified or given examples of violations of "moral turpitude" or "conduct or habits inconsistent with professional standards" in their regulations. The public and the pharmacy profession would be better protected if licensed professionals had better guidance as to what are prohibited acts.

There are several practices which may be covered under "conduct or habits inconsistent with professional standards" which are not specifically listed as licensing violations. Such practices by pharmacists include, but are not limited to:

A. Entering into fee sharing agreements with prescribers;

B. Refusing to provide services to any group of people or organization based on race, religion, creed or ethnic background;

C. Attempting to diagnose, treat or prescribe for diseases or illnesses; and

D. Engaging in false or misleading advertising.

Clearer definitions of improper professional acts would also make it easier for the investigators to determine if a complaint involves a licensing violation (see the OL Performance Audit Report).

Recommendation No. 8

The Board of Pharmacy should establish formal goals, objectives and quantifiable measures which should be included in the OL's budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual acccomplishments can be compared with stated targets. With goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL established its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured, neither the Governor's Office nor the Legislature can evaluate the Board's performance (see the OL Performance Audit Report).

Recommendation No. 9

OL should issue licenses only after the Board, with a quorum present, approves licensure as documented in the meeting minutes.

The Division issues licenses to pharmacists without the documented approval of the Board. Licenses are issued upon the authorization of the Board secretary after he determines an applicant's file is complete and other Board members are notified.

AS 08.80.040 directs the Board to issue licenses. This requires a meeting with a quorum present. Licensing documents should be reviewed by all Board members present at such a meeting in order to ensure adequate review. Action on the individual applicants should be recorded in the meeting minutes.

In order to document for the public record license approvals, as well as other important issues discussed during Board meetings, the Division should include adequate detail of the Board proceedings in the Board minutes. Minutes of past Board meetings do not include enough detail to determine the substance of Board actions.

We recommend that the Board, in coordination with the Division, revise their procedures in order to avoid potential criticism of licensing improprieties and to provide an adequate record of Board action (see the OL Performance Audit Report).

Recommendation No. 10

OL should collect, record and maintain for a five year period files and statistics of license and testing applicants and related workload of the licensing examiner.

The Division needs relevant facts and statistics for evaluating the performance of their personnel and Board activity. Many past records have not been collected and maintained, such as:

1. Number of persons licensed by the Board in past years;

2. Records of those applicants failing the examination;

3. Number of applicants denied the chance to take the examination due lack of qualifications;

4. Number of complaints and criticisms about the performance of the Board and its staff;

5. Correspondence workload of license examiners; and

6. Number of persons requesting applications.

It is to the advantage of the Division to keep these records in order to support their budget request, evaluate their personnel and keep the Board informed as to their progress. Also, feedback from the Board and the public should be encouraged so as to determine whether staff performance is adequate (see the OL Performance Audit Report).

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative attainments as Board activities relate to the public need factors defined in the "Sunset" law. These analyses are not intended to be comprehensive in nature, but address those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

A. The following demonstrate the Board's performance in the public's best interest.

1. The Board has held an average of two meetings a year in various locations in Alaska.

2. The Board has established and adhered to a Code of Ethics for Board members.

3. The Board provides a national examination once a year.

4. The Board has also attempted to pass regulations for potentially dangerous ingredients and fines for violations of the substitution statute.

5. The Board has written proposed regulations for the Medical Board for physician assistants.

B. The Board members' personal actions have been commendable and in the best interests of the public. We observed several examples of self-sacrifice, and of placing the needs of the public before the needs of the profession.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. The following enhanced the performance of the Board of Pharmacy:

1. Active knowledgeable Board members seeking to assure that pharmacy is practiced in the best interest of the public (see Appendix F).

2. The Board received funding and support from OL in the amount of $17,500 (see Appendix A).

B. The following practices have impeded the Board's performance:

1. The investigative staff has not informed the Board of all licensing complaints (see the OL Performance Audit Report).

2. The Board believed that OL has not been able to provide adequate support, for example regulations passed were not drafted for public hearings (see Recommendation No. 2).

3. There has been a high turnover in clerical support in OL hindering the Board performance. One member believed that a full-time clerical support position would enhance the Board's performance.

4. Alaska's drug laws do not agree with federal drug laws creating conflicting legal requirements for pharmacists.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Board of Pharmacy has recommended many statutory changes which are generally of benefit to the public interest. The following is a brief summary. Some recommendations have been made several times.

1. The Board has requested that Title 17 be deleted and that the Uniform Controlled Substance Act be adopted.

2. The Board requested additional authority to investigate improper practices of pharmacy (AS 08.80.030(c)).

3. The Board has requested physicians be required to label prescriptions (AS. 08.80.400).

4. The Board has requested that shopkeeper permits not be required (AS 08.80.040).

5. The Board recommended fines for noncompliance with the substitution law (AS 08.80.295).

6. The Board has requested statute changes to require applicants licensed by endorsement to pass a Jurisprudence Examination (see Recommendation No. 4).

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. We found no evidence the Board has encouraged interested persons to report to it. The minutes are not sufficient to determine the extent of public participation. We were told by the Board members that they encouraged public participation, and that concerned persons had reported to the Board.

B. The Board members did not believe that it was a Board function to increase the availability of pharmacists in the State (see Appendix E).

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

A. The Board's meetings, examinations, and public hearings are advertised in newspapers, by OL, to encourage public participation. There were cases noted where two tests were advertised 12 days or less before the examination was given. This is clearly not a sufficient time lapse. We found no other indication the public has been encouraged to participate (see the OL Performance Audit Report).

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

A. The only complaints we became aware of concerning the Board were from persons responding to our questionnaire. There were two areas of concern:

1) The board membership does not reflect the employee pharmacists and hospital pharmacists (see Recommendation No. 6 and Appendix F).

2) The board inspection program is not sufficient to protect the public (see Recommendation No. 5 and Appendix F).

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. The Board has actively pursued complaints and inquiries. We observed cases where the Board has personally investigated complaints.

B. The Board has assigned one member to work with the investigative staff to provide technical assistance.

C. The Board has issued 136 permanent licenses, 16 honorary licenses, and 1 temporary permit in the past four years.

D. In Anchorage, the Board members have developed a "Hot Line" by which all pharmacists in the area can be alerted of potential problems.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

A. Applications require unnecessary information such as an applicant's sex, age, picture, past convictions. This is in violation of the Equal Employment Opportunity requirements. However, this information may be necessary to confirm an applicant's qualification. We have recommended the Board seek legal counsel to determine if they are in compliance.(see Recommendation No. 3 and the OL Performance Audit Report).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the recommendation section of this report, and the OL Performance Audit Report.

APPENDIXES

APPENDIX A

BOARD OF PHARMACY
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Average Revenue (See Schedule 1 and Note 1)	$12,400
Expenditures (See Note 2)	17,500
Excess of Expenditures Over Revenues	$(5,100)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Pharmacist		
Pharmacy Intern Registration Fee	$10	Upon intern application
Examination Fee	50	Application for examination
Reexamination Fee	15	Reexamination within one year
Reciprocity Investigation Fee	25	Application for licensure by reciprocity
Temporary License Fee	10	Issuance of temporary license
Emergency Permit Fee	10	Issuance of emergency permit
Pharmacist License	50	Biennially
Pharmaceutical Distributor		
Wholesale Drug Dealer License Fee	50	Biennially
Retail Pharmacy License Fee	50	Biennially
Hospital Pharmacy License Fee	50	Biennially
Hospital Drug Room License Fee	25	Biennially
Nursing Home In-patient Distribution License Fee	25	Biennially
Shopkeepers Permit (see Note 3)	10	Biennially
General		
License Amendment or Replacement Fee	2	Upon reissuance of license

Note 1

Most of the pharmacy revenues are composed of renewal registration fees. These fees are collected once every two years

and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Year 1977 and 1978 in order to obtain an accurage representation of collected revenues.

Note 2

Expenditures included those made by Board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board and OL.

Note 3

Shopkeepers permits have not been issued.

APPENDIX B

ADMINISTRATIVE STATISTICS

Licensed Pharmacists in Alaska	Through June 30, 1978
Pharmacists licensed and working in Alaska	179
Out-of-State pharmacists licensed in Alaska	103
Total pharmacists licensed in Alaska	282
Pharmacies in Alaska	
Retail pharmacies in Alaska	73
Wholesale pharmacies in Alaska	3
Total Pharmacies in Alaska	76
Drug Rooms in Alaska	
Hospital drug rooms in Alaska	11
Nursing Home drug rooms in Alaska	3
Total Drug Rooms in Alaska	14

APPENDIX C

COMPARISON OF ALASKAN PRESCRIPTION PRICES
TO SEATTLE AREA PRESCRIPTION PRICES
(see Note 1)

	Description	Average Prices Alaska	Seattle	Alaska % of Seattle
1.	Nitroglycerine tablets, 1/100 gr., 100 tablets	$ 3.33	$ 3.04	110%
2.	Erythromycin tablets, 250 mgm, 50 tablets	9.39	8.13	115%
3.	Ampicillin capsules, 250 mgm, 50 capsules	8.63	7 91	109%
4.	Benadryl (Diphenhydramine), 25 mg, 50 capsules	4.50	4.47	101%
5.	Potassium penicillin G tablets, 200,000u, 50 tablets	4.45	5.02	89%
6.	Benadryl (Diphenhydramine), Elixir-12.5 mg/cc, 6 oz.	4.06	4.18	97%
7.	Cortisporin (Polymyxin B-Neomycin), ear drops, 10 cc	6.58	5.90	112%
8.	Kwell (Gamma Benezene), lotion 1%, 2 oz.	4.25	4.02	106%
9.	Neosynephrin (Phenylephrin HCL), nose drops 1/4%, .. oz.	1.72	1.72	100%
10.	Povan (Pyruinium Pamoate), suspension, 10mgm/cc liquid, 6 oz.	17.43	14.15	123%
11.	Cortefacetate (Hydrocortisone) 1%, ointment, 2oz.	8.82	6.64	133%
	Total Actual Costs	$73.16	$65.18	112%

Note 1

Prices were averaged from questionnaires returned to Legislative Audit. Alaska prices were not segregated by region because there was no significant difference in prices by region.

APPENDIX D

PHARMACY INSPECTION FORM
ALASKA BOARD OF PHARMACY

DATE OF INSPECTION:_____:

+ + + +

APPENDIX E

QUESTIONNAIRE FOR MEMBERS OF THE BOARD OF PHARMACY
(See Note 1)

Please answer the following questions as completely as possible. The answers will help us to evaluate the Board's activities.

1. What do you believe to be the goals and objectives of the Board of Pharmacy?

   A. *The number one justification for the existence of a Board of Pharmacy is for the protection of the public. All goals and objectives have to be subordinate to and compatible with this protection of the public.*

   B. *Examine applicants for registration as pharmacists and grant certificates of registration only to those who meet standards as to education and training, and who are of good moral character and free from addiction to drugs or alcohol.*

   C. *Examine intern applicants and register them as intern pharmacists, only after research as to qualifications, education, moral character as above for pharmacists.*

   D. *Investigate individually or collectively, or through its agents, for violations of the pharmacy laws of both State and Federal government.*

   E. *Follow a legend drug and or controlled substance through the various channels from suppliers, to wholesalers, to retail pharmacies, to physicians, and finally to the ultimate user so that this distribution is done in compliance with the various laws of the State and nation, and the incidence or opportunity of diversion of these dangerous drugs is kept at a minimum.*

   F. *Through association with the National Board of Pharmacies, keep up with all national laws and keep alert for forged documents and those with drug and alcohol problems and even addicts who might attempt to practice pharmacy in this State to the detriment of the people of the State.*

   G. *Inspecting pharmacies to assure that they are clean and have the necessary equipment to properly fill prescriptions.*

2. How does the Board measure its progress in meeting its goals and objectives?

   A. *The Board conducts entrance examinations annually for those graduates of pharmacy schools desiring to practice in Alaska.*

   B. *The Board provides self-examination forms for self-inspection, and periodic on-site inspections are made by Board members.*

   C. *The number of regulations considered, rewritten and passed.*

   D. *The volume of business conducted by the Board at the meetings.*

   E. *The Board has received very few complaints on the profession.*

3. Is the staff from the Department of Commerce and Economic Development and/or other departments adequate to perform and enforce all laws and regulations relating to the Board of Pharmacy? What staff support services are provided adequately/inadequately? Are investigations performed adequately/inadequately?

   A. *The staff from Department of Commerce and Economic Development is inadequate to perform and enforce all of the laws and regulations pertaining to the practice of Pharmacy. Having Board members in various cities around the State amounts to have a State official in the areas at a fraction of the cost of maintaining a permanent employee.*

   B. *Investigations performed by the Department are thorough, but the caseload per investigator is such that investigations are sometimes delayed.*

4. What evidence exists demonstrating that the absence of pharmacy regulations and/or the Board would be detrimental to the public's best interest?

   A. *The Board has intercepted and rejected licenses for a number of people who could definetely be detrimental to the public's best interest. I do not believe that these people would have been rejected had the Board not investigated them carefully and stood firm in its decision when we felt they were not qualified.*

B. *The fact that the Board has intercepted a good number of bad actors over the years is the best answer to this question. Without knowledable interogation and investigation, with co-operation of the NABP and other State boards, we would now have a good number of bad actors practicing in Alaska who in a short time could do a great deal of damage, both to themselves and the public. The Board's record on this is good and it is our belief that this could not be done by non professionals with a degree of success that we have enjoyed.*

C. *Even in the pipe line boom times when every shaddy character in the profession was in and out of Alaska, our record is good, and we did not license pharmacists to practice in this State who where not of good moral character and fully qualified.*

5. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restricitve, and/or inadequate to provide the Board with the responsibility and power to properly govern the purpose and activities of the Board? Please list and explain.

A. *Most of the members of the Board of Pharmacy believe that the best laws are the least laws that will do the job and that the people of the State and the regulations themselves will benefit from clear, concise, and needed laws and regulations. But, that we do not need a vast number of restrictive and unnecessary laws or regulations.*

B. *The most pressing need is for a Uniform Controlled Substance Act that closely parallels the Federal law. This will allow the State to prosecute violations at the State level without involving Federal Law anymore than possible, particularly if both laws are much the same. Our Controlled Substance Laws are obsolete and must be rewritten soon.*

C. *The Board of Pharmacy should take an active part in the writing of these laws and can be a great help to those in the Legislature who are considering the Controlled Substance Law Revision.*

6. Based on the March 15, 1978 Attorney General's Opinion that AS 08.80.420(b), which prohibits pharmacists from advertising, is unconstitutional, do you believe it is necessary for the Board of Pharmacy to seek legislation to prohibit pharmacists from using false or misleading advertising?

Yes it is necessary. When a highly professional service is advertised or a product that is difficult for trained people to fully understand, such as most of the complicated drugs used today, it is necessary that regulations be written to prevent the public from being victimized or even "talked into" using drugs that they really do not need. Some of the very dangerous tranquilizer drugs that have a key place in certain aspects of medical science, should not be advertised as a cure all for those who might think they need this type of medication, without also informing the public of the many and complicated side effects of these drugs. Tremendous pressure could be put on physicians by patients who believe the glib TV ad or the glossy magazine or newspaper advertising. This type of advertising, tied to a price, could be detrimental to many people.

7. Presently, there is approximately 1 pharmacist to every 2,600 persons in Alaska, while the national average is 1 pharmacist to every 1,800 persons.

   A. Do you believe more pharmacists are needed in Alaska?

      1. *Yes.....but this should be done by those needing the pharmacists. The Board should aid all those involved, and process applications thoroughly, but expediently, when application is made, but should not enter into a tax funded program to solicit pharmacists.*

      2. *There seems to be an adequate number of pharmacists to serve the people of Alaska. Possibly the disparity between the Alaska and national average is the lack of density of the Alaska population.*

   B. Do you believe it is the Board's responsibility to actively recruit additional qualified pharmacists for Alaska?

      The members do not believe that the Board should recruit pharmacists or act as an employment bureau.

8. Presently, the Board is composed of five pharmacists and two public members. Do you believe an increased number of public members would tend to make the Board:

	Number Responding
A. Mcre receptive to public need.	*-0-*
B. Less receptive to public need.	*1*
C. No change.	*2*

Probably "C" above would apply. However, "B" might prove to be a fact. Two lay persons are really enough to assure full protection from an over profession oriented board. A further dilution of knowledgeable professionals would probably also dilute the effectiveness of the Board ans slow the process of registration. Two lay people can be educated to the real needs of the Board as it serves both the profession, from a licensing standpoint, and the people, from a protection standpoint and any addition of lay people would be nonproductive.

Note 1

A digest of the Board's comments was prepared by the Auditors. Four of the seven Board members assisted us by answering our questions and by supplying us with supplemental information. Other Board members provided us with verbal response to questions, and assisted by providing us with supplemental information.

APPENDIX G

PHARMACIST'S QUESTIONNAIRE
(See Notes 1 and 2)

Name (Optional): _____

		Yes	No	No Opinion
1.	Have you been able to attend any continuing education seminars or classes within the last two years?	85%	15%	
2.	If so, how many hours of classes have you had?	22.3 hr/pharmacist		
3.	Do you believe that State laws should require evidence of continuing education before a pharmacist's registration and license is renewed?	39%	55%	6%
4.	Do you believe adequate continuing education requires travel to areas outside of Alaska?	30%	61%	9%
5.	Is the establishment of a degree program in pharmacy within the University of Alaska needed?	12%	79%	9%
6.	Have you ever had any contact with the Board of Pharmacy?	77%	23%	
7.	If so, was your contact with the Board concerning:			
	A. Interview regarding your licensure?	58%	42%	
	B. New regulations?	24%	76%	
	C. Board policy?	24%	76%	
	D. Investigations?	8%	92%	
	E. New Legislation?	29%	71%	
	F. Board inspection of your practice?	11%	89%	
	G. Other (please specify): *Asked for clarification of laws.*	5%	95%	

		Yes	No	No Opinion
8.	Should the Board of Pharmacy have:			
	A. A majority of pharmacists?	92%		
	B. A majority of public members?	0%		
	C. An equal number of pharmacists and public members?	8%		
9.	Do you believe the Board of Pharmacy has operated in the public's best interest?	77%	8%	15%
10.	Would the absence of the Board be detrimental to the public's best interest?	94%	3%	3%
11.	Are there any statutes or regulations that are obsolete, vague, or unduly restrictive?	30%	21%	49%
	Please specify: *A need for regulations to comply with Federal regulations, especially the Controlled Substance Act. To revise statutes and regulations to clarify intent and legality in areas of discretion.*			
12.	Are there any additional statutes, regulations or licensing requirements needed to ensure the public is adequately protected?	26%	36%	38%
	Please specify: *Three main concerns are: 1) Inspections of pharmacy, 2) Drug Stores to be pharmacist-owned, 3) Limit over availability of drugs by strict control of "who" dispenses "what".*			
13.	Does Alaska need a state pharmacy law similar to the Federal Law?	38%	36%	26%

	Yes	No	No Opinion
15. Do you believe that all geographical areas within the State have adequate access to pharmaceutical services?	30%	40%	30%
If not, note areas you believe need more care: *Remote areas and native villages can not support a full-time pharmacist - we should make use of Public Health in this respect and support it.*			
16. A March 15, 1978 Attorney General Opinion states AS 08.80.420(b), which prohibits pharmacists from advertising, is unconstitutional. Have you changed or do you anticipate changing your advertising policy as a result of this opinion?	5%	64%	31%
17. Is the licensing of shopkeepers needed to protect the public?	61%	24%	15%
18. Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce and Economic Development?	14%	65%	21%
Please specify: *They are slow in acting, especially on applications and licenses. Many pharmacists would like the Division to supply them with copies of the current laws.*			
19. Are you aware of any discriminatory practices involving licensing or investigations of the Board?	2%	92%	6%
20. Has the Board of Pharmacy's self-examination program effectively ensured compliance with state laws and regulations by pharmacists and pharmacies?	45%	11%	44%
21. Is the requirement to maintain a notebook detailing activities during internship a reasonable requirement for licensure?	63%	23%	9%

		Yes	No	No Opinion
22.	Should a previously licensed pharmacist who has not been licensed for 3 or more years be required to take an oral examination before the Board?	77%	18%	5%
23.	Should the Board be involved in consumer complaint review for determining if a pharmacist's license should be renewed or revoked?	80%	15%	5%
24.	Is the issuance of temporary permits to non-licensed pharmacist applicants in the public's best interest?	62%	27%	11%
25.	Are the current reciprocity policies of the Board of Pharmacy fairly and consistently applied to all licensees seeking licensure in Alaska by reciprocity?	85%	1%	14%
	If not, please comment: *Statutes discriminate against Alaska student who attend school in the lower 48 and want to return to Alaska - Board is requiring 540 hours of postgraduate internship for endorsement.*			
26.	Are there any alternatives to the regulation of the profession by the Board of Pharmacy which would better serve the public's interest?	14%	48%	38%
	If so, please discuss: *Board actions should be more representative of the profession and should work to enhance professionalism - these concerns do not have to conflict with the public's best interest.*			

27. Any additional comments?

Many pharmacists expressed repeatedly the Board is not representative citing the following conditions:

1) The non-public (professional) members of the Board are all store-owners.

2) Pharmacy chains, hospital pharmacists, staff pharmacists, independent pharmacists, employee pharmacists, and the Alaska State Pharma utical Association are not directly represented on the Board.

3) The Board should be rotated more often.

a. As their present terms expire, 3 Board members will have served 15 or more consecutive years on the Board.

b. Several inquired as to how one could become a Board member.

c. Progressive points of view from new sources can't be realized if they aren't given a chance to be proven.

4) Board is an elitist group whose view point is financial, not professional.

5) Both professional and consumer sectors need representation.

6) Board hasn't kept its constituency aware.

The Board needs to take definite action toward establishing continuing education requirements, an all inclusive inspection program on a regular basis, and work to have a Controlled Substances Act passed. Several respondents wanted the Board to act on proposing legislation to establish temporary licenses for various circumstances.

Note 1

A digest of comments, provided by the profession was made by the Auditors. In addition, members of the profession supplied us with additional information to be considered in this review.

Note 2

Number of questionnaires sent	124
Number of questionnaires returned	67
Response rate	54%

JAY S. HAMMOND
GOVERNOR

RECEIVED
JAN 11 A.M.
LEGISLATIVE
AUDIT

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary reports as shown below:

1. Board of Examiners in Optometry
2. Board of Dispensing Opticians
3. Board of Psychologist and Psychological Associate Examiners
4. Board of Chiropractic Examiners
5. Alaska State Medical Board
6. Board of Veterinary Examiners
7. State Physical Therapy Board
8. Board of Pharmacy
9. Board of Nursing
10. Board of Nursing Home Administrators
11. Board of Dental Examiners
12. Alaska Transportation Commission

We view these reviews of agency programs and activities which are specifically subject to termination in a manner different from those made of State departments or agencies. Usually we in the Executive Branch endeavor to respond directly to each finding and recommendation. However, in regard to the Boards and Commissions, the Executive Branch agency during a public hearing shall demonstrate a public need for its continued existence or the discontinuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

The Executive Branch of Alaska Government has made an extensive study of the above Boards and the Alaska Transportation Commission. We are continuing to study those entities, their origin, their present and future potential, and other related subjects in conjunction with Alaska statutes 24 and 44 (Sunset Legislation). As prescribed in AS 44.66.050 one or more legislative hearings are to be held to receive testimony from the public, the Commissioner of the department having administrative responsibility for each, and the members of the Boards or Commission involved. During those hearings we will present our findings and recommendations affecting each of the foregoing Boards and the Alaska Transportation Commission.

January 9, 1979

Accordingly, we are presenting this in addition to the responses from the Department of Commerce, Department of Law, and the individual Board or Commission members and others on an interim basis.

Sincerely,

Michael Harper
Administrative Assistant
to the Governor

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

December 15, 1978

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the performance review of the Board of Pharmacy as submitted by the Division of Legislative Audit.

Recommendation No. 1. Agreed in that all boards should comply with statutes. The board should take further action either in promulgating the appropriate listing of dangerous ingredients or requesting a statutory change. The board has indicated that it wishes to repeal shopkeeper provisions. These subjects, the matter of a fine schedule and the board's annual report will be discussed with the board at its next meeting and will be acted upon by the division in conjunction with the board. The division will advise and provide administrative support to the board in implementing these recommendations.

Recommendation No. 2. Agreed. Applicants for licensure by endorsement or examination should be required to have substantially similar minimum qualifications.

We believe that mandatory continuing education is one method of attempting to insure that practitioners maintain some level of competency. However, special consideration would be required for the bush areas in meeting these requirements.

Recommendation No. 3. Agreed. In an effort to assure that all applicants are qualified through internship or experience the board has recommended a statutory change which would prohibit independent practice by an inexperienced graduate.

08-H8LH

Pharmancy statutes address licensure by endorsement. If the other states' qualifications are not acceptable for licensure in Alaska, these statutes permit the board the option of not licensing individuals from those states.

Preliminary discussions have been held with the board regarding agency responsibility for applications and files. Cooperative efforts will be made to implement this recommendation.

Recommendation No. 4. Agreed. Again, discussions concerning these areas have recently been and will continue to be held with this board.

Recommendation No. 5. Agreed. AS 08.80.030(3) could be expanded to specifically provide inspection authority. However, the frequency of inspections as well as the costs involved should be seriously considered prior to the imposition of mandatory scheduling.

Recommendation No. 6. Agreed. Present statutory provisions do not preclude membership of any licensed pharmacist. We agree that there should be a turnover in membership which would facilitate broader representation and that public members on this board are desirable. We would have no objection to increasing the ratio of public to professional members but would oppose any increase in total board membership.

The division has started preliminary discussions with the Attorney General's Office on developing a code of conduct and ethics for all boards.

Recommendation No. 7. Agreed. Licensing violations should be clearly defined, however, not meant to be all inclusive.

Recommendation No. 8. Agreed. This board, as well as all boards, will be contacted in March or April 1979 for input into the division's budget for FY 1981. This input will address the boards goals, objectives, and financial needs.

Recommendation No. 9. Agreed. Action will be taken after discussion with the board, to implement this recommendation. All licnesees approved or disapproved will be listed in board minutes verifying board action.

Recommendation No. 10. Agreed. Complete reorganization of files and procedures within the agency is expected to be accomplished by the end of calendar year 1979. Some changes have recently been initiated by the agency.

I appreciate the time and efforts expended by your staff.

Yours truly,

H. Phillip Hubbard
Commissioner

08-H8LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING / POUCH D – JUNEAU 99811

JANUARY 3, 1979

THE STATE OF ALASKA
AUDIT DIVISION
POUCH W ALASKA OFFICE BUILDING
BUDGET AND AUDIT DIVISION
JUNEAU, ALASKA 99801

ATTN: MR. GERALD L. WILKERSON, CPA

DEAR MR. WILKERSON;

THANK YOU FOR YOUR LETTER OF NOVEMBER 29TH REGARDING THE PERFORMANCE REVIEW OF THE BOARD OF PHARMACY. ON PAGE 1 OF YOUR REVIEW, UNDER MEMBERS OF THE PHARMACY BOARD, MR. LES ELKINS TITLE SHOULD BE VICE PRESIDENT.

ON PAGE 5 OF THE REPORT WHERE YOU STATE IT IS REQUIRED THAT THE JURISPRUDENCE EXAM BE GRADED BY A BOARD MEMBER RESIDING IN A DIFFERENT JUDICIAL DISTRICT. THIS IS NOT CORRECT. WHEN THE COMPLETE EXAM WAS ADMINISTERED IN ALASKA AND WAS GRADED IN ALASKA, THEN THIS WAS THE REQUIREMENT, HOWEVER, NOW THE EXAMS ARE GRADED BY THE TESTING SERVICE USING A COMPUTER AND OUR JURISPRUDENCE EXAM IS MERELY A PART OF THIS EXAM THAT IS REALLY NOT COVERED BY THE STATUTE.

ON PAGE 6 YOU RECOMMEND THAT QUALIFIED PHARMACISTS LICENSED IN ANOTHER STATE, BUT WHO HAVE NOT HAD 540 HOURS OF POST GRADUATE INTERNSHIP, BE LICENSED. THE BOARD HAS TAKEN THIS INTO CONSIDERATION AND HAS DEEMED IT WISE TO CONTINUE WITH THE 540 HOURS OF POST GRADUATION INTERNSHIP AT THIS TIME. THERE ARE MANY GOOD REASONS FOR THIS REQUIREMENT IN THAT MANY PHARMACISTS IMMEDIATELY TAKE OVER A PHARMACY PRACTICE IN ONE DRUG STORE TOWNS IN ALASKA AS SOON AS THEY ARE LICENSED AND IN THE BOARDS OPINION THIS WOULD NOT BE ADEQUATELY PROTECTING THE PUBLIC TO ALLOW THIS TO HAPPEN WITHOUT THE PHARMACIST HAVING SOME ACTUAL HOURS OF EXPERIENCE IN A PHARMACY.

YOU RECOMMEND THAT LICENSED PHARMACISTS BE REQUIRED TO DEMONSTRATE CONTINUED COMPETENCY THROUGH CE OR REEXAMINATION. THE BOARD HAS EXAMINED THESE RECOMMENDATIONS MANY TIMES IN THE PAST AND STRONGLY FEEL THAT SINCE THERE IS NO COMPETENCY

EXAMINATION THAT HAS BEEN FOUND TO BE PRACTICAL BY ANY OF THE NATIONAL PHARMACY ORGANIZATIONS, THAT IT CERTAINLY WOULD BE PREMATURE TO THINK THAT THE ALASKA BOARD OF PHARMACY COULD COME UP WITH AN EXAM THAT WOULD BE LEGITIMATE.

THE BOARD HAS PUBLISHED MEMOS TO ALL THE LICENSED PHARMACISTS IN ALASKA STATING THAT THE BOARD IS STRONGLY IN FAVOR OF CONTINUING EDUCATION BUT THE BOARD DOES NOT CONCUR AT THIS TIME THAT THIS SHOULD BE MADE MANDATORY. MANY OF THE STATES THAT MADE CE MANDATORY HAVE FOUND THEY HAVE SERIOUS PROBLEMS WITH THIS AND POSSIBLY WHEN THE BOARD FEELS THAT THE STATES THAT ARE NOW USING CE HAVE WORKED OUT MOST OF THESE PROBLEMS AND HAVE CE THAT SHOWS SOME DEFINITE GOOD RESULTS THAT IT WILL BE INSTITUTED BY THE BOARD, HOWEVER, AT THIS TIME THE BOARD DOES NOT FEEL THAT CE SHOULD BE MADE MANDATORY.

ON PAGE 7 YOU RECOMMEND THAT THE BOARD COMPLY WITH STATUTORY REQUIREMENTS FOR GRADING EXAMINATIONS AND ESTABLISHING INTERNAL CONTROLS. WE FEEL THAT YOU ARE NOT FAMILIAR WITH THE NATIONAL EXAM THAT WE ADMINISTER AND THAT THERE IS NO POSSBILITY THAT THE ADMINISTRATION OF OUR NATIONAL EXAM IS OPEN TO ANY ACCUZATION OF BIAS THAT WOULD STAND UP, NOR THAT IT WOULD BE TENDERED BY ANYONE TAKING THE EXAM.

ON PAGE 7 THE BOARD WOULD NOT AGREE THAT IT WOULD BE BENIFICIAL FOR A LIMITATION OF THE NUMBER OF TERMS A BOARD MEMBER CAN SERVE. IN ALASKA THE BOARD HAS TWO MEETINGS A YEAR AND WHILE MANY THINGS ARE DONE IN BETWEEN BOARD MEETINGS, IT TAKES A BOARD MEMBER SEVERAL YEARS TO BECOME FAMILIAR WITH THE STATUTES AND REGULATIONS THAT WE ARE ADMINISTERING TO THE DEGREE THAT THE MEMBER CAN GRASP THE NEED FOR NEW LEGISLATION OR REGULATIONS. WE FEEL THAT WE HAVE A VERY HARD WORKING, KNOWLEDGEABLE BOARD AND THE MAIN REASON FOR THIS IS DUE TO THE FACT THAT SEVERAL BOARD MEMBERS HAVE BEEN ON THE BOARD FOR LONG PERIODS OF TIME. POSSIBLY LEGISLATORS COULD UNDERSTAND THE POSITION OF THE BOARD MEMBER IF THEY LIKENED A BOARD MEMBER WHO HAS SERVED FIVE YEARS AND HAS NEVER MISSED A MEETING, HE WOULD HAVE WORKED TWENTY DAYS IN THE FIVE YEARS. A LEGISLATOR HAVING SERVED TWENTY DAYS OF HIS FIRST TERM IN OFFICE CERTAINLY WOULD NOT FEEL THAT HE HAD SERVED WITH HIS MOST EFFECTIVENESS AND PROBABLY WOULD FEEL HE WAS MOST EFFECTIVE AFTER SERVING SEVERAL TERMS. WE FEEL THAT IF THE OLDEST BOARD MEMBERS SERVED ONLY TWO TERMS THAT THE DEPARTMENT OF OCCUPATIONAL LICENSING WOULD HAVE TO MAKE MOST OF THE DECISIONS AND THIS WOULD BE A VERY POOR POLICY. THE DEPARTMENT MANY TIMES LACK THE EXPERTISE NECESSARY FROM KNOWLEDGEABLE PHARMACIST BOARD MEMBERS AND AT THE NATIONAL MEETINGS IN DISCUSSING THE EFFECT OF THIS LIMITATION, IN A FEW OF THE STATES WHERE THEY HAVE PASSED IT, WE HAVE LEARNED THAT THE PEOPLE REPRESENTING THE BOARDS SOON SEEM TO BE THE STATE EMPLOYEES OF THE DEPARTMENTS AND IN OUR OPINION THIS IS NOT ADQUATE PROTECTION FOR THE PUBLIC.

THE SAME PAGAGRAPH REGARDING PHARMACISTS NOT REPRESENTING ALL CLASSES OF PHARMACISTS, IT IS THE FEELING OF THE BOARD THAT THE PHARMACIST IS A PHARMACIST AND WE DO NOT LICENSE DIFFERENT CATAGORIES, HOWEVER, THE FIVE REGULAR PHARMACIST ON THE BOARD REPRESENT ACTUALLY 5 DIFFERENT CATEGORIES: 1. COMMUNITY PHARMACY, JAMES MCCORCLE (ONE STORE IN COMMUNITY SETTING), 2, CHAIN PHARMACY, ELDON R. ULMER (4 OR MORE STORES), 3. RETIRED PHARMACISTS, LESTER E'KINS, 4. STRICTLY PROFESSIONAL PHARMACY, JAMES MURPHY (IN MEDICAL SETTING CLINIC ORIENTED), 5. WHOLESALE PHARMACY, CHARLES R. RUSH. PHARMACIST DO INTERCHANGE BETWEEN RETAIL, HOSPITAL, WHOLESALE AND CONSULTING PHARMACISTS WITHOUT ANY CHANGE OF LICENSURE OR ADVICE TO THE BOARD.

ON PAGE 8, WHERE YOU STATE THAT YOU AGREE OUR REGULATION WOULD HAVE RESTRICTED COMPETITION AND REDUCE THE AVAILABILITY OF NON-PRESCRIPTION DRUGS YOU ARE NOT AGREEING WITH US AS THAT IS NOT OUR OPINION. WE FEEL THAT OUR REGULATION WOULD NOT HAVE RESTRICTED COMPETITION OR REDUCED THE AVAILABILITY OF OF NON-PRESCRIPTION DRUGS AS THE ONLY DRUGS THAT WE WERE RESTRICTING OR REDUCING THE AVAILABILITY OF ARE NOT FOUND AT THIS TIME IN OTHER OUTLETS UNLESS IT IS BY ERROR. EVEN WITHOUT OUR REGULATIONS NO STORES OTHER THAN LICENSED PHARMACIES, WOULD WANT OR TRY TO CARRY THE ITEMS THAT WERE RESTRICTED BY OUR REGULATIONS AND IN THE BOARDS OPINION THERE WAS NO REASON FOR THESE REGULATIONS NOT BEING PROMULGATED, EXCEPT AN ATTORNEY GENERALS ATTORNEY WHO CHANGED HIS MIND DUE TO WHAT THE BOARD FEELS WAS POLITICAL PRESSURE AND NOT THE SAFEGARDING OF THE PUBLIC. FURTHER THE BOARD WHOULD ASSUME FROM YOUR RECOMMENDATIONS THAT YOUR STATEMENT REGARDING THE UNIFORM CONTROLED SUBSTANCES ACT, THAT WE HAVE RECOMMENDED, WAS GOING TO TAKE THE PLACE OF, OR BE RELATED TO THE REGULATIONS CONNECTED WITH THE SHOPKEEPERS PERMITS. THIS IS NOT THE CASE AS THE DRUGS UNDER THE UNIFORM CONTROLLED SUBSTANCE ACT ARE DIFFERENT THAN THOSE WHICH WE LISTED AS DANGEROUS UNDER OUR SHOPKEEPERS PERMITS.

ON PAGE 9, REGARDING B, C, AND D AS YOU STATE THESE ARE ITEMS THAT THE BOARD APPROVED AND GAVE TO THE DEPARTMENT FOR ACTION WHICH HAS NOT HAPPENED, EVEN THOUGH WE HAVE INQUIRED AS TO WHAT ACTION WE SHOULD TAKE WHEN WE DO NOT GET ANY ACTION FROM THE DEPARTMENT OF CENTRAL LICENSING WHEN THEY STATE THE PERSONNEL IN OUR DEPARTMENT HAS RESIGNED AND NEW PERSONNEL HAS NOT BEEN ASSIGNED.

REGARDING A, ON PAGE 11, THERE HAS NEVER BEEN ANY QUESTION AS TO OUR INTERNSHIP REQUIREMENTS BEING 540 HOURS OF POST GRADUATE INTERNSHIP OR HOURS WORKED AS A REGULAR PHARMACIST IN ANOTHER STATE IN LIEU OF INTERNSHIP. NO STATE HAS SEPARATE INTERNSHIP REQUIREMENT FOR EXAMINATION AND LICENSE THROUGH RECIPROCITY. IF SUCH A REQUIREMENT WERE TO BE INTRODUCED IT WOULD MOST CERTAINLY BE FOUND TO BE ILLEGAL AS THERE IS NO LIGITIMATE REASON FOR A STATE TO REQUIRE DIFFERENT INTERNSHIPS FOR DIFFERENT WAYS OF BECOMING LICENSED. THE APPLICANT THAT

YOU MENTIONED IN YOUR REPORT MARKED ON HIS JURISPRUDENCE EXAM THAT THE INTERNSHIP REQUIREMENTS WERE 540 HOURS AFTER GRADUATION SO IT APPEARS THAT HE WAS NOT CONFUSED AS TO THE INTERNSHIP REQUIREMENTS IN THE STATE OF ALASKA. ALSO THIS INFORMATION IS GIVEN OUT IN THE BOOKLET THAT IS SENT OUT BY NABP TO ANY PHARMACIST WHO RECIPROCATES.

REGARDING B,ON PAGE 11, THE STATE OF ALASKA WOULD BE REMISS IN ITS PROTECTION OF THE PUBLIC WERE IT TO ACCEPT PHARMACISTS WHO HAVE BECOME LICENSED IN STATES WHERE WE KNOW NOTHING ABOUT THE TYPE OF LICENSING EXAM GIVEN IN THAT STATE. AT THE PRESENT TIME THERE IS SOME CONTROVERSY IN EVEN ACCEPTING ALL OF THE STATES WHO GIVE THE SAME NATIONAL EXAM THAT WE DO. A COUPLE OF STATES HAVE DECIDED THAT THEY ARE GOING TO GRADE THIS NATIONAL EXAM ON A CURVE IN ORDER FOR SOME OF THEIR PHARMACISTS TO PASS WHO WOULD NOT PASS THE EXAM IN OUR STATE OR IN MOST OF THE STATES. IF THEY CONTINUE TO DO THIS WE WILL PROBABLY GO TO THE ATTORNEY GENERALS OFFICE TO ALSO INCLUDE THESE STATES IN ONES WHOSE RECIPROCITY APPLICATIONS WE WOULD NOT ACCEPT, HOWEVER, THEY WOULD BE ABLE TO TAKE OUR EXAM. IF WE LICENSED PHARMACISTS WHO HAVE PASSED AN EXAM WE KNOW NOTHING ABOUT WE WOULD CERTAINLY JEOPORDIZE THE VALIDITY OF FAILING A PHARMACIST WHO FLUNKS THE NATIONAL EXAM.

ON PAGE 12, UNDER C, YOUR RECOMMENDATION FOR PHARMACISTS TO FIRST APPLY TO THE DEPARTMENT IN JUNEAU IS UNREALISTIC. WE MANY TIMES HAVE PHARMACISTS WHO ARE NEEDED TO GO TO WORK ON SHORT NOTICE AND FLY DIRECTLY TO EITHER FAIRBANKS, ANCHORAGE OR AREAS CLOSE TO THESE CITIES. TO REQUIRE THESE PEOPLE TO GO TO JUNEAU FIRST AND WAIT UNTIL THEIR APPLICATION IS PROCESSED WOULD BE AN UNDUE BURDEN ON THE APPLICANT AND A TREMENDOUS ADDED EXPENSE FOR NO APPARENT REASON. I FEEL THERE WOULD BE FAR MORE POTENTIAL FOR CRITISM WERE WE TO ADOPT ANYTHING REQUIRING THE APPLICANT TO ONLY PROCESS THEIR APPLICATION THROUGH JUNEAU AS A BOARD MEMBER MUST GIVE THE JURISPRUDENCE EXAM ANYWAY BEFORE LICENSURE.

ON PAGE 14, UNDER D, WHICH WE HAVE ALREADY TOUCHED ON WE FEEL WE SHOULD EMPHASIZE AGAIN THAT WE CERTAINLY DO NOT BELIEVE THAT TURN OVER IN MEMBERSHIP ON THE BOARD HAS ANY ADVANTAGES. WE ARE VERY FAMILIAR WITH TURNOVER IN THE DEPARTMENT OF OCCUPATIONAL LICENSING AND IF THERE WERE ANY WAY WE COULD HAVE HAD ANY EMPLOYEE IN THE DPARTMENT OF OCCUPATIONAL LICENSING WHO HELPED WITH OUR WORK THAT WERE THERE ANYWHERE NEAR TWENTY YEARS IT WOULD HAVE BEEN A TREMENDOUS BENEFIT AND WE HOPE YOU ARE NOT ALSO MAKING THIS RECOMMENDATION TO THE DEPARTMENT, AS MOST OF OUR PROBLEMS SEEM TO BE WITH TURNOVER IN PERSONNEL.

ON PAGE 14, WHERE YOU MAKE THE STATEMENT THAT YOU FEEL ADDITIONAL PUBLIC MEMBERS ARE DESIRABLE WE WOULD CERTAINLY DISAGREE. WE FEEL THAT OUR PUBLIC MEMBERS ALSO WOULD RECOMMEND THAT THERE NOT BE MORE THAN TWO PUBLIC MEMBERS ON OUR BOARD OR PROBABLY ANY OTHER PROFESSIONAL BOARD. WE FEEL THAT OUR PUBLIC MEM-

BERS WOULD VERIFY THAT THE PHARMACY BOARD DOES NOT PROTECT OR HELP THE PHARMACIST BUT DOES ALL IN ITS POWER TO PROTECT AND ASSIST THE PATIENT.

ON PAGE 15, C[illegible]OUR RECOMMENDATION NUMBER 7, IF WE TRY TO LIST ALL THE P[illegible]SSIBLE VIOLATIONS THAT COULD OCCUR IT WOULD BE AN UNWIELDY TASK. THE BOARD FEELS WITH THE DESCRIPTIONS GIVEN , WE CAN ENFORCE ALL LICENSE VIOLATIONS AND CERTAINLY HAVE NEVER FELT HAMPERED BY NOT HAVING THE AUTHORITY TO CORRECT ANY PROBLEM AGAINST ANY PHARMACIST OR PHARMACY THAT HAS BEEN BROUGHT TO OUR ATTENTION.

ON PAGE 16, UNDER RECOMMENDATION NUMBER 8, WE CERTAINLY FEEL THAT FOR OUR TOTAL BUDGET FOR $4,500 THAT WE SHOULD NOT HAVE TO PREPARE ANY LONG LIST TO JUSTIFY THIS. IF YOU CONSIDER THE COST OF BRINGING SEVEN MEMBERS FROM AROUND THE STATE FOR TWO MEETINGS A YEAR OF TWO DAYS EACH, PLUS THE PER DIEM, IT SEEMS THE LEGISLATURE SHOULD CONCUR THAT THE $4,500 BUDGET WHICH WE ARE ALLOCATED IS NECESSARY.

ON PAGE 16, UNDER YOUR RECOMMENDATION NUMBER 9, WE WOULD LIKE SOME TYPE OF ATTORNEY GENERALS RULING THAT IT IS A REQUIREMENT THAT WE HAVE A QUORUM PRESENT TO APPROVE A LICENSE. THIS SEEMS LIKE A TREMENDOUS BURDEN ON THE APPLICANTS AND IN THE PAST WE HAVE NOT HANDLED IT IN THIS MANNER AS IT SEEMS WRONG FOR PHARMACISTS TO HAVE TO WAIT 6 MONTHS TO RECEIVE THEIR LICENSE. ALL MEMBERS HAVE KNOWLEDGE OF THE APPLICANTS AND ALL CONCUR THAT THEY SHOULD BE LICENSED, HOWEVER, HOLDING THESE FOR A MEETING WITH A QUORUM PRESENT WHEN THIS MEETING ONLY HAPPENS TWICE A YEAR, DOES NOT SEEM TO BE THE BEST PROCEDURE.

ON PAGE 17, YOUR RECOMMENDATION NUMBER 10, REGARDING OCCUPATIONAL LICENSING HAS CERTAINLY BEEN DONE AND CERTAINLY MUST BE ON FILE IN THE DEPARTMENT. THEY HAVE BEEN GIVEN ALL THIS INFORMATION AND IN THE BOARD MEETINGS IN JUNEAU, LICENSE APPLICATIONS AND FILES HAVE BEEN AVAILABLE, AND TO OUR KNOWLEDGE ARE VERY COMPLETE.

THIS SEEMS TO BE THE PORTION OF THE REPORT THAT WE ARE TO ANSWER AND WHILE THESE ANSWERS ARE NOT AS COMPLETE AS WE WOULD HAVE PREFERRED THEM TO BE, WE THOUGHT THAT IF THERE WERE FURTHER QUESTIONS YOU COULD ADDRESS THEM TO US AND POSSIBLY WE COULD ANSWER THEM VERBALLY. THERE ARE OTHER QUESTIONS IN YOUR REPORT THAT WE DO NOT AGREE COMPLETELY WITH BUT THESE ARE THE ITEMS YOU HAVE ADDRESSED TO US AND WE HAVE TRIED TO ANSWER THEM TO THE BEST OF OUR ABILITY.

SINCERELY,
ALASKA STATE BOARD OF PHARMACY

ELDON ULMER
CHAIRMAN

CHARLES R. RUSH
SECRETARY

COPY: ALL PHARMACY BOARD MEMBERS
DIVISION OCCUPATIONAL LICENSING.
DEPT OF ADMINISTRATION , DIV. INTERNAL AUDIT(Richard A.Smith)

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH W—STATE CAPITOL

JUNEAU, ALASKA 99811

January 12, 1979

Members of the
Legislative Budget and Audit Committee:

We have reviewed the response of the Board of Pharmacy to our Performance Review of the Board of Pharmacy dated October 30, 1978.

1. In response to our review the Pharmacy Board stated that we were not familiar with the National Examination for pharmacists and how it is administered.

Our Recommendation No. 4 is directed toward the administration of the Jurisprudence Examination, not the National Examination.

2. In response to our recommendation that all applications for licensure be submitted by the applicant directly to Occupational Licensing (see Recommendation No. 3, C.) the Board stated that the recommendation is unrealistic. The Board states that to require unlicensed pharmacists to go to Juneau first and wait until their application is processed would be an undue burden on the applicant.

Submission of the application information to Occupational Licensing does not require the applicant's physical presence in Juneau. The submission can be made by mail.

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

3 21LH

4/25/79

ALASKA PHARMACEUTICAL ASSOCIATION

Box 1185

Anchorage Alaska 9951

Dear Senators & Representatives

The pharmacists of the State of Alaska are unalterably opposed to the restructuring of the State Board of Pharmacy from its current status to a watered down, weakened & ineffective board as proposed by State Representative Brown Commerce Committee.

The current Board has displayed in the past its ability to perform adequately, efficiently & effectively for the protection of the public & the overseeing of the profession of pharmacy in the State of Alaska.

The State Board of Pharmacy is already operating on an unsatisfactory budget of $4500 annually. The Department of Occupational Licensing, with a budget of nearly four times this amount, has failed in the past to complete its required tasks. From taxpayers' points of view, we feel that the State Board of Pharmacy, given the same amount could more efficiently & at less expense, license its own approximately 250 pharmacists, oversee the profession & protect the public.

Since the legislature has already approved retaining the State Board of Pharmacy under the "Sunset Review", why dilute the expertise of the members by limiting the term of office to 4 years?

Sincerely yours,

Chuck Decker R.Ph

Secretary

Alaska Pharmaceutical Association

cc: all pharmacists residing in Alaska

STATE OF ALASKA

JAY S. HAMMOND

GOVERNOR

BOARD OF PHARMACY

CENTRALIZED LICENSING STATUTE, AS 08.01

MISCELLANEOUS PROVISION, AS 08.02

PHARMACY ACT, AS 08.80

PHARMACY REGULATIONS, 12 AAC 52

Printed: August, 1977

Title 8. Business and Professions.

Chapter 01. Centralized Licensing.

Section
10. Applicability of chapter
20. Board organization
25. Public members
30. Quorum
40. Transportation and per diem
50. Administrative duties of department
60. Application for license
70. Administrative duties of boards
80. Department regulations
87. Powers and duties of department
90. Applicability of the Administrative Procedure Act
100. License renewal, lapse and reinstatement
105. Penalty for improper payment
110. Definitions

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

(1) Board of Public Accountancy;

(2) Board of Barber Examiners;

(3) Repealed by § 6 ch 32 SLA 1971.

(4) Board of Chiropractic Examiners;

(5) Board of Hairdressing and Beauty Culture Examiners;

(6) Board of Dental Examiners;

(7) Board of Electrical Examiners;

(8) State Board of Registration for Architects, Engineers and Land Surveyors;

(9) State Medical Board;

(10) Board of Nursing;

(11) Board of Examiners in Optometry;

(12) Board of Pharmacy;

(13) Real Estate Commission;

(14) Board of Veterinary Examiners;

(15) Board of Psychologist and Psychological Associate Examiners;

(16) Collection Agency Board;

(17) Board of Welding Examiners;

(18) Board of Marine Pilots;

(19) Board of Dispensing Opticians;

(20) Guide Licensing and Control Board. (§ 1 ch 59 SLA 1966; am § 2 ch 136 SLA 1967; am § 2 ch 101 SLA 1968; am § 2 ch 143 SLA 1968; am § 2 ch 151 SLA 1968; am § 1 ch 106 SLA 1970; am § 6 ch 32 SLA 1971; am § 4 ch 179 SLA 1972; am § 2 ch 45 SLA 1973; am § 14 ch 65 SLA 1973; am § 1 ch 43 SLA 1975)

Effect of amendment. — The 1975 amendment, effective May 6, 1975, added paragraph (20).

Editor's note.—Section 2, ch. 59, SLA 1966, provides: "The Department of Commerce shall provide for the orderly transfer of the service functions which are to be performed by the department under this chapter."

Section 4, ch. 59, SLA 1966, provides: "A provision in existing law which conflicts with this Act is superseded by this Act."

Legislative committee reports.— For report on ch. 143, SLA 1968 (HB 707), see 1968 House Journal, p. 836. For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 08.01.020. Board organization. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members. (§ 1 ch 59 SLA 1966)

Sec. 08.01.025. Public members. No public member of a board may:

(1) be engaged in the occupation which the board regulates;

(2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or

(3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 258 SLA 1976)

Sec. 08.01.030. Quorum. A majority of the membership of a board constitutes a quorum unless otherwise provided. (§ 1 ch 59 SLA 1966)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (§ 1 ch 59 SLA 1966)

Sec. 08.01.050. Administrative duties of department. (a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;

(2) maintain records and files;

(3) issue and receive application forms;

(4) notify applicants of acceptance or rejection of applicants as determined by the board;

(5) designate dates examinations are to be held and notify applicants;

(6) publish notice of examination;

(7) arrange space for holding examinations;

(8) notify applicants of results of examinations;

(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;

(10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of $2;

(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;

(12) compile and maintain current a register of licenses;

(13) answer routine inquiries;

(14) maintain files relating to individual licensees;

(15) arrange for printing and advertising;

(16) purchase supplies;

(17) employ secretarial help when needed;

(18) perform other services which may be requested by the board;

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in § 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned. (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment added paragraph (19) of present subsection (a).

The second 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in the introductory paragraph of present subsection (a).

The third 1976 amendment designated the provisions of this section as subsection (a), and in that subsection, substituted "department" for "Department of Commerce" and "when appropriate" for "for the boards" in the introductory language and inserted "by the licensee" in two places in paragraph (10). The amendment also added subsection (b).

While none of the amendments gave effect to the others, this section is set out as it appears in ch. 258, SLA 1976, with the inclusion of paragraph (19) of subsection (a) added by ch. 102, SLA 1976.

Effective date. — Section 60, ch. 102, SLA 1976, makes the amendment to this section effective 30 days after the effective date of this act. Section 61 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law:

(1) keep minutes and records of all proceedings;

(2) hold a minimum of one meeting each year;

(3) hold at least one examination each year;

(4) request, through the department, investigation of violations of its laws and regulations;

(5) prepare and grade examinations;

(6) pass on qualifications of applicants for examination and license;

(7) forward minutes of meetings to the department within 20 days;

(8) forward results of examinations to the department;

(9) notify the department of meeting dates at least 15 days before meeting. (§ 1 ch 59 SLA 1966)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;

(2) what is contained in application forms;

(3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

Sec. 08.01.087. Powers and duties of department. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in § 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in § 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by a board listed in § 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (§ 3 ch. 258 SLA 1976)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (§ 1 ch 59 SLA 1966; am § 4 ch 258 SLA 1976)

Effect of amendment. — The 1976 amendment added "except those under AS 08.01.087(b)" to the end of the section.

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968)

Sec. 08.01.105. Penalty for improper payment. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (§ 3 ch 258 SLA 1976)

Sec. 08.01.110. Definitions. In this chapter

(1) "board" includes the boards and commissions listed in § 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in § 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in § 10 of this chapter. (§ 1 ch 59 SLA 1966; am § 40 ch 218 SLA 1976; am § 5 ch 258 SLA 1976)

Effect of amendments. — The first 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (2).

The second 1976 amendment added paragraphs (3) through (6).

Chapter 02. Miscellaneous Provisions.

Section
10. Professional designation requirements
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) A person licensed in the state as a chiropractor as defined in AS 08.20.220, a dentist as defined in AS 08.36.360, a medical practitioner or osteopath as defined in AS 08.64.380, a professional nurse as defined in AS 08.68.410, an optometrist as defined in AS 08.72.300(3), a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall professionally identify himself by the use of appropriate letters or a title after his name which represents his specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays his professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and identifies himself by using the letters "M.D." or the title "doctor" or "physician" or any other title which tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of his noncompliance by his appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, his noncompliance continues, the board may suspend or revoke his license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1973)

Sec. 08.02.020. Limitation of liability for members of licensing boards. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976)

Effective date. — Section 50, ch. 102, SLA 1976, makes this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

Chapter 80. Pharmacy Act.

Article
1. The Board of Pharmacy (§§ 08.80.010—08.80.100)
2. Licensing and Registration (§§ 08.80.110— 08.80.265)
3. Duties of Licensed Pharmacists (§§ 08.80.270—08.80.365)
4. Unlawful Acts (§§ 08.80.370—08.80.460)
5. General Provisions (§§ 08.80.470—08.80.490)

Article 1. The Board of Pharmacy.

Section
10. Creation and membership of Board of Pharmacy
20. Term of office
30. Powers of the board
40. Duties of the board
50. Applicability of Administrative Procedure Act
60. Meetings of the board
70. Quorum
80. Expenses of members
90. Disposition of fees
100. [Repealed]

Sec. 08.80.010. Creation and membership of Board of Pharmacy. There is created the Board of Pharmacy, composed of seven members, five of whom shall be pharmacists licensed in the state who have been actively engaged in the practice of pharmacy in the state for a period of three years immediately preceding their appointment. Two shall be persons with no direct financial interest in the health care industry. Whenever possible, the board shall include at least one member from each judicial district. (§ 3 ch 194 SLA 1955; am § 25 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment, in the first sentence, substituted "seven members, five" for "five members, each," "pharmacists" for "a pharmacist," "have" for "has," and "their" for "his." The amendment also added the present second sentence.

Effective date. — Section 50, ch. 102, SLA 1976, makes the amendment to this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

Am. Jur. and C.J.S. references.—17 Am. Jur., Drugs and Druggists, §§ 7 to 13.

28 C.J.S. Druggists §§ 1, 2, 4.

Sec. 08.80.020. Term of office. Members of the board are appointed by the governor, and confirmed by the legislature in joint session, for overlapping terms of five years, or until their successors are appointed and qualified. The terms of the public members shall be staggered so that they do not expire at the same time. An appointment to fill a vacancy is for the unexpired term. The term of office begins on April 1 of each year. (§ 3 ch 194 SLA 1955; am § 26 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment added the present second sentence.

Effective date. — Section 50, ch. 102, SLA 1976, makes the amendment to this section effective 30 days after the effectiv date of this act. Section 51 of ch. 102 make the act effective May 29, 1976, i accordance with AS 01.10.070(c).

Sec. 08.80.030. Powers of the board. The board may

(1) elect a president and secretary from its membership an adopt rules for the conduct of its business;

(2) examine applicants for registration as pharmacists;

(3) investigate individually, collectively, or through its agent, fo violations of this chapter, or of any other state or federal statute relatin to the practice of pharmacy;

(4) adopt regulations and do whatever else is necessary an advisable to carry out the purposes of this chapter;

(5) promulgate regulations to carry out the purposes of thi chapter;

(6) examine applicants for shopkeeper permits;

(7) register intern pharmacists and promulgate rules relatin to their minimum experience requirements;

(8) promulgate regulations to ensure adequate security for a dangerous drugs. (§ 4 ch 194 SLA 1955; am § 1 ch 72 SLA 1969 am § 2 ch 69 SLA 1970; am § 1 ch 206 SLA 1972)(am § 1 ch 187 SL 1976)

Effect of amendment.

The 1976 amendment substituted "investigate individually, collectively, or through its agent, for" for "investigate, individually, or collectively, all alleged" in paragraph (3).

Legislative committee report.—Fo report on ch. 69, SLA 1970 (HB 564 see 1970 House Journal Supplemer No. 2, p. 7.

Sec. 08.80.040. Duties of the board. The board shall

(1) examine qualified applicants for registration as pharma cists; each examination shall be graded by a member who reside in a judicial district other than the district in which the applican resides;

(2) grant certificates of registration;

(3) initiate prosecution of any person violating this chapter;

(4) report to the legislature on the condition of pharmacy i the state; the report shall include a resumé of the proceedings o the board during the year and the names of all persons registered under this chapter;

(5) maintain a record of the name and place of business of each person registered under this chapter, together with evidence adequate to justify registration;

(6) issue a list of potentially dangerous medicinal ingredients or preparations that may be sold only under the direct supervision of a licensed pharmacist; the failure to include an ingredient or preparation in this list does not affect any law or regulation, which prohibits or restricts the sale of the ingredient or preparation; and

(7) issue shopkeeper permits in accordance with § 380 of this chapter. (§ 5 ch 194 SLA 1955; am § 2 ch 206 SLA (1972)

Effect of amendment. — The 1972 amendment added paragraph (7).

Sec. 08.80.050. Applicability of Administrative Procedure Act. The board shall comply with the Administrative Procedure Act (AS 44.62).

Sec. 08.80.060. Meetings of the board. The board shall meet at least once each year at the call of the president for the transaction of business properly before it. The president shall also call the board into session when requested in writing by at least two members. The secretary shall give at least 30 days written notice to all members before a meeting. (§ 6 ch 194 SLA 1955)

Sec. 08.80.070. Quorum. Four members constitute a quorum for the transaction of business. However, when the board meets for the purpose of examining applications for registration, three members of the board constitute a quorum. (§ 6 ch 194 SLA 1955; am § 27 ch 102 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "Four members" for "Three members" at the beginning of the section and "three members" for "two members" near the end of the section.

Effective date. — Section 50, ch. 102, SLA 1976, makes the amendment to this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

Sec. 08.80.080. Expenses of members. Members of the board are entitled to reimbursement for actual travel expenses incidental to the discharge of their duties and, while in the performance of their duties, are entitled to the per diem expenses allowed by law. (§ 7 ch 194 SLA 1955)

Sec. 08.80.090. Disposition of fees. The fees collected by the secretary of the board shall be deposited in the general fund of the state. (§ 21 ch 194 SLA 1955)

Sec. 08.80.100. Board secretary as certifying officer. Repealed by § 3 ch 59 SLA 1966.

Article 2. Licensing and Registration.

Section
110. Qualifications for registration
115. Registration of pregraduate and postgraduate intern pharmacist
117. Malpractice insurance
120. Grading and content of examination
130. Re-examination
140. License by endorsement
150. Temporary registration
155. Emergency permit
160. Fees
170—210. [Repealed]
220. Prescription department required for issuance of license
230. Sanitary conditions required for issuance of license
240. Form and display of registration certificate and license
250. Renewal of lapsed registration
260. Grounds for refusing or revoking a license
265. Limits or conditions on license; discipline

Sec. 08.80.110. Qualifications for registration. An applicant for registration as a pharmacist shall

(1) be fluent in the reading, writing and speaking of the English language;

(2) furnish the board with at least two affidavits from reputable citizens, whom he has known for at least one year, attesting to his good moral character and freedom from addiction to the use of drugs or alcoholic liquors;

(3) be a graduate of a college of pharmacy recognized by the National Association of Boards of Pharmacy;

(4) pass an examination by a board of pharmacy which board has been approved by the National Association of Boards of Pharmacy;

(5) have completed at least 1,500 hours of internship training under the direct supervision of a licensed pharmacist in a licensed pharmacy, 540 hours of which must have been completed after graduation. (§ 8 ch 194 SLA 1955; am § 1 ch 24 SLA 1968; am § 2 ch 72 SLA 1969; am §§ 3, 4 ch 206 SLA 1972(am § 16 ch 127 SLA 1974)

Effect of amendment.

The 1974 amendment deleted "a citizen of the United States and" following "be" in paragraph (1).

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

C.J.S. references. — 28 C.J.S. Druggists § 3; 53 C.J.S. Licenses §§ 32 to 34.

Sec. 08.80.115. Registration of pregraduate and postgraduate intern pharmacist. (a) An applicant for registration as a postgraduate intern pharmacist shall meet the requirements of § 110(1)—(3) of this chapter and pay the required fee.

(b) An applicant for registration as a pregraduate pharmacist shall meet the requirements of § 110(1) and (2) and shall be enrolled in a pharmacy school recognized by the National Association of Board of Pharmacy and shall be declared a junior by the pharmacy school. An applicant for registration as a pregraduate internship pharmacist may be on recognized vacation from the pharmacy school; however, the vacation may not exceed one quarter or one semester. The pregraduate internship pharmacist shall pay the required fee.

(c) The registration of post graduate or pregraduate internship pharmacists is valid for one year and may be renewed upon application. (§ 5 ch 206 SLA 1972)

Sec. 08.80.117. Malpractice insurance. If medical malpractice insurance for pharmacists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of pharmacist services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 28 ch 102 SLA 1976)

Effective date. — Section 50, ch. 102, SLA 1976, makes this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

Sec. 08.80.120. Grading and content of examination. To pass the state pharmacy examination each applicant must attain a general average of not less than 75 per cent and a grade of not less than 60 per cent in any one category of the National Association of Board of Pharmacy Standard Examinations for licensure or an equivalent examination given by the board. (§ 89 ch 194 SLA 1955; am § 2 ch 24 SLA 1968; am § 6 ch 206 SLA 1972; am § 1 ch 50 SLA 1974)

Effect of amendment.

The 1974 amendment, at the end of the section, substituted the language beginning "any one category" and ending "examination given by the board" for "each of the following subjects on the examination: jurisprudence, chemistry, mathematics, pharmacy, pharmacology and related subjects, and in the discretion of the board, oral theory and practical pharmacy."

Legislative committee report. — For report on ch. 50, SLA 1974 (HB 588), see 1974 House Journal, p. 311.

Sec. 08.80.130. Re-examination. An applicant unsuccessful in his initial examination may take a second examination within one year without further application and upon payment of the re-examination fee. If the applicant fails to take a second examination within one year, he must submit a new application for any examination. (§ 8 ch 194 SLA 1955; am § 7 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment added "without further application and upon payment of the re-examination fee" at the end of the first sentence and added the second sentence.

Sec. 08.80.140. License by endorsement. The board may register without examination an applicant who has been certified as a registered pharmacist by the National Association of Boards of Pharmacy, if the applicant meets the requirements of § 110(1)—(4) of this chapter. (§ 8 ch 194 SLA 1955; am § 3 ch 24 SLA 1968; am § 3 ch 72 SLA 1969; am § 8 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment substituted "meets the requirements of § 110(1)—(4)" for "has complied with § 110(5)."

Sec. 08.80.150. Temporary registration. The board shall issue a temporary license to an applicant applying for registration as a pharmacist under § 140 of this chapter upon written or oral examination before a member of the board and certification by the member to the secretary of the board that the applicant is competent to receive a temporary license. The temporary license is valid for three months, or until the next regular meeting of the board, whichever is longer. A temporary license is not renewable, but at the discretion of the issuing board member may be extended for a period not to exceed 60 days, and an applicant may not receive more than one temporary license. An applicant whose registration has been denied by the board is not eligible to receive a temporary license. (§ 9 ch 194 SLA 1955; am § 9 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment substituted "issue" for "give" in the first sentence, substituted "applying" for "eligible" in that sentence, inserted "under § 140 of this chapter" therein, inserted "but at the discretion of the issuing board member may be extended for a period not to exceed 60 days," and substituted "license" for "permit" at the end of the fourth sentence.

Sec. 08.80.155. Emergency permit. (a) The board may in its discretion grant an emergency permit to a pharmacist for the purpose of providing coverage in a pharmacy which is temporarily without the services of a pharmacist due to death, illness or other emergency circumstances.

(b) A pharmacist applying under (a) of this section must submit proof that he holds a license in good standing in a state recognized by the National Association of Boards of Pharmacy, and pay the fee required under § 160 of this chapter.

(c) A permit issued under this section is valid for a period not to exceed 60 days. (§ 10 ch 206 SLA 1972)

Sec. 08.80.160. Fees. The following fees shall be imposed under this chapter when applicable:

(1)	examination fee	$50
(2)	re-examination fee	15
(3)	reciprocity investigation fee	25
(4)	biennial pharmacist license fee	50
(5)	temporary license fee	10
(6)	wholesale drug dealer biennial license fee	50
(7)	retail pharmacy biennial license fee	50
(8)	pharmacy intern registration fee	10
(9)	emergency permit fee	10
(10)	hospital pharmacy biennial license fee (in and outpatient)	50
(11)	hospital drug room biennial license fee (inpatient)	25
(12)	nursing home and related facilities biennial license fee for inpatient dispensing	25
(13)	shopkeepers biennial permit fee	10
(14)	license amendment or replacement fee	2

(§ 10(a) ch 194 SLA 1955; am § 4 ch 24 SLA 1968; am § 11 ch 206 SLA 1972)

Effect of amendment.—The 1972 amendment inserted "drug" in paragraph (6), substituted "pharmacy" for "dealer" in paragraph (7), and added paragraphs (8)—(14).

Sec. 08.80.170. Examination fee.

Repealed by § 7 ch 24 SLA 1968.

Sec. 08.80.180. Temporary registration fee.

Repealed by § 7 ch 24 SLA 1968.

Sec. 08.80.190. Renewal fee.

Repealed by § 7 ch 24 SLA 1968.

Sec. 08.80.200. Wholesale dealer license fee.
Repealed by § 7 ch 24 SLA 1968.

Sec. 08.80.210. Retail dealer license fee.
Repealed by § 7 ch 24 SLA 1968.

Sec. 08.80.220. Prescription department required for issuance o license. The board shall issue a license to operate a pharmacy onl to an establishment which operates a bona fide prescription de partment. (§ 10 ch 194 SLA 1955)

Sec. 08.80.230. Sanitary conditions required for issuance of li cense. Failure to have proper sanitary appliances and to maintain orderly and sanitary premises are grounds for refusing a licens to a pharmacy. (§ 10 ch 194 SLA 1955)

Sec. 08.80.240. Form and display of registration certificate and license. The registration certificate and license shall be in the form and issued in the manner prescribed by the board. The license and certificate shall be conspicuously displayed in the premises for which issued or in which the licensee is employed. (§ 10 ch 194 SLA 1955)

Sec. 08.80.250. Renewal of lapsed registration. A previously licensed pharmacist who has not been registered for a period of three years or more shall take an oral examination before the board and satisfy it of his competence before the renewal of his registration. He may take a written examination if he desires. (§ 10 ch 194 SLA 1955; am § 5 ch 24 SLA 1968)

Sec. 08.80.260. Grounds for refusing or revoking a license. The board may refuse to issue, or may suspend or revoke a license to practice pharmacy for any of the following grounds:

(1) conviction of a felony or conviction of a misdemeanor involving moral turpitude;

(2) selling, bartering, or making available, morphine, cocaine or other narcotic to a person addicted to the use of drugs except upon prescription issued by a licensed physician;

(3) drug addiction;

(4) intemperance in the use of alcohol;

(5) violation of this chapter;

(6) conduct or habits inconsistent with professional standards;

(7) conviction of selling federal legend drugs without prescription of a licensed physician, surgeon, dentist or veterinarian;

(8) falsely stating in any license application that the applicant has not been convicted of or is not presently charged with any violation of pharmacy, liquor or narcotic laws;

(9) violation of regulations pertaining to the provision of adequate security for dangerous drugs. (§ 14 ch 194 SLA 1955; am § 6 ch 24 SLA 1968; am § 12 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment added paragraphs (8) and (9).

Cited in Leege v. Martin, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

ALR and C.J.S. references.—What amounts to conviction within statute making conviction a ground for refusing or cancelling license or special privilege, 113 ALR 1179.

28 C.J.S. Druggists §§ 2 to 5; 53 C.J.S. Licenses § 44.

Sec. 08.80.265. Limits or conditions on license; discipline. (a) In addition to action under § 260 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice pharmacy under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 28 ch 102 SLA 1976)

Effective date. — Section 50, ch. 102, SLA 1976, makes this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

Article 3. Duties of Licensed Pharmacists.

Section
270. Report of employee
280. Responsibility for goods sold
290. Affixing of label
295. Substitution
297. Prescription prices available to consumer
300. Record of prescriptions
310. Record of sales
320. Pharmacist required
330. Licensed pharmacist as manager
340. Who may prepare prescriptions
350. Technical aids required
360. Sale of dangerous materials
365. Partial closure of pharmacy

Sec. 08.80.270. Report of employee. (a) An owner or manager of a pharmacy shall report to the board at the time the board directs, but not more often than twice each year, the names of all pharmacists employed in his pharmacy.

(b) An owner or manager of a pharmacy shall forward to the board a change of employee notice within 10 days of hiring or dis-

missing a pharmacist. (§ 11(a) ch 194 SLA 1955; am § 13 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment designated the former section as subsection (a) and added subsection (b). In subsection (a), the amendment substituted "twice" for "once" and substituted "pharmacists" for "clerks."

Sec. 08.80.280. Responsibility for goods sold. An owner, or, if the owner is not a licensed pharmacist, a manager of a pharmacy, is responsible for the quality of drugs, chemicals and other medicines sold or dispensed by him, except those sold in the original packages of the manufacturer, and except those articles and preparations known as patent or proprietary medicines. (§ 11(b) ch 194 SLA 1955)

C.J.S. reference.—2[P] C.J.S. Druggists, §§ 6, 11 to 13.

Sec. 08.80.290. Affixing of label. At the time of dispensing a prescription, there shall be affixed to the container of a prescription, a label bearing the name and address of the pharmacy compounding the prescription, the serial number of the prescription, the name and directions of the prescriber, the name of the patient, the date of dispensing, and the initials of the registered pharmacist who compounded the prescription. In addition a pharmacist shall indicate on the drug container the name and strength of the drug contained in it, unless specifically directed otherwise by the prescribing physician, osteopathic physician, dentist or veterinarian. If a drug is a mixture of pharmacologically active substances, only the name of the mixture need be indicated on the container, or in the absence of a name, the term "physician's mixture" may be used. (§ 11(c) ch 194 SLA 1955; am § 14 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment added the second and third sentences.

Sec. 08.80.295. Substitution. (a) Except as limited by (b) and (c) of this section, with the consent of the purchaser, the pharmacist may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent and meets the standards of (f) of this section. Upon substitution the pharmacist shall notify the purchaser and the person who prescribed the drug of the substitution and of the drug substituted.

(b) A person authorized to prescribe drugs shall specify in writing or

by oral communication whether or not the pharmacist may substitute a drug under (a) of this section. Written specification may be accomplished either by (1) the physician personally initialing or checking the appropriate box on a prescription order form labeled "DISPENSE AS WRITTEN" or "SUBSTITUTION ALLOWED"; or (2) by handwriting on the prescription order. If the physician fails or neglects to give written specification, the prescription shall be dispensed as written. If the person communicating the specification does so orally, the pharmacist shall indicate that fact in handwriting on the written copy of the prescription order.

(c) Preprinted prescription order forms used by a person authorized to prescribe drugs shall contain boxes labeled "DISPENSE AS WRITTEN" and "SUBSTITUTION ALLOWED" to be checked or initialed by the person issuing the prescription.

(d) A pharmacist shall substitute a drug product under (a) of this section only when there will be a savings in cost to the purchaser.

(e) For a period of two years following September 16, 1976, every pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that "Under Alaska law a therapeutically equivalent but less expensive drug may, in some cases, be substituted for the drug prescribed by your doctor. Please consult your pharmacist or physician." The printing on the sign shall be in block letters not less than one inch in height.

(f) If a person authorized to prescribe drugs is temporarily unavailable, the pharmacist may, if he cannot supply the drug requested, substitute a drug or preparation of approximately equal therapeutic value so long as he notifies the author of the prescription at an early opportunity. The pharmacist in all cases of substitution, except when specifically indicated to the contrary by the prescriber, shall relate the nature of the change to the purchaser.

(g) A pharmacist may not substitute a product under the provisions of this section unless it has been manufactured with the following minimum good manufacturing standards and practices:

(1) maintain quality control standards equal to those of the Food and Drug Administration;

(2) comply with regulations promulgated by the Food and Drug Administration;

(3) mark products with identification code or monogram;

(4) label products with expiration date;

(5) provide reasonable services to accept returned goods that have reached their expiration date;

(6) maintain 24-hour resources for product information where practicable and financially feasible;

(7) maintain recall capabilities for unsafe or defective drugs;

(8) shall not refuse to sell to any properly licensed pharmacy.

(h) As used in this section, unless the context requires otherwise,

(1) "brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging;

(2) "generic name" means the official title of a drug or drug ingredients published in the latest edition of a nationally recognized pharmacopoeia or formulary;

(3) "substitute" means to dispense without prescriber's express authorization a different drug product in place of the drug ordered or prescribed;

(4) "therapeutically equivalent" means drugs that will provide essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen. (§ 15 ch 206 SLA 1972; am § 2 ch 187 SLA 1976)

Effect of amendment. — The 1976 amendment rewrote this section.

Sec. 08.80.297. Prescription prices available to consumer. A pharmacist shall disclose the price of filling any prescription when requested by the consumer. (§ 3 ch 187 SLA 1976)

Sec. 08.80.300. Record of prescriptions. Each pharmacy shall maintain a record of every prescription compounded or dispensed. The record shall be kept for a period of not less than five years, and shall be open at all times to inspection by the board, its members, agents or employees, and by the medical doctor who issued the prescription. (§ 11(d) ch 194 SLA 1955)

C.J.S. reference. — 28 C.J.S. Druggists, §§ 6, 9, 10.

Sec. 08.80.310. Record of sales. (a) The owner, or, if the owner is not a licensed pharmacist, the manager, of every drug store, shall maintain in his place of business a record in which sales of the following items shall be entered: the compounds and salts of arsenic and mercury (calomel excepted); caustic hydrates of sodium and potassium; the concentrated mineral acids; hydrocyanic acids and their salts; yellow phosphorous; the essential oils of pennyroyal, tansy and savine; croton oil, aconite; carbolic acid; and the poisonous alkaloids or alkaloidal salts.

(b) The record shall state the quantity and date of purchase, the purpose for which it is to be used, and the name and address of the buyer. The record shall be available during hours of busi-

ness and subject to inspection by the attorney general, a federal, state or municipal peace officer, acting within his area of jurisdiction, and an authorized agent of the board. A record of each sale shall be retained for a period of five years from the date of the sale. (§ 11(e) ch 194 SLA 1955; am § 16 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment deleted "and the proprietor of every general store, or roadhouse" following "drug store" in subsection (a).

Sec. 08.80.320. Pharmacist required. (a) A pharmacy shall have a pharmacist, licensed and registered under this chapter, on duty during the hours that the pharmacy is open for business.

(b) In communities which have one licensed pharmacy, the owner of the pharmacy shall have a pharmacist, licensed and registered under this chapter, on duty, or on call, at all times that the pharmacy is open for business. (§ 11(f)(i) ch 194 SLA 1955; am § 17 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment, in subsection (a), deleted "licensed" preceding "pharmacist" and inserted "licensed and registered under this chapter." In subsection (b), the amendment deleted "licensed" preceding "pharmacist," inserted "licensed and registered under this chapter," and added "that the pharmacy is open for business."

ALR and C.J.S. references.—Construction of statutes in relation to operation of drugstore, pharmacy or chemical store, without registered pharmacist, 74 ALR 1084.

28 C.J.S. Druggists § 6.

Sec. 08.80.330. Licensed pharmacist as manager. (a) If the owner of a pharmacy is not a licensed pharmacist, he shall place a licensed pharmacist, designated the manager, in full charge and control of the pharmacy. The manager shall insure compliance with all laws, rules and regulations governing the operation of the pharmacy. The licensed pharmacist shall immediately advise the board of his appointment as manager.

(b) No license may be issued to a pharmacy unless there is a licensed registered pharmacist in charge whose name appears on the face of the license. (§ 11(g) ch 194 SLA 1955; am § 18 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment added subsection (b).

Sec. 08.80.340. Who may prepare prescriptions. No person except a licensed pharmacist or a licensed intern pharmacist under the direct supervision of a licensed pharmacist may compound and dispense the prescription of a physician. However, this section does not limit the authority of a licensed medical doctor to compound and dispense medicinal preparations. (§ 11(h) ch 194 SLA

1955; am § 19 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment inserted "or a licensed intern pharmacist under t.. direct supervision of a licensed pharmacist in the first sentence.

Sec. 08.80.350. Technical aids required. Each licensed pharmacy shall have on the premises a copy of the most recent revision of the "United States Dispensatory" or "Remington's Practice of Pharmacy" or both the "National Formulary" and the "United States Pharmacopoeia." In addition, each pharmacy shall have sufficient technical equipment to properly compound prescriptions and pharmaceutical preparations. No license may be issued until the requirements of this section are met. (§ 11(j) ch 194 SLA 1955; am § 20 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment rewrote this section.

Sec. 08.80.360. Sale of dangerous materials. Drugs or medical supplies which contain poisonous, potent, habit-forming or deleterious ingredients shall be dispensed only by a licensed pharmacist. At the time of the sale, the pharmacist shall make the nature of the drug or medical preparation known to the purchaser. (§ 11(k) ch 194 SLA 1955)

C.J.S. reference.—28 C.J.S. Druggists §§ 6, 8 to 13.

Sec. 08.80.365. Partial closure of pharmacy. A pharmacy or pharmacy drug department which is open for business at times different than the remainder of the store or building in which the pharmacy is located shall

(1) be accessible to the remainder of the store or building only through an entrance which is capable of being locked;

(2) be advertised by the methods described in §§ 420 and 430 of this chapter only if the signs or symbols are attached or located within the portions of the store or building where the pharmacy is located;

(3) be locked during nonbusiness hours; and

(4) have all keys to the pharmacy or drug department in the possession of a pharmacist, licensed and registered under this chapter. (§ 21 ch 206 SLA 1972)

Article 4. Unlawful Acts.

Section
370. Vending machine sales prohibited
380. Issuance of shopkeepers permits
390. Pharmacists required in hospitals and clinics
400. Practice of medicine not affected
410. Use of term "pharmacist" prohibited
420. Certain advertising prohibited
430. Use of pharmacy symbols prohibited
440. Denial of examination or license
450. Disciplinary action
460. Violation

Sec. 08.80.370. Vending machine sales prohibited. No mechanical device or vending machine wherever located, may be used to dispense a drug, medicine or preparation containing poison. (§ 12 ch 194 SLA 1955)

C.J.S. reference.--28 C.J.S. Druggists §§ 6, 11 to 13.

Sec. 08.80.380. Issuance of shopkeepers permits. The board shall, upon proper application and payment of the required fee, issue a shopkeepers permit to sell substances or preparations not of a poisonous nature, in the original unbroken packages only. These remedies shall be sold under restrictions and regulations as the board may adopt. The board may include in shopkeeper permits permission to sell other remedies not prohibited by law. (§ 12 ch 194 SLA 1955; am § 22 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment rewrote this section.

Sec. 08.80.390. Pharmacists required in hospitals and clinics. (a) A hospital, clinic, nursing home, infirmary or related facility which dispenses drugs for outpatient treatment shall have a licensed pharmacist in charge of the dispensary, except that prescriptions may be compounded and dispensed by or under the supervision of the prescribing physician.

(b) The board shall issue a license to a hospital drug room, nursing home drug room or related facility which dispenses drugs from bulk supply for inpatient treatment, providing the facility employs a licensed pharmacist on a continual or consultant basis. (§ 12 ch 194 SLA 1955; am § 23 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment designated the former section as subsection (a) and added subsection (b). In subsection (a) the amendment deleted "or" preceding "clinic" and inserted "nursing home, infirmary or related facility."

Sec. 08.80.400. Practice of medicine not affected. This chapter

does not affect the practice of medicine by a licensed medica doctor, and does not limit him in supplying a patient with any medicinal preparation or article which he considers proper. (§ 12 ch 194 SLA 1955)

Sec. 08.80.410. Use of term "pharmacist" prohibited. It is unlawful for a person to assume or use the title "pharmacist," or any variation of the title, or to hold himself out to be a pharmacist, without being registered. (§ 13(a) ch 194 SLA 1955)

Sec. 08.80.420. Certain advertising prohibited. (a) It is unlawful for a person to use or exhibit the title "pharmacist," "assistant pharmacist," or "druggist," or the descriptive term "pharmacy," "drug store," "drug sundries," or other similar title or term containing the word "drug," in any business premises, or in an advertisement through the media of press, or publication, or by radio or television, unless the business has a licensed pharmacist in regular and continuous employment.

(b) A person may not advertise in any manner, prices, percentiles of prices or discounts for drugs requiring a prescription. (§ 13(b) ch 194 SLA 1955; am § 24 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment added subsection (b).

Sec. 08.80.430. Use of pharmacy symbols prohibited. It is unlawful for a person to display in a place of business the characteristic pharmacy symbol of bottles, or globes, which are colored or contain colored liquids unless the business has a pharmacist licensed and registered under this chapter on duty under § 320 of this chapter. (§ 13(c) ch 194 SLA 1955; am § 25 ch 206 SLA 1972)

Effect of amendment. — The 1972 amendment deleted "licensed" preceding "pharmacist" and substituted "licensed and registered under this chapter on duty under § 320 of this chapter" for "in regular and continuous employment."

Sec. 08.80.440. Denial of examination or license. The board may deny an applicant the opportunity to be examined, may deny a license to an applicant who has successfully completed the prescribed examination, or may deny a license to an applicant for registration by reciprocity, or institute proceedings to suspend, revoke or otherwise terminate a registration, but only upon the basis of a specific complaint. Complaints shall be in the form of an affidavit and shall be filed in duplicate with the secretary of the board. (§ 15 ch 194 SLA 1955)

Sec. 08.80.450. Disciplinary action. The board may consider a complaint based upon the alleged violation of any provision of this chapter, and may by a majority vote of a quorum dismiss the complaint, reprimand a licensee, or take other punitive action as the nature of the facts warrant. Orders issued by the board shall be in writing, signed by a majority and filed with the secretary of the board. The accused shall receive an authenticated copy of the order. (§ 17 ch 194 SLA 1955)

Sec. 08.80.460. Violation. (a) A person who violates a provision of this chapter for which no punishment is provided is guilty of a misdemeanor and is punishable by a fine not to exceed $1,000, or by imprisonment for a period not to exceed three months or by both.

(b) A person who violates the provisions of § 295 of this chapter is punishable by a civil fine in an amount established by the board in a schedule or schedules establishing the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in the Administrative Procedure Act (AS 44.62). (§ 19 ch 194 SLA 1955; am § 26 ch 206 SLA 1972; am § 4 ch 187 SLA 1976)

Effect of amendment.
The 1976 amendment added subsection (b).

C.J.S. references.—28 C.J.S. Druggists §§ 6, 11 to 13; 53 C.J.S. Licenses §§ 56 to 71.

Article 5. General Provisions.

Section	Section
470. Construction	486. Definitions
475. Exception	490. Short title

Sec. 08.80.470. Construction. Nothing in this chapter amends, modifies, repeals or otherwise changes any provision of the Uniform Narcotic Drug Act (AS 17.10) or the Alaska Food, Drug and Cosmetic Act (AS 17.20). (§ 20 ch 194 SLA 1955)

Sec. 08.80.475. Exception. This chapter does not apply to the safe storage, preservation, dispensing, or control of drugs in any federally operated hospital or institution. (§ 1 ch 49 SLA 1974)

Legislative committee report. — For report on ch. 49, SLA 1974 (HB 589), see 1974 House Journal, p. 312.

Sec. 08.80.480. **Definitions.** As used in this chapter, unless the context otherwise requires,

(1) "board" means the Board of Pharmacy;

(2) "drug" or "drugs" means drugs or medical supplies which contain poisonous, potent, habit-forming or deleterious ingredients, or medicines containing ingredients which may be considered dangerous or harmful if taken in overdose;

(3) "medical supplies" means items for the cure or treatment of disease or injury which do not require prescription by a physician and which do not contain poisonous, potent, habit-forming or deleterious ingredients, or an ingredient which may be considered dangerous or harmful if taken in overdose;

(4) "owner" means the owner of a place of business for wholesaling, retailing, compounding or dispensing drugs, medicines or poisons;

(5) "pharmacy" includes "drug store" and "pharmacy or drug department" and means a place of business in which physicians' prescriptions are compounded or dispensed and in which drugs and medicines are compounded or dispensed;

(6) Repealed by § 11 ch 53 SLA 1973.

(7) "recognized college of pharmacy" means a college, school or department of pharmacy whose entrance requirements and courses of study are approved by the National Association of Boards of Pharmacy;

(8) "manager" means a licensed pharmacist in charge of a pharmacy or drug store, or of a pharmacy or drug department, where the owner is not a licensed pharmacist;

(9) "retail" means sale to the ultimate user;

(10) "retail pharmacist" means a person who sells to the ultimate user;

(11) "sell" means to possess in violation of the intent of this chapter, exchange, barter, give away or otherwise dispose of;

(12) "wholesale" means sale by a manufacturer, wholesale dealer, distributor, or jobber to a person who sells, or intends to sell, directly to the user;

(13) "wholesale drug dealer" means a manufacturer, wholesale dealer, distributor or jobber;

(14) "bulk supply" means drugs in original containers not labeled as required by § 290 of this chapter;

(15) "drug room" means an area provided only for the proper and safe storage, preservation and control of bulk supply drugs and which is under the responsibility of a continuously employed or consultant pharmacist;

(16) "hospital pharmacy" means and includes a pharmacy, licensed by the board, located within any hospital, institution or establishment which maintains and operates organized facilities for the diagnosis, care and treatment of human illness and provides for the obtaining, storage and dispensing of drugs to both inpatients and outpatients and which is under the responsibility of a staff pharmacist;

(17) "outpatient dispensing" means dispensing drugs for administration outside of the hospital pharmacy's control;

(18) "prescription department" means that section of a business in which prescriptions for medications are compounded, filled and dispensed by a licensed pharmacist;

(19) "shopkeeper" means a retail dealer who sells over the counter medicinal preparations in original unbroken packaging which do not require a prescription for dispensing. (§ 2 ch 194 SLA 1955; am §§ 27—29 ch 206 SLA 1972; am § 11 ch 53 SLA 1973)

Effect of amendments. — The 1972 amendment substituted "pharmacist" for "dealer" in paragraph (10), inserted "drug" in paragraph (13), and added paragraphs (14)—(19).

The 1973 amendment repealed paragraph (6).

Legislative committee report.—For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

Sec. 08.80.490. Short title. This chapter may be known as the Pharmacy Act. (§ 1 ch 194 SLA 1955)

(6) "vision and eye-screening projects" means a project organized with the intent of identification and referral of vision and eye disorders;

(7) "prescription" means a written formula prepared by a person licensed under AS 08.72 and which contains the following essential elements when applicable to eyeglasses, contact lenses or other visual therapy: diopric power of spheres, cylinders and prisms, axis of cylinders and position of prism base; designation of inter-pupillary distances; size, base curve, power, color and type, when a contact lense; and the name of the patient, date of prescription and name and office location of prescriber. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37)

Authority: AS 08.72.050

12 AAC 48.1100 – 12 AAC 48.1121. Repealed. (Eff. 4/24/71, Reg. 37)

CHAPTER 52. BOARD OF PHARMACY

Article
1. Internship
2. Hospital Pharmacies
3. General Provisions

ARTICLE 1. INTERNSHIP

Section
10. Record of experience of pregraduate and postgraduate pharmacy intern
20. Training requirements for pharmacy intern
30. Intern experience in a hospital
40. Internship in government-operated institutions

12 AAC 52.010. RECORD OF EXPERIENCE OF PREGRADUATE AND POSTGRADUATE PHARMACY INTERN. A pharmacy intern shall submit a record of his intern experience every three months on a form provided by the board. The form must be certified by a pharmacist, licensed and registered under AS 08.80.110, who supervises the pharmacy intern's work. (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4),(5) and (7)

12 AAC 52.020. TRAINING REQUIREMENTS FOR PHARMACY INTERN. (a) A pharmacy intern shall

(1) write one comprehensive outline for each 40 hours of employment, of at least 300 words about a pharmaceutical preparation, drug or specialty in the notebook required under (b) of this section until he has accumulated 500 hours of internship; pharmacy interns with 500 or more hours of internship need not comply with this requirement;

(2) record prescriptions or chart orders filled in the notebook required under (b) of this section and personally fill at least at the rate of 100 prescriptions per 40 hours worked after completion of 1,000 hours of internship;

(3) observe the dispensing and recording of sales of controlled substances as those substances are defined by federal and state laws and regulations;

(4) study the method of controlled substance inventory in compliance with federal and state laws and regulations; and

(5) make out official order forms, except for signature, for the purpose of controlled substances.

(b) A pharmacy intern must record in a suitable notebook the experience he has gained to show he has met the training requirements outlined in (a) of this section. The notebooks will be reviewed and considered by the board in determining whether or not a pharmacy intern has met the training requirements in (a) of this section. (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4),(5) and (7)

12 AAC 52.030. INTERN EXPERIENCE IN A HOSPITAL. Pharmacy intern experience in a hospital must be obtained in a hospital pharmacy licensed as an inpatient and outpatient hospital pharmacy as defined in AS 08.80.480(16). (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4),(5) and (7)

12 AAC 52.040. INTERNSHIP IN GOVERNMENT-OPERATED INSTITUTIONS. The completion of an internship served in a pharmacy not licensed by the board but operated in an institution established by the state will be sufficient to meet the requirements set out in AS 08.80.110(5) if the following conditions are met:

(1) the applicant has served his internship under the supervision of a pharmacist licensed by the state; and

(2) supervising pharmacist certifies that the pharmacy in which the internship was completed meets all of the requirements set out by federal law and regulation, the Alaska Statutes, and this chapter. (Eff. 4/11/76, Reg. 58)

Authority: AS 08.80.030(4) and (5)
AS 08.80.110(5)

ARTICLE 2.
HOSPITAL PHARMACIES

Section

100. Preparation of list of noncontrolled legend drugs
110. Prepackaging noncontrolled legend drugs
120. Labeling prepackaged noncontrolled legend drugs
130. Supervision of prescribing physician; procedure for delivery to patient of prepackaged, noncontrolled legend drugs
140. Pharmacist in charge of hospital pharmacy

12 AAC 52.100. PREPARATION OF LIST OF NONCONTROLLED LEGEND DRUGS. The licensed pharmacist or licensed consultant pharmacist in charge of a hospital pharmacy or drug room, in consultation with the hospital's medical staff, shall prepare a list of noncontrolled legend drugs which may be delivered to outpatients receiving emergency treatment when a licensed pharmacist is not on duty and the prescribing physician is not present. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)
AS 08.80.390

12 AAC 52.110. PREPACKAGING NONCONTROLLED LEGEND DRUGS. Licensed pharmacists may prepackage noncontrolled legend drugs identified on the list prepared under sec. 100 of this chapter. There shall be no more than six doses of the drug in each prepackaged container. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8)
AS 08.80.390

12 AAC 52.120. LABELING PREPACKAGED NONCONTROLLED LEGEND DRUGS. (a) Drugs prepackaged under sec. 110 of this chapter must be labeled by the pharmacist at the time of packaging.

(b) The prescription label or unit dose package label must contain

(1) a blank space for the name of the patient;

(2) a blank space for the name of the prescribing physician;

(3) the name of the drug;

(4) the strength of the drug.

(5) the expiration date of the drug, if applicable;

(6) the lot number of the drug;

(7) the date of prepackaging;

(8) a blank space for the date of delivery to patient;

(9) a prescription number;

(10) initials of the pharmacist who prepackaged the drug;

(11) the name and address of the hospital;

(12) directions to the patient or, if not predetermined, a blank space for special instructions of the prescribing physician; and

(13) a blank space for the name or initials of the person delivering the drug. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8) AS 08.80.390

12 AAC 52.130. SUPERVISION OF PRESCRIBING PHYSICIAN; PROCEDURE FOR DELIVERY TO PATIENT OF PREPACKAGED, NONCONTROLLED LEGEND DRUGS. (a) If a licensed pharmacist is not on duty, emergency room personnel may deliver noncontrolled legend drugs, prepackaged in accordance with secs. 100–120 of this chapter, to a person receiving emergency outpatient treatment on receiving on order from a licensed physician. The physician's order may be by written or telephonic communication. No more than one prepackaged container of the same drug may be delivered to a person receiving emergency outpatient treatment, unless more than one package is required to sustain the patient until the first available pharmacist is on duty in the community.

(b) When delivering drugs under this section, the person doing so shall

(1) complete the label affixed to the container with all required information except that the name and strength of the drug may be deleted on order of the prescribing physician; and

(2) prepare a record of delivery which includes all of the information listed in sec. 120 of this chapter.

(c) The record prepared under (b)(2) of this section shall be given to the pharmacist in charge of the hospital pharmacy at the beginning of the pharmacist's next duty day.

(d) This section does not authorize other than emergency room personnel on a hospital's staff to deliver noncontrolled legend drugs to outpatients receiving emergency treatment.

(e) This section does not authorize the delivering of controlled legend drugs by any person not authorized by law to dispense controlled legend drugs. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8) AS 08.80.390

12 AAC 52.140. PHARMACIST IN CHARGE OF HOSPITAL PHARMACY. (a) The pharmacist in charge of the hospital pharmacy shall within a resonable time record all drugs delivered to outpatients under sec. 130 of this chapter in the pharmacy record book maintained for the recording of all medication delivered from the emergency room under this chapter.

(b) The entry made under (a) of this section must include logging the prescription number and all information required by the record of delivery prepared under sec. 130(b)(2) of this chapter and must be shown as a completed prescription.

(c) The pharmacist in charge of the hospital pharmacy shall determine what constitutes an adequate supply of prepackaged, noncontrolled legend drugs for use under the provisions of this article. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030(4) and (8) AS 08.80.390

ARTICLE 3. GENERAL PROVISIONS

Section
900. Definitions

12 AAC 52.900. DEFINITIONS. In this chapter unless the context otherwise requires

(1) "board" means the Board of Pharmacy;

(2) "state" means the State of Alaska;

(3) "completed prescription" means the prescribed drug has been delivered to the patient, on a physician's order, that all blank spaces on the label have been filled in, and a record of doing so has been given to the pharmacist so he may file the prescription as required by law;

(4) "deliver to patient" means completing the blank spaces on the label of the prepackaged drug and actually handing the package to the patient, or the patient's representative;

(5) "dose" means the amount of medication that is to be given at one specific time, as determined by the physician;

(6) "emergency room personnel" means those employees of a hospital who are designated by the administrator of the hospital, or by the personnel committee of the hospital, to be employed in the emergency room of the hospital for the purpose of administering emergency treatment to patients;

(7) "noncontrolled legend drug" means any drug that bears on the label the legend, "TO BE DISPENSED ONLY ON OR BY THE PRESCRIPTION OF A PHYSICIAN," but not drugs that have been classified as "CONTROLLED SUBSTANCES" under the Federal Controlled Substances Act of 1970 (21 USC Section 801 et seq.);

(8) "pharmacy record book" means a book kept for the sole purpose of logging all information pertinent to the delivery of noncontrolled legend drugs under secs. 100–140 of this chapter;

(9) "physician's order" means an order given to the emergency room personnel by a physician licensed to practice in Alaska or recognized by the hospital as a physician who may practice medicine in the hospital;

(10) "prepackage" means placing in a container that meets federal and state qualifications as a legal container, not more than six doses of a noncontrolled legend drug and affixing a label to the container that includes all of the information required under sec. 120 of this chapter;

(11) "present" means physically present the emergency room of the hospital with patient. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.03(
AS 08.80.3(

STATE OF ALASKA
DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT
BOARD OF PHARMACY
POUCH D, JUNEAU, ALASKA 99811

PHARMACY PROCEDURE SHEET

LICENSURE BY EXAMINATION:

The following documents MUST be on file before you will be considered for examination:

1. COMPLETED AND NOTARIZED APPLICATION, INCLUDING PHOTOGRAPH.
2. CERTIFIED COPY OF DIPLOMA FROM A COLLEGE OF PHARMACY RECOGNIZED BY THE NABP OR A NOTARIZED COLLEGE TRANSCRIPT SHOWING THE MOST RECENT DEGREE GRANTED
3. NOTARIZED EVIDENCE OF HAVING COMPLETED 1500 HOURS OF INTERNSHIP UNDER THE DIRECT SUPERVISION OF A LICENSED PHARMACIST, 540 HOURS OF WHICH MUST BE COMPLETED AFTER GRADUATION
4. FEES: a. Examination fee--$50. b. Biennial license fee--$50. must be submitted before your license will be issued and may be submitted before the examination.

The Board of Pharmacy will administer the pharmacy examination during the month of June. Notice of the exact time and location will be given in the month of March.

LICENSURE BY ENDORSEMENT THROUGH THE NABP:

The following documents MUST be on file before you will be considered for licensure by endorsement:

ITEMS 1 & 2 above
3. CERTIFIED COPY OF CURRENT LICENSE FROM THE STATE ON WHICH YOU BASE YOUR REQUEST FOR LICENSURE
4. FEES: a. Reciprocity investigation fee--$25. b. Biennial license fee--$50. must be submitted before your license will be issued and may be submitted with your Alaska application.

Upon receipt of the preceding listed items, procedure will begin for endorsement through the NABP. If everything is in order, your license will be issued when the final NABP application is received and you have passed the Alaska Jurisprudence examination.

NOTE TO ALL APPLICANTS FOR LICENSURE BY ENDORSEMENT THROUGH THE NABP:

Eligibility for reciprocal licensure in all states is contingent upon the applicant's qualifications at the time of his licensure by examination in the state from which he applies.

The NABP requires that applicants complete the PRELIMINARY application for reciprocal licensure in order that eligibility may be determined. The preliminary application will be supplied by the Secretary of the Board of Pharmacy or the Department.

The PRELIMINARY application must be completed in full and SUBMITTED TO the NABP with a fee of $75.00 in the form of a money order, bank draft, or certified check. This is NOT to be confused with the fees required by the Board of Pharmacy in Alaska. Complete instructions are given on the PRELIMINARY NABP application and should be read carefully to insure prompt handling of your application.

PROCEDURES FOR OBTAINING A TEMPORARY LICENSE TO PRACTICE PHARMACY:

The following documents MUST be on file with a Board member or the Department before you will be interviewed for a Temporary License:

ITEMS 1, 2, & 3 in section LICENSURE BY ENDORESEMENT
4. Fees: a. Temporary License fee--$10. b. Reciprocity investigation fee--$25. c. Biennial License fee--$50.

Upon receipt of the above listed items the Jurisprudence examination will be given by one of the Board members. After the issuance of your Temporary License, you will have three months to complete and submit to the Department the final NABP application form.

All copies of documents MUST BE CERTIFIED by a Notary Public to be true copies of the original documents. Copies no larger than 8 1/2" x 11" preferred. YOUR APPLICATION AND SUPPORTING CREDENTIALS WILL BE RETURNED TO YOU IF THEY ARE NOT COMPLETE AND IN PROPER FORM.

PROCEDURE FOR REGISTERING AS A PHARMACY INTERN TO PRACTICE PHARMACY:

A Pharmacy Intern Permit may be issued by a Board member to an applicant upon passing the Alaska Jurisprudence examination given by the Board member. The Intern Permit is valid for one year and may be renewed upon application and payment of the annual fee.

The following documents MUST be on file with a Board member or the Department before you will be interviewed for a pregraduate Pharmacy Intern Permit:

1. COMPLETED AND NOTARIZED INTERN APPLICATION, INCLUDING PHOTOGRAPH
2. PROOF THAT YOU ARE ENROLLED IN A SCHOOL OF PHARMACY RECOGNIZED BY THE NABP AND THAT YOU ARE DECLARED A JUNIOR BY THAT SCHOOL OF PHARMACY
3. $10 REGISTRATION FEE

The following documents MUST be on file with a Board member or the Department before you will be interviewed for a postgraduate Pharmacy Intern Permit:

ITEM 1 above
2. CERTIFIED COPY OF DIPLOMA FROM A SCHOOL OF PHARMACY RECOGNIZED BY THE NABP OR A NOTARIZED COLLEGE TRANSCRIPT SHOWING THE MOST RECENT DEGREE GRANTED
3. $10 REGISTRATION FEE

Upon receipt of the above listed items the Jurisprudence examination will be given by one of the Board members.

FOR INFORMATION REGARDING JOB OPPORTUNITIES OR SALARY SCHEDULES, PLEASE CONTACT THE SECRETARY OF THE ALASKA PHARMACEUTICAL ASSOCIATION, P.O. BOX 1185, ANCHORAGE, ALASKA 99501.

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF PHARMACY
POUCH D
JUNEAU, ALASKA 99811

I HEREBY MAKE APPLICATION for registration and licensure to practice Pharmacy in the State of Alaska by EXAMINATION ( ), by ENDORSEMENT through the NABP ( ).

THIS APPLICATION MUST BE COMPLETED IN FULL. If any section does not apply, please write N/A in the space provided. TYPE OR PRINT IN INK ALL INFORMATION.

IF APPLYING FOR REGISTRATION through ENDORSEMENT, upon what State License or Certificate do you base this application?_____
Certificate Number_____Effective Date_____

1. NAME IN FULL_____SOCIAL SECURITY #_____

2. PRESENT MAILING ADDRESS_____Phone_____
ZIP CODE

3. PERMANENT RESIDENT ADDRESS_____Phone_____
ZIP CODE

4. PLACE OF BIRTH_____DATE OF BIRTH_____AGE_____

5. POST HIGH SCHOOL EDUCATION

NAME OF SCHOOL - - LOCATION	MONTH - YEAR	MONTH - YEAR
_____	FROM_____	TO_____
_____	FROM_____	TO_____
_____	FROM_____	TO_____
_____	FROM_____	TO_____

Did you receive a degree or certificate of graduation from any of the above mentioned schools, colleges or universities? YES ( ) NO ( )
If yes, give name of institution_____
Title of degree or certificate_____Date effective_____

6. I AM CERTIFIED AND/OR REGISTERED AS A PHARMACIST IN THE FOLLOWING STATES:

State	Date Issued	Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. I HAVE PASSED THE FOLLOWING STATE BOARD EXAMINATIONS:

State	Date
_____	_____
_____	_____

08-425 Revised

8. How many hours of internship have you completed since graduation?_____

9. Where and under whom did you complete your internship? (give name and address of pharmacist, pharmacy; and dates of internship)

_____

_____

_____

10. To what county, district or state pharmacy associations have you belonged? (if you have never been a member of a society, indicate reasons below)

Name Address

_____ _____

_____ _____

11. How many years of practical experience have you had where drugs, medicines, and poisons were dispensed and retail prescriptions compounded?_____

12. LIST EXPERIENCE IN DETAIL:

Name of Employer_____
Address_____
From_____To_____Position Held_____

Name of Employer_____
Address_____
From_____To_____Position Held_____

Name of Employer_____
Address_____
From_____To_____Position Held_____

IF ANY OF THE FOLLOWING ANSWERS ARE YES, EXPLAIN IN DETAIL IN AFFIDAVIT FORM ON A SEPARATE SHEET.

	Yes	No
13. Have you ever been called before any state board for interrogation concerning any violation of pharmacy laws or unethical conduct?	( )	( )
14. Have you ever been denied a certificate by, or the privilege of taking an examination before, any state pharmacy board?	( )	( )
15. Have you ever had a license to practice as a registered pharmacist revoked or suspended?	( )	( )
16. Have you ever been charged or convicted of a violation of a U.S. or state statute or regulation excluding minor traffic violations?	( )	( )
17. Have you ever been addicted to or excessively used alcohol, narcotics, barbiturates or habit-forming drugs?	( )	( )
18. Have you ever been treated for drug addiction or inebriety?	( )	( )
19. Have you ever applied for and been denied a DEA number?	( )	( )
20. Have you ever surrendered your DEA number for any other reason than routine matters?	( )	( )
21. Have you ever been charged with or convicted of a violation of any federal or state narcotic law?	( )	( )
22. Are there any charges involving any of the above items pending against you?	( )	( )

I HEREBY CERTIFY that the information contained in this application is true and correct to the best of my knowledge. I further certify that all credentials supplied by me are true and correct and that the photograph which appears below is a true likeness of myself taken within the past sixty (60) days. I understand that any false information or falsification of credentials may result in failure to obtain a license to practice as a Registered Pharmacist in the State of Alaska.

ATTACH PHOTOGRAPH

No larger than

3" X 3"

_____
Signature of Applicant

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of_____this_____day

of_____, 19_____.

_____
Notary Public

_____
My Commission Expires

NOTARY SEAL

23. CERTIFICATE OF MORAL CHARACTER

THIS CERTIFIES that I have been personally acquainted with_____ _____for_____years and that I know him/her to be of good moral character, not addicted to the use of habit-forming drugs or intemperance, and I recommend him/her to the Board of Pharmacy, State of Alaska, as being entirely worthy to be licensed to practice pharmacy in Alaska pursuant to law.

Name_____

Address_____

(continued)

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of _____ this _____ day of _____, 19_____.

_____
Notary Public

_____
My Commission Expires

NOTARY SEAL

24. CERTIFICATE OF MORAL CHARACTER

THIS CERTIFIES that I have been personally acquainted with _____ _____ for _____ years and that I know him/her to be of good moral character, not addicted to the use of habit-forming drugs or intemperance, and I recommend him/her to the Board of Pharmacy, State of Alaska, as being entirely worthy to be licensed to practice pharmacy in Alaska pursuant to law.

Name _____

Address _____

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of _____ this _____ day of _____, 19_____.

_____
Notary Public

_____
My Commission Expires

NOTARY SEAL

*Section 1. AS 08.80.140 is amended to read:

Sec. 08.80.140. LICENSE BY ENDORSEMENT. The board may register without examination , except the jurisprudence examination , an applicant who has been certified as a registered pharmacist by the National Association of Boards of Pharmacy, if the applicant meets the requirements of § 110(1)-(4) of this chapter.

*Section 2. AS 08.80.320(b) is amended to read:

(b) In communities which have one licensed pharmacy, the owner of the pharmacy shall have a pharmacist, licensed and registered under this chapter, on duty [, OR ON CALL,] at all times that the pharmacy is open for business , but during the time that a pharmacist is not on duty and the remainder of the store is open for business , the pharmacy must be in compliance with § 365(1),(3) and (4) of this chapter. Stores in existance on the effective date of this section have one year to comply with this section.

*Section 3. AS 08.80.030(6), AS 8.80.040(7), AS 08.80.117, AS 08.80.160(13), AS 08.80.380, AS 08.80.420 and AS 08.80.480(19) are repealed.

Physical Therapy Board

A PERFORMANCE REVIEW
OF THE
STATE PHYSICAL THERAPY BOARD

October 20, 1978

Commissioner of the Department of Commerce and Economic Development	H. Phillip Hubbard
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Board of Physical Therapy

Chairperson	Donna Klokkevold, RPT
Secretary	Edward T. Heuston
Member	Richard W. Allsop, RPT
Member	J. Michael James, MD
Member	Gary McCarthy, RPT

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

October 20, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
STATE PHYSICAL THERAPY BOARD

October 20, 1978

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

1-Q1LH

STATE OF ALASKA

PHYSICAL THERAPISTS PRACTICE ACT

08.84

Department of Commerce

Division of Occupational Licensing

Pouch D

Juneau, Alaska 99801

CHAPTER 84. PHYSICAL THERAPISTS PRACTICE ACT

Article
1. State Physical Therapy Board (Secs 08.84.010-08.84.020)
2. Registration (Secs 08.84.030-08.84.120)
3. Unlawful Acts (Secs 08.84.130-08.84.180)
4. General Provisions (Secs 08.84.190-08.84.200)

ARTICLE 1. State Physical Therapy Board

Section
10. State Physical Therapy Board
20. Applicability of Administrative Procedure Act

Sec. 08.84.010. STATE PHYSICAL THERAPY BOARD. (a) There is created the State Physical Therapy Board, which consists of five members appointed by the governor. The membership consists of one physician licensed to practice medicine in the state, three physical therapists registered in the state, and one lay person. The members shall be selected from a list of 10 persons which shall be submitted by the Alaska Chapter of the American Physical Therapy Association. Members of the board shall be appointed for terms of one, two and three years, respectively; all subsequent appointments shall be made for a term of three years and until their successors are appointed. Vacancies on the board shall be filled by appointment in like manner. Board members are not entitled to a travel or per diem allowance.

(b) The Physical Therapy Board shall conduct examinations for applicants and shall control all matters pertaining to the registration of physical therapists and physical therapy assistants and the practice of physical therapy. The board shall

(1) pass upon the qualifications of applicants;

(2) conduct examinations;

(3) issue temporary permits and registration certificates to physical therapists and physical therapy assistants qualified under this chapter;

(4) suspend or revoke registration certificates, when necessary;

(5) keep a current register listing the name, business address, date and number of registration certificate of each physical therapist and physical therapy assistant who is registered to practice in this state;

(6) keep a record and minutes of its meetings, proceedings and hearings. (sec 15 ch 74 SLA 1957; am sec 8 ch 49 SLA 1969; am sec 1 ch 71 SLA 1974)

Sec. 08.84.020. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT. The board shall comply with the Administrative Procedure Act (AS 44.62). (sec 4 ch 158 SLA 1960; am sec 4 ch 30 SLA 1969)

ARTICLE 2. Registration

Sections
30. Qualifications for registration
40. Application for registration
50. Fees
60. Registration by endorsement
65. Temporary permit
70. (Repealed)
80. Examinations
90. Registration
100. Renewal of registration
110. (Repealed)
120. Refusal, revocation and suspension of registration

Sec. 08.84.030. QUALIFICATIONS FOR REGISTRATION. To be eligible for registration by the board as a physical therapist or physical therapy assistant, an applicant shall

(1) be of good moral character;

(2) have graduated from a school of physical therapy approved by the Council on Medical Education and Hospitals of the American Medical Association, or the American Physical Therapy Association;

(3) pass to the satisfaction of the board an examination from the Professional Examination Service, to determine his fitness for practice as a physical therapist or physical therapy assistant, or be entitled to registration without examination as provided in sec. 60 of this chapter. (sec 3 ch 74 SLA 1957; am secs 1, 8 ch 49 SLA 1969; am secs 1, 2 ch 26 SLA 1970; am sec 25 ch 245 SLA 1970; am sec 2 ch 71 SLA 1974)

Sec. 08.84.040. APPLICATION FOR REGISTRATION. To be registered as a physical therapist or physical therapy assistant, an applicant shall apply to the board on a form prescribed by the board. An applicant shall include in his application, evidence under oath that he possesses the qualifications required by sec. 30 of this chapter. (sec 4 ch 74 SLA 1957; am sec 3 ch 71 SLA 1974)

Sec. 08.84.050. FEES. The following fees shall be imposed under this chapter when applicable:

(1) application $25

(2) registration by examination 25

(3) registration by endorsement 25

(4) biennial renewal 25

(5) temporary permit 10

(sec 4 ch 74 SLA 1957; am sec 2 ch 49 SLA 1969; am sec 3 ch 26 SLA 1970)

Sec. 08.84.060. REGISTRATION BY ENDORSEMENT The board may register without examination an applicant who is a physical

therapist or physical therapy assistant registered under the laws of another state or territory, if the requirements for registration in that state or territory were, at the date of registration, substantially equal to the requirements in this state. (sec 6 ch 74 SLA 1957; am sec 4 ch 26 SLA 1970; am sec 4 ch 71 SLA 1974)

Sec. 08.84.065. TEMPORARY PERMIT. (a) The board may issue a nonrenewable temporary permit to an applicant for registration by endorsement or by examination who meets the requirements of sec. 30(1), (2) and (3) of this chapter and pays the required fee.

(b) A temporary permit issued to an applicant for registration by endorsement is valid for eight months or until the board considers the applicant's endorsement application, whichever occurs first.

(c) A temporary permit issued to an applicant for registration by examination is valid for eight months or until the results of the first examination for which the applicant is scheduled are published, whichever occurs first. If the applicant fails to take the first examination for which he is scheduled his temporary permit lapses on the day of the examination. (sec 5 ch 26 SLA 1970; am sec 5 ch 71 SLA 1974)

Sec. 08.84.070. REGISTRATION FEE.
Repealed by sec 8 ch 49 SLA 1969.

Sec. 08.84.080. EXAMINATIONS. (a) The board shall examine applicants for registration as physical therapists or physical therapy assistants at the times and places it determines.

(b) An application for examination shall be submitted to the department at least 40 days before the examination date. (sec 7 ch 74 SLA 1957; am sec 3 ch 49 SLA 1969; am sec 6 ch 26 SLA 1970; am sec 6 ch 71 SLA 1974)

Sec. 08.84.090. REGISTRATION. The board shall register an applicant who meets the qualifications for registration under this chapter. It shall issue a certificate of registration to each person registered. A certificate of registration is prima facie evidence of the right of the person to represent himself as a registered physical therapist or registered physical therapy assistant. (sec 8 ch 74 SLA 1957; am sec 7 ch 71 SLA 1974)

Sec. 08.84.100. RENEWAL OF REGISTRATION. (a) A registered physical therapist or physical therapy assistant shall renew his registration biennially with the Department of Commerce on or before the date set by the department under AS 08.01.100(a). If the registration is not renewed on or before that date, it lapses.

(b) A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration which remains lapsed for more than 60 days. If the registration remains lapsed for more than three years, the board may require the applicant to take and pass the examination given under sec 30(3) of this chapter. (sec 9 ch 74 SLA 1957; am sec 4 ch 49 SLA 1969; am sec 8 ch 71 SLA 1974)

Sec. 08.84.110. RENEWAL FEE.
Repealed by sec 8 ch 49 SLA 1969.

Sec. 08.84.120. REFUSAL, REVOCATION AND SUSPENSION OF REGISTRATION. The board may refuse to register an applicant, may refuse to renew the registration of a person, and may suspend or revoke the registration of a person who

(1) is habitually drunk or addicted to the use of narcotic drugs;

(2) is, in the judgment of the board, guilty of immoral or unprofessional conduct;

(3) has been convicted of violating a state or federal narcotic law;

(4) has been convicted of a crime involving moral turpitude;

(5) is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;

(6) has obtained or attempted to obtain registration by fraud or material misrepresentation;

(7) has been declared mentally ill by a court and has not thereafter been lawfully declared sane;

(8) has treated or attempted to treat ailments of human beings otherwise than by physical therapy, or has attempted to practice independent of the prescription and direction of a person licensed to practice medicine or osteopathy; or

(9) as a physical therapy assistant, has attempted to practice physical therapy which has not been initiated, supervised and terminated by a registered physical therapist. (sec 10 ch 74 SLA 1957; am sec 5 ch 49 SLA 1969; am sec 9 ch 71 SLA 1974)

ARTICLE 3. Unlawful Acts

Sections		Sections	
130.	False claim of registration forbidden		therapists
140.	Penalty for fraud in obtaining registration	160.	Practice of registered physical therapist
150.	Registration of physical	170.	Penalty
		180.	Investigation by board

Sec. 08.84.130. FALSE CLAIM OF REGISTRATION FORBIDDEN. (a) A person not registered as a physical therapist, or whose registration is suspended or revoked, or whose registration is lapsed, who uses in connection with his name the words or letters "R.P.T.," "Registered Physical Therapist," or other letters, words, or insignia indicating or implying that he is a registered physical therapist, or who in any way, orally, or in writing, directly or by implication, represents himself as a registered physical therapist is guilty of a misdemeanor.

(b) A person not registered as a physical therapy assistant, or whose registration is suspended or revoked, or whose registration is lapsed, who in any way, orally, or in writing, directly or by implication, represents himself as a registered physical therapy assistant is guilty of a misdemeanor. (sec 11 ch 74 SLA 1957; am sec 10 ch 71 SLA 1974)

Sec. 08.84.140. PENALTY FOR FRAUD IN OBTAINING REGISTRATION. A person who wilfully makes a false oath or affirmation or who obtains or attempts to obtain registration by a fraudulent representation is guilty of a misdemeanor. (sec 12 ch 74 SLA 1957)

Sec 08.84.150. REGISTRATION OF PHYSICAL THERAPISTS. (a) It is unlawful for anyone to practice physical therapy without being registered in accordance with this chapter.

(b) A person practicing physical therapy without being registered on April 27, 1969 may continue to practice for a period of six months. At the end of that period he must be registered under sec 90 of this chapter in order to continue to practice physical therapy in the state. (sec 14 ch 74 SLA 1957; am sec 6 ch 49 SLA 1969)

Sec. 08.84.160. PRACTICE OF REGISTERED PHYSICAL THERAPIST. A person registered under this chapter may not treat human ailments by physical therapy or otherwise except under the prescription and direction of a person licensed to practice medicine or osteopathy. This chapter does not authorize any person to practice medicine, osteopathy, chiropractic, or other method of healing. A person who violates this section is guilty of a misdemeanor. (sec 13 ch 74 SLA 1957; am sec 7 ch 49 SLA 1969)

Sec. 08.84.170. PENALTY. A person who violates this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than $50 nor more than $500, or by imprisonment for not more than 30 days. (sec 17 ch 74 SLA 1957)

Sec. 08.84.180. INVESTIGATION BY BOARD. The board shall investigate every supposed violation of this chapter coming to its notice and shall report all cases which in the judgment of the board warrant prosecution to the proper law enforcement officials. (sec 17 ch 74 SLA 1957)

ARTICLE 4. General Provisions

Section 190. Definitions
Section 200. Short title

Sec. 08.84.190. DEFINITIONS. As used in this chapter, unless the context otherwise requires,

(1) "board" means the State Physical Therapy Board;

(2) "physical therapist" means a person who practices physical therapy;

(3) "physical therapy" means the treatment of a bodily or mental condition of a person by the use of the properties of heat, light, water, electricity, massage, therapeutic exercise including physical rehabilitation procedures, and physical therapy evaluation, treatment planning, instruction and consultative services; the use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not included within the term "physical therapy";

(4) "physical therapy assistant" means a person who assists in the practice of physical therapy or portions of it as initiated, supervised, and terminated by a registered physical therapist; his responsibilities do not include testing or evaluation. (sec 2 ch 74 SLA 1957; am sec 11 ch 71 SLA 1974)

Sec. 08.84.200. SHORT TITLE. This chapter may be cited as the Physical Therapists Practice Act. (sec 1 ch 74 SLA 1957)

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
POUCH D
JUNEAU, ALASKA 99811

PROCEDURE FOR OBTAINING REGISTRATION TO PRACTICE PHYSICAL THERAPY IN ALASKA

It is unlawful for anyone to practice physical therapy without being registered in accordance with this chapter. (Reference: AS 08.84.150(a))

YOUR APPLICATION AND SUPPORTING CREDENTIALS WILL BE RETURNED TO YOU IF THEY ARE NOT IN PROPER FORM.

REGISTRATION BY EXAMINATION: Alaska offers the P.E.S. examination twice yearly. Applications must be completed and on file 40 days in advance of the scheduled examination date. The applicant is responsible for assuring that the following items have been submitted to the Alaska State Physical Therapy Board before being considered for examination;

1. Completed application form.

2. Official transcript from your school of physical therapy, sent directly from the school to Juneau (above address).

3. Fee of $50.00 - includes $25.00 application fee and $25.00 examination fee.

Your application for permanent license will be considered by the Board after successful completion of the P.E.S. examination.

REGISTRATION BY ENDORSEMENT: If you hold a current license obtained by written examination from a state or territory whose requirements at the time of your registration were substantially equal to those currently in effect in Alaska, you are eligible for registration by endorsement. The applicant is responsible for assuring that the following items have been submitted to the Alaska State Physical Therapy Board before being considered for endorsement:

1. Completed application form.

2. Fee of $50.00 - includes $25.00 application fee and $25.00 endorsement fee.

3. A report of the scores you obtained in the P.E.S. examination. THESE SCORES MUST BE REPORTED FROM THE INTERSTATE REPORTING SERVICE OF THE PROFESSIONAL EXAMINATION SERVICE, 475 RIVERSIDE DR., NEW YORK, NEW YORK 10027.

4. Official transcript from your school of physical therapy, sent

directly from the school to Juneau (above address).

5. Verification form completed by all the states where you have been licensed (verification forms enclosed). The license of the other state or territory upon which endorsement is to be based must be current.

TEMPORARY PERMIT: Any member of the Physical Therapy Board may issue you a temporary permit if you are applying for permanent registration by examination or endorsement. The temporary permit allows you to practice while you are awaiting the next examination, or while you are completing application for registration by endorsement. A list of board members is attached. You must be graduated from a school of physical therapy approved by the American Physical Therapy Association in order to obtain a temporary permit. Foreign trained therapists are not eligible for temporary permits but may apply directly for permanent licensure.

The following items must be submitted to the board member before a permit will be issued:

1. Completed application form.

2. Official transcript from your school of physical therapy (sent directly from the school) or a notarized copy of your school diploma.

3. If licensure is by endorsement, a notarized copy of your current state license or a verification form completed by the state where you are licensed (verification form enclosed).

4. Non-refundable fee of $10.00.

5. An interview with a board member will be requested, but is not mandatory.

A temporary permit is valid for 8 months. Your application will be reviewed by the board and, if accepted, a permanent license will be issued. A temporary permit expires upon receipt of a failing grade on the applicant's examination. An applicant failing an examination may not be granted a second temporary permit. A permanent license may later be issued upon subsequently passing the P.E.S. exam.

You will be notified within 6 months after being issued a temporary permit whether or not your application is complete, and reminded of your temporary permit expiration date.

Revised: 9/7/77

MAIL DIRECTLY TO:
STATE OF ALASKA
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
STATE PHYSICAL THERAPY BOARD
POUCH "D"
JUNEAU, ALASKA 99811
Phone: (907) 465-2547

Picture
2" x 2"

APPLICATION FOR: (Check One)

( ) Physical Therapist
( ) Physical Therapy Assistant
( ) Temporary Permit - $10.00

BY: ( ) Endorsement - $50.00
( ) Examination - $50.00

1. NAME _____ S.S. NO. _____
Last First Middle Maiden

2. DOB _____ PLACE _____ HEIGHT ____ WEIGHT ____ SEX ____ EYES ____ HAIR ____
Mo. Day Year City State

3. MAILING ADDRESS _____
Street or Box City State Zip Code

4. EDUCATION (Beginning with High School):

NAME OF SCHOOL	LOCATION	Mo./Yr.	Mo./Yr.	DEGREE AWARDED OR NUMBER OF HOURS
		FROM	TO	
		FROM	TO	
		FROM	TO	

5. POST GRADUATE COURSE ATTENDED:

_____

_____

_____

6. APPLICATION BY EXAMINATION:

1. Have you ever taken the Professional Examination for Physical Therapist or for Physical Therapy Assistant before? Yes ( ) No ( )

Examination date _____ Place administered _____

7. PROFESSIONAL EXPERIENCE LAST 10 YEARS:

NAME AND ADDRESS OF EMPLOYMENT	POSITION HELD	DATES

(Attach Separate Sheet)

Revised: 9/7/77

8. EXPECTED PLACE OF EMPLOYMENT IN ALASKA _____

9. LICENSING BACKGROUND:

(a) States and countries in which you have been licensed:

_____ DATES _____ CURRENT? _____

_____ DATES _____ CURRENT? _____

_____ DATES _____ CURRENT? _____

_____ DATES _____ CURRENT? _____

(b) Have you ever been denied a license, or had a license revoked or suspended? If yes, explain _____

_____

_____

(c) State upon which endorsement is based _____

(d) License No. _____ Date Issued _____ Is license current? _____

(e) If endorsement is not approved by the board, do you wish to take the Professional Examination Service exam in order to be licensed in Alaska? _____

10. GENERAL INFORMATION:

	YES	NO
1. Have you ever been called before or notified by any state board or physical therapy society concerning a violation of the physical therapist practice act, or unethical conduct?	( )	( )
2. Have you ever been denied a certificate by, or the privilege of taking an examination before any state board?	( )	( )
3. Have you ever been charged or convicted of a violation of a Federal or State statute, excluding minor traffic violations?	( )	( )
4. Have you ever been addicted to or excessively used alcohol, narcotics, barbiturates or habit forming drugs?	( )	( )
5. Are you now or have you ever been emotionally or mentally ill?	( )	( )
6. Have you ever been treated for mental or emotional illness, drug addiction or inebriety?	( )	( )
7. Have you ever been discharged or forced to resign from any position as a physical therapist or physical therapy assistant?	( )	( )
8. Have you any physical handicap, chronic disease, or other disability? . .	( )	( )

If "yes" to any of the above, please explain in full on a separate sheet. If "yes" to #7 above, please give employer's name and address, and date of resignation.

I hereby certify that this information is true and correct to the best of my knowledge. I understand that any false or misleading information may result in failure to obtain licensure or subsequent revocation of my license.

Signature of Applicant _____ Title _____

SUBSCRIBED AND SWORN before me this _____ day of _____, 19___.

My Commission Expires _____ NOTARY PUBLIC _____

(Seal)

VERIFICATION OF LICENSURE

Sir:

I am applying for a license to practice physical therapy in the state of Alaska. The State Physical Therapy Board requires that this form be completed by each jurisdiction in which I hold or have held licenses. Please complete the form and return it to:

Alaska State Physical Therapy Board
Pouch D
Juneau, Alaska 99811

PLEASE DO NOT DETACH

. . . . . .

State of _____

Name of Licensee _____

Graduate of _____

License No. _____ issued effective _____

By reciprocity/endorsement _____ by examination _____

License is current _____ lapsed _____

Has the applicant's license ever been suspended or revoked? _____. If so, for what reason? _____

_____

Derogatory information, if any _____

_____

Comments, if any _____

_____

Signed _____

[BOARD SEAL]

Title _____

State Board _____

Date _____

08-2533

VERIFICATION OF LICENSURE

Sir:

I am applying for a license to practice physical therapy in the state of Alaska. The State Physical Therapy Board requires that this form be completed by each jurisdiction in which I hold or have held licenses. Please complete the form and return it to:

Alaska State Physical Therapy Board
Pouch D
Juneau, Alaska 99811

PLEASE DO NOT DETACH

. . . . . .

State of _____

Name of Licensee _____

Graduate of _____

License No. _____ issued effective _____

By reciprocity/endorsement _____ by examination _____

License is current _____ lapsed _____

Has the applicant's license ever been suspended or revoked? _____. If so, for what reason? _____

_____

Derogatory information, if any _____

_____

Comments, if any _____

_____

Signed _____

[BOARD SEAL]

Title _____

State Board _____

Date _____

08-2533

ALASKA STATE BOARD OF PHYSICAL THERAPY

PROFESSIONAL REFERENCE

Sir:

I am applying for a license to practice physical therapy in the state of Alaska. The State Physical Therapy Board requires that this form be completed and mailed to:

State of Alaska
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811

. . . . . .

I do certify that I was professionally associated with _____ (name of applicant) _____ from _____, 19____ to _____, 19____. I recommend the applicant as being professionally capable, reliable, of good moral character, and worthy of confidence.

PERSONAL STATEMENT:

_____
Signature

_____
Title

_____
Institution

_____
Address

_____
Date

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of _____, this _____ day of _____, 19____.

NOTARY SEAL

_____
Notary Public

_____
My Commission expires

Revised: 9/7/77

ALASKA STATE PHYSICAL THERAPY BOARD

C. Patricia Mc Cabe, R.P.T., Chairman
3710 E. 20th Ave.
Anchorage, Alaska 99504

Richard W. Allsop, R.P.T.
211 Eureka
Fairbanks, Alaska 99701

Donna Klokkevold, R.P.T., Secretary
3710 E. 20th Ave.
Anchorage, Alaska 99504

Edward T. Heuston
Star Route Box 6014
Eagle River, Alaska 99577

J. Michael James, M.D.
3710 E. 20th Ave.
Anchorage, Alaska 99504

Division of Occupational Licensing
Department of Commerce
Pouch D
Juneau, Alaska 99801

(Phone: 907-465-2544)

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the State Physical Therapy Board was conducted to review Board activities and accomplishments to determine if the Board has operated in an effective, efficient and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the State Physical Therapy Board should be reestablished. The law currently specifies that this Board will terminate on June 30, 1979, but will continue until June 30, 1980, for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) Interviews with Board members and questionnaires sent to the Board members;

(3) Interviews with professional associations;

(4) Tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) Interviews with OL employees;

(6) Complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency, the Human Rights Commission, and the Equal Employment Opportunity Office;

(7) Questionnaires sent to state licensed physical therapists and physical therapist assistants; and

(8) Other states' licensing requirements.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090.

(2) OL has not adequately collected, recorded or maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out its responsibilities.

(3) The Physical Therapy Board, at the time of this review, had four members. Only one member was responsive during this review.

ORGANIZATION AND FUNCTION

As of September 1, 1957, physical therapists (PT's) were required to be registered by the territorial government. They were registered at that time by the Territorial Medical Board, under the authority of Chapter 74, SLA 57.

In 1974 the State Physical Therapy Board was created by Chapter 71, SLA 1974. At this time, physical therapy assistants (PTA's) were also required to be licensed. The difference between a PT and a PTA is that a four-year degree is required for a PT and a two-year associate degree is required for a PTA.

AS 08.84.010 states that the Board shall be made up of three PTs, one medical doctor, and one lay person. The purpose of the Board is to control all matters pertaining to the registration of PTs and PTAs and the practice of physical therapy.

The major duties of the Board are to pass on the qualifications of applicants, conduct examinations, issue temporary permits and registration certificates to qualified PTs and PTAs, suspend or revoke licenses, when necessary, keep a current register of licensed PTs and PTAs and keep a record of its meetings, proceedings and hearings. The Board is assisted in these duties by the Division of Occupational Licensing (OL). OL processes applications, maintains files, answers correspondence dealing with the Board and provides other administrative support as needed by the Board. In addition, OL's Investigations Unit investigates any complaints made involving PTs or PTAs.

Qualifications for licensure include educational requirements and a passing score on an examination. The examination is given on a nation-wide basis and is prepared and graded by a national organization (Professional Examination Service).

If a PT or PTA has taken the examination in another state and has been licensed by that state as a PT or PTA, they may be licensed in Alaska by endorsement without retaking the examination. The licensing requirements in the other state must be substantially equal to Alaska's requirements.

To get a PT or PTA license renewed, a licensee must submit an application with a fee by June 30 every even numbered year.

Physical therapy is the treatment of illness and injury by physical means. The goal of the PT is to help the patient function normally via rehabilitation. Although the PT may

spend time in consultation, research, teaching and administering, in general the PT's job is to give supervision and direction of care of the patients assigned to him or her.

A doctor must, by statute, refer a patient to a PT and during treatment, the PT must keep the doctor informed of the patient's progress during the treatment.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative oversight consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the State Physical Therapy Board should continue to regulate and license the physical therapy (PT) profession in order to protect the public's health, safety and welfare.

However, the Physical Therapy Board needs to assure continued competence of licensed PTs. We are recommending that continuing education be required for license renewal (see Recommendation No. 2).

The Board is doing a good job of licensing qualified PTs. However, we are recommending that they improve licensing procedures for the use of temporary permits, in order to prevent unqualified persons from obtaining temporary permits (see Recommendation No. 3).

We found three statutory problems:

1) The Board does not have the authority to promulgate regulations (see Recommendation No. 1).

2) Qualified foreign-trained PTs may not be licensed in this state (see Recommendation No. 4).

3) The statutes in establishing illegal acts relating to the practice of PT do not define such terms as "unprofessional conduct" and "moral turpitude" (see Recommendation No. 5).

FINDINGS AND RECOMMENDATIONS

Recommendations No. 1 through No. 5 are addressed to the State Physical Therapy Board. Recommendations 6 and 7 are addressed to the Division of Occupational Licensing (OL) and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978", issued under separate cover.

Recommendation No. 1

The State Physical Therapy Board should be allowed to promulgate regulations.

Alaska Statute 08.84, which is the statute creating the State Physical Therapy Board, does not grant the Board the authority to promulgate administrative regulations, according to the Attorney General's Office. The Board has formalized policies; however, these policies do not have the effect of law. The Board feels that lack of regulation-making power has been detrimental to the Board's operations.

We recommend that a section be added to the Physical Therapy Board's statutes which will give the Board authority to promulgate regulations. Otherwise the Board does not have the authority to establish professional standards, and enforce compliance of such standards.

Recommendation No. 2

The State Physical Therapy Board should require physical therapists and physical therapy assistants to obtain continuing education in order to get their licenses renewed.

To obtain an initial physical therapist's license in Alaska, an applicant is required to possess a bachelor's degree in physical therapy and pass a national examination. Renewal of licenses is required every two years. Presently, licensees do not have to demonstrate continued competency to maintain their license.

Once a professional is granted a license to practice an occupation they have an implied obligation to maintain that minimum competence. Quality health care is dependent upon competent performance of the professional. Continuing education is one means by which professionals gain knowledge and skill so they can maintain and improve their performance.

In response to our questionnaires, 47% of the PTs and 37% of the PTAs believed continuing education should be required, and 70% stated that they were aware of continuing education courses or seminars in their areas (see Appendix D).

The Board should have discretionary latitude in requiring continuing education requirements. For example, by requiring continuing education, an undue hardship might be placed on a PT practicing in rural areas. Rather than deny re-licensure and reduce the health care in these areas, the Board should be allowed to waive this requirement in special cases.

Recommendation No. 3

Controls over temporary licenses should be improved.

Alaska Statute 08.84.065 allows the Board to issue nonrenewable temporary permits to applicants who are awaiting permanent licensure by examination or endorsement. The temporary permits are valid either until the examination results are received or all the documents for licensure by endorsement are received, or for eight months, whichever occurs first.

We noted two problems with temporary permits:

1) An applicant may receive a temporary permit by submitting his credentials to a Board member. The Board member may then issue a temporary permit without consulting the rest of the Board. As a result, temporary licenses could be issued to unqualified persons. We found that temporary licenses were issued to applicants before documentation of their qualifications was received by the Board or licensing examiner.

2) In testing the individual licensing files, we found cases where temporary licenses had lapsed, because of the eight-month limitation, before permanent licenses were issued. The PTs were in violation of the statute which requires that PTs must be licensed in order to practice.

We recommend the following to combat these problems: documentation required for temporary licensure should go to the licensing examiner in all cases. Then, upon notification by the licensing examiner that the applicant has filed all necessary documents, a Board member can decide if a temporary license should be issued.

Also, the Board should take all steps possible to ensure that applicants are issued their permanent licenses before their temporary permits expire.

Recommendation No. 4

Statutory changes should be made to allow qualified foreign-trained physical therapists to practice physical therapy in Alaska.

To be licensed as a physical therapist in Alaska, an applicant must have graduated from a college of physical therapy which is approved either by the American Physical Therapy Association or the Council on Medical Education and Hospitals of the American Medical Association. However, neither of these two groups approve foreign schools. A foreign-trained PT thus may not be licensed to practice physical therapy in Alaska. An exception to this has been made in an Attorney General's opinion which states that if foreign-trained PTs have been licensed in another state, they may be licensed in Alaska. However, any foreign-trained physical therapist who has not been licensed in other states is denied licensure in Alaska.

Twenty-eight other states license foreign-trained PTs on the basis of evaluations done on an applicants education by a Credential Evaluation Service. The Service evaluates an applicant's credentials by comparing them with American standards. If they are found to be substantially equal, the applicant may be licensed. This service is endorsed by the American Physical Therapy Association.

We recommend that the statutes be amended to allow persons, whose foreign education is found to be substantially equal to an American's by this credentialing Service, to be licensed in Alaska.

Recommendation No. 5

The State Physical Therapy Board in conjunction with the Attorney General, should compose formal regulations which define and list examples of licensing violations.

Alaska Statute 08.84.120 lists violations which are grounds for denial, suspension and revocation of a license. The list includes vague terms such as "moral turpitude" and "unprofessional conduct" which many physical therapists probably would not be able to understand without the advice of a lawyer. The Board should clarify and give examples of these terms.

Physical therapists and the public would be better informed and protected if they had guidance as to what actions by a physical therapist are illegal. An example of unprofessional conduct would be the commission of a fraudulent act while practicing physical therapy.

Recommendation No. 6

The State Physical Therapy Board should establish formal goals, objectives and quantifiable measures which should be included in the Division of Occupational Licensing (OL) budget documents.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL established its own budget goals and objectives. However, the budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured, both the Governor's Office and the Legislature cannot evaluate the Board's performance (see the OL Performance Audit Report).

Recommendation No. 7

The Division of Occupational Licensing should collect, record and maintain for five years files and statistics of license and testing applicants and related workload of the licensing examiner.

The Division needs relevant facts and statistics for evaluating the performance of their personnel and Board activity. Many past records have not been collected and maintained, such as:

1. Number of physical therapists and physical therapy assistants licensed each year and total number of licensed physical therapists and physical therapy assistants;

2. Records of those applicants failing the examination;

3. Number of applicants denied the chance to take the examination due to lack of qualifications;

4. Number of complaints and criticisms about the performance of the Board and its staff;

5. Correspondence workload of license examiners;

6. Number of persons requesting applications.

It is to the advantage of the Division to keep these records in order to support their budget request, evaluate their personnel and keep the Board informed as to their progress. Also, feedback from the Board and the public should be encouraged so as to determine whether staff performance is adequate (see the OL Performance Audit Report).

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative attainments as Board activities relate to the public need factors defined in the "Sunset" law. These analyses are not intended to be comprehensive in nature, but address those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. In testing the individual licensing files, we found that the Board is conscientious in the licensing of PTs, except for the problems with temporary licenses as noted in Recommendation No. 3.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. The Board's statutes do not give the Board the authority to promulgate regulations - the Board has written policies, but they do not have the effect of law (see Recommendation No. 1).

2. The statutes do not allow the Board to license foreign-trained PTs (see Recommendation No. 4).

3. The Board feels its operations are seriously hampered by the inefficient handling of complaints by the Investigations Unit within OL (see the OL Performance Audit Report).

4. The turnover of the licensing examiners in OL has caused some inefficiency in the Board's operations.

5. One member of the State Physical Therapy Board has attended only 44 per cent of the meetings. The Board is not getting the benefit of having a full Board (see the OL Performance Audit Report).

6. The terms of three Board members had been lapsed for approximately a year before the Office of the Governor reappointed the Board members (see the OL Performance Audit Report).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. Since 1974, when the PT Board was created, only minor language changes have been made; except for the amendment to allow the PT Board members to receive per diem and travel allowances. These changes were initiated by the Department of Commerce and Economic Development and the Office of the Governor.

2. No changes have been recommended by the Board.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. The public is invited to attend Board meetings to give their opinions about Board proceedings. Board meetings and examinations are advertised one time only in each of four newspapers throughout the state (see the OL Performance Audit Report).

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. As noted in IV, the public is invited to attend Board meetings via newspaper advertisements. We found no other evidence that the Board has encouraged public participation

2. Since 1974, only three persons have attended Board meetings.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. Since its inception, the Board has requested the Investigations Unit in OL investigate two complaints - no action has been taken on the complaints (see the OL Performance Audit Report).

2. One complaint involving the Board of Physical Therapy was made to the Ombudsman Office. The complaint, which involved a foreign-trained PT, was satisfactorily resolved as a result of an Attorney General's Opinion.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. The Board requires an applicant to have the following credentials to be licensed as a PT: a degree from a physical therapy school (which includes a 9-month internship program) and a passing score on a national written examination.

2. Since the Physical Therapy Board took over in 1974, it has licensed approximately 60 PTs.

3. The Board does not require continuing education for PTs to ensure continued competence (see Recommendation No. 2).

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. The application for licensure contains questions which could lead to discrimination on the Board's part against an applicant (see the OL Performance Audit Report).

2. The statutes do not allow foreign-trained physical therapists to be licensed to practice in Alaska (see Recommendation No. 4).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

1. The PT Board should be added to the list of Boards which are under the jurisdiction of the Administrative Procedures Act (AS 44.62. 330).

2. Please refer also to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

STATE PHYSICAL THERAPY BOARD
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Revenues (see Schedule 1 and Note 1)	$ 2,300
Expenditures (see Note 2)	11,700
Excess of Expenditures Over Revenues	$(9,400)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Application Fee	$25	With application for licensure
Registration by Examination Fee	25	With taking examination
Registration by Endorsement Fee	25	When registered
Biennial Renewal Fee	25	Biennially
Temporary Permit Fee	10	When permit is applied for
Late Fee Fine	10	With late payment

Note 1

This revenue figure includes application and examination fees plus renewal fees. Since the renewal fees are collected once every two years, they cause the revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in fiscal years 1977 and 1978 in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures include those made by Board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts that other departments, such as the Department of Law, may have incurred in assisting the Board and OL.

APPENDIX B

ADMINISTRATIVE STATISTICS

Licensed Physical Therapists and Licensed Physical Therapy Assistants	As of October 20, 1978
Licensed Physical Therapists	92
Licensed Physical Therapy Assistants	3
Board Meetings in Calendar Years 1976-1978	7 meetings
Average number of meetings per calendar year (excluding telephone conferences)	2 meetings
Number of examinations given	9 exams

Calendar Year	Passes	Fails
1976	2	0
1977	3	1
1978	1	2

APPENDIX C

QUESTIONNAIRE SENT TO BOARD MEMBERS
(see Note 1)

1. Why do you think physical therapists should be registered by a State agency?

   To use the law for enforcement of policies.

2. What do you believe to be the goals and objectives of the State Physical Therapy Board?

   1. *To provide optimum physical therapy care to the public and protect them from fraud.*

   2. *To ensure that licensure is of qualified therapists.*

   3. *To handle any complaints concerning the practice of physical therapy.*

3. Do you feel that the Board is achieving its goals as you perceive them in question number 2?

   Yes.

4. Do you feel more emphasis should be places on some goals and less on others? Please describe any areas you feel would be applicable.

   No.

   However, more support and better service for investigating complaints is needed from investigators of the Division.

5. What evidence exists demonstrating that the absence of regulations governing the practice of physical therapy and/or the Board would be detrimental to the public's best interest?

   One individual is advertising as providing "physical therapy". She is not trained in any way as a therapist, but the public does not know so. Even with the law this occurs. Without the law it could occur very frequently.

6. Is the staff of Occupational Licensing and/or other State agencies adequate to handle the administrative and enforcement needs of the Board? What staff support services are provided adequately? Inadequately?

6. (cont'd.)

Need more enforcement help.

At times, administrative needs are not met.

Licensing Examiners are very busy. For a time, we had a new one every few months and nothing was done as it needed to be.

7. Are there any statutes or regulations that you believe are too obsolete, vague, unduly restrictive and/or inadequate to allow the Board to carry out its purposes? Please cite specific statutes and their weaknesses.

The statute stating Physical Therapists must be graduated from a school approved by the APTA restricts us in licensing foreign-trained therapists.

8. What changes could be made to the Board which would improve its service to the public?

No comment.

9. Any other comments?

No comment.

Note 1

At the time this questionnaire was mailed from the Division of Legislative Audit, there were only four members on the State Physical Therapy Board. Each of the four Board members was sent a questionnaire and Legislative Audit received one response which is summarized above.

APPENDIX D

QUESTIONNAIRE SENT TO PHYSICAL THERAPISTS AND PHYSICAL THERAPY ASSISTANTS

	% Responses (see Note 1)		
	Yes	No	No Opinion
1. Do you feel that it should be necessary for the following to be licensed by the State:			
Physical Therapists	97%	0%	3%
Physical Therapist Assistants	90%	5%	5%
Why or why not?			
2. Do you feel that the absence of the Board would be detrimental to the public's best interests?	88%	5%	7%
Please discuss:			
3. Do you believe that the State Physical Therapy Board is operating in the public's best interest?	81%	2%	17%
4. Do you believe Alaska's licensing requirements for permanent licenses are adequate and effective in ensuring that the public is protected?	85%	3%	12%
If no, please explain:			
5. Do you feel that temporary permits are in the best interests of the public?	85%	7%	8%
6. Do you feel that the examination given by Professional Examination Service (PES), which is required for licensure as a physical therapist in Alaska, is a fair and reasonable test of a physical therapist's professional knowledge and ability?	83%	7%	10%
7. Do you feel that continuing education should be required before the following licenses are renewed:			
Physical Therapists	47%	47%	6%
Physical Therapist Assistants	37%	53%	10%

	% Responses (see Note 1)		
	Yes	No	No Opinion
8. Do you know of any classes, workshops, and/or seminars that have been offered in your area which relate to physical therapy and would qualify for continuing education?	70%	27%	3%
9. Do you believe that the current reciprocity (endorsement) policies of the State Physical Therapy Board are fairly and consistently applied?	76%	10%	14%
If no, please comment:			
10. Are you aware of any discriminatory practices involving licensing of minority groups?	0%	97%	3%
11. Do you think the State Physical Therapy Board should be made up of:			3%
A. a majority of physical therapists?	61%		
B. an equal number of physical therapists and public members?	36%		
C. a majority of public members?	0%		
Please circle one.			
12. Do you feel it is advantageous to have a medical doctor on the Board?	68%	27%	5%
13. Have you had any contact with the State Physical Therapy Board?	44%	53%	3%
Please specify:			
14. Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce and Economic Development?	34%	63%	3%
Please discuss:			

Note 1

Number of questionnaires sent to licensed physical therapists and physical therapy assistants	88
Number of physical therapists and physical therapy assistants who responded	59
Response Rate	67%

JAY S. HAMMOND
GOVERNOR

RECEIVED
JAN 11 A.M.
LEGISLATIVE
AUDIT

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary reports as shown below:

1. Board of Examiners in Optometry
2. Board of Dispensing Opticians
3. Board of Psychologist and Psychological Associate Examiners
4. Board of Chiropractic Examiners
5. Alaska State Medical Board
6. Board of Veterinary Examiners
7. State Physical Therapy Board
8. Board of Pharmacy
9. Board of Nursing
10. Board of Nursing Home Administrators
11. Board of Dental Examiners
12. Alaska Transportation Commission

We view these reviews of agency programs and activities which are specifically subject to termination in a manner different from those made of State departments or agencies. Usually we in the Executive Branch endeavor to respond directly to each finding and recommendation. However, in regard to the Boards and Commissions, the Executive Branch agency during a public hearing shall demonstrate a public need for its continued existence or the discontinuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

The Executive Branch of Alaska Government has made an extensive study of the above Boards and the Alaska Transportation Commission. We are continuing to study those entities, their origin, their present and future potential, and other related subjects in conjunction with Alaska statutes 24 and 44 (Sunset Legislation). As prescribed in AS 44.66.050 one or more legislative hearings are to be held to receive testimony from the public, the Commissioner of the department having administrative responsibility for each, and the members of the Boards or Commission involved. During those hearings we will present our findings and recommendations affecting each of the foregoing Boards and the Alaska Transportation Commission.

Accordingly, we are presenting this in addition to the responses from the Department of Commerce, Department of Law, and the individual Board or Commission members and others on an interim basis.

Sincerely,

Michael Harper

Michael Harper
Administrative Assistant
to the Governor

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

December 15, 1978

RECEIVED
JAN 11 A.M.
LEGISLATIVE AUDIT

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the State Physical Therapy Board, as submitted by the Division of Legislative Audit.

Recommendation No. 1. Agreed. The lack of authority to promulgate regulations is a detriment to efficient board operations. Pending the outcome of Sunset Review, the division will propose legislation to grant this authority.

Recommendation No. 2. Agreed. Continuing education is one method of maintaining and improving quality care in the health care fields. We also agree that special consideration should be given to those licensees practicing and residing in rural areas where availability of educational courses is nonexistant, however, we would not advocate that they be exempt.

Recommendation No. 3. Agreed. Discussions will be held with the board and through cooperative efforts this recommendation should be complied with in the near future.

Recommendation No. 4. Foreign trained physical therapists should be licensed to practice in Alaska, if fully qualified. The division will discuss this issue and your recommendation with the board at its next meeting.

Recommendation No. 5. Agreed. Licensing violations should be as clearly defined as possible, as long as care is taken where the definition could not be interpreted as all-inclusive.

08-H8LH

Recommendation No. 6. Agreed. This board, as well as all boards, will be contacted in March or April, 1979 for input into the division's budget for FY 1981. This input will address the board's goals, objectives, and financial needs.

Recommendation No. 7. Agreed. Complete reorganization of files and procedures within the agency are expected to be accomplished by the end of calendar year 1979. Some changes have recently been initiated by the agency.

I appreciate the time and efforts expended by your staff.

Yours truly,

H. Phillip Hubbard
Commissioner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING / POUCH D – JUNEAU 99811

RECEIVED
JAN 11 A.M.
LEGISLATIVE AUDIT

PHYSICAL THERAPY BOARD

RESPONSE TO LEGISLATIVE AUDIT COMMITTEE

The following are the Board's responses to the recommendations in the preliminary performance review of the State Physical Therapy Board, dated October 20, 1978, from the Division of Legislative Audit.

Recommendation No. 1

The State Physical Therapy Board should be allowed to promulgate regulations.

The Board agrees with this recommendation and is making appropriate suggested changes for the statutes. Ammendments will be submitted during the next Legislative Session to provide for the Board to make rules and regulations.

Recommendation No. 2

The State Physical Therapy Board should require physical therapists and physical therapy assistants to obtain continuing education in order to get their licenses renewed.

The Board agrees with the importance of and the idea behind continuing education. However, the Board does not feel it is ready to handle mandatory continuing education at this time because of:

1. Difficulty in getting quality coarses in Alaska due to the expense of "importing" instructors.
2. Great distances and costs involved for rural therapists to attend inservice coarses.
3. Lack of standards determining the quality of continuing education coarses. There is no professional Physical Therpay School in Alaska to offer continuing education. The local chapter of the American Physical Therapy Association does an excellent job of providing education seminars; however most of these are given by local physical therapists, and uniform standards have not been set.

The Board will be setting up a task force to study and make recommendations for the problems of providing continuing education in Alaska. February 1979.

As there have been no complaints from the public regarding degree of professionalism (knowledge, skills, services) of physical therapists, the Board feels lack of required continuing education is not an urgent problem.

Recommendation No. 3

Controls over temporary licenses should be improved.

It is the responsibility of all Board members to know the qualifications for licensure. Therefore the premise in the first paragraph under recommendation No. 3 is incorrect. We question whether one Occupational Licensing Examiner knows the qualifications for licensure better than one Board member. As it is the responsibility of the Board member to issue temporary permits, at least copies of the documents should be seen by the issuing member. The current Board members are not aware of any instance where an applicant was issued a temporary permit before documentation of their qualifications was received by either the Board member or Licensing Examiner.

The temporary licenses which lapsed before permit licenses were issued occured when there were several rapid changes of the licensing examiners, and when the State was requiring financial disclosure of all Board members, as several physical therapy members resigned causing lack of a quorum. The Board has since made a policy (which hopefully will become a regulation) that the Licensing Examiner shall notify all applicants two months prior to expiration of their temporary permit, if their application is not complete and ready for permanent licensure. In the past year, since this policy, it is believed that there has been no problems.

The Board disagrees that the licensing examiner must first receive all documents for a temporary permit. An applicant may present all documents personally to a Board member and recieve a temporary permit. Documents will then be sent to Juneau by certified mail. It is the responsibility of the Board to pass on the qualifications of the applicant rather than the licensing examiner.

The Board agrees with the last statement of this recommendation and is attempting to do so.

Recommendation No. 4

Statutory changes should be made to allow qualified foreign-trained physical therapists to practice physical therapy in Alaska.

The Board agrees with this recommendation and is proposing statute changes accordingly.

Recommendation No. 5

The State Physical Therapy Board in conjunction with the Attorney General, should compose formal requlations which define and list examples of licensing violations.

The Board agrees, but first must receive the athority to make regulations. The Board is recommending statute changes in order to make rules and regulations, and has already made a partial list of violations.

Recommendation No. 6

The State Physical Therapy Board should establish formal goals, objectives and quantifiable measures which should be included in the Division of Occupational Licensing (OL) budget documents.

This has been done for the past year, 1978, by the Board and was sent to the Division of Occupational Licensing. The Division was to write up the report in final format. Report items sent to Juneau Oct. 78.

Recommendation No. 7

The Division of Occupational Licensing should collect, record and maintain for five years files and statistics of license and testing applicants and related workload of the licensing examiner.

The Board agrees.

Donna Klokkevold

Donna Klokkevold, Chairman

Tom Heuston

Tom Heuston, Secretary

Gary McCarthy, RPT

Gary McCarthy, R.P.T.

P.O Box 8032
Anchorage, AK
99508

W.E. Bradley
P.O. Drawer 8-P
Anchorage
99508

Mr. Bradley:

This letter is written to share my concern with you to reinstate the Physical Therapists Practice Act. As a licensed Physical Therapist this is an important matter to me in order for us to maintain our quality care.

A copy of the proposed changes is enclosed for your review.

Thank you for your support.

Sincerely,

Mary Pomeroy, R.P.T.

ALASKA PHYSICAL THERAPY ASSOCIATION, INC.
P.O. BOX 4-908
ANCHORAGE, ALASKA 99509

Bd of Psych

+ Psych.

EXAMINERS

A PERFORMANCE REVIEW
OF THE
BOARD OF PSYCHOLOGIST
ND PSYCHOLOGICAL ASSOCIATE EXAMINE

October 31, 1978

A PERFORMANCE REVIEW
OF THE
BOARD OF PSYCHOLOGIST
AND PSYCHOLOGICAL ASSOCIATE EXAMINERS

October 31, 1978

Commissioner of the Department of Commerce and Economic Development	H. Phillip Hubbard
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Board of Psychologist and
Psychological Associate Examiners

Chairperson	Dorothy Whitmore, Ed.D.
Member	James C. Parsons
Member	Pamela Delys-Baglien, Ph.D.
Member	Robert D. Bowers
Member	Dick Madson

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

October 31, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW
OF THE
BOARD OF PSYCHOLOGIST
AND PSYCHOLOGICAL ASSOCIATE EXAMINERS

October 31, 1978

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

31-[redacted] LH

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Board of Psychologist and Psychological Associate Examiners was conducted to review Board activities and accomplishments to determine if the Board has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Psychologist and Psychological Associate Examiners should be reestablished. The law currently specifies that this Board will terminate on June 30, 1979, but will continue until June 30, 1980 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) Interviews with Board members and questionnaires sent to the Board;

(3) Interviews with health agencies and professional associations;

(4) Tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) Interviews with OL employees;

(6) Complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency, and the Equal Employment Opportunity Office;

(7) Questionnaires sent to State licensed psychologists and psychological associates; and

(8) Review of other states' licensing requirements.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor has it developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090.

(2) OL has not adequately collected, recorded or maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out its administrative responsibilities.

(3) While conducting this review, we received little or no cooperation from some Board members.

ORGANIZATION AND FUNCTION

The Board of Psychologist and Psychological Associate Examiners (PPAE) was established in 1967 under the provisions of Title 8, Chapter 86 of the Alaska Statutes. The Board consists of three licensed psychologists and two public members appointed by the Governor and approved by the Legislature.

The Board regulates licensed psychologists and psychological associates in the State. A psychologist associate is allowed by statute to practice counseling and administer and interpret psychology tests. A psychologist is allowed by statute to practice counseling and psychotherapy.

The Board's duties are basically the following:

1) Examining and issuing licenses to qualified applicants;

2) Establishing or amending rules and regulations necessary and desirable to enforce state statutes;

3) Holding hearings in order to revoke, annul or suspend the license of a person violating the psychologist and psychological associate statutes and regulations.

An applicant may be licensed as a psychologist by passing an examination given by the Board or by endorsement. For endorsement, an applicant must provide proof of licensure in another state with equal licensing requirements at the time of original licensing.

In order to qualify for licensure by examination, an applicant must pass a written examination, have a doctorate and one year of experience. The Board has proposed regulations defining the type of acceptable experience. For applicants filing before December 31, 1978, acceptable experience would be:

(1) graduation from an American Psychology Association (APA) approved doctoral program or a program which meets the APA standards; or

(2) one year of supervised post-doctoral experience acquired in a facility authorized to provide psychological services; or which meets the APA program standards.

After December 31, 1978, applicants must have one year of post-doctoral experience acquired under the supervision of a licensed psychologist or a diplomate of the American Board of Examiners in Professional Psychology.

Psychological associates may be licensed after examination if they have a master's degree and three years experience, two of which must be in Alaska.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various ard practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. The legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board should continue to regulate and license the psychology and counseling professionals. The regulation and licensing of these professionals is necessary to protect the public's health, safety and welfare.

However, a statutory change should be considered which will increase the number of public members on the Board and allow the public to be better represented (see Recommendation No. 1). Board actions have not been made in the public's best interest. For instance, the Board has been inconsistently evaluating applicants' qualifications and licensing psychologists since the Board's inception (see Recommendation No. 2). Also the Board has been conducting its meetings and making its deliberations and decisions in secrecy (see Recommendation No. 3).

In order for it to perform effectively and efficiently, the Board needs to make several changes. For instance, it needs to comply with the advice from the Attorney General's office to avoid costly litigation proceedings (see Recommendation No. 7). Also the Board needs to update its application forms in order to decrease the current average application processing time of 28 weeks (see Recommendation No. 5).

In addition, the Board needs to develop grading standards and a test manual for its examinations. Problems with examination procedures have already caused one complaint and may result in other court suits (see Recommendation No. 7).

There are at least four unlicensed practitioners in Alaska who may be advertising and practicing psychology or counseling in violation of the Alaska Statutes. In order to adequately protect the public from the practice of unlicensed and unqualified psychologists and psychological associates, the Board should develop a more aggressive investigative policy (see Recommendation No. 6).

In conclusion, the Board needs to analyze and evaluate its purpose and take the necessary actions needed to perform and fulfill its responsibilities.

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through 9 are addressed to the Board of Psychologist and Psychological Associate Examiners. Findings and Recommendations No. 10 and 11 are addressed to the Division of Occupational Licensing (OL), and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978", issued under separate cover.

Recommendation No. 1

A statutory change should be considered which will increase the number of public members on the Board and allow the public to be better represented.

The Board is currently composed of three psychologists and two public members. In questionnaires returned by State licensed psychologists, 39% of the respondents believed the Board has not operated in the public's best interest.

Our findings support this view. For instance, the Board has been inconsistently licensing applicants even though an Attorney General's opinion and a prior Division of Legislative Audit report, dated August 5, 1975, noted prior inconsistencies and made recommendations to change these practices (see Recommendation No. 2). Also, the Board has been conducting its meetings and making its deliberations and decisions in secrecy (see Recommendation No. 3). Such actions not only expose the State to lawsuits, but also threaten recruiting efforts of State mental health institutions for qualified psychologists and counselors (see Recommendation No. 2).

The regulations and policies of the Board have a substanital impact on the health, welfare and ultimately the costs and services for mental health care in Alaska. The use of additional public members is desirable because knowledgeable active public members provide a valuable point of view and safeguard against problems cited above.

If the above recommendation is found to be infeasible, or if the Board continues to inconsistently apply the statutes after it has had an opportunity to implement its proposed regulations, then it is recommended that the Legislature amend the law transferring the Board's licensing function to the Department of Commerce and Economic Development.

Recommendation No. 2

The Board of Psychologist and Psychological Associate Examiners should consistently apply statutory licensing criteria to all applicants.

In a prior Division of Legislative Audit report dated August 5, 1975, it was found that the provisions of AS 08.86, outlining the required qualifications for licensure of psychologists and psychological associates, had not been consistently applied by the Board. A more recent review of available records filed after 1975 indicates that this condition still exists.

The Attorney General sent a memorandum, dated February 9, 1976, to the Board stating that the licensing requirement "experience acceptable to the board" found in AS 08.86. 130(3), was unconstitutionally vague without clarification from adopted regulations. It was also pointed out that a former Board member said that the Board has accepted clinical internship program experience for purposes of AS 08.86. 130(3). Therefore, it would be illegal to deny a person with this type of experience the opportunity to take the examination.

Delaying and denial of licensure for qualified applicants not only discourages applicants, but also affects the public's best interests. In a Legislative Audit questionnaire sent to licensed psychologists, 50% of those responding said they believed there is a shortage of psychologists in the State. Thirty-nine percent responded that there was no psychologist shortage and 11% had no opinion. In addition, a proposed report by the Statewide Health Coordinating Council dated September, 1978, noted that family violence, child abuse and neglect, violent crimes and alcohol abuse are major mental health problems in Alaska.

In January, 1977, the Mental Health Advisory Council, a citizen advisory council to the Division of Mental Health and Development Disabilities, Department of Health and Social Services, passed a resolution which listed numerous problems concerning the licensing of psychologists by the Board. The resolution further stated that these problems threaten the viability of many mental health programs in Alaska. Statutes require the director of these programs to have an Alaskan psychologist license.

Psychology regulations have been proposed but have not become effective as of September 30, 1978. Effective regulations will help guide the Board to consistently license qualified applicants. However, if regulations are not promptly implemented, then it is recommended that legislation be introduced to clarify AS 08.36.130(3).

Recommendation No. 3

The Board should openly conduct its meetings and provide documentation supporting its deliberations and decisions.

The Board is conducting its deliberations and parts of its meetings in secrecy. In addition, there is insufficient documentation to identify its decisions. Examples are:

1. Board did not allow license examiners to record or take minutes of the first half of a public meeting.

2. Minutes are ambiguous as to what the Board has decided.

3. There is no documentation in the files identifying Board decisions and actions.

Ambiguous minutes and lack of documentation in the applicants' files have caused licensing problems. For instance, an applicant took the State psychology examination two years ago and passed. The current Board only recently granted the applicant his license, because they say the prior Board decided the person was not qualified. Board minutes support the current Board's position. However, there is conflicting documentation in the applicant's folder as to whether the applicant was approved by the prior Board or allowed to take the examination with only one Board member's approval.

In other instances, we found no evidence in six licensed psychologist files identifying that the Board approved their licenses.

AS 44.62.312(a)(2) states:

> "It is the policy of the state that it is the intent of the law that actions of those units (governmental units) be taken openly and that their deliberations be conducted openly."

This statute covers all meetings of a board and, therefore, should be strictly adhered to. Without compliance, the Board gives the impression that the decision making process is not for public knowledge. Also, it is difficult for Board members and others to determine and trace the reasons for prior Baord decisions without proper documentation (see the OL Performance Audit Report).

Recommendation No. 4

The Board should comply with the Attorney General's advice and in those cases where the Board disregards this advice, the Attorney General should inform Board members that they may be personally liable for their actions.

Several cases have occurred where the Board has disregarded the Attorney General's advice. Such actions by the Board could expose the State to costly litigation proceedings.

For example, the Attorney General recently advised the Board that a particular applicant was eligible for licensure. The applicant passed the psychology examination in 1976 with the approval of a prior Board chairman. The current Board refused to license the applicant because Board minutes show that the prior Board disapproved of the applicant's eligibility. AS 08.86.120 states that a person who passed the examination given by the Board is entitled to be licensed as a psychologist.

In addition, the Board refused to honor an agreement made by the Department of Law with a license applicant who charged that the psychology examination was unfair. The agreement was for the applicant to take only part of the examination again. The Board wanted the applicant to retake all of the examination (see Recommendation No. 7).

By refusing to follow its counsel, who is the Attorney General, the Board not only exposes the State to litigation proceedings, but also members can become personally liable for actions taken.

The Board has changed its position regarding the above two cases. It recently licensed the first individual discussed above and is allowing the second person to take part of the psychology examination in compliance with the Attorney General's agreement. The decision was made after the Board listened to the advice of OL officials and a representative of the Attorney General's office.

Recommendation No. 5

The Board should update its application forms and regulations in order to promptly process and analyze applications.

It takes the Board an average of 28 weeks, or over 6 months, to receive an application and make a final determination of whether the applicant is qualified. Such long delays are a result of:

A. Inconsistent licensing (see Recommendation No. 2);

B. Requests by the Board for additional information from applicants; and

C. Lack of written guidelines for licensure.

The Board made over 10 requests in the last three years for applicants to supply more detailed information regarding post-doctoral supervised experience. Application forms and verification forms of post-doctoral supervised experience and out-of-state licenses should require that the applicant submit sufficient information so the Board can properly evaluate the applicant's qualifications.

In addition, the Board should list in regulations those states whose statutory requirements are similar and dissimilar to Alaska's requirements. This would better inform applicants of whether they are qualified for endorsement or for the examination.

And finally, the Board should develop standard procedures and guidelines for evaluating and licensing applicants. Written guidelines followed consistently by the Board should help lower the application processing time to a more reasonable average.

Recommendation No. 6

The Board should develop a more aggressive investigation policy by establishing clear regulations for licensing violations and by promptly filing complaints against those practitioners who violate the law.

AS 08.86.180 and AS 08.86.185 state that no person may practice or offer to practice psychology, counseling, and psychometrics unless that person is a licensed psychologist or psychological associate, or specifically exempt by the statutes. In addition, the statutes further define that a person who violates these statutes is guilty of a misdemeanor.

There are at least four unlicensed practitioners in Alaska who may be advertising and practicing psychology or counseling in violation of AS 08.86.180 and 08.86.185. In addition, several licensed psychologists expressed concern in a Legislative Audit questionnaire that psychologists educated in areas other than clinical psychology may obtain a license and practice clinical psychology without being qualified to do so.

AS 08.86.220 allows the Board to restrict the practice of a licensed psychologist by specialty, upon a finding that there is a demonstrated problem with competence, experience, education or health. However, according to investigative files and Board meeting minutes, the Board has never sought to do so. Nor has it composed regulations to provide guidance in this investigative area.

In order to adequately protect the public from the practice of unlicensed and unqualified psychologists and psychological associates, the Board should implement regulations which

specifically define under what conditions a licensed psychologist may be restricted to by specialty. Also, the Board should promptly file complaints against any psychologists violating the Alaska psychology statutes.

Recommendation No. 7

The Board should develop standards and a test manual for the examination given to license applicants.

Several respondents to a Legislative Audit questionnaire sent to licensed psychologists in the State noted that the essay and oral questions were exactly identical. A review of past tests shows that the Board made no marks of grading on the test sheets. In addition, there are no written standard answers or grade sheets with which the Board can properly evaluate and grade applicants' tests. Already one examinee has charged that the examination is unfair (see Recommendation No. 3).

In the Ethical Standards of Psychologists published by the American Psychology Association (APA), Principle 8 states that a person examined has the right to know the results and the data on which the judgements were made. It also states that a test manual should be composed that fully describes the development of the test, the rationale and the evidence of validity and reliability.

The Board should follow the APA ethical standards by proposing and implementing regulations and a test manual. Such actions will help the Board treat all applicants in a consistent manner and avoid costly litigations against the Board.

Recommendation No. 8

Legislation should be introduced to change licensing statutes for psychological associates in order to encourage more qualified applicants to apply and become licensed in the State.

Psychological associates include those persons practicing, counseling and administering psychological evaluation and guidance tests. Alaska statutes require that applicants qualified to be licensed as psychological associates must take an examination. In order to take the examination, an applicant must have at least three years experience, two of which must be in Alaska.

As of September 30, 1978, there are only 3 licensed psychological associates in the State. Other psychological associates who are statutorily exempt from being licensed may also be practicing in the State. However, at least two applicants were denied licensure in the last three years because of the licensing requirements. Others may have been discouraged from applying. By removing the requirement for Alaskan experience, the statutes will encourage more qualified

applicants to become licensed and practice in the State.

Another method to encourage more qualified applicants without lowering standards is to allow out-of-state qualified licensed practitioners to obtain their Alaska license without taking the examination. Endorsement is currently allowed for psychologists, but not for psychological associates.

Recommendation No. 9

Legislation should be introduced requiring continuing education for psychologists and psychological associates.

Psychologists and psychological associates are acutely aware of the public's trust that they maintain tneir professional competency. Required continuing education is one means of fulfilling that trust. In addition, a program of continuing education will assist in avoiding professional obsolesence and keep practitioners aware of changes taking place in the profession.

Twenty-two of 28 psychologists responded to a Legislative Audit questionnaire that they believed continuing education should be required for their profession. In addition, the American Psychology Association endorses the concept and has determined that 11 states require it.

Recommendation No. 10

The Board should establish formal goals, objectives and quantifiable measures which should be included in the OL's budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL established its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured neither the Governor's Office nor the Legislature can evaluate the Board's performance (see the OL Performance Audit Report).

Recommendation No. 11

The Division of Occupational Licensing should develop a procedure manual for the licensing examiner supporting the Board.

Currently the licensing examiner supporting the Board has no procedure manual with which to guide his/her actions. There have been five license examiners for the Board in the last two years. With this high turnover, it is necessary that there are standard guidelines to help new and old employees.

It is recommended that the Division enlist the advice of the Board to construct specific guidelines for the examiner. This will help to ensure that the manual accurately reflects any licensing procedure changes made in compliance with Recommendation No. 2.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative attainments as Board activities relate to the public need factors defined in the "Sunset" law. These analyses are not intended to be comprehensive in nature, but address those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission or program has operated in the public interest.

1. The Board has inconsistently applied the psychology licensing requirements listed in the Alaska Statutes. The Board has also denied several apparently qualified applicants the opportunity to take the psychology examination. Such policies are not in the public's best interest (see Recommendation No. 2).

2. In January, 1977, the Mental Health Advisory Council, a citizen advisory council to the Division of Mental Health and Development Disabilities, Department of Health and Social Serivices, passed a resolution which listed numerous problems concerning the licensing of psychologists by the Board. The resolution further stated that these problems threaten the viability of many mental health programs in Alaska. Statutes require the director of these programs to have an Alaskan psychologist license.

3. The Board has been disregarding the Attorney General's advice which could expose the State to costly litigation proceedings (see Recommendation No. 4).

4. Several unlicensed psychologists or psychological associates may be advertising or practicing as psychologists or counselors in violation of Alaska Statutes. In order to better protect the public, the Board needs to develop a more agressive investigative policy (see Recommendation No. 6).

5. The Board has proposed but not implemented regulations defining standards for licensing requirements. This occurred three years after a prior Legislative Audit report dated August 5, 1975, recommended that regulations be adopted and implemented (see Recommendation No. 2).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. The Division of Occupational Licensing (OL) has not maintained updated records, files and statistics for Board use (see the OL Performance Audit Report).

2. Investigations have not been processed by the investigation section of OL in a timely manner There are several investigations that are over two years old (see the OL Performance Audit Report).

3. Statutory requirements for licensing psychological associates are unnecessarily restrictive by requiring two of the three years of acquired experience to be completed in Alaska (see Recommendation No. 8).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. The Board has made two recommendations for statutory changes. The first would have required that applicants have one year of continuous residency in Alaska before being licensed. It is doubtful whether this is in the public's interest, since it would discriminate against professionals who just moved from other states.

   The other recommendation was to delete the statutes which exempt governmental, educational and private agency supervised psychologists and psychological associates from being licensed. We have found no evidence which demonstrates that there is a need for this change in the statutes.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. We noted no evidence which demonstrates Board encouragement.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. The Board appears to conduct its deliberations and meetings in secrecy (see Recommendation No. 3).

2. During the past four years, thirty-four persons other than Board members and State employees were present during Board meetings as recorded by Board minutes. Many of those participants attended three public meetings to discuss the proposed regulations. Other participants were applicants and other licensed psychologists.

3. The Board advertises in several newspapers to encourage public participation. During the last three years, the advertisements averaged approximately one advertisement per paper for each meeting. Also the advertisements for examinations averaged slightly more than one advertisement per paper. No advertisements were published for public hearings on proposed regulations which is in violation of the Administrative Procedures Act. However, notices of the meetings were sent to interested agencies, which include the Alaska Psychology Association and mental health clinics, and sent to newspapers which did not publish them.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

1. Two complaints were filed and investigated by the Ombudsman's Office. One was regarding a denial of license by the Board; the other was a complaint about OL misplacing a receipt for a temporary license. The first complaint was labeled by the Ombudsman's Office as a complaint "unsupported" and was "rectified". The other was found to be "justified" and "rectified".

2. A complaint was recorded with OL about the fairness of PPAE's examination. The complaint was resolved with an agreement whereby the applicant only has to retake only part of the examination (see Recommendation No. 4).

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. A small number of complaints are recorded with OL against state psychology practitioners. There were eight complaints in four years (see Appendix B).

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. Psychology and psychological associate applications require unnecessary information such as an applicant's age and picture (see the OL Performance Audit Report).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

BOARD OF PSYCHOLOGIST AND
PSYCHOLOGICAL ASSOCIATE EXAMINERS
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1978
(UNAUDITED)

Average Revenue (see Schedule 1 and Note 1)	$ 2,100
Expenditures (see Note 2)	20,000
Excess of Expenditures Over Revenues	$(17,900)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Psychologists and Psychological Associates		
Application Fee	$50	With application
Renewal Fee	50	With renewal of application
Biennial Fee	50	Biennially
Out-of-State License Fee	50	With issuance of license
Temporary License Fee	10	With issuance of license
Duplicate License Fee	2	With issuance of duplicate license
Examination Fee	30	With taking the Professional Education Service Examination

Note 1

Most of the psychology revenues are composed of renewal registration fees. These fees are collected once every two years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in fiscal year 1977 and 1978 in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures inculde those made by Board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board and OL.

APPENDIX B

COMPLAINTS AND ADMINISTRATIVE STATISTICS

Schedule 1
Complaints Against Psychologists and Psychological Associates

	1978[1]	1977	1976	1975	Total
Malpractice Complaints	0	0	0	2	2
Insurance Problems	0	1	0	0	1
Practicing Without Licenses	1	0	2	1	4
Unfair Practical Examination given by Board	1	0	0	0	1
Total	2	1	2	3	8

Schedule 2
Administrative Statistics

	As of October 13, 1978
Licensed Psychologists	52
Licensed Psychological Associates	3
Board Meetings:	
Average number of meetings per year	5 meetings
Average Time Length per Meeting	4 hours

(1) Statistics as of September 30, 1978

APPENDIX C

QUESTIONNAIRE SENT TO BOARD MEMBERS

1. What do you believe to be the goals and objectives of the Board of Psychologists and Psychological Associate Examiners?

Description	Number of Board Members' Responses (see Note 1 and 2)
To formulate recommendations to upgrade statutes.	3
To protect the Alaskan public by ensuring the competence of the profession through a fair and impartial examination process.	3
To conduct board meetings and hold public hearings to determine best interests of the public.	1
To establish standards which are commensurate with best standards of other states.	2
Protection of consumer from fraudulent use and misrepresentation by the profession and by unqualified members.	1
Make suggestions to the Alaska State Psychology Association.	1

2. How does the Board measure its progress in meeting its goals and objectives?

Description	Number of Board Members' Responses
Establish standards through regulations, which when adopted and implemented, will achieve our objective.	2
Establish a fair and impartial licensing Board.	1
Through the number and caliber of successful applicants.	2

3. Is the staff from the Department of Commerce and Economic Development and/or other departments adequate to perform and enforce all laws and regulations relating to the Board of Psychologists and Psychological Associate Examiners? What staff support services are provided adequately? Inadequately?

Description	Number of Board Members' Responses
Staff is adequate.	3
Inadequate investigation staff.	2
Don't know.	1

4. What evidence exists demonstrating that the Board has operated in the public's best interest?

Description	Number of Board Members' Responses
Few lawsuits for malpractice against licensed psychologists.	1
Only one Ombudsman's complaint.	1
Board has not licensed persons with inadequate credentials.	1
The development of regulations.	1
Can't answer.	1

5. What evidence exists demonstrating that the absence of psychological regulations and/or the Board would be detrimental to the public's best interest?

Description	Number of Board Members' Responses
Since Board has received many inquiries from aspiring psychologists who never apply for licensure, it might be assumed those people could become self-appointed practitioners.	1
Every state has licensing laws for psychologists.	1
No hard evidence except that Board is aware of persons practicing, counseling whose practice is not helpful and is even harmful to the public.	1

Description	Number of Board Members' Responses
Actions by the Attorney General have become necessary because of the vagueness of the licensure statutes. Regulations were essential to clarify these cases	*1*
Recurrent complaints of misrepresentation and unethical practice evidence the need for licensing laws.	*1*
Don't know.	*1*

6. Has the Board recommended any statutory changes which are generally in the public's best interest?

Description	Number of Board Members' Responses
The Board recommended the deletion of the statute which exempts those unlicensed psychologists who are working in governmental, educational and private agencies where they could be appropriately supervised.	*1*
Yes, several statutory changes have been suggested.	*2*
No. However, they have proposed regulations.	*1*

7. Has the Board made any studies to determine if there is a psychologist and psychological associate manpower shortage in Alaska or certain areas of Alaska? What were the studies' conclusions? What do you believe is the manpower situation?

Description	Number of Board Members' Responses
No.	*2*
Know of an acute shortage of well-qualified psychologists.	*1*
Don't know.	*1*

8. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restrictive and/or inadequate to provide the Board with the responsibility and power to properly govern the purpose and activities of the Board? Please list and explain.

Description	Number of Board Members' Responses
Yes, but these have been scrutinized, and changes are in the forthcoming regulations.	3
Psychological associate licensing standards do not exist.	1

9. What changes could be made to the Board which would improve its service to the public?

Description	Number of Board Members' Responses
There is concern that with three professional members and two public members, the balance in a vote may be critical. Also, in the examination process, each public member has the same power to pass and fail test items as the professional members, thus making it morally impossible for a professional member to be absent for any reason.	1
The screening, testing, and interviewing process needs improvements.	1
Addition of one more professional and public member would be helpful.	1
Don't know.	1

10. Why is the essay examination needed in addition to the Professional Examination Service examination?

Description	Number of Board Members' Responses
To test applicant on ethics and problems unique to Alaska, including Alaska law.	4
To offer more criteria concerning the suitability of the candidate.	3
To be aligned with practices in other states.	1

11. Do you think continuing education requirements should be enacted by the Legislature and/or the Board?

Description	Number of Board Members' Responses
Yes.	*3*
Continuing education should be required only by the actions of the Board.	*1*

Note 1

The questionnaire was sent to the 5 present Board members and 1 prior Board member whose term had recently expired. We received replies to our questions from 4 Board members. Therefore, the response rate is 67%.

Note 2

Each Board member responded to each question with several answers. Therefore, total responses for each question may exceed the number of Board members.

APPENDIX D

QUESTIONNAIRE SENT TO PSYCHOLOGISTS

		% Responses (see Notes 1, & 2)		
		Yes	No	No Opinion
1.	Have you been able to attend any psychology seminars or classes after being licensed within the last year?	86%	14%	0%
2.	If so, how many hours of continuing education have you had this year?	Average 26 hours		
3.	Do you believe that state laws should require continuing education before psychologist licenses are renewed?	79%	14%	7%
4.	Have you ever had any contact with the Board of Psychologist and Psychological Associate Examiners?	79%	21%	0%
5.	Do you believe that the Board of Psychologist and Psychological Associate Examiners has operated in the public's best interest?	58%	39%	3%
6.	Do you believe that the Board of Psychologist and Psychological Associate Examiners has fairly and consistently evaluated license applicants?	61%	29%	10%
7.	When you were licensed in Alaska, did you take the following tests:			
	1. Professional Examination Service multiple choice exam	61%	29%	10%
	2. An essay examination	21%	68%	11%
	3. An oral examination	50%	43%	7%
8.	If you took the written essay examination, what subjects were asked? *Ethics was the most frequently mentioned answer.*			
9.	If you took an oral examination, what subjects were asked? *Ethics was the most frequently mentioned answer.*			

		% Responses (see Note 1 & 2)		
		Yes	No	No Opinion
10.	Do you believe that the following adequately test an applicants' ability for licensure purposes?			
	a. Professional Examination Service multiple choice exam	50%	47%	3%
	b. Essay examination	43%	47%	10%
	c. Oral examination	54%	39%	7%
11.	After the exam, were you told your scores of each exam?	29%	57%	14%
12.	Do you believe that Alaska's licensing requirements for temporary and permanent licenses are adequate and effective in ensuring that the public is protected?	39%	50%	11%
13.	Do you have any complaints concerning the service provided by the staff support of the Division of Occupational Licensing, Department of Commerce and Economic Development?	29%	64%	7%
14.	Do you believe that there is a shortage of psychologists in the state?	50%	39%	11%
15.	Do you believe that there is a need for licensure of all psychologists in the state?	93%	7%	0%
16.	Do you believe that certifying psychologists would be as effective in protecting the public as the current licensing system?	28%	54%	18%
17.	Are you aware of any discriminatory practices involving licensing of minority groups?	0%	97%	3%
18.	If you have seen the regulations proposed by the Board of Psychologists and Psychological Associate Examiners, do you believe they are fair and adequate in order to protect the public?	54%	19%	28%

		% Responses (see Note 1 & 2)		
		Yes	No	No Opinion
19.	Do you believe a requirement of one year postgraduate experience for licensing psychologists is:			
	a. too lenient of a requirement	11%	0%	0%
	b. too restrictive of a requirement	11%	0%	0%
	c. adequate in order to protect the public	75%	0%	3%

Note 1

Number of questionnaires sent to State licensed psychologists	52
Number of psychologists who responded	28
Response Rate	53%

Note 2

Questionnaires were also sent to the three psychological associations. There responses were not received in time to include them in this report.

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED
JAN 11 A.M.
LEGISLATIVE
AUDIT

January 9, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary reports as shown below:

1. Board of Examiners in Optometry
2. Board of Dispensing Opticians
3. Board of Psychologist and Psychological Associate Examiners
4. Board of Chiropractic Examiners
5. Alaska State Medical Board
6. Board of Veterinary Examiners
7. State Physical Therapy Board
8. Board of Pharmacy
9. Board of Nursing
10. Board of Nursing Home Administrators
11. Board of Dental Examiners
12. Alaska Transportation Commission

We view these reviews of agency programs and activities which are specifically subject to termination in a manner different from those made of State departments or agencies. Usually we in the Executive Branch endeavor to respond directly to each finding and recommendation. However, in regard to the Boards and Commissions, the Executive Branch agency during a public hearing shall demonstrate a public need for its continued existence or the discontinuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

The Executive Branch of Alaska Government has made an extensive study of the above Boards and the Alaska Transportation Commission. We are continuing to study those entities, their origin, their present and future potential, and other related subjects in conjunction with Alaska statutes 24 and 44 (Sunset Legislation). As prescribed in AS 44.66.050 one or more legislative hearings are to be held to receive testimony from the public, the Commissioner of the department having administrative responsibility for each, and the members of the Boards or Commission involved. During those hearings we will present our findings and recommendations affecting each of the foregoing Boards and the Alaska Transportation Commission.

January 9, 1979

Accordingly, we are presenting this in addition to the responses from the Department of Commerce, Department of Law, and the individual Board or Commission members and others on an interim basis.

Sincerely,

Michael Harper

Michael Harper
Administrative Assistant
to the Governor

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

This department has reviewed recommendation number 4 of the performance review of the Board of Psychologists and Psychological Associate Examiners submitted by your division.

Recommendation number 4 reads:

> The Board should comply with the Attorney General's advice and in those cases where the Board disregards this advice, the Attorney General should inform Board members that they may be personally liable for their actions.

Please be advised that the recommendation of your division represents what has been the consistent policy of this department with respect to every occupational licensing board under the Department of Commerce and Economic Development, including the Board of Psychologists and Psychological Associate Examiners. While the minutes of the Board of Psychologists and Psychological Associate Examiners may not reflect this department's admonition to Board members that failure to license certain applicants contrary to our express advice would subject them to possible personal liability, the department has done so on at least three occasions.

CSLH

Should you wish further clarification or verification of this policy as we have applied it to the Board of Psychologists and Psychological Associate Examiners, please do not hesitate to contact this office.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Bruce Botelho
Bruce M. Botelho
Assistant Attorney General

BMB:cb

cc: Commissioner, Department of Administration
Commissioner, Department of Commerce and Economic Development

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

December 15, 1978

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Board of Psychologists and Psychological Associate Examiners, as submitted by the Division of Legislative Audit.

Recommendation No. 1. Agreed. The use of additional public members could provide a beneficial overall perspective in board operations. However, we would not advocate increasing the size of board membership.

Recommendation No 2. Your basic premise underlying this recommendation is that effective regulations will help guide the board in consistently licensing qualified applicants. I am in complete agreement.

The proposed regulations were signed by the Lieutenant Governor and will become effective on December 24, 1978. I feel these regulations will provide the necessary frame work for applicants to be dealt with consistently.

Recommendation No. 3. Agreed. I have forwarded a copy of AS 44.62.312(a)(2) concerning public meetings to the board for their information. The Director of the Division of Occupational Licensing has also discussed this situation with the board. All meetings are now recorded and minutes taken. This recommendation has been implemented.

Recommendation No. 4. Agreed. The regulations referred to in my response to recommendation no. 1 will remedy the major portion of your recommendation. Your additional comment concerning board members becoming personally liable is a legal question which I feel should be answered by an attorney within the Department of Law.

08-H8LH

Recommendation No. 5. Agreed. The portion of this recommendation concerning updating regulations has been answered in responding to recommendation no. 1. The application form will be revised by December 31, 1979.

Recommendation No. 6. AS 08.86.070 describes the duties of the board. It is the responsibility of the Division of Occpational Licensing to investigate complaints and the board will act as a quasi-judicial body. I do agree that the board may request an investigation. Should any board member request an investigation the division will proceed.

Recommendation No. 7. Agreed. Regulations discussed in recommendation no. 1 will in effect partially institute this recommendation. The division will work with the board concerning implementation.

Recommendation No. 8. Agreed. The board is reviewing this recommendation. The division will provide any assistance necessary or requested in order to rectify this problem.

Recommendation No. 9. I agree with the concept concerning continuing education as a condition of relicensure.

Recommendation No. 10. Agreed. This board, as well as all boards, will be contacted in March or April, 1979 for input into the division's budget for FY 1981. This input will address the board's goals, objectives and financial needs.

Recommendation No. 11. Agreed. Discussions will be held with the board and through cooperative efforts a procedure manual will be formulated by the end of calendar year 1979.

I appreciate the time and efforts expended by your staff.

Yours truly,

H. Phillip Hubbard
Commissioner

Entry Requirements for Professional Practice of Psychology

A Guide for Students and Faculty

American Association of State Psychology Boards

The Purpose of this Brochure

The American Association of State Psychology Boards (AASPB) has become increasingly concerned that students preparing for professional practice of psychology be made aware of the legal requirements for entry into such practice. The purpose of this brochure is to acquaint students with typical requirements for licensure or certification in the various jurisdictions in the United States and Canada. The Association hopes that an understanding of these requirements will enable the student to better meet the standards established by law to regulate the practice of psychology in the public interest.

What is the American Association of State Psychology Boards?

The AASPB was formed in 1961 to serve a number of needs of state psychology boards throughout North America. One primary need was the establishment of a standardized, written examination for professional practice in psychology which could be used by all jurisdictions to examine candidates for licensure or certification. In addition to that purpose, the AASPB also serves to coordinate efforts of the various boards, facilitate communication among boards, and act as a voice for those responsible for the legal regulation of the practice of psychology.

The Purpose of Licensure or Certification of Psychologists*

The practice of professional psychology is now regulated by law in 49 of the 50 states of the U.S., as well as the District of Columbia and 7 provinces of Canada.** The laws are intended to protect the public by limiting licensure to those persons who are qualified to practice psychology as defined by state law.

The legal basis for licensure lies in the right of the state to enact legislation to protect its citizens. *Caveat emptor* or "buyer beware," is felt to be an unsound maxim when the "buyer" of services cannot be sufficiently well informed to beware, and hence states have established regulatory Boards to license qualified practitioners. A professional board is a state agency acting to protect the public, not to serve the profession. However, by insuring high standards for those who practice independently, the Board is simultaneously serving the best interests of both the public and profession. The major functions of any professional board are: (1) To determine the standards for admission into the profession and to administer appropriate procedures for selection and examination, and (2) To regulate practice and to conduct disciplinary proceedings involving violation of standards of professional conduct embodied in law.

Those who practice the profession of psychology in a research laboratory, in a state or federal institution or agency, or in a college or university are still exempt from the requirements of licensure in some states, although there is a trend toward requiring licensure of agency employees. The psychologist who offers direct services to the public for a fee must be licensed.

Typical Requirements of Psychology Licensing Laws

Licensing laws in the various jurisdictions differ considerably, yet most have a common core of agreement. Of course, each board is the final authority on all matters of requirements within its jurisdiction and should be contacted for specifics. The typical requirements for licensure in the various jurisdictions are as follows:

A) **Education**
Achievement of a doctoral degree in psychology from an approved program, or the equivalent as deemed by the board. The definitions of approved programs vary widely, but often refer to accreditation of the academic institutions by recognized accrediting bodies. (Some states have two or more levels of licensure or certification, with the lower level requiring less than the doctoral degree and entailing more restrictions on the practitioner.)

B) **Experience**
One or two years supervised experience in a setting approved by the state board. Most, but not all, states require that some of the supervised experience be postdoctoral.

C) **Examination**
Demonstration of relevant knowledge through passing an objective written examination. The Examination of Professional Practice in Psychology, constructed by a committee of AASPB in association with the Professional Examination Service, is used in about 48 jurisdictions. The cut-off point for successful performance on the examination is determined by the board having authority for the jurisdiction. In some states, successful performance is required on an oral and/or essay examination conducted by the Board or a committee designated by the Board. Specialty examinations, *e.g.* in clinical psychology, industrial psychology, or school psychology may become common in the near future.

D) **Administrative requirements**
In addition to the foregoing requirements, the various state laws specify different citizenship, age, and residence requirements, as well as requiring evidence of good moral character.

Stated succinctly, the major hurdles which any candidate must meet in the evaluation by the board are:

1) The Board's review of credentials (transcripts, application, references).
2) Examination (written and/or oral)

Most candidates successfully pass these hurdles, but some fail. Potential sources of difficulty are discussed below

How to Prepare for Successfully Meeting the Requirements of Licensure

Although well prepared candidates have little or no problem with the licensing process, certain areas can be identified in which difficulties are most likely to occur. These potential problem areas are:

1) **Knowledge of the law and regulations.** The applicant should examine the law for the jurisdiction in which licensure is sought to assure that there has been full compliance with the law before an application is submitted. The applicant also should be familiar with, and comply with, any regulations of the board with respect to qualifications.

2) **Adequacy of training and/or experience.** The problems subsumed under this heading include a lack of the appropriate degree specified by the law (usually a Ph.D. in psychology); failure of the candidate to complete the required number of graduate hours in psychology; failure of the institution from which the degree was granted to meet the criteria for approval by the board; failure of the specific curriculum in which the student was enrolled to meet the requirements of the particular state board. With regard to the last-mentioned criterion, most laws contain a stipulation that the graduate work be predominantly psychological in nature, and the doctoral degree be based upon a dissertation which is psychological in content. It should also be noted that some jurisdictions require evidence of continuing education, beyond the Ph.D., for psychologists to retain their licenses.

In addition to these problems having to do with the nature of the candidate's education, each law specifies the duration of experience required, and each board stipulates the type of setting in which approved experience may be obtained. Typical of such approved settings are the APA-approved internship programs. Each candidate should plan for supervised experience that will satisfy the legal requirements for practice in the jurisdiction in which licensure is desired.

3) **Examination Performance.** Successful performance in state licensing examinations usually requires demonstration of knowledge of basic psychology which is relevant to professional practice, along with knowledge of professional ethics and professional affairs. While numerous factors are undoubtedly operative, probably the most frequent source of failure is the candidate's possession of insufficient knowledge of basic psychology. Candidates may also be disqualified in oral examinations as a consequence of demonstration of insufficient knowledge about the management of professional problems, particularly ethical problems.

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*When both the title and practice of psychology are regulated, the law is called a *licensing* law; when only the title of psychologist is regulated, the law is called a *certification* law. To avoid redundancy in the remainder of our discussion the word "licensure" will be used to stand for either licensure or certification.

**Throughout this text the term "state" will refer to Canada's provinces as well as political subdivisions of the U.S.

The Content of the Examination of Professional Practice in Psychology

In order to help the candidate to prepare for the Examination of Professional Practice in Psychology (EPPP), a separate brochure has been prepared by AASPB, and is available from AASPB, the Professional Examination Service, or the board of examiners in those jurisdictions using the exam. In the paragraphs below, the content of that examination is summarized briefly.

1) **Background knowledge:** physiological psychology and comparative psychology, learning, history, theory and systems, sensation and perception, motivation, social psychology, personality, cognitive processes, developmental psychology, psychopharmacology;
2) **Methodology:** research design and interpretation, statistics, test construction and interpretation, scaling;
3) **Professional practice:**
   a) Clinical psychology: test usage and interpretation, diagnosis, psychopathology, therapy, judgment in clinical situations, community health;
   b) Behavior modification: Learning, applications;
   c) Other specialities: Management consulting, industrial and human engineering, social psychology, T-groups, counseling and guidance, communications, systems analysis;
   d) Professional conduct, affairs, and ethics: Interdisciplinary relations, professional conduct, knowledge of professional affairs.

The EPPP is published in various forms, with new forms published periodically. The examination varies from 150 to 200 items in length. The content areas enumerated above are not equally weighted.

The requirements for licensure, delineated above, and the discussion of potential bases for denial, suggest that the student who seeks out a broad and sophisticated background in psychology is likely to encounter few problems in the licensing process. The student should especially seek experiences which emphasize the application of psychological knowledge to problems likely to be encountered as a professional psychologist. Narrowly based training, avoiding the complexity of the field of psychology, is probably not in the student's best interest if professional practice is a goal. Cursory or limited supervision, or supervision by other than a qualified psychologist, is also likely to lead to deficiencies. Moreover, since psychologists tend to be mobile, a broad background acceptable to all or most boards is preferable to training narrowly designed to meet the requirements of a single jurisdiction. Students who have sought out experiences consistent with APA standards and have taken training at recognized facilities of quality rarely experience difficulty in obtaining licensure.

An Interstate Reporting Service has been established by the Professional Examination Service to facilitate mobility by permitting easier endorsement of licenses among states. The Reporting Service maintains a permanent record of examination scores on the EPPP for those candidates who choose to register. On the candidate's request, the Service will report the score, accompanied by appropriate normative data, to the board of another state in which licensure is being sought.

Resources

It cannot be overemphasized that the final and absolute word concerning requirements for licensure in any state must be obtained from the specific board in question. Addresses for state boards are published each calendar year in the *American Psychologist*. When in doubt, write or call your board. In addition to the individual Boards, the following are other sources of information which may be of value to students and faculty.

American Association of State Psychology Boards
c/o Morton Berger, Ph.D.
N.Y. State Board of Psychology
99 Washington Avenue, Rm. 1841
Albany, New York 12230

American Psychological Association,
Office of Professional Affairs
1200 Seventeenth Street, N.W.
Washington, D.C. 20036

American Psychological Association,
Office of Educational Affairs
1200 Seventeenth Street, N.W.
Washington, D.C. 20036

Standards for Providers of Psychological Services. American Psychological Association, September, 1974

A model for state legislation affecting the practice of psychology, 1967. *American Psychologist*, Vol. 22, No. 12, December 1967.

A model for state legislation affecting the practice of psychology, 1975. (Draft) Committee on State Legislation, American Psychological Association.

Ethical Standards of Psychologists. *American Psychologist*, 1963. (Amended 1965 and 1972). Published and updated periodically by the American Psychological Association.

Professional Examination Service
475 Riverside Drive
New York, NY 10027

APA-Approved Doctoral Programs in Clinical, Counseling, and School Psychology. Published annually in the *American Psychologist*.

APA-Approved Internships for Doctoral Training in Clinical and Counseling Psychology. Published annually in the *American Psychologist*.

Terris, L.D. The National Licensing Examination. *Professional Psychology*, 1973, 4, 386-391.

Secretary of the State Board of Examiners of Psychologists, your state.

JAMES C. PARSONS
207 E. NORTHERN LIGHTS BLVD. • ANCHORAGE, ALASKA 99503
PHONE 276-2230

April 20, 1979

Sen. W. E. Bradley, Chairman
Senate Commerce Committee
Pouch V
Juneau, Ak, 99811

Dear Brad:

I am deeply concerned that the Board of Psychologist and Psychological Associate Examiners may be terminated under sunset review. I will not go into detailed history of what has happened concerning this professional licensing board except to say that I was in the House when the original bill passed that body in 1964 and have been concerned about professional standards in my field for the past quarter century.

During the past several years while I have been Secretary of this Board, we have attempted to tighten up procedures and indeed, the first regulations for the Board were finally approved in December of 1978. Unfortunately, some of the statements made in both the sunset audit review and other investigations are difficult to address without lengthy explanation and refutation.

I would hope that your committee would see fit to extend the life of this Board since I do not think it would be in the public interest for this function to be assumed by a government agency, rather than by professionals in the field.

The impact of our Board being sunsetted would place in jeopardy anyone who is licensed in Alaska who attempted to move to another licensing jurisdiction (every state, Washington, D.C., and Puerto Rico have similar boards and standards). This is crucial, since every state board checks to see if standards of screening and testing are equal to those in their jurisdiction.

In addition to a national objective examination, each state gives a state examination to attempt to evaluate factors of professional ethics, work samples and similar issues.

Sincerely,

James C. Parsons, Secretary
Alaska Board of Psychologist and
Psychological Associate Examiners

JCP:amh
enc.

AMERICAN ASSOCIATION OF STATE PSYCHOLOGY BOARDS

Committee on Supervision

The American Association of State Psychology Boards established a Committee on Supervision with the charge that it develop Guidelines for the attainment of that amount of supervised practice which is required as a pre-condition to licensure. The need for such Guidelines has been evidenced by mounting pressure towards uniform standards for licensing on a Federal level, as well as the continuing feedback that many States were having difficulty arriving at consistent standards for evaluating this aspect of their applicants' credentials. The Committee was also charged with the development of Guidelines for Supervision of unlicensed persons providing psychological services. This initial report concerns itself with the first of these issues.

A period of supervised professional work experience is widely recognized by statute as one of the prerequisites for credentialing for autonomous practice. The process of supervision, that is, the management of a work experience and evaluation of the psychologist's performance, serves as a bridge between graduate education and practicum training, and the detailed application of professional skills in specific client situations.

The supervisory function serves a multiplicity of purposes. It provides guidance in administrative issues in the practice setting, it continues and expands education in skills, it offers emotional support, and it provides evaluation for purposes of the supervisee's growth, as well as administrative judgment relative to the supervisee's capacity for autonomous professional functioning. The supervisor assigns work, sets realistic standards for achievement, and offers evaluation of the supervisee's performance. The supervisor offers a perspective on the relationship between the supervisee's assignment, the rest of the agency and the facilities available outside of the agency, in order that the supervisee's diagnostic and intervention procedures are intelligently placed within the context of all of the systems effecting and influencing the client. In addition to all of this, the supervisor must deal with the personal characteristics of the supervisee which either enhance or interfere with his work efficiency.

The following Guidelines are based on a careful review of the operation of all of the State Boards of Examiners, and intensive consideration and debate of the Executive committee of the American Association of State Psychology Boards. In addition to detailing what we deem to be reasonable minimal standards for supervised practice, this document underlines and emphasizes the legal, administrative and professional responsibility of the licensed psychologist designated as supervisor. It is the supervisor's obligation to limit supervision to those areas in which he/she has professional expertise, as well as to develop the specialized skills necessary to render competent supervision.

SUPERVISED PRACTICE AS PREREQUISITE FOR LICENSURE

I. Duration and Setting of Supervised Practice

A. Two years of supervised and documented experience shall be required prior to considering a candidate as eligible for admission to examination for full licensure.

1. The first year of supervised experience shall be credited only after accruing the equivalent of two years of full time graduate study in an integrated sequence of course work in psychology. The second year of supervised experience must be obtained post-doctorally. Credit shall not be granted for practice in connection with course work practicum experience for which graduate credits are granted.

B. Supervised experience shall be credited only for professional practice in an organized public or private agency, institution or organization which will provide an opportunity for contact with other disciplines, and an opportunity for work with a broad range of clients. Other settings may be considered only by prior arrangement with, and approval, of the Board.

1. A minimum qualifying placement shall consist of the equivalent of one full year (35 hours per week) assignment to insure a comprehensive, supervised work experience.

II. Qualifications of Supervisors

A. Overall supervision of the psychologist's professional growth resides in the licensed psychologist. Specific skill training may be assigned to other specialists, under the authority of the supervising psychologist. The non-psychologist supervisor shall have clearly established practice and teaching skills demonstrable to the satisfaction of both the supervising psychologist, and the supervisee.

B. The supervisor shall so limit supervisory responsibilities as to be certain to maintain a level of supervision and practice consistent with professional standards insuring the welfare of the supervisee and the client.

III. Amount of Supervisory Contact

In keeping with previous recommendations, there shall be one hour per week as a minimum for general administrative supervision. Specific case discussion and skill training require additional supervisory contact. Supervision is to be conducted on a one to one basis, and shall not be substituted for by group seminars or consultation which may be excellent training procedures in their own right. It is likely that much more than one hour per week would be required, especially with supervisees of lesser experience.

IV. Conduct of Supervision

A. The committee recognizes that, under all circumstances, the variability in preparation for practice of the trainee will require individually tailored supervision. The specific content of the supervised procedures will have to be worked out between the individual and the supervisee.

B. The licensed psychologist who provides supervision for the candidate for licensure, must have legal, administrative, and professional responsibility for the work of the supervisee. This means that the supervisor must be available to the supervisee, at the point of the decision making. The supervisor's relationship with the supervisee shall be clearly differentiated from that of consultant, who may be called in at the discretion of the consultee, and who has none of the legal, administrative or professional accountability for the services performed, and the welfare of the client.

V. Evaluation and Accreditation of Supervised Practice

A. The Board shall require submission of information by the supervisor(s) which will enable it to evaluate and credit the extent and quality of the candidate's supervised practice.

The form requesting such information shall cover the following:

a. Name of Supervisee
b. Educational level of Supervisee
c. Supervisor's name, address, license number, State in which granted and area of specialization.
d. Name and nature of setting in which supervised practice took place.
e. Dates of practice covered in this report.
f. Number of practice hours during this period.
g. Supervisee's duties.
h. Number of one to one supervisory hours.
i. Assessment of supervisee's performance.

B. Supervised practice time during which the Supervisor deems Supervisee's performance to have been unacceptable shall not be credited towards the required supervised practice hours.

Morris Goodman, Ph. D.

Judy Hall, Ph. D.
Evelyn Rule, Ph. D.
Tommy Stigall, Ph. D.
Joan Taylor, Ph. D.
Morton Berger, Ph. D., Ex Officio

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
POUCH D
JUNEAU, ALASKA 99811
Phone (907) 465-2544

PSYCHOLOGY PROCEDURE SHEET

AS 08.86: Alaska law requires licensure to practice Psychology.

General Instructions: All copies of documents must be certified by a Notary Public to be true copies of the original documents. Your application and supporting documents will be returned if they are not completed and in proper form.

Foreign applicants: All foreign documents must be certified by a Notary Public and must be accompanied by certified translations by a recognized translator.

Applicants are requested to read the application and these instructions carefully, as failure to do so may cause additional correspondence and delay in the processing of your application; it may result in your having to wait for the next board meeting or examination.

REFERENCES: Attached are reference letter forms which must be forwarded by you to your list of references and then submitted directly to the Department of Commerce and Economic Development.

VERIFICATION OF OUT-OF-STATE LICENSURE: Attached is a verification form. It is your responsibility to forward this form to the state where you are presently licensed and then submit it directly to this office.

VERIFICATION OF POST DOCTORAL SUPERVISED EXPERIENCE: Attached is a Post Doctoral Supervisory Experience Verification form. This form must be submitted to your supervisor or former supervisor for completion by them and submitted directly to this office.

LICENSURE BY ENDORSEMENT: (Psychologist) The following documents must be on file in this office before you will be considered for licensure:

1. A completed notarized application, photo and $50.00 application fee.

2. Out-of-state license fee of $50.00.

3. Verification of current licensure in another state.

4. a. Proof of a Doctoral Degree with primary emphasis on psychology from an accredited school.
   b. Proof of one year post doctoral supervised experience;
   -OR-
   c. Proof that you are a diplomate in good standing with the American Board of Examiners in Professional Psychology.

5. Five (5) reference letters.

6. Resume or Visa.

7. Official transcript from school that granted Bachelors Degree.

8. Official transcript from school that granted Masters Degree.

9. Official transcript from school that granted Doctoral Degree.

AS 08.86 requires that the examination and qualifications at the time of your licensure are essentially similiar to Alaska. Therefore, the acceptance or rejection of your application will be based on these requirements.

If you are a diplomate of the American Board of Examiners in Professional Psychology, you are eligible for licensure by endorsement. You must submit certified evidence that you are a diplomate.

After all documents are received in this office, they will be submitted to the Board for review. You will be notified by this Department of the Board's decision.

LICENSURE BY EXAMINATION: (PSYCHOLOGIST) The following documents must be on file in this office before you will be considered for examination:

1. A completed notarized application, photo and a $50.00 application fee.
2. A $30.00 examination fee.
3. Proof of a Doctoral Degree with emphasis on Psychology from an accredited school.
4. Five (5) reference letters. Attached are reference letter forms.
5. Proof of one year of post doctoral supervised experience.
6. Resume or Visa.
7. Official transcript from school that granted Bachelors Degree.
8. Official transcript from school that granted Masters Degree.
9. Official transcript from school that granted Doctoral Degree.

After all documents are received in this office, they will be submitted to the Board for review. You will be notified by this Department of the Board's decision.

LICENSURE BY EXAMINATION: (Psychological Associate) The following documents must be on file in this office before you will be considered for examination:

1. A completed notarized application, photo and application fee.
2. A $30.00 examination fee.
3. Certified copy of a Masters Degree showing proof of at least 24 semester hours of course work related to counseling or another specialized area which licensure is requested.
4. Proof of practical work or previously studied theory on your Masters Degree.
5. Proof of three (3) years' experience within the past ten (10) years which must be as follows: Two (2) years of experience in Alaska; and one (1) year of supervised post graduate experience.
6. Recommendation from your immediate supervisor, if a licensed Psychologist, or from two licensed Psychologists who hold Doctoral Degrees.
7. Five (5) reference letters.
8. Official transcript from school that granted Bachelors Degree.
9. Official transcript from school that granted Masters Degree.
10. Official transcript from school that granted Doctoral Degree.

An applicant for the Psychological Associate examination cannot be scheduled for the examination if he has failed the examination within the past

six (6) months. The applicant must wait until his six months period has expired before he can be rescheduled for the examination.

EXAMINATIONS: Examinations are usually held in March and September of each year. The Board utilizes the written examination provided by the American Association of State Psychology Boards. These examinations are usually four hours long. The answer sheets are returned to the Professional Examination Service for grading. Examinees are notified of the results of the examination by this Department after they are received in this office. The Board has approved one (1) standard deviation below the mean as an acceptable score for licensure.

RENEWAL OF LICENSES: All permanent licenses must be renewed by June 30 on odd number years. A license which is not renewed by the due date lapses. A penalty of $10.00 shall be charged in addition to all delinquent renewal fees for reinstatement of a license which remains lapsed for more than 60 days. It is illegal to practice on a lapsed license. Notification of the necessity to renew will be mailed to each licensee approxmately 30 days before the renewal date. Failure to receive a renewal notice is not considered an excuse for nonrenewal.

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS
Pouch D
Juneau, Alaska 99811

I HEREBY APPLY for licensure as a
PSYCHOLOGIST ( ) PSYCHOLOGICAL ASSOCIATE ( )
by: EXAMINATION ( ) ENDORSEMENT ( )
This application must be completed in full. If any section does not apply, write N/A in the space provided. PLEASE PRINT OR TYPE.

If applying for licensure by ENDORSEMENT, upon what state license do you base this application?_____ Certificate number_____

Date of issuance_____.

PERSONAL DATA:

1. Name in Full_____

2. Present mailing address_____ Zip Code_____

3. Permanent residence address_____ Zip Code_____

4. Resident Phone_____ Business Phone_____Alternate

Message Phone_____ if not available at either of the above.

5. Place of Birth_____ Date of Birth_____ Age_____

EDUCATIONAL DATA: Names, addresses & Zip Codes of ALL undergraduate colleges & universities attended. Give dates of attendance and graduation.

6. College (Baccalaureate)_____

Names, addresses & Zip Codes of Masters & Doctorate universities. Give dates of attendance and graduation.

7. College (Masters)_____

Revised 1975

8. College (Doctorate)_____

_____

_____

_____

Area of Emphasis	Title of Thesis	Degree Earned

Give names of Professors/Instructors/Directors in conjunction with 6, 7, & 8. The Department of Commerce will initiate contact with the above.

++

PROFESSIONAL DATA:

9. List the states in which you are certified or licensed to practice psychology_____

10. List any states in which you took and passed a psychological licensing examination_____

11. Have you ever taken the P.E.S. examination of Professional Practice in Psychology? Yes ( ), No ( ). If yes, when and where?_____

12. Are you a member in good standing of the American Board of Examiners in Professional Psychology? Yes ( ), No ( ).

++

OCCUPATIONAL DATA: In chronological order, from most remote to most recent, list all relevent or related professional positions held. Provide names of employers, addresses, zip codes, phone numbers, positions held, duties and responsibilities and name of direct supervisor(s).

13. _____

_____

_____

_____

_____

_____

_____

14. [illegible]

15 Passport type photo (taken within the last six months) certified, for positive identification.

Place

Photo

Here

++

I HEREBY CERTIFY that the information in this application is true and correct to the best of my knowledge. I understand that any false information may result in failure to obtain licensure as a psychologist in Alaska, or subsequest revocation of license.

_____
Signature of applicant

SUBSCRIBED AND SWORN before me, a Notary Public, in and for the State of _____, this_____ day of_____, 19___.

_____
Notary Public

_____
My Commission expires

NOTARY SEAL

VERIFICATION OF LICENSURE

Sir:

I am applying for licensure to practice psychology in the State of Alaska. The Board of Psychologists and Psychological Associate Examiners requires this form to be completed by the jurisdiction in which I hold or have held licenses. Please complete this form and send it directly to the:

Department of Commerce & Economic Development
Division of Occupational Licensing
Board of Psychologists and Psychological Associate Examiners
Pouch D
Juneau, Alaska 99811

Name _____ (Printed)

Signature _____

Address _____

_____

1. State of _____
2. Name of Licensee _____
3. Graduate of _____
4. License No. _____ Issued effective _____
5. Expiration date of License _____
6. By reciprocity/endorsement _____ Examination _____
7. List the specific requirements that the applicant had to meet to become licensed in your State

   A.
   B.
   C.
   D.

8. Has the applicant's license ever been suspended or revoked? _____
9. If so, for what reason? _____
10. Comments, if any; _____

_____

Signed _____

(SEAL)

Title _____

State Board _____

Date _____

Address _____

08-2425

POST DOCTORAL SUPERVISORY EXPERIENCE VERIFICATION

THIS PORTION TO BE COMPLETED BY THE APPLICANT.

I, _____ am applying for licensure in the State of Alaska as a Psychologist ( ) Psychological Associate ( ). My application shows that I was under your supervision from _____ to _____.

THIS PORTION TO BE COMPLETED BY THE SUPERVISOR AND SENT DIRECTLY TO THE:

Department of Commerce and Economic Development
Division of Occupational Licensing
Board of Psychologists & Psychological Associate Examiners
Pouch D
Juneau, Alaska 99811

I, _____ did supervise _____

at _____

for the following number of hours _____. Comments on ability, character, etc._____

_____

_____

_____.

I hereby certify the above information is true and complete to the best of my knowledge.

_____
Signature

_____
Title

_____
Address

_____

Subscribed and sworn before me this

_____ of _____, 19___.

_____
Notary

My Commission expires _____

08-2426

CERTIFICATE OF GOOD MORAL CHARACTER

Note to Applicant: This form must be submitted to your references. Your references must submit this form directly to the:

Department of Commerce & Economic Development
Division of Occupational Licensing
Board of Psychologist and Psychological Associate Examiners
Pouch D
Juneau, Alaska 99811

This certifies that I have been personally acquainted with

_____ _____ of _____

for _____ years and that I know him/her to be of good moral character, not addicted to the use of habit-forming drugs or intemperance, and I here-by recommend him/her to the Board of Psychologist and Psychological Associate Examiners as entirely worthy to be licensed to practice psychology in the State of Alaska.

_____
Name

_____
Address

_____

Subscribed and sworn to before me this _____ day of _____, 19___.

_____
Notary

My Commission expires _____.

08-2427

Board or Commission	Appointee	Term

BOARD OF PSYCHOLOGISTS AND PSYCHOLOGICAL ASSOCIATE EXAMINERS
AS 08.86. - 5 members,; 3 year term; serves at the pleasure of the Governor.

Dorothy Whitmore, Ed.D. (chairman) — July 1, 1977 (1980)
207 E. Northern Lights Blvd.
Suite 202
Anchorage, Alaska 99503
344-2078 (home)
276-2230 (work)

James C. Parsons — July 1, 1979
207 E. Northern Lights Blvd., Suite 202
Anchorage, Alaska 99503
276-2230 (work)
279 3735 (home)

Robert D. Bowers — July 1, 1981
7744 Boundary Avenue
Anchorage, Alaska 99504
337-6256 (home)
279-9544 (work)

Dick L. Madson — July 1, 1980
Suite D, Nerland Bldg.
543 Third Avenue
Fairbanks, Alaska 99701
456-7219 (home)
452-4215 or 452-4254 (work)

Pam Delys-Baglien, Ph.D. — July 1, 1981
Kodiak/Aleutian Mental Health Ctr.
P.O. Box 712
Kodiak, Ak 99615
486-5742 (work)

AMERICAN ASSOCIATION OF STATE PSYCHOLOGY BOARDS

Committee on Supervision

The American Association of State Psychology Boards established a Committee on Supervision with the charge that it develop Guidelines for the attainment of that amount of supervised practice which is required as a pre-condition to licensure. The need for such Guidelines has been evidenced by mounting pressure towards uniform standards for licensing on a Federal level, as well as the continuing feedback that many States were having difficulty arriving at consistent standards for evaluating this aspect of their applicants' credentials. The Committee was also charged with the development of Guidelines for Supervision of unlicensed persons providing psychological services. This initial report concerns itself with the first of these issues.

A period of supervised professional work experience is widely recognized by statute as one of the prerequisites for credentialing for autonomous practice. The process of supervision, that is, the management of a work experience and evaluation of the psychologist's performance, serves as a bridge between graduate education and practicum training, and the detailed application of professional skills in specific client situations.

The supervisory function serves a multiplicity of purposes. It provides guidance in administrative issues in the practice setting, it continues and expands education in skills, it offers emotional support, and it provides evaluation for purposes of the supervisee's growth, as well as administrative judgment relative to the supervisee's capacity for autonomous professional functioning. The supervisor assigns work, sets realistic standards for achievement, and offers evaluation of the supervisee's performance. The supervisor offers a perspective on the relationship between the supervisee's assignment, the rest of the agency and the facilities available outside of the agency, in order that the supervisee's diagnostic and intervention procedures are intelligently placed within the context of all of the systems effecting and influencing the client. In addition to all of this, the supervisor must deal with the personal characteristics of the supervisee which either enhance or interfere with his work efficiency.

The following Guidelines are based on a careful review of the operation of all of the State Boards of Examiners, and intensive consideration and debate of the Executive committee of the American Association of State Psychology Boards. In addition to detailing what we deem to be reasonable minimal standards for supervised practice, this document underlines and emphasizes the legal, administrative and professional responsibility of the licensed psychologist designated as supervisor. It is the supervisor's obligation to limit supervision to those areas in which he/she has professional expertise, as well as to develop the specialized skills necessary to render competent supervision.

SUPERVISED PRACTICE AS PREREQUISITE FOR LICENSURE

I. Duration and Setting of Supervised Practice

A. Two years of supervised and documented experience shall be required prior to considering a candidate as eligible for admission to examination for full licensure.

1. The first year of supervised experience shall be credited only after accruing the equivalent of two years of full time graduate study in an integrated sequence of course work in psychology. The second year of supervised experience must be obtained post-doctorally. Credit shall not be granted for practice in connection with course work practicum experience for which graduate credits are granted.

B. Supervised experience shall be credited only for professional practice in an organized public or private agency, institution or organization which will provide an opportunity for contact with other disciplines, and an opportunity for work with a broad range of clients. Other settings may be considered only by prior arrangement with, and approval, of the Board.

1. A minimum qualifying placement shall consist of the equivalent of one full year (35 hours per week) assignment to insure a comprehensive, supervised work experience.

II. Qualifications of Supervisors

A. Overall supervision of the psychologist's professional growth resides in the licensed psychologist. Specific skill training may be assigned to other specialists, under the authority of the supervising psychologist. The non-psychologist supervisor shall have clearly established practice and teaching skills demonstrable to the satisfaction of both the supervising psychologist, and the supervisee.

1. The supervisor shall so limit supervisory responsibilities as to be certain to maintain a level of supervision and practice consistent with professional standards insuring the welfare of the supervisee and the client.

III. Amount of Supervisory Contact

In keeping with previous recommendations, there shall be one hour per week as a minimum for general administrative supervision. Specific case discussion and skill training require additional supervisory contact. Supervision is to be conducted on a one to one basis, and shall not be substituted for by group seminars or consultation which may be excellent training procedures in their own right. It is likely that much more than one hour per week would be required, especially with supervisees of lesser experience.

IV. Conduct of Supervision

A. The committee recognizes that, under all circumstances, the variability in preparation for practice of the trainee will require individually tailored supervision. The specific content of the supervised procedures will have to be worked out between the individual and the supervisee.

B. The licensed psychologist who provides supervision for the candidate for licensure, must have legal, administrative, and professional responsibility for the work of the supervisee. This means that the supervisor must be available to the supervisee, at the point of the decision making. The supervisor's relationship with the supervisee shall be clearly differentiated from that of consultant, who may be called in at the discretion of the consultee, and who has none of the legal, administrative or professional accountability for the services performed, and the welfare of the client.

V. Evaluation and Accreditation of Supervised Practice

A. The Board shall require submission of information by the supervisor(s) which will enable it to evaluate and credit the extent and quality of the candidate's supervised practice.

The form requesting such information shall cover the following:

a. Name of Supervisee
b. Educational level of Supervisee
c. Supervisor's name, address, license number, State in which granted and area of specialization.
d. Name and nature of setting in which supervised practice took place.
e. Dates of practice covered in this report.
f. Number of practice hours during this period.
g. Supervisee's duties.
h. Number of one to one supervisory hours.
i. Assessment of supervisee's performance.

B. Supervised practice time during which the Supervisor deems Supervisee's performance to have been unacceptable shall not be credited towards the required supervised practice hours.

Morris Goodman, Ph. D.

Judy Hall, Ph. D.
Evelyn Rule, Ph. D.
Tommy Stigall, Ph. D.
Joan Taylor, Ph. D.
Morton Berger, Ph. D., Ex Officio

S T A T E O F A L A S K A

JAY HAMMOND

GOVERNOR

BOARD OF PSYCHOLOGISTS & PSYCHOLOGICAL ASSOCIATE EXAMINERS

CENTRALIZED LICENSING STATUTE, AS 08.01

PSYCHOLOGISTS AND PSYCHOLOGICAL ASSOCIATES
AS 08.86.

REGULATIONS, 12 AAC 40

Department of Commerce & Economic Development

Division of Occupational Licensing

Pouch D

Juneau, Alaska 99811

Printed: January 1979

CHAPTER 01. CENTRALIZED LICENSING

Section		Section	
10.	Applicability of chapter	80.	Department regulations
20.	Board organization	87.	Powers and duties of department
25.	Public members	90.	Applicability of the Administrative Procedure Act
30.	Quorum	100.	License renewal, lapse and reinstatement
40.	Transportation and per diem	105.	Penalty for improper payment
50.	Administrative duties of department	110.	Definitions
60.	Application for license		
70.	Administrative duties of boards		

Sec. 08.01.010. APPLICABILITY OF CHAPTER. This chapter applies to the

(1) Board of Public Accountancy;
(2) Board of Barber Examiners;
(3) Repealed by sec. 6 ch 32 SLA 1971.
(4) Board of Chiropractic Examiners;
(5) Board of Hairdressing and Beauty Culture Examiners;
(6) Board of Dental Examiners;
(7) Board of Electrical Examiners;
(8) State Board of Registration for Architects, Engineers and Land Surveyors;
(9) State Medical Board;
(10) Board of Nursing;
(11) Board of Examiners in Optometry;
(12) Board of Pharmacy;
(13) Real Estate Commission;
(14) Board of Veterinary Examiners;
(15) Board of Psychologist and Psychological Associate Examiners;
(16) Collection Agency Board;
(17) Board of Welding Examiners;
(18) Board of Marine Pilots;
(19) Board of Dispensing Opticians;
(20) Guide Licensing and Control Board.

Sec. 08.01.020. BOARD ORGANIZATION. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members.

Sec. 08.01.025. PUBLIC MEMBERS. No public members of a board may:

(1) be engaged in the occupation which the board regulates;
(2) be associated by legal contract with a members of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
(3) have a direct financial interest in the occupation which the board regulates.

Sec. 08.01.030. QUORUM. A majority of the membership of a board constitutes a quorum unless otherwise provided.

Sec. 08.01.040. TRANSPORTATION AND PER DIEM. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180.

Sec. 08.01.050. ADMINISTRATIVE DUTIES OF THE DEPARTMENT. (a) The department shall provide the following administrative and budgetary services when appropriate:

(1) collect fees and issue receipts;
(2) maintain records and files;
(3) issue and receive application forms;
(4) notify applicants of acceptance or rejection of applicants as determined by the board;
(5) designate dates examinations are to be held and notify applicants;
(6) publish notice of examination;

(7) arrange space for holding examinations;
(8) notify applicants of results of examinations;
(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;
(10) issue duplicate licenses or certificates upon proof of loss of the original and payment of a fee of $2;
(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;
(12) compile and maintain current a register of licenses;
(13) answer routine inquiries;
(14) maintain files relating to individual licensees;
(15) arrange for printing and advertising;
(16) purchase supplies;
(17) employ secretarial help when needed;
(18) perform other services which may be requested by the board;
(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in sec. 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned.

Sec. 08.01.060. APPLICATION FOR LICENSE. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department.

Sec. 08.01.070. ADMINISTRATIVE DUTIES OF BOARDS. Each board shall perform the following duties in addition to those provided in its respective law:

(1) keep minutes and records of all proceedings;
(2) hold a minimum of one meeting each year;
(3) hold at least one examination each year;
(4) request, through the department, investigation of violations of its laws and regulations;
(5) prepare and grade examinations;
(6) pass on qualifications of applicants for examination and license;
(7) forward minutes of meetings to the department within 20 days;
(8) forward results of examinations to the department;
(9) notify the department of meeting dates at least 15 days before meeting.

Sec. 08.01.080. DEPARTMENT REGULATIONS. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;
(2) what is contained in application forms;
(3) how a person applies for an examination or license.

Sec. 08.01.087. POWERS AND DUTIES OF DEPARTMENT. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in sec. 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in sec. 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or

reversing the temporary order is issued or until 15 days after the person receives t notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 d after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in sec. 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require license by a board listed in sec. 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents.

Sec. 08.01.090. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings held under this chapter, except those under AS 08.01.087(b).

Sec. 08.01.100. LICENSE RENEWAL, LAPSE AND REINSTATEMENT. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

Sec. 08.01.105. PENALTY FOR IMPROPER PAYMENT. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor.

Sec. 08.01.110. DEFINITIONS. In this chapter

(1) "board" includes the boards and commissions listed in sec. 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic developme

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in sec. 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in sec. 10 of this chapter.

CHAPTER 86. PSYCHOLOGISTS AND PSYCHOLOGICAL ASSOCIATES.

Article
1. Board of Psychologist and Psychological Associate Examiners (§§ 08.86.010-08.86.050)
2. Administration of Board Affairs (§§ 08.86.070-08.86.100)
3. Licensing of Psychologists (§§ 08.86.120-08.86.150)
3A. Licensing of Psychological Associates (§§ 08.86.160-08.86.162
4. Prohibitions and Penalties (§§ 08.86.170-08.86.220)
5. General Provisions (§ 08.86.230)

Article 1. Board of Psychologist and Psychological Associate Examiners.

Section
10. Creation and membership of board
20. Appointment and term of office
30. Board meetings
40. Assistants
50. Transportation and per diem

Sec. 08.86.010. CREATION AND MEMBERSHIP OF BOARD. There is created a Board of Psychologist and Psychological Associate Examiners. It consists of three licensed psychologists, and two persons who have no direct financial interest in the health care industry. (§ 1, ch. 136, SLA 1967; am § 1, ch. 65, SLA 1973; am § 30, ch. 102, SLA 1976)

Effect of amendment. -- The 1976 amendment added "and two persons who have no direct financial interest in the health care industry" to the end of the second sentence.

Effective date. -- Section 50, ch. 102, SLA 1976, makes the amendment to this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

Sec. 08.86.020. APPOINTMENT AND TERM OF OFFICE. Members of the board are appointed by the governor and confirmed by the legislature for staggered terms of three years. The terms of the public members shall be set so that they do not expire at the same time. A member serves at the pleasure of the governor. (§ 1, ch. 136, SLA 1967; am § 31, ch. 102, SLA 1976)

Effect of amendment. -- The 1976 amendment added the present second sentence.

Effective date. -- Section 50, ch. 102, SLA 1976, makes the amendment to this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

Sec. 08.86.030. BOARD MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman or of two board members. (§ 1, ch. 136, SLA 1967)

Sec. 08.86.040. ASSISTANTS. The board may employ assistants to prepare and grade examinations and to investigate alleged violations of this chapter. (§ 1, ch. 136, SLA 1967)

Sec. 08.86.050. TRANSPORTATION AND PER DIEM. Notwithstanding the provisions of AS 39.20, no board member is entitled to transportation or per diem allowance. (§ 1, ch. 136, SLA 1967)

ARTICLE 2. ADMINISTRATION OF BOARD AFFAIRS.

Section
70. Duties of the board
80. Board regulations
90. Administrative duties of the department
100. Applicability of the Administrative Procedure Act

Sec. 08.86.070. DUTIES OF THE BOARD. The board shall

(1) pass on qualifications of applicants for licenses;

(2) prepare, administer and grade written examinations;

(3) after hearing, suspend or revoke the license of a licensed psychologist or psychological associate who violates a regulation of the board;

(4) set fees which are charged for psychological associates. (§ 1, ch. 136, SLA 1967; am §§ 2, 3, ch. 65, SLA 1973)

Effect of amendment. -- The 1973 amendment inserted "or psychological associate" in paragraph (3) and added paragraph (4).

Sec. 08.86.080. BOARD REGULATIONS. The board shall adopt regulations to carry out the purposes of this chapter. (§ 1, ch. 136, SLA 1967)

Sec. 08.86.090. ADMINISTRATIVE DUTIES OF THE DEPARTMENT. The department shall furnish administrative services for the board. (§ 1, ch. 136, SLA 1967)

Sec. 08.86.100. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (§ 1, ch. 136, SLA 1967)

ARTICLE 3. LICENSING OF PSYCHOLIGISTS.

Section
120. Entitlement to licensure
125. Malpractice insurance
130. Qualification for examination
135. Temporary license
140. Fees
150. Out-of-state license

Sec. 08.86.120. ENTITLEMENT TO LICENSURE. A person who passes the examination given by the board is entitled to be licensed as a psychologist. (§ 1, ch. 136, SLA 1967)

Sec. 08.86.125. MALPRACTICE INSURANCE. If medical malpractice insurance for psychologists or psychological associates becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of psychologist or psychological associate services to the public, the director of insurance may require all persons licensed under this chapter to carry medical malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska. (§ 32, ch. 102, SLA 1976)

Effective date. -- Section 50, ch. 102, SLA 1976 makes this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

Sec. 08.86.130. QUALIFICATION FOR EXAMINATION. A person is entitled to take an examination if the board finds he

(1) has not engaged in dishonorable conduct relevant to the practice of psychology;

(2) holds a doctoral degree with primary emphasis on psychology from an accredited school;

(3) has at least one year's experience acceptable to the board. (§ 1, ch. 136, SLA 1967)

Sec. 08.86.135. TEMPORARY LICENSE. The board may issue a temporary license to a person who meets the requirements of § 130 of this chapter. A temporary license issued under this section is valid until the results of the examination following the issuance of the temporary license are published. (§ 1, ch. 38, SLA 1970)

Sec. 08.86.140. FEES. Each application fee, renewal fee, biennial and out-of-state license fee is $50. The fee for a temporary license is $10. The fee for a duplicate license is $2. (§ 1, ch. 136, SLA 1967; am § 2, ch. 38, SLA 1970)

Revisor's note (1970). -- In ch. 38, SLA 1976, "biannual" was used instead of "biennial" in the first sentence of this section. The correction was made in light of AS 08.01.100(a) (which requires biennial renewal) and the statement in Webster's

Third New International Dictionary that the two words are "sometimes" synonymous. Such a usage was clearly the intent of ch. 38, SLA 1970.

Sec. 08.86.150. OUT-OF-STATE LICENSE. A person who is licensed or certified as a psychologist by an authority other than Alaska is entitled to be licensed in Alaska without examination if

(1) he holds a doctoral degree with primary emphasis on psychology from an accredited school;

(2) the examination and qualification requirements for his out-of-state license or certificate were essentially similar to the examination and qualification requirements for licensure in Alaska at the time he was licensed; or

(3) he is a diplomate in good standing of the American Board of Examiners in Professional Psychology;

(4) he completes and returns the proper application forms, and pays the out-of-state certificate fee. (§ 1, ch. 136, SLA 1967)

ARTICLE 3A. LICENSING OF PSYCHOLOGICAL ASSOCIATES.

Section
160. Associates: Entitlement to licensure
Section
162. Associates: Qualification for examination

Sec. 08.86.160. ASSOCIATES: ENTITLEMENT TO LICENSURE: A person who passes the examination given by the board is entitled to be licensed as a psychological associate. (§ 5, ch. 65, SLA 1973)

Sec. 08.86.162. ASSOCIATES: QUALIFICATION FOR EXAMINATION. A person is entitled to take a psychological associate examination if the board finds that he:

(1) has not engaged in dishonorable conduct related to the practice of counseling or psychometry;

(2) holds a master's degree from an accredited or approved educational institution, with at least 24 credit hours of course work directly related to counseling or another specialized area in which licensure is requested, including a practicum;

(3) has at least three years' experience within the past ten years, two of which are in Alaska, and including one year's supervised postgraduate experience acceptable to the board;

(4) has the recommendation of his immediate supervisor if a licensed psychologist, or two licensed psychologists who hold doctoral degrees;

(5) has not within the preceding six months failed an examination given by the board. (§ 5, ch. 65, SLA 1973)

ARTICLE 4. PROHIBITIONS AND PENALTIES.

Section
170. Use of title
180. Practice of psychology
185. Practice of counseling and psychometrics
190. Name under which person practices
200. Confidentiality of communication
210. Penalty
220. Limits or conditions on license; discipline

Sec. 08.86.170. USE OF TITLE. (a) Unless he is licensed under this chapter, no person may use the title "psychologist" or a title, designation, or device indicating or tending to indicate that he is a psychologist or practices psychology.

(b) Unless he is licensed under this chapter, no person may use the title "psychological associate" or a title, designation, or device indicating or tending to indicate that he is a psychological associate or practices counseling or psychometrics. (§ 1, ch. 136, SLA 1967; am § 6, ch. 65, SLA 1973)

Effect of amendment. -- The 1973 amendment added subsection (b).

Sec. 08.86.180. PRACTICE OF PSYCHOLOGY. (a) Unless he is licensed under this chapter, no person may practice psychology, or offer to practice psychology, or represent to the public that he is a psychologist or that he practices psychology.

(b) This section does not apply to

(1) a person employed by a governmental unit, educational institution or private agency who may be required to enage in some phase of work of a psychological nature in the course of his employment, if the employer maintains appropriate supervision of psychological activities and professional conduct;

(2) a student, intern, or resident in psychology pursuing a course of study approved by the board as qualifying training and experience for psychologist, if his activities constitute a part of his supervised course of study and he is designated by title such as "psychology intern" or "psychology trainee";

(3) a qualified member of another profession, such as a social worker, or pastoral counselor, in doing work of a psychological nature consistent with his training and consistent with the code of ethics of his profession;

(4) Repealed by § 15, ch. 65, SLA 1973.

(5) a person practicing medicine, if he is licensed to practice medicine.

(c) Nothing in this chapter authorizes a person licensed as a psychologist to engage in the practice of medicine, as defined by the laws of the state. (§ 1, ch. 136, SLA 1967; am § 10, ch. 69, SLA 1970; am §§ 7, 15, ch. 65, SLA 1973)

Effect of amendment. -- The 1973 amendment deleted "or" preceding "educational institution" in paragraph (1) of subsection (b) inserted "or private agency" and the proviso, and repealed paragraph (4) of that subsection.

Legislative committee report. -- For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 08.86.185. PRACTICE OF COUNSELING AND PSYCHOMETRICS. (a) Unless he is licensed under this chapter, no person may practice counseling or psychometrics, offer to practice counseling or psychometry, or represent to the public that he is a counselor or psychometrist.

(b) This section does not apply to:

(1) a person employed by a governmental unit, educational institution or private agency who may be required to engage in some phase of work of a counseling nature in the course of his employment, if the employer maintains appropriate supervision of psychological activities and professional conduct;

(2) a student, intern or resident in psychology pursuing a course of study approved by the board as qualified training and experience for counseling, if his activities constitute a part of his supervised course of study;

(3) pastoral counselors.

(c) Nothing in this chapter authorizes a person licensed as a psychological associate to engage in the practice of medicine, as defined by the laws of the state. (§ 8, ch. 65, SLA 1973)

Sec. 08.86.190. NAME UNDER WHICH PERSON PRACTICES. (a) A licensed psychologist may practice psychology only under his own name.

(b) A licensed psychological associate may practice counseling or psychometry only under his own name. (§ 1, ch. 136, SLA 1967; am § 9, ch. 65, SLA 1973)

Sec. 08.86.200. CONFIDENTIALITY OF COMMUNICATION. No psychologist or psychological associate may reveal to another person a communication made to him by a client of his about a matter concerning which the

client has employed the psychologist or psychological associate in a professional capacity. This section does not apply to a case conference with other psychologists, psychological associates or with physicians and surgeons, or in the case in which the client in writing authorized the psychologist or psychological associate to reveal a communication. (§ 1, ch. 136, SLA 1967; am § 10, ch. 65, SLA 1973)

Effect of amendment. -- The 1973 amendment, in the first sentence, inserted "or psychological associate" twice and, in the second sentence, inserted "psychological associates" and "or psychological associate."

Sec. 08.86.210. PENALTY. A person who violates §§ 170, 180, 185, or 190 of this chapter is guilty of a misdemeanor. (§ 1, ch. 136, SLA 1967; am § 11, ch. 65, SLA 1973)

Effect of amendment. -- The 1973 amendment inserted "185."

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE: DISCIPLINE. (a) Upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure or facility, require additional education or training, or revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section. (§ 32, ch. 102, SLA 1976)

Effective date. -- Section 50, ch. 102, SLA 1976, makes this section effective 30 days after the effective date of this act. Section 51 of ch. 102 makes the act effective May 29, 1976, in accordance with AS 01.10.070(c).

ARTICLE 5. GENERAL PROVISIONS.

Section
230. Definitions

Sec. 08.86.230. DEFINITIONS. In this chapter

(1) "psychologist" means a person who practices psychology;

(2) "to practice psychology" means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personnel evaluation, group relations, and behavior adjustment, including

(A) counseling and guidance;

(B) using psychotherapeutic techniques with persons or groups of persons who have adjustment problems in the family, at school, or at work;

(C) measuring and testing of personality, intelligence, aptitudes, emotions, and attitudes and skills;

(D) conducting research on human behavior;

(3) "board" means the Board of Psychologist and Psychological Associate Examiners;

(4) "department" means the Department of Commerce and Economic Development;

(5) "psychological associate" includes a counselor and psychometrist;

(6) "counselor" means a person who practices counseling;

(7) "to practice counseling" means to apply established principles of learning, motivation, perception, thinking, and emotional relationships to problems of group relations, and behavior adjustment.

(A) counseling and guidance;

(B) using counseling techniques with persons or groups of persons who have adjustment problems in the family, school or at work;

(C) limited use of testing including tests of intelligence or tests of motor skills;

(8) "psychometrist" means a person who practices psychometrics;

(9) "to practice psychometrics" means to apply the recognized principles, methods and procedures of the science and profession of psychology, but limited to the administering, scoring, and interpreting of tests of mental abilities, aptitudes, interests, motor skills and objective tests of personality characteristics for purposes such as psychological evaluation or for educational or vocational selection, guidance or placement;

(10) "private agency" means a clinic or private practice under the direction of a licensed psychologist, psychiatrist, or a custodial, rehabilitative or health care organization which is acceptable to the board;

(11) "supervision" means at least one hour a week of personal interview with a supervisor whose educational qualifications are consistent with the level of activity being supervised; a supervisor is responsible for insuring that the extent, kind and quality of the psychological

and counseling services performed are consistent with a psychological associate's training and experience, as well as his obedience to the provisions of this chapter. (§ 1, ch. 136, SLA 1967; am §§ 12, 13, ch. 65, SLA 1973; am § 55, ch 218, SLA 1976)

Effect of amendment. The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (4).

TITLE 12. PROFESSIONAL AND VOCATIONAL REGULATIONS

CHAPTER 60. BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS

Article
1. Applications (12 AAC 60.010 - 12 AAC 60.060)
2. Experience and education (12 AAC 60.070 - 12 AAC 60.090)
3. Examinations (12 AAC 60.100 - 12 AAC 60.160
4. Rules of professional conduct (12 AAC 60.170 - 12 AAC 60.220
5. Reinstatement of professional privileges after discipline (12 AAC 60.230 - 12 AAC 60.240)
6. General provisions (12 AAC 60.900 - 12 AAC 60.910)

ARTICLE 1. APPLICATIONS

Section
10. Application forms; supporting evidence
20. Application for temporary license
30. Application for licensure by endorsement
40. Applications reviewed by the board
50. Application made under oath; penalty
60. Application not returned

12 AAC 60.010. APPLICATION FORMS; SUPPORTING EVIDENCE. (a) An application for initial licensure as a psychologist must be submitted on a form provided by the department with

(1) a check or money order in the amount specified in AS 08.86.140;

(2) transcripts from all undergraduate and graduate schools attended by the applicant;

(3) a certified copy of the applicant's doctoral degree diploma awarded with primary emphasis on psychology by a school accredited by a regional accrediting association;

(4) a complete vita from the date of high school graduation to the time of application, including dates and places of residency;

(5) a copy of the applicant's doctoral dissertation abstract;

(6) five letters of reference, one of which must be from the applicant's doctoral committee membership, preferably the chairperson; two from licensed psychologists, members of the American Psychological Association, or diplo-

mates of the American Board of Examiners in Professional Psychology; and, two from other persons not related to the applicant; and

(7) evidence of one year of professional experience as defined in sec. 70 of this chapter. (Eff. 12/24/78, Reg.68)

Authority: AS 08.86.080
AS 08.86.130

12 AAC 60.020. APPLICATION FOR TEMPORARY LICENSE. An applicant who is qualified to sit for the psychologist examination may be issued a temporary license by making a written request and submitting the fee specified in AS 08.86.140. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.070(1)
AS 08.86.080
AS 08.86.135

12 AAC 60.030. APPLICATION FOR LICENSURE BY ENDORSEMENT. An applicant for licensure by endorsement will be licensed without examination if

(1) she or he complies with sec. 10 of this chapter;

(2) submits verification of her or his valid and current certificate, license or other evidence of qualification issued by a state board created by state authority; and

(3) for applicants who were licensed in another jurisdiction before 1968, the board determines that the applicant's out-of-state certificate, license or other evidence of qualification was based upon examination and qualifications substantially similar to the board's at the time of application for an Alaska license. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.070(1)
AS 08.86.080
AS 08.86.150

12 AAC 60.040. APPLICATIONS REVIEWED BY THE BOARD. (a) An application received by the department will be reviewed by the board at a regular meeting before the applicant will be approved to sit for the examination, approved for a temporary license or approved for licensure by endorsement. No application will be reviewed until all the submis-

sions required by secs. 10 or 20 of this chapter have been received by the department. It is the responsibility of the applicant to assure that all submissions are received by the department.

(b) An application and supporting documents must be received at least 45 days before a scheduled examination for the applicant to be approved to sit for that exam. If an application and supporting documents are received less than 45 days before the next scheduled examination, the applicant will be considered for the following examination. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.070(1)
AS 08.86.080

12 AAC 60.050. APPLICATION MADE UNDER OATH; PENALTY. An application must be signed and the truth of its contents sworn to by the applicant. False or misleading statements or information, whether made knowingly or not, are grounds for denial of approval to take the examination or revocation of a license granted on the basis of the false or misleading statement. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.06.080

12 AAC 60.060. APPLICATION NOT RETURNED. An application becomes the property of the board upon receipt by the department and neither the application nor its supporting documents will be returned to the applicant. However, if an applicant fails to qualify for licensure, the $50 license fee will be refunded. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.080
AS 08.86.140

ARTICLE 2. EXPERIENCE AND EDUCATION.

Section
70. "Experience" defined
80. Criteria for evaluation of experience
90. "Accreditation" defined

12 AAC 60.070. "EXPERIENCE" DEFINED. (a) The one year's experience required by AS 08.86.130(3) is satisfied by any one of the following through December 31, 1978:

(1) graduation from an American Psychological Association approved doctoral program; or

(2) graduation from a doctoral program not approved by the American Psychological Association but which meets the American Psychological Association doctoral program standards to the satisfaction of the board; or

(3) one year of supervised post-doctoral experience acquired in a facility authorized to provide a full range of psychological services; or

(4) one year of supervised post-doctoral experience which the applicant can show meets the American Psychological Association doctoral program standards to the satisfaction of the board.

(b) After December 31, 1978, the experience requirement is satisfied by one year of post-doctoral experience acquired under the supervision of a licensed psychologist or a diplomate of the American Board of Examiners in Professional Psychology. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.070(1)
AS 08.86.080
AS 08.86.130(3)

12 AAC 60.080. CRITERIA FOR EVALUATION OF EXPERIENCE. (a) In order to be credited with the experience required by sec. 70 of this chapter, the following minimum requirements must be met:

(1) the applicant's supervised experience must have been in the same or similar field of psychology as was the applicant's education and training;

(2) a year of experience must consist of not less that 1,500 clock hours completed within 24 consecutive calendar months;

(3) during the entire supervised experience, contact between the supervisor and applicant must have been for a minimum of one hour per person per week of personal consultation and the supervisor must verify to the board the applicant's supervised experience, setting forth the nature and extent of the supervision;

(4) the supervised experience must be with a licensed or certified psychologist, a diplomate of the American Board of Professional Psychology, or a person holding a doctorate degree in psychology and who is considered by the board qualified to supervise;

(5) the supervisor must have had, before the period of supervision, three years of board approved professional experience;

(6) a full-time appointment teaching psychology may count for one-half of the one year of supervised experience if the appointment was for courses in the same or a similar field of psychology as was the applicant's education and training; the post-doctoral experience may have taken place in any post-doctoral training program presently or after the effective date of this section approved by the American Psychological Association for specialty training in applied psychology or in any other post-doctoral training program determined as comparable by the board;

(7) the experience may consist of work in psychological research for an accredited college or university offering an advanced degree or work in a research organization in which psychological research is an important function if the research was performed under the supervision of a person meeting the qualifications of (4) and (5) of this subsection.

(b) Unsupervised independent private practice will not be considered as acceptable supervised professional experience. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.070(1)
AS 08.86.080
AS 08.86.130(3)

12 AAC 60.090. "ACCREDITATION" DEFINED. (a) For the purposes of AS 08.86 and this chapter, an accredited school is one which is accredited by any regional accrediting agency recognized by the American Association of Collegiate Registrars and Admissions Officers.

(b) An accredited doctoral program is one which has been approved by the American Psychological Association or which is clearly equivalent to the standard used by the American Psychological Association. The burden of establishing equivalent standards rests with the applicant. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.070(1)
AS 08.86.080
AS 08.86.130(2)

ARTICLE 3. EXAMINATIONS.

Section
105. Frequency of examination
110. Examination
120. Identification of applicant
130. Time allowed for examination
140. Passing score
150. Regrading
160. Reexamination; abandonment of application

12 AAC 60.100. FREQUENCY OF EXAMINATION. Examinations will be given twice a year, usually in April and October. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.070(2)
AS 08.86.080

12 AAC 60.110. EXAMINATION. (a) The examination is both objective and essay.

(b) Answers to the written portion must be recorded on the answer sheets furnished by the board.

(c) No applicant may leave the written examination location during the examination without permission of an examiner.

(d) The written examination may include questions about the provisions of AS 08.86.

(e) An applicant may not remove examination materials from the examination location nor make any record of examination materials.

(f) Any applicant assisting or receiving assistance from another applicant or violating any provisions of sec. 120 of this chapter will be dismissed from the examination and will forfeit fees paid and the privilege of examination. (Eff. 12/24/78 Reg. 68)

Authority: AS 08.86.070(2)
AS 08.86.080

12 AAC 60.120. IDENTIFICATION OF APPLICANT. (a) For purposes of anonymity, the department will assign each applicant an examination number which neither the department nor applicant may reveal.

(b) No applicant may place any identification marks on the examination papers or reveal the examination number to an examiner or to any other person.

(c) No applicant may identify herself or himself by making any oral or written reference to any college, professor, present licenses, present position, or specialty until the examination has been completed.

(d) No items turned in to the examiners may identify the applicant except by the assigned examination number. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.080

12 AAC 60.130. TIME ALLOWED FOR EXAMINATION. Time limits may be set for each section of the written examination; examination begins when the applicant is told to start by the examiner. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.080

12 AAC 60.140. PASSING SCORES. When the board uses the Professional Examination Service, a score of .75 standard deviation below the national mean is the passing grade on the objective portion of the examination. The essay section of the examination will be graded on a pass/fail basis. Each applicant will be given written notification by the department of his or her score on the written examination and no examination scores or pass/fail information will be released except in writing. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.070(2)
AS 08.86.080

12 AAC 60.150. REGRADING. (a) Subject to (b) of this section, an applicant who receives a failing score may request regrading or reviewing of the examination via written request to the department within 30 days of receiving notification of the score.

(b) No written examination will be regraded or reviewed if the applicant received a score of more than one standard deviation below the mean.

(c) The review must be made in the presence of one board member and any recommended change in the score must be approved by the board at a duly conducted meeting of the board. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.070(2)
AS 08.86.080

12 AAC 60.160. REEXAMINATION; ABANDONMENT OF APPLICATION. (a) An applicant who fails the examination may be re-examined if she or he notifies the department in writing of her or his intent to be reexamined. A reexamination under this subsection will not be authorized, however, if it has been more than one year since the applicant took and failed the examination.

(b) Eighteen months after an applicant has failed the examination or failed to qualify for licensure by endorsement, the application will be considered abandoned and will be destroyed. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.080

ARTICLE 4. RULES OF PROFESSIONAL CONDUCT.

Section
180. Competence
190. Misrepresentation
200. Confidentiality
210. Test security
220. Effect of violation

12 AAC 60.180. COMPETENCE. Neither a psychologist nor a psychologist-supervisor may function outside her or his particular field or fields of competence as established by her or his education, training, and experience. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.080

12 AAC 60.190. MISREPRESENTATION. A psychologist may not misrepresent nor permit the misrepresentation of her or his professional qualifications, affiliations, or purposes, or those of the institutions, organizations, products or services with which she or he is associated. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.080

12 AAC 60.200. CONFIDENTIALITY. A psychologist shall safeguard confidential information that has been obtained in the course of her or his teaching, practice, or investigation. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.080
AS 08.86.200

12 AAC 60.210. TEST SECURITY. A psychologist may not reproduce or describe in ways that might invalidate the techniques, in public or in publications subject to general public distribution, any psychological tests or other assessment devices the value of which depends in whole or in part on the naivete of the subject, and shall limit access to such tests or devices to persons with professional interests who will safeguard their use. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.080

12 AAC 60.220. EFFECT OF VIOLATION. Violation of any of the provisions of secs. 170 - 210 of this chapter or AS 08.86.190 - 200 is unprofessional conduct and grounds for disciplinary proceedings. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.070(3)
AS 08.86.080
AS 08.86.210

ARTICLE 5. REINSTATEMENT OF PROFESSIONAL PRIVILEGES AFTER DISCIPLINE.

Section
230. Appearance required for reinstatement of professional privileges
240. Documentation of rehabilitation

12 AAC 60.230. APPEARANCE REQUIRED FOR REINSTATEMENT OF PROFESSIONAL PRIVILEGES. A person seeking reinstatement of professional privileges whose license has been revoked or suspended or whose authority to practice has been limited or conditioned shall appear in person before the board at a time and place designated by the board to determine the individual's present fitness. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.080

12 AAC 60.240. DOCUMENTATION OF REHABILITATION. An applicant for reinstatement of professional privileges has the burden of satisfying the board that he or she is rehabilitated. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.070
AS 08.86.080

ARTICLE 6. GENERAL PROVISIONS.

Section
900. Filing of addresses

12 AAC 60.900. FILING OF ADDRESSES. Each person licensed under AS 08.86 shall file with the department his or her current mailing address and shall immediately report to the department at its Juneau office any change of address, giving both old and new address. (Eff. 12/24/78, Reg. 68)

Authority: AS 08.86.080

BOARD OF VET. EXAM.

A PERFORMANCE REVIEW OF THE BOARD OF VETERINARY EXAMINERS

November 1, 1978

A PERFORMANCE REVIEW
OF THE
BOARD OF VETERINARY EXAMINERS

November 1, 1978

Commissioner of the Department of Commerce and Economic Development	H. Phillip Hubbard
Deputy Commissioner of the Department of Commerce and Economic Development	Bertram L. Wagnon

Members of the
Board of Veterinary Examiners

Chairman	Berton A. Gore, DVM
Member	David Howe, DVM
Member	Clifford D. Lobaugh, DVM

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

November 1, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the attached report is submitted for your review:

A PERFORMANCE REVIEW
OF THE
BOARD OF VETERINARY EXAMINERS

November 1, 1978

Gerald L Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

31-Q1LH

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Board of Veterinary Examiners was conducted to review board activities and accomplishments to determine if the board has been operating in an effective, efficient and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Veterinary Examiners should be reestablished. The law currently specifies that this Board will terminate on June 30, 1979, but will continue until June 30, 1980 for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

(1) Applicable statutes and Board regulations;

(2) Interviews with Board members and questionnaires sent to the Board;

(3) Interviews with professional associations;

(4) Tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;

(5) Interviews with OL employees;

(6) Complaints filed with OL, the Ombudsman's Office, Consumer Affairs Agency, and the Equal Employment Opportunity Office;

(7) Questionaires sent to State licensed veterinarians; and

(8) Review of other states' licensing requirements.

Scope Constraints

This review was hampered by the following constraints:

(1) The Board has not established and reported financial and program plans as required by AS 37.07.050 nor

has it developed and reported performance information regarding its effectiveness and accomplishments as required by AS 37.07.090.

(2) OL has not adequately collected, recorded or maintained pertinent files and statistics relating to the Board to effectively and efficiently carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

The Board of Veterinary Examiners is a regulatory board consisting of three licensed veterinarians. The authority of the Board is outlined by Alaska Statutes 08.08.010-.250.

Basically, the Board determines the minimum quality of veterinary care in the State by:

1. Examining and issuing licenses to qualified applicants;

2. Establishing or amending rules and regulations necessary or desirable to enforce State statutes; and

3. Holding hearings in order to revoke, or suspend the license of a person violating the veterinary statutes and regulations.

An applicant is statutorily qualified to take an examination if he has graduated from a Board approved school, has never had a license revoked, and is of good moral character.

Presently, the examination contains three parts: A multiple choice test provided by Professional Examinational Service, a written test and an oral examination prepared by the Board.

A candidate is statutorily qualified for licensure by endorsement if the applicant passed a veterinary examination, actively practiced veterinary medicine at least five of the last seven years, and graduated from an accredited veterinary college.

Temporary permits are allowed for applicants who are qualified to take the examination and such permits are valid only until the results of the examination have been determined.

The Board has staff support from the Division of Occupational Licensing which consists of two sections. The licensing section, which processess applications, is supposed to maintain license files, gather and collect statistics, answer inquiries and provide other administrative help to the licensing boards. The other section provides investigative services to the Board in the event of consumer or professional complaints.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Veterinary Examiners should continue to regulate and license veterinarians. The regulation and licensing of these professionals is necessary to protect the public's health, safety and welfare.

However, certain changes need to be implemented in order for the Board to efficiently perform its duties. The Board needs to develop standards, regulations and formal procedures for the examination given to license applicants. (see Recommendation No. 1).

Legislation should be introduced which will require continuing education for veterinarians. Continuing education will assist in avoiding professional obolescence and keep practitioners aware of changes taking place in their profession (see Recommendation No. 2).

Legislation should also be introduced which will require public members be appointed to the Board. Public representation on the Board will help insure that the public's interest is represented and protected (see Recommendation No. 3).

OL should provide adequate assistance and support necessary for the proper functioning of the Board. In 1975 and 1976 the Board requested, but did not receive, assistance from OL to propose legislative changes to the Veterinary Practice Act (see Recommendation No. 4).

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 and No. 2 are addressed to the Board of Veterinary Examiners. Findings and Recommendations No. 3 through No. 5 are addressed to the Division of Occupational Licensing (OL), and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978" issued under separate cover.

Recommendation No. 1

The Board of Veterinary Examiners should develop grading standards, procedures and regulations for the examination given to license applicants.

In a Legislative Audit questionnaire sent to State licensed veterinarians, several respondents mentioned that they were asked irrelevant questions by a Board member during the veterinary oral examination. The following are problems with the examination given to applicants:

1. Lack of regulations specifying what types of tests will be required for applicants with certain qualifications;

2. lack of grading and scoring procedures for the Alaska written and oral examination; and

3. applicants are not anonymous to Board members grading the oral examination. Applicants' pictures must be submitted with applications. These are reviewed by the Board prior to the oral examination and allow the Board members to associate the applicants with their applications and pictures. This lack of anonymity would allow applicants who failed the test to charge grading discrimination.

The Board keeps completed examinations although Alaska Statutes establish that OL is responsible for maintaining past examinations. OL is better suited to keep examination papers because they can provide adequate security. Also, OL will have quicker and easier access to the examination papers if questions arise.

Standardization and consistency serves to protect the interests of the applicants, Board and public. The following is recommended:

1. Regulations should be implemented which define:

   a. Grading procedures;

b. types of tests required for applicants with certain qualifications; and

c. a Board policy of no grading discrimination.

2. A test manual should be created in which standard test answers, examination procedures and grading procedures are outlined to guide all graders.

3. The Board should not require an applicant's picture to be on an application. The licensing examiner can require that an identification card be shown when an applicant first enters the examination rooms. The examiner should not be involved with the grading.

Recommendation No. 2

Legislation should be introduced which will require continuing education for veterinarians.

Veterinary practitioners are acutely aware of the public trust involved in maintaining their professional competency. Required continuing education is one means of fulfilling that trust.

Twenty-nine of the 42 veterinarians responding to a Legislative Audit questionnaire believe that continuing education should be required of their profession. A program of continuing education will help avoid professional obsolescence and keep practitioners aware of changes taking place in their profession.

Recommendation No. 3

Legislation should be introduced to require public members on the Board of Veterinary Examiners.

The Board regulates veterinarians for the purpose of public protection. The Board is currently composed of only three licensed veterinarians. At the last Board meeting, the Board requested the Department of Commerce to pursue the possiblities of having a public member at the Board meetings.

We agree with the Board that the public should have its views represented since the Board's purpose is for public protection. In 1977, the State of California passed the Public Members Act which requires that one-third (1/3) of all health related board members be represented by the public. California claims that the public's confidence and well being have been enhanced by this law.

Recommendation No. 4

OL should provide adequate assistance and support necessary for the proper functioning of the Board of Veterinary Examiners.

In 1975 and 1976 the Board requested assistance from the Division in order to propose legislative changes to the Veterinary Practice Act. There is no evidence showing that the Division provided help to the Board. As a result, the Board was forced to go to the Alaska State Veterinary Association for the help and aid that it needed.

OL is required by statute to provide administrative services to the Board. In order for the Board to properly discharge its responsibilities, it needs and requires the cooperation and help of the Division.

Recommendation No. 5

The Board of Veterinary Examiners should establish formal goals, objectives and quantifiable measures which should be included in the OL's budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluted and analyzed.

OL establishes its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without the Board's goals and measures being identified or measured, neither the Governor's Office nor the Legislature can evaluate the Board's performance (see the OL Performance Audit Report).

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative attainments as Board activities relate to the public need factors defined by "Sunset" law. These analyses are not intended to be comprehensive in nature but address those areas covered in the scope of our review

I. The extent to which the board, commission or program has operated in the public interest.

1. The Board of Veterinary Examiners has composed regulations concerning application procedures, definitions of licensing violations and clarifications of acceptable veterinary practice.

2. The Board has held an average of one meeting per year and one examination per year (see Schedule B).

3. The Board has promptly processed and evaluated applications. They have averaged seven weeks per application.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and any other matter, including budgetary, resource, and personnel matters.

1. OL has not provided adequate assistance and support necessary for the proper functioning of the Board (see Recommendation No. 4).

2. OL has not maintained updated records, files and statistics for Board use (see the OL Performance Audit Report).

3. Investigations have not been processed by the investigation section of OL in a timely manner. It has been noted that a complaint against veterinarians averages about a year to be processed.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. The Board has made five requests for statutory changes, according to Board meeting minutes. Two requests were to implement a new Veterinary Practice Act. There is little evidence which

demonstrates a need for this revision. However, some of the recommended changes are in the public's best interest, including a continuing education requirement (see Recommendation No. 2) and the placement of public members on the Board (see Recommendation No. 3).

Another recommendation was to amend the temporary license permit requirements to require that all veterinarians granted a temporary permit work under the supervision of a State licensed veterinarian. We have seen no evidence or complaints against veterinarians with temporary licenses which demonstate that this change is needed.

In addition, the Board has proposed a regulation that all applicants must take the State Veterinary Examination. Again, we have seen nc evidence which demonstates that this change is needed.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

1. There is no documentation in the Board minutes which identifies that the Board has encouraged feedback.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. The Board advertises in newspapers to encourage public participation and also sends notices to interested associations. During the last three years, the Board has averaged slightly more than one advertisement per newspaper for each meeting and examination. One advertisement was published per paper for a regulations change.

2. During the past four years, no one other than Board members and support staff participated in Board meetings, as recorded by Board minutes.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. We found no filed complaints against the Board.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. Complaints against veterinarians are indicators of the quality of veterinary practice in the State. We found only two complaints against veterinarians on file with OL (see Appendix B).

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, mission or agency to its own activities and the a of activity or interest.

1. Veterinary applications require unneccessary information such as an applicant's age and picture. This is a violation of Equal Employment Opportunity requirements (see the OL Performance Audit Report).

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

VETERINARY LICENSE REVENUES
COMPARED WITH EXPENDITURES
(UNAUDITED)

Average Revenue (see Schedule 1 and Note 1)	$ 2,700
Expenditures (see Note 2)	10,000
Excess of Expenditures Over Revenues	$(7,300)

Schedule 1
Types of Revenues

Revenues	Amount	Collection Time
Initial License Fee	$25	With issuance of license
Biennial Renewal	50	Biennially
Temporary License	10	With issuance of license
Reciprocity Fee	25	With issurance of license
Examination Fee	25	With taking of examination

Note 1

Most of the veterinary revenues are composed of renewal registration fees. These fees are collected once every two years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in fiscal years 1977 and 1978 in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures include those made by Board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Board and OL.

APPENDIX B

BOARD STATISTICS

Schedule 1
Veterinary Examination

	1978	1977	1976	1975	Pass Rate Four-Year Average
Veterinary Applicants	8	8	11	12	
Number of Fails	3	0	2	1	
Number of Passes	5	8	9	11	
Percent Pass	62%	100%	82%	92%	84%

Schedule 2
Veterinary Complaints

Malpractice Complaints	1
Overpricing Complaints	1
Total	2

Schedule 3
Administrative Statistics

	As of October 31, 1978
Licensed Veterinarians	100
Board Meetings:	
Average number of meetings per year	4 meeting
Average time length per meeting	4 hours

APPENDIX C

QUESTIONNAIRE SENT TO BOARD MEMBERS

1. What do you believe to be the goals and objectives of the Board of Veterinary Examiners?

Description	*Number of Board Members' Responses (See Note 1 & 2)*
To keep incompetent veterinarians from practicing within the State.	2
To examine and license qualified applicants.	1
To help maintain good health of Alaskans.	1
To investigate and, if necessary, punish veterinarians who illegally practice veterinary medicine.	1

2. How does the Board measure its progress in meeting its goals and objectives?

Description	*Number of Board Members' Responses*
No progress under old regulations.	1
By examining applicants, Board can evaluate quality of new licenses.	1
Number of complaints and seriousness of the complaints will be a good indicator.	1

3. Is the staff from the Department of Commerce and/or other departments adequate to perform and enforce all laws and regulations relating to the Board of Veterinary Examiners? What staff support services are provided adequately? Inadequately?

Description	*Number of Board Members' Responses*
Staff support is currently good and has improved.	2

3. (cont'd.)

Description	*Number of Board Members' Responses*
Problems have arisen concerning:	
a. Failure to follow through on requested services;	*1*
b. slow to complete task;	*1*
c. inadequate knowledge of Board's activities;	*1*
d. failure to assist Board on problems;	*1*
e. slow and reluctant assistance from Attorney General's Office;	*2*
f. lack of interest or initiative in regards to Board activities; and	*1*
g. high turnover in staff.	*1*

4. What evidence exists demonstrating that the Board has operated in the public's best interest?

Description	*Number of Board Members' Responses*
There are few complaints regarding licensed veterinarians. Without regulation, more serious complaints will occur.	*1*

5. What evidence exists demonstrating that the absence of veterinary regulations and/or the Board would be detrimental to the public's best interest?

Description	*Number of Board Members' Responses*
No immediate evidence, although the American Veterinary Medical Association may have done studies.	*1*

6. Has the Board recommended any statutory changes which are generally in the public's best interest?

Description	*Number of Board Members' Responses*
The Board submitted a new practice act to the Division of Occuptational Licensing and to the Legislature.	*2*

7. Has the Board made any studies to determine if there is a veterinary manpower shortage in Alaska or certain areas of Alaska? What were the study's conclusions? What do you believe is the manpower situation?

Description	*Number of Board Members' Responses*
Services in the city is adequate and rural services, through Public Health Service, are also adequate.	2
There is no emergency help in the remote areas.	2

8. Are there any statutes or regulations that you believe to be obsolete, vague, unduly restricive, and/or inadequate to provide the Board with the responsibility and power to properly govern the purpose and activities of the Board? Please list and explain.

Description	*Number of Board Members' Responses*
Licensing requirements too lenient. Anyone applying for licensure should be required to take an examination.	1
No public members.	1
Licensing by reciprocity is allowed and it should be.	1
Temporary license statutes should be eliminated or changed.	1
No provision for registering animal health technicians.	1
No provision for relief veterinanrian in an emergency.	1
Limited investigative force.	1

9. What changes could be made to the Board which would improve its service to the public?

Description	*Number of Board Members' Responses*
Add one or two non-veterinarians to the Board.	1
Need additional funds to travel to Juneau to discuss problems with Legislature.	1

10. Do you think continuing education requirements should be enacted by the Legislature and/or the Board?

Description	*Number of Board Members' Responses*
Yes, for a minimum of 10 hours.	1
State Veterinary Association requires it. However, continuing education will not assure that a veterinarian is remaining competent.	1

Note 1

At the time the questionnaries were sent out, there were only two Board members. Both members responded.

Note 2

Each Board member responded to each question with several answers. Therefore, total responses for each question may exceed the number of Board members.

APPENDIX D

QUESTIONNAIRE SENT TO VETERINARIANS

		(See Note 1) % Responses		
		Yes	No	No Opinion
1.	Have you been able to attend any veterinarian seminars or classes within the last year?	98%	2%	-0-
2.	If so, how many hours of continuing education have you had during the last year?	Average Hours 29		
3.	Do you believe that State laws should require continuing education before veterinarian licenses are renewed?	69%	31%	-0-
4.	When you were licensed in the State, did you have to take the following examinations?			
	a. Professional Examination Service multiple choice examination.	57%	36%	7%
	b. An oral examination.	62%	33%	5%
	c. Any others?			
	1. *Most prevelant answer is written examination.*	26%	29%	45%
5.	Do you believe the examination(s) that you were required to take for Alaska's veterinarian license was relevant and useful for testing the abilities of a veterinarian applicant?	42%	29%	29%
	Please identify those that you believe aren't relevant:			
	1. *Most criticism concerned the National Examination which is the professional examination service.*			
	2. *Criticisms were also directed at irrelevant questions asked by a prior Board member.*			

		(See Note 1) % Responses		
		Yes	No	No Opinion
6.	Are there other procedures that you believe are more relevant and useful for testing the abilities of a veterinarian applicants?	43%	24%	33%
	Please specify:			
	1. *Most often mentioned answer was practical examinations with slides or a diagnostic case study.*			
7.	Do you believe that the Board of Veterinary Examiners has operated in the public's best interest?	86%	7%	7%
8.	Do you have any complaints concerning the service provided by the support staff of the Division of Occupational Licensing, Department of Commerce?	19%	76%	5%
9.	Do you believe that all geographic areas within the State are adequately serviced by veterinarians in private practice?	55%	38%	7%
10.	Do you know of any studies or statistics which support your answer in number 9?	2%	96%	2%
11.	Are you aware of any discriminatory practice involving licensing of minority groups?	2%	96%	2%
12.	Do you believe Alaska's licensing requirements for temporary and permanent licenses are adequate and effective in ensuring that the public is protected?	50%	48%	2%
13.	Do you believe that current statutes are restricting the more effective and efficient use of veterinarian technicians and aides?	14%	76%	10%

Note 1

Number of questionnaires sent to State licensed veterinarians.	100
Number of questionnaires received.	42
Response rate.	42%

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED
JAN 11 A.M.
LEGISLATIVE
AUDIT

January 9, 1979

Mr. Gera d Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

We have reviewed your preliminary reports as shown below:

1. Board of Examiners in Optometry
2. Board of Dispensing Opticians
3. Board of Psychologist and Psychological Associate Examiners
4. Board of Chiropractic Examiners
5. Alaska State Medical Board
6. Board of Veterinary Examiners
7. State Physical Therapy Board
8. Board of Pharmacy
9. Board of Nursing
10. Board of Nursing Home Administrators
11. Board of Dental Examiners
12. Alaska Transportation Commission

We view these reviews of agency programs and activities which are specifically subject to termination in a manner different from those made of State departments or agencies. Usually we in the Executive Branch endeavor to respond directly to each finding and recommendation. However, in regard to the Boards and Commissions, the Executive Branch agency during a public hearing shall demonstrate a public need for its continued existence or the discontinuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

The Executive Branch of Alaska Government has made an extensive study of the above Boards and the Alaska Transportation Commission. We are continuing to study those entities, their origin, their present and future potential, and other related subjects in conjunction with Alaska statutes 24 and 44 (Sunset Legislation). As prescribed in AS 44.66.050 one or more legislative hearings are to be held to receive testimony from the public, the Commissioner of the department having administrative responsibility for each, and the members of the Boards or Commission involved. During those hearings we will present our findings and recommendations affecting each of the foregoing Boards and the Alaska Transportation Commission.

Accordingly, we are presenting this in addition to the responses from the Department of Commerce, Department of Law, and the individual Board or Commission members and others on an interim basis.

Sincerely,

Michael Harper

Michael Harper
Administrative Assistant
to the Governor

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811

December 15, 1978

RECEIVED

JAN 1[illegible] A.M.

LEGISLATIVE AUDIT

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

The following comments are in response to the Performance Review of the Board of Veterinary Examiners, as submitted by the Division of Legislative Audit.

Recommendation No. 1. Agreed. Grading standards, regulations and formal examination procedures are desirable for all licensing boards. The proposed act, requested by the board and introduced through the department, addresses these concerns.

Recommendation No. 2. Agreed. Continuing competency is generally advocated as one method of assuring that practitioners remain qualified once licensed. The proposed act, requested by the board and introduced through the department, addresses this subject.

Recommendation No. 3. Agreed. We agree that the public should be represented through membership on the board. The proposed practice act also addresses this subject.

Recommendation No. 4. Agreed. The division should, and currently is, providing administrative assistance to the board although past deficiencies are recognized.

Recommendation No. 5. Agreed. The board's goals and objectives will be incorporated within the division's budget document. Contact will be made with all boards in March or April, 1979 for input to the budget for FY 1981

The recommendations cited will be acted upon regardless of action taken on the proposed practice act.

08-H8LH

I appreciate the time and efforts expended by your staff.

Yours truly,

H. Phillip Hubbard
Commissioner

RECEIVED
JAN 17 A.M.
LEGISLATIVE AUDIT

A Performance Review of the
Board of Veterinary Examiners--
Comments of Board of Veterinary Examiners

Page 5, Paragraph 5 concerning licensing by endorsement:

The board does not feel that a candidate is statutorily qualified for licensure by endorsement if the applicant has passed a veterinary examination, actively practiced veterinary medicine at least five of the last seven years and graduated from an accredited veterinary college.

According to Section 08.98.210, a veterinarian may be licensed without examination if he fulfills the above criteria. In this section the word "may" is very important as it gives the board the option of licensure by endorsement or by examination. The board feels this authority is very important if it is to assure to the public a "certain degree" of competance of licensed veterinarians. A July 5, 1978, interpretation of the statute by the Attorney General's office states that we do not have this authority. The board has asked the Attorney General's office for a re-interpretation of this section.

Page 7, Recommendation Number 1:

The board agrees almost completely with the recommendation.

1. Regulations should be implemented which define:

   a. grading procedures--the board enters in the board minutes at each examination the grading procedure. We agree that this should be in the regulation but were not aware of the necessity previously.

   b. types of tests required for an license with certain qualifications- the board agrees with the concern over oral examination. At the December, 1978, examination no oral examination was given nor will this type of examination be used in the future. The board feels that anonymity is important and all examinations are graded with only an identification number identifying each examination. The department alone knows which applicant has which identification number.

2. A test manual should be created--the board feels this would be a definite improvement to the administration of the board examinations. However, this would take a great amount of time as well as expertise in preparing and wording examination questions. In 1978, in California, certain questions on the veterinary board examination were successfully challenged because they were ambiguous. The California board states that "from now on, experts will be used to prepare the exam".

Continuation of:
Page 7, Recommendation Number 1:
(2.)

The board feels that monies should be appropriated to fund a group with the expertise to draft such a test manual.

3. The board agrees that pictures of applicants are not necessary on the application. At the December, 1978, board meeting, the board instructed the department to remove the requirement of a picture from the application.

Recommendation Number 2:

The board agrees that continuing education for all licensed veterinarians would be an important way of maintaining professional competancy as well as assuring public trust in practicing veterinarians. We also agree that it will keep practioners aware of changes taking place in their profession. The board wishes to note that continuing education requirements do not assure that all licensed veterinarians will maintain a high level of competance.

Recommendation Number 5:

Establish goals and objectives--the board feels this is certainly a worthwhile procedure, but was not aware of its requirement. At its December, 1978, board meeting the board asked the department to draft an outline which would help the board develop formal goals, objectives, and quantifiable measures which then could be included in the Occupational Licensing's budget document.

Page 11:

Recommendation of board to repeal the temporary license permit requirements. The present statutes allow an applicant to practice veterinary medicine without supervision, with a temporary license, until the results of the next examination are published. This time period could be six months to one year, depending on whether one examination or two are given during a particular year. The board feels that allowing an applicant to practice medicine without supervision is not in the public's best interests. (Some states no longer offer temporary permits.) The Medical Board does offer temporary permits, but the applicant must have completed an internship and taken and have passed a national examination. The Division of Audit states that because there have been no complaints, they see no reason for any change. The board does not feel that we should wait for a comqlaint or for a problem to exist before suggesting a change. We do not feel that requiring an applicant to work under the supervision of a licensed veterinarian is that great a hardship on the applicant. In return, we feel we better guard the public's best interest.

Page 11, Paragraph 3:

Recommendation by the board that all applicants may be required by the board to take the state portion of the veterinary examination. The Division of Audit again states that they have seen no evidence which demonstrates that this change is needed. The board does not feel that waiting until there is a problem before taking action is the best approach. The state portion of the examination is of a more practical nature as opposed to the national examination which is more detailed and technical. The board feels that if a veterinarian is keeping current with continuing education, that he or she should be able to pass the practical portion of the examination. The board also realizes that once a veterinarian is given a license, it is very difficult to prove incompetance and have his or her license revoked. More and more, Alaska is becoming a popular state for people to retire in. Of this group are veterinarians who are no longer in active practice, who may have graduated twenty to thirty years ago, but who would like to be licensed to practice veterinary medicine in Alaska. This type of applicant is very difficult for the board to evaluate for competancy without giving a practical examination.

Page 12, VIII:

Application picture and applicant's age--the board has instructed the department to omit the requirement of age and a recent photo from all application forms.

Appendix A, Page 14:

Expenditures, 10,000

The board questions where the 10,000 figure comes from. Certainly, per diem and travel are a very small portion. The board was denied the request to send a member to a national board of veterinary examiners meeting as had been done the previous two years. The board feels this is an extra method of keeping current in trends, problems, and improvements of examining boards.

Perhaps the 10,000 amount was arrived at by taking a per cent of department expenses and allocating them to the board of veterinary examiners. We do not feel we have received this amount of service from the department.

The board feels it is important to point out that many hours of each member's time is devoted to board activities each year without monetary compensation. Filling out questionnaires, responding to reports such as the audit reports associated with the Sunset Law are examples of additional time required of board members.

The board is concerned over the large difference between revenue and expenditures. At the December 6, 1978, board meeting the board suggested that biennial renewal of license fees be increased from 50 to $100.

Continuation of:

Power of Investigation:

Presently the board has no power of investigation. There is a department-wide investigation division that handles all complaints. The board's position is to be an impartial board and to make a ruling on the complaint after the investigation is completed. The board has no knowledge of an investigation or the person or persons being investigated nor the party making the complaint. The rationale is to assure that the board does not become influenced during an investigation but remains an impartial board enabling it to make a fair and just ruling on the complaint after the investigation is completed. The board has no complaint with this procedure; however, this procedure does create certain problems and perhaps shortcomings.

1. Many complaints are made directly to board members. The board members are the persons the public will turn to with a problem or complaint.

2. The present investigation procedure is quite slow, owing directly to a large workload.

3. Spending time investigating a complaint that is perhaps more of a misunderstanding than a complaint.

4. Investigation being performed by persons with no expertise in the field in which they are investigating.

Perhaps communication between the investigator and the board would be advantageous in the following ways:

1. Help in deciding whether or not a complaint is a serious violation of the state statutes or a minor violation or perhaps a misunderstanding.

2. Shorten the investigation necessary if the complaint is not felt to be serious or is a misunderstanding.

3. If the complaint is a serious violation, then immediate attention is necessary to decide if the complaint is valid. If the complaint is valid, then quick action would be necessary to prevent additional violations from occurring.

4. By facilitating the investigation and possibly eliminating investigation on minor complaints, time and money could be saved by the investigation division.

5. Shorten the time it is now taking to have a complaint investigated.

Page 21, Number 6, Questionnaire sent to veterinarians:

Procedures felt more relevant and useful for testing the abilities of a veterinary applicant? Most often mentioned was a practical examination.

The state portion of the board examination is primarily practical in nature. The difficulty of a practical examination is that it is difficult to avoid ambiguity and it also requires an opinion. The Professional Examining Service has now developed a practical portion of their examination and it will be incorporated into the veterinary board examination for the year 1979.

The veterinary school at Washington State University will also be contacted to see if they have slides or transparancies for our use in the examination.

David Howe dvm
Member Bd. of Veterinary Examiners

HB 86

THE ALASKA STATE VETERINARY MEDICAL ASSOCIATION

BOX 631 • ANCHORAGE, ALASKA 99501

February 7, 1979

The Honorable W. E. (Brad) Bradley
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

The Alaska State Veterinary Medical Association has written a new practice act, known as House Bill No. 86, that will be introduced this legislative session. The purpose of my letter is to give you an understanding of the bill.

We now have a veterinary practice act which was enacted in 1963 and has had no major revisions since then. We chose to write a new act rather than revise the old because in nearly all parts of the act changes have been proposed to clarify the intent. Writing a new act seemed the easiest way to accomplish this.

We have compared the content of the old act with the proposed act. In nearly all cases, the proposed act and the old act handle regulation and licensing of the profession in the same way. Notable exceptions are as follows:

The size of the Board of Veterinary Examiners was increased from three to five members. This was done because the present board size of three members often proved inadequate due to the absence of members for various reasons.

A public member was provided as one of the members of the Board to encourage representation of the public interest in regulation of the profession.

A section was included which defines the legal responsibilities of aides and trained technicians working under the direction of a veterinarian. The present act makes no mention of persons employed by veterinarians leaving it legally open to question as to whether or to what extent a veterinarian may use these people to aid in treatment of animals.

The new act provides for the examination and registration of Animal Health Technicians. Technicians are a relatively new profession employed by veterinarians to do a wide variety of technical tasks. Many technicians are presently employed in Alaska; however, there is no provision made for them in the present statutes.

Registration is necessary for up-to-date, immediate reference of all veterinary technicians engaged in animal care in the state with reference to qualifications, addresses, license status, etc. This provision allows the Board to adopt appropriate standards for those engaged in animal technology and the issuance of permits to such persons found competent.

Temporary licensing has been changed from the existing uncontrolled situation giving temporary licenses to all applicants who qualify for a license. Under the present law a person who has never passed a national or state examination can obtain a temporary unrestricted license to practice.

The new act proposes that two classes of temporary licenses be issued:

One type would be issued to any technician qualified to take the examination provided he work with a practitioner licensed in the state.

A second type would be issued for a 60-day period to a veterinarian who is licensed in another state. The license would allow the licensee to take over the practice of a veterinarian who is absent.

Examination of licensees has been changed to require a state exam and a national exam for every applicant unless the applicant has either (1) passed a National Board Examination in the last three years, or, (2) has been an active practicing veterinarian in another state. Persons qualifying would be required to to take only the state exam.

Presently, veterinarians who have "practiced" for five of the last seven years in another state may receive a license without exam. The problem with this is that the definition of "Veterinary Practice" is so broad that people involved with activities not commonly considered to be the active practice of veterinary medicine would qualify for license. Examples of this could include meat inspectors, animal consultants, and certain types of researchers. The new act would require all applicants to take the state exam.

The new act provides a legal means by which to cope with the problem of animals left in the care of veterinarians and later abandoned. This is a frequent problem that is not dealt with in the present act.

We would appreciate your support on this bill.

Respectfully,

Jon Thomas, DVM

Jon Thomas
President, ASVMA

THE ALASKA STATE VETERINARY MEDICAL ASSOCIATION
BOX 631 • ANCHORAGE, ALASKA 99501

March 22, 1979

The Honorable W. E. "Brad" Bradley
Senate
Pouch 5
Juneau, Alaska 99801

Dear Senator Bradley:

It appears that the House Budge and Audit Review (Sunset) Committee will recommend to "sunset" the veterinary board, along with many other health related boards after six months.

I feel that this action cannot be within the original concept of "Sunset Review" for the following reasons. Alternate systems to take over board functions are bound to be more costly since the boards are presently volunteer. Any new system will probably involve another level of full or parttime personnel which will add to bureaucracy and will make these positions political.

I do not think that the present veterinary board is functioning inefficiently, is "turf guarding" or is otherwise limiting competition in veterinary medicine. The minor problems that do exist could be corrected by statutory changes, policy changes in occupational licensing, improved communications with the department, and correction of funding deficiencies.

Sincerely,

Jon Thomas, DVM

Jon Thomas, DVM
President, ASVMA

STATE OF ALASKA

STATUTES AND REGULATIONS
OF
LICENSED VETERINARIANS

PRINTED: JANUARY, 1978

STATE OF ALASKA

JAY S. HAMMOND
GOVERNOR

FOR INFORMATION WRITE:

Department of Commerce
Division of Occupational Licensing
Board of Chiropractic Examiners
Pouch D
Juneau, Alaska 99811

(as of 1/1/75)

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CENTRALIZED LICENSING ACT

CHAPTER 01. CENTRALIZED LICENSING

Section
10. Applicability of chapter
20. Board organization
30. Quorum
40. Transportation and per diem
50. Administrative duties of department
60. Application for license
70. Administrative duties of boards
80. Department regulations
90. Applicability of the Administrative Procedure Act
100. License renewal, lapse and re-instatement
110. Definitions

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

(1) Board of Public Accountancy;
(2) Board of Barber Examiners;
(3) Board of Examiners in Basic Science, Repealed by Sec 6 ch 32 SLA 1971;
(4) Board of Chiropractic Examiners;
(5) Board of Hairdressing and Beauty Culture Examiners;
(6) Board of Dental Examiners;
(7) Board of Electrical Examiners;
(8) State Board of Registration for Architects, Engineers and Land Surveyors;
(9) State Medical Board;
(10) Board of Nursing;
(11) Board of Examiners in Optometry;
(12) Board of Pharmacy;
(13) Real Estate Commission;
(14) Board of Veterinary Examiners;
(15) Board of Psychologist Examiners;
(16) Collection Agency Board;
(17) Board of Welding Examiners;
(18) Board of Marine Pilots. (sec 1 ch 59 SLA 1966; am sec 2 ch 136 SLA 1967; am sec 2 ch 101 SLA 1968; am sec 2 ch 143 SLA 1968; am sec 2 ch 151 SLA 1968; am sec 1 ch 106 SLA 1970; am sec 6 ch 32 SLA 1971; am sec 3 ch 179 SLA 1972)

Effect of amendments.-The 1967 amendment added paragraph (15).

The first 1968 amendment, effective May 1, 1968, added paragraph (16).

The second 1968 amendment substituted "Veterinary" for "Veterinarian" in paragraph (14).

The third 1968 amendment added paragraph (17).

The 1970 amendment added paragraph (18).

The 1971 amendment repealed paragraph (3).

Editor's note.-Section 2, ch. 59, SLA 1966, provides: "The Department of Commerce shall provide for the orderly transfer of the service functions which are to be performed by the department under this chapter."

Section 4, ch. 59, SLA 1966, provides: "A provision in existing law which conflicts with this Act is superseded by this Act."

Legislative committee report.-For legislative committee report on ch. 143, SLA 1968 (HB 707), see House Journal (1968), p. 836.

For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 08.01.020. Board organization. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members. (sec 1 ch 59 SLA 1966)

Sec. 08.01.030. Quorum. A majority of the membership of a board constitutes a quorum unless otherwise provided. (sec 1 ch 59 SLA 1966)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (sec 1 ch 59 SLA 1966)

Sec. 08.01.050. Administrative duties of department. The Department of Commerce shall provide the following administrative and budgetary services for the boards:

(1) collect fees and issue receipts;
(2) maintain records and files;
(3) issue and receive application forms;
(4) notify applicants of acceptance or rejection of applicants as determined by the board;
(5) designate dates examinations are to be held and notify applicants;
(6) publish notice of examination;
(7) arrange space for holding examinations;
(8) notify applicants of results of examinations;
(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;
(10) issue duplicate licenses or certificate upon proof of loss of the original and payment of a fee of $2;
(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;
(12) compile and maintain current a register of licenses;
(13) answer routine inquiries;
(14) maintain files relating to individual licensees;
(15) arrange for printing and advertising;
(16) purchase supplies;
(17) employ secretarial help when needed;
(18) perform other services which may be requested by the board. (sec 1 ch 59 SLA 1966)

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (sec 1 ch 59 SLA 1966)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law:

(1) keep minutes and records of all proceedings;
(2) hold a minimum of one meeting each year;
(3) hold at least one examination each year;
(4) request, through the department, investigation of violations of its laws and regulations;
(5) prepare and grade examinations;

(6) pass on qualifications of applicants for examination and license;
(7) forward minutes of meeting to the department within 20 days;
(8) forward results of examinations to the department;
(9) notify the department of meetings dates at least 15 days before meeting. (sec 1 ch 59 SLA 1966)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;
(2) what is contained in application forms;
(3) how a person applies for an examination or license. (sec 1 ch 59 SLA 1966)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (sec 1 ch 59 SLA 1966)

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license, permit or certificate requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days. (sec 1 ch 59 SLA 1966; am sec 2 ch 94 SLA 1968)

Effect of amendment.-The and added subsection (b). 1968 amendment designed the former section as subsection (a)

Sec. 08.01.110. Definitions. In this chapter

(1) "board" includes the boards and commissions listed in sec 10 of this chapter;

(2) "department" means the Department of Commerce. (sec 1 ch 59 SLA 1966)

CHAPTER 98. VETERINARIANS

CHAPTER 98. VETERINARIANS

Article
1. Board of Veterinary Examiners (Secs 08.98.010 - 08.98.100)
2. Licensing (Secs 08.98.120 - 08.98.210)
3. Enforcement (Sec. 08.98.230)
4. General Provisions (Sec 08.98.250)

ARTICLE 1. BOARD OF VETERINARY EXAMINERS

Section
10. Creation and membership of board
20. Appointment and term of office
30. Executive secretary of board
40. Board meetings
50. Duties of the board
60. Board regulations
70. Duties of the department
80. Department regulations
90. Applicability of the Administrative Procedure Act
100. Compensation

Sec. 08.98.010. CREATION AND MEMBERSHIP OF BOARD. There is a Board of Veterinary Examiners. It consists of three licensed veterinarians. (Sec 1 ch 91 SLA 1963; am sec 1 ch 94 SLA 1966)

Effect of amendment. - The 1966 amendment substituted "Veterinary" for "Veterinarian" in the first sentence.

Editor's note. - Section 2, ch 91, SLA 1963, states: "A person is entitled to a license under AS 08.98 without examination who has been graduated from an approved school of veterinary medicine, surgery, or dentistry, who applies and pays a fee of $10, and who has continuously engaged in the practice of veterinary medicine in the state for at least 12 months immediately preceding the effective date of this Act."

Section 3, ch. 91, SLA 1963, states: "The governor may appoint to board unlicensed veterinarians who have practiced veterinary medicine, surgery, or dentistry in this state for at least the two years preceding July 1, 1963, until at least three veterinarians are licensed."

Sec. 08.98.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the members of the board, with the confirmation of the legislature, for terms of four years, or until their successors are appointed. A member serves at the pleasure of the governor. The first members shall be initially appointed for two, three and four-year terms. (Sec 1 ch 91 SLA 1963)

Sec. 08.98.030. EXECUTIVE SECRETARY OF BOARD. The commissioner of commerce is the executive secretary of the board. (Sec 1 ch 91 SLA 1963)

Sec. 08.98.040. BOARD MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (Sec 1 ch 91 SLA 1963)

Sec. 08.98.050. DUTIES OF THE BOARD. The board shall

(1) pass on qualifications of applicants for licenses and issue licenses to those who qualify;

(2) prepare and grade examinations, provided that the board may use examinations prepared by the National Board of Veterinary Examiners;

(3) after hearing, have the authority to suspend or revoke the license of a licensed veterinarian who

(A) obtained his license by fraud, misrepresentation, or deception;

(B) is chronically drunk or is a drug addict;

(C) make untruthful statements about his professional ability, to solicit business;

(D) distributes alcohol or drugs except as required by the practice of veterinary medicine, surgery, or dentistry;

(E) in his professional capacity, conducts himself in a way that indicates he is not a competent veterinarian;

(F) is convicted of a felony or any crime involving moral turpitude;

(G) falsifies an official state or federal certificate relating to veterinary medicine. (Sec 1 ch 91 SLA 1963; am sec 2 ch 94 SLA 1966; am sec ch 54 SLA 1967)

Effect of amendments. - The 1966 amendment added the proviso at the end of paragraph (2). The 1967 amendment added paragraph (3) (G).

Sec. 08.98.060. BOARD REGULATIONS. (a) The board shall adopt procedural regulations describing how a person applies for and take an examination under this chapter.

(b) The board shall adopt substantive regulations

(1) defining conduct which, if engaged in by a veterinarian, is evidence of incompetence;

(2) specifying approved schools under sec 170(1) of this chapter;

(3) specifying the subject matter to be covered in an examination for veterinarians. (Sec 1 ch 91 SLA 1963)

Sec. 08.98.070. DUTIES OF THE DEPARTMENT. The department shall furnish the board with administrative services, including renting space for holding examinations, printing and mailing licenses, sending notices, before December 1 of each year, that licenses must be renewed, collecting fees and issuing receipts, keeping a current register of licensees, employing secretarial assistants, replying to routine requests for information, printing forms and informational bulletins, typing all matter to be reproduced, maintaining records and completed examinations, and keeping records of receipts and disbursements. (Sec 1 ch 91 SLA 1963; am sec 3 ch 94 SLA 1966)

Effect of amendment. - The 1966 amendment deleted "proctoring examinations, printing examinations" following "holding examinations."

Sec. 08.98.080. DEPARTMENT REGULATIONS. The department shall adopt procedural regulations necessary to carry out the duties imposed on it by sec 70 of this chapter. (Sec 1 ch 91 SLA 1963)

Sec. 08.98.090. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under this chapter. (Sec 1 ch 91 SLA 1963)

Sec. 08.98.100. COMPENSATION. Members of the board are entitled to per diem allowances and transportation expenses allowed by law and paid members of other state examining boards. (Sec 1 ch 91 SLA 1963)

ARTICLE 2. LICENSING

Section	Section
120. License required	170. Qualification for examination
130. Examination	180. Temporary license
140. Content of examination	190. Fees
150. Administration of examination	200. Reinstatement of lapsed license
160. Re-examination	210. Out-of-state veterinarian

Sec. 08.98.120. LICENSE REQUIRED. No person may practice veterinary medicine, surgery, or dentistry unless he is licensed under this chapter. (Sec ch 91 SLA 1963)

Sec. 08.98.130. EXAMINATION. A person who passes the examination given by the board is entitled to be licensed as a veterinarian. (Sec 1 ch 91 SLA 1963)

Sec. 08.98.140. CONTENT OF EXAMINATION. The examination shall be in veterinary anatomy, surgery, medicine, obstetrics, pathology, chemistry, diagnosis, materia medica, therapeutics, physiology, sanitary medicine, dentistry, and other scientific subjects related to the practice of veterinary medicine, surgery, and dentistry. (Sec 1 ch 91 SLA 1963)

Sec 08.98.150. ADMINISTRATION OF EXAMINATION. The board shall offer examinations at least once a year. Examinations shall be so administered that, whenever possible, one who grades a written examination does not know whose paper he is grading. (Sec 1 ch 91 SLA 1963; am sec 4 ch 94 SLA 1966)

Effect of amendment. - The 1966 amendment inserted "whenever possible" in the second sentence and deleted the former last sentence, which pertained to the filing and inspection of examination papers.

Sec. 08.98.160. RE-EXAMINATION. A person who fails an examination may apply for a subsequent examination, but shall pay the examination fee each time he applies. (Sec 1 ch 91 SLA 1963)

Sec. 08.98.170. QUALIFICATION FOR EXAMINATION. A person is entitled to take the examination who

(1) was graduated from a school of veterinary medicine approved by the board;

(2) Repealed by sec 25 ch 245 SLA 1970.

(3) has completed application forms and returned them to the board;

(4) has paid the fee specified in sec 190 of this chapter;

(5) has not had a veterinarian license revoked for cause in another jurisdiction;

(6) is of good moral character. (Sec 1 ch 91 SLA 1963; am secs 5, 6 ch 94 SLA 1966; am sec 25 ch 245 SLA 1970)

Effect of amendment. - The 1966 amendment deleted "examination" preceding "fee" in paragraph (4) and added paragrpah (6).

Effect of amendment. - The 1970 amendment repealed paragraph (2).

Legislative committe report. - Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.) For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

Sec. 08.98.180. TEMPORARY LICENSE. A person who meets the requirements of sec 170 of this chapter is entitled to be licensed. A license issued under this section is valid until the results of the examination following the issuance of the license are published. No person may receive more than one license under this section. (Sec 1 ch 91 SLA 1963; am sec 7 ch 94 SLA 1966)

Effect of amendment. - The 1966 amendment substituted "sec 170" for "sec 170(1) and (2)" in the first sentence, deleted "who has completed application forms and returned them to the board, and who has paid the temporary license fee" following "chapter" in such sentence, and deleted the former second sentence, which pertained to waiver by the board of the requirements of secs 170(3) and (4) of this chapter.

Sec. 08.98.190. FEES. The following fees shall be imposed under this chapter when applicable:

(1) examination fee $25

(2) reciprocity fee 25

(3) initial license fee 25

(4) biennial renewal 50

(5) temporary license 10

(Sec 1 ch 91 SLA 1963; am sec 1 ch 53 SLA 1968)

Effect of amendment. - The 1968 amendment rewrote this section.

Sec. 08.98.200. REINSTATEMENT OF LAPSED LICENSE. A person whose license has lapsed is entitled to have his license reinstated without taking an examination unless his license has remained lapsed more than five years. (Sec 1 ch 91 SLA 1963; am sec 2 ch 53 SLA 1968)

Effect of amendment. - The 1968 amendment rewrote this section.

Sec. 08.98.210. OUT-OF-STATE VETERINARIAN. A veterinarian in good standing in a veterinary association of another state or territory or the District of Columbia which licenses veterinarians to practice veterinary medicine may be licensed without examination and otherwise upon substantially the same terms and conditions as are fixed in the jurisdiction from which he has come for the licensure of a veterinarian from this state. As a prerequisite to licensure the board shall require a veterinarian to take and pass an examination, unless the applicant has

(1) passed a state veterinarian examination;

(2) engaged in the active practice of veterinary medicine for at least five out of the previous seven years before filing the application excluding

time spent in the military service of the United States;

(3) graduated from an accredited school of veterinary medicine;

(4) met the character requirements established by the board. (Sec 1 ch 91 SLA 1963; am sec 8 ch 94 SLA 1966; am sec 2 ch 54 SLA 1967)

Effect of amendments. - The 1966 amendment rewrote this section. The 1967 amendment also rewrote this section.

ARTICLE 3. ENFORCEMENT

Section
230. Injunction

Sec. 08.98.230. INJUNCTION. When it appears that a person has engaged in or is about to engage in an act constituting a violation of sec 120 of this chapter, the board, through its executive secretary, shall bring an action in the superior court to enjoin the act and to enforce compliance with sec 120 of this chapter. (Sec 1 ch 91 SLA 1963)

ARTICLE 4. GENERAL PROVISIONS.

Section
250. Definitions

Sec. 08.98.250. DEFINITIONS. In this chapter

(1) a person who practices veterinary medicine, surgery, or dentistry is one who does any of the following:

(A) appends to his name a title or abbreviation indicating to the public that he is a veterinarian;

(B) for compensation, diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(C) holds himself out to the public as one who diagnoses or treats diseases, injuries, or deformities of domesticated animals;

(D) maintains premises for receiving, examining, and treating a domesticated animal for compensation;

(2) "board" means the Board of Veterinary Examiners;

(3) "department" means the Department of Commerce. (Sec 1 ch 91 SLA 1963)

Editor's note. - In light of the 1966 amendment of AS 08.98.010, it appears that "Board of Veterinarian Examiners" in paragraph (2) of this section should read "Board of Veterinary Examiners.

Editor's note. - "Veterinarian" has been changed to "veterinary" in paragraph (2) of this section as set out above. Editor's note in original should be disregarded.

CHAPTER 68. BOARD OF VETERINARY EXAMINERS

TITLE 12. PROFESSIONAL AND VOCATIONAL REGULATIONS

CHAPTER 68. BOARD OF VETERINARY EXAMINERS

Article
1. Examinations (12 AAC 68.010 - 12 AAC 68.040)
2. Evidence of Incompetence (12 AAC 68.050 - 12 AAC 68.120)

Section
10. Applications
20. Time and Place of Examinations
30. Notifications of Applicants
40. Applications for License

12 AAC 68.010. APPLICATIONS. (a) An application for examination to practice veterinary medicine, surgery, or dentistry shall be made in writing to the Department of Commerce on a form prescribed and furnished by the Department. The fee required by AS 08.98.190 shall accompany the application form.

(b) An applicant may be required to furnish other information to demonstrate that he meets the minimum qualifications of AS 08.98.170.

(c) An application for examination must be postmarked no later than 60 days before the examination date. (Eff. 3/27/71, Register 37)

Authority: AS 08.98.060(a)
AS 08.98.070

12 AAC 68.020. TIME AND PLACE OF EXAMINATION. (a) The time and place of the examination will be published by all major newspapers, in the State of Alaska, at least six months before the examination date.

(b) The Department of Commerce will arrange for space in which the examination is given. (Eff. 3/27/71, Register 37)

Authority: AS 08.98.060(a)
AS 08.98.070

12 AAC 68.030. NOTIFICATION OF APPLICANTS. (a) All applicants will be notified in writing of the time and place of the examination by the Department of Commerce at least 10 days before the examination.

(b) An applicant will be advised by the Department of his grade in writing no later than 60 days following the grading of the examination by the Board. (Eff. 3/27/71, Register 37)

Authority: AS 08.98.060(a)

12 AAC 68.040. APPLICATION FOR LICENSE. An application for a license is included on the same form used for the application

for examination. Space is provided on the form to indicate whether licensing will be by examination or by waiver of examination. (Eff. 3/27/71, Register 37)

Authority: AS 08.93.060
AS 08.98.210

ARTICLE 2. EVIDENCE OF INCOMPETENCE

Section
50. Evidence of Incompetence
60. Approved Schools
70. Conflict of Interest
80. Treatment of Patients
90. Certificate of Health
100. Confidential Relationship
110. Testimonials
120. Soliciting

12 AAC 68.050. EVIDENCE OF INCOMPETENCE. The following conduct is considered evidence of incompetence of an applicant:

(1) a judgement of insanity by a competent court;

(2) a conviction of a violation of a federal or state law relating to narcotic drugs;

(3) A conviction of malpractice in veterinary medicine surgery or dentistry. (Eff. 3/27/71, Register 37)

Authority: AS 08.98.060

12 AAC 68.060. APPROVED SCHOOLS. A school of veterinary medicine that is recognized and approved by the American Veterinary Medical Association is approved by the Board.* (Eff. 3/27/71, Register 37)

Authority: AS 08.98.0[illegible] b)(2)

12 AAC 68.070. CONFLICT OF INTEREST. It is unprofessional [illegible]o represent conflicting interest, except by express consent of all concerned, given after a full disclosure of the facts. A conflict of interest results when a veterinarian is employed by a buyer to inspect an animal for soundness or other reason, and he accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is evidence of unprofessional conduct for the purposes of AS 08.98.050. (Eff. 3/27/71, Register 37

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

*A list of approved shcools may be obtained from the American Veterinary Medial Association.

BOARD OF VETERINARY EXAMINERS

12 AAC 68.080. TREATMENT OF PATIENTS. A licensed Veterinarian shall exercise the degree of care, skill and diligence in treating patients that is ordinarily used in the same or similar circumstances by average members of the veterinary medical profession in the community in which he practices. Failure to comply with this section constitutes incompetence for the purpose of AS 08.98.050 (3)(E). (Eff. 3/27/71, Register 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.090. CERTIFICATE OF HEALTH. No licensed veterinarian may issue a certificate of health for an animal unless he performs the inspection and the appropriate tests it required. (Eff. 3/27/71, Register 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.100. CONFIDENTIAL RELATIONSHIP. A licensed veterinarian shall maintain a confidential personal relationship between himself and his client, or his client's authorized agent. (Eff. 3/27/71, Register 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.110. TESTIMONIALS. No licensed veterinarian may write testimonials endorsing proprietary remedies, instruments, equipment or food except that reports of the results of properly controlled experiments or clinical studies are permitted if given publicity through scientific journals or meetings. (Eff. 3/27/71, Register 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

12 AAC 68.120. SOLICITING. (a) No member of the veterinary profession may utilize the services of solicitors. No licensed veterinarian may participate in arrangements which share the proceeds from professional services with individuals who may have been instrumental in his having been selected to perform the particular service.

(b) A licensed veterinarian shall avoid the impropriety of employing questionable methods to attract public attention or claim to possess superior knowledge or skill in the treatment or prevention of a disease. (Eff. 3/27/71, Register 37)

Authority: AS 08.98.050(3)(E)
AS 08.98.060(b)(1)

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
POUCH D
Juneau, Alaska 99811

PROCEDURE FOR OBTAINING A LICENSE TO PRACTICE VETERINARY MEDICINE IN ALASKA.

The Alaska Statutes state that no person may practice veterinary medicine, surgery or dentistry in the State without first obtaining an Alaska license. (Reference: Alaska Statutes 08.98.120)

EXAMINATION: The following documents must be on file before your application for examination will be considered;

1. Completed, notarized application, which must be accompanied by;

   (a) Certified copy of veterinary college diploma, or certified letter from college attesting to successful graduation.

   (b) The four attached reference letters must be completed and notarized by the references listed on your application and they must be submitted with your application.

   (c) Fees:

      1. $25.00 examination
      2. $25.00 initial license fee, which must be submitted before your license will be issued and may be submitted with your application.

   (d) A letter of recommendation, if applicable, from a state association, a local association and three veterinarians attesting to your skills. (New graduates are exempt)

   (e) Resume and reason for seeking licensure in Alaska.

2. The attached "verification of license" form must be completed by each state in which you have been licensed and then forwarded directly to this office. (Two are attached)

TEMPORARY LICENSE: If you wish to practice in the State while waiting for the next examination held by the Board of Veterinary Examiners, you may apply for a temporary license by submitting ALL THE ABOVE ITEMS AND THE $10.00 TEMPORARY LICENSE FEE.

LICENSURE BY WAIVER OF EXAMINATION. The following documents must be on file before your application for licensure by waiver of examination will be considered:

1. Completed, notarized application, which must be accompanied by:

   (a) Certified copy of veterinary college diploma, or certified letter from the college attesting to successful graduation.

(b) The four attached reference letters must be completed and notarized by the references listed on your application, and they must be submitted with your application.

(c) Certified evidence of having been engaged in the active practice of veterinary medicine for five out of the previous seven years, excluding military service, before date of application. Notarized statements may be provided by previous employers or by character reference. Evidence must be submitted with your application (Statements of licensure only for the period of time are not sufficient evidence of active practice).

(d) A report of the scores you obtained in the P.E.S. examination. THESE SCORES MUST BE REPORTED FROM THE INTERSTATE REPORTING SERVICE OF THE PROFESSIONAL EXAMINATION SERVICE, 475 RIVERSIDE DRIVE, NEW YORK, NEW YORK 10027.

(e) A letter of recommendation from three veterinarians attesting to your skills, and, if applicable, a letter from a State association and a local association.

(f) Fees:
(1) $25.00 waiver of examination fee
(2) $25.00 initial license fee, which must be submitted before your license will be issued and may be submitted with your application.

2. The attached "verification of license" forms must be completed by each state in which you have been licensed and then forwarded directly to this office (Two are attached).

3. Certified evidence of the successful completion of a State veterinary examination must be submitted directly to this office.

FOREIGN GRADUATES: A foreign graduate of veterinary medicine must have taken and passed the Education Commission for Foreign Veterinary Graduates (E.C.F.V.G.) examination. A certified copy of the E.C.F.V.G. certificate must be submitted with the application.

PLEASE NOTE: YOUR APPLICATION AND CREDENTIALS WILL BE RETURNED TO YOU IF THEY ARE INCOMPLETE.

YOUR APPLICATION AND REFERENCE LETTERS MUST BE NOTARIZED AND ALL COPIES OF DOCUMENTS MUST BE CERTIFIED TO BE TRUE COPIES OF THE ORIGINAL DOCUMENTS.

STATE OF ALASKA
DEPARTMENT OF COMMERCE
DIVISION OF OCCUPATIONAL LICENSING
POUCH "D"
JUNEAU, ALASKA 99811

APPLICATION FOR VETERINARY LICENSURE

I hereby apply for a license to practice veterinary medicine, surgery, and dentistry in the State of Alaska by EXAMINATION ( ), by WAIVER OF EXAMINATION ( ).

THIS APPLICATION MUST BE COMPLETED IN FULL. If any section does not apply, the applicant will so indicate in the space provided.

Name _____
(Name in full, including middle name)

Mailing Address _____
Zip Code

Place and Date of Birth _____ Age _____

Educational Status:

High School _____
Name and location date graduated

College or University _____
Name and location degree received, if any

School of Veterinary Medicine _____
Name and location dates attended

_____ _____
Diploma received date of diploma

Professional Status: I am a member in good standing in the following Veterinary Medical Associations:

1. _____ _____
Name Location

2. _____ _____
Name Location

3. _____ _____
Name Location

Occupational Status: List positions you have held for the past seven years only.

1. _____
Name of employer Address Position held

_____
Dates of employment

08-457

2. _____
Name of employer Address Position held

_____
Dates of employment

3. _____
Name of employer Address Position held

_____
Dates of employment

I have been licensed to practice veterinary medicine in the following states:

1. _____
State Board Certificate number Date of issue Certificate current?

2. _____
State Board Certificate number Date of issue Certificate current?

3. _____
State Board Certificate number Date of issue Certificate current?

List four references who have knowledge of your character and professional abilities.

1. _____ _____ _____
Name Address Zip Code

2. _____ _____ _____
Name Address Zip Code

3. _____ _____
Name Address Zip Code

4. _____ _____
Name Address

Make any additional statement you may deem of value to the board:

_____

_____

If granted a license I will be governed by the rules and regulations of the Alaska State Board of Veterinary Examiners, and will at all times observe and abide by the Code of Ethics adopted by the Board.

_____
Signature of Applicant

_____
Date

Subscribed and sworn before me, a notary public in and for the State of _____, this _____ day of _____, 19___.

_____
Notary

SEAL

_____
My commission expires

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE
and Economic Development
DIVISION OF OCCUPATIONAL LICENSING

POUCH D — JUNEAU 99801
PHONE 465-2544

CERTIFICATE OF GOOD MORAL CHARACTER

THIS CERTIFIES THAT I HAVE BEEN PERSONALLY ACQUAINTED WITH _____ OF _____. FOR _____ YEARS AND THAT I KNOW HIM/HER TO BE OF GOOD MORAL CHARACTER, NOT ADDICTED TO THE USE OF HABIT-FORMING DRUGS OR INTEMPERANCE AND I HEREBY RECOMMEND HIM/HER TO THE BOARD OF _____ OF ALASKA AS ENTIRELY WORTHY TO BE LICENSED TO PRACTICE _____ IN ALASKA PURSUANT TO LAW.

NAME: _____

ADDRESS: _____

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 19 ___.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES _____

SEAL

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE
and Economic Development
DIVISION OF OCCUPATIONAL LICENSING

POUCH D -- JUNEAU 99801
PHONE 465-2544

CERTIFICATE OF GOOD MORAL CHARACTER

THIS CERTIFIES THAT I HAVE BEEN PERSONALLY ACQUAINTED WITH _____ OF _____. FOR _____ YEARS AND THAT I KNOW HIM/HER TO BE OF GOOD MORAL CHARACTER, NOT ADDICTED TO THE USE OF HABIT-FORMING DRUGS OR INTEMPERANCE AND I HEREBY RECOMMEND HIM/HER TO THE BOARD OF _____ OF ALASKA AS ENTIRELY WORTHY TO BE LICENSED TO PRACTICE _____ _____ IN ALASKA PURSUANT TO LAW.

NAME: _____

ADDRESS: _____

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 19 ____.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES _____

SEAL

VERIFICATION OF LICENSURE

I am applying for a certificate to practice veterinary medicine in the State of Alaska. The Alaska State Board of Veterinary Examiners requires that this form be completed by each jurisdiction in which I hold or have held licenses. Please complete the form and return it to:

DEPARTMENT OF COMMERCE
Division of Occupational Licensing
Alaska State Board of Veterinary Examiners
Pouch D
Juneau, Alaska 99811

_____
Full Name of Applicant

_____
Mailing Address

_____
City State Zip Code

PLEASE DO NOT DETACH

. . . . . .

I, _____ certify that _____
Secretary of Board Name of Applicant

holds license number _____ issued on _____, 19__ by (examination) (reciprocity)(endorsement). This applicant's license has never been revoked and is current and in good standing with this board.

In testimony whereof witness my hand and seal.

_____
Signed

_____
Designate Name of Board

(Void without Seal)

_____
Address

_____
City State Zip Code

Comments:

08-469 Rev. 11/72

SJR

71

FILE EMPTY

SB

21

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

March 11, 1980

The Honorable Brad Bradley
Chairman, Seante Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: Senate Resolution No. 21

Dear Senator Bradley:

After a preliminary review of Senate Resolution No. 21, this department has determined that there are no constitutional or legal problems preventing the implementation of this policy. Although this policy may result in certain costs to the state, the Department of Law is not in a position to prepare a fiscal note.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Leslie J. Ludtke
Leslie J. Ludtke
Assistant Attorney General

LJL;ab

03-C5LH

SB
37, 43,
44

505 West Northern Lights Boulevard
Suite 120
Anchorage, Alaska 99503

Tele: 279-3195

ALASKA LANDLORD & PROPERTY MANAGERS ASSOCIATION

MY NAME IS: SAMUEL CLEMENS

I REPRESENT THE ALASKA LANDLORD & PROPERTY MANAGERS ASSOCIATION

I HAVE BEEN IN THE RENTAL BUSINESS HERE IN ALASKA SINCE 1965. I AM A RELATIVELY SMALL LANDLORD WITH JUST 16 UNITS.

I AM RETIRED FROM THE NAVY, WITH OVER 30 YEARS OF SERVICE AND ALSO RETIRED FROM THE STATE OF ALASKA. I AM A LANDLORD BECAUSE I HAVE FOUND THIS TYPE OF ENTERPRISE AFFORDS ME THE OPPORTUNITY TO AUGMENT MY RETIREMENT INCOME AND ALLOWS ME TO BE INDEPENTLY SELF EMPLOYED WITHOUT ACTUALLY BEING EMPLOYED.

PRIMARILY I AM HERE TO REPRESENT THE ALASKA LANDLORD & PROPERTY MANAGERS ASSOCIATION. AS PRESIDENT OF THIS ASSOCIATION I REPRESENT A GOOD PORTION OF THE LANDLORDS AND PROPERTY MANAGERS WITHIN ALASKA. WE HAVE A MEMBERSHIP OF 175 MEMBERS, REPRESENTING 3,080 RENTAL UNITS IN ANCHORAGE ALONE. WE ALSO HAVE MEMBERS OPERATING IN OTHER CITIES OF ALASKA INCLUDING FAIRBANKS (WITH 620 UNITS REPRESENTED), KETCHIKAN, DOUGLAS AND SOLDOTNA WITH A SUBSTANTIAL NUMBER OF UNITS.

ADDRESSING ATTENTION TO THREE SENATE BILLS, SB-36, SB-38 AND SB-57. ALL OF WHICH HAVE BEEN INTRODUCED AS PROPOSED CHANGES, ADDITIONS OR AS CLARIFICATIONS OF ARTICLES WITHIN ALASKA STATUTES.

ALASKA STATUTES TITLE 34.03 - UNIFORM RESIDENTIAL LANDLORD & TENANT ACT SAYS:

1. SIMPLIFY, CLARIFY, MODERNIZE AND REVISE THE LAW GOVERNING THE RENTAL OF DWELLING UNITS AND THE RIGHTS AND OBLIGATIONS OF LANDLORD AND TENANT;

2. ENCOURAGE LANDLORD AND TENANT TO MAINTAIN AND IMPROVE THE QUALITY OF HOUSING;

3. MAKE UNIFORM THE LAW AMONG THOSE STATES WHICH ENACT IT.

WITH THAT AS BACKGROUND I FEEL THAT IS EXACTLY WHY THESE THREE SENATE BILLS HAVE BEEN INTRODUCED.

SENATE BILL 36 - A NEW SECTION TO BE ADDED TO THE STATUTES

I FEEL THAT THE LANDLORD SHOULD BE PROTECTED BY STATE LAW FROM BEING VICTIMIZED BY WORTHLESS CHECKS, THE SAME AS ANY OTHER TYPE OF BUSINESSMAN. IF IT IS A MISDEMEANOR TO PASS A BAD CHECK TO A MOTEL, HOTEL OR INNKEEPER, THEN THE SAME SHOULD APPLY LIKEWISE TO LANDLORDS. GRANTED HOTELS OPERATE ON A DAY TO DAY, OR A FEW DAYS OCCUPANCY AND A LANDLORD OPERATES ON A LONGER TIME SPAN AND EVEN THOUGH THE TWO TYPES OF LODGING ARE SIMILAR I NEVER-THE-LESS FEEL THAT THE LANDLORD HAS A GREATER INVOLVEMENT OF LIABILITY COMMITTMENTS, AGREEMENTS AND A MUCH LONGER TIME. THE POINT IS THAT A B A D C H E C K IS EXACTLY THAT! AS A LANDLORD I WOULD LIKE TO FEEL THAT I DO HAVE PROTECTION OR AN AVENUE OF RECOURSE UNDER THE LAW.

SENATE BILL 38 - A NEW SECTION TO BE ADDED TO THE STATUTES

THIS BILL CLARIFIES WHERE THE RESPONSIBILITY RESTS FOR THE PROPER AND ADEQUATE SERVICES. IS IS PROTECTIVE IN NATURE. IT ALLOWS THE LANDLORD TO TAKE IMMEDIATE ACTION TO PROTECT HIS PROPERTY WHEN IT IS APPARENT THAT IT IS JEOPARIZED BY ANOTHER PERSONS NEGLIGENCE. I BELIEVE THIS BILL HAS BEEN INTRODUCED WITH THE INTENT OF PROTECTION OF BOTH LANDLORDS AND TENANTS. THERE IS MORE AT STAKE, SO TO SPEAK, IN A MULTIPLE DWELLING COMPLEX, THAN A LANDLORD AND A TENANT. IF ONE TENANT DID GET CARELESS IT COULD EFFECT THE SAFETY OF OTHER TENANTS. I FEEL THAT THE REMEDIAL PROVISIONS AS STATED ARE NECESSARY.

RELATE THE EXPERIENCE I HAD WITH TENANTS IN APT. "B", 40TH STREET - IF APPROPRIATE AND TIME ALLOWS.

SENATE BILL 57 - IN SUPPORT OF THIS BILL I WOULD LIKE TO READ A LETTER FROM AN ALPMA MEMBER AND ANCHORAGE ATTORNEY-AT-LAW:

READ LETTER -

MR. MAFFEI'S PROPOSED CHANGE AND AMENDMENT IS WELL SUPPORTED BY ALPMA. WE FEEL THAT THE TENANT SHOULD PROVIDE THE LANDLORD A FORWARDING ADDRESS AND ALSO THAT IN MANY CASES IT APPEARS THAT THE 14 DAY PERIOD IS NOT SUFFICIENT TIME TO DO ADEQUATE CHECKING ON CLOSE OUT OF UTILITY SERVICES AND TO KNOW THAT THERE WILL NOT BE ANY DELAYED BILLINGS PLACED ON THE LANDLORD AFTER THE TENANT HAS MOVED, THE NOTICE HAS BEEN TIMELY FORWARDED TO THE TENANT AND SO TO, SO TO SPEAK, THE TRANSACTION CLOSED.

SPEAKING OF PERSONAL EXPERIENCES, I PRESENTLY HAVE A LIKE SITUATION. THE TENANT BECAME UNEMPLOYED. EARLY IN JANUARY HE CONTACTED THE RESIDENT MANAGER AND STATED THAT THEY MAY HAVE TO MOVE AND ASKED IF THEY COULD USE UP THE SECURITY DEPOSIT AS RENT THROUGH THE 15TH. THE MATTER WAS REFERRED TO ME. THE NEXT DAY I TALKED WITH THE MAN AND EXPLAINED WHY I WOULD NOT AGREE WITH HIS REQUEST. WE DISCUSSED POSSIBILITIES OF THEM REMAINING IN THE APARTMENT. HE STATED THAT HE SHOULD BE RECEIVING AN UNEMPLOYMENT CHECK ON THE 15TH OF THE MONTH. WE AGREED TO THEM PAYING THE FULL MONTHS RENT AT THAT TIME. I ALSO INFORMED THEM THAT BY STATE LAW AND THE RENTAL AGREEMENT THEY WERE REQUIRED TO GIVE A 30 DAY NOTICE TO VACATE AND WHEN THEY DID VACATE AND IF ALL REQUIREMENTS WERE MET THAT THEY WOULD BE RECEIVING A REFUND OF SECURITY DEPOSIT. IT ALL SEEMED TO BE UNDERSTOOD. THEY WERE GOOD TENANTS.

ON JANUARY 15TH, EARLY EVENING, I WAS INFORMED BY THE MANAGER THAT THE TENANTS HAD MOVED. THEY HAD LEFT THE KEY IN THE MANAGERS MAIL BOX AND LEFT A NOTE THAT THEY HAD MOVED. THEY HAVE NOT GIVEN A FORWARDING ADDRESS OR PHONE NUMBER OR WHERE THEY COULD BE LOCATED. THIS IS AN EXAMPLE OF WHAT HAPPENS.

IN CONCLUSION AND SPEAKING IN BEHALF OF THE ALASKA LANDLORD AND PROPERTY MANAGERS ASSOCIATION I RECOMMEND AND URGE THAT EACH OF THESE BILLS BE PASSED, WHICH WILL CLARIFY AND STRENGTHEN THE STATUTES IN IT'S INTENT AND PURPOSE.

THANK YOU.

LAW OFFICES
MAFFEI, INC.
A PROFESSIONAL CORPORATION
1034 WEST 4TH AVENUE
ANCHORAGE, ALASKA 99501

ALBERT MAFFEI
TELEPHONE 272-2503

P. O. BOX 674
ANCHORAGE, ALASKA 99510

November 17, 1978

Mr. Bernard L. Marsh
Executive Secretary
Alaska Landlord & Property Managers Assoc.
505 West Northern Lights Blvd.
Suite 120
Anchorage, AK 99503

RE: Landlord Tenant Act-Security Deposits

Dear Ben:

In my practice over the past several years regarding the Landlord-Tenant Act, it appears that the most troublesome provision is the one requiring the return of the security deposit.

The provision under AS 34.03.070(b), which provides that accrued rent and damages must be itemized by the landlord in a written notice delivered to the tenant, together with the amount due, no later than 14 days after termination of the tenancy and delivery of possession by the tenant is the one that causes the problems and probably should be amended.

The problem is the written notice delivered to the tenant. Generally, I have advised my clients that if a tenant does not give any written or verbal notice of his new address and the landlord has no actual notice of his new address, then the written notice should be delivered to the tenant at his last known address, which is the landlord's premises. This is impractical, however, since obviously the tenant has moved and unless he has left a forwarding address, the notice will not be delivered to him.

The question is if the notice is not delivered to the tenant, then may he bring action against the landlord for twice the actual amount withheld?

The law should be clarified to either provide that the tenant must notify the landlord in writing of his new address, or put the responsibility upon the tenant to make demand for the return of the security deposit giving his address and where he can be located, and then require that the landlord deliver to him within 14 days either the security deposit or the written notice. This would seem to be fair since rarely does

the tenant give his landlord notice of where he intends to move, and usually the tenant just skips without giving any notice, and waits until the 14 days have expired, and then brings an action for double the amount of the security deposit. If the landlord does not give a notice, obviously the tenant will be sucessful.

I would appreciate hearing from you regarding this matter.

Very truly yours,

MAFFEI, INC.

Albert Maffei

AM/bfm

37

Introduced: 1/16/79
Referred: Commerce and Judiciary

IN THE SENATE BY BRADLEY

SENATE BILL NO. 37

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to landlord remedies."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 34.03.250(a) is amended to read:

(a) Except as provided in (c) of this section, a [A] lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable unless perfected before March 19, 1974.

* Sec. 2. AS 34.03.250 is amended by adding a new subsection to read:

(c) The landlord and tenant may execute a security agreement which gives the landlord an enforceable security interest for unpaid rent in the household goods of the tenant which are not exempt from execution or attachment under state or federal law. The landlord has no right to take possession of the collateral except by judicial process. The security interest is subject to AS 45.05.690 - 45.05.794 except when inconsistent with this section. The security interest is not a "landlord's lien" for purposes of AS 45.05.696(2). The security agreement is void unless in writing and signed by the tenant.

* Sec. 3. This Act applies prospectively only and not retroactively.

43

Introduced: 1/16/79
Referred: Commerce and Judiciary

IN THE SENATE BY BRADLEY

SENATE BILL NO. 43

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to rental agreements."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 34.03.030(c) is amended to read:

(c) Except as provided in (d) of this section, if [IF] a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective only for one year.

* Sec. 2. AS 34.03.030 is amended by adding a new subsection to read:

(d) If a rental agreement given effect by the operation of this section has either of the provisions listed below, that provision is as effective and enforceable as if each party had signed the agreement and delivered it to the other party:

(1) a provision requiring

(A) automatic renewal of the tenancy for a one-year term after a term of one year unless a written notice of nonrenewal is delivered by either party to the agreement to the other party; and

(B) automatic renewal of the tenancy each year in the same manner;

(2) a provision

(A) requiring automatic renewal of the tenancy for a one-year term after a term of one year unless a written notice of nonrenewal is delivered by either party to the agreement to the other party; and

(B) prohibiting more than one renewal of the tenancy under the rental agreement.

* Sec. 3. This Act is inapplicable to rental agreements executed before the effective date of this Act.

Alaska Court System
State of Alaska

303 K STREET
ANCHORAGE, ALASKA 99501

RICHARD P. BARRIER
DEPUTY ADMINISTRATIVE DIRECTOR

OFFICE OF ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 9, 1979

Hon. W. E. "Brad" Bradley
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Bradley:

Thank you for sending the Court System several of your bills for comment and statements concerning fiscal impact. I have reviewed each of these bills, including SB 36, 37, 38, 42, 43, and 44, and find the impact of these bills on the operations of the Alaska Court System should be minimal. Each of these bills is related to substantive issues of law relating to landlords and remedies under the Landlord and Tenant Act. As a result of these bills there may be more or less litigation in various types of disputes but it is unlikely that the level of litigation will increase enough to have a serious impact on the Court System.

The Court System takes no position concerning the intent or purpose of the legislation you have sent us. Our comments are generally limited to impacts bills on the administration of the courts. Thank you for supporting the establishment of an intermediate Court of Appeals.

I would appreciate your continuing to send to us any bills which may have an impact on the Court System.

Sincerely,

Richard P. Barrier
Deputy Administrative Director

44

Introduced: 1/16/79
Referred: Commerce and Judiciary

IN THE SENATE BY BRADLEY

SENATE BILL NO. 44

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to security deposits and prepaid rent."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 34.03.070(d) is amended to read:

(d) If the landlord wilfully fails to comply with (b) of this section, the tenant may recover an amount not to exceed [TWICE] the actual amount withheld.

* Sec. 2. This Act applies to any action brought under AS 34.03.070(d) which is commenced on or after the effective date of this Act, regardless of when the cause of action may have arisen.

DRAFT

BROOKE MARSTON, Broker
WILEY S. BROOKS, Property Manager
LINDA J. ENCELEWSKI, Assistant Manager

Marston Property Management, Inc.

PROFESSIONAL MANAGEMENT IS OUR BUSINESS

BRAD BRADLEY

2804 W. NORTHERN LIGHTS BLVD.
ANCHORAGE, ALASKA 99503
TELEPHONE: (907) 274-5504

February 17, 1979

Mr. George Oliver
President
Anchorage Board of Realtors
301 E. Fireweed
Anchorage, Alaska 99503

Dear Mr. Oliver:

It has come to my attention that certain requirements of the Alaska Statutes and Regulations relating to Real Estate Brokers and salesmen are not in the best interest of property owners. In fact, specific statutes act to prevent property owners from effectively managing their own investments. Other statutes hinder those having a fudiciary responsibility from managing an owner's property by the most efficient and ecomonical means.

Below are some specific statutes which I urge the Real Estate Board to carefully study and seek legislative change which will be more in the interest of real estate owners:

1. Article 2 Section 08.88.161 (1) which reads, "unless licensed as a real estate broker, associate real estate broker, or real estate salesman, no natural person, foreign or domestic corporation, or partnership, or limited partnership, or other entity may sell, exchange, rent, lease, auction, or purchase real estate."

   Comment: The intent of this part of the statutes is undoubtedly to protect an owner against persons not having proper training and qualifications. But, literally interpreted, the words rent and lease prevent an owner from employing an unlicensed person from renting or leasing real estate in the owners behalf. I feel quite certain many owners absent from Alaska, or simply involved with their own enterprises authorize resident managers to sign rental and lease agreements for the owner. The owner should certainly have this right without placing an unlicensed resident manager in violation of the statutes. The exceptions found in Section 08.88.421 are not explicit enough to prevent some from insisting that an unlicensed non-owner is unauthorized to sign a rent or lease agreement.

   Subparagraph (3) of the above reference section reads, "Collect rent for the use of real estate;"

REALTOR®

Comment: This part of the statute is very specific and less subject to interpretation. It prohibits an owner or a professional management firm from including collecting rent monies as part of the duties assigned to an on-site manager. This is over regulation for the following reasons:

1) It is normally cost prohibitive to employ a licansed individual to work as a resident manager.

2) Residents of an apartment complex without a qualified (licensed) resident manager to collect rents are inconvenienced and incur travel expenses to pay rent monies.

3) It is a real estate owner's risk and right to employ a resident manager to collect rents in the owner's behalf.

4) Professional property management firms routinely provide a fidelity bond on employees to protect their client's interest. (See our own enclosed management agreement). Even though we are providing fidelity bonds on our employees, we are unable to utilize on-site managers to collect rents.

2. Article 3, Section 8.88.331 states:
"All transactions in real estate by a real estate salesman or associate real estate broker shall be processed through his employing real estate broker's office, whether the transactions are for the real estate salesman's or associate real estate broker's own use or the use of a client."

Article 3, Section 8.88.341 (1) states:
"A real estate broker shall (1) keep a complete record of all real estate transactions made by himself or persons in his employ for at least three years" etc.

Comment: While I am in complete agreement agreement that the statute, as it relates to the real estate client is very appropriate, to deny the real estate salesman or associate real estate broker the freedom and privacy of renting, leasing and maintaining records on their own investments is very inappropriate.

RECOMMENDATIONS:

1. That Article 4 of Section 08.88.421 be amended as follows:
Subparagraph (10) be added:
(10) A person employed by a real estate owner or licensed owner's agent, whose responsibilities are limited to "on-site" management, office

administration, or bookkeeping.

2. That article 4, of section 8.88.421 (1) be amended as follows: Subparagraph (11) be added - a person, though licenced, who rents leases, and maintains records or property he owns.

3. That a subparagraph (c) be added to Chapter 64 12 AAC 64.230 to read: (c) a licensee engaged in property management must provide a fidelity bond in adequate amounts on all employees who handle or are responsible for owner's monies.

I am certain you will insure the above recommendations will be given early study and action by the Anchorage Real Estate Board.
Thank you for your interest and dedication in these matters.

Sincerely,

Wiley S. Brooks
Manager

CC: Bernard L. Marsh, Executive Secretary
Alaska Landlord & Property Managers Association

Alaska Court System
State of Alaska

303 K STREET
ANCHORAGE, ALASKA 99501

RICHARD P. BARRIER
DEPUTY ADMINISTRATIVE DIRECTOR

OFFICE OF ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 9, 1979

Hon. W. E. "Brad" Bradley
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Bradley:

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The Court System takes no position concerning the intent or purpose of the legislation you have sent us. Our comments are generally limited to impacts bills on the administration of the courts. Thank you for supporting the establishment of an intermediate Court of Appeals.

I would appreciate your continuing to send to us any bills which may have an impact on the Court System.

Sincerely,

Richard P. Barrier
Deputy Administrative Director

SB

98

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

February 8, 1979

The Honorable W. E. Bradley
Alaska State Legislature
State Capitol
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 98

Dear Senator Bradley:

You have asked Dick Pegues, Administrative Officer for the Department of Law, for his comments on Senate Bill 98. I have been requested to respond to your letter in his stead.

If a fiscal note is required by SB 98, the Department of Public Safety would be the appropriate agency to inquire of, as this would fall within their expertise.

With respect to the substance of SB 98, the Department of Law has several objections which mitigate against its passage. As a primary consideration, should this bill become law there would be selective enforcement, at best. This is because the person at the counter in the Division of Motor Vehicles would have no way of knowing how long a person attempting to register a vehicle had been in the state, nor whether a person was employed nor for how long the person was employed. Should a person registering a vehicle admit that he has been in the state for longer than 90 days or employed for more than 15 days, he would be subject to the penalty reflected in SB 98. However, it is highly likely that people would soon be aware of the obvious advantages of misrepresenting these facts, and in this regard, the bill encourages misrepresentation.

In addition, the bill discriminates between residents and non-residents who register their vehicles at a time later than that required by law. There appears to be no valid reason for this distinction other than the possibly more difficult job of enforcing registration requirements on out-of-state vehicles.

It would appear that the best way to approach this problem is simply more strict enforcement of existing laws. I have consulted the Department of Public Safety; and the concerns expressed above are shared by that department.

If I may be of any further assistance, please contact me at your convenience.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: Michael J. Stark
Michael J. Stark
Assistant Attorney General

MJS/mt

SB

102

TO: SEN. WILLIAM SUMNER
SEN. W.E. BRADLEY

FROM: KENNETH OWSICHEK 243-5899
P.O. BOX 6301, ANCHORAGE, AK 99502

THIS IS TO STATE THAT I FULLY SUPPORT THE EFFORT TO REPEAL THE PRESENT GUIDE LAW. I AM A GUIDE WITH A $400,000 INVESTMENT FOR MY GUIDING OPERATION. I RECEIVE NO GUIDE AREA DISPITE MY INVESTMENT, EXPERIENCE IN THE AREA AND DEPENDENCE ON GUIDING FOR A LIVING. I HAVE ALSO BEEN THREATENED BY THE BOARD WITH DISCIPLINARY ACTION FOR CHARGES AGAINST ME THAT WERE COMPLETELY DISMISSED IN A JURY TRIAL. I BELIEVE THE GUIDE BOARD IS ACTING BEYOND ITS PROPER FUNCTION. THEY HAVE BECOME AN ARM OF THE ATTORNEY GENERAL'S OFFICE AND THEIR SYSTEM OF ASSIGNING EXCLUSIVE GUIDE AREAS HAS BEEN HAPHAZARD, UNJUST AND ILLEGAL. I WILL SEND YOU A LETTER WITH DETAILS SUPPORTING MY VIEW. THANK YOU. EOM

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6442
JUNEAU, ALASKA 99802

1979 FEB 26 PM 12 57

02033 ANCHORAGE ALASKA 27 02-26 955A AST

PMS SENATOR W E BRADLEY

JUNEAU AK

1066

DEAR SENATOR,

AS A LICENSED ALASKAN ASSISTANT GUIDE, I SUPPORT THE REPEAL OF PRESENT GUIDE LAW.

ALAN L JONES, LICENSE NBR 1110006

1317 WEST NORTHERN LIGHTS BLVD SUITE 9

ANCHORAGE AK 99503

TELEGRAM

#

Ø2125 POM TDA CHUGIAK ALASKA 15 Ø2-26 359P AST

PMS SEN W E BRADLEY

JUN

I FAVOR REPEAL OF THE PRESENT GUIDE LAW.

DON SISSON BOX 707 CHUGIAK ALASKA 99567

DICK RICE
P. O. Box 10
Palmer, Ak. 99645

February 22, 1979

Dear Senator Bradley,

Regarding the effort to repeal the present guide law(limited guiding areas and liscense control by Guide board), I hope you will vote for and enlist support for the repeal of this law and the return of the previous method of regulating the guiding industry. At present nearly 80% of the guides in Alaska are in favor of the repeal of this arbitrary and restrictive law, including many of them who have drawn some benefit from it. Personally, I've been severly limited in my ability to make a living these past 3 years, because I've no area to limit in, though I've been guiding in the Wrangells and Chugach ranges for 15 years and am liscensed for all 8 units in South Central Alaska.

Sincerely hope you and your fellow Senators will repeal the unfair guide law, and return things to normal as they were in 74.

Sincerely,

Dick Rice

Dick Rice, Reg. Guide

DR/lr

February 22, 1979

Sen. W. E. Bradley
Pouch V
Capitol Building
Juneau, AK 99811

Dear Sen. Bradley:

I understand that you are presently discussing matters pertaining to the Guide Law. The purpose of this letter is to voice my full support of the repeal of this law.

I have been an active registered guide since 1962, but because of arbitrary and unfair regulations promulgated by the Guide Licensing & Control Board, I find myself without any area in which to guide. This is in spite of the fact that I am registered in Units 6 through 17.

In my opinion, the whole concept of allocating guide areas was ill conceived, badly timed, and expertly blundered. The same could be said for placing licensing and control in the hands of this Board. We were, I'm sorry to say, much better off as a profession when these functions were handled by the Department of Fish & Game.

Very truly yours,

Lee Browning

Lee Browning
2907 W. 34th Avenue
Anchorage, Alaska
99503

BRUNNER
OF ALASKA

6950 CRAWFORD DRIVE • ANCHORAGE, ALASKA 99502 • TELEPHONE (907) 243-2284

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LOUIE K. BRUNNER
Lt. Col. Ret.

February 23, 1979

Senator W. E. Bradley
Pouch V
Capitol Building
Juneau, Alaska 99811

Dear Brad:

It has been some time since I have had the opportunity to set down and talk with you. Next time you have a chance drop by and see us. We are out of the taxidermy business but are still envolved in Alaska raw furs.

The purpose of my letter is to urge you and your colleagues to give serious consideration to Mr. Ron Hayes' proposal to do away with the present guide law. In my position I have the opportunity to talk to guides, sportsmen and other interested personnel on a daily basis. I attend most of the guide board meetings and many of the fish and game board meetings. I have participated with the APHA and have donated considerable time and money to assist them in their efforts.

During the many years you and I have been in Alaska we have watched the guide hassle and it continues to get worse. The distribution of guide areas in the state is so complex and unfair that it has caused far more problems than it has resolved.

The loss of respect for the Alaskan Guides by the American Sportsman in the last few years is primarily due to the haggling presently going on in the guide board.

Let's clean up the guide business by putting it in the Alaskan Court system where it belongs! Let's do away with "dual jeopardy"--where the guide is tried by the courts and then again by the guide board. This would also do away with the unfairness caused by assigning guide areas. Remember--D-2 will amplify all the problems the guide board has been causing.

You are to be congratulated on the fine job you are doing in Juneau. Keep up the good work.

Sincerely,

Louie K. Brunner

(907) 344-1457

SAMSAL GUIDE & FLYING SERVICE

LLOYD E. SAMSAL, OWNER

REGISTERED GUIDE & OUTFITTERS
2733 West 100th Avenue
Anchorage, Alaska 99502

February 23, 1979

Dear Senator W. E. Bradley:

I am an old time Alaska guide. I am writing to you to let you know I favor the repeal of the present guide law.

Sincerely

Lloyd E. Samsal
2733 West 100th Ave
Anchorage, Alaska
99502.

Alaska Professional Hunters Association, Inc.

P. O. BOX 4-1932
ANCHORAGE, ALASKA 99509

Phone (907) 243-3977
or (907) 262-4678

March 5, 1979

OFFICERS
RAY McNUTT
President
JACK LEE
Vice President

BOARD OF DIRECTORS
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Eastern Arctic
KEITH KOONZ
Arctic Coast
ED SHAVINGS, Sr.
Southwestern

Senator Brad Bradley, Chairman
Senate Commerce Committee
Pouch V.
Juneau, Alaska 99811

Dear Brad:

Thank you for sending me a copy of Senate Bill 102.

The Alaska Professional Hunters Ass. has long felt a step in this direction was needed badly. You have our complete support on this bill.

We were happy you introduced Senate Bill 101 also. This one was needed as well as the above. If we can be of any help in either of these let us know.

I can't think of any other group that would be interested in this legislation.

I understand some of the legislators are under the impression Mr. Tom Biss still represents APHA. This is not true, that arrangement was terminated Feb. 7, 1979. Would appreciate it if you would make a note of that for your Commerce Committee.

We certainly appreciate your work on our behave with the above legislation.

Sincerely,

Ray

Ray McNutt

Introduced: 2/1/79
Referred: Commerce

IN THE SENATE

BY BRADLEY

SENATE BILL NO. 102

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the grounds for disciplining a licensed guide."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.54.200(a)(1) is amended to read:

(1) complaints concerning the licensee have been filed with the board from three or more clients of separate parties <u>within a continuous five-year period</u>; or Proof of game violation by conviction -

I have been a guide for 26 years - now I buy a licence and have no place to hunt, I was not given a Territory to hunt

Paul Vent

Introduced: 2/1/79
Referred: Commerce

IN THE SENATE BY BRADLEY

SENATE BILL NO. 102

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the grounds for disciplining a licensed guide."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.54.200(a)(1) is amended to read:

(1) complaints concerning the licensee have been filed with the board from three or more clients of separate parties <u>within a continuous five-year period</u>; or

About Regulation more stringent than applied to Doctors or any other professional group I know of.

Lee Hancock
Box 955 Anchorage 99510

Most Non-Resident Moose & Caribou hunters not handled by Registered Guides, including Europeans. They are set out by Air Taxis and others who may have a transporters license.

Lee Hancock

TELECRAM

RCA ALASKA COMMUNICATIONS, INC.

02

#

02084 POM ANCHORAGE ALASKA 15 02-23 314P AST

PMS SEN W E BRADLEY

JUN

I SUPPORT REPEAL OF THE PRESENT GUIDE LAW.

ROCKY KEEN

PO BOX 1605

ANCHORAGE AK 99510

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
P.O. BOX 2441
JUNEAU, ALASKA 99802

02137 NL ANCHORAGE ALASKA 50 02-22 613P AST

PMS SENATOR W E BRAD BRADLEY

JUN

I AM HIGHLY IN FAVOR OF THE REPEAL OF THE PRESENT GUIDE LAW, IN REGARD TO A CORRESPONDENCE WITH MR RON HAYES AND MR TIM ENWRIGHT. BOTH REGISTERED GUIDES AND WE WANT THIS GUIDE LAW THROWN OUT.

W S BILL RICE, REGISTERED GUIDE

TIM ENWRIGHT, REGISTERED GUIDE

TELEGRAM

02129 NL ANCHORAGE ALASKA 50 02-22 350P AST

PMS SEN W E BRADLEY

JUN

SIR, AS AN ALASKAN REGISTERED GUIDE I SUPPORT REPEAL OF THE PRESENT GUIDE LAW, FORCING GUIDES TO HUNT IN EXCLUSIVE AREAS.

DENNIS C OWENS

BOX 361

MOOSE PASS, AK 99631

February 27, 1979

Dear Senator Bradley,

I hope you will vote to repeal the present Guide law, which limits guiding areas and gives liscense control to the Guide board, and return the guiding industry to jurisdiction of the ADF & G where it belongs, as it was until a few years ago. In a recent poll of Alaskan guides, 142 voted for repeal of this law, 43 against. Hope you'll support us in our fight to get rid of this restrictive Guide law and we'll all be able to make a decent living.

Respectfully,

Charles A. Edmonds, Reg. Guide

Charles A Edmonds

CE/lr

March 2, 1979

Senator William Sumner,

Dear Sir.

I am writing you to voice my opinion. I strongly urge you to vote to repeal the present guide law. My guide license was suspended for two years even though I had a jury trial and was found not guilty. Yet the board has the power to revoke licenses independant of the court system.

Again I urge you to vote for repeal.

Sincerely
Tom V Zimmerman Jr.

SB 102

Mark Miller

Feb. 2[illegible] 1979

Senator W.E. Bradley
Pouch V, Capitol Building
Juneau, Ak. 99811

Dear Mr. Bradley,

The present guide board is not forfill[illegible] it's job to the general guiding public. I think the guide area law sh[illegible] be thrown out and a more capable group of persons redue it if the a[illegible] thing is necessary. The fish and Game did a better job. Now as it stands, there are a few guides with large areas while others like myself have nothing. For two years I hunted on my own and make a good salary of under $20,000.00. Now I don't have an area and for the last two years I had to stratch a major part of my income. Others have been grantede areas so large they can still make $100,000. plus and have room to expand.

Something must be done or all the state has succeeded in doing "again" is supporting another group of lucky people while the profession lays stagnant to those like myself who where fairly new in the area. I hope you can do something.

Sincerely,
Mark Miller

Licensed Air Taxi Registered Guide & Outfitter Skwentna, Alaska 99667

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 1, 1979

Tom
Mr. ~~Thomas~~ V. Zimmerman
SRA Box 60726-A
Fairbanks, Alaska 99701

Dear Mr. Zimmerman:

Enclosed is Senate Bill 102 relating to grounds for disciplining a licensed guide.

I would appreciate receiving any comments you may have pertaining to this bill. If you know of other agencies that have an interest in this legislation, please let me know so that I may get the benefits of comments from all knowledgeable and interested parties.

In consideration of a productive and expeditious session, I request that your comments be returned to the Senate Commerce Committee within 10 days.

Sincerely,

Brad

Brad Bradley
State Senator
Chairman
Senate Commerce Committee

WEB:jp
Encl

I am opposed to any further government interference i.e. laws, regulations etc on the guiding industry. I feel the present law is abused from what it was intended for. Any additional legislation means sabotages, red tape and all things associated.

Sincerely Tom V. Zimmerman

Sec. 08.54.190. Expiration and renewal. (a) A master guide, registered guide, class-A assistant guide, assistant guide or transporter license expires on December 31, following issuance.

(b) No license may be issued to a class-A assistant guide or assistant guide who has failed to renew his license for two consecutive years unless he again meets the qualifications for initial issuance of the license.

(c) A master or registered guide who fails to renew a license is not required to requalify under § 100(2) or § 110(8) of this chapter, respectively. (§ 1 ch 17 SLA 1973; am § 12 ch 127 SLA 1974; am § 4 ch 106 SLA 1976)

Effect of amendments. — The 1974 amendment substituted "class-A assistant guide" for "class-A guide" in subsection (b).

The 1976 amendment substituted "assistant guide or transporter license" for "or assistant guide license" in subsection (a) and added "following issuance" to the end of that subsection.

Editor's note. — Section 10, ch. 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.54.200. Grounds for disciplining a licensee. (a) The board shall hold a hearing to determine if disciplinary action is necessary if

(1) complaints concerning the licensee have been filed with the board from three or more clients of separate parties; or

(2) a licensee has been charged with a violation of federal or state sport fish, game or guide statutes or regulations; or

(3) a licensee has been convicted of a violation of federal or state sport fish, game or guide statute or regulation.

((b) After a hearing, the board may revoke, suspend, or deny renewal of a license if the board finds that the licensee

(1) engaged in unethical activity, unsafe activity, or activity which adversely affects the natural resources of the state when such activity is unrelated to the legal and legitimate purposes of the contract hunt; or

((2) violated a provision of a federal or state sport fish, game or guide statute or regulation.

(c) After a hearing, the board shall revoke a license if the board finds that the licensee

(1) does not meet the qualifications specified by statute or regulation for the class of license held;

(2) is incompetent as a master guide, registered guide, class-A assistant guide, or assistant guide;

(3) has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations.

(d) No person who is disciplined under this section may engage in any guiding or transporting activity during the period of license revocation

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU, ALASKA 99801

Chris OK

March 5, 1979

The Honorable Brad Bradley
Chairman, Senate Commerce
Committee
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

Your letter of February 19, regarding Department comments and a fiscal note on SB 102 was not received in our office until February 27, thus our written response is somewhat tardy. I did discuss this matter with one of your staff members on February 28, and indicated that a letter would be forthcoming.

The Department of Fish and Game does not plan to comment on SB 102 as we have essentially nothing to do with the administration of the State's guiding industry. This authority is vested in the Department of Commerce and Mr. Don Hostak administers the program. I believe that he will be commenting on the bill and would be the best source for preparation of a fiscal note.

If we can be of assistance to you on other matters, please feel free to contact our office.

Sincerely,

for Carl L. Rosier
Deputy Commissioner
Program Management

11-K11LH

12-L2LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER / *POUCH N – JUNEAU 99811*

February 27, 1979

Honorable Brad Bradley
Chairman, Senate Commerce
Committee
Pouch V
Juneau, Alaska 99811

RE: SB 102

Dear Senator Bradley:

The Department of Public Safety supports SB 102. This bill does not alter current practices and in effect, would have little impact on current procedures. Complaints that are over five years old are not considered reasonably admissable in court and consequently not used.

You may want to contact the Department of Fish and Game, as it appears they will have an interest in the bill. There will not be a fiscal impact on this Department regardless of whether the bill passes or not.

I will be happy to meet with you at your convenience to answer any questions you may have.

Sincerely,

Robert J. Stickles
Acting Deputy Commissioner
Department of Public Safety

RJS/lsb

Alaska Professional Hunters Association, Inc.

P. O. BOX 4-1932
ANCHORAGE, ALASKA 99509

Phone (907) 243-3977
or (907) 262-4678

February 22, 1979

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Eastern Arctic
KEITH KOONZ
Arctic Coast
ED SHAVINGS, Sr.
Southwestern

W. E. Bradley
Pouch V
Juneau, Alaska 99811

Dear Mr. Bradley:

The Alaska Professional Hunters Association is deeply concerned about the current move underway to remove the Guide Law from Alaska Statutes.

We would appreciate your considering the following points in behalf of retaining the Guide Law.

A. It could be people are short sighted in their desire t throw out the guide law. Under the guide Licensing an Control Board it is known in what areas each guide is working. If we have no guide law everyone a plane, boat, snowmachine, horses etc. will be taking out hunt Certainly there eill be no respect to areas or who has been there traditionally, be they native or non-native

B. It could not be at a worse time to rid ourselves of th guide law. That, in our opioion, would give the envir mentalist the very thing they need to further restrict more land in order to keep the land and wildlife resou ces from beigg raped by uncontrolled hunting pressure by thes one act. Secretary Andrus and Representive Morris Udall have already used these type tactice in their effort to gain more locked up land.

C. The Alaska Game Board is meeting in April and, should they believe the guide law had a chance of being throw out, it would greatly increase the passibility of them closing more areas to sport hunting or putting all big game under a permit system. By supporting a move to throw out the guide law, you will be killing the guidi industry as well as drastically curtailing the opportu ity for resident sport hunting and working directly in the anti-hunting forces' hands.

D. Some may feel they will benefit by the removal of the guide law, those who have lost their license or didnot qualify for an exclusive guide area. This is very short sighted, perhaps they can for a period of a year. However, a year down the road, the guidi industry will die and that will effect all Alaskans.

We urge to support the Alaska Professional Hunters Association's position on this vital issue. The enclosed "Open Letter" will give you more detailed description of the above points and some others.

Mr. Tom Biss has not represented APHA as a lobbyist since Februa 7, 1979.

Respectfully,

Ray McNutt

Ray McNutt,
President, APHA

Encl:

RM/km

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Professional Hunters Association, Inc.

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WAYNE HANS
Kodiak
BUD HELMRICKS
Eastern Arctic
KEITH KOONZ
Arctic Coast
ED SHAVINGS, Sr.
Southwestern

February, 1979

An Open Letter to the Guiding Industry-

Fellow guides, throwing out the Guide Law will not turn the calendar back to the days when we could take our clients into any area open for hunting. Nor will it solve the probl caused by the Antiquities Act closures, dwindling wildlife resources, or the irrational associated with this recent subsistence issue. To the contrary, it will only hasten restrictions and wreck havoc with what chance we have to survive in the guiding industry. These are pretty strong words to those of us who lost a substantial portion of our Exclusive Guide Area(s) to Carter's actions, but truth none-the-less.

I'd like to attempt to explain why I make the above statement. The most obivlous argument to such statements is that "if the Guide Law is thrown out, and the Exclusive Guid Areas with it, then those of us who lost areas will be able to hunt anywhere we want to and therefore remain in business I'll not argue that this may be true for this coming fall season, and I've thought of it myself as I lost a substantia portion of my fall area to the McKinley Extensions-BUT it's a damn short-sighted point of view if we look ahead about fou teen months to the Spring, 1980 meetings of the Game Board.

Suppose we throw out the Guide Law, or at least the Ex-clusive Area concept. Then this fall we all hustle our clie into the open areas; and it won't be just a few clients, but as many hunters as each of us feels we can handle 'cause this may be the last chance we have to make a buck in this business. And besides, it will be easy to book hunters this year because the word's out that permits may be darn hard to get next year. It doesn't take much imagination to see what happens next! But let's follow things on through.....

This fall, when sheep hunters all over Alaska are re-stricted to hunting about half the areas they've had in the past, we guides would be right there with them, in greater force than ever before because our areas have also been reduced and we have no place else to hunt.

Competition for airstrips, areas to hunt, and trophies would be at an unprecedented high level, and resultant conflicts between guides and residents would sky-rocket. Not only would every resident sportsman in the State raise hell about guides that dit this, and guides that did that, but even more devastating for the guides who hope to remain in business, or retire with some self-respect, would be our success rates as compared to the resident harvest figures. At the same time the resident harvest will drop by an estimated 40 to 80 percent (depending upon whether we go to a full curl law or not), it is conceivable that by overbooking hustling, and just plain out-hunting we could approach or even surpass last fall's harvest. But any way we cut it, we would be considerably more successful than the resident hunter.

"So, what's so bad about this?"

I don't think any of us are so naive that we can expect the State and its residents to accept their cut in the harvest unless our non-resident clients are cut just as much in proportion, or even more, now that the crunch is on. And this is no idle observation, for speculation of the very speculation of the very sutuation I've described has been discussed between both the Department and the Board of Game and representatives of your Guide Association. All we, as an industry, have to do to cut our own throats and destroy any hope we have to head off lottery permit systems on sheep and bears is to sweep the the available harvest this fall. If this happens and the non-resident harvest isn't correspondingly reduced along with the resident harvest in 1979 we are going to see so damn many anti-guide, anti-non-resident, pro-regional and discriminatory proposals from the public, Department of Fish and Game, Administration (we may see these anyway) and even the Game Board, that even if the 1980 Game Regulations don't put us all out of business the legislative and regional game boards will! Before ANY of us jumps on the band wagon to throw out the Exclusive Guide Areas we had better take a long hard look at the consequences; and at the motives of those proposing such action.

Most of us received a letter from Ron Hayes advocating that we join the Natives in their efforts to throw out the Guide Law. I doubt that many of us will disagree with some of Ron's reasons, but I sure take exception to his reasonning that they'll cooperate with us in the future. Bull----! If we haven't learned yet about cooperation with groups like AFN, RuralCap and the National Park Service during this D-2 battle then we damn well deserve what would happen to us if the Guide Law were thrown out at this time. I don't care what we do, those Regional Corporations are going to try and stop us everyway they can, and the ONLY cooperation we'll as guides if the Regional Board concept goes, is the cooperation we BUY with our knowledge and expertise in booking clients and managing hunts. I'll not deny that many as any guide in business- but for the next couple years, and until the Regional Corporations realize that clients won't book with them or their people without going through guys like us who have the contacts and reputation, we aren't going to be able to even slow down this anti-white-guide movement that's been building along the coast ever since the Marine Mammal Act was passed in 1972 (and even before), much less expect any cooperation that's not forced upon them. There are admitte

exceptions, but in my experience with dog-team polar bear hunting, walrus and muskox, I've long since learned that "exceptions" have to live in the village too, and it's going to take time before the "exceptions" are in the majority and any degree of cooperation can be acheived.

What it boils down to is this. If the Guide Law were thrown out today, the guides don't have the clout necessary in Juneau to get another guide law established that would not be regional in nature. Fellows, you know as well as I do, if we are ever forced to operate under regional guide laws you had better move to the villages and get yourself adopted....it's simple as that. There will be no home in Anchorage, and guide area in Unit 9; we'll be guiding in our own back yard, or not at all.

There are several more considerations too. Those of us that lose areas to the new Monuments have an excellent chance of receiving compensation for our losses a couple years down the road when D-2 is settled and we can begin instigating class action and individual condemnation suits against the Federal Government. But these condemnation suits will only hold water IF our Exclusive Guide Area concept is effective. If the Exclusive Area concept is thrown out, or if the Board continues to accept filings on top of existing Exclusive Guide Areas, even the dumbest government attorney will be able to successfully challange our position by simply pointing out that the Exclusive Guide Areas do not, in fact, protect and insure our businesses. And if they do not protect our businesses, then they were worthless at the time of the Antiquities Act and no compensation is justified. If, on the other hand, we can successfully demonstrate, as an industyr, that the Exclusive Guide Areas are what holds the industry together and makes the system work (look at Kodiak-that system could never work without Exclusive areas, and it's being used as a model to help shape future permit systems), then we have every reason to expect to win these suits.

A last major consideration is the current situation with D-2 legislation in Washington. As an industry we have had considerable impact in the D-2 issue, as evidenced by the House version of HR-39 which gave guides grandfather rights for up to 25 years in certain National Parks created by that Act. During the past serveral months your Association and others have been working to expand this influence but our efforts can only succeed if we present a unified and responsible 'front'. If we are in-fighting over areas and guide laws-and even the basic concept on which the industry survives, it won't take our enemies long to sense our confusion and make us look like a bunch of greedy, savage entrepreneurs back in Washington.

Yet I'm not suggesting that we sit back and do nothing. Ron's letter points out two basic areas of conflict between the existing system and the industry; the issue of double jeopardy by Guide Board action after being found Not-guilty in a court of law, and the issues are controversial, but I'd like to think that they can be best handled within the industry rather than to throw them out on the floor of the legislature along with the entire Guide Law.

The Guide License and Control Board just appointed an Advisory

Committee consisting of Association representatives, non-affiliated guide members, a representative of the A.G. 's office and a Guide Boar member which presumably will be able to voice these conflicts to the Board and suggest corrective measures. Following the December meeting such suggestions might well have been hooted, but I think those of you who attended the Jan/Feb meetings came away with a different feeling. Guide Board member Chuck Keim said it best when he stated to those in attendence that one of the Board's primary functions in the future would be to stand as yet another bulwark between the ethical guide who is trying to make a living, and the Governmental (agencies) who would like to take this right away from him without just cause .

In another action the Board voted unanimously to adopt a resoluti not to hear or act upon any case against a guide for Federal treaspass violation.

I sure don't know all the answers, but it's kind've like being an American- I don't like everything that goes on. but it's still the best game in town and worth fighting for. Let's keep our Guide Law, let's fight to make certain any special guiding privileges extended to coastal residents for marine mammals come under jurisdiction of our existing Guide Board, and let's support the Advisory Committee and get our beefs before the Board, not before the public and our ememies in Juneau and Washington.

Thank you,

Lynn Castle, APHA Director

The Board of Directors of Alaska Professional Hunters Association has endorsed the open letter written by Lynn Castle.

Ray McNutt

Ray McNutt
President, APHA

SB

112

TESTIMONY OF JULIUS J. BRECHT, DIRECTOR
DIVISION OF BANKING AND SECURITIES
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

BEFORE
SENATE COMMERCE COMMITTEE

March 1, 1979

Good afternoon. My name is Julius J. Brecht, Director of the Division of Banking and Securities within the Department of Commerce and Economic Development. I would first like to take this opportunity to thank you for the opportunity to appear before this committee to offer comment on SB 112.

The Corporations and Associations Title, AS 10, requires the department to accept filings for incorporation of domestic corporations (incorporated in Alaska) and registrations of articles of incorporation for foreign corporations (incorporated outside of Alaska) doing business in the State and to maintain those files as official files of the State. The title also requires that corporations and associations keep the information on file current through the submission of annual reports and other filings.

The duties of the department in the context of AS 10 are carried out through the Corporations Section within the Division of Banking and Securities. All of the files maintained by the division in this respect are open to the public.

Fees are charged for the reproduction of various documents and certification of documents or the certification of the status of corporations on file with the division. These fees are supposedly set to cover the cost incurred by the division in administering AS 10. Those fees were set in many cases a number of years ago. Several fees were increased by statute in 1976. However, we again find ourselves faced with the situation where the dollars generated by the combined fee structure provided by AS 10 are not adequate to cover the costs incurred by the division in administering the title. These costs if not paid by the corporations in the form of fees are, of course, ultimately borne by the Alaska taxpayer.

The department, therefore, finds itself once more having to go the Legislature to seek a change in the fees at a time when the Legislature has many extremely important issues to resolve and limited time in which to accomplish those tasks.

The present bill would remedy this situation by replacing all references to specific fees in AS 10 by a directive to the department to adopt regulations setting forth the fees. Of course, those regulations are

reviewable by the Legislature pursuant to AS 44.62.190(a). The bill does not attempt to relegate to regulation the setting of taxes or penalties for late filings. Those are clear prerogatives of the Legislature. However, since the fees provided for in AS 10 are specifically to cover the cost of administering that title, setting those fees by regulation would allow the department to adjust the fees from time to time to pay the reasonable costs of administration of the title. In this way, those who enjoy the advantages of incorporation, e.g., limited personal liability, will pay for the service rather than the Alaska taxpayer.

Another provision of the bill allows for the distribution of assets of a business or non-profit corporation by the board of directors of the corporation after the corporation has been either voluntarily or involuntarily dissolved. In effect, the provision allows the corporate existence to continue up to seven years after the corporation has been dissolved for the sole purpose of distribution of assets discovered after dissolution. After that time period has lapsed, interested parties could go to court to get a determination on the discovered assets.

In summary, the provisions of the bill before you are of a housekeeping nature and will aid the corporations and associations served through a streamlined fee structure as well as aid the department in administering the title. By keeping the fees current, the corporations and not the Alaska taxpayer will pay the reasonable cost of the services rendered by the department through the Corporations Section within this division. A section-by-section analysis of the bill is attached dated January 19, 1979 and is submitted for your information.

I, therefore, urge the members of the committee to carefully consider the provisions of SB 112 and take affirmative action on it.

JJB/slp27U

02-0018 (Rev. 10/76)

STATE of ALASKA

MEMORANDUM

TO: Members of the Committee

DATE: January 19, 1979

FILE NO:

TELEPHONE NO:

FROM: Julius J. Brecht, Director
Division of Banking & Securities
Department of Commerce &
Economic Development

SUBJECT: SB-112
Corporations and
Associations Title
10 Amendment Bill
Narrative Supplement

The proposed corporations and associations legislation before you provides a number of changes to the Alaska Corporations and Associations Title, AS 10. Much of the present law was enacted in 1959 and has undergone a number of changes from time to time. A large portion of the provisions of this bill are of a "housekeeping" nature and are proposed to streamline the fee structure set out in the various chapters of AS 10.

The major provisions of the bill include (1) provision for a procedure for profit and nonprofit corporations to dispose of assets discovered after dissolution; (2) the repeal of references throughout the Title to specific fees for various services rendered by the Department of Commerce and Economic Development ("department") to corporations, cooperatives and associations doing business in the state and to the public; (3) provision that those fees will be established by the department by regulation; and (4) provision for the department to charge a fixed average annual fee per corporation, cooperative or association to each of them subject to the Title in place of charging them the various fees specified in the Title with certain exceptions. Those exceptions go mainly to the fees required for incorporation.

The following is a section-by-section review of the provisions of the bill.

Section 1. (AS 10.05.039(a)). This section repeals the reference to the specific fee for the registration of a corporation name under the Alaska Business Corporation Act ("ABCA") and replaces that provision with a requirement that the fee shall be established by the department by regulation.

Section 2. (AS 10.05.042). This section repeals the reference to a specific fee for the renewal of a registered name under ABCA and replaces it with a requirement that the fee be established by regulation.

Section 3. (AS 10.05.519(d)). This section repeals the explicit reference to "limited partnership" in the context of corporate name availability upon reinstatement of a corporation under ABCA. The department does not have the authority to regulate and does not maintain files on limited partnership names. Therefore the reference to limited partnerships in Sec. 519(d) is meaningless.

Section 4. (AS 10.05.594). This section provides a procedure for a corporation to dispose of assets discovered after dissolution of a corporation under ABCA. Presently, Alaskan corporations may not be reinstated if they have been dissolved for more than two years, and therefore timely distribution of assets is severely hampered. There have been several instances in the recent past where good title could not be given to property discovered after dissolution. This section continues the corporate existance for an additional five years after dissolution solely for the purpose of disposing of the property. After that five year period, the section provides that a court resolution could be obtained. See, Section 19 of this memorandum for a similar provision for nonprofit corporations under AS 10.20.

Section 5. (AS 10.05.708(a)). This section repeals the reference in ABCA to specific filing fees for the filing of articles of incorporation for domestic and foreign corporations, with the exception of nonprofit corporations regulated under AS 10.20, based on the capital stock of a corporation. That provision is replaced with the requirement that the department establish these fees by regulation based on the amount of authorized capital stock.

Section 6. (AS 10.05.711(a)). This section repeals the reference in ABCA to specific filing fees for filing amendatory or supplemental articles of incorporation for domestic and foreign corporations, with the exception of nonprofit corporations regulated under AS 10.20, based on the capital stock of a corporation. That provision is replaced with the requirement that the department establish these fees by regulation based on the amount of change in the authorized capital stock.

Section 7. (AS 10.05.714). This section repeals the reference to the specific fees for appointment, amendment, or revocation of appointment of a process agent for a foreign corporation under ABCA and replaces those provisions by the requirement that the fees be established by the department by regulation.

Section 8. (AS 10.05.720). This section repeals the reference to the explicit fee for the issuance of a certificate or a duplicate of a certificate of the payment of the annual tax and filing of the annual

report required of business corporations under ABCA. In place of the explicit fee there is established the requirement that the department set the fee by regulation.

Section 9. (AS 10.05.747). In (a) of this section, the reference to a specific filing fee for instruments not otherwise provided in ABCA is repealed and replaced by a requirement that the fee be established by regulation. In (b) of the section, the department is given authority to establish by regulation and charge a fixed average annual fee per corporation to each corporation subject to ABCA. This fee would be charged by the department in place of charging corporations the various fees specified in ABCA with certain exceptions. Those exceptions go to the following: (1) the fee required for the registration of a corporate name, (2) the incorporation fee based on the initial capitalization of a corporation, and (3) the fee based on a subsequent change of the capitalization of the corporation. The fixed annual fee would also cover the cost of routine administrative services rendered to the corporation by the department. For example, a given corporation may require numerous services of the department throughout the year including change of registered agent, amendment of the articles of incorporation (other than changes of capitalization), etc. All of these various fees require the department's corporation staff to expend considerable time maintaining a system to collect the correct fees required by statute for approximately 10,000 corporations. With one flat fee, the accounting system would be far easier and less burdensome on both the department and the corporation in that seperate accounting of each and every fee on a case-by-case basis could be avoided. See, Sections 18, 21 and 23 of this memorandum for similar provisions under AS 10.15, 10.20, and 10.25.

Section 10. (AS 10.05.750). This section repeals the requirement of ABCA that a certificate of withdrawal of a foreign corporation from registration be filed with the Office of the Clerk of the Superior Court, in addition to a filing with the department. At the present time, the department maintains the primary files on foreign corporations and is required to provide the Superior Court with an updated list pursuant to AS 10.05.630. The additional filing with the Superior Court under Sec. 750 is therefore redundant and unnecessary. In addition, this section repeals the reference to the specific fee for the filing of the certificate and replaces it with the requirement that the department establish the fee by regulation.

Section 11. (AS 10.05.753). This section repeals the reference in ABCA to the specific fee for the dissolution of a domestic business corporation and replaces it by a requirement that the fee be established by the department by regulation.

Section 12. (AS 10.05.756). This section repeals the reference in ABCA to the specific fee for filing a certificate of dissolution from the state of origin of a foreign corporation and replaces it with the requirement that the fee be established by the department by regulation.

Section 13. (AS 10.05.762). This section repeals the fee required for furnishing a certified copy of any instrument under ABCA and replaces it with the requirement that the fee be established by the department by regulation.

Section 14. (AS 10.15.255). This section repeals the reference in the Alaska Cooperative Corporation Act ("ACCA") to the specific fee for filing of terminated contracts and replaces it with the requirement that the fee be established by the department by regulation.

Section 15. (AS 10.15.260). This section repeals the reference in ACCA to a specific fee for filing of a list of names of all persons whose contracts have been terminated and replaces it with the requirement that the fees be established by the department by regulation.

Section 16. (AS 10.15.535). This section repeals and reenacts the requirement in ACCA that a license fee be charged to each cooperative authorized by its articles to issue stock, and the fee is to be established by the department by regulation based on the amount of stock issued.

Section 17. (AS 10.15.545). This section repeals the reference in ACCA to the specific license fee for cooperatives having no authorized shares of capital stock and replaces it by the requirement that the fee will be established by the department by regulation.

Section 18. (AS 10.15.555). In (a) of this section, the reference in ACCA to the specific fees for various services rendered to cooperative corporations are repealed and replaced by the requirement that the fees will be established by regulation. Those services include the filing of the articles of incorporation or articles of consolidation for a new cooperative, articles of amendment, restated articles, or articles of merger, statement of intent to dissolve, statement of revocation of voluntary dissolution proceedings, articles of dissolution, and other statements. In (b) of this section, the department is given the authority to establish by regulation and charge a fixed average annual fee per cooperative corporation to each corporation subject to ACCA. This fee would be charged by the department in place of charging the corporations the various fees specified in ACCA with the exception of fees related to the initial incorporation of the corporation. The fixed annual fee would also cover the cost of routine administrative services rendered to the cooperative by the department. See, Section 9 of this memorandum for further explanation.

Section 19. (AS 10.20.450). This section provides a procedure for a nonprofit corporation under the Alaska Nonprofit Corporations Act ("ANCA") to dispose of assets discovered after dissolution. Presently an Alaskan nonprofit corporation may not be reinstated if it has been dissolved for more than two years, and therefore the timely distribution of assets is severely hampered. There have been several instances in the recent past where good title could not be given to property discovered after dissolution. This section continues the corporate existance for an additional five years after dissolution solely for the purpose of disposing of the property. After that five year period, the section provides that a court resolution could be obtained. See, Section 4 of this memorandum for a similar provision for business corporations under ABCA.

Section 20. (AS 10.20.530). This section repeals the reference in ANCA to the specific fee for service of process on the commissioner for nonprofit corporations and replaces that provision with a requirement that the fee be established by the department by regulation.

Section 21. (AS 10.20.635). In (a) of this section, the reference to the specific fees for various services rendered by the department are repealed and replaced by the requirement that the fees will be established by the department by regulation. In (b) of this section, the department is given authority to establish by regulation and charge a fixed average annual fee per corporation for each corporation subject to ANCA. The fixed annual fee would be charged by the department in place of charging corporations the various fees specified in ANCA with the exception of the fee for incorporation. The fixed annual fee would also cover the cost of routine administrative services rendered by the department to the corporation. See, Section 9 of this memorandum for further explanation.

Section 22. (AS 10.20.640). This section repeals the reference in ANCA to the specific fee structure to be charged for certified copies of instruments and requires the department to establish a fee structure by regulation.

Section 23. (AS 10.25.530). In (a) of this section, reference in the Alaska Electric and Telephone Cooperative Act ("AETCA") to various specific fees is repealed and replaced by the requirement that the fees will be established by the department by regulation. In (b) of this section, the department is given authority to establish by regulation and charge a fixed annual fee per cooperative for each cooperative subject to AETCA. This fee would be charged by the department in place of charging corporations the various fees that are specified in AETCA with one exception. A cooperative would still have to pay the initial incorporation fee required by Sec. 530(a)(1). The fixed annual fee would also cover the cost of routine administrative services rendered to the corporation by the department. See, Section 9 of this memorandum for further information.

Section 24. (AS 10.35.060). This section repeals the reference in the Alaska Business Act ("ABA") to the specific fee for the registration of a business name and replaces it with the requirement that the fee be established by the department by regulation.

Section 25. (AS 10.35.070). This section repeals the reference in ABA to the specific fee for the renewal of a registered business name and replaces it by the requirement that the fee be established by the department by regulation.

Section 26. (AS 10.40.140(a)). This section repeals the reference in the Alaska Religious Corporations Act to the specific fee for a filing of any document and requires that the fee be established by the department by regulation.

Section 27. This section states the effective date of the Act as July 1, 1979. This date is chosen as the beginning of FY '80. It is felt that regulations establishing the various fees could be in finalized form by that time, and if necessary the fees could be adopted by emergency regulation.

In summary, the bill before you is basically a housekeeping measure to aid in the better administration of the Corporations and Associations Title and to provide a reasonable mechanism for the distribution of assets discovered after dissolution of a business or nonprofit corporation.

I urge the committee to consider thoughtfully the provisions of the bill. I stand ready to answer any questions you may have concerning this legislation.

JJB/mh4/2

Δ fees to adm from statutory control.

Introduced: 2/6/79
Referred: Commerce and Finance

IN THE SENATE

BY THE COMMERCE COMMITTEE

SENATE BILL NO. 112

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled. "An Act relating to corporate dissolution and reinstatement, and fees paid by businesses and corporations; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 10.05.039(a) is amended to read:

(a) The fee for registration of a corporate name shall be established by the department by regulation [IS $2 FOR EACH MONTH, OR FRACTION OF EACH MONTH, BETWEEN THE DATE OF FILING THE APPLICATION AND DECEMBER 31 OF THE CALENDAR YEAR IN WHICH THE APPLICATION IS FILED].

* Sec. 2. AS 10.05.042 is amended to read:

Sec. 10.05.042. RENEWAL OF REGISTERED NAME. A corporation which has registered its corporate name may renew the registration from year to year by filing an application for renewal each year setting out the facts required in an original application for registration and a certificate of good standing required for an original registration and by paying a fee established by the department by regulation [OF $10]. An application for renewal may be filed between October 1 and December 31 in each year. The renewal of the registration extends the registration for the following calendar year.

* Sec. 3. AS 10.05.519(d) is amended to read:

(d) A corporation dissolved by the commissioner under the provisions of this section may be reinstated by the commissioner at any time within two years from the date of the certificate of involuntary dissolution whenever it is established to the satisfaction of the com-

missioner that in fact there was no cause for the dissolution, or whenever the neglect or delinquency resulting in dissolution has been corrected and payment made of double the amount delinquent along with the amount the corporation would have paid had it not been dissolved. Reinstatement may not be authorized if the same or a deceptively similar corporate, [LIMITED PARTNERSHIP,] reserved or registered name is currently on file with the commissioner, unless the corporation being reinstated contemporaneously amends its articles of incorporation to change its name to conform with the provisions of this chapter.

* Sec. 4. AS 10.05.594 is amended by adding new subsections to read:

(b) If a dissolved corporation is the owner of real or personal property, or claims an interest in or lien upon any real or personal property, the corporation through its board of directors, continues to exist for five years after the date of dissolution for the purpose of conveying, transferring, or releasing the real or personal property or interest in or lien upon that property. A dissolved corporation through its board of directors, continues to exist for the purpose of being made a party in any action or proceeding arising before its dissolution and involving the title to real or personal property or any interest in it. The action or proceeding may be instituted and maintained in the same manner as the dissolution of the corporation. This subsection does not affect or suspend any statute of limitations applicable to a claim.

(c) For the purpose of service of process, notice, or demand within the prescribed time following dissolution, the commissioner is an agent of the dissolved corporation upon whom service may be made in the manner prescribed in AS 10.05.057(b).

* Sec. 5. AS 10.05.708(a) is amended to read:

(a) A domestic or foreign corporation which is required by law to file articles of incorporation with the department, except corporations

organized under AS 10.20 and foreign corporations organized under the laws of the United States or the laws of a state or territory of the United States or the laws of a foreign country for the same purposes as those allowed under AS 10.20, shall pay to the commissioner a filing fee established by the department by regulation. The filing fee shall be based on the amount of authorized capital stock of the corporation.

[,(1) IF THE AUTHORIZED CAPITAL STOCK OF THE CORPORATION IS $100,000, OR LESS, A FILING FEE OF $30;

(2) IF THE AUTHORIZED CAPITAL STOCK OF THE CORPORATION EXCEEDS $100,000, THE FEE SET FORTH IN (1) OF THIS SUBSECTION PLUS AN ADDITIONAL FEE OF 20 CENTS FOR EACH $1,000, OR FRACTION OF $1,000, OF AUTHORIZED CAPITAL STOCK ABOVE $100,000;

(3) IF THE AUTHORIZED CAPITAL STOCK EXCEEDS $1,000,000, THE FEES SET FORTH IN (1) AND (2) OF THIS SUBSECTION PLUS AN ADDITIONAL FEE OF $15 FOR EACH $1,000,000, OR FRACTION OF $1,000,000, OF AUTHORIZED CAPITAL STOCK OVER $1,000,000.]

* Sec. 6. AS 10.05.711(a) is amended to read:

(a) A domestic or foreign corporation, except corporations organized under AS 10.20 and foreign corporations organized under the laws of the United States or the laws of a state or territory of the United States or the laws of a foreign country for the same purposes as those allowed under AS 10.20, filing amendatory or supplemental articles of incorporation, or certificates of increase or decrease of capital stock with the department, shall pay to the commissioner

(1) for filing amendatory or supplemental articles which do not increase capital stock, or for filing a certificate of decrease of capital stock, a fee established by the department by regulation [OF $10];

(2) for filing amendatory or supplemental articles which do

not increase capital stock, or for filing a certificate of increase of capital stock, a fee established by the department by regulation based on the amount of change in the authorized stock of the corporation. [OF $10, PLUS

(A) A FURTHER FEE OF 20 CENTS PER $1,000 OR FRACTION OF $1,000 OF AUTHORIZED INCREASE OF CAPITAL STOCK ABOVE $100,000 AND LESS THAN $1,000,000;

(B) A FURTHER FEE OF $15 PER $1,000,000 OR AUTHORIZED INCREASE OVER $1,000,000.]

* Sec. 7. AS 10.05.714 is amended to read:

Sec. 10.05.714. FEES ON APPOINTMENT OR REVOCATION OF APPOINTMENT OF PROCESS AGENT. (a) A foreign corporation filing with the department a certificate of the appointment and consent of the agent residing in the state, or a certificate of revocation of the appointment of the resident agent shall pay a fee [OF $5] to the commissioner established by the department by regulation.

(b) For filing a statement, mentioned in AS 10.05.054(a) and (b), of change of address of registered agent, the agent shall pay a fee [OF $25] to the commissioner established by the department by regulation.

* Sec. 8. AS 10.05.720 is amended to read:

Sec. 10.05.720. FAILURE TO PAY TAX OR MAKE REPORT AS PRECLUDING SUIT BY CORPORATION AND CERTIFICATE OF PAYMENT OR FILING AS EVIDENCE. No domestic or foreign corporation may commence or maintain a suit, action or proceeding in a court in the state without alleging and proving that it has paid its annual corporation tax last due and has filed it annual report for the last calendar or fiscal year for which the report became due. A certificate of the payment of the annual tax and filing of the annual report is prima facie evidence of the payment of the tax and the filing of the annual report. The commissioner shall

issue the certificate or a duplicate for a fee established by the department by regulation [OF 25 CENTS].

* Sec. 9. AS 10.05.747 is amended to read:

Sec. 10.05.747. OTHER FILING FEES [FOR INSTRUMENTS NOT OTHERWISE PROVIDED FOR]. (a) The filing fee for an instrument not otherwise provided for in this chapter shall be established by the department by regulation [IS $10].

(b) The department may by regulation charge each corporation subject to this chapter a fixed fee in place of the various fees specified in this chapter, with the exception of AS 10.05.039, 10.05.708, and 10.05.711, and for routine administrative services rendered to a corporation by the department.

* Sec. 10. As 10.05.750 is amended to read:

Sec. 10.05.750. FEES AND PENALTIES PAYABLE ON WITHDRAWAL OF FOREIGN CORPORATION. A registered foreign corporation may withdraw from the state upon payment of all annual coporation taxes and penalties due at the time of desired withdrawal, and by filing with the department [AND IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT WHERE ITS ARTICLES ARE ON FILE,] a certificate of withdrawal, signed by its proper officers and under its corporate seal. The fee for filing the certificate with the department shall be established by the department by regulation [IS $5. HOWEVER, ALL WITHDRAWALS MADE IN THE STATE BEFORE MARCH 29, 1957, ARE VALIDATED AND CONFIRMED].

* Sec. 11. AS 10.05.753 is amended to read:

Sec. 10.05.753. FEES ON DISSOLUTION OF DOMESTIC CORPORATION. A domestic corporation shall pay to the commissioner for the use of the state a fee established by the department by regulation [OF $5] for filing the instruments mentioned in this chapter providing for the dissolution of domestic corporations.

* Sec. 12. AS 10.05.756 is amended to read:

Sec. 10.05.756. TAXES, PENALTIES AND FEES ON FILING CERTIFICATE OF DISSOLUTION OF FOREIGN CORPORATION. A foreign corporation desiring to file a certificate of dissolution from the state of its origin may file the certificate, when signed by the proper state officer, under seal, upon payment of all annual corporation taxes and penalties due at the time of dissolution. The filing fee in the office of the commissioner shall be established by the department by regulation [IS $5].

* Sec. 13. AS 10.05.762 is amended to read:

Sec. 10.05.762. FEES FOR CERTIFIED COPIES OF INSTRUMENTS. The fee for furnishing a certified copy of any instrument shall be established by the department by regulation [IS $1 FOR THE FIRST THREE FOLIOS OR LESS AND 20 CENTS A FOLIO FOR EACH ADDITIONAL FOLIO. HOWEVER, THE CHARGE FOR A CERTIFIED COPY OF ARTICLES OF INCORPORATION IS $5 FOR THE FIRST 20 FOLIOS OR LESS AND 20 CENTS A FOLIO FOR EACH ADDITIONAL FOLIO].

* Sec. 14. As 10.15.255 is amended to read:

Sec. 10.15.255. TERMINATION OF FILED CONTRACT. When a contract filed under AS 10.15.230 - 10.15.260 has been terminated in any manner, the cooperative shall upon demand, give a statement of termination to the member party to the contract, who may file the statement in the office of the precinct recorder where the contract was originally filed. The precinct recorder shall stamp "expired" after the name of the member in the alphabetical record. The fee for the filing and stamping shall be established by the department by regulation [IS 25 CENTS].

* Sec. 15. AS 10.15.260 is amended to read:

Sec. 10.15.260. FILING OF LIST OF TERMINATED CONTRACTS. A cooperative may file in the office of the precinct recorder where the contract was originally filed a sworn list of the names of all persons whose contracts have been terminated in a manner other than by expiration of

their term. The precinct recorder shall stamp "expired" after the name of each of those persons in the alphabetical record. The fee for the filing and stamping shall be established by the department by regulation [IS TWO CENTS FOR EACH NAME].

* Sec. 16. AS 10.15.535 is repealed and re-enacted to read:

Sec. 10.15.535. DETERMINATION OF LICENSE FEE FOR COOPERATIVE AUTHORIZED TO ISSUE CAPITAL STOCK. The license fee of each cooperative authorized by its articles to issue capital stock shall be established by the department by regulation based on the amount of authorized capital stock.

* Sec. 17. AS 10.15.545 is amended to read:

Sec. 10.15.545. LICENSE FEE FOR COOPERATIVE WITHOUT CAPITAL STOCK. The license fee of each cooperative having no authorized shares of capital stock shall be established by the department by regulation [IS $25].

* Sec. 18. AS 10.15.555 is amended to read:

Sec. 10.15.555. MISCELLANEOUS FEES AND CHARGES. (a) The department shall establish by regulation and charge and collect from a cooperative fees for filing

(1) articles of incorporation or articles of consolidation for a new cooperative [,$15 TOGETHER WITH THE PROPORTIONATE PART OF THE ANNUAL LICENSE FEE PAYABLE FOR THE SUCCEEDING FRACTION OF THE FISCAL YEAR];

(2) articles of amendment, restated articles, or articles of merger, [$10,] and, if the articles provide for an increase of the amount of authorized capital stock of the cooperative, the filing cooperative shall also pay the proportionate part of the annual license fee for the succeeding fraction of the fiscal year, payable by a cooperative whose authorized shares equal the newly increased authorized shares of

the filing cooperative, less the annual license fee already paid for the succeeding fraction of the fiscal year by the filing cooperative; but filing articles decreasing the authorized shares does not reduce the annual license fee of the filing cooperative until the beginning of the fiscal year following that in which the articles were filed;

(3) statement of intent to dissolve [,$5];

(4) statement of revocation of voluntary dissolution proceedings [,$5];

(5) articles of dissolution [,$10];

(6) all other statements, except an annual statement [,$5].

(b) The department may by regulation charge each cooperative corporation subject to this chapter a fixed annual fee in place of charging cooperative corporations the various fees specified in this chapter, with the exception of AS 10.15.535, (a)(1) of this section, and for routine administrative services rendered to the cooperative corporation by the department.

* Sec. 19. AS 10.20.450 is amended by adding new subsections to read:

(b) If a dissolved corporation is the owner of real or personal property, or claims any interest in or lien upon any real or personal property, the corporation through its board of directors, continues to exist for five years after the date of dissolution for the purpose of conveying, transferring, or releasing the real or personal property or interest in or lien upon that property. In addition, a dissolved corporation through its board of directors, continues to exist for the purpose of being made a party in any action or proceeding arising before dissolution and involving the title to real or personal property or any interest in it. The action or proceeding may be instituted and maintained in the same manner as before the dissolution of the corporation. This subsection does not affect or suspend any statute of limitations

applicable to a claim.

(c) For the purpose of service of process, notice, or demand within the prescribed time following dissolution, the commissioner is an agent of the dissolved corporation upon whom service may be made in the manner prescribed in AS 10.05.057(b).

* Sec. 20. AS 10.20.530 is amended to read:

Sec. 10.20.530. SERVICE ON COMMISSIONER. When a foreign corporation authorized to transact business in the state, or not authorized to transact business in the state but doing so, fails to appoint or maintain a registered agent in the state, or when a registered agent cannot with reasonable diligence be found at the registered office, or when the certificate of authority of a foreign corporation is suspended or revoked, the commissioner is an agent upon whom process, notice, or demand may be served. Service on the commissioner shall be made by delivering to and leaving with him, or with a person designated by him in the corporation division of his office, duplicate copies of the process, notice or demand, accompanied by a fee established by the department by regulation [OF $10]. The commissioner shall immediately have one copy forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under whose laws it is incorporated. Service on the commissioner is returnable in not less than 30 days.

* Sec. 21. AS 10.20.635 is amended to read:

Sec. 10.20.635. FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES. (a) The commissioner shall establish by regulation, charge and collect for

(1) filing articles of incorporation and issuing a certificate of incorporation [,$30];

(2) filing articles of amendment and issuing a certificate of

amendment [,$15];

(3) filing restated articles of incorporation and issuing restated certificate of incorporation [,$15];

(4) filing articles of merger or consolidation and issuing a certificate of merger or consolidation [,$15];

(5) filing a statement of change of address of registered office or change of registered agent, or both [,$10];

(6) filing articles of dissolution [,$10];

(7) filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority [,$30];

(8) filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority [,$15];

(9) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state [,$15];

(10) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state [,$15];

(11) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal [,$10];

(12) filing any other statement or report, including an annual report, of a domestic or foreign corporation [,$5].

(b) The department may by regulation charge each corporation subject to this chapter a fixed annual fee in place of the various fees specified in this chapter, with the exception of (a)(1) of this section and for routine administrative services rendered to the corporation by the department.

* Sec. 22. AS 10.20.640 is amended to read:

Sec. 10.20.640. FEE FOR CERTIFIED COPIES OF INSTRUMENTS. The fee for furnishing a certified copy of any instrument shall be established by the department by regulation [IS $1 FOR THE FIRST THREE FOLIOS OR LESS AND 20 CENTS A FOLIO FOR EACH ADDITIONAL FOLIO. HOWEVER, THE CHARGE FOR A CERTIFIED COPY OF ARTICLES OF INCORPORATION IS $5 FOR THE FIRST 20 FOLIOS OR LESS AND 20 CENTS A FOLIO FOR EACH ADDITIONAL FOLIO].

* Sec. 23. AS 10.25.530 is amended to read:

Sec. 10.25.530. FEES. (a) The commissioner shall establish by regulation, charge and collect filing fees for

(1) filing articles of incorporation [,$15];

(2) filing articles of amendment [,$10];

(3) filing articles of consolidation or merger [,$10];

(4) filing articles of conversion [,$15];

(5) filing certificate of election to dissolve [,$5];

(6) filing articles of dissolution [,$10];

(7) filing certificate of change of principal office and designation or change of registered office and registered agent [,$5]; and

(8) acting as agent for service of process [,$10].

(b) The department may by regulation charge each cooperative subject to this chapter a fixed annual fee in place of the various fees specified in this chapter, with the exception of (a)(1) of this section, and for the routine administrative services rendered to the corporation by the department.

* Sec. 24. AS 10.35.060 is amended to read:

Sec. 10.35.060. FEE FOR AND DURATION OF REGISTERED NAME. The fee for the initial registration of a business name shall be established by the department by regulation [IS $20]. The year in which the regis-

tration becomes effective is considered a full year of registration and the registration is effective until the close of the fifth calendar year beginning with the year of initial registration.

* Sec. 25. AS 10.35.070 is amended to read:

Sec. 10.35.070. RENEWAL OF REGISTERED NAME. A registered business name may be renewed every five years if an application for renewal is filed. An application for renewal must set out the facts required in an original application for registration and be accompanied by a renewal fee to be established by the department by regulation [OF $20]. An application for renewal may be filed between October 1 and December 31 of any year. The renewal of the registration extends the registration for the following five calendar years.

* Sec. 26. AS 10.40.140(a) is amended to read:

(a) Any document required to be filed with the commissioner under this chapter shall be accompanied by a fee to be established by the department by regulation [OF $10].

* Sec. 27. This Act takes effect July 1, 1979.

Recieved Senate Commerce 4/26/80

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill 112 am
Title "An Act relating to corporate dissolution and reinstatement, and fees . . . paid by businesses and corporations; and providing for an effective date."
Requested by House Commerce Committee Date 4/24/80

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Legal Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES						
200	TRAVEL		7.5	8.1	8.7	9.4	10.2
300	CONTRACTUAL		5.0	5.4	5.8	6.3	6.8
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND		12.5	13.5	14.5	15.7	17.0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is estimated that between one and two additional days per week of attorney time will be required to enforce the corporate records discovery provisions of this bill. Since this time is less than one-half of an attorney's time, no additional personal services expense has been shown. If this new work is undertaken, however, some delay in existing workload will occur. Direct out-of-pocket expenses are estimated $7,500 for travel and $5,000 for deposition/reporter services, during the first year. Since many of the corporations to be examined are headquartered out of state, substantial travel will be required. Costs have been increased by 8% annually for inflation.

IV. DATE April 24, 1980 PREPARED BY Richard L. Pegues, Admin. Officer
AGENCY Dept. of Law
PHONE 465-3695

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

LAW OFFICES OF
FINDLEY & PASTORINO
110 SEWARD STREET
JUNEAU, ALASKA 99801
(907) 586-3811

THOMAS W. FINDLEY
RAYMOND C. PASTORINO

February 8, 1979

Senator Brad Bradley
Pouch "V"
Juneau, Alaska 99811

RE: Senate Bill 112

Dear Senator Bradley:

Thank you for your kindness in offering me the opportunity to comment on Senate Bill 112. At this time I do not anticipate filing any comments or position papers.

You asked if I knew of any persons interested in this legislation. William B. Rozell, a partner in Faulkner, Banfield, Doogan and Holmes, 311 Franklin Street, Juneau, Alaska 99801, may wish to offer his comments.

Again, thank you for giving me this opportunity.

Very truly yours,

Thomas W. Findley

Thomas W. Findley

TWF:km

SB
133

Latest PROPOSED SUBSTITUTE FOR SENATE BILL NO. 133

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 42.05.711 is amended by adding a new subsection to read:

Nonprofit electric cooperatives organized under AS 10.25 shall, upon affirmative resolution of their respective boards of directors, be exempt from the provisions of Article 5 of this Chapter in regard to any rates or rate schedules which have been adopted by representatives of the consumers serving as the board of directors of that cooperative.

Sorely needed restraints

Are PUC appointments 6 years?

$2,000,000 PUC

W.C Rhoades -

BILL ANALYSIS

ASSIGNMENT DATE 2/23/79

UNASSIGNED

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Commerce	Colletta, Kerttula and Bradley	SB 133

DEPARTMENT POSITION

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Carolyn S. Guess Alaska Public Utilities Commission		Carolyn S. Guess	2/23/79

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL

(3) PROGRAM EFFECTS OF BILL

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

APUC COMMENTS ON SB 133

Senate Bill No. 133 would exempt from economic regulation the following non-profit cooperative corporations:

Alaska Village Electric Cooperative, Inc. (AVEC)
Chugach Electric Association
Copper Valley Electric Association
Glacier Highway Electric Association
Golden Valley Electric Association
Homer Electric Association
Kodiak Electric Association
Kotzebue Electric Associaton
Matanuska Electric Association
Naknek Electric Association
Nushagak Electric Cooperative
OTZ Telephone Cooperative, Inc.

Bristol Bay Telephone Cooperative
Copper Valley Telephone Cooperative, Inc.
Matanuska Telephone Association
Nushagak Telephone Cooperative, Inc.

The number of customers served by the above named electric cooperatives is approximately 72,000 and the telephone cooperative consumers who would be affected by this bill are approximately 20,000. Under the existing statute the Commission provides public protection to these 92,000 consumers in the determination of reasonable and fair rates

and the resolution of consumer complaints regarding billing practices, rates and charges, quality and availability of service. In addition the Commission has provided a streamlined procedure for approval of rate increases necessitated by an increase in the cost of fuel, guaranteeing to the consumer that documented increases in fuel costs have been received by the Commission.

An analysis of the action taken by the Commission during the past two years in regard to cooperative utilities indicates minimum discrepancies between the revenue requirement requested by a utility and granted by the Commission. In the area of rate design, however, the Commission has responded to innovated requests by both electric and telephone cooperatives. The Staff has and is currently performing analysis of and recommendations for the following specific rate design requests:

(1) A reserve capacity ch for residential, commercial and large er consumers of Matanuska Electric Association

(2) The elimination of el ctric heat promotional rates;

(3) Changes in the traditional electric declining block rate structures;

(4) Elimination of numerous rate schedules for various types of electric consumers;

(5) The "unbundling" of telephone rates of Matanuska Telephone Association;

(6) Seasonal electric rates.

In addition, the Commission was directed and funded by the 1977 State Legislature to provide a cost-of-service and management audit of AVEC in order to avert an economic crisis created by the refusal of the REAA schools to sign purchase power contracts with AVEC because the schools believed the rate structure to be discriminatory.

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> "This Section does not perceive any difference between REA cooperatives or any other public utility even though their Boards of Directors are elected by consumer members of the Association. The consumer complaints reaching the Staff are identical to those of the investor-owned utilities. It is evident that the customers of REA cooperatives experience the same problems in the resolution of their complaints as do the customers of privately-owned utilities. Further, it is apparent to this Section that customers of the cooperatives do not perceive a difference between utilities regardless of

the ownership structure. The question as we perceive it is not one of who "owns" the cooperative but who "controls" the cooperative.

Ther are a number of issues that the Legislature may wish to consider in making a determination of whether this bill is in the public interest. They include:

1) The Public Utilities Regulatory Policies Act of 1978, a part of the National Energy Act requires that at least one electric cooperative, Chugach Electric Association, if not regulated by a State Commission, submit to FERC regulation for the purpose of conside ng standards to carry out the Federal purposes conservation of energy supplied by utilities efficicient use of utility resources; equitable rates. Those ratemaking standards that either a federal or state regulating agency must address for an electric utility selling more than 500 million kwh annually, include;

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The Commission has no knowledge at this time of whether the passage of this Legislation would jeopardize REA funding to any of the telephone and electric cooperatives in the State. During the year 1978, the former field representative of REA indicated that one-quarter of the annual monies available to cooperatives in the U.S. was allocated to utilities within the State of Alaska.

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The Commission is available to answer any questions of the Legislature in its determination of whether the public interest would be served by the economic deregulation of electric and telephone cooperatives within the State of Alaska.

CONSUMER COMPLAINTS RECEIVED BY APUC-1978

	All Regulated Utilities	Coop-Electric and Telephone Utilities
Billing practices	274	107
Rates and Charges	262	108
Quality of Service	464	93
Line extensions or service availability	268	160
Total	1,268	468

Table II All REA Cooperative electric and telephone utilities

	Electric	Telephone	Total
Billing practices	88	19	107
Rates and Charges	86	22	108
Quality of Service	53	40	93
Line extension or service availability	96	64	160
Total	323	145	468

SENATE BILL 133

Testimony by David Hutchins, Executive Director
Alaska Rural Electric Cooperative Association

SENATE COMMERCE COMMITTEE
March 8, 1979

The purpose of SB 133 is to scale down APUC regulation of non-profit electric cooperatives to the same level of regulation now provided by law for municipally owned utilities.

The current responsibility of the APUC to provide very intensive regulation is more than can be adequately performed by the commission with the resources that have been provided. The Legislature needs to make a very basic policy decision:
(1) The responsibilities of the APUC must be reduced or,
(2) Very substantial increases in funding and staff salaries must be made in order for the APUC to attract and retain the expertise needed to make intensive regulation work.

In his resignation statement as Administrator of the APUC in January, Mr. Ronald Lindes stated that "he believes the agency's control of utility businesses is excessive." Certainly, in so far as electric cooperatives are concerned, we believe Mr. Lindes is correct. We believe that the reduction of regulation contemplated by SB 133 is the clear choice in resolving the current problems rather than investing large new sums of money in the present level of regulations.

We believe that the public interest would be well served by de-regulating the electric cooperatives because:

(1) THE MEMBER OWNED NON-PROFIT COOPERATIVE IS INHERENTLY SELF-REGULATING.

The affairs and business practices of the cooperative are directly controlled by a member - consumer Board of Directors which is elected by and reports to the membership at least annually.

(2) A BOARD OF DIRECTORS COMPRISED OF CONSUMERS IS A BETTER REGULATOR THAN A GOVERNMENT AGENCY.

When the applications to the APUC for rate changes are examined, it is found that in nearly every case the rate increases requested have been less than the facts justified based on rates of return allowed by the APUC.

(3) ANY RATES WHICH MIGHT BE CHARGED BY A COOPERATIVE IN EXCESS OF THOSE ALLOWED BY THE APUC WOULD SIMPLY INCREASE THE CONSUMER'S EQUITY IN THE COOPERATIVE.

No profits are paid to any outside investors. All assets are used for the benefit of the consumers, and each consumer's equity is returned to him when he ceases to be a member.

(4) REGULATION BY THE APUC SUBSTANTIALLY INCREASES THE COSTS OF THE COOPERATIVE WHICH MUST BE PAID BY THE CONSUMERS.

The attached sheet provides examples of recent costs of regulation incurred by Alaska's electric cooperatives.

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

801 W. Fireweed, Suite 101, Anchorage, Ak. 99503

Sample Costs of APUC Regulation

Cooperative	Direct Cost '75 - '78	Remarks
Golden Valley	$ 116,591	$8.75 per Consumer "Regulatory Lag" cost estimated at $2.5 million
Matanuska	$ 68,563	$7.20 per Consumer
Copper Valley	$ 31,275	$14.40 per Consumer
Nushagak	$ 4,700	$9.40 per Consumer
Glacier Highway	$ 11,472	$15.40 per Consumer

David Hutchens
March 1, 1979

SENATE BILL 133

Testimony of David Hutchens, Executive Director
Alaska Rural Electric Cooperative Association

Senate Commerce Committee
March 13, 1979

The bulk of the testimony given by Commissioner Carolyn Guess of the APUC on March 8 dealt with the need perceived by the Commission to retain jurisdiction over telephone service and to retain authority to provide consumer protection and information services for the consumers served by the electric cooperatives.

In response to these comments from Commissioner Guess, a proposed substitute for SB 133 has been drafted. This proposal restricts its application only to non-profit electric cooperatives. Also, the exemption for these electric cooperatives would apply only to rates. The APUC would still retain all other jurisdiction including certification of territories to be served (Article 3), standards of service and facilities (Article 4), accounts, records, and reports (Article 6), financial and management regulation (Article 7), penalties and enforcement (Article 8), and miscellaneous provisions (Article 9).

The only exemption which this proposal would grant the electric cooperatives is an exemption from the APUC ratemaking process. Commissioner Guess testified that there have been "mi mum discrepancies between the revenue requirement requested by a ility and granted by the Commission." But despite the fact that we have eventually been granted the rates which the APUC concedes have been reasonable, it is this rate making process which provides a financial burden on the electric cooperatives.

If the proposed substitute is adopted, the only issue remaining among those raised by the Commissioner is the question of rate design. As a member of the APUC, the Commissioner would like to retain full control over exactly how the rates should be structured. We believe that this is a matter which should properly be left to the discretion of the elected representatives of the consumers. We know that our consumers are intelligent people who are quite capable of running their own cooperatives.

I would close by reiterating the point I made on March 8. The APUC is not now able to attract and retain the expertise required to make the current scheme of intensive regulation work. The Legislature needs to decide either to provide the additional funds the APUC needs to do the job it now has, or reduce the job required of the APUC. We believe that the rate regulation of non-profit electric cooperatives is one area in which the public interest would be well served by reducing the responsibility of the APUC, and I urge the adoption of the proposed substitute for SB 133.

SENATE BILL 133

Testimony of David Hutchens, Executive Director
Alaska Rural Electric Cooperative Association

Senate Commerce Committee
March 10, 1979

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SUBSTITUTE FOR SB 133

Amend AS 42.05.711 by adding a new subsection to read:

Non-profit electric cooperatives shall be exempt from the provisions of Article 5 of this chapter in regard to any rates or rate schedules which have been adopted by representatives of the consumers serving as the board of directors of that cooperative and which have been approved by the Rural Electrification Administration or its successor.

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March 1, 1979

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David Hutchens
March 1, 1979

February 14, 1979

Ms. Karen Bernstein
Information Officer
Department of Commerce
and Economic Development
Pouch D
Juneau, Alaska 99811

Dear Ms. Bernstein:

Enclosed is SENATE BILL 133 relating to public utilities.

I would appreciate your comments/position papers on this SENATE BILL to include a fiscal note, if appropriate. If you decide that a fiscal note is not required, please make such a statement in your reply. If your Department recommends specific changes, in addition to general comments, I would prefer that they be keyed to page and line numbers.

If you know of other departments or agencies that have an interest in this legislation, please let me know so that I may get the benefits of comments from all knowledgeable and interested parties.

In consideration of a productive and expeditious session, we request that your comments/position be returned to the Senate Commerce Committee within 10 days.

Sincerely,

Brad

Brad Bradley
State Senator
Chairman
Senate Commerce Committee

WEB/bm

Encl

TESTIMONY

NAME: RONALD LINDER
LIVE ~~IN~~ ~~CITIZEN~~ OF ANCHORAGE Alaska Alaska
PAST EXECUTIVE Director of the Public Utilities Commission

Speaking as a private citizen with close personal knowledge of public Utility regulation in Alaska

I strongly support Senate Bill #133 as a first step in the direction of sorely needed restraint on the regulatory powers of the Alaska Public Utilities Commission. The present degree of utility regulation is excessive. This proposed bill affords a modest degree of deregulation in a area where safeguards to protect the public interest are more than adequate.

Cooperatives organized under Alaska statute are member owned, non profit entities. The management of these cooperatives is carefully supervised by boards of directors that are elected by members of the cooperatives. There are certainly few social endeavors that are more ~~democratic~~ illustrative of our system of democracy in action than cooperatives organized and managed for the benefit of the people. A well run cooperative will prosper and offer a vitally necessary service to its members. Certainly the public interest is well served by cooperatives. Not everyone in a cooperative will be completely satisfied but ~~[illegible]~~ on balance it is truly democracy in action.

The regulators, through their spokesperson Commissioner Cross, have spoken in general opposition to ~~any~~ the relaxation of regulation. The commissioners have taken the approach that only they know best what is in the "pubic intrest" of the consumer. This attitude of paternalism is running counter to the ~~national~~ state and national feeling that government is too deeply involved in our personal and local affairs. While we in Alaska decry the over bearing paternalism of the federal government in ~~telling us~~ dictating what is best for Alaskans, we have been applying the same paternalism on a state government basis over local governments and cooperatives through the APUC. The right to succeed comes with it the right to fail. I trust more in the probably that ~~right of~~ cooperatives to succeed in their own affairs than I do in the commission with less intrest in that success or failure. Who knows best what is in the public intrest? Is it the public or bureaucratic government?

The legislature has the power to regulate commerce in Alaska. ~~You have delegated this respon~~ In the area of Utilities and other businesses you have delegated this authority to the Alaska Public Utilities Commission. ~~etc~~ Your

guidance to the Commission is in the form of AS 42.05 ~~which~~ of which ~~this~~ senate Bill # 133 is an amendment.

AS 42.05 is very broadly written legislation that grants extensive powers to the commissioners to ~~act in your~~ exercise the powers of the legislature. Commissioners are nominated by the governor and confirmed by the legislature for terms of 6 years. This means that the commissioners do not have to come back to the legislature to renew. The AS 42.05 is so broadly written as to permit ~~your~~ central state control over movie theaters, ~~rock~~ ~~stage plays~~, dramatic performances and outdoor rock concerts if the commissioners so decide.

Your commissioners have not been reluctant in using the heavy powers of this legislation. It has been an activist commission badly in need of restraint, either self imposed or imposed by the legislature. I suspect that this will be an issue you will address next year as the APUC comes up for review under the Alaska Sunset law with help from the legislative Audit report of ~~the~~ commission activities which ~~should be~~ ~~co~~ is presently in progress.

If deregulation of the cooperatives is not ~~[illegible]~~ pursued by the legislature, you are saying to your constituents that some state office ~~is better~~ knows better what is in ~~their~~ public interest than they do themselves. If this is not true then What is the power of their board of directors. Is it only the power to propose while the APUC has the power to dispose? Don't the will of the people to improve service, expand facilities or plan for the future thwarted by this approach?

The commission has exercised hindsight. What is required is foresight and that's a more difficult task better left to those with ~~the~~ economic ~~and~~ and social interest at the local level. Those that deal with their cooperative on a daily basis are far better judges of what is in their best interest. They don't need a political commission in Anchorage to tell them what is best. From first hand knowledge I can tell you that the capability of the APUC staff accurately to analyze financial proposals of utilities does not exist. It has not existed for years and it is not likely to exist for sometime in the future.

In summary, I support the proposed legislation as
immediate
the first and most obvious step in rectifying regulatory
ills that have plagued utilities and other businesses in
Alaska. A through review of the legislature that
grants regulatory powers to the RPUC is sorely needed!
both electric & telephone
The partial deregulation of cooperatives is a prudent very
low risk step in the reversal of the ominous
movement towards governmental
control over our daily lives.

Henry David Thoreau said in 1848 "That
government is best that governs best."
Governor Hammond was reelected espousing a
similar philosophy. If you agree with this premise,
then I urge you to return power to the people by
voting this proposed legislation out of
committee today with your unanimous do pass
recommendation.

I Thank you for your attention Q?

Introduced: 2/12/79
Referred: Commerce

IN THE SENATE BY COLLETTA, KERTTULA AND BRADLEY

SENATE BILL NO. 133

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to public utilities."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 42.05.711(b) is amended to read:

(b) Public utilities owned and operated by a political subdivision of the state or by a nonprofit cooperative corporation (AS 10.25) and none of whose utilities, excepting the furnishing of collection and disposal service of garbage, refuse, trash or other waste material, is in competition with any other utility, are exempt from the provisions of this chapter, other than the provisions of AS 42.05.221 - 42.05.281, unless the owner and operator elects to be subject to all provisions of this chapter. Notwithstanding any other provisions of this chapter, municipalities providing collection and disposal service of garbage, refuse, trash or other waste material within their corporate boundaries are not subject to regulation by the Alaska Public Utilities Commission unless the municipality elects to be subject to the provisions of this chapter.

(h) → amendment →

Suggested amendment

Introduced: 2/12/79
Referred: Commerce

IN THE SENATE BY COLLETTA, KERTTULA AND BRADLEY

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Have Bill Check

SUBSTITUTE FOR SB 133

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OK by Ken Rosenstein

BILL ANALYSIS

ASSIGNMENT DATE 2/23/79

UNASSIGNED

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Commerce	Colletta, Kerttula and Bradley	SB 133

DEPARTMENT POSITION

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Carolyn S. Guess Alaska Public Utilities Commission		Carolyn S Guess	2/23/79

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL

(3) PROGRAM EFFECTS OF BILL

(4) FISCAL IMPACT: ☑ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

APUC COMMENTS ON SB 133

Senate Bill No. 133 would exempt from economic regulation the following non-profit cooperative corporations:

Alaska Village Electric Cooperative, Inc. (AVEC)

Chugach Electric Association

Copper Valley Electric Association

Glacier Highway Electric Association

Golden Valley Electric Association

Homer Electric Association

Kodiak Electric Association

Kotzebue Electric Associaton

Matanuska Electric Association

Naknek Electric Association

Nushagak Electric Cooperative

OTZ Telephone Cooperative, Inc.

Bristol Bay Telephone Cooperative

Copper Valley Telephone Cooperative, Inc.

Matanuska Telephone Association

Nushagak Telephone Cooperative, Inc.

The number of customers served by the above named electric cooperatives is approximately 72,000 and the telephone cooperative consumers who would be affected by this bill are approximately 20,000. Under the existing statute the Commission provides public protection to these 92,000 consumers in the determination of reasonable and fair rates

and the resolution of consumer complaints regarding billing practices, rates and charges, quality and availability of service. In addition the Commission has provided a streamlined procedure for approval of rate increases necessitated by an increase in the cost of fuel, guaranteeing to the consumer that documented increases in fuel costs have been received by the Commission.

An analysis of the action taken by the Commission during the past two years in regard to cooperative utilities indicates minimum discrepancies between the revenue requirement requested by a utility and granted by the Commission. In the area of rate design, however, the Commission has responded to innovated requests by both electric and telephone ccoperatives. The Staff has and is currently performing analysis of and recommendations for the following specific rate design requests:

(1) A reserve capacity charge for residential, commercial and large power consumers of Matanuska Electric Association;

(2) The elimination of electric heat promotional rates;

(3) Changes in the traditional electric declining block rate structures;

(4) Elimination of numerous rate schedules for various types of electric consumers;

(5) The "unbundling" of telephone rates of Matanuska Telephone Association;

(6) Seasonal electric rates.

In addition, the Commission was directed and funded by the 1977 State Legislature to provide a cost-of-service and management audit of AVEC in order to avert an economic crisis created by the refusal of the REAA schools to sign purchase power contracts with AVEC because the schools believed the rate structure to be discriminatory.

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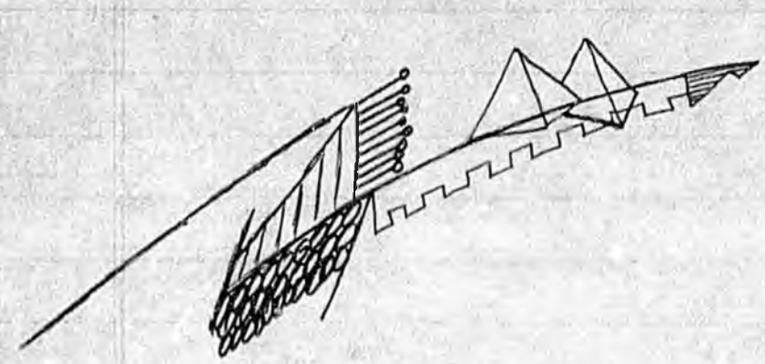
SB-133 David Hutchens:

Past Director Ak P.U.C.



SB-133
Sharon Macklin
279-3923

✓

called 3/12 AM
Got recording out of Town to 19th

3/11

Chris,

I see Sharon Macklin's name & phone # on this sheet. Does she want to testify on SB 133. She is a lobbyist for a telephone company. Have her to testify either here or by teleconference in anchorage. See which side she is on - Let me know / Brad

SB

224

Introduced: 2/13/79
Referred: Commerce and Finance

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 224

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the motor fuel tax; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 43.40.010(a) is amended to read:

(a) There is levied a tax of 19 per cent of the retail value of each [EIGHT CENTS A] gallon on all motor fuel sold or otherwise transferred within the state, except that

(1) the tax on aviation gasoline is 14 per cent of the retail value of each [FOUR CENTS A] gallon,

(2) the tax on motor fuel used in and on watercraft of all descriptions is six per cent of the retail value of each [FIVE CENTS A] gallon, and

(3) the tax on all aviation fuel other than gasoline is nine per cent of the retail value of each [TWO AND ONE-HALF CENTS A] gallon.

* Sec. 2. AS 43.40.010(b) is amended to read:

(b) There is levied a tax of 19 per cent of the retail value of each [EIGHT CENTS A] gallon on all motor fuel consumed by a user, except that

(1) the tax on aviation gasoline consumed is 14 per cent of the retail value of each [FOUR CENTS A] gallon,

(2) the tax on motor fuel used in and on watercraft of all descriptions is six per cent of the retail value of each [FIVE CENTS A] gallon, and

(3) the tax on all aviation fuel other than gasoline is nine per cent of the retail value of each [TWO AND ONE-HALF CENTS A] gallon.

* Sec. 3. AS 43.40.010 is amended by adding a new subsection to read:

(1) The Department of Revenue shall annually determine the retail value of the motor fuels taxed under this chapter and, after applying the percentages set out in this section, shall, by regulation adopted no later than May 1 of each year, establish the applicable cents-per-gallon rates to be applied on a uniform, statewide basis to each category of motor fuel. These rates become effective on the first day of the next tax year.

* Sec. 4. AS 43.40.030(a) is amended to read:

(a) Except as specified in sec. 10(j) of this chapter, a person who uses motor fuel to operate an internal combustion engine is entitled to a refund of 40 per cent of the state tax on each [SIX CENTS A] gallon if

(1) the tax on the motor fuel has been paid;

(2) the motor fuel is not aviation fuel, or motor fuel used in or on watercraft; and

(3) the internal combustion engine is not used in or in conjunction with a motor vehicle licensed to be operated on public ways.

* Sec. 5. AS 43.40.100 is amended by adding new paragraphs to read:

(4) "retail value" means the average retail price of motor fuel in each category for the previous calendar year, calculated by the Department of Revenue, based on a statewide statistical sample taken from, at least, 10 representative communities in the state on a monthly basis and published in a report to be submitted each year to the legislature no later than January 30 for that year;

(5) "tax year" means the period commencing on July 1 and ending on June 30 of the following calendar year.

* Sec. 6. TRANSITION. For the first tax year under this Act, the Department of Revenue shall determine the applicable retail values and rates of taxation under this Act for the 1979 tax year, calculated on the basis of statistical data compiled by the department in accordance with AS 43.40.100(4) for the period between the effective date of this Act and September 1, 1979. The Department of Revenue shall promulgate those rates no later than November 1, 1979. These rates become effective January 1, 1980, and remain in effect until substituted rates are established for the tax year commencing on July 1, 1980.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

AUTOMOBILE OPERATORS would face heavy new tax burdens if the Legislature adopts a proposal to change the gasoline taxes from a flat rate to a sliding scale based on retail prices. The new tax measure was recommended by Gov. Jay Hammond as one way to build up the general fund so that the state can have more money in its operational budget.

Gasoline that now retails at 75 cents a gallon would cost 79.7 cents a gallon under the new law. The present eight-cent tax that is included in the 75 cents would become a big 12.7 cents bite out of the 79.7 cent price. This would be a 59 percent tax increase for the motorist.

More frightening would be the prospect of paying higher and higher state taxes as the retail prices of gasoline increase this spring and summer. Gas that would sell for 80 cents under the present law would cost 85.6 cents under the new law. As prices continue to rise, the motorists would find their tax load increased 117 percent by the time gas is $1 a gallon. Gas that would sell for $1 under the present law would cost $1.09½ under the proposed law.

The new law would hit the motorist's pocketbook this way: a 20-gal. tankful that now costs $15 would cost $15.94 immediately and as the retail price exceeded 75 cents a gallon, the total cost would increase further. When the retail price gets to $1 a gallon the same 20-gallon tankful would cost $21.88.

STATE STATISTICS show that 62 percent of all motor vehicles are registered in Anchorage. Another 18 percent are registered in Fairbanks, Juneau and Ketchikan. Thus 80 percent of them are in the four cities.

Collections from motor fuel taxes were $24.5 million during the year ended last June 30. A 59 percent increase in this tax revenue would take $14.5 more away from the motorists than at present. If the retail price climbs and the tax rate is increased 117 percent, the extra pinch on the taxpayer would be $28.7 million.

Fuel for aircraft and boats would also come under the new tax with automatic escalation as the retail prices climb. Aviation gas is taxed under existing law at a flat rate of four cents a gallon. Under the new law this would be replaced by a tax of 14 percent of its retail price.

Thus aviation gas that now retails at $1 a gallon would become $1.09½ a gallon. If aviation gas prices climb, the gas that would under present law cost $1.30 a gallon would be $1.53½ under the proposed law. This would mean the operator of a small plane that burns 15 gallons an hour would have his operating costs increased $1.41 an hour immediately and $2.04 if the gas price climbs to $1.30.

Other aviation fuels, for jet aircraft, would also be subject to an escalating tax. Domestic airlines would be hit hard. Many international airlines would escape this tax because they use fuels brought to Anchorage under bond and delivered free of state taxes.

THIS TAX CHANGE would be obnoxious to all motor vehicle operators. It discriminates against them by compelling them, as a special category, to provide additional funds for the general operations of the state.

The state budget is already slanted against the urban centers and in favor of rural areas. Everybody is facing the pinch of local tax increases from their local governments because the state is not providing a fair share of the state revenue-sharing funds.

The 1980 budget now before the Legislature provides no increase in revenue-sharing funds for the state's municipalities. That means that the cities will receive less than in 1979 because of the inflation factor. The state pays only 80 percent of the cost of school buildings in the larger cities while it pays 100 percent of the cost in rural communities.

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Jim Wilson

ALASKA AIR CARRIERS ASSOCIATION

SB 224

FOR THE MAJORITY OF THIS TESTIMONY, I AM REPRESENTING THE ALASKA AIR CARRIERS ASSOCIATION, WHICH REPRESENTS AN $83 MILLION GROSS REVENUE INDUSTRY OF THIS STATE. THE MEMBER CARRIERS REPRESENT 85 TO 90% OF THE TOTAL REVENUE GENERATED, AND WE ARE OPPOSED TO SB 224.

I AM OPPOSED TO SB 224 AND ANY INCREASE IN MOTOR FUEL TAX.

WITH THE COST OF FUEL INCREASING ALL TOO FREQUENTLY, I BELIEVE WE WOULD BE CREATING AN UNDUE ADDED EXPENSE TO ALL USERS. THIS PROPOSED CHANGE IN MOTOR FUEL TAX WOULD COST OUR INDUSTRY AN ADDITIONAL 2.9 MILLION ACCORDING TO DEPARTMENT OF REVENUE FIGURES. I BELIEVE THAT FIGURE IS LOW BECAUSE THEIR FIGURES ARE NOT EVEN ON CURRENT RETAIL PRICES, THAT IS AVIATION FUELS ONLY.

THE DEPARTMENT OF REVENUE HAS HAD A SUBSTANTIAL INCREASE IN MOTOR FUEL TAX COLLECTED DURING THE PAST 10 YEARS, SOMETHING ON THE ORDER OF 42% PER YEAR. OUR BUSINESS HAS HAD LESS THAN 6% PER YEAR. IN 1968 TOTAL REVENUE FROM AVIATION MOTOR FUEL TAX WAS $778,000: IN 1978 IT WAS $3.3 MILLION - THAT'S OVER 400%. THERE ARE SEVERAL AREAS IN THE STATE WHERE THIS TAX IS NOT ALWAYS COLLECTED.

(EXAMPLE: PEOPLE HAVE BBL FILLED AT BULK PLANT, NOT PUT INTO AIRCRAFT)

IF ALL DISTRIBUTORS WERE REQUIRED TO COLLECT THE TAX, IT WOULD CREATE AN INCREASE IN REVENUE, WITHOUT AN INCREASE IN TAX.

THIS BILL WOULD ENPOWER THE DEPARTMENT OF REVENUE TO ESTABLISH AVERAGE RETAIL VALVE. I QUESTION THEIR ABILITY TO DO THIS, THEY ARE USING THE AIRLINE CONTRACT PRICE FOR JET FUEL IN THE ESTIMATE AND I DON'T THINK THEY KNOW WHERE THEY GOT THE PRICE FOR AVIATION GAS.

(EXAMPLE: JET - DEPT. OF REVENUE PRICE $.45

LIVINGSTON BULK RATE $.497

JUNEAU AIRPORT RETAIL W/O TAX $.692 UNDER 50 GALLONS
$.597 ~~UNDER~~ OVER 50 GALLONS

I CAN SEE ADDITIONAL PERSONNEL NEEDED TO ADMINISTER THIS EXTRA WORK LOAD, WE DON'T NEED TO ADD TO THE BUREAUCRACY.

I WILL GIVE AN EXAMPLE OF WHAT THIS PROPOSED CHANGE IN TAX STRUCTURE WILL DO. USING 100,000 GALLONS, WHICH WILL REPRESENT ABOUT 4000 FLIGHT HOURS. TODAY WE PAY $4000.00 TAX ON AVIATION GAS. UNDER PROPOSED CHANGES, USING CURRENT BULK PRICE (NOT RETAIL PRICE) OF $.66 PER GALLON, TAX WOULD BE $9240.00, OR MORE THAN DOUBLE. USING RETAIL VALVE WOULD ADD MORE THAN AN ADDITIONAL $1500.00 (JUNEAU AIRPORT).

EXAMPLE ON JET FUEL: 100,000 GALLONS REPRESENT ABOUT 3000 FLIGHT HOURS. TODAY WE PAY $2500 TAX. UNDER PROPOSED CHANGE, USING CURRENT BULK PRICE (NOT RETAIL PRICE) $.497 PER GALLON, TAX WOULD BE $4473. USING RETAIL PRICE WOULD INCREASE THIS OVER $1800 (JUNEAU AIRPORT).

AS YOU CAN SEE, THIS TAX CHANGE WOULD DOUBLE THE EXISTING TAX COLLECTED, ASSUMING NO INCREASE IN VOLUME. ALSO, AS PRICE OF FUEL ESCALATES, TAX WOULD ESCALATE ALSO, A VICIOUS CIRCLE.

THE DEPARTMENT OF REVENUE IS ESTIMATING THIS TAX WILL GENERATE a $10,000,000 INCREASE IN MOTOR FUEL TAXES. I QUESTION THOSE FIGURES. EXAMPLE: $.45 ON JET, AND OUR BULK PRICE IS $.497. JET IS RETAILING AT THE JUNEAU AIRPORT AT $.692 + TAX.

THE EXTRA EXPENSES WILL HAVE TO BE PASSED ON TO THE CONSUMER, YOUR CONSTITUENTS - OUR CUSTOMERS. WE ARE ALREADY FACED WITH HIGH INFLATION, ALL THESE REVISED TAXES WOULD DO IS ADD FUEL TO OUR RATE OF INFLATION.

AGAIN, THE ALASKA AIR CARRIERS ASSOCIATION AND ALL MEMBERS, REPRESENTING 80 TO 95% OF THE AIR TRANSPORTATION SYSTEM IN THIS STATE, ARE OPPOSED TO SB 224. WE ARE MORE THAN PREPARTED TO DO WITHOUT WHATEVER SERVICES, IF ANY, THIS TAX WOULD CREATE. THERE IS NO GUARANTEE WE WOULD SEE ANY OF THE TAX BECAUSE IT GOES TO THE GENERAL FUND.

THANK YOU

PHIL R. HOLDSWORTH, P.E.
CONSULTING ENGINEER & LEGISLATIVE COUNSEL
MINING – GEOLOGY – LANDS

PHONE 907-586-1383

326 FOURTH STREET No. 1009
JUNEAU, ALASKA 99801

February 25, 1979

Mr. William I. Waugaman
P. O. Box 80589
College, Alaska 99708

Dear Bill:

There has been no action on SB 224 to date but am requesting an opportunity to testify if it comes up in Sen. Bradley's Commerce Committee. As I interpret the bill the following would result:

Sec. 431401010(a) - Motor fuel tax.

Gasoline - 8¢ to 17¢ or a 112.5% increase
Diesel - 8¢ to 10¢ or a 25% increase

(a)(1) - Aviation gasoline.

4¢ to 12.6¢ or a 215% increase

(a)(2) - Watercraft use.

Gasoline - 5¢ to 5.1¢ or a 2% increase
Diesel - 5¢ to 3.2¢ or a 36% decrease

(a)(3) - Aviation other than gasoline.

2.5% to 4.8% or a 92% increase

Sec. 43.40.030(a) - Refund on off-highway use.

Present law - 6¢ on an 8¢ tax or 75%

New law - Gasoline 6.8¢ on a 17¢ tax or 40%
Diesel - 4¢ on a 10¢ tax or 40%

Where the present law results in a final tax of 2¢ per gallon for off-highway use, the new law would result in a tax of 10.2¢ for gasoline and 6¢ for diesel, or an increase of 410% and 200% respectively.

From the above you can see that the hardest hit are the off-highway users of gasoline. Next are the users of aviation gasoline, followed closely by the off-highway users of diesel.

These latter two groups are certain to register strong objections to the proposal, particularly when bush plane service and heavy equipment operations for road construction and mining are essential to maintain the present level of travel and employment.

The other two groups who will also oppose this legislation are the highway travelers (over 100% tax increase), and the scheduled airlines using jet fuel (a 92% increase). The only users who would have their present tax reduced are commercial fishermen, tug boat operators, etc. using diesel for fuel (a 36% decrease). Overall I would say that the passage of this legislation could result in "unequal treatment" of various classes of users, and could probably be shot down on that basis.

SB-224. Jim Wilson. Alaska Air Carriers.
Livingston Chapter.
$198,000,000 goose Revenue.

Oppose SB-224.

Ex. → 100,000 gal. = 4,000 flight hours.
some cases will = cost 100%

(Ben - Ben) 50% of fuel tax comes from the trucking industry.

Ben is concerned about the word "Average" in the bill. You can determin your own average!

John Messenger D.of Revenue →
Projected Revenue >16 mil

Phil Holsworth

Motor fuels
7¢ to 14¢

Aviation Gas.
4¢ to 12.6¢

Water Use fuels
gas 5¢ to 5.1¢
Diesel 5¢ to 3.2¢ 36% ↓

off highway use.

now 75% refund

if passed this refund is reduced!

DO-T. — In favor of TAX >.

New Tax On Motorists

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SB
232

Contact. on This Bill.
Mike Faith
AIECA

Refer to Board
of Elec. Exam.
Lunsei

SB23

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W--ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

February 28, 1979

M E M O R A N D U M

TO: The Honorable Clem V. Tillion
President of the Senate
State of Alaska

FROM: Jim Duncan
Chairman
Legislative Budget and Audit Committee

SUBJECT: Transmittal of a Bill recommending designated programs be subject to termination under the Sunset Review Law.

In accordance with AS 44.66.030 of the Sunset Law the enclosed bill is forwarded.

This bill contains programs and activities recommended by the Legislative Budget and Audit Committee that will be subjected to the "Sunset" process. If enacted into Law, designated programs and activities will terminate July 1, 1980.

Introduced: 3/1/79
Referred: Commerce and Finance

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

SENATE BILL NO. 232

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act designating programs and activities for review and termination under AS 44.66; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.56.250 - 14.56.290 (relating to the responsibility and authority of the Department of Education, division of state libraries, to publish the Alaska Blue Book) are repealed.

* Sec. 2. The following laws relating to mechanical inspection functions of the Department of Labor are repealed:

(1) AS 18.60.220 - 18.60.395 (boiler and pressure vessel inspection);

(2) AS 18.60.600(a)(2), 18.60.600(b), and 18.60.610 - 18.60.650 (electrical wiring inspection);

(3) AS 18.60.715(b), 18.60.720(b), 18.60.725, 18.60.730 and 18.60.740(4) (plumbing code inspection);

(4) AS 18.60.800(b)(2) and 18.60.820 (elevator safety inspection).

* Sec. 3. AS 18.65.130 - 18.65.290 and AS 44.62.330(a)(34) (Police Standards Council) are repealed.

* Sec. 4. AS 18.80 and AS 39.50.200(9)(N) (State Commission on Human Rights) are repealed.

* Sec. 5. AS 23.35 (Fisherman's Fund) is repealed.

* Sec. 6. AS 28.05.011(8) (authority of the Department of Public Safety to operate motor vehicle weighing stations and to enforce size, weight and

COMMITTEE COPY

load limitations) is repealed.

* Sec. 7. AS 44.19.870 - 44.19.881 (division of policy development and planning) are repealed.

* Sec. 8. AS 45.50.491 - 45.50.521 (consumer protection - Department of Law) are repealed.

* Sec. 9. AS 45.50.531(b) is amended to read:

(b) A person entitled to bring an action under this section may, [AFTER INVESTIGATION BY AND APPROVAL OF THE ATTORNEY GENERAL,] if the unlawful act or practice has caused similar injury to numerous other persons similarly situated and if he adequately represents the similarly situated persons, bring an action on behalf of himself and other similarly injured and situated persons to recover actual damages. [A PERSON PLANNING TO BRING AN ACTION UNDER THIS SUBSECTION SHALL FIRST SUBMIT TO THE ATTORNEY GENERAL A COPY OF HIS PROPOSED COMPLAINT, AND HE MAY NOT FILE THE COMPLAINT IN COURT WITHOUT THE ATTORNEY GENERAL'S APPROVAL.] In an action brought under this subsection, the court may in its discretion order, in addition to damages, injunctive or other equitable relief.

* Sec. 10. The responsibility of the Department of Law under AS 45.45 (regulation of motor vehicle repairs) is terminated.

* Sec. 11. AS 47.10.150, 47.10.160, and 47.10.180 - 47.10.220 (programs of the Department of Health and Social Services relating to the confinement of juveniles) are repealed.

* Sec. 12. The Alaska Growth Policy Council, established within the division of policy development and planning, Office of the Governor, by Administrative Order No. 26, under the authority of AS 44.19.880(c), is terminated.

* Sec. 13. A claim for an injury compensable under AS 23.35, repealed by this Act, may be paid by the commissioner of labor if claim for compensation

is made within one year of the effective date of this Act. A claim shall be paid in accordance with the provisions of AS 23.35 as the provisions read at the time of repeal. On July 1, 1981 the balance in the fishermen's fund (AS 23.35.060, repealed and AS 37.05.155(a)(6)) lapses into the general fund.

* Sec. 14. This Act takes effect July 1, 1980.

SB
257

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Commerce & Econ. Develop.	Commerce Committee	SB 257

DEPARTMENT POSITION

Opposed.

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
D.A. Hartig Occupational Licensing	03-23-79		

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unknown	State Board of Architects, Engineers, and Land Surveyors

(3) PROGRAM EFFECTS OF BILL

Would add another regulated group to an existing regulated profession.

(4) FISCAL IMPACT: ☐ NONE ☒ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

It has not been demonstrated that nonregulation of landscape architecture adversely impacts the public health, safety or welfare. This profession is concerned with esthetics and does not involve activities related directly to human life or well being. Actual need, not imagined need, should be established.

Consumers of these services are most likely to have substantial resources and recourses. Practitioners may be presently certified by the National Association of Landscape Architects if they wish such status. Nothing in AS 08.48 prohibits or restricts the profession. It does not appear that either the public or the profession requires governmental regulation of another group of practitioners.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 257

Title Relating to the State Bd. of Registration for Arch., Eng., and Land Surveyors

Requested by Commerce Committee Date March 22, 1979

II. FISCAL DETAIL

Agency Affected Commerce and Economic Development

Program Category Affected Public Protection

Budget Request Unit(s) Affected Regulation and Licensing of Professions

EXPENDITURES (Thousands of Dollars)

		FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES	0	0	0	0	0	0
200	TRAVEL	0	2.0	2.1	2.1	2.2	2.2
300	CONTRACTUAL	0	1.0	1.1	1.1	1.2	1.2
400	COMMODITIES	0	0	0	0	0	0
500	EQUIPMENT	0	0	0	0	0	0
600	LAND & STRUCTURES	0	0	0	0	0	0
700	GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
	TOTAL	0	3.0	3.2	3.2	3.4	3.4

FUNDING (Thousands of Dollars)

GENERAL FUND	0	3.0	3.2	3.2	3.4	3.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

TRAVEL

Boards, Commissions & Legislators		
3 Trips	In-state transportation	495
12 per diem days	In-state per diem	660
1 Trip	Out-of-state transportation	550
6 per diem days	Out-of-state per diem	300

CONTRACTUAL

Communications, including printing and advertising	500
Professional fees and services	
Council dues and examination fees	500

In-state travel for one board member assumes 4 meetings per year with 1/4 being held in the member's home town. Inflation is computed at 6% per annum. Assumes an effective date of July 1, 1979.

IV. DATE March 23, 1979 PREPARED BY Don Hostak, Director

AGENCY Division of Occupational Licensing

PHONE 465-2534

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Feb. 13 (noon)

Brad ---

(1) Robert Cacy of the ATC is the first Exec. Director. Thanks. We need some info from him

(2) At 1:30 today the Senate Judiciary Committee is hearing the Bill on Guides. They called to make certian that you are awair of this. I made it + did O.K.!

(3) Please call Ross Hart about legislation regarding the registration of Landscape Architects. 586-6400 Attached is the Senate Bill from last year regarding this topic.

Please see him some weekend.

Christian

Chris O/C

Too late for this year. Tuesday was last day + I introduced my full quota. Can introduce for next year, but cannot get on calendar this year so might as well wait.

Thanx Brad

Background Information

1978?

Adomian does not support this legislation.

We have consistently suggested that occupational regulation is an inappropriate use of the state's police power in the absence of evidence of overt public abuse.

The proponents of this legislation argue in its favor that the service is concerned with public health, welfare and safety - That incompetence can result in damage. We concur. Damages can result to the consumer from incompetence in any occupation. That premise is insufficient in our viewpoint to require government regulation. Actual, not imagined, need should be established.

2. They will argue that there is no way for the average consumer of landscape architectural services to discriminate between the competent and incompetent. We do not agree.

~~Thirdly~~ First the average consumer is unlikely to be your average man in the street. He is most likely a person with either substantial private resources, such as EXXON or public resources, such as the State.

Second, private institutions exist which already provide evaluative ability — the Nat Soc. of Landscape Architects will certify any person meeting its requirements which are rigorous. Educational institutions routinely attest to an educational achievements of their graduates on request of the graduate.

3. They will argue that Alaska's Regis. Act for A. C. & L. S. inhibits them from working by requiring their designs be sealed by a registered professional. A S 08.48.331(2) specifically exempts ~~from~~ "the practice of any other legally recognized profession." Although

"lawfully recognized" is not defined, surely this language was intended to exempt ~~[illegible]~~ more than just regulated occupations. We do not regulate traffic engineers nor do we attempt to prevent them from practicing. The situations are analogous.

~~That includes may [illegible] if you have any questions~~

In short it does not appear that either the public or the profession requires government intrusion into this area of private enterprise.

~~Bob Bradley~~

approximately 25 members - less than half of those practicing -

Washington incident - Washington
" Oregon

Minch recommends exemption under 321

landscape project that doesn't substantially effect public health, safety and welfare.

recommends 341(7) be expanded to include ~~sites and grounds~~ "works and projects"

Doug Ackley - one of the most difficult area of administration is in overlap.

Wants to delete word "buildings" from engineering definition.

SOME PRACTICAL QUESTIONS RELATING TO LICENSURE OF LANDSCAPE ARCHITECTS

TO: THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE - SECOND SESSION

RE: SENATE BILL NO. 416
HOUSE BILL NO. 655

PREPARED BY: ALASKA CHAPTER, AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS - CONTACT: MR. ROSS HART - 586-6400

SOME PRACTICAL QUESTIONS

1. WHY IS LICENSURE NEEDED?

Grounded in the responsibility of the State of Alaska to maintain means for protecting health, safety, and welfare of their citizens, licensure provides a basis for making a determination of minimum competency. When that determination has been made, the state may then confer the priviledge of doing some thing(s) or engaging in certain practices as indicated on a license issued to the person proven competent. The most widely known is the driver's license issued upon an individual's passing a driving test.

In essence, a license holder has been granted permission to do something that, if done improperly, could harm others. Such permission must be granted by a duly established authority in order to protect the public, assure competence, weed out incompetence, and to provide discipline, redress, or revocation where bad practice has been proven. Moreover, since an average client cannot be reasonably expected to have the level of sophistication necessary to adequately evaluate either the sepcialized services offered by Landscape Architects or the level of competence of a given practitioner, that client needs the specialized protections provided by licensure. In addition, since certain elements of specialized practice may already have been legally sanctioned as being under the pervue of other more established professions whose requirements to sit for examination may prohibit members of younger professions from qualifying, due process must be available to applicants whose newer area of expertise is not provided for by the older boards or the examinations they adminster.

2. HOW IS LANDSCAPE ARCHITECTURE INVOLVED WITH HEALTH, SAFETY, AND WELFARE?

"Clear and direct" relationships between protection of the public and the practice of Landscape Architecture may be seen in the following examples:

a. Improperly specified relationships between water supplies, such as to artificial ponds, fountains, etc., and water drainage facilities could result in contamination of a water supply system of an entire community.

b. Improper design of outdoor lighting systems and their supply lines could present undue fire and/or shock hazards.

c. Inadequate design of outdoor structures such as those used in parks and other recreational facilities could result in injury should those structures fail. Such structures can include small shelters, footbridges, gazebos, kiosks, decks, rest facilities, among others.

d. Specification of unsafe playground equipment could result in injury and consequent liabilities.

f. Inadequate provision for drainage can result in flooding of foundations, basements, walkways, highway rights of way, recreation areas, and other kinds of facilities used by the public. This could present particularly serious hazards under the freezing conditions of Alaska.

g. Lack of adequate knowledge of plant materials and their functional charcteristics and interrelationships with various kinds of soils and other environmental elements can present at least these kinds of hazards:

   i. trees placed in soils whose structural characteristics do not provide its root system adequate physical support under stress of certain wind conditions.

   ii. root systems placed too near foundations of structures will ultimately weaken the structure.

   iii. certain toxic or otherwise harmful species could harm childern in a variety of ways.

   iv. specification of hardwood trees on highway medians or otherwise too close to rights-of-way present a serious hazard to motorists and their passengers.

   v. specification of plant materials on incompatible soils can result in deadwood that provides fire hazards.

h. Improper specifications for grading and filling can result in soil slippage and washing or even massive erosion.

3. HOW HAVE LANDSCAPE ARCHITECTS BEEN PREVENTED FROM PRACTICING UNDER PRESENT LAW?

Restraint from practice has occured:

a. under those conditions when Landscape Architects may not even submit a bid for contract because some portion of work they are trained to do has been allocated jurisdictionally to the purview of regulatory boards of related environmental design professions.

b. under those conditions where a call for bids specifies or falls under more general policy provisions of given private and public agencies requiring that the bidder hold a valid license as proof of minimum competency.

Existence of either or both of the two conditions given above not only by themselves may constitute a restraint of trade impediment within given jurisdictions but also becomes a particularly severe restraint on Landscape Architects seeking out of state work while their home state provides no licensure through which they may present a legally sanctioned proof of competence.

4. DON'T LANDSCAPE ARCHITECTS JUST WANT LICENSURE AS A STATUS SYMBOL?

Landscape Architects want licensure in order that the profession will not be marred by the adverse effect of not insuring competence of all practitioners whose work directly affects public safety. They recognize that their service-oriented activities are not readily evaluated by the lay public; average citizens may not be expected to have adequate knowledge to protect them from manifestations of bad practice.

Landscape Architects want licensure in order that they may compete, without restraint, for work both within as well as outside of their home jurisdictions.

5. WHY CANNOT LANDSCAPE ARCHITECTS BECOME LICENSED UNDER PRESENT LAW AS ARCHITECTS, ENGINEERS, OR LAND SURVEYORS?

The critical elements here are the separate and distinctly different definitions of the respective professions which reveal activities of often overlapping but quite distinct scope or range. There would be legally indefensible inconsistencies in not recognizing the horticultural background underlying the distinctly unique body of knowledge, and concomitant skills, through which their knowledge is manifested in the contemporary practice of Landscape Architecture. The specialized services offered by architects, engineers, and land surveyors do not derive from knowledge developed out of horticultural context. However, among the things Landscape Architects often do have in common with architects and with some kinds of engineers are design-oriented activities. Among the things Landscape Architects have in common with surveyors are knowledge and skills in topography and grading.

Another critical element lies with the educational background and other qualifications necessary for a candidate to fulfill in order to even sit for licensure examination of other professions. No person should be obliged to face unreasonable requirements that would prevent his sitting for examination. We should recall that provisions of due process must apply not only to license holders but also to applicants.

6. WHAT IS THE FORMAL TRAINING OF LANDSCAPE ARCHITECTS?

After completing high school, there are several levels of education available in Landscape Architecture. These include vocational programs (certificates or Associate degrees), pre-professional programs (Baccalaureate degrees), undergraduate professionals degree programs (Bachelor of Science in Landscape Architecture), and graduate professional degree programs (Master of Science in Landscape Architecure or Master of Landscape Architecture). Vocational programs entail about two academic years of study and a summer of field experience. These programs normally focus on residential and commerical scale projects and emphasize practical knowledge, such as construction detailing, grading, horticultural practices, grounds maintenance, and business practices. The purpose of these programs is to train leaders for the landscape industry, thus studio courses stress detail scale design such as surfacings,

planting composition and minor structural elements. Upon completion, graduates of vocational programs enter supervisory roles in nursery or contracting firms and relatively few continue their formal education.

In recent years, undergraduate pre-professional degree programs have been developed at several universities to provide an academic foundation for advanced work in any one of several design disciplines. Seven schools, all with graduate level landscape porgrams, have instituted "generalist" programs that award either a Bachelor in Environmental Design or a Bachelor in Environmental Studies degree. These programs stress broad-scoped social science and natural science course work and offer only limited amounts of design studies and technical material, for graduates are expected to continue their professional developemnt in the Master's program.

By contrast, other undergraduate programs award professional degrees in Landscape Architecture and have a full compliment of design and technical education in their curricula. These programs are either four or five years in length with the latter generally providing for more elective opportunities and some individual specialization. It is estimated that about 80% of the graduates from these programs enter practices in professional offices or planning agencies. Of the remaining 20%, about half pursue graduate studies and the rest find employment in the landscape industry.

Graduate degrees, either M.S. or M.L.A., are available at approximately twenty schools in this country, frequently at the same institution as professional degree undergraduate programs. These advance programs require from one to three-and-one-half years of study depending on the applicant's background. For those with an undergraduate professional degree in Landscape Architecture, the advanced program usually amounts to a year-and-one-half or two years. For students coming with pre-professional degrees as well as those with non-design backgrounds, Master's programs normally require a residency of three to three-and-one-half years.

7. WON'T LICENSURE OF LANDSCAPE ARCHITECTS ADVERSELY AFFECT NURSERYMEN?

Nurserymen who are engaged in raising and selling plant materials to their customers will not be adversely affected by passage of a licensure law for Landscape Architecture. Activities of the two occupations, while related, are entirely different: a nurseryman's products are botanical, and a Landscape Architect's products are designs for envisioned works which usually include, but are not limited to, botanical elements. Moreover, the one deals in products while the other often provides only services; goods can be inspected by a prospective buyer, generally services cannot.

If some nurserymen are adversely affected by a licensure law, then it may be because they are enganged in design activity for which they may not have appropriate training or experience through which they obtain competence.

8. HAVE ANY LANDSCAPE ARCHITECTS BEEN DENIED HAVING PLANS ACCEPTED BY PRIVATE OR GOVERNMENT AGENCIES FOR LACK OF LICENSURE?

Yes. However, the more frequent consequence of lack of licensure is that firms which cannot afford to prepare plans for private or government agencies requiring licensure of its bidders simply do not enter the bidding process when they know they will be excluded under existing regulations.

9. DOES THE LICENSING BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS FEEL LANDSCAPE ARCHITECTS SHOULD BE LICNESED?

The answer is yes. At a meeting at the board on September 22, 1977 a resolution was unaminously passed "that the board support the concept of registration of Landscape Architects".

10. PRESENT LAW RESTRICTS LANDSCAPE ARCHITECTS FROM JOINING OTHER PROFESSIONALS IN A PROFESSIONAL CORPORATION. IF THIS RESTRICTION WERE ELIMINATED, WHY SHOULD LICENSURE BE NEEDED FOR LANDSCAPE ARCHITECTS?

In some states that kind of restriction exists. However, its elimination would still not remove the fundamental need for licensure of Landscape Architects for these reasons:

a. The basic purpose of licensure protecting public health, safety, and welfare would remain unachieved.

b. Without licensure Landscape Architects could not be prinicipals of such a firm. In consequence, engineers and architects would continue doing Landscape Architectural work in an activity where they have not been proven competent.

c. Removal of this restriction would not provide for licensure needs of individual private practitioners who are not members of such firms. Absence of benefit of licensure would discourage or prevent many one-man offices from being located on a given jurisdiction.

11. IS IT TRUE THAT ONCE LANDSCAPE ARCHITECTS ARE LICENSED, THEY THEN AMEND THE LAW TO RESTRICT THE OPERATION OF NURSERYMEN?

Under provisions of the law, no persons should be restrained from practicing Landscape Architecture so long as those individuals are able to prove their competence. Moreover, no persons should be required to face unreasonable requirements that would prevent their sitting for examination. However, where there are unqualified people engaged in the practice of Landscape Architecture, and thereby impinging on public safety, those people should be proven competent.

12. HOW MANY STATES CURRENTLY LICENSE LANDSCAPE ARCHITECTS? HOW MANY HAVE HAD LICENSURE REPEALED?

Thirty-eight states currently provide licensure for Landscape Architects. One state has, under provision of a hastily enacted sunset law, repealed an inadequate title act and is currently drafting a practice law that would replace it.

13. DO LANDSCAPE ARCHITECTS DESIGN BUILDINGS?

Landscape Architects do design some buildings such as park structures. However, Landscape Architects do not design habitable buildings.

14. WON'T LICENSURE OF LANDSCAPE ARCHITECTS INCREASE THE COST OF LANDSCAPE ARCHITECTURAL SERVICE TO THE PUBLIC?

It is possible that the cost of licensure may initially cause a small increment on some fees. However, experience indicates that these will soon become insignificant by comparison with the much larger effects of cyclical swings of economic cycles.

Here, again, a licensure operation should be of such effectiveness on fulfilling its stated societal purpose that it would be judged cost-effective.

LAKE & BOSWELL CONSULTING ELECTRICAL ENGINEERS

JAMES M. LAKE, P.E.
ROBERT B. BOSWELL, P.E.

543 THIRD AVENUE, ROOM 206
FAIRBANKS, ALASKA 99701
PHONE 907-452-1441

January 30, 1979

Mr. Don Hostak, Director
Division of Occupational Licensing
Department of Commerce and Economic Development
Pouch D
Juneau, Alaska 99811

Dear Don:

I have again reviewed the committee substitute for Senate Bill No. 416, introduced in the last session of the Legislature, pertaining to the Licensing of Landscape Architects.

I am opposed to the Licensing of Landscape Architects for three reasons:

1. In my judgement the practice of Landscape Architecture does not impact the public health, safety or welfare as, in its simplest terms, Landscape Architecture is concerned basically with esthetics. There is a very definite trend, both in the state of Alaska and Nationally, to abolish unnecessary licensing requirements and to create another licensed profession which has no demonstrated need for protection of the public is, in my opinion, imprudent.

2. Paragraph 15 of 08.48.341 as written is in conflict with the presently defined areas of expertise of Architects, Civil Engineers and Land Surveyors. Each of these three established diciplines are involved with various phases of "preservation, enhancement, or improvement of natural land features" and it would appear that the act would create numerous areas of overlapping jurisdiction with resultant problems.

3. Since the public Safety, Health and Welfare is not affected by the dicipline of Landscape Architecture, I see no need to require the public to pay for such services. The addition of a Landscape Architect to the design team for a commercial building, for instance, would increase the design costs for no tangible reason.

Very truly yours,

James M. Lake, P.E.

JML/vg

STUTZMANN ENGINEERING ASSOC., INC.
P. O. BOX 1429
FAIRBANKS, ALASKA 99707
907 452-4094

RECEIVED
DEPARTMENT OF
COMMERCE
JAN 29 2 13 PM '79
OCCUPATIONAL
LICENSING

January 25, 1979

State of Alaska
Dept. of Commerce and Economic Development
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811

Attn: Erma Norlund

Dear Erma:

I have received the copy of CS for Senate Bill 416 which you sent me. As to my comments thereon, I am still opposed to licensing of landscape architects for the same reasons as I stated last year when this came up. At a time when we are in the process of paring down boards under the Sunset Law, why add another branch of individuals of this sort?

Also, I cannot see how their activities effect "health and safety" of the public. Their work is mainly cosmetic, like that of a hairdresser. I do not believe they belong on a common board with architects, engineers and land surveyors in any event.

I firmly oppose their registration as proposed under this bill.

Please convey my comments to Mr. Hostak by copy of this letter.

Very truly yours,

Paul E. Stutzmann

Paul E. Stutzmann, P.E. and R.L.S.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

REQUEST
Bill/Resolution No. SB 416 , HB 655
Title Relating to State Board of Registration for Architects, Engineers &
Requested by _____ Date Land Surveyors
1/16/78

II. FISCAL DETAIL
Agency Affected Commerce & Economic Development
Program Category Affected Public Protection
Budget Request Unit(s) Affected Regulation & Licensing of Professions

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES		0	0			
200 TRAVEL		0	4.1	4.3	4.6	4.9
300 CONTRACTUAL		0	1.0	1.1	1.1	1.2
400 COMMODITIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS, ETC.		0				
TOTAL		0	5.1	5.4	5.7	6.1

FUNDING (Thousands of Dollars)

GENERAL FUND		0	5.1	5.4	5.7	6.1
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

TRAVEL

Boards, Commissions & Legislators

8 Trips	In-State Transporatation	1,320
36 Per diem Days	In-State Per diem	1,980
1 Trip	Out-of-State Transportation	550
6 Per diem Days	Out-of-State Per diem	300

CONTRACTUAL

Communications, including Printing and Advertising	500
Professional Fees and Services	
Council Dues and Exam Fees	500

In-state travel for two board members assumes 6 meetings per year with 1/3 being held in the members home town. Inflation is computed at 6% per annum. Assumes an effective date of 7/1/78.

IV. DATE 1/23/78 PREPARED BY [illegible]
AGENCY [illegible]
PHONE [illegible]

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

HEWITT V. LOUNSBURY & ASSOCIATES
ENGINEERS PLANNERS SURVEYORS
723 W. 6th. Avenue, Anchorage, Ak. 99501 Tel. (907) 272-5451

RECEIVED
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COMMERCE
FEB 6 | 36 PM '79
OCCUPATIONAL
LICENSING

MEMORANDUM

TO: Mr. Don Hostak

RE: Landscape Architects Bill

DATE: January 31, 1979

FROM: Loren H. Lounsbury

I am opposed to the regulation of landscape architects as proposed by the bill to be introduced to the Alaska Legislature. In my opinion there is no need to register landscape architects as the work they perform does not endanger the health, safety or welfare of the public. Therefore, it is inappropriate to include them with architects, engineers and land surveyors.

Since the legislature passed Sunset Legislation it appears they are concerned with limiting regulation to those professions that have a direct affect on the health, safety and welfare of the public.

It would seem to me that the landscape architects should make a showing that they do affect the health, welfare and safety of the public before this legislation is considered.

If this bill is passed every nursery operator, gardener, or anyone who has ever done any landscaping would have to be registered to practice under Grandfather Rights. I am not aware of any move by the public or the people who have provided landscape services in the past to be concerned about the registration and regulation. Therefore, it would appear to me that unless there is a huge outcry by the public that they need protection by the practicers of landscaping, we would be just adding another costly regulation to the State Statutes.

HEWITT V. LOUNSBURY & ASSOCIATES
ENGINEERS PLANNERS SURVEYORS 723 W. 6th. Avenue, Anchorage, Ak. 99501 Tel.(907) 272-5451

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BRIDGES · MONSARRAT · ARCHITECTS

4789 BUSINESS PARK BLVD • BLDG K • (907) 272 5488 • ANCHORAGE ALASKA 99503

RECEIVED
DEPARTMENT OF
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FEB 5 9 44 AM '79
OCCUPATIONAL
LICENSING

January 31, 1979

Mr. Don Hostak
Director of Licensing
Department of Commerce and Economic Development
State Board of Registration for Architects,
Engineers and Land Surveyors
Pouch D
Juneau, Alaska 99811

Dear Don,

I received a memorandum from Erma Norland indicating that you would like comments and reasons for favoring or opposing the proposed legislation.

I have reviewed last year's Senate Bill #416 to add landscape architects to the present Board of Registration for Architects, Engineers and Land Surveyors. I am not opposed to the concept of requiring professional registration for landscape architects. There are, however, many questions to be answered before I could support adding landscape architects to our present registration statutes.

As we are registered for the health, welfare and protection of the public, I believe it is imperative that it be clarified how the public is threatened by the lack of professional registration for landscape designers.

An acceptable definition of landscape architecture must be prepared for review. The definition submitted last year literally carved out professional requirements from existing services provided by civil engineers and architects. The proponents of the Landscape Architecture Bill have stated that there is an existing deficiency and that they are filling an existing void. This should be established prior to ligislation being proposed for legislative action.

There are many architects, engineers, landscape planners and landscape companies presently offering services that may be restricted with a Landscape Architects Bill. I believe the

bill should speak more directly to the effects of such a bill on existing companies. There are approximately forty of these companies listed under landscape architects and contractors in the Anchorage Telephone Directory. I do not believe that all of these can qualify for professional registration, as civil engineering and surveying knowledge is required for topographic design. I also do not believe that these companies providing lesser services should be forced into hiring a registered professional on their staff or close their businesses.

Internally, the bill proposed would create havoc, in my opinion, for the Board of Registration. The new regulations will be in immediate conflict, and the proponents of the Landscape Architects Bill have not, so far as I know, attempted to establish regulations compatible with the presently registered professionals. I believe that a task force working with the Alaska Professional Design Council, an organization which represents all registered professionals, could probably satisfy the conflicts by introducing proposed regulations to be implemented as quickly as possible upon passage of any bill creating registration for landscape architects.

All Alaskan professionals are registered through examination or comity based upon examination. I believe more information should be presented concerning the testing and a review by the Board of Registration of the national tests given landscape architect trainees. The contents of that examination would help verify qualifications and conflicts with existing professional registrations.

Finally, as we are presently in a struggle to justify our very existence, I find it very untimely that consideration is given to expanding the Registration Board with another discipline within a year of the time required to justify the existence of the existing Board of Registration.

I shall be in Juneau February, 22nd, 23rd, 24th for the next scheduled meeting of th Board of Registration. I hope to have the opportunity of visiting with you on the morning of the 22nd. I would appreciate the opportunity to discuss the landscape architect and other Board related subjects with you at that time, if your schedule permits.

Very truly yours,

Jim L. Bridges
Architect AIA
JLB/la

W. J. WELLENSTEIN • ARCHITECT • A.I.A., INC.
325 BARROW STREET • ANCHORAGE, ALASKA 99501
PHONE (907) 278-3941 • 277-6254

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JANUARY 25, 1979

MR. DON HOSTAK, DIRECTOR
DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL
LICENSING
POUCH D
JUNEAU, ALASKA 99811

TO MR. HOSTAK:

ERMA NORLUND SENT ME A COPY OF THE LANDSCAPE ARCHITECTS BILL FOR MY COMMENT.

I AM NOT IN FAVOR OF LICENSING LANDSCAPE ARCHITECTS. ATTACHED IS A COPY OF A LETTER I WROTE LAST YEAR AND MY OPINION HASN'T CHANGED.

SINCERELY

W. J. WELLENSTEIN
MEMBER, BOARD OF REG.
A. E. AND L.S.

WJW/DG

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

W. J. WELLENSTEIN · ARCHITECT · A.I.A., INC.
9 BARROW STREET · ANCHORAGE, ALASKA 99501
PHONE (907) 276-3941 · 277-6254

RECEIVED
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COMMERCE
JAN 29 2 54 PM '79
OCCUPATIONAL
LICENSING

[illegible], 1978

[illegible] JOHN L. RADER, PRESIDENT
[illegible] STATE SENATE
[illegible]

DEAR [illegible] RADER:

I APPRECIATE BEING GIVEN THE OPPORTUNITY TO COMMENT ON THE PROPOSED [illegible] AND S.B. 416.

I AM OPPOSED TO THE LICENSING OF INDIVIDUALS AS LANDSCAPE ARCHITECTS FOR THE FOLLOWING REASONS:

1. CONSTRUCTION LAWS, AS YOU ARE AWARE, ARE WRITTEN FOR THE PROTECTION OF HEALTH, WELFARE AND SAFETY. I SEE NOTHING TO THE PUBLIC IN ANY OF THESE AREAS IF THEY ARE [illegible].

2. I SEE DIFFICULTY INTRODUCING OUR PRESENT LAW WITHOUT [illegible] ANOTHER DISCIPLINE.

3. I CAN SEE ADDITIONAL PROBLEMS FOR THE BOARD IN COMPLAINTS [illegible] BETWEEN THE CIVIL AND/OR LANDSCAPE ARCHITECT AS TO WHOSE DISCIPLINE THE SHAPING OF THE TERRAIN WILL BE.

4. [illegible] CONTROL, SETTING GRADES, DETERMINATION OF PROPER LAND USE, APPROACHES TO BUILDINGS, ETC., ARE NOT IN A LANDSCAPE ARCHITECTS DOMAIN.

5. [illegible] MEMBERS ON THE BOARD WOULD NOT BE IN PROPORTION TO THE [illegible] DISCIPLINES AND THE NUMBERS THEY REPRESENT.

6. [illegible] AWARE, WE ARE PRESENTLY REVISING THE STATE BOARD OF [illegible]ION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS [illegible] CHAPTER 08. WE HAVE REPEATEDLY BEEN INFORMED [illegible] GENERAL'S OFFICE THAT WE ARE UNABLE TO POLICE [illegible] IN THE PRESENT [illegible] AS THEY NOW EXIST. [illegible] OUR EFFORTS SHOULD BE DIRECTED TO THAT GOAL.

WELLENSTEIN · ARCHITECT · A.I.A., INC.
[illegible] STREET · ANCHORAGE, ALASKA 99501
[illegible] (907) 279-5011 · 277-6254

[illegible] 29, 1973

[illegible] TO: JOHN L. RADER, PRESIDENT
[illegible] STATE SENATE

[illegible] I AM OPPOSED TO THIS BILL AND AM RESPONDING NOT AS A [illegible] AS A PRIVATE PRACTIONER. THANKS AGAIN [illegible] THE OPPORTUNITY OF EXPRESSING MY VIEWS IN THIS [illegible] LEGISLATION.

SINCERELY,

[illegible]

[illegible] WELLENSTEIN

[illegible]

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Commerce & Econ. Develop.	Commerce Committee	SB 257

DEPARTMENT POSITION

Opposed.

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
D. A. Hostak Occupational Licensing	03-23-79		

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unknown	State Board of Architects, Engineers, and Land Surveyors

(3) PROGRAM EFFECTS OF BILL

Would add another regulated group to an existing regulated profession.

(4) FISCAL IMPACT: ☐ NONE XX FI[illegible] ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

It has not been demonstrated that nonregulation of landscape architecture adversely impacts the public health, safety or welfare. This profession is concerned with esthetics and does not involve activities related directly to human life or well being. Actual need, not imagined need, should be established.

Consumers of these services are most likely to have substantial resources and recourses. Practitioners may be presently certified by the National Association of Landscape Architects if they wish such status. Nothing in AS 08.48 prohibits or restricts the profession. It does not appear that either the public or the profession requires governmental regulation of another group of practitioners.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 257
Title Relating to the State Bd. of Registration for Arch., Eng., and Land Surveyors
Requested by Commerce Committee Date March 22, 1979

II. FISCAL DETAIL
Agency Affected Commerce and Economic Development
Program Category Affected Public Protection
Budget Request Unit(s) Affected Regulation and Licensing of Professions

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	2.0	2.1	2.1	2.2	2.2
300 CONTRACTUAL	0	1.0	1.1	1.1	1.2	1.2
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC	0	0	0	0	0	0
TOTAL	0	3.0	3.2	3.2	3.4	3.4

FUNDING (Thousands of Dollars)

GENERAL FUND	0	3.0	3.2	3.2	3.4	3.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

TRAVEL

Boards, Commissions & Legislators		
3 Trips	In-state transportation	495
12 per diem days	In-state per diem	660
1 Trip	Out-of-state transportation	550
6 per diem days	Out-of-state per diem	300

CONTRACTUAL

Communications, including printing and advertising	500
Professional fees and services	
Council dues and examination fees	500

In-state travel for one board member assumes 4 meetings per year with 1/4 being held in the member's home town. Inflation is computed at 6% per annum. Assumes an effective date of July 1, 1979.

IV. DATE March 23, 1979 PREPARED BY Don Hostak, Director
AGENCY Division of Occupational Licensing
PHONE 465-2534

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

SB
274

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

May 4, 1979

The Honorable W.E. "Brad" Bradley
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 274 (motor vehicle safety responsibility)

Dear Senator Bradley:

This is in response to your letter of April 28, 1979 concerning SB 274. The Department of Law will not be able to do a comprehensive analysis of this bill before the legislature adjourns, but we will say in general that we do not favor changing Alaska's Motor Vehicle Safety Responsibility Act into a mandatory insurance Act. In addition, this department is not the appropriate agency to do a fiscal analysis. However, we offer some brief comments:

1. Sec. 8, repealing and re-enacting AS 28.-20.440(f)(1), states that a motor vehicle liability policy may not be cancelled after the beginning of the policy period. This may cause some problems. Literally, it appears to apply to both the insured and the insurer. Could an individual cancel his or her policy upon selling the vehicle during the term of the policy? Does the current AS 28.20.540(a)(3) adequately handle this? Must the insurer continue coverage under a policy if the insured fails to pay the premiums?

2. Sec. 9, adding AS 28.20.440(f)(5), states that payment for coverage provided by a motor vehicle liability policy must be paid in full by the owner or operator before the beginning of the policy period. This provision may cause considerable economic hardship. Current practice allows for various multi-payment plans. Many people simply cannot afford to pay the full premium all at once.

3. Sec. 15 repeals (among others) AS 28.20.-300, the exception for government vehicles. There is case law which exempts United States postal drivers from state requirements to hold a drivers' license in the state in which they work. By repealing this statutory exception, the bill appears intended to require a postal delivery person to obtain a certificate of insurance in Alaska; that raises the same sort of questions as the license requirement itself.

If we can provide you with any further assistance or information, please let us know.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Art Peterson
Arthur H. Peterson
Assistant Attorney General

AHP:md:AHP:NES

cc: Keith Specking
Legislative Assistant
Governor's Office

SB

373

BILL SUMNER
Alaska State Senator
DISTRICT 7-E

DURING SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3791

OUT OF SESSION:
1016 WEST 6TH AVENUE
SUITE 418
ANCHORAGE, ALASKA 99501
(907) 272-4541

COMMITTEES:
RESOURCES
CHAIRMAN
FINANCE
RULES
COMMITTEE ON COMMITTEES
JOINT INTERIM COMMITTEE
ON GAS PIPELINE FINANCING

Christian:

Attached is some information on the artists' royalty bill...the California statute and a memo from Jack Chenoweth.

Quite simply, the bill is intended to allow artists to profit when their art work appreciates since right now they receive no financial benefits. As far as what the Arts Council can do with the money, the bill as drafted says on page 3, section (C) that when the Arts Council can't find the artist and the money has been in the account for two years, the money will then lapse into the general fund. We would rather see the Arts Council keep the money and use it to develop the arts in Alaska. This might be an appropriate change.

Give a call with any more questions and I'll see what else I can put together.

Cheryl.

Cheryl Frasca
Bill Sumner's Office
2.25.80

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 31, 1980

SUBJECT: Artist's royalty on resale of works of fine art. (Work Order Number 7775)

TO: Senator Bill Sumner

FROM: John B. Chenoweth
Legislative Counsel

Some notes on the significant differences between this bill draft and the California statute:

I have expanded the definition of "work of fine art" from the "original painting, sculpture, or drawing" of the California statute to include also "photograph or work of graphic art." The basis of the change is the comparable definition used in Chapter 8, SLA 1979, relating to protection of the artist's interest in his works of fine art placed with a dealer for sale as against claims by the creditors of the dealer.

I have deleted from the provisions of the Alaska bill the California provision excluding payment in the event of resale by a seller for a price that is lower than his original purchase price: few works of fine art of first quality would meet the test of this exclusion, but the presence of the exclusion, to me, suggests a loophole that might defeat the artist's rights or at least present problems of proof if he attempts to secure judicial relief.

I have reduced by five years, from seven to two, the time given to the Alaska State Council on the Arts to locate an artist based on my reading of the statute of limitations (AS 09.10.070) under which an artist would be able to secure judicial assistance in collecting an amount due him because of a resale of a work of fine art. Likewise, rather than impose a separate statute of limitations, as California does, for suits by an artist in furtherance of rights granted by AS 45.45.250, I have made no mention of this in the bill draft. I suggest that the applicable statute of limitations -- that is, the time in which the artist may initiate a cause of action based on rights given in AS 45.45.250 -- is two years:

No person may bring an action . . .

* * *

(3) upon a liability created by statute, other than a penalty or forfeiture, unless commenced within two years.

AS 09.10.070. If a longer statutory period seems necessary, please advise and I will redraft following your instructions.

In all other respects, I have followed the California statute as the model for this bill draft.

JBC:ljb

Enclosure

Publication and preemption in copyright law: Elegiac reflections on Goldstein v California. (1975) 22 UCLA LR 1022.
Photocopying and record piracy: Of Dred Scott and Alice in Wonderland. (1975) 22 UCLA LR 1052.
State Protection of Intellectual Property. 60 ABAJ 198.

§ 986. [Sale of fine art]

(a) Whenever a work of fine art is sold and the seller resides in California or the sale takes place in California, the seller or his agent shall pay to the artist of such work of fine art or to such artist's agent 5 percent of the amount of such sale. The right of the artist to receive an amount equal to 5 percent of the amount of such sale is not transferable and may be waived only be a contract in writing providing for an amount in excess of 5 percent of the amount of such sale.

(1) When a work of art is sold at an auction or by a gallery, dealer, broker, museum, or other person acting as the agent for the seller the agent shall withhold 5 percent of the amount of the sale, locate the artist and pay the artist.

(2) If the seller or agent is unable to locate and pay the artist within 90 days, an amount equal to 5 percent of the amount of the sale shall be transferred to the Arts Council.

(3) If a seller or his agent fails to pay an artist the amount equal to 5 percent of the sale of a work of fine art by the artist or fails to transfer such amount to the Arts Council, the artist may bring an action for damages within three years after the date of sale or one year after the discovery of the sale, whichever is longer.

(4) Moneys received by the council pursuant to this section shall be deposited in an account in the Special Deposit Fund in the State Treasury.

(5) The Arts Council shall attempt to locate any artist for whom money is received pursuant to this section. If the council is unable to locate the artist and the artist does not file a written claim for the money received by the council within seven years of the date of sale of the work of fine art, the right of the artist terminates and such money shall be transferred to the operating fund of the council as reimbursement to fund programs of the council.

(6) Any amounts of money held by any seller or agent for the payment of artists pursuant to this section shall be exempt from attachment or execution of judgment by the creditors of such seller or agent.

(b) Subdivision (a) shall not apply to any of the following:

(1) To the initial sale of a work of fine art where legal title to such work at the time of such initial sale is vested in the artist thereof.

(2) To the resale of a work of fine art for a gross sales price of less than one thousand dollars ($1,000).

(3) To a resale after the death of such artist.

(4) To the resale of the work of fine art for a gross sales price less than the purchase price paid by the seller.

(5) To a transfer of a work of fine art which is exchanged for one or more works of fine art or for a combination of cash, other property, and one or

more works of fine art where the fair market value of the property exchanged is less than one thousand dollars ($1,000).

(c) For purposes of this section, the following terms have the following meanings:

(1) "Artist" means the person who creates a work of fine art.

(2) "Fine art" means an original painting, sculpture, or drawing.

(d) This section shall become operative on January 1, 1977, and shall apply to works of fine art created before and after its operative date.

(e) If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provisions or applications of this section which can be effected, without the invalid provision or application, and to this end the provisions of this section are severable.

Added Stats 1976 ch 1228 § 1.

Note —Stats 1976 ch 1228 also provides: § 2. The rights of an artist of a work of fine art to receive payment of an amount equal to 5 percent of the amount of a sale of fine art within the provisions of Section 986 shall be vested at the time of such sale; except that an artist shall have no rights to any payment pursuant to this act, if any provision therein is subsequently repealed so as to remove the provisions for such payment, as to any sale which occurs subsequent to such repeal; and except that, in the event any provision in this act is otherwise subsequently amended or changed, an artist shall have only those rights to payment provided for by such subsequent amendment or change and shall have no rights to any payment pursuant to this act, as to any sale which occurs subsequent to such amendment or change.

A critical comment on California's Droit de Suite, Civil Code Section 986. (1977) 29 Hast LJ 249.

SUGGESTED FORM

Complaint by Artist Against Owner of Art Gallery for Damages—Failure to Pay Artist Prescribed Percentage from Sale of Fine Art

[Title of Court and Cause]

1. Plaintiff resides at __1__ *[address]*, in the City of __2__, County of __3__, State of __4__

2. Defendant is the sole proprietor of the __5__ *[specify gallery]* located at __6__ *[address]*, in the City of __7__, County of __8__, State of California, and has been engaged for the past __9__ years in the sale and purchase of fine art.

3. On __10__, 19__11__, plaintiff completed work on a __12__ [painting *or* sculpture *or* drawing *or as the case may be]* entitled "__13__." __14__ *[If applicable, set forth further description of art work].*

4. On __15__, 19__16__, plaintiff sold the __17__ [painting *or* sculpture *or* drawing *or as the case may be]* to __18__ *[initial purchaser]* for the sum of $__19__. A copy of the receipt of such sale is attached, marked Exhibit "—," and by reference made part hereof.

5. On __20__, 19__21__, defendant acquired the __22__ [painting *or* sculpture *or* drawing *or as the case may be]* from __23__ *[initial purchaser]* in exchange for the following described __24__ [painting(s) *or as the case may be]* owned by defendant: __25__. Plaintiff is informed and believes and thereon alleges that the fair market value of the work(s) of art exchanged amounted to $__26__.

6. On __27__, 19__28__, defendant sold the __29__ [painting *or* sculpture *or* drawing *or as the case may be]* on the gallery premises to __30__ *[purchaser]* for a gross sale price of $__31__.

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 25, 1980

Christine D'Arcy
Visual Arts Director
Alaska State Council on the Arts
619 Warehouse Avenue, Suite 220
Anchorage, AK 99501

Dear Ms. D'Arcy:

Unfortunately our appointment on February 21, 1980, did not materialize. Nevertheless, I am interested in your views on the proposed act relating to the sale of fine art (SB 373). I have enclosed a copy of this bill for your review.

Please send your comments within 15 days so we may expedite this legislation.

Sincerely,

Christian Basler

Christian Basler
Administrative Assistant

Enclosure: Senate Bill 373

Introduced: 2/1/80
Referred: Commerce, Judiciary and Finance

IN THE SENATE BY SUMNER

SENATE BILL NO. 373

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the sale of fine art."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.45 is amended by adding a new section to read:

ARTICLE 6. SALE OF FINE ART.

Sec. 45.45.250. SALE OF WORKS OF FINE ART. (a) When a work of fine art is sold and the seller resides in the state or the sale of the work of fine art takes place in the state, the seller or his agent shall pay to the artist of the work of fine art, or the artist's agent, a royalty equal to five percent of the amount of the gross sales price.

(b) The right of an artist to receive a royalty equal to five percent of the amount of the gross sales price from the sale of a work of fine art is not transferable. The right may be modified only by a written contract signed by the artist or his agent and the selling party or his agent which provides for the payment of a royalty greater than five percent of the gross sales price in the event of sale of a work of art. [An artist may not waive the right to receive the royalty payment.]

(c) Payment of the amount required to be paid to an artist by this section is the responsibility of the seller or his agent. The seller or his agent shall make a [good faith] effort to locate the artist and transmit the payment required by this section. If the seller or his agent is unable to locate and pay the artist within 90 days, the amount required to be paid to the artist by this section shall be transmitted to the Alaska State Council on the Arts for deposit to a special account.

(d) This section does not apply to

(1) the initial sale of a work of fine art if legal title to the work is vested in the artist at the time of sale;

(2) the resale of a work of fine art after the death of the artist;

(3) the resale of a work of fine art for a gross sales price of less than $1,000;

(4) the exchange of a work of fine art for one or more works of fine art, or for a combination of cash, other property, and one or more works of fine art, if the fair market value of the property exchanged is less than $1,000.

(e) In this section,

(1) "artist" means the person who creates a work of fine art;

(2) "fine art" means an original painting, sculpture, drawing, photograph, or work of graphic art.

* Sec. 2. AS 45.05.120(e) is amended to read:

(e) Whenever an artist delivers or causes to be delivered a work of fine art of his own creation to an art dealer for the purpose of sale, or exhibition and sale to the public on a commission or fee or other basis of compensation, the work of fine art is not subject to the claims of the art dealer's creditors. Whenever a person who is not an artist, or the agent, of the artist, delivers a work of fine art to an art dealer for the purpose of sale and the work is sold, the amount of the gross sales price of the work of fine art which shall be withheld for payment to the artist under AS 45.45.250 is not subject to the claims of the creditors of the art dealer. For the purposes of this subsection

(1) "art dealer" means a person other than a public auctioneer engaged in the business of selling works of fine art;

(2) "artist" means the creator of a work of fine art;

AK. State Council of the Arts.

(3) "fine art" includes a painting, sculpture, drawing, photograph, or work of graphic art.

* Sec. 3. AS 44.19.930 is amended by adding a new paragraph to read:

(6) to administer a special account called the "artist's royalty account," to which the council shall deposit amounts received from sellers of works of fine art, or their agents, who are unable to locate artists for the purpose of making payment of the portion of the gross sales price under AS 45.45.250; in the administration of the special account, the council shall

(A) receive payments from the resale of a work of fine art and deposit the payments to the account;

(B) attempt to locate an artist for whom money is received under (A) of this paragraph and remit payment of the amount due to that artist;

(C) in the event of inability to locate the artist or failure of the artist to submit a written claim for a payment due to him within two years, transfer the amount due the artist to the general fund of the state; and

(D) manage the account to protect the amounts on deposit.

SB-373

Byron Birtsall
~~Biron~~ ~~Birtsall~~ - Artist Summers
office spoke with.
- Modeled on Calf. Bill.

Jack Chenowitz. - 3837
Legal Dept.
#7775 Work order

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

February 19, 1980

Senator Brad Bradley, Chairman
Senate Commerce Committee
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99811

Re: Senate Bill 373, relating to the sale of fine art

Dear Senator Bradley:

In response to your February 4 request for comments from this department regarding this legislation, we have reviewed the bill, and offer the following comments.

While the idea of protecting the artist's interest in a work of art has considerable merit, there are some problems in this bill. For example:

(a) Its provisions apparently apply to sales of fine art by private persons (not just commercial sales), and to resales by private persons for $1,000 or more. Neither the bill nor AS 45.45 as it stands makes clear whether the intent is to cover commercial sales only. If the bill is intended to apply to non-commercial sellers, there will be a serious problem in trying to keep track of sales.

(b) The burden placed on the seller or seller's agent to locate the artist and transmit payment (subsection (c) of AS 45.45.250) may be unworkable and create another kind of enforcement problem -- keeping track of the artists. Perhaps some agency, such as the State Council on the Arts, should maintain a current listing of artists' addresses and furnish that information to sellers to aid them in fulfilling that duty. The burden would be on the artist to make sure that his or her current address was on file.

(c) It is not clear how the modification agreement under AS 45.45.250(b) will be enforced for future sales.

(d) It is unusual for a person to be able to collect repeatedly for later increases in price on resales of a product. This may give rise to litigation, e.g., regarding whether a seller obtained a higher resale price through his or her own expertise in promotion or display techniques.

(e) The definitions of "fine art" (AS 45.45.-250(e)(2) and (45.05.120(e)(3)) do not coincide (which in fact, may be intentional). The definition in AS 45.45.250(e)(2) includes the word "original", but the other section does not. Also, the definitions exclude works such as ivory carvings, prints made by silk screen or wood cut, etc., works done by weaving, and a number of other possible original creations properly thought of as fine art. This may be unfairness in the law. On the other hand, it may not be workable to include such works and still distinguish between "art" and "crafts".

(f) The word "withheld" on line 23, page 2, probably should be "held".

Our department is in no position to prepare a fiscal note on possible costs of the proposal.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Sarah T. Kavasharov
Sarah T. Kavasharov
Assistant Attorney General

AMG:jb:STK

ROBERT L. MANLEY

1312 West 15th Avenue

Anchorage, Alaska 99501

March 11, 1980

Senator Brad Bradley
Chairman Senate Commerce Committee
Alaska State Legislature
Pouch U
Juneau, Alaska 99811

RE: Senate Bill 373
An act regulating the sale of fine art

Dear Senator Bradley:

I am writing to voice my opposition to Senate Bill 373, an act relating to the sale of fine art, which I understand is presently before your committee. In essence, the act establishes an artist's royalty of 5% of the gross sales price to be paid on each resale of works of fine art. Legislation of this type is apparently intended to allow an artist to participate throught his or her life in the profits realized from the appreciation of works of fine art. Ideally, the poor struggling artist who is forced to sell his or her work at a pittance merely to survive can reap a portion of the benefits of the increased value of such works after he or she is discovered and is able to command a substantial price for his or her work. I am opposed to the Bill because neither in theory nor practice would such a law work to the benefit of most artists.

Under present law an artist is free to copyright art works and thus prohibit their reproduction. Likewise, by private contract, the artist can establish the type of royalty scheme provided by Senate Bill 373. In a free market place such a contract proposal would probably reduce the initial sales price of the work of art. If the collector must pay a royalty upon resale, he will realize a smaller profit and, accordingly, must reduce his investment in order to obtain the return he seeks. If the royalty scheme is mandated by law, the same result will occur and the initial sales price will be reduced to the detriment of the artist.

A particularly objectionable aspect of the Bill is tying the royalty of "gross sales price." If a person purchased a painting for $5,000 and because of market conditions or personal financial condition was forced to sell it for $3,000 through an agent thus netting only $2,000, because of commission, the crowning insult would be the requirement of paying the artist a further $150 royalty. Tying the matter to net profit would help cure that inequity, but in an inflationary environment "profit" on resale involves inflated dollars and the actual profit is very much smaller.

Another problem is in § 1(e)(2) defining fine art. The section provides that "'fine art' means an original painting, sculpture, drawing, photograph or work of graphic art." If the Bill is passed, the work "includes" should be substituted for the word "means" in this spot. This change would bring the provision into conformity with AS 45.05.120(e)(3) and thus would adopt a nonexclusive definition. The border line between "arts" and "crafts" is rather indistinct. Certainly if someone paid in excess of $1,000 for a weaving or piece of pottery, it would seem to fall within the category of "fine art."

I am not sure who proposed the Bill to Senator Sumner or who is lobbying in favor of it; however, the proposal to involve the Alaska State Council on the Arts simply establishes another brick in the massive of Alaskan bureaucracy. An uncharitable reviewer might even characterize the proposal as a small exercise in empire building on the part of the Alaska State Council on the Arts.

It does not appear that at the present time the Bill would work primarily to the benefit of Alaskan artists. The people who will be reaping royalties are LeRoy Neiman, Frederick Hunterwassar and other well established international artists. Under the Bill the royalty would be payable to such international artists even if the sale was consummated at a foreign auction house.

I don't believe that the proposal has any more merit than a proposal to allow architects or contractors to participate by way of royalty in the appreciation of buildings which they design or construct. Thank you for your consideration of my opinion and I urge you to oppose Senate Bill 373.

Very truly yours,

Robert L. Manley

chris manley/fabrications inc.
1312 west 15th ~ anchorage, alaska 99501
(907) 274-9907

3-16-80

Dear Senator Sumner,

I am a consumer of the visual arts as well as a working visual artist. I urge you to re-consider your decision to support Senate Bill 373 dealing with a 5% royalty tax on the sale of fine art.

My research has shown that similar legislation in California enacted 2-3 years ago has failed to help the very artists it was supposed to help. It has encouraged the consumers of visual arts to rethink future purchasing of art.

In this day of spiraling inflation and higher taxes it seems poor monetary management to add a program of this magnitude when the Alaska State Council on the Arts does not have the staff or funding in its budget to operate this program. There is a conflict in the definitions of fine art, page 2, e 2, and page 3, e 3. I suggest if there is mass support of this Bill that the definitions reflect that fine art includes a painting, sculpture drawing, photograph, or work of graphic art.

I am opposed to Senate Bill 373 as the negative impact on the visual arts will far outway any positive effects.

Sincerely,
Christian Manley

cc Senator Brad Bradley
Commerce Committee Chairman

Ms. Susan R. Clark
1109 C Street
Juneau, Alaska
99801

JUNEAU ARTS COUNCIL
Box 562
Juneau, Alaska 99802

cc: Christian Basler
Commerce committee

QUESTIONNAIRE

Senate Bill 373, "An Act relating to the sales of fine art."

I. Do you favor a royalty fee on the sale of your art? If so, is 5% acceptable?

yes However I do not feel the artist should get a % of the gross, but rather a percentage (say 30%) of the increase over the original price paid by the owner (ie a percentage of the profit made in the resale)

I AM A FEMALE ARTIST + collector

II. Should the seller or her or his agent carry prime responsibility for dispersal of the royalty fee? (PLEASE DO NOT USE SEXIST OR NON inclusive language in the bill)

Whoever handles the $ — it could be either at different times + not all sellers have agents

III. In the event that the seller or her or his agent cannot locate the artist for payment, should that payment be restricted to deposit in a special account with the Alaska State Council on the Arts?

Sounds reasonable, but artist searches could be expensive + bureaucracy being what it is.... this may not be ~~so~~ simple a process

If the artist is deceased, is the deposit + no longer required

JUNEAU ARTS COUNCIL
Box 562
Juneau, Alaska 99802

What about payment of the royalty to the estate or family of a deceased artist? I should think this would only be fair at least ~~same~~ as far as the artists immediate family (husband, wife, children, even parents).

IV. If deposited with the Alaska State Council on the Arts, are the administrative functions for the management of such funds satisfactory?

No 2 yrs is too short a time and if funds are to "disolve" into the State they should not go to general fund, but to the Arts Council (whoops - conflict of interest?) - well to something related to programs for artists, otherwise it's just an additional state tax on the sale of art

V. Would you be willing to testify before a legislative committee regarding this particular issue?

yes

VI. Other comments:

I am an artist who works in a fiber medium - I create fiber art as wall art + sculpture. Recently commissioned pieces of fiber art by the state have been ranging in $1,000 - $5,000. It is art, it is not craft. Fiber art is appreciating + the demand is currently growing at a fast rate. My work, I expect to increase in value if only because fiber art is currently underpriced. "Fine Art" should include fiber art

Introduced: 2/1/80
Referred: Commerce, Judiciary and Finance

IN THE SENATE BY SUMNER

SENATE BILL NO. 373

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the sale of fine art."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.45 is amended by adding a new section to read:

ARTICLE 6. SALE OF FINE ART.

Sec. 45.45.250. SALE OF WORKS OF FINE ART. (a) When a work of fine art is sold and the seller resides in the state or the sale of the work of fine art takes place in the state, the seller or his/her agent shall pay to the artist of the work of fine art, or the artist's agent, a royalty equal to five percent of the amount of the gross sales price.

(b) The right of an artist to receive a royalty equal to ~~five~~ 30 percent of the amount of the ~~gross sales price~~ profit from the sale of a work of fine art is ~~not~~ transferable. The right may be modified only by a written contract signed by the artist or his/her agent and the selling party or his/her agent which provides for the payment of a royalty greater than five percent of the gross sales price in the event of sale of a work of art. An artist may not waive the right to receive the royalty payment.

(c) Payment of the amount required to be paid to an artist by this section is the responsibility of the seller or his/her agent. The seller or his/her agent shall make a good faith effort to locate the artist and transmit the payment required by this section. If the seller or his/her agent is unable to locate and pay the artist within 90 days, the amount required to be paid to the artist by this section shall be transmitted to the Alaska State Council on the Arts for deposit to a special account.

(d) This section does not apply to

(1) the initial sale of a work of fine art if legal title to the work is vested in the artist at the time of sale;

(2) the resale of a work of fine art after the death of the artist;

(3) the resale of a work of fine art for a gross sales price of less than $1,000;

(4) the exchange of a work of fine art for one or more works of fine art, or for a combination of cash, other property, and one or more works of fine art, if the fair market value of the property exchanged is less than $1,000.

(e) In this section,

(3) "art" means

(1) "artist" means the person who creates a work of fine art;

(2) "fine art" means an original painting, sculpture, drawing, photograph, or work of graphic ~~art~~ or fiber art.

* Sec. 2. AS 45.05.120(e) is amended to read:

(e) Whenever an artist delivers or causes to be delivered a work of fine art of his own creation to an art dealer for the purpose of sale, or exhibition and sale to the public on a commission or fee or other basis of compensation, the work of fine art is not subject to the claims of the art dealer's creditors. Whenever a person who is not an artist, or the agent, of the artist, delivers a work of fine art to an art dealer for the purpose of sale and the work is sold, the amount of the gross sales price of the work of fine art which shall be withheld for payment to the artist under AS 45.45.250 is not subject to the claims of the creditors of the art dealer. For the purposes of this subsection

(1) "art dealer" means a person other than a public auctioneer engaged in the business of selling works of fine art;

(2) "artist" means the creator of a work of fine art;

(3) "fine art" includes a painting, sculpture, drawing, photograph, or work of graphic art.

* Sec. 3. AS 44.19.930 is amended by adding a new paragraph to read:

(6) to administer a special account called the "artist's royalty account," to which the council shall deposit amounts received from sellers of works of fine art, or their agents, who are unable to locate artists for the purpose of making payment of the portion of the gross sales price under AS 45.45.250; in the administration of the special account, the council shall

(A) receive payments from the resale of a work of fine art and deposit the payments to the account;

(B) attempt to locate an artist for whom money is received under (A) of this paragraph and remit payment of the amount due to that artist;

(C) in the event of inability to locate the artist or failure of the artist to submit a written claim for a payment due to him within two years, transfer the amount due the artist to the general fund of the state; and

(D) manage the account to protect the amounts on deposit.

SB
387

WALTER SCZUDLO
CHAIRMAN AND CHIEF EXECUTIVE OFFICER

ARCTIC first federal
savings & loan association

P.O. BOX 709 • FAIRBANKS, ALASKA 99707 • 452-4471
570 GAFFNEY ROAD • 400 STEESE HIGHWAY
701 WEST FOURTH AVENUE, ANCHORAGE

March 10, 1980

Senator Brad Bradley, Chairman
Senate Commerce Committee
Pouch U, State Capitol
Juneau, Ak. 99811

Dear Senator Bradley:

I appreciate you forwarding copies of Senate Bills 140, 384, 387 and 430; and House Bill [illegible] to this Association.

In Senate Bill 384 and House Bill 671, page three, line three, we would suggest adding "which would also include refinanced mortgage loans", between the words "loan" and "including".

At page three, line 16 we suggest adding "federal and state savings and loan association" between the words "bank" and "or". Page four, line 27 we suggest adding "federal and state savings and loan association" between words "banks" and "or". This would insure all financial lenders an opportunity to participate in all AHFC programs.

Senate bills 387, 430 and 140 we have no comment and suggest adoption of these three bills.

Sincerely yours,

Robert M. Haverfield
President

RMH:sgh

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811

February 15, 1980

Honorable Brad Bradley, Chairman
Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: SB 386, 387 and CSHJR 52

Dear Senator Bradley:

Thank you for offering the Department of Commerce and Economic Development the opportunity to respond directly to the above referenced bills and resolutions which have been referred to your committee in the Senate. Our responses and comments are contained in the following pages.

Sincerely,

David Creekman

David Creekman
Information Officer

08-H2LH

SB 387

"An Act clarifying the authority of the Alaska Housing Finance Corporation to provide housing assistance for mobile homes; and providing for an effective date."

The Department of Commerce and Economic Development requests additional time to consider and respond to this bill.

A copy of the department's response to SB 387 will be provided the Senate Commerce Committee when it is prepared.

Alaska HOUSING FINANCE CORPORATION

February 13, 1980

Senator Brad Bradley
Chairman
Senate Commerce Committee
Pouch "V"
Juneau, Alaska 99811

Re: SB 387

Dear Senator Bradley:

I have no opposition or comment to make regarding SB 387. I do not feel it is necessary for a fiscal note on this legislation.

Sincerely,

J. M. Linton
Executive Director

JML:jh

Telephone (907) 274-4621
Suite 100
Plaza 201 E. 3rd Avenue
P.O. Box 1020
Anchorage, Alaska 99510

WALTER SCZUDLO
CHAIRMAN AND CHIEF EXECUTIVE OFFICER

ARCTIC first federal
savings & loan association

P.O. BOX 709 • FAIRBANKS, ALASKA 99707 • 452-4471
570 GAFFNEY ROAD • 400 STEESE HIGHWAY
701 WEST FOURTH AVENUE, ANCHORAGE

March 10, 1980

Senator Brad Bradley, Chairman
Senate Commerce Committee
Pouch U, State Capitol
Juneau, Ak. 99811

Dear Senator Bradley:

I appreciate you forwarding copies of Senate Bills 140, 384, 387 and 430; and House Bill 671 to this Association.

In Senate Bill 384 and House Bill 671, page three, line three, we would suggest adding "which would also include refinanced mortgage loans", between the words "loan" and "including".

At page three, line 16 we suggest adding "federal and state savings and loan association" between the words "bank" and "or". Page four, line 27 we suggest adding "federal and state savings and loan association" between words "banks" and "or". This would insure all financial lenders an opportunity to participate in all AHFC programs.

Senate bills 387, 430 and 140 we have no comment and suggest adoption of these three bills.

Sincerely yours,

Robert M. Haverfield
President

RMH:sgh

ALASKA FEDERAL SAVINGS

ADMINISTRATIVE OFFICES
(907) 586-1015 586-1017
311 NORTH FRANKLIN ST.
JUNEAU, ALASKA 99801

March 10, 1980

Senator Brad Bradley, Chairman
Senate Commerce Committee
Pouch V, State Capitol
Juneau, Alaska 99802

Re: SB 140, 384, 387, 430
HB 671

Gentlemen:

Thank you very much for the opportunity to comment on the above listed legislation as noted in your letter of February 28, 1980.

SB 387, 430 - Clarifying the authority of Alaska Housing Finance Corporation are needed. We, therefore, urge adoption of these two bills.

SB 140 - Now amended to CSSB 140, expands the authority of Alaska Housing Finance Corporation into rural areas that should assist the public. We therefore urge adoption of the bill.

SB 384 & HB 671 - Are identical and we believe the following changes would prove beneficial as noted:

Change - Page 3, line 16 and Page 4, line 27
Insert "Insured bank, savings and loan association or trust company" for "banks or trust companies."

Reason - This change will clarify and insure that the financial institution will be supervised by a Federal government agency; and insure that all financial real estate lenders have an equal opportunity to participate in the various programs of Alaska Housing Finance Corp.

Change - Page 3, line 2
Add "initial or refinanced" between words "any" and "housing."

Reason - The addition of these two words will clarify and assure that all residents, whether new home buyers or long time home owners, have an equal opportunity to avail themselves of the benefits of the Alaska Housing Finance Corp. loan programs.

We have received many customer complaints over the policies of Alaska Housing Finance Corporation. The practice of discrimination over the use of the public tax dollars, when AHFC will not allow a long time home owner to refinance his home under Alaska Housing Finance program, is the one complaint that is heard most often and is impossible for the Alaska resident to comprehend.

We, therefore, recommend the above two changes and adoption of SB 384 and HB 671 as amended.

Thank you again for the opportunity to comment. We would also appreciate receiving information regarding any public hearing dates on the above or any housing related bills.

Yours truly,

L.C. Coffman
President

cc: All Alaskan League Members
Rick Lauber

ANCHORAGE BOARD OF REALTORS,® INC.
1818 WEST NORTHERN LIGHTS BLVD., SUITE 103
ANCHORAGE, ALASKA 99503
(907) 272-3833

REALTOR®

February 14; 1980

The Honorable W. E. "Brad" Bradley
The State Senate
Pouch V
Juneau, Alaska 99811

Dear Brad,

Thank you for your letter of February 6 concerning SB387-Mobile Homes as Real Property. I assume the intent of the bill is to provide statutory authority for AHFC to lend on mobile homes whether or not they are permanently affixed to the land or placed on a rented lot.

Additional statutory authority should not be required. AHFC has announced publicly their program to make loans for mobile homes, which indicates they feel they have the necessary authority already. The problem seems to be getting AHFC to adopt a program that is acceptable to the special interest groups involved, and I believe SB387 would have little if any effect in reaching a solution.

I believe a more effective approach would be the following amendments to Sec. 18.56.090:

> "Par (2): make or participate in the making of mortgage loans to sponsors, developers, builders and purchasers of residential housing, <u>including mobile homes whether or not they are permanently affixed to the real property or whether or not the mortgagor is the owner of the real property they occupy</u>, if the corporation...."
>
> "Par (7): acquire real property <u>or personal property</u>, or any interest in real property <u>or personal property</u>, in its own name...."

This approach would more clearly portray the intent of the bill without creating controversy over the legal ques-

REALTOR®—IS A COLLECTIVE MEMBERSHIP MARK WHICH MAY BE USED ONLY BY REAL ESTATE PROFESSIONALS WHO ARE MEMBERS OF THE NATIONAL ASSOCIATION OF REALTORS®

tion of whether mobile homes can be classed as real property unless permanently attached to the land.

Sincerely,

George

George Oliver,
Chairman, Legislative Committee

GO/hc

SB

416

P.O. BOX 4-2061 • 99509

3/24/80

SENATOR W. BRADLEY
CHAIRMAN COMMERCE COMMITTE
POUCH V. MAIL STOP NUMBER 3100
JUNEAU, AK
99811

DEAR SENATOR BRADLEY

AS A MEMBER OF MIDNIGHT SUN STREET ROD ASSOC. AND AUTO HOBBYIST I SUPPORT SENATE BILL 416 AS ORIGINALLY PROPOSED BY THE MIDNIGHT NIGHT SUN STREET ROD ASSOC. THE BILL AS AMENDED DOES NOT MEET THE ORIGINAL INTENT OF OUR BILL. THE MAIN INTENT OF OUR ORIGINAL BILL IS TO PROMOTE SAFETY THROUGH SELF POLICING OF MEMBER VEHICLES. THE SAFETY INSPECTION PROGRAM IS ORGANIZED BY THE NATIONAL STREET ROD ASSOCIATION WHICH HAS A NATIONAL MEMBERSHIP OF APPROXIMATELY 20,000 PERSONS. BILLS WHICH ARE VIRTUALLY IDENTICAL TO OUR ORIGINALLY PROPOSED BILL HAVE BEEN PASSED INTO LAW BY THE STATES OF DELAWARE & ~~MINNESOTA~~ MINNESOTA AS WELL SEVERAL OTHER STATES. OUR ORGANIZATION HAS TAKEN STEPS TO PRESENT THE BILL TO PERSONNELL WITH STATE OF ALASKA DEPT. OF PUBLIC SAFETY. I CAN SAFELY SAY IT WAS FAVORABLY RECIEVED. IF YOU SHOULD ~~WISH~~ DESIRE TO DISCUSS THE MATTER FURTHER PLEASE DO NOT HESITATE TO CALL ME AT 276-3646 DAYS OR 337-3814 EVES

SINCERELY
Ronald W. Bunn
RONALD W. BUNN

midnight sun street rod association
ANCHORAGE, ALASKA
P.O. BOX 4-2061 • 99509

Tom Snyder
SRA, BX 325F,
ANCH. AK.
99507

As a lifetime Alaskan & registered voter I would like to request your support on Senate Bill 416 as originally proposed by the Midnite Sun Street Rod Assn.

Thank you

Tom Snyder
SRA, BX 325F
ANCH. AK.
99507

midnight sun street rod association

ANCHORAGE, ALASKA

MAR. 24, 1980

RE: SENATE BILL 416

SEN. BRAD BRADLEY,

HAVING LIVED IN THE ANCHORAGE AREA FOR 11 YEARS NOW, THIS IS THE 1ST TIME I HAVE WRITTEN TO JUNEAU IN REGARDS TO A BILL.

I OWN A 1931 MODEL A FORD THAT IS MODIFIED WITH A LATER MODEL ENGINE. MY WIFE AND 4 CHILDREN, AGES 15, 13, 9 AND 8 ALL ENJOY DRIVING AND RIDING AROUND. EVEN WITH HIGHER GAS PRICES WE ENJOY A SUNDAY DRIVE.

OUR CLUB ORIGINALY PROPOSED THE BILL AND I AND MY FAMILY WHOLE-HEARTEDLY ENDORSE THE BILL AS IT WAS 1ST PROPOSED. THIS PROPOSAL WAS ARRIVED AT WITH MUCH DISCUSSION & DELIBERATION AND IS SOUND. IT HAS NOW BEEN CHANGED ALMOST BEYOND RECOGNITION, PLEASE CHANGE IT BACK TO THE ORIGINAL!

I OWN A HOME IN SEWARD & LOVE IT HERE. PLEASE HELP ME & MY FAMILY ENJOY ONE OF THE THINGS THAT WE LIKE TO DO.

THANK YOU VERY MUCH,

Charles F. Lyons

VOTERS REG. # 0107097

3/24/80

midnight sun street rod association
ANCHORAGE, ALASKA

GEORGE H SCHAEFER
P.O BOX 10-412
ANCHORAGE ALASKA
99511
V.R. CO553/64

Dear Senator Bradley

I am a member of the Midnight Sun Street Rod association. I am in full support of Senate Bill 416, as it was presented by the Midnight Sun Street Rod Asso. I would like to see it as a law and hope that you'll give it full support.

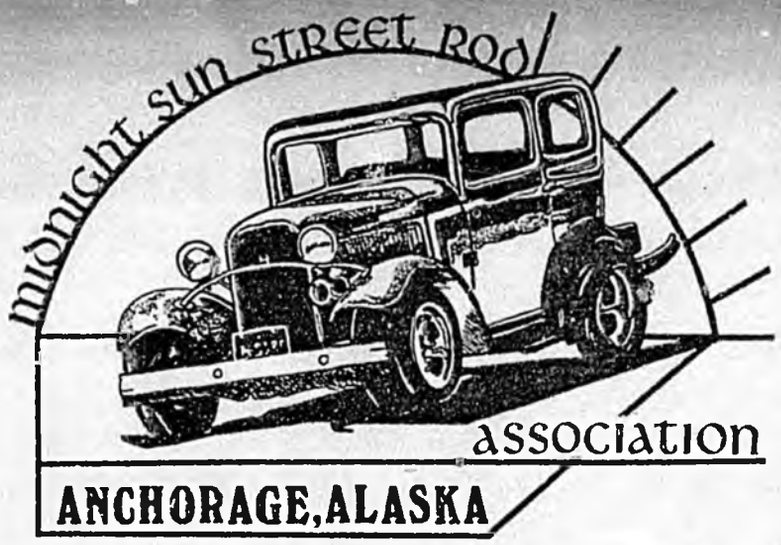
Thanks you for your cooperation in this matter.

George H Schaefer

Dear Senator Bradley,

I would like to have S.B. 416 approved as it was orginaly submitted by the Midnight sun Street Rod association and not the version that Senator Sumner submited.

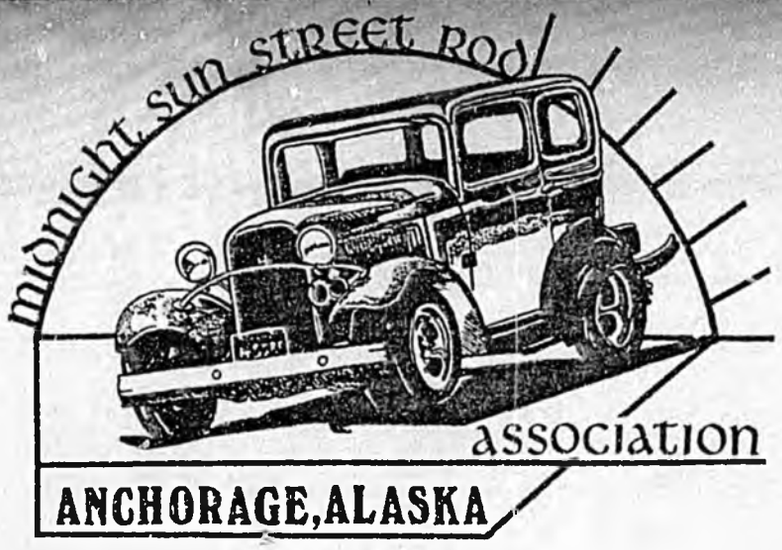
Michael J Bulkeley
4225 S Penard RD. #116
anchorage alaska 99503



To Senator W. Bradley

I wish to make it known that I support Senate Bill 416 in the manner in which it was proposed by the Midnight Sun Street Rod Association. Thanks for your consideration.

Charles C. Stennette



3-24-80

To: Senator Bradley

I'm a street rodder and am a member of Midnight Sun Street Rod Assoc.

I strongly support S. Bill # 416 Concerning license plates for street rodders — I hope a speedy passage of this bill is in the works!

Sincerely —

Wm. Flemming
4501 Montrose
Anchorage, Ak 99502

midnight sun street rod association

ANCHORAGE, ALASKA

3-24-80

TO: Senator Bradley:

Being a member of The midnight Sun Street rod Association, the club worked out a bill on Vehicle ~~[illegible]~~ lic. plating. Now you are changing it please put it back the way it was orginaly put in

Bill # SB 416

Butch Norah

PURPOSE OF STREET ROD PLATES

(A) To promote safety through self-policing of member vehicles.

(B) To provide family oriented recreation.

(C) Preservation of modified antiques, known as street rods.

(D) To provide recognition for organized automobiles hobbyist.

(E) Additional revenue.

AN ACT

Amending the motor vehicle code; and providing for an effective date.

---

*Section 1. AS 28.10.181(a) is amended to read:

Sec. 28.10.181. REGISTRATION OF UNIQUE AND SPECIAL VEHICLES AND VEHICLES USED FOR SPECIAL PURPOSES. (a) The department shall register unique and special vehicles and vehicles used for special purposes and issue registration plates as provided in this section. Notwithstanding other provisions of this chapter, registration plates issued under this section remain with the person or organization to whom they are issued when vehicle ownership is transferred or title or interest in the vehicle is assigned, except for plates issued under (b), (h), (i) and (L) of this section.

*Section 2. AS 28.10.181 is amended by added a new subsection to read:

(L) If any modified automobile at least twenty (20) years old, here-in-after referred to as a street rod, is duly registered in the State of Alaska, the owner of such street rod may make an application for a special street rod automobile plate under this subsection to be displayed on such street rod in lieu of the standard vehicle registration plate. Applicant must furnish proof that said street rod is registered in an Alaska street rod club which is fully affiliated with the National Street Rod Association, Inc.

Upon receipt of an application for a special street rod plate on a form prescribed under this subsection, the Commissioner shall issue to such applicant, a special street rod automobile plate on a permanent basis, and it shall bear the inscription "STREET ROD" with yellow letters on a blue background. In addition, such plates shall have displayed thereon the word "ALASKA"; the words "NORTH TO THE FUTURE", and numbered in a separate numerical series beginning with No. 1. This special plate shall be issued for the applicant's use only for such automobile, and in the event of a transfer of title, the transferor shall surrender the special plate to the Commissioner. Said applicants shall, in addition to the prescribed registration validation sticker, be required to display a valid National Street Rod Association safety inspection sticker in the lower right-hand corner of the windshield of such vehicle upon which said special plate is displayed.

*Section 3. AS 28.10.421(d) is amended by adding a new subsection to read:

(12) a street rod (one time only upon initial registration under §181 of this chapter.....$20

*Section 4. Sections 1, 2 and 3 of this Act take effect January 1, 1981.

CURING SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3791

OUT OF SESSION:
1016 WEST 6TH AVENUE
SUITE 415
ANCHORAGE, ALASKA 99501
(907) 272-4541

BILL SUMNER
Alaska State Senator
DISTRICT 7-E

COMMITTEES:
RESOURCES
CHAIRMAN
FINANCE
RULES
COMMITTEE ON COMMITTEES
JOINT INTERIM COMMITTEE
ON GAS PIPELINE FINANCING

November 21, 1979

Billy G. Berrier - Director
Division of Legal Services
Legislative Affairs Agency
Pouch Y - State Capitol
Juneau, Alaska 99811

Dear Mr. Berrier:

Enclosed, please find materials relating to special vehicles, more commonly known as "street rods." I have been asked to consider introducing legislation which, in effect, would grant official recognition of street rods as having historical value and recreational purpose. In addition, the intent of the legislation would allow for some variances in safety regulations pertaining to the vehicles if such a vehicle were registered and affiliated with the National Street Rod Association.

I have included a proposal for legislation which was submitted to me by members of the Midnight Sun Street Rod Association (affiliated with the National Street Rod Association), a copy of legislation adopted by the state of Delaware and a Vehicle Safety Inspection form from the National Street Road Association.

I would appreciate a draft of legislation incorporating the points mentioned in the enclosed material and would appreciate authorship listed as "by Sumner, by request." Thanks for your help with this matter.

Sincerely,

BILL SUMNER
Senator

BS:mg

VEHICLE SAFETY INSPECTION 1978-79

The National Street Rod Association vehicle safety inspection is valid until expiration date* shown below, unless voided by modifications or deterioration of any system components. A new inspection can be requested at any time and is recommended if modifications are made to the vehicle or any of its components. Certification sticker is not transferable.

Owner: _____ Age: _____ Street Address: _____

City: _____ State: _____ Zip: _____ Phone: _____

Make of Vehicle: _____ V.I.N. _____ Year _____ Body Style _____

NSRA Membership Number: _____ License Number _____ Current Drivers License # _____

1. ☐ **SPEED INDICATOR:** Speedometer or calibrated tachometer required.
2. ☐ **REAR VIEW MIRRORS:** Two required; one inside, one outside.
3. ☐ **INSURANCE:** Current liability insurance required (PL/PD).
4. ☐ **AUTOMATIC TRANSMISSION LOCKOUT:** Required (no exceptions).
5. ☐ **SAFETY GLASS:** Must comply with current ANSI Z 26.1 standard.
6. ☐ **WINDSHIELD WIPER:** One (operable) required.
7. ☐ **LIGHTING:** ____ Hi-beam; ____ low-beam; ____ tail; ____ brake; ____ license (rear reflector required; should be part of tail-light lens design). Must comply with VESC-12 25.1, 24" MN-54" maximum height.
8. ☐ **HORN:** Required.
9. ☐ **SHIFT PATTERN:** Shift pattern must be visable.
10. ☐ **BRAKES:** Four-wheel brakes required. Lines *must* be safely mounted and routed.
11. ☐ **TIRES:** Minimum 3/32 tread acceptable. Must meet DOT specifications.
12. ☐ **SHOCK ABSORBERS:** One per wheel required.
13. ☐ **STEERING:** No excessive "play" (2" radius max.) or binding; system must be safely mounted.
14. ☐ **SCRUB LINE:** No components to be below this line.
15. ☐ **EMERGENCY BRAKE:** Must be activated separate from normal foot operation. Line lock not acceptable.
16. ☐ **SELF-ALIGNING ROD END BEARINGS:** (Heim, etc.) Ball MUST have ⅛" spacer (minimum) on each side of housing, equal to the diameter of the lip on the ball. Spacers are required only if misaligned or binding can occur. Rod ends MUST NOT have more than 10° misalignment. No visible fractures, insert sloppiness or binding will be allowed.
17. ☐ **CHASSIS FASTENERS:** Self-locking nuts, lock washers, safety wire, Loctite, or cotter pins required.
18. ☐ **MODIFICATIONS:** All changes must be of safe design and construction; quality or workmanship to be considered in inspection.
19. ☐ **THROTTLE LINKAGE:** Must not travel past center, return spring required.
20. ☐ **FUEL SYSTEM:** Tank and lines safely mounted and routed.
21. ☐ **EXHAUST SYSTEM:** Exit exhaust away from car body. No leaks; reasonable sound leval; 85 decibels max.

FOR YOUR SAFETY

RECOMMENDED EQUIPMENT: Turn indicators, per VESC-12, hi-beam indicator light in instrument panel, fire extinguisher in driver/passenger compartment, minimum wheel offset, seat belts, windshield defroster, gear shift indicator.

RECOMMENDED TOWING EQUIPMENT: (cars equipped with trailer hitch) turn indicators; tail & stop lights; two outside mirrors; safety chain mount; hitch securely mounted; fenders over trailer tires.

VEHICLE INSPECTION RATING ☐ Approved ☐ Not approved

If not approved, inspector's comments (indicated by number of item referred to):

_____ _____ _____ _____

_____ _____ _____ _____

_____ _____ _____ _____

Date of inspection: _____ Inspector _____ Division _____

Completion of the NSRA vehicle inspection warrants only that the vehicle hereon identified complies with equipment requirements recommended by the National Street Rod Association. The National Street Rod Association vehicle safety inspection is only advisory and is not to be construed as an official legal clearance, and the National Street Rod Association, its employees, officers, delegates, agents, or anyone assisting the Association assumes no responsibility for this advisory clearance.

*This inspection expires - June 1, 1979

This form must be signed by Vehicle owner _____

Date _____ Place _____

SD 12152

Form 100 1/78

P. O. Box 4-2061
Anchorage, AK 99509
February 22, 1980

Senator Bill Sumner
Pouch V, Mail Stop 3100
Juneau, AK 99811

Dear Senator Sumner:

We are in receipt of Senate Bill No. 416, "An Act relating to the registration of motor vehicles; and providing for an effective date," and it is not what we presented to you. First we will point out the incorrect portions of the Bill as presented to the Commerce and Finance Committee, and second we will discuss what our intent of the bill is. We have also enclosed a copy of what was presented to you, and you can see the difference:

Section 1. - No change.

Section 2. -

We are considering any automobile that is at least 20 years old that is modified from stock, no matter what country of manufacture. It doesn't matter to us where an auto is manufactured, and the reason we chose at least 20 years old is because age alone would make it unique; besides, if a car can last 20 years on Alaska highways, it deserves recognition.

We want in the statutes that the applicant must furnish proof that their auto is registered in an Alaska street rod club which is fully affiliated with the National Street Rod Association, and that such vehicle has a valid safety sticker displayed on its windshield showing that it has passed the National Street Rod Association safety inspection. We are not proposing this bill just to have a special plate; we are proposing this bill to insure that our hobby of having family fun with cars is not legislated out of existence. This bill will enable us to self-police our sport and verify to you that we are indeed doing our job.

Section 3. -

This is as we presented it and we apologize for being incorrect. We wish to pay an initial one-time fee of $20 and in addition the annual registration fee of $30 each year at renewal time.

Section 4. - No change.

Myself, Ron Bunn and Dave Mock, National Street Rod Association Representative for Alaska, had a meeting with Charles Hosack, Deputy Director, Division of Motor Vehicles, and Ken Simpson, Registrar, Division of Motor Vehicles, in December, 1979, in reference to our proposed legislation, and they were very receptive to our bill under certain conditions. We discussed these conditions with them and wholeheartedly agree, and we thanked them for their time and guidance.

They advised that the description of the design of the plate should not be spelled out in statute; that it is better to have statute allow a special plate for street rods and then leave it to their Division to do what they can with the plate manufacture. We also agreed with them that it would be better not to have regulations written to describe what we needed because our requirements are few; that it would be better to have them in statute.

The legislation as proposed was modeled after An Act to amend Chapter 21, Subchapter VII, Section 2196 of Delaware Title 21 of the State of Delaware. The State of Delaware was the first state to adopt this type of legislation, and since then Wisconsin, Tennessee, Minnesota and Connecticut have also passed similar legislation. Pennsylvania and New Jersey have legislation presently pending.

If you have any questions concerning this legislation or if you wish us to testify, please contact me or Ron Bunn.

Ron Bunn, Manager
Shorett & Riely Real Estate Appraisers
3201 "C" Street
Anchorage, AK 99503 276-3646

Ed Park, Royalty Manager
Division of Minerals & Energy Management
703 W. Northern Lights
Anchorage, AK 99503 263-2256

We thank you for your time and consideration.

Sincerely,

Edward W Park

Edward W. Park
Secretary

EWP/cgp

Enclosure

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Senator Sumner	SB 416

DEPARTMENT POSITION

Oppose

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Robert J. Rowan	2/27/80	William R. Nix by JHB	2/27/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING) None

(2) OTHER AGENCIES AFFECTED BY BILL Some municipalities - minute loss of revenue from Motor Vehicle Registration tax.

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Street Rodders Association	Unknown

(3) PROGRAM EFFECTS OF BILL

Regulations would have to be proposed and adopted, which would reflect how to interpret "subsequently modified" as a determining factor in which vehicles qualify as street rods.

Manufacturer of plates would require special dies due to mandated slogan, color (reverse of new plates), and numbering.

Loss of revenue to State as proposed law waives annual registration fee.

(4) FISCAL IMPACT: ☐ NONE ☒ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

This is a request for special plates for a small special interest group. If approved, other special interest groups will rightfully ask for special consideration, and the number of different type plates could get out of hand and could become quite costly.

Oppose one-time fee and waiving all registration fees thereafter. Just because one is modified and one is not, should not be reasoning behind waiving registration fees.

Bill proposes statutory mandate relating to numbering, color, slogan, design, etc. Would prefer that design, color, etc, not be mandated, but fall under AS 28.10.161 (b).

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 416
Title An Act relating to the registration of motor vehicles
Requested by Senator Bradley, Chairman - Commerce Date 2-20-80

II. FISCAL DETAIL
Agency Affected Department of Public Safety - Motor Vehicles
Program Category Affected Life and Property Protection
BRU, Program, or Subprogram(s) Affected Vehicle Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	0	*	*	*	*	*
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND		(106.5)	(106.5)	(106.5)	(106.5)	(106.5)
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		0				
PART TIME		0				
TEMPORARY		0				

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

*Expenditures would be $3.8 for first year, and approximately $.1 each year thereafter. This would cover special dies to manufacturer plates and slight increase in cost of plate over bulk rate.

Funding: There are 7,103 vehicles presently registered in Alaska which were manufactured prior to 1959. If 50% fell within "subsequently modified" regulations, the loss of revenue to the state is reflected.

IV. DATE 2-27-80 PREPARED BY Bill Brown
AGENCY Public Safety, Motor Vehicles
PHONE 465-4335

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

SB
430

ALASKA FEDERAL SAVINGS

ADMINISTRATIVE OFFICES
(907) 586-1015 586-1017
311 NORTH FRANKLIN ST.
JUNEAU, ALASKA 99801

March 10, 1980

Senator Brad Bradley, Chairman
Senate Commerce Committee
Pouch V, State Capitol
Juneau, Alaska 99802

Re: SB 140, 384, 387, 430
HB 671

Gentlemen:

Thank you very much for the opportunity to comment on the above listed legislation as noted in your letter of February 28, 1980.

SB 387, 430 - Clarifying the authority of Alaska Housing Finance Corporation are needed. We, therefore, urge adoption of these two bills.

SB 140 - Now amended to CSSB 140, expands the authority of Alaska Housing Finance Corporation into rural areas that should assist the public. We therefore urge adoption of the bill.

SB 384 & HB 671 - Are identical and we believe the following changes would prove beneficial as noted:

Change - Page 3, line 16 and Page 4, line 27
Insert "Insured bank, savings and loan association or trust company" for "banks or trust companies."

Reason - This change will clarify and insure that the financial institution will be supervised by a Federal government agency; and insure that all financial real estate lenders have an equal opportunity to participate in the various programs of Alaska Housing Finance Corp.

Change - Page 3, line 2
Add "initial or refinanced" between words "any" and "housing."

Reason - The addition of these two words will clarify and assure that all residents, whether new home buyers or long time home owners, have an equal opportunity to avail themselves of the benefits of the Alaska Housing Finance Corp. loan programs.

We have received many customer complaints over the policies of Alaska Housing Finance Corporation. The practice of discrimination over the use of the public tax dollars, when AHFC will not allow a long time home owner to refinance his home under Alaska Housing Finance program, is the one complaint that is heard most often and is impossible for the Alaska resident to comprehend.

We, therefore, recommend the above two changes and adoption of SB 384 and HB 671 as amended.

Thank you again for the opportunity to comment. We would also appreciate receiving information regarding any public hearing dates on the above or any housing related bills.

Yours truly,

L.C. Coffman
President

cc: All Alaskan League Members
Rick Lauber

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

March 11, 1980

The Honorable Brad Bradley
Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 430 (Alaska State Housing Authority)

Dear Senator Bradley:

This is in response to your request for comments from our department on the above-referenced legislation.

It appears that Senate Bill 430 would have no fiscal impact on the Department of Law. While this department has no position on the substance of this bill, one or two technical matters do come immediately to mind.

First, the title of the bill is, "An Act extending the power...," while the title and text of the amendment to AS 18.55.390 appear to be dealing with limitations on the authority's power. The proposed new language of AS 18.55.390 does appear to broaden somewhat the authority's powers regarding moderate cost and rental housing, and this may explain the use of the word "expanding" in the title of the bill. It is a bit confusing at first glance.

Second, although the existing language of AS 18.55.390 is not particularly precise, the proposed new language will give the authority clear directions as to its powers. Unfortunately I do not know what problems may have led to the need for this proposed amendment, and am thus unable to offer any concrete suggestions for tightening up the language.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Teo Spengler for
Susan Burke
Assistant Attorney General

03-C6LH

SB/ab

WALTER SCZUDLO
CHAIRMAN AND CHIEF EXECUTIVE OFFICER

ARCTIC first federal
savings & loan association

P.O. BOX 709 • FAIRBANKS, ALASKA 99707 • 452-4471
570 GAFFNEY ROAD • 400 STEESE HIGHWAY
701 WEST FOURTH AVENUE, ANCHORAGE

March 10, 1980

Senator Brad Bradley, Chairman
Senate Commerce Committee
Pouch U, State Capitol
Juneau, Ak. 99811

Dear Senator Bradley:

I appreciate you forwarding copies of Senate Bills 140, 384, 387 and 430; and House Bill 671 to this Association.

In Senate Bill 384 and House Bill 671, page three, line three, we would suggest adding "which would also include refinanced mortgage loans", between the words "loan" and "including".

At page three, line 16 we suggest adding "federal and state savings and loan association" between the words "bank" and "or". Page four, line 27 we suggest adding "federal and state savings and loan association" between words "banks" and "or". This would insure all financial lenders an opportunity to participate in all AHFC programs.

Senate bills 387, 430 and 140 we have no comment and suggest adoption of these three bills.

Sincerely yours,

Robert M. Haverfield

Robert M. Haverfield
President

RMH:sgh

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER / POUCH D – JUNEAU 99811

February 29, 1980

Honorable Brad Bradley, Chairman
Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: SB 406 and 430 and SJR 39

Dear Senator Bradley:

Thank you for offering the Department of Commerce and Economic Development the opportunity to respond directly to the above referenced bills and resolution which have been referred to your committee. Our responses and comments are contained in the following pages.

Sincerely,

David Creekman

David Creekman
Information Officer

Attachments

08-H2LH

SB 430

"An Act extending the power of the Alaska State Housing Authority with respect to moderate cost and rental housing."

Although the title of the bill purports to extend ASHA's power, a close analysis of the language of the bill indicates that it may do exactly the opposite. Also, the impact of the language of the bill might be more broad than was intended.

Specific comments prepared by the Alaska State Housing Authority follow.

Comments on Senate Bill No. 430: "An Act Extending the Power of the Alaska State Housing Authority with Respect to Moderate Cost and Rental Housing"

I. FACTS:

MODERATE COST AND RENTAL HOUSING is addressed in AS 18.55.300-470 inclusive. ASHA's powers and duties with respect to moderate cost and rental housing are set forth in Section 310 of Title 18 Chapter 55:

> Sec. 18.55.310. Powers and duties of authority. The authority shall construct, protect, operate, maintain, rent, and sell at the places in the State which the authority considers most appropriate moderate-cost or rental housing facilities and projects for veterans and other residents of the State. For this purpose the authority may accept funds from any source, including the Federal Government, and may enter appropriate contracts, including contracts with the Federal Government.

The powers set forth under Section 310 above are augmented by those granted ASHA elsewhere in the statutes:

> Sec. 18.55.380. Authority may use powers under other laws. Any powers of the authority under any statute, including but not limited to the powers of eminent domain and issuance of bonds and obligations, may be invoked with respect to a project undertaken or a loan made or to be made under the authorization provided in Sections 300-470 of this chapter.

At present, ASHA's authority as provided in Sections 300-470 is limited by the following provision:

> Sec. 18.55.390. Limitation on authority's power. The power of the authority to act under Sections 300-470 of this chapter is limited to projects where adequate financing on reasonable terms is not otherwise available or entrepreneurial sponsorship is lacking.

Senate Bill No. 430 proposes to repeal Section 390 and re-enact this section to read as follows:

> Sec. 18.55.390. Limitations on Authority's Power. The authority may act under AS 18.55.300-18.55.470 only with respect to a project in an area of the State where financing is not otherwise available, or with respect to a project for which there is no apparent sponsor with experience in the development of moderate cost housing.

II. ISSUE PRESENTED:

Does Senate Bill No. 430 extend the power of ASHA with respect to moderate cost and rental housing?

III. SHORT ANSWER:

No. Although the proposed re-enactment may clarify the term "entrepreneurial sponsorship" in the current provision, the proposed legislation may restrict the development of ASHA moderate cost and rental housing projects to rural areas and prohibit said development in metropolitan areas.

IV. ANALYSIS:

Under Section 18.55.390 as presently enacted, ASHA may develop moderate cost and rental housing at any time and place where "adequate financing on reasonable terms is not otherwise available" or "entrepreneurial sponsorhip is lacking". Therefore, ASHA may develop moderate cost and rental housing where:

(1) Adequate financing on reasonable terms is available but no one else is building;

(2) Private entrepreneurs are building but adequate financing is tight;

(3) Adequate financing is available but not on reasonable terms (with or without entrepreneurial sponsorship).

Therefore under the present statutory provisions, ASHA may develop in bush areas where there is no "entrepreneurial sponsorship"; in bush areas where there is no adequate financing; in bush areas where there is "entrepreneurial sponsorship" and "adequate financing", but not on reasonable terms; and in metropolitan areas where most frequently there will be adequate financing and entrepreneurial sponsorship, but no adequate financing on reasonable terms.

Under the proposed re-enactment, ASHA may be limited to developing moderate cost and rental housing in bush areas such as Bethel where no financing is available. In metropolitan areas financing will be "otherwise available" under the proposed re-enactment, whether or not the terms are reasonable. Furthermore, in metropolitan areas, it is feasible for private sponsors to qualify under certain Federal programs for the development of moderate cost housing. Therefore ASHA may be precluded from offering moderate cost and rental housing in areas where private interests wish to expand in the area of federal subsidy housing.

V. CONCLUSION:

Although Senate Bill No. 430 is an Act entitled "An Act Extending the Power of the Alaska State Housing Authority with Respect to Moderate Cost and Rental Housing", the proposed re-enactment is restrictive by its terms. The particular phraseology of the section, for instance, "an area of the State", "where financing is not otherwise available", "no apparent sponsor with experience", "development of moderate cost housing" without mention of rental housing, lead me to conclude that Senate Bill No. 430 may be an attempt by established

metropolitan business concerns to restrain competition from ASHA in the area of moderate cost housing. Bankers and experienced builders appear to be requesting first "dibs" in the development of moderate cost housing, federally subsidized and otherwise. In the more remote areas where the established business concerns are unwilling to adventure themselves, they have given ASHA a free hand.

With respect to rental housing, the proposed re-enactment is all together ambiguous. "Rental housing" is included in the title of Senate Bill 430, but nowhere does "rental housing" appear in the body of the proposed re-enactment.

The proposed re-enactment does not extend the power of ASHA. If the first clause of the existing provision remains unchanged and only the second clause is amended along the lines of the proposed re-enactment, then ASHA's power may be extended inasmuch as ASHA would have the option of developing moderate cost and rental housing in the case where there existed reasonable financing and willing but inexperienced sponsors. With such an amendment, Sec. 18.55.390 would read as follows:

> Limitation on authority's power. The power of the authority to act under Sections 300-470 of this chapter is limited to projects where adequate financing on reasonable terms is not otherwise available or where there is no apparent sponsor with experience in the development of moderate cost and rental housing.

SB
443

SB-443

7900 Honeysuckle Drive
Anchorage, Alaska 99502
March 28, 1980

Senator W. E. (Brad) Bradley
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

About a year and a half ago the Anchorage School Board met with the Student Advisory Board (2 representatives from each high school) to hear some of the problems and concerns which they wanted to express to us. One comment was, "Why is it necessary to say the Pledge of Allegiance every day - - couldn't we say it once each week or once each month?"

After some discussion regarding the pledge, I felt I should tell them how I feel about it. I explained that I look upon the recitation of the Pledge as an opportunity to express my appreciation for the freedoms we enjoy, the benefits that we have inherited and thankfulness to those who fought to establish this nation. We do not worship the flag, but look upon it with respect and as a symbol of freedom. We should not tire or become bored with expressions of gratitude, but should look upon them as we would our thanks offered at the dinner table. Daily expressions of appreciation and gratitude should be a part of our everyday life.

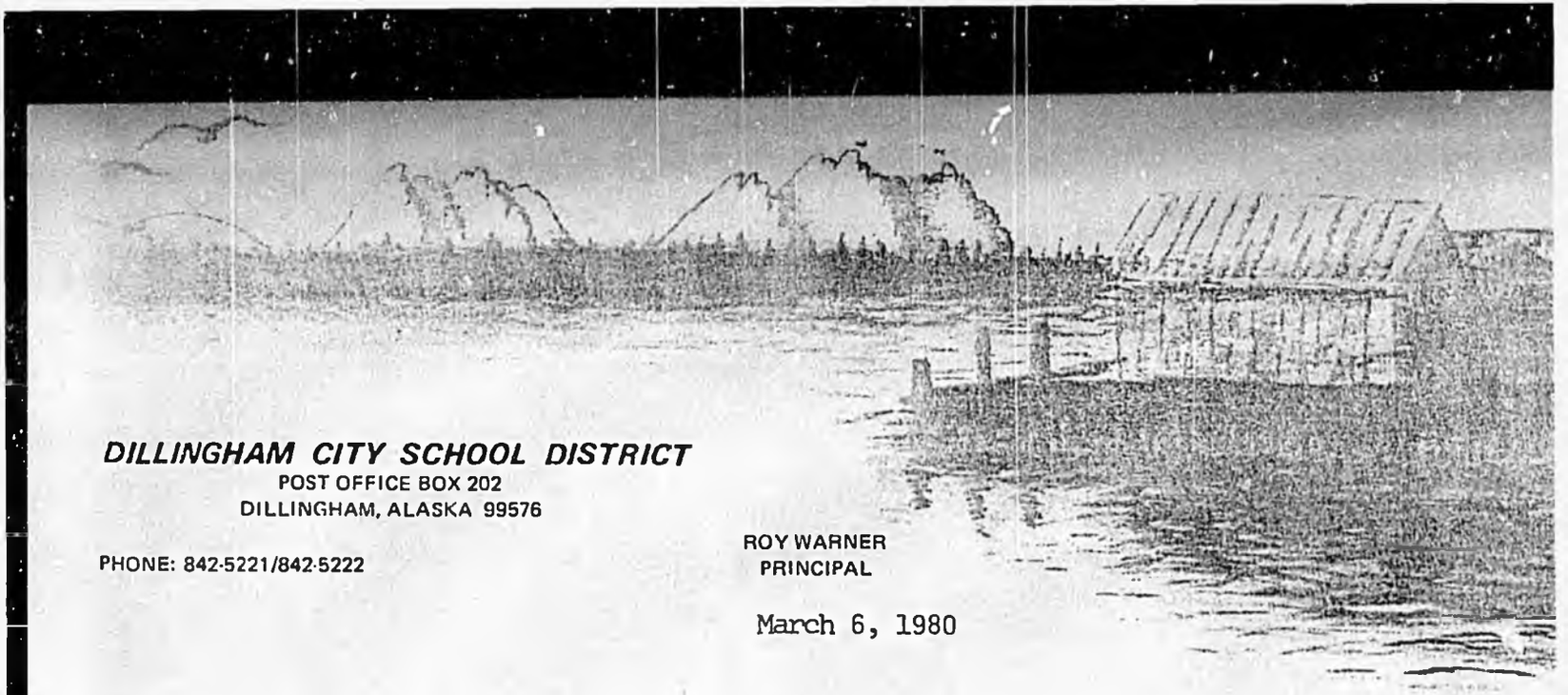
I hope these thoughts will assist you in promoting your legislation regarding the Pledge of Allegiance.

Keep up the good work.

Sincerely,

Keith W. Calderwood

Keith W. Calderwood



DILLINGHAM CITY SCHOOL DISTRICT
POST OFFICE BOX 202
DILLINGHAM, ALASKA 99576

PHONE: 842-5221/842-5222

ROY WARNER
PRINCIPAL

March 6, 1980

Chairman, Brad Bradley
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Mr. Bradley:

In your letter that refers to SB 443, I find this is in agreement with the way I feel.

I feel the pledge of allegiance emphasizes in part what we are trying to teach. We are trying to teach patriotism, loyalties and to teach individuals to be worthy citizens. Yet SB 443, also affords the opportunity to not say the pledge of allegiance for what ever reasons that individual desires.

Therefore, I am in agreement with the bill as it is written.

Thank you for asking my comments.

Sincerely,

Roy Warner

Roy Warner
Principal

RW:jw

CITY AND BOROUGH OF JUNEAU SCHOOL DISTRICT
P.O. BOX 808 • DOUGLAS, ALASKA 99824

March 7, 1980

Senator Bill Bradley, Chairman
Senate Commerce Committee
Pouch V
Mail Stop 3100
Juneau, Alaska 99811

Dear Senator Bradley:

I agree with the Senate Bill #443. I feel that we need to do everything we possibly can to afford public school students and teachers to develop respect for their country. I believe that the opportunity of pledging allegiance at the beginning of each school day can foster this attitude. I wholeheartedly support this Bill and would encourage its passage. Thank you.

Sincerely,

Jerald L. Mikesell

Dr. Jerald L. Mikesell, Principal
Glacier Valley Elementary School
Juneau, Alaska

JLM:nlk

BOX 1200

PH. 262-5846

KENAI PENINSULA BOROUGH SCHOOL DISTRICT

SOLDOTNA, ALASKA 99669

March 7, 1980

Senator Brad Bradley, Chairman
Senate Commerce Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

I am responding to your correspondence of March 4, 1980, related to SB 443.

The sponsors of this bill are certainly to be commended for the intent expressed therein.

However, I believe that the present "opportunity to recite the Pledge of Allegiance at the beginning of each school day" is currently in existence. For example, this is the present practice within the Kenai Peninsula Borough School District.

In short, I believe the intent of this legislation is worthwhile; however, I do not believe it is necessary.

Sincerely,

Fred Pomeroy

Fred Pomeroy
Superintendent

FP/bj

GREATER SITKA BOROUGH SCHOOL DISTRICT
ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES

P. O. BOX 179 SITKA, ALASKA 99835

JOHN E. COFFEE
SUPERINTENDENT

March 6, 1980

Brad Bradley, Chairman
Senate Commerce Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

I am in agreement with Senate Bill No. 443. To be honest with you, I thought this was a privilege we were now afforded. We do say the pledge at Baranof School and we do allow those who have other convictions to remain seated. We do not have a rule that mandates such procedures. They are taken for granted as an acceptable means of beginning the school day.

I suggest you strike the word "materially" in line 17 and "substantial" in line 18. I believe these words are open to interpretation, and I am sure someone would eventually go the limits.

Good luck in getting this bill out of the Senate Judiciary Committee and before the full Senate.

Sincerely,

Robert D. Schell

Robert D. Schell, Principal
Baranof Elementary School

RDS/kk

Soldotna Elementary
Box 547
Soldotna, Ak 99669

Introduced: 2/18/80
Referred: Judiciary

IN THE SENATE BY BRADLEY

SENATE BILL NO. 443

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

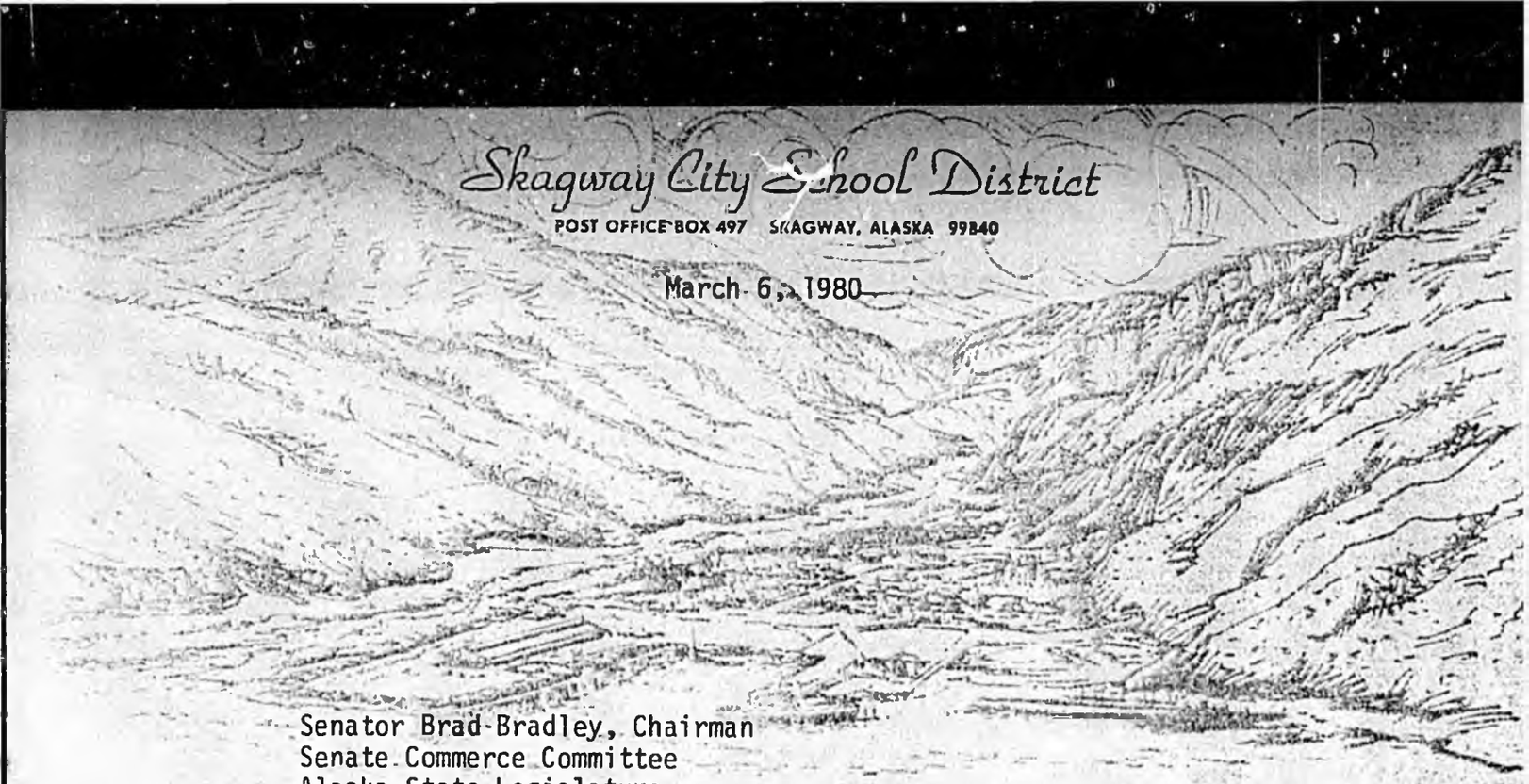
For an Act entitled: "An Act affording students and teachers in the public schools an opportunity to recite the pledge of allegiance at the beginning of each school day."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.03 is amended by adding a new section to read:

Sec. 14.03.135. PLEDGE OF ALLEGIANCE. An opportunity shall be afforded students and teachers in the public schools to recite the pledge of allegiance to the flag of the United States during the first hour of each day in session during the school term. Students and teachers who for any reason do not wish to participate in the recitation of the pledge of allegiance may keep silent, remain seated, or express their nonparticipation in any other way which does not materially disrupt classwork or involve substantial disorder or invasion of the rights of others.

I support this bill as a guide to participation. We all allow this opportunity in our school now. We as a nation have been losing our patriotism gradually for the past decade or so. This bill would call attention to this patriotic activity.



Skagway City School District
POST OFFICE BOX 497 SKAGWAY, ALASKA 99840

March 6, 1980

Senator Brad-Bradley, Chairman
Senate Commerce Committee
Alaska State Legislature
Pouch V, State Capitol Bldg.
Juneau, Alaska 99811

Honorable Senator Bradley:

SB 443 is a bill that I believe is just and correct for administration of schools. In particular, line 11 and 12 are within a positive frame work for local policy development.

Thank you for this legislation.

Sincerely,

Nyal D. Worsham
Superintendent

NDW/jmh

Tanana School
Tanana, Alaska 99777
March 5,1980

Mr. Brad Bradley
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Mr. Bradley,

I am strongly in favor of SB 443 and certainly hope the bill is passed with as much expediency as possible.

My one suggestion for a change in statement is that in line 18 the word substantial be replaced with the word any. In a high school situation a student may interpret the word substantial with various meanings. It is an ambiguous word in this context and will undoubtedly be interpreted in a variety of ways.

Thank you.

Sincerely,

Alicia F. Bunce

Alicia F. Bunce
Resource Room Teacher

BRISTOL BAY BOROUGH SCHOOL DISTRICT
P. O. BOX 169
NAKNEK, ALASKA 99633

PHONE 268-4225 OR 4265
HIGH SCHOOL

DALE L. LUNSFORD
SUPERINTENDENT

March 6, 1980

The Honorable Brad Bradley
Senator
State of Alaska
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

The contents of Senate Bill 443 has merit as a requirement in every school classroom in the State of Alaska.

I suggest that the word "and" on Line 14, "teachers" on Line 15 be deleted, as it is a teachers responsibility to teach the meaning of the pledge as well as be committed to the pledge as a leader and helper to our young people.

Sincerely,

Dale

Dale L. Lunsford

DLL/kss

Haines Borough School District

P.O. Box 251
HAINES, ALASKA 99827

Stephen T. McPhetres, Superintendent

Stephen T. McPhetres, High School Principal
Alan W. Heinrich, Elementary Principal

March 7, 1980

Senator Brad Bradley, Chairman
Senate Commerce Committee
Alaska State Legislature
Pouch V, State Capital
Juneau, Alaska 99811

Dear Senator Bradley:

Thank you very much for your letter of March 4, 1980.

I feel that students should be allowed to recite the Pledge of Allegiance to the Flag of the United States of America. If we cannot make it mandatory, we should at least strongly encourage it. To that end I would make the following changes:

1. lines 13 & 14 — delete the restriction about having to be done only during the first hour of the day. It should be allowed to be done anytime deemed appropriate.

2. lines 16-17 — delete everything past "remain seated". It appears that non-participation should be provided for but keeping silent and remaining seated is enough latitude.

I will pass a copy of your letter and a copy of Senate Bill No. 443 on to all our elementary staff members; some may choose to coment.

Thanks again for the opportunity to give this input.

Yours truly,

Alan W. Heinrich

Alan W. Heinrich
Elementary Prinicpal

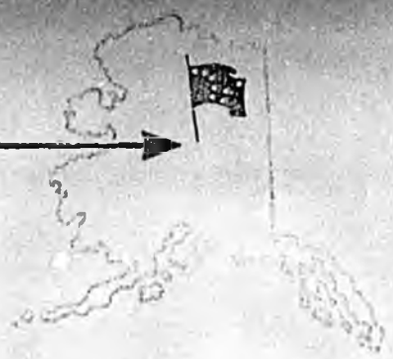
AWH:lp

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT
P. O. Box 1250, Fairbanks, Alaska 99707 (907) 456-7934

DR. BRYCE STALLARD
Superintendent of Schools

GUS ZADRA
Associate Superintendent

CHARLES A. LOWRY
Assistant Superintendent



March 11, 1980

Mr. Bard Bradley, Chairman
Senate Commerce Committee
Alaska State Legislature
Juneau, Alaska

Dear Mr. Bradley:

Regarding your letter of March 4, 1980 concerning SB 443, our teachers feel that they currently have the "opportunity" to recite the pledge of allegiance at the beginning of each school day, and in fact, most of them do so. Most of them feel that such a statute would "force" them to recite the pledge. They, therefore, do not feel such a law would be appropriate.

I would add that if they are misinterpreting the proposed legislation, ie., if they currently do not have the right to say the pledge, then they would be in favor of such a statute. We would certainly hate to think we are in violation of state law by leading our students in that patriotic act.

Sincerely,

(Mrs.) Mina Sanders, Principal
Taylor Elementary School
Eielson AFB, Alaska

Introduced: 2/18/80
Referred: Judiciary

IN THE SENATE BY BRADLEY

SENATE BILL NO. 443

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act affording students and teachers in the public schools an opportunity to recite the pledge of allegiance at the beginning of each school day."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.03 is amended by adding a new section to read:

Sec. 14.03.135. PLEDGE OF ALLEGIANCE. An opportunity shall be afforded students and teachers in the public schools to recite the pledge of allegiance to the flag of the United States during the first hour of each day in session during the school term. Students and teachers who for any reason do not wish to participate in the recitation of the pledge of allegiance may, keeping silent, remaining seated, ~~or~~ express their nonparticipation, ~~in any other way which does not materially disrupt classwork or involve substantial disorder or invasion of the rights of others.~~ by

difficult to define or determine where the line might be drawn.

I believe in the pledge of allegiance!!

From:
White Cliff School
1900 First Avenue
Ketchikan
99901

March 12, 1980

Vern Williams
Route 6, Box 4143
Juneau, Alaska 99803

Honorable Brad Bradley
Chairman, Senate Commerce Committee
Alaska State Senate
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

I would like to take this opportunity to respond to Senate Bills 443 and 459 forwarded to me from your office for comment.

SENATE BILL 443

I support the principle and the practice of allowing time at the beginning of the school day for students to Pledge Allegiance to the flag of the United States. This country provides its citizens with measureless benefits and opportunities. To take a few minutes each day for our students to focus on the flag that represents our nation is a good thing.

Specifically addressing the legislation, I would suggest that everything after "recitation" on line 15, be deleted and add following "recitation" on line 15 the phrase, "will not be required to participate." I don't think it is advisable to have them "express their non participation". Excusing them from participation is the intent.

SENATE BILL 459

I support this bill as presented. Our nation was founded on a strong faith in God. How students may personnally interpret that is a matter of their own conscience. To provide the opportunity daily for students to reflect on their basic beliefs and feelings is immeasurably important to them and the society in general.

Thank you for providing me the opportunity to address myself to these two bills.

Sincerely,

Vern Williams

Vern Williams

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue - Anchorage, Alaska
99504
AREA CODE 907-333-9561

SERVICE-HANSHEW JUNIOR/SENIOR HIGH SCHOOL
5577 Abbott Road
Anchorage, Alaska 99507

March 11, 1980

State Senator Brad Bradley
Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V - State Capitol
Juneau, Alaska 99811

State Senator Bradley;

The School Board of the Anchorage School District presently has a policy which is identical to Sec. 14.03.135 of Senate Bill No. 443.

In this unit, Service-Hanshew, the pledge is given each morning by a School Government student, prior to the daily annourcements.

Sincerely,

R. Arndt
Unit Administrator

RA:dc

cc: file

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue - Anchorage, Alaska
99504
AREA CODE 907-333-9561

ROMIG JUNIOR HIGH SCHOOL
2500 Minnesota Drive
Anchorage, AK 99503

March 10, 1980

Senator Brad Bradley
Chairman, Senate Commerce Committee
Pouch V
State Capitol
Juneau, AK 99811

Dear Senator Bradley:

In response to your letter of March 4, 1980 regarding SB 443, this school has been, for the past nine years, affording exactly that which the proposed bill affords. I have no knowledge of any legislative policy or rule which prohibits a public school that which the proposed bill affords.

Needless to say our recital of the Pledge of Allegiance to the flag on a daily basis speaks for our belief in the practice.

Respectfully,

W. E. Griffith
Assistant Principal

et

cc: Lily Nielsen

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue - Anchorage, Alaska
99504
AREA CODE 907-333-9561

Chester Valley School
1750 Patterson Street
Anchorage, Alaska 99504

March 10, 1980

Senator Brad Bradley
Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

Thank you very much for sending me a copy of SB443.

It is traditional in the Anchorage Elementary Schools to recite the pledge of allegiance each morning. According to my son, it is an optional exercise in the junior highs, and I don't believe that it is done in the senior high schools. From my son's remarks, which he included in a prize winning essay on the flag (the contest was sponsored by the Anchorage Elks), participation is sporadic and the demeanor of the non-participating students substantially detracts from the meaningfulness of the ceremony.

I am not certain that legislating the pledge will make a more meaningful exercise in citizenship; I fear that it will provide a source of embarrassment for those students who cherish a deep love for the flag and what it stands for.

Sincerely,

Don Putnam

Don Putnam, Principal

March 10, 1980

Brad Bradley
Chairman, Senate Commerce Committee
Pouch V State Capitol
Juneau, Alaska 99811

Dear Mr. Bradley:

In reference to Senate Bill No. 443: Line 15.

I have strong feelings regarding any teacher who does not wish to pledge allegiance to our countries flag. A teacher is looked up to by children who have in most cases not yet formed firmly the ideals which they will carry throughout life. A person with this attitude toward our country should not be allowed to teach. In fact, with some research, you will find cases where teachers were dismissed from their jobs due to this feeling.

Sincerely,

Max G. Hulse, Principal
Nunaka Valley School
P.O. Box 881
Eagle River, Ak. 99577

pws

Get/send to Senator Bradley

Introduced: 2/18/80
Referred: Health, Education & Social Services and Finance

IN THE SENATE BY BRADLEY

SENATE BILL NO. 459

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to days in session in public schools."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.03.040 is amended to read:

Sec. 14.03.040. DAY IN SESSION. (a) Each day within the school term is a day in session except Saturdays, Sundays, and days designated as holidays by or according to AS 14.03.050. A school board may approve Saturdays as a day in session. The day in session in every school shall be at least four hours long, exclusive of intermissions, for the first, second, and third grades and five hours, exclusive of intermissions, for all other grades. The commissioner may approve a shorter day in session for any grade. Except as provided in (b) of this section, the [THE] period of the day in session shall be devoted to the instruction of pupils or to study periods for the pupils.

(b) At the beginning of the first class of each school day in public schools in session one minute of silence shall be observed for voluntary silent prayer, meditation, or reflection.

Dear Sir,

The above looks fine, especially "b". I feel this part is a big step toward improving our children's attitude in regard to moral ~~attitude~~ thinking & behavior.

thanks,

Max G Hulse, Principal

Nunaka Valley

SB 459

NORTH STAR ELEMENTARY
605 WEST FIREWEED LANE
ANCHORAGE, ALASKA 99503

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue - Anchorage, Alaska
99504
AREA CODE 907-333-9561

MARCH 12, 1980

SENATOR BRAD BRADLEY
POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811

DEAR SENATOR BRADLEY:

THANK YOU FOR YOUR LETTER CONCERNING SB443.

MY OWN PERSONAL VIEWPOINT IS QUITE SUPPORTIVE OF THIS BILL. THE LANGUAGE IS CONCISE AND IT DOES LEAVE OPTIONS FOR PERSONS OPPOSED. THE ANCHORAGE SCHOOL DISTRICT'S POSITION IS SPELLED OUT IN ADMINISTRATIVE POLICY AND VERY CLOSELY PARALLELS THE LANGUAGE OF YOUR BILL.

THANKS FOR YOUR CONTINUED EFFORTS ON BEHALF OF OUR STATE IN GENERAL AND EDUCATION IN PARTICULAR.

SINCERELY,

George Rakos

GEORGE RAKOS
PRINCIPAL
NORTH STAR ELEMENTARY

GR:JT

ANCHORAGE
SCHOOL DISTRICT
Pouch 6-614 — Anchorage, Alaska
99502
AREA CODE 907-333-9561

Ursa Major Elementary School
454 Dyea Avenue
Fort Richardson, AK 99505
March 11, 1980

Mr. Brad Bradley
Alaska State Legislature
Senate Committee on Commerce
Pouch V
State Capital
Juneau, Alaska 99811

Dear Mr. Bradley,

I am not in favor of the last line of Senate Bill No. 443.

I feel that as Citizens of the United States, the least we can do is show respect to our flag. I agree that some students may remain silent, but I do not agree with their expressing nonparticipation.

Sincerely,

James G. Curley
Principal

Alaska State Legislature
Senate
Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

March 4, 1980

TO WHOM IT MAY CONCERN

Dear Ladies and Gentlemen:

Enclosed is SB 443, "An Act affording students and teachers in the public schools an opportunity to recite the pledge of allegiance at the beginning of each school day."

I would appreciate your comments/position papers on this matter. If you recommend specific changes, in addition to general comments, I would prefer that they be keyed to page and line numbers.

If you know of other persons who have an interest in this legislation, please let me know so that I may get the benefit of comments from all knowledgeable and interested parties.

In consideration of a productive and expeditious session, I request that your comments/position paper be returned to me within 10 days from the date of this letter. This bill is presently before the Senate Judiciary Committee, chaired by Senator Robert Ziegler, and a hearing date has not yet been set; however, I would like your comments within the time frame mentioned above so that I may be prepared when Senator Ziegler's Committee hears this matter.

Thank you for your cooperation and assistance.

Sincerely,

Brad Bradley

Brad Bradley
Chairman, Senate Commerce Committee

BB:jss
Enclosure

Johnson
Box 60-Tri-Valley
Healy, AK 99743

I'm an elementary teacher. Great to see this!
K Johnson
Tri Valley

Hutchison Career Center

IVAN R. GILLESPIE
Director of Vocational Education

Fairbanks North Star Borough School District
3750 Geist Road
Fairbanks, AK 99701
(901) 479-2261

March 11, 1980

Alaska State Legislature
Committee on Commerce
Pouch V - State Capitol
Juneau, Alaska 99811

Attention: Senator Brad Bradley, Chairman
Senate Commerce Committee

Dear Senator Bradley:

Senate Bill No. 443 appears to be permissive legislation that would allow students and teachers an opportunity to recite the pledge of allegiance at the beginning of each school day.

I believe that it is important for the young people of our nation to develop a sense of partriotism and participate in these types of activities. I do not see the need for this type of permissive legislation, however, unless there is some law that would prohibit this.

If there is some type of legal restriction regarding the students and teachers participation in this type of activity, it is my feeling that this piece of legislation, as written, would allow their participation.

Thank you for making me aware of this piece of legislation.

Yours truly,

Ivan R. Gillespie

Ivan R. Gillespie, Director
VOCATIONAL EDUCATION

IRG:bn

WRANGELL PUBLIC SCHOOLS

P. O. BOX 651
WRANGELL, ALASKA 99929
GATEWAY TO THE STIKINE
Telephone (907) 874-3395
ROBERT McCONNELL, Superintendent of Schools

March 7, 1980

Honorable Brad Bradley, Senator
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

In responding to your letter of March 4, 1980, and SB443, I see no reason why anyone would complain about your legislation. I only wish, and I suppose my age shows, that everyone would perform the allegiance as we use to back when.

Sincerely,

Robert W. McConnell
Superintendent

RWM:sk

CITY AND BOROUGH OF JUNEAU SCHOOL DISTRICT
P.O. BOX 808 • DOUGLAS, ALASKA 99824

March 13, 1980

Senator Brad Bradley
Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

I would like to take the opportunity to comment on SB 443, "An Act affording students and teachers in the public schools an opportunity to recite the pledge of allegiance at the beginning of each school day."

As an elementary principal I oppose SB 443 for the following reasons:

Local Preference It should be left to individual communities to decide through their school boards if they want to require that the opportunity to recite the pledge of allegiance be given to students each day.

Legislating Patriotism Senate Bill 443 no doubt is proposed in the hope it will help young people to feel more pride and love for their country. It is my experience that such obligatory recitations actually become meaningless and at times are resented by students. I encourage teachers to teach students about our country and our curriculum has been developed with special emphasis on learning about our state and country. It is intelligent patriotism that schools should be teaching.

Appropriatness Even with careful teaching, most young elementary students do not understand what they are saying when they recite the pledge of allegiance. Mandatory recitation often makes the exercise less meaningful.

I want students to truly appreciate the freedoms and responsibilities our country has to offer. I want students to have a working knowledge of how our country was found and developed. I want students to understand why they should be proud and thankful

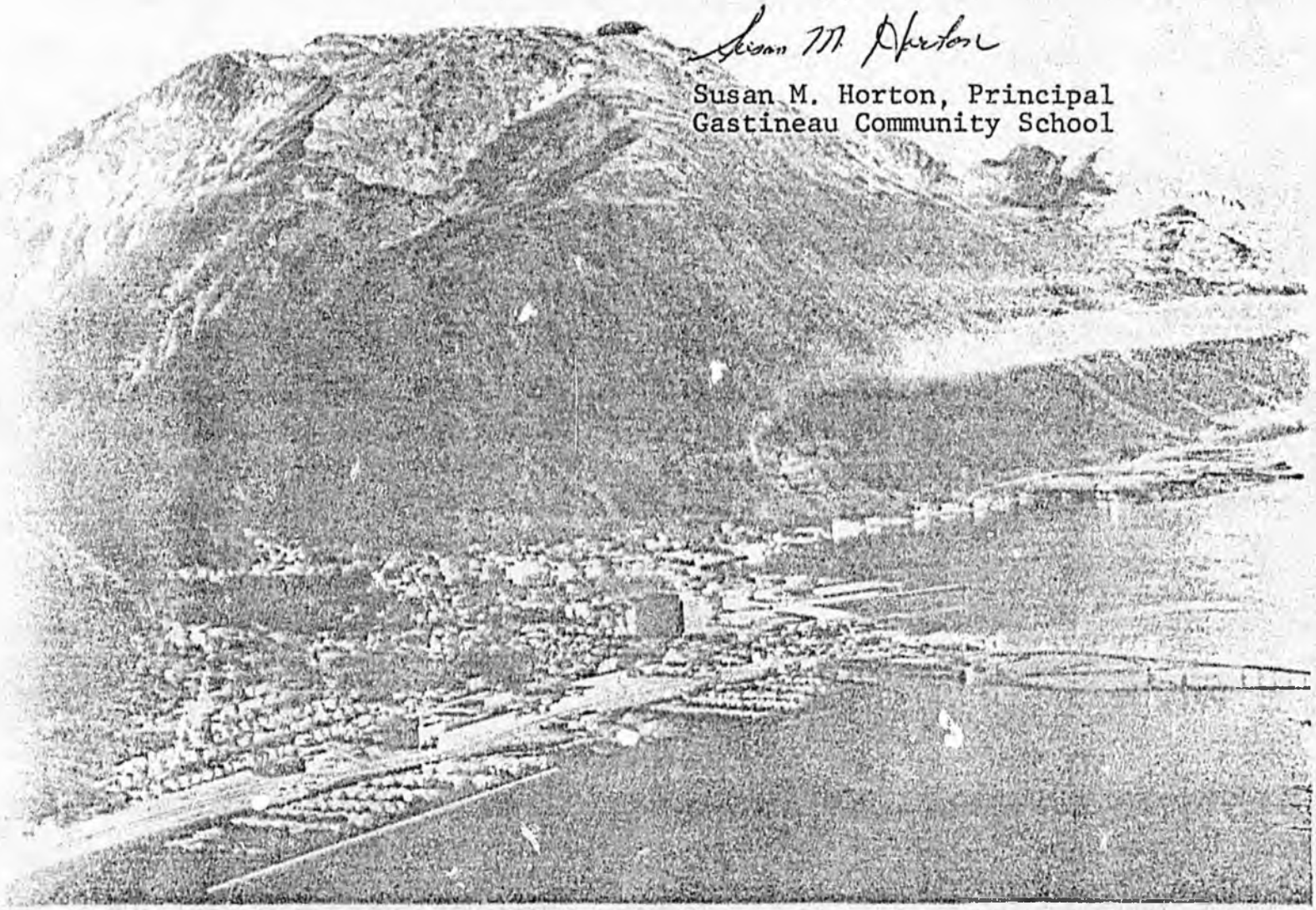
they live in the United States of America. I do not want students being forced to participate in an exercise until it has meaning for them and they can relate the pledge to the greatness of our country.

It would be easy to justify passing this legislation because of the new wave of patriotism sweeping our country, but I think common sense should prevail rather than have our senators associate voting for this bill as being a good patriot.

Sincerely,

Susan M. Horton

Susan M. Horton, Principal
Gastineau Community School



Introduced: 2/18/80
Referred: Judiciary

IN THE SENATE BY BRADLEY

SENATE BILL NO. 443

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act affording students and teachers in the public schools an opportunity to recite the pledge of allegiance at the beginning of each school day."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.03 is amended by adding a new section to read:

Sec. 14.03.135. PLEDGE OF ALLEGIANCE. An opportunity shall be afforded students and teachers in the public schools to recite the pledge of allegiance to the flag of the United States during the first hour of each day in session during the school term. Students and teachers who for any reason do not wish to participate in the recitation of the pledge of allegiance may keep silent, remain seated, or express their nonparticipation in any other way which does not materially disrupt classwork or involve substantial disorder or invasion of the rights of others.

3-12-80

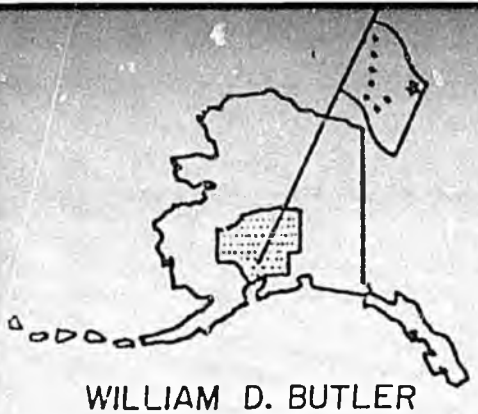
I agree to the importance of teaching patriotism and respect for flag, country and long cherished traditions that promote honor and self respect. I have no qualms concerning the above proposed Senate Bill # 443; however, in order to enhance the duty, if not the privilege of such patriotic "participation, rather than making a ritual" which could, in time, create an aggra-

vation, may I suggest that the Pledge <u>be taken</u> weekly, that is the first order of business Monday morn - for at any other appropriate time and place?

Incidentally, I have continued to do this over the years without dissent from my government and history students, particularly, when I take the time to <u>explain why</u> and then invite them to join with me!

Thank you and Good Luck!!

Respectfully,
William W. (Bill) Hatch
Teacher
Bristol Bay Borough
U.S. <u>Naknek</u>,



PALMER HIGH SCHOOL

BOX AB PALMER, ALASKA 99645

LOCATED IN THE MATANUSKA VALLEY

PHONE (907) 745-3241

WILLIAM D. BUTLER
PRINCIPAL

JOE J. TRIDLE
ASSISTANT PRINCIPAL

March 12, 1980

Mr. Brad Bradley, Chairman
Senate Commerce Committee
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

RE: S.B. 443

Dear Mr. Bradley:

Thank you for the opportunity to comment on this piece of legislation as per your letter of March 4, 1980.

This bill would only serve to make a spectacle of a patriotic privilege. In effect, this bill would mandate a specific schedule in schools and not allow schools the right to decide how to observe the flag. Peer pressure on some students would not allow them the opportunity not to participate.

Let the people handle their patriotic participation in the American fashion, not as a dictate. I believe the courts have ruled that this activity cannot be mandated in schools. In actuality, this bill mandates the Pledge of Allegiance in a specific manner.

Therefore, please hold up any action on this bill.

Sincerely,

Bill Butler

Wm. D. Butler
Principal

cc: Robert Ziegler, Senate Judiciary Committee

WDB:cl

March 13, 1980

Re: SB 443

Senator Robert Ziegler
Chairman, Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

I am writing this letter to state my support for SB 443, "An Act affording students and teachers in the public schools an opportunity to recite the pledge of allegiance at the beginning of each school day."

One of the things I remember most as a child in elementary school is beginning each day with the pledge of allegiance. True, the first few years I did not fully understand what I was reciting, but I did have a feeling of pride and respect toward the American flag. When I was old enough to understand the words of the pledge, it was a definite asset to already have the pledge memorized, and my respect for the United States of America was intensified.

Fortunately, my two children have developed the same habit of reciting the pledge every morning and I have their teachers to thank for that, but not every child is afforded that opportunity. How sad it is, and what an embarrassment it is to our country when children of eleven, twelve and older do not even know the words to the pledge of allegiance to the country of which they are citizens. Hopefully, the passage of SB 443 will encourage more participation in the daily recitation of the pledge of allegiance.

Since SB 443 makes this opportunity available, and does not make the saying of the pledge obligatory to anyone I give it my whole-hearted support.

Sincerely,

Margaret A. Poor

Margaret A. Poor
P. O. Box 176
Douglas, Alaska 99824

cc: Senator Brad Bradley
Senator Bill Ray

ANCHORAGE
SCHOOL DISTRICT
Pouch 6-614 – Anchorage, Alaska
99502
AREA CODE 907-333-9561

March 7, 1980

Honorable Brad Bradley
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

I believe that you might be interested in policy which is presently practiced in Anchorage School District. We certainly support the effort you would make under SB 443.

I appreciate your interest in this legislation. I hope you are also able to support our funding legislation.

Sincerely,

John B. Peper

John B. Peper, Ed.D.
Superintendent

jm

BOARD OF MARINE PILOTS

Key to References

(Y) - (yellow cover) - State of Alaska Sunset Review, 1979. Prepared by the Division of Occupational Licensing

(B) - (blue cover) - Division of Legislative Audit Performance Review

(W) - (white cover) - Senate Commerce Committee Public Hearing Testimony, December 10, 1979

1. Examinations - Statutory elimination of the Coast Guard exam as a prerequiste to the State Exam. Redundant.
   (Y) - p 5, last paragraph; p 6, first paragraph
   (B) - p 5, paragraph 4, p 7
   (W) - p 2, paragraph 3; p 3, paragraph 1; p 4; p 5, paragraph 4

2. Increase the biennial license fee (presently $200) and the application fee (presently $10).
   (Y) - p 3; p 11, paragraphs 2 and 3
   (B) - p 25
   (W) - page 16; page 18

3. Repeal Sec. 08.62.040 (2)(4) which gives the board the power to regulate pilotage fees. I suggest that this power be given to an existing regulation body, such as the ATC, which already has a rate structure within it.
   (Y) - p 7, last paragraph; p 8
   (B) - p 6; p 7, last paragraph; p 12
   (W) - p 6 (Capt. Ed Murphy); p 28, paragraph 1; p 30

4. The Board of Marine Pilots should be continued. (How many years?)
   (Y) - p 1
   (B) - p 7, paragraph 2
   (W) - p 2, paragraph p 6, paragraph 2

5. Repeal Sec. 08.62.110 (AS 30.10 was repealed in 1970) and the portion of Sec. 08.62.120 which states "A license issued under AS 30.10 lapses at the end of calendar year 1970."
   (Y) - p 11; p 13 (obsolete)

6. AS 08.62.040(a)(3) - repeal vessels in section.
   (a) The board shall:
   (3) keep a register of licensed pilots, [vessels], operators, agents, and managers
   (Y) - This is a suggestion by OL and Elaine Garrett may wish to comment on this. Evidently there is no way OL is able to keep a register on all vessels. They are performing this function for the Board of Marine Pilots.

TANANA JUNIOR HIGH SCHOOL
a part of the
Fairbanks North Star Borough School District
Trainor Gate Road Fairbanks, Alaska 99701

MARCH 12, 1980

BRAD BRADLEY, CHAIRMAN
SENATE COMMERCE COMMITTEE
POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811

RE: SB 443

I MOST CERTAINLY SUPPORT SB 443. IN FACT I WOULD SUGGEST THAT A PERIOD BE PLACED AFTER THE WORD, SILENT, ON LINE 16 AND THE REMAINDER OF LINES 16, 17 AND 18 BE DELETED.

Robert L. Puckett

ROBERT L. PUCKETT
PRINCIPAL

RLP:P

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT
P.O. Box 1250, Fairbanks, Alaska 99707 (907)456-7934

DR. BRYCE STALLARD
Superintendent of Schools

GUS ZADRA
Associate Superintendent

Brad Bradley, Chairman
Senate Commerce Committee
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

In response to your SB 443, I am unaware of any school district in Alaska or elsewhere that doesn't provide by School Board Policy or Regulation instruction of children in The Pledge of Allegiance and care of The American Flag. We in the schools have long been apprised of the rights of children/parents to not participate in this instruction/ceremony for religious and other reasons. All of this is to say that teachers and children have always had the opportunity to recite the pledge (or the right not to) since I started teaching 18 years ago.

I believe in patriotism and the school is the rightful arena to instruct/reinforce this concept. The Pledge however, is probably the least effective tool used to promote patriotism. I have never found a sixth grade child who couldn't recite the pledge. Likewise, I have never found a 6th grader who fully understood the meaning/significance of the pledge or who could define every word in it. In fact, it's the rare eighth grader who can distinguish the difference between a democracy and a republic. I will leave to you to judge the value of reciting daily something that has little, if any, meaning for a child.

While I would say your bill is not needed, should you proceed I suggest making it a general statement void of such particulars as "first hour", "each day", "keep silent", "remain seated", etc.

I appreciated being given the opportunity to respond to your proposed bill.

Sincerely yours,

Dale A. Durrwachter

Dale A. Durrwachter, Principal
Hunter Elementary School

DAD:teb

Introduced: 2/18/80
Referred: Judiciary

IN THE SENATE BY BRADLEY

SENATE BILL NO. 443

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act affording students and teachers in the public schools an opportunity to recite the pledge of allegiance at the beginning of each school day."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.03 is amended by adding a new section to read:

Sec. 14.03.135. PLEDGE OF ALLEGIANCE. An opportunity shall be afforded students and teachers in the public schools to recite the pledge of allegiance to the flag of the United Staces during the first hour of each day in session during the school term. Students and teachers who for any reason do not wish to participate in the recitation of the pledge of allegiance may keep silent, remain seated, or express their nonparticipation in any other way which does not materially disrupt classwork or involve substantial disorder or invasion of the rights of others.

3/13/80

Non-participants of the pledge of allegiance should stand quietly, while the others are reciting the pledge.

Woodriver Elementary School

1 Mile Chena Pump Road

Fairbanks, AK 99701

Juanita K. Johnson (Intern)

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

March 4, 1980

William Benson, Principal
University Park School
Box 1250
Fairbanks, AK 99707

Dear Mr. Benson:

Enclosed is SB 443, "An Act affording students and teachers in the public schools an opportunity to recite the pledge of allegiance at the beginning of each school day."

I would appreciate your comments/position papers on this matter. If you recommend specific changes, in addition to general comments, I would prefer that they be keyed to page and line numbers.

If you know of other persons who have an interest in this legislation, please let me know so that I may get the benefit of comments from all knowledgeable and interested parties.

In consideration of a productive and expeditious session, I request that your comments/position paper be returned to me within 10 days from the date of this letter. This bill is presently before the Senate Judiciary Committee, chaired by Senator Robert Ziegler, and a hearing date has not yet been set; however, I would like your comments within the time frame mentioned above so that I may be prepared when Senator Ziegler's Committee hears this matter.

Thank you for your cooperation and assistance.

Sincerely,

Brad

Brad Bradley
Chairman, Senate Commerce Committee

BB:jss
Enclosure

Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

March 4, 1980

TO WHOM IT MAY CONCERN

Dear Ladies and Gentlemen:

Enclosed is SB 443, "An Act affording students and teachers in the public schools an opportunity to recite the pledge of allegiance at the beginning of each school day."

I would appreciate your comments/position papers on this matter. If you recommend specific changes, in addition to general comments, I would prefer that they be keyed to page and line numbers.

If you know of other persons who have an interest in this legislation, please let me know so that I may get the benefit of comments from all knowledgeable and interested parties.

In consideration of a productive and expeditious session, I request that your comments/position paper be returned to me within 10 days from the date of this letter. This bill is presently before the Senate Judiciary Committee, chaired by Senator Robert Ziegler, and a hearing date has not yet been set; however, I would like your comments within the time frame mentioned above so that I may be prepared when Senator Ziegler's Committee hears this matter.

Thank you for your cooperation and assistance.

Sincerely,

Brad Bradley

Brad Bradley
Chairman, Senate Commerce Committee

BB:jss
Enclosure

Sounds Great!

Cliff Schaller
Principal
Kilbuck School
Bethel, Alaska
99559

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue - Anchorage, Alaska
99504
AREA CODE 907-333-9561

Rogers Park Elementary School
1400 E. Northern Lights Blvd.
Anchorage, Alaska 99504

March 14, 1980

Senator Brad Bradley
Fouch V
Juneau, Alaska 99811

Dear Senator Bradley,

I appreciate your contacting me in regard to my opinion on SB 443, "An Act affording students and teachers in the public schools an opportunity to recite the pledge of allegiance at the beginning of each school day."

Our Anchorage School Board has afforded this opportunity to every student through established board policy. I feel it is most appropriate to handle this at the local level rather than legislate it by the state. If this is a major problem in Alaska, perhaps it should be more appropriately addressed through the Department of Education or the state school board.

I would not favor this specific state legislation as I believe the responsibility lies with the local school board.

Sincerely,

Marilyn S. Barnett

Marilyn S. Barnett, Principal

MSB:jls

We, the undersigned administrators, teachers, staff and parents of the Klawock City School District, support SB 443, "An Act affording students and teachers an opportunity to recite the pledge of allegiance at the beginning of each school day.

PRINT NAME	SIGNATURE	POSITION
WILLIAM SUSS	William Suss	SUPERINTENDENT
Clara G. Peratrovich	Clara G Peratrovich	Indian Ed. Instr.
Ruth A. Rowan	Ruth A. Rowan	Teacher
JOANNE Nickerson	Joanne Nickerson	Teacher's Aide
Margaret Kennedy	Margaret Kennedy	Teacher Aide
SALLY A SKAN	Sally A. SKan	Teacher-Aide
Martha L. Thomas	Martha L Thomas	Teacher-aide
BLYTHE A. BAKER	Blythe A. Baker	Bookkeeper/grant writer
MALINDA MERRELL	Malinda Merrell	Teacher
Dina Swenson	Dina Swenson	teacher
Nilda Lynch	Nilda Lynch	teacher
Jackie Woods	Jackie Woods	Teacher-Aide

Klawock City School District
PO Box 9 Klawock, AK 99925

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue - Anchorage, Alaska
99504
AREA CODE 907-333-9561

Inlet View School
1219 N Street
Anchorage, Alaska 99501

March 14, 1980

Senator Brad Bradley
Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V - State Capitol
Juneau, Alaska 99811

Senator Bradley:

Your legislative proposals, SB 459 and the amendment to SB 443, are of considerable interest to those of us who work in public schools. Thank you for soliciting our comments. However, both proposals are objectionable in that they appear to be restrictive bills designed to legislate such things as patriotism, religion, and morality. They may be appropriate as local policies, which are developed at the school board level and reflect community standards. In fact SB 459 is already ASD policy.

NO

Thank you for giving me an opportunity to respond.

Sincerely,

Norma Frick

Norma J. Frick
Principal
Inlet View

Copper River School District

Superintendent's Office
Box 108
Glennallen, Alaska 99588
(907) 822-3234

March 18, 1980

The Honorable Brad Bradley
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: Senate Bill 443

Dear Senator Bradley:

In response to your letter of March 4 received on March 13 concerning subject bill, I am in favor of the intent of your legislation. I think we are in a critical time of our nation and we need to develop a more acute awareness of our heritage and overcome some of the complacency and derision given toward patriotic endeavors.

I do have some reservations, however, on the latter part of line 16 and lines 17, 18 and 19. I am concerned about how students might "express their nonparticipation" in any other way which does not materially disrupt class work or involve substantial disorder or invasion of the rights of others. It would seem to me that a period after seated would be appropriate. It would prevent unnecessary judgements which the teacher of the classroom might make. I offer that suggestion to you realizing that my judgement is probably no better than yours.

I thank you for your concern in this matter.

Sincerely,

Alfred Krinke

Dr. Alfred Krinke, Superintendent
Copper River School District

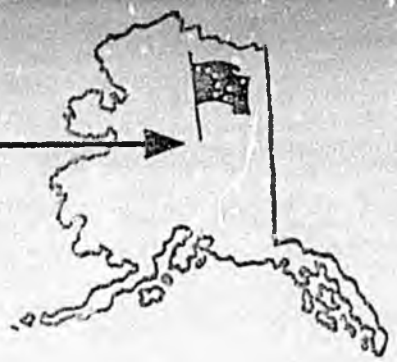
AK:pm

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT
P. O. Box 1250, Fairbanks, Alaska 99707 (907) 456-7934

DR. BRYCE STALLARD
Superintendent of Schools

GUS ZADRA
Associate Superintendent

CHARLES A. LOWRY
Assistant Superintendent



March 19, 1980

The Honorable Brad Bradley
Chairman, Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

In reference to your letters of March 4 concerning Bills 443 and 459, it is the position of this Board that the subjects of these Bills can be better addressed at the local level and, therefore, we do not favor their passage.

Thank you for the courtesy of your inquiry.

Respectfully yours,

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

H. O. Williams

H. O. Williams
President
Board of Education

HOW/plh

Kiana High School
Kiana, Alaska 99749

March 14, 1980

Brad Bradley, Chairman
Senate Commerce Committee
Alaska State Legislature
Pouch V State Capitol
Juneau, Alaska 99811

Brad:

I am in support of Senate Bill 443 and it is my understanding that it is equally well supported among the teaching staff in the Kiana Schools.

With best wishes,

Larry Healy, Principal

LH/anr

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue - Anchorage, Alaska
99504
AREA CODE 907-333-9561

March 17, 1980

Senator Brad Bradley
Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V - State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

I appreciate the opportunity to express my opinion on SB 443. I would like to see lines 16-19 changed to read as follows: of the pledge of allegiance may stand and remain silent or may be excused from the class during this time.

Again, thanks for the opportunity to express my opinion.

Sincerely,

Penny Potter

Penny Potter, Principal
Huffman Elementary School

PP:mlp

ANCHORAGE SCHOOL DISTRICT
ALASKA

DIMOND MEARS SECONDARY SCHOOL
Richard N. Mize, Unit Administrator
2909 W. 88th Ave.
Anchorage, Alaska 99502

ANCHORAGE
SCHOOL DISTRICT
4600 DeBarr Avenue · Anchorage, Alaska
99504
AREA CODE 907-333-9561

March 20, 1980

Brad Bradley, Chairman
Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

Since you have asked, I will comment on both SB443 and SB459. I appreciate your interest in our comments and the service you are rendering by making us aware of some of the legislation that could affect us as administrators in the schools. Please be aware that my comments represent only my own personal thinking and not necessarily the school in which I work, the district for which I work, or any association of which I am a member or officer.

SB 443

This bill is very similar to a mandated practice in schools in the Anchorage School District. We have been following this procedure for the past four or five years. I, personally, am highly in favor. One problem we have noted, however, is that by repeating the pledge every day, the effect is often lost. In other words, rote repetition tends to become no more than that without any thinking or appreciation for what is being said or pledged. Our students, over the years since we started this practice, have suggested it would be more effective if we used the Pledge of Allegiance every other day, twice each week, or once each week. Nevertheless, we follow the procedure now, and I feel we are setting an example in forms of patriotism and appreciation for the United States of America by doing so.

SB 459

This one bothers me for several reasons. First, assuming passage of SB 443 (or in our district it's with or without SB 443), we are already starting with the Pledge of Allegiance. This minute of silence adds to the time we are not able to spend in the instructional program. Second, on a regular basis, I believe the moment of silence would be very difficult to enforce. Silence in a school building with 2,500 students and 150 employees is almost impossible, even if everyone is attempting to cooperate. It seems to me that unless there is total silence, the atmosphere we are trying to create is not possible to reach. Third, as a devout and practicing Christian, I believe wholeheartedly in the power of prayer. I resent, however, the state telling me when I should pray. I can appreciate the thought, but I don't need a specified period of silence to pray. I pray regularly, and I know God hears me, but I don't need the state to tell me when to talk to Him.

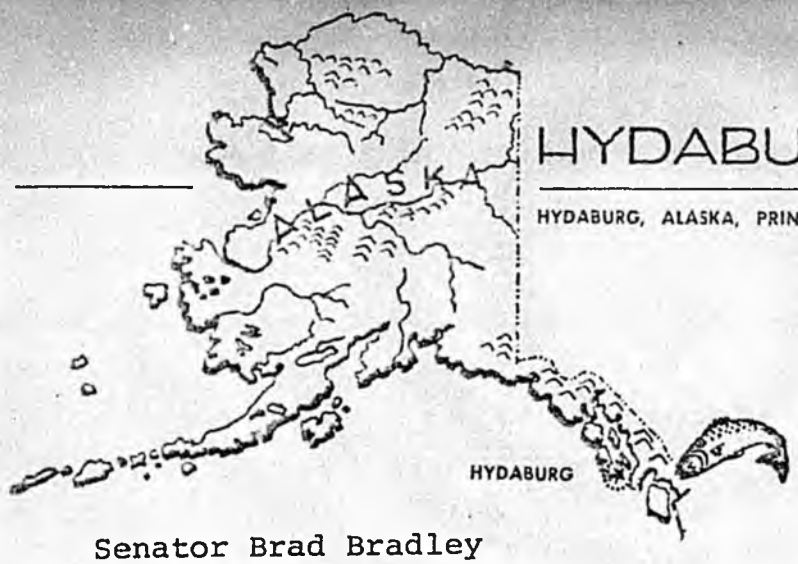
Fourth, all of us occasionally need a little time to ourselves to reflect, but I do not see that happening because a law says we will do it every morning. When I need to sit back and reflect I need more than a minute and I need to do it when I feel the need, not on a prescribed schedule. Fifth, meditation for the non-meditator does not happen because we say it will. This is also related to enforcement, but I can see a real problem with attempting to discipline a student who snickers or is a little noisy during the silent minute. We have enough problems without attempting to talk to parents or students who see this as just another attempt to promote prayers in school and they want no part of it. I'm willing to spend my time and effort in meetings, due process hearings, or court sessions, if necessary, with those students and parents who have violated the law or the rights of others attempting to get the most they can from our educational process. I am not as willing to spend that kind of time with a student who violates the state mandated right of others to have silence. In other words, I see many either intentionally or unintentionally being disruptive during this moment of silence, and I, as a principal, have no desire to determine whether or not it was intentional or what sort of discipline should be levied.

Sincerely,

Laurence N. Graham

Laurence N. Graham, Principal
Dimond-Mears Secondary School

/mb



HYDABURG CITY SCHOOL

HYDABURG, ALASKA, PRINCE OF WALES ISLAND 99922

March 24, 1980

Senator Brad Bradley
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

I am writing in reference to SB-443 titled, ...opportunity to recite the Pledge of allegiance...."

While I realize that particular language may be the stumbling block to the successful passage of this bill, may I state that in total, the reciting of this pledge would strengthen our educational curriculum via recognizing the numerous free opportunities we enjoy in America. One might choose to reword the pledge, but I believe this would be difficult if not impossible to successfully facilitate.

Again, I favor passage of this particular bill.

Sincerely,

Sasha I. Soboleff
Supt. of Schools

SIS:de

cc: Sen. Robert Zieglar
Sen. M.E. Dankworth
Sen. Don Bennett

4/3/80

Edmund Krysztowski
503 E. Northern Lights Blv
Anchorage, AK
99503

Honorable Brad Bradley
Pouch U State Capitol
Juneau, Alaska 99811

Dear Mr. Bradley,

I support SB 443 with all my heart. Hope it will pass. I would also like to see prayer in public schools in the same manner as SB 443

Don't you like letters that are short and to the point?

Sincerely,

Edmund Krysztowski

Answered 4/7

ALASKA CONGRESS OF PARENTS AND TEACHERS

A BRANCH OF THE NATIONAL CONGRESS OF PARENTS AND TEACHERS

May 15, 1980

Senator Brad Bradley
Pouch V
Juneau, Ak 99801

Dear Senator Bradley;

Thank you for the opportunity to comment on SB 459 and SB 443. I apologize for the delay in answering. The Alaska PTA has never addressed either issue in a formal meeting. Therefore, without doing some research, I could not have given an answer that would include more than my personal belief.

We have just completed a survey of the PTA's in the Fairbanks area. We had a response from 78 parents and teachers. The response for SB 443 was a whopping 100% in favor of passage.

Also, 100% of the people surveyed voted yes for passage of SB 459.

It would indicate to us that both of these bills have a broad base of support in the Fairbanks area.

Again, we thank you for the opportunity to comment. If we can be of any assistance in the future, please do not hesitate to contact us.

Sincerely yours

Rose Rybachek

Rose Rybachek
ACPT Immediate past president
FNSB Central Council President
Bulletin Editor

SB
489

w/SB989

JAY HAMMOND, GOVERNOR

DEPARTMENT OF EDUCATION

ALASKA PUBLIC BROADCASTING COMMISSION

400 GAMBELL ST., SUITE 302
ANCHORAGE, ALASKA 99501
272-9418 • 277-1636

March 10, 1980

CERTIFIED NO. 419843

Representative Joyce Munson
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Joyce:

Please accept this letter as my comments regarding Senate Bill 509/House Bill ~~934.~~ I will limit my comments in this communication to the effect this proposed legislation, SB509/HB934, has on public broadcasting. In this letter I will provide you with A) My Understanding of the Legislation, and B) Comments, as follows: 1) General, 2) Structure, 3) Insulation, 4) Language/Intent, and 5) Options.

A) MY UNDERSTANDING OF THE LEGISLATION:

In the proposed legislation, the Department of Commerce and Economic Development will expand, becoming the Department of Commerce and Economic Development, and Telecommunications. Article II of the proposed bills sets up two telecommunications divisions administered by a deputy commissioner. This deputy commissioner is appointed by the governor and in turn appoints division directors.

Under this legislation, a Policy Board is to be established; its purpose being to advise the Division of Public Telecommunications Services on the planning and implementation of educational and health-related systems. This new legislation also absorbs the functions of the Alaska Public Broadcasting Commission and repeals its statutory authority.

B) COMMENTS:

1) General: It would appear that an aggregation of various state agencies engaged in telecommunications endeavors would best serve the public through increased efficiency and accountability. There can be no question that a mature telecommunications system in the State of Alaska will do much to enhance the quality of life. What we must bear in mind in seeking to restructure our telecommunications system is to analyze its successes as well as its shortcomings. We must be careful in fashioning any new entity so as not to fall party to "throwing the baby out with the bath water", as it were.

C o n t. . . .

A thorough analysis of each agency, which is sought to be placed in the aggregate, outlining its positive and negative aspects in serving the public, should be prerequisite to this legislation.

2) Structure: This new agency, in my opinion, suffers from a weak management structure with regard to the successful operation of public broadcasting. At present, a nine-member citizen commission, appointed by the Governor, provides the coordination, as well as legal and technical support for public broadcasting stations. This Commission also provides coordination and management functions for the Satellite Television Project. The Commission members serve without pay, and employ an executive director who serves at the pleasure of the Commission. In addition, an engineer, satellite coordinator, administrative assistant, secretary, and satellite technicians work for the Public Broadcasting Commission.

Under SB509/HB934, the Commission's functions would be absorbed by the Department of Public Telecommunications. All policy decisions would be vested in the deputy commissioner of the Department of Commerce and Economic Development and Telecommunications, with advice from the director of the Department of Public Telecommunications.

This type of vertical management structure provides for neither public comment nor participation. Further, a vertical matrix, such as the one proposed in SB509/HB934, does not provide for the continuity necessary for the efficient functioning of a public broadcasting system. It would seem that, since the Governor appoints the commissioner, who in turn appoints the deputy commissioner, who in turn appoints directors, when the gubernatorial change occurs, a "domino" effect would be felt throughout the agency. It is important for the health of the public broadcasting system to provide for stability and continuity.

SB509/HB934 also provides for a public telecommunications Advisory Board, Section 44.33.511, Paragraph (a). This Board has neither authority nor purpose. It seems to be, at best, a cosmetic trapping of the proposed legislation. Boards, such as the one proposed, without a real policy function or the ability to act upon public input, should be eliminated.

3) Insulation: The proposed management structure for Public Broadcasting, under SB509/HB934, strips away the insulation afforded to public stations by the Commission. It has been recognized on a national level, as well as for the past ten years, here, in Alaska, that public broadcasting must be free from political influence. This is accomplished, in Alaska, by having each station hold its own license and providing state funding for those stations through the Public Broadcasting

C o n t. . . .

Commission.

Under the proposed legislation, the deputy commissioner of the Department of Commerce, Economic Development and Telecommunications could directly affect the climate at a public broadcasting facility. It is important that public stations keep the kind of insulation provided them presently under the aegis of the Alaska Public Broadcasting Commission.

4) Language; The powers of the Department of Public Telecommunications are quite broad. This Department would be responsible for the coordination and support of all public broadcasting functions in the State, including, but not limited to financing and engineering. (See Section 44.33.509(b)(2)).

By providing such broad powers to this agency, which is vertically controlled, the State of Alaska walks dangerously close to the line of usurping licensee prerogative as mandated in the Communications Act of 1934. A clarification of this paragraph is absolutely essential so as not to get the State of Alaska embroiled in censoring public broadcasting's programming and, more importantly, in contravening federal law.

The Department of Public Telecommunications also is to provide technical assistance and direction in the development and production of all educational and public telecommunications materials, without taking responsibility for the content of such programming. (Section 44.33.509(b)(1)). The language in the paragraph raises a number of questions:

1) Is it the intent of the State of Alaska to go into the television and radio production business?

2) How is it possible for the State of Alaska to relinquish responsibility for the content of programming for which it provides assistance, direction, development and production?

3) Given the broad authority of this new agency, will the Department of Public Telecommunications seek to mandate the play of programming that it produces by public radio and television stations?

4) Given the language in Paragraphs 1 and 2, is it the intent of the legislature to seek state ownership of public broadcasting facilities?

C o n t. . . .

5) Options: It would seem that the Public Broadcasting Commission could be easily moved under any new department seeking to aggregate the functions of telecommunications in the State of Alaska.

Since the legislation and administration of the Commission are already in place and in operation, a legislative amendment to the Enabling Act of the Commission could easily be effected, moving it under the proposed Department of Commerce, Economic Development and Telecommunications. A move of this type would insure the integrity of Public Broadcasting, as well as foster a more efficient and innovative approach to telecommunications issues facing us.

Another option, which might be considered, would be to fashion a new agency with the same goals and intent articulated in SB509/HB934 as a commission or a department with a publicly appointed board.

I hope this letter has succeeded in providing you with my comments and thoughts on SB509/HB934. I have offered them in a positive and constructive light. Please call upon me if I may provide you with additional information regarding this letter. I look forward to working with you during this most exciting time for telecommunications in Alaska.

Sincerely,

Stowell R. Johnstone

Stowell R. Johnstone,
Chairman
APBC

SRJ:MFP:blh

cc: The Honorable Jay S. Hammond, Governor
All Legislators
APBC Members
All Stations

Wave Referral
House working on Bill

Introduced: 2/18/80
Referred: Commerce and Finance

IN THE SENATE BY HOHMAN

SENATE BILL NO. 489

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing a communications service agency."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 42 is amended by adding a new chapter to read:

CHAPTER 23. COMMUNICATIONS SERVICE AGENCY.

Sec. 42.23.010. COMMUNICATIONS SERVICE AGENCY. There is established in the Office of the Governor the communications service agency.

Sec. 42.23.020. DIRECTOR. The agency is administered by a director who is appointed by and serves at the pleasure of the governor.

Sec. 42.23.030. PERSONNEL. The director shall employ the personnel necessary to carry out the provisions of this chapter.

Sec. 42.23.040. POWERS AND DUTIES OF THE DIRECTOR. (a) The director shall

(1) supervise and administer the activities of the agency;

(2) advise the governor on matters of comprehensive state planning for telecommunications services;

(3) make an annual report to the governor of the activities of the agency.

(b) The director may

(1) with the written concurrence of the governor, enter into contracts and subcontracts on behalf of the state to carry out the provisions of this chapter;

(2) act for the state in the initiation, investigation, evaluation of or participation in any program related to the purposes of the agency which involves more than one government or governmental unit;

(3) on behalf of the state, accept and expend gifts or grants made to the state with the approval of the governor if the gifts or grants were made for the purposes of furthering the objectives of the agency.

Sec. 42.23.050. FUNCTIONS AND DUTIES OF THE AGENCY. (a) The agency shall

(1) coordinate and supervise the existing state programs in telecommunications;

(2) cooperate with public utilities and private enterprises to provide effective telecommunications to all residents of the state;

(3) provide technical assistance to the governor and the legislature in identifying long range goals and objectives for the state and its political subdivisions in the field of telecommunications;

(4) prepare and maintain a state comprehensive telecommunications development plan;

(5) provide information and assistance to state agencies to promote governmental coordination and unity in the preparation of agency plans and programs involving the use of telecommunications;

(6) review planning within state government as may be necessary for receipt of federal, state or other funds;

(7) participate with other countries, provinces, states or subdivisions of these international or interstate planning, and assist Alaska's local governments, governmental conferences and councils, in planning and coordinating their activities relating to telecommunications;

(8) encourage educational and research programs that further the development of effective telecommunications; and

(9) serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to federal, state or local

governmental agencies in the development of telecommunication systems.

(b) The agency shall, in carrying out its functions, consult with local, regional, state and federal officials, private groups and individuals, and with officials, of other countries, provinces and states, and may hold public hear' s to obtain information for the purpose of carrying out the provisi. of this chapter.

(c) The division shall

(1) coordinate its services and activities with those of other state departments and agencies to the fullest extent possible to avoid duplication;

(2) prepare an integrated annual report on telecommunications in the state and submit it to the governor for incorporation into his report to the legislature;

(3) cooperate with the University of Alaska and other appropriate public and private institutions in research and investigations.

Sec. 42.23.060. AGENCY MAY ACCEPT GRANTS AND OTHER AID. The agency may apply for and receive from the federal government, its agencies, or from other public or private sources, gifts, grants or other aids available for its purposes.

Sec. 42.23.070. DEFINITIONS. In this chapter

(1) "agency" means the communications service agency;

(2) "director" means the director of the communications service agency; and

(3) "telecommunications" means the transmission and reception of messages, impressions, pictures and signals by means of electricity, electromagnetic waves and any other kind of energy, force variations or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DEPUTY COMMISSIONER – ADMINISTRATION

POUCH Z
JUNEAU, ALASKA 99811

March 11, 1980

Brad Bradley, Chairman
Senate Commerce Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bradley:

We have reviewed Senate Bill 489 and reached the conclusion that the new division would simply expand on the role now assigned to the Division of Policy Development and Planning and therefore not materially affect the operations within the Department of Transportation & Public Facilities. Therefore, our position on this bill is one of neutrality.

I have contacted the Governor's Office and understand that they are providing you with further comments, as well as a fiscal note.

Sincerely,

Ron Lind
Deputy Commissioner

25A-T3LH

STATE OF ALASKA

JAY S. HAMMOND
GOVERNOR

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER / POUCH F-ALASKA OFFICE BUILDING
JUNEAU 99811

March 12, 1980

The Honorable Brad Bradley
Chairman
Senate Commerce Committee
Pouch V
State Capitol
Juneau, AK 99811

Dear Senator Bradley:

In reference to Senate Bill 489, the Department of Education supports the consolidation of telecommunications services provided by state government, since the improved efficiency of technical assistance, system development, and support service to telecommunications users would enhance the Department's ability to effectively implement telecommunications technology for the state's schools.

In any reorganization of telecommunications services, however, system planning and development of systems exclusively serving schools, as well as the development of courseware or program content, must ultimately be the responsibility of and accountable to the policies of the State Board of Education, on behalf of all public schools in the state.

In our opinion, no fiscal note is required save that which would be necessary for the internal operations of the proposed agency.

Sincerely,

Marshall L. Lind
Commissioner

05-E1LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF MILITARY AFFAIRS

ALASKA DIVISION OF EMERGENCY SERVICES

1306 EAST 4TH AVENUE
ANCHORAGE – 99501

March 10, 1980

The Honorable Brad Bradley
Alaska State Senate
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

In reference to your letter regarding Senate Bill 489, let me assure you we are supportive to efforts that improve overall telecommunications within the State.

As you are aware communications are generally taxed to their limits during emergencies; therefore this office is vitally interested in any improvement in this field. This office has long been an advocate of centralizing telecommunication functions into a single responsive agency. We believe that improved services and many economies in State agencies expenditures could be realized by approaching telecommunications requirements on a total system approach rather than piecemeal by individual departments as it has been in the past.

We also fully realize that this proposed Agency will go beyond purely State office requirements and will fulfill study needs concerning advances in public and international telecommunications as well.

09-12LH

In this regard, we see a need for an agency to act as a clearing house for such things as advances in technology, eg., emergency 911 functions for the local telephone communities. Going beyond this, micro computer technology is opening a whole range of telecommunications advances coupled with the telephone. In the future, computer driven emergency messages could automatically alert fire, ambulance and police to emergencies in progress. Electronic mailing, voting, and polling is also possible in the future, thereby better serving the public and private telecommunications needs.

In summary, this Division feels that advances in telecommunications is expanding at an exponential rate and there is a definite need for a Communications Service Agency to advise the Governor on comprehensive State planning for telecommunications. Fiscal requirements should logically be addressed after definite scope and magnitude of the endeavor is defined.

Sincerely,

Edward S.E. Newbury
Director

ESEN:LIT:so

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

POUCH C
JUNEAU, ALASKA 99811

465-2200

March 18, 1980

Honorable Brad Bradley
Chairman, Senate Commerce Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Senator Bradley:

In response to your letter of March 1, 1980, this Department:

Favors SJR 49 and the establishment of a consular office

Favors management of ASHA lease space (SB 491) being identified to the Department of Administration. We, as you know, manage most lease space for the State.

Take no position on SB 489 and an act establishing a communication service agency.

There will be no material fiscal impact on this Department from any of the above legislation.

Sincerely,

Richard A. Smith

Richard A. Smith
Deputy Commissioner
Administrative Management

RAS/mjc
cc: Keith Specking

02-B9LH

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 489

An Act establishing a communications service agency."

Senate Bill No. 489 would establish in the Office of the Governor a communications service agency to plan and coordinate a statewide program of telecommunications and provide technical assistance to the Governor, the Legislature, state agencies and local agencies in the field of telecommunications.

The Department of Health & Social Services endorses the concept of this bill. It appears likely that telecommunications will play an increasingly important role in the State, and coordination of the planning and implementation of the development of such a system will be required.

Within this Department, the Emergency Medical Services Section is already deeply involved in the development and use of telecommunications networks, and coordinates its activities with those of the Department of Transportation and Public Facilities and the Department of Public Safety. We foresee a greatly expanded role for telecommunications in public information and education programs conducted by several of the divisions within this Department.

A central planning and coordinating agency in State government would be a distinct advantage to this Department. It may be appropriate, though, to investigate placement in a line agency rather than in the Office of the Governor.

Recommended by: _____
Dean F. Tirador, M.D.
Director, Division
of Public Health

Date: 3/21/80

Approved by: _____
Helen D. Beirne
Commissioner

Date: 3/24/80

Telecommunications Needs as Identified by the
Alaska Department of Health & Social Services

Emergency Medical Services

The emergency medical services program has three or four primary concerns with respect to telecommunications. In cities and towns there should be a single access telephone number (such as 911) for all emergency services. Most major towns and cities in Alaska, except Juneau, already have "911" systems in operation.

The second major concern is for adequate ambulance to hospital communications. This is extremely important since many ambulance personnel are now trained in advanced procedures, including starting IV's, which require physician consultation and approval. Many major highways in Alaska still lack the necessary microwave or VHF repeater links to enable ambulances in remote rural areas to communicate with hospital personnel.

Another consideration for the highway system is to make sure that there are adequate numbers of trained CB monitors, such as members of the REACT organization, so people without access to a telephone can call for emergency assistance on their CB radios.

A final major concern is for reliable village health clinic to hospital and hospital to hospital communications throughout the state. Community health aides in villages and mid-level practitioners rely upon village clinic to hospital communications for daily doctor's calls and to arrange medevacs or other assistance during medical emergencies.

At present, 57 villages rely upon small earth satellite stations for clinic to hospital communications. Due to the high cost of these dedicated links (approximately $1200 per month) the U.S. Public Health Service is unable to afford to implement this system in other villages. Furthermore, the reliability of many of these small earth satellite stations has been very poor, with many of them being out of order for several days or more at a time.

Over 100 other village health clinics rely upon HF single band radios, which have poor propagation in high latitudes and consequently are often not reliable either.

If the satellite system could be improved and expanded, it could have other potential uses besides reliable point to point voice communications. With one or two way visual and two way audio transmission capabilities, continuing education programs could be transmitted to remote hospitals throughout the state.

With expansion of television reception in villages, health education programs could be aired to rural and bush residents.

Office of Alcoholism and Drug Abuse

The Office of Alcoholism and Drug Abuse sees a need for an automated management information system with terminals at each treatment facility and at the main office in Juneau. These treatment facilities are located in Fairbanks, Kotzebue, Nome, Unalaska, Bethel, Dillingham, McGrath, Tok, Seward, Kenai, Yakutat, Juneau, Sitka, Ketchikan, Palmer, Hoonah, Petersburg and Wrangell.

They also would like to have video reception capabilities at each site with satellite based transmitting from Anchorage for training of local program staff.

Office of Aging

The Office of Aging would like to see a statewide toll free hot line established for a centralized information & referral system, which would be properly staffed with adequately trained personnel.

Division of Public Assistance

The Division of Public Assistance reports that it needs direct computer terminal lines to each of its 19 district offices, with a 5 second turn around time. At present, it has terminals in Anchorage, Juneau, Ketchikan and Fairbanks. All except the Fairbanks terminal are presently in good working order.

The other district offices are currently located in Petersburg, Sitka, Valdez, Kodiak, Palmer, Kenai, Dillingham, Bethel, Aniak, Mountain Village, Unalakleet, Galena, Nome, Kotzebue, and Fort Yukon. In the future, offices may be opened in Barrow, Wasilla, Wrangell, Seward, Tok, and the Aleutians.

Public Assistance also needs the capacity to transmit checks and other documents to district offices.

Division of Mental Health & Development Disabilities

The Division of Mental Health & Development Disabilities would like to have one way video and two way audio transmitting and receiving capabilities at Alaska Psychiatric Institute in Anchorage and at Harborview Developmental Center in Valdez. This would be useful for conducting continuing education programs for staff.

Other potential Department of Health & Social Services uses of Telecommunications

Satellite TV through its capability to reach rural and urban communities statewide, can play a vital role in providing a vehicle for the dissemination of educational and public information in both health and social service topics.

If transmission costs are reasonable, one-way video could be used by various Health & Social Services divisions and/or special offices as part of their activities to deliver educational packages for training or public information and to provide statewide public exposure to health & social service issues being discussed by a group in one location. It may also provide an opportunity for more regional unification of state programs and committees.

Additional telecommunications subsystems which could offer the Department Divisions an opportunity for improving its delivery of services include:

--Centralization of client records with instant access.
--Education of specific consumers and field based providers, i.e. food stamp and public assistance field offices.
--Conferencing - state task force committees meeting on a specific issue.

Subsystems most likely to be used for the above are two-way radio telecopies, computer systems, teleconferencing and video conferencing. Ultimate usage of any of these subsystems could lead to the saving in both time and money by reducing travel.

Expanding the teleconferencing network to more sites would enhance its usability and practicality greatly.

For the most part, the needs outlined here have not been addressed in the State FY 1981 Budget.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SENATE BILL NO. 489
Title "An Act extablishing a communications service agency."
Requested by _____ Date 3/13/80

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected Health/Division of Public Health
BRU, Program, or Subprogram(s) Affected Emergency Medical Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The Department foresees no additional expenses as a result of this bill.

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: J. Gleek Date: 3/13/80
Division/Office: P. H. Administration PH:
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt: MACT Date: 3/13/80

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

Page ____ of ____

SB
518

John E. Benson, Broker
Dorothy M. Benson, Assoc. Broker

Telephone 907-225-9651
Evening 907-247-8197

CAPITAL INVESTMENT REALTY
P.O. Box 7076
KETCHIKAN, ALASKA 99901

March 26, 1980

The Honorable W. E. Bradley
Chairman, Commerce Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator:

Re: Senate Bill #518
"An Act Relating to the regulation of real estate brokers and salesman"

I am writing because the above bill is discrimatory to people desiring to obtain a Real Estate Broker or Real Estate Salesman License who live in rural areas.

Presently the real estate courses are given in Anchorage and Fairbanks and a three day stay-over in either of these cities is very restrictive to us in Southeastern or any of the people living in other communities.

However, I am in favor of the educational requirements but would stress that they be offered in all communities either through correspondence courses or through the local community colleges. This should be addressed in the above numbered bill.

Your consideration of this addition to the bill will be appreciated.

Sincerely,

Dorothy M. Benson

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Assoc. Broker

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KETCHIKAN, ALASKA 99901

March 26, 1980

The Honorable W. E. Bradley
Chairman, Commerce Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator:

Re: Senate Bill #518
"An Act Relating to the regulation of real estate brokers and salesman"

I am writing because the above bill is discrimatory to people desiring to obtain a Real Estate Broker or Real Estate Salesman License who live in rural areas.

Presently the real estate courses are given in Anchorage and Fairbanks and a three day stay-over in either of these cities is very restrictive to us in Southeastern or any of the people living in other communities.

However, I am in favor of the educational requirements but would stress that they be offered in all communities either through correspondence courses or through the local community colleges. This should be addressed in the above numbered bill.

Your consideration of this addition to the bill will be appreciated.

Sincerely,

Dorothy M. Benson

Dorothy M. Benson
Assoc. Broker

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811
465-3674

March 25, 1980

Honorable Brad Bradley
Chairman, Senate Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 518 (Real Estate Commission)

Dear Senator Bradley:

This is in response to your request for comments on Senate Bill 518.

The Department of Law has no position on the substance of this bill. As a technical matter, however, I would like to suggest that it is not entirely clear what the "educational requirements" are that are referred to at page 1, line 23; page 2, lines 17 and 18, and page 3, lines 6 and 7. There are at present no statutorily mandated educational requirements for real estate brokers, assistant brokers, or salespersons. The proposed amendment to AS 08.88.091 in section 1 of the bill requires the commission to establish clinics, meetings, courses, and so forth, but neither the amendment nor any existing provisions of AS 08.88 appears to authorize the commission to require persons seeking licenses to attend them.

I am not aware of what problems may have prompted the need for this bill, so perhaps I am missing something.

The bill would have no fiscal impact on this department.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Susan Burke
Susan Burke
Assistant Attorney General

03-C6LH SB/ab

SB

535

Alaska Morris 3795
Sen. Finance

Introduced: 3/27/80
Referred: Commerce, Community & Regional Affairs and Finance

IN THE SENATE BY THE COMMERCE COMMITTEE

SENATE BILL NO. 535

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for a Task Force on Fire Prevention and Control; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. TASK FORCE ON FIRE PREVENTION AND CONTROL. The Alaska Task Force on Fire Prevention and Control is established in the Department of Community and Regional Affairs.

* Sec. 2. MEMBERSHIP. (a) The Alaska Task Force on Fire Prevention and Control consists of nine members appointed by the governor, without regard to political affiliation, to be selected as follows:

(1) one member from the Alaska State Firefighters Association from a list of nominees provided by the association;

(2) one member from the International Association of Firefighters from a list of nominees provided by the association;

(3) one member from the Alaska Fire Chiefs Association from a list of nominees provided by the association;

(4) one member representative of the insurance industry;

(5) a contractor or architect licensed under AS 08.18;

(6) a commissioner or executive officer of a regional native housing authority created under AS 18.55.996;

(7) an educator from the state public school system;

(8) one public member; and

(9) one member representative of the Alaska Municipal League from a list of nominees provided by the league.

(b) There shall be at least one member from each judicial district.

* Sec. 3. OBJECTIVES. The objectives of the task force are to

(1) identify and provide a detailed account of the fire loss problem in the state, including causal factors;

(2) identify and define the present roles and relationships of the agencies in the state which are involved in fire protection activities at the local, regional, state and federal levels;

(3) recommend organizational or operational modifications to improve the effectiveness of the state's fire protection system;

(4) provide documentation that will assist all government agencies and fire fighting services in effectively meeting their fire protection responsibilities.

* Sec. 4. CHAIRMAN. The members of the Task Force on Fire Prevention and Control shall elect a chairman from the membership of the task force.

* Sec. 5. PROJECT DIRECTOR. The Task Force on Fire Prevention and Control shall hire an executive director to function as an impartial investigator and project director. The executive director shall be under the direction of the chairman and may, with the approval of the chairman, employ additional staff as necessary.

* Sec. 6. MEETINGS AND HEARINGS. The Task Force on Fire Prevention and Control shall meet at least once every three months. The first meeting shall be held not later than 60 days following the appointment of the nine members to the task force. Public hearings and meetings shall be held in areas of the state that are representative of its urban and rural fire protection problems.

* Sec. 7. COMPENSATION. The members of the Task Force on Fire Prevention and Control serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions.

* Sec. 8. DUTIES. The Task Force on Fire Prevention and Control shall

(1) request and review information concerning the causes and

nature of fire losses in the state;

(2) hold public hearings and meetings to determine the extent of public awareness of existing fire protection systems;

(3) study the activities of the various fire protection agencies in the state;

(4) submit an annual report with recommendations for the improvement of fire prevention and control in the state to the governor and the legislature; the first annual report shall be submitted by January 1, 1982; and

(5) by January 1, 1984, submit to the governor and the legislature its final report which shall identify those interim report recommendations which have been implemented, evaluate the practical effects of the implementation of the recommendations, and make further recommendations on the improvement of fire prevention and control.

* Sec. 9. This Act terminates on June 30, 1984.

* Sec. 10. This Act takes effect immediately in accordance with AS 01.10.-070(c).

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED 4-1-80

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Commerce Committee	SB 535

DEPARTMENT POSITION

Support

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Ronald A. Hendrie	4/1/80	William R. Nix	4/1/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
1. CS HB 863
2. Refer to comments

(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL
Alaska Fire Chiefs Association
Alaska State Firefighters Association

(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unknown

(3) PROGRAM EFFECTS OF BILL
No discernible program effects during the task force study phases other than, upon request, occassional staff time and travel required to provide input concerning our programs and services/activities, including our observations as to the fire problem, to the task force.

Eventual short and long term program effects would depend on what recommendations, for the improvement of fire prevention and control, were made and implemented.

(4) FISCAL IMPACT: ☐ NONE ☒ FISCAL ANALYSIS ATTACHED (INFormal)

(5) AMENDMENTS PROPOSED:

None

(6) COMMENTS:
In our opinion the task force study and report(s), comprehensively and properly conducted and executed, is vital to a long needed analysis and improvement of the state's fire protection system. Without an approach of this type meaningful improvement of the state's fire environment is not favorable and our delivery system cost effectiveness is highly suspect.

Among the objectives of the task force would be the identification and defining of the present roles and relationships of the various agencies in the state which are involved in fire protection activities at the local, regional, state and federal levels. There is considerable overlap and duplication of effort without any viable means of coordination.

In addition to the Department of Public Safety, numerous state agencies, e.g. Department of Natural Resources, Department of Transportation and Public Facilities, Department of Health & Social Services, Department of Administration, Department of Labor, Department of Education amongst others, are involved in varying levels of fire protection programs

A state focused fire prevention and control master plan is needed and indicated. The task force could and should be the catalyst for this direly needed effort if this legislation is passed.

For additional background material, including the scope of the issue, attached is a copy of A Prospectus of Alaska's Fire Protection (January 4, 1980), a report furnished to Governor Hammond by Mr. Thomas W. Monk, Legislative Chairman, Alaska State Firefighters Association.

SB
554

Alaska State Legislature

Senate

Committee on Resources

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 13, 1980

Christian:

Here is a copy of the legal analysis of SB 554. It is quite obvious that there may be problems with this measure should it be decided that it come to the floor of Resources.

If there are any questions that you wish to throw at me, feel free to do so.

Jay

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 13, 1980

SUBJECT: Analysis of legal problems connected with Senate Bill 554 (Work Order Number 8552)

TO: Senator Bill Sumner
Chairman, Senate Resources Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

You have asked me to research legal problems which may be involved with Senate Bill 554, "An Act authorizing the commissioner of the Department of Natural Resources to lease state land for industrial development." This bill presents several separate legal issues.

Section 38.05.072(b)(2) requires that a lessee of government land under this act shall agree that at least 75 percent of the persons employed by the lessee shall be state residents. The United States Supreme Court has held that a resident of one state is entitled to travel to another state for purposes of employment free from discriminatory restrictions in favor of state residents. Ward v. Maryland, 20 L.Ed. 449 (1871). More recently, it has held that unless there is a substantial reason for the discrimination, disparity of treatment between residents and nonresidents is precluded by the Privileges and Immunities Clause. A "substantial reason" for discrimination does not exist unless nonresidents constitute a peculiar source of evil and a "reasonable relationship" must exist between the danger posed by nonresidents and the discrimination practiced against them. Toomer v. Witsell, 334 U. S. 385, 192 L.Ed. 1460, 68 S. Ct. 1156 (1948).

In applying this criteria, the Supreme Court overturned the Alaska Hire statute, which provided that residents be given preference over nonresidents for employment in the state oil and gas industry. The purpose of the Alaska Hire statute

was to relieve the uniquely high unemployment rate of the state, but the Court found that nonresidents were not a source of this evil since the record indicated that unemployment was a particular problem of unskilled Alaskans and Alaskans in remote areas, so that the high unemployment rate was not principally due to the influx of nonresidents seeking employment. Furthermore, the Court held that the statute was not reasonably related to the evil sought to be corrected because the preference was granted to all Alaskans regardless of their employment status instead of to only unemployed Alaskans. Hicklin v. Orbeck, 437 U. S. 518, 57 L.Ed.2d 397, 98 S. Ct. 9482 (1978). Arguably, the purpose of this act is to attract new industry to the state in order to stimulate the economy in general, rather than principally to provide jobs. However, even under such a broad interpretation of the purpose, there is little doubt that the section requiring the employment of a percentage of state residents comes squarely under the reasoning enunciated in Hicklin v. Orbeck, supra. It violates the Privileges and Immunities Clause of Article IV, section 2 of the U.S. Constitution and may also run afoul of the Equal Protection Clause of the Fourteenth Amendment; and, if a lessee were an industry which was involved in interstate commerce, the provision could run afoul of the Commerce Clause as well.

The lease of state land for industrial development under terms which would presumably be very attractive and, therefore, favorable to a lessee could run into trouble under Article IX, section 6 of the Alaska Constitution which provides:

> No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose. (Emphasis added).

While this act only provides for leases of state land, a lease certainly is a transfer of property rights and would be scrutinized under this section. Section 38.05.072(b) provides that a lessee may be charged no rent or real property taxes, clearly a potential transfer of public property also. While this act could be subject to attack, I feel that it would probably survive a challenge based upon this provision of the constitution. "Public purpose" is a term of great imprecision (DeArmond v. Alaska State Development Corporation, 376 P2d 717 (Alaska 1962)), and the

legislature has broad discretion to choose the means to affect a public purpose, which the courts will not interfere with unless the means chosen are arbitrary and without any reasonable basis in fact. Suber v. Alaska State Bond Committee, 414 P.2d 546 (Alaska 1966). It has been held that legislation directed towards improving the economic climate of the state serves a legitimate purpose (Walker v. Alaska State Mortgage Association, 416 P.2d 245, (1966)) and that efforts to attract local industry also serve a public purpose (Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970)). The purposes behind this act, to attract industry and to stimulate the economy, are similar and would likely be upheld as public purposes.

Lastly, there seems to be a potential constitutional "separation of powers" problem inherent in this act. Just as one branch of government may not infringe upon the power of another branch of government, there are limits imposed upon the extent to which one branch of government may delegate its power to another branch of government. The rule is that so long as a policy is laid down and a standard for the exercise of the power is established by statute, no unconstitutional delegation of legislative power is involved in leaving to selected governmental instrumentalities the making of rules and the determination of facts to which the policy is to apply. Schechter v. United States, 55 S. Ct. 37, 97 A. L. R. 947 (1935). The power to tax is essentially a legislative function and the legislature is authorized to grant tax exemptions. City of Nome v. Block No. H, Lots 5, 6 & 7, 502 P.2d 124 (Alaska 1972). AS 38.05.072(b) provides that the commissioner, evidently at his sole discretion, may agree that no real property taxes will be assessed against a lessee. Since the act contains no standards for the exercise of the power to exempt from taxation, it can be argued that this provision is an unconstitutional delegation of legislative power. Although there are no Alaska cases directly on point, the separation of powers doctrine is recognized in Alaska (Bradner v. Hammond, 553 P.2d 1 (Alaska 1976)), and other states have recognized limits on the delegation of state legislative power under the "separation of powers" doctrine. Cities Service Gas Company v. Witt, 500 P.2d 288 (Okla. 1972); Citizens v. Smith, 396 P.2d 677 (Nev. 1964); Spokane County v. Valu-Mart, Inc., 419 P.2d 993 (Wash. 1966). Article II, section 1 of the Alaska Constitution provides that the legislative power is vested in the

legislature, so it appears under the Schechter rule that the legislature would have to set standards before it could delegate the power to grant a tax exemption to the executive branch of government. This act does not comply with that requirement.

If you have any further questions, please contact me.

TBC:ljb

SB

585

Introduced: 5/13/80
Referred: Commerce and Finance

IN THE SENATE

BY THE RULES COMMITTEE
BY REQUEST

SENATE BILL NO. 585

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to review of public need for regulation of occupations."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.03 is amended by adding new sections to read:

CHAPTER 03. TERMINATION, CONTINUATION AND REESTABLISHMENT OF REGULATORY BOARDS, AND EVALUATION OF NEED FOR REGULATION.

ARTICLE 2. EVALUATION OF NEED FOR REGULATION.

Sec. 08.03.040. EVALUATION OF NEED FOR REGULATION OF AN OCCUPATION. (a) Upon the written request of practitioners of ~~an~~ an occupation or members of the public, the department shall evaluate an occupation which is not regulated under this title to determine whether the occupation should be regulated.

(b) At the discretion of the commissioner, the department may evaluate an occupation which is not regulated under this title to determine whether the occupation should be regulated.

Sec. 08.03.050. HEARINGS. As part of an evaluation of an occupation, the department shall hold hearings and invite practitioners of the occupation and members of the public to comment. If persons engaged in an occupation are seeking to be regulated, the department shall request the following information from them:

(1) a definition of the problems which create a need for regulation of the occupation;

(2) the nature of potential harm to the public if the occupation is not regulated;

(3) the extent to which there is a threat or existing harm to the public health, safety, or economic well-being;

(4) the extent to which consumers of services provided by the occupation will benefit from a method of regulation which identifies competent practitioners of the occupation;

(5) the extent to which the occupation calls for independent judgment and the exercise of special skills or training which makes it difficult for consumers to determine the quality of service being offered by particular practitioners;

(6) the extent to which practitioners of the occupation are currently supervised through existing law or regulation;

(7) efforts made by practitioners of the occupation to deal with the problem which create a need for regulation of the occupation and the results of the efforts;

(8) alternatives to regulation;

(9) the extent to which regulation is expected to restrict entry into the occupation;

(10) whether the occupation is regulated in other jurisdictions;

(11) the extent to which the problems present in the occupation can reasonably be expected to be eliminated by regulation; and

(12) the system of regulation proposed.

Sec. 08.03.060. REPORTS. After the completion of an evaluation under AS 08.03.040, the department shall submit to the presiding officers of both houses of the legislature a report containing

(1) findings as to whether

(A) regulation of an occupation is needed to protect the public health, safety, and welfare;

(B) high standards of professional competence are cur-

rently upheld by practitioners of an occupation;

(C) the public is generally able to determine the competence of practitioners of an occupation;

(D) professional associations currently provide adequate protection against incompetent practitioners;

(E) existing laws and regulations are adequate to protect the public from incompetent practitioners;

(F) practitioners of an occupation perform a service which may affect third parties relying on expert skill and training; and

(G) characteristics of an occupation make it impractical to regulate;

(2) summation of hearings conducted and comments presented;

(3) alternatives to regulation considered, including possible statutory changes;

(4) recommendations, including details of any proposed system of regulation.

Sec. 08.03.070. RECOMMENDATIONS. (a) Before the department may recommend that an occupation be regulated under this title, it must determine that

(1) the unregulated practice of the occupation can harm or endanger the public health, safety and welfare and that the potential for harm is not remote;

(2) the occupation has qualities that distinguish it from other unregulated occupations and which make regulation appropriate;

(3) the public will benefit from regulation of the occupation; and

(4) the public cannot be protected from incompetent practitioners of the occupation by other means.

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 14, 1980

Ms. Lois Cook
Department of Commerce
and Economic Development
Pouch D, Mail Stop 0800
Juneau, AK 99811

Dear Ms. Cook:

Enclosed is SENATE BILL 585.

I would appreciate your comments/position papers on this SENATE BILL to include a fiscal note, if appropriate. If you decide that a fiscal note is not required, please make such a statement in your reply. If your Department recommends specific changes, in addition to general comments, I would prefer that they be keyed to page and line numbers.

If you know of other departments or agencies that have an interest in this legislation, please let me know so that I may get the benefit of comments from all knowledgeable and interested parties.

In consideration of a productive and expeditious session, we request that your comments/position be returned to the Senate Commerce Committee within 10 days.

Sincerely,

Brad Bradley

Brad Bradley
Chairman
Senate Commerce Committee

BB/jss
Enclosure

cc: David Creekman, Information Officer

Letter of Intent.

May 13, 1980

Senator Clem Tillion, President
Alaska State Legislature

Terry Gardiner, Speaker
Alaska State Legislature

Mr. Speaker:
Mr. President:

During the research of the Free Conference Committee into the hearings, audits, and history of the health and health related boards and from discussions with representatives of the administration, board members and legislators, it became increasingly clear to the Committee that additional screening processes might insure that professions which sought regulation were, indeed, needing of regulation through establishment of boards, licensing, and practice acts. It was felt by the Committee that screening of professions and development of substantive answers to a wide variety of questions about professions seeking regulation was advisable and would best be handled through the executive branch of government for action by the legislature.

Therefore, the Free Conference Committee had legislation drafted which establishes such a systematic review of professions seeking regulation. The Committee wishes to make clear that in signing this letter there is no endorsement or approval of this particular bill, as there have been no hearings on this bill. Rather, the Committee feels strongly that the concept needs to be available to the public and circulated, and the public should have an opportunity to respond to legislators regarding this concept between now and the next legislative session.

The Free Conference Committee requests that the Rules Committees of the House and of the Senate introduce this legislation so that it may be publically available for discussion, hearing and eventual action.

Senate Members:

Senator Sturgulewski, Chairman

Senator Bennett

Senator Fahrenkamp

House Members

Representative Malone, Chairman

Representative Osterback

Representative Bettisworth

SB
587

COMMITTEE REPORT

SENATE

FURTHER:

Date: June 3 1980

Mr. President:

The Committee on COMMERCE has had SB 587

relating to professional geologists

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for SB 587 [✓] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
[redacted]	Tim Kelly - No rec
	[illegible]
	[illegible]

Brad F. Bradley
CHAIRMAN
Do Pass

S 60 (Rev. 12/78)

J. McCaslin Brown

February 28, 1980

MEMORANDUM

TO: Richard A. Bradley
Legislative Counsel
Legislative Affairs Agency

FROM: Rep. Fred Brown

Thank you for your memo of February 26, regarding this strange requirement of a "professional geologist."

Apparently because of the federal requirements involving certain coal mining and reclamation activities, the states may (is this your conclusion?) be required to have some method of designating "professional geologists."

In this age of Sunset, obviously, I am not interested in creating a brand new board with wide-ranging activities. While you are drafting a bill, please come up with the absolute bare minimum action required by the State in defining a professional geologist that you believe would meet the federal requirement.

Thank you very much for your attention to this matter.

FB:kfw
bcc: Dr. Jim McCaslin Brown

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M February 26, 1980

SUBJECT: Professional Geologists
(Work Order Number 7353)

TO: Representative Fred E. Brown

FROM: Richard A. Bradley
Legislative Counsel

I have your memorandum of February 12, 1980, which I received February 21st.

On receipt of your memorandum, I read Public Law 95 - 87 again and finally discovered the phrase "professional geologist." It appears at 91 Stat. 476, in sec. 507(b)(14) of the bill. In context, the language requires that applications for "surface coal mining and reclamation permits" meet a number of requirements. Among the requirements, at paragraph (b)(14), the applicant is required to provide

> "cross section maps or plans of the land to be affected including actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture. . . ." (Emphasis added.)

The phrase is not defined in P.L. 95 - 87 and, by implication, the states are free to provide a definition.

Based on the information in the AIPG newsletter, I located the Indiana law that was said to be enacted responsive to P.L. 95 - 87. See Indiana Statutes 25-17.5-1-1 - 25-17.5-1-9, attached. That law gives the certification responsibility to the Department of Natural Resources. While I assume that in Indiana, as in Alaska, that department may more likely have geologists on its staff, there is no need to give DNR professional certification responsibility. I suggest that Commerce receive the responsibility.

Note also that no testing is involved in the Indiana process. Rather, the department examines credentials and if the standards established in the law are met, the individual is issued a certificate which describes him as a "professional geologist" and permits the individual to describe himself as such.

There appears to be no present law in Alaska regarding the professional certification of geologists. The term is used in a number of areas of the code [AS 27.07.040, AS 31.05.-009, AS 38.05.181, and AS 41.08] but is apparently undefined otherwise.

If I understand your request, you want a bill prepared which is similar to the Indiana law. I will undertake to prepare such a bill with the responsibility given to DCED as suggested above, unless I hear from you to the contrary.

RAB:ljb

Enclosure

ARTICLE 17.5

GEOLOGISTS

CHAPTER.

1. CERTIFIED PROFESSIONAL GEOLOGISTS. 25-17.5-1-1 — 25-17.5-1-9.

CHAPTER 1

CERTIFIED PROFESSIONAL GEOLOGISTS

SECTION.

25-17.5-1-1. Definitions.
25-17.5-1-2. Certification requirement.
25-17.5-1-3. Application — Form —Fee.
25-17.5-1-4. Qualifications.
25-17.5-1-5. Issuance of certificate.
25-17.5-1-6. Denial — Notice — Hearing.
25-17.5-1-7. Department to investigate applicants and violations.
25-17.5-1-8. Meaning of conviction — Department's authority upon conviction.
25-17.5-1-9. Prohibited acts — Penalty.

25-17.5-1-1. Definitions. — As used in this chapter:

"Department" means the department of natural resources.

"Certified professional geologist" means a geologist certified under this chapter.

"Geology" refers to that science which is based on investigation of the earth's crust and the rocks and other materials which compose it and which utilizes knowledge of the earth and its constituent rocks, minerals, liquids, gases, and other materials for the benefit of mankind.

"Qualified geologist" means a person who possesses all the qualifications to be a certified professional geologist under this chapter except that he is not certified.

"Responsible position" means a position requiring the exercise of independent control and direction and the use of initiative, skill, and independent judgment when performing geological work or when supervising such work. [IC 25-17.5-1-1, as added by Acts 1979, P.L. 245, § 1.]

25-17.5-1-2. Certification requirement. — After June 30, 1980, no person other than a certified professional geologist may stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a certified professional geologist, or use in any manner the title "professional geologist", "registered geologist" or "certified geologist" unless he is certified under this chapter. [IC 25-17.5-1-2, as added by Acts 1979, P.L. 245, § 1.]

25-17.5-1-3. Application — Form — Fee. — An application for certification as a professional geologist shall be made to the department on a form prescribed by the department and shall be accompanied by the application fee fixed by rules of the department. [IC 25-17.5-1-3, as added by Acts 1979, P.L. 245, § 1.]

25-17.5-1-4. Qualifications. — To be certified as a professional geologist, a person must be certified by the American Institute of Professional Geologists, or have the following qualifications:

(1) Be of good moral character.

(2) Meet one of the following educational requirements fulfilled at a school or university whose geological curricula is accredited and meets the criteria established by rules of the department:

(A) Graduation with a major in geology; or

(B) Completion of thirty [30] semester hours in geological science courses leading to a major in geology, of which at least twenty-four [24] hours are in the third or fourth year, or graduate courses.

(3) Meet one of the following work experience requirements:

(A) Three [3] years of professional geological work under the supervision of a certified professional geologist, except that prior to July 1, 1979, professional geological work qualifies under this subdivision if it was under the supervision of a qualified geologist; or

(B) Five [5] years' experience in a responsible position.

(4) Have at least seven [7] years of professional geological work. Professional geological work does not include routine sampling, laboratory work, or geological drafting.

(A) Each year of undergraduate study in the geological sciences counts as one half [1/2] year of professional geology work up to a mazimum of two [2] years, and each year of graduate study or research counts as a year of professional geology work.

(B) Teaching in the geological sciences at college level counts as one [1] year of professional geology work, provided that the total teaching experience includes six [6] semeste s per semester, or equivalent if under another system, of third or h year or graduate courses.

(C) Credit for undergraduate s graduate study, and teaching, separately, or in combination, ma exceed a total of four [4] years towards meeting the requirement o ast seven [7] years of professional geological work.

(D) The ability of the applicant st be demonstrated by his having performed his professional geologica: work in a responsible position. The adequacy of the required supervision and experience shall be determined by the department in accordance with standards set forth in rules adopted by it. [IC 25-17.5-1-4, as added by Acts 1979, P.L. 245, § 1.]

25-17.5-1-5. Issuance of certificate. — An applicant who meets the qualifications for certification under this chapter, upon payment of the certification fee, shall be issued a certificate as a professional geologist. [IC 25-17.5-1-5, as added by Acts 1979, P.L. 245, § 1.]

25-17.5-1-6. Denial — Notice — Hearing. — An applicant who is denied certification shall be notified in writing and informed of the reason for the denial. Within thirty [30] days after receipt of notice, the applicant may make written request to the department for a hearing which, if granted, shall be conducted as specified in IC 4-22-1 [4-22-1-1 — 4-22-1-30]. [IC 25-17.5-1-6, as added by Acts 1979, P.L. 245, § 1.]

25-17.5-1-7. Department to investigate applicants and violations. — The department shall investigate applicants and violations of this chapter. [IC 25-17.5-1-7, as added by Acts 1979, P.L. 245, § 1.]

25-17.5-1-8. Meaning of conviction — Department's authority upon conviction. — A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or a crime involving moral turpitude is deemed to be a conviction within the meaning of this chapter. The department may order a certificate suspended or revoked or may decline to issue a certificate when the time for an appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence. [IC 25-17.5-1-8, as added by Acts 1979, P.L. 245, § 1.]

25-17.5-1-9. Prohibited acts — Penalty. — After June 30, 1980, any person who signs, stamps, or seals any plans, specifications, plats, reports, or other documents as a certified professional geologist, "registered geologist" or "certified geologist" without being certified under this chapter, or after his certificate has expired or has been suspended or revoked, commits a Class A infraction. [IC 25-17.5-1-9, as added by Acts 1979, P.L. 245, § 1.]

Cross References. Penalties for infractions, 35-50-1-1 — 35-50-1-4, 35-50-4-1 — 35-50-4-4, 35-50-5-2.

ARTICLE 18

GOING OUT OF BUSINESS, REMOVAL AND FIRE SALES

CHAPTER.

1. Going Out of Business, Removal of Business, Fire or Other Altered Goods Sale Licenses (Clerk of the Circuit Court), 25-18-1-13, 25-18-1-19.

CHAPTER 1

GOING OUT OF BUSINESS, REMOVAL OF BUSINESS, FIRE OR OTHER ALTERED GOODS SALE LICENSES (CLERK OF THE CIRCUIT COURT)

SECTION.

25-18-1-13. Criminal acts voiding license.
25-18-1-19. Penalty for violating chapter.
25-18-1-20. [Repealed.]

25-18-1-13 [42-1522]. Criminal acts voiding license. — Any violation of IC 35-43 [35-43-1-1 — 35-43-5-5] by a seller in connection with a sale governed by this chapter also constitutes a violation of this chapter and automatically voids any license authorizing such a sale. [Acts 1965, ch. 271, § 13, p. 744; 1978, P.L. 2, § 2535, p. 2.]

Geologists

Ken Schowalter
Soho lobby

11AM - Baranoff →

114 - Freeman

JAY S. HAMMOND, GOVERNOR

ALASKA OIL AND GAS CONSERVATION COMMISSION

May 30, 1980

3001 PORCUPINE DRIVE-ANCHORAGE, ALASKA 99501

Hon. W.E. Bradley, Chairman, Senate Commerce Committee
Hon. Bill Sumner, Chairman, Senate Resources Committee
Hon. John Sackett, Chairman, Senate Finance Committee

Dear Senators:

We believe SB 587 discriminates against those working geologists who are not members of the American Institute of Professional Geologists (A.I.P.G) by requiring three years of experience to be under the supervision of a professional geologist, as narrowly defined in the bill. At the effective date of this bill, only those geologists certified by A.I.P.G. will be recognized as professional geologists under SB 587. This will require someone who is not a member of A.I.P.G. to have worked under the supervision of an A.I.P.G. member for three years to qualify on that date for certification by the Commissioner of Commerce and Economic Development.

We suggest the following changes which will allow someone who has sufficient experience to qualify for certification.

Sec. 08.53.020(a)(2) have seven years of experience in geological work. [, three of which were under the supervision of a professional geologist.]

Sec. 08.53.020(d) (new subsection) Three years after the effective date of this act, three years of the experience required in (a)(2) of this section must be under the supervision of a professional geologist.

Sec. 08.53.020 (e) (old subsection d).

We believe that with these changes geologists with many years of experience will be fully qualified to be certified directly by the Commissioner of Commerce and Economic Development, without having to join the A.I.P.G. Further, these changes will enable some geologists who are supervisors of other geologists to be recognized as professional geologists. This would expand the base of geologists who will eventually qualify for certification by the Commissioner.

Yours very truly,

Harry W. Kugler
Commissioner

Bob Walker - drafted SB-587

added Sec 1.
08.01.010
(22) geologists

Draft a CS SB-587

↙ ↘

Satisfy Feds — NO Licensure by State.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSSB 587
Title An Act relating to licensing of Professional Geologists
Requested by Commerce Committee : Date 6/3/80

II. FISCAL DETAIL
Agency Affected Commerce & Economic Development
Program Category Affected Public Protection
BRU, Program, or Subprogram(s) Affected Licensing and Regulation of Professions
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		-0-				
400 COMMODITIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS, ETC.		-0-				
TOTAL		-0-				

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS		-0-				
OTHER (Specify Fund Source)		-0-				

POSITIONS

FULL TIME		-0-				
PART TIME		-0-				
TEMPORARY		-0-				

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The Department is able to absorb licensing of professional Geologists under the assumption that there will be no fees collected, no regulations promulgated, no investigations conducted and no board appointed.

IV. DATE 6/3/80 PREPARED BY Ann Griggs, Director
AGENCY Occupational Licensing
PHONE 465-2534

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)