

HB

704

COMMITTEE REPORT

HOUSE

(5)

FURTHER:

1/29/82

Date: 3-10-82

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 704

"An Act continuing the existence of the Real Estate Commission; and providing for an effective date."

under consideration and ~~(a majority of the committee)~~ ~~(the committee)~~ reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

*Lawrence*  
*Byloma*  
*[Signature]*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Lawrence*  
 CHAIRMAN

Date introduced 1-29-82  
" Rec'd: 1-29-82

Expenses none

Comm. hearing 3-1-82 - CS work draft to be prepared.  
" action 3-10-82 CS adopted - passed out of Comm.  
legal services provided by  
financing Dept & Chief Clerk @ 4:30 p.m.

Atty Generalist of  
Ad. Coastal Health  
Notified 586-1212

He sending some amendments  
he would like to see part of  
the Board. Sending (5) copies that  
members can study prior to  
meeting.  
3-1-82 - Reminder

PROPOSED STATUTORY CHANGES IN AS 08.88 PRESENTED TO THE HOUSE LABOR AND COMMERCE COMMITTEE BY THE ALASKA REAL ESTATE COMMISSION, MARCH 1, 1982:

\* Sec. 08.88.091 is amended by adding a new paragraph to read:

(3) The commission may make available to the public manuals, *OK* texts or other materials prepared with funds from the surety fund. When these materials are made available the commission may make a reasonable charge for them designed to recover the actual costs of the item provided. Funds collected under this section shall be paid at least once a month into the general fund. These payments shall be credited to the real estate surety fund.

\* Sec. 08.88.101 (11) is repealed and reenacted to read:

*OK* (11) print and distribute duplicate license certificates to replace lost certificates;

\* Sec. 08.88.101 (12) is amended to read:

*OK* (12) send notice 30 days before (*Jan 31 of next year*), BEFORE DECEMBER 1 OF EACH YEAR, ) the date that licenses must be renewed; *Not of commission but of industry.*

\* Sec. 08.88.201 is repealed and reenacted to read:

*OK* 08.88.201. REEXAMINATION. A person who fails an examination may apply for a subsequent examination, but shall pay the examination fee each time he applies.

\* Sec. 08.88.221 is repealed and reenacted to read:

08.88.221. FEES. Fees  for the following categories for a *if applicable* real estate broker, associate broker, or salesman licensee or  applicant are established by regulations adopted under AS 08.01.065:

- (1) examination; - 50
- (2) reciprocity; - 100
- (3) initial license; - 100
- (4) renewal of an active license; 100
- (5) renewal of an inactive license; 50
- ~~(6) amending or transferring a license. 25~~

*sub. (all) added.*  
*Sec. 08.88.221 (all) fee in.*

\* Sec. 08.88.251 is amended to read:

(c) A person who is inactive may become active by applying for an active license and paying the required fees. In the application form he shall state the date on which he intends to become active. His active status begins on the date stated. The commission shall send him a license certificate. A person is entitled to change from an inactive to an active status without examination if he has not been inactive more than two (THREE) years. If he has been inactive more than two (THREE) years, he is required to take an examination.

\* Sec. 08.88.261 is repealed:

\* Sec. 08.88.361 is amended to read:

Sec. 08.88.361. WHEN COMMISSION IS EARNED. A commission or fee is earned when the real estate broker fulfills the terms of a written personal services contract.

*all AS 08.88.401 is repealed and reenacted to read.*  
\* Sec. 08.88.401 (a) is repealed and reenacted to read:

Sec. 08.88.401 (a) a licensee may not in any way represent that he holds or has been awarded any degree or designation to which he is not entitled nor may he represent himself as being a member or affiliate of any professional organization to which he does not belong.

\* Sec. 08.88.401 (b) is repealed and reenacted to read:

Sec. 08.88.401 (b) commissions or fees for performance of acts specified in Section 161 of this chapter may be paid only to a licensed Alaska real estate broker except when a real estate broker properly licensed in another state assists an Alaskan real estate broker, the out-of-state broker's commission or portion of the commission may be paid directly to the out-of-state broker by the seller or escrow holder. Commissions or portions of commissions paid to a licensed real estate salesman must be paid by the broker or under the authorization of the broker with whom the real estate salesman is licensed.

\* Sec. 08.88.401 (c) is amended to read:

(c) knowingly make, authorize, direct or aid in the publication of a false statement or misrepresentation concerning land or a subdivision of other real estate offered for sale or lease;

\* Sec. 08.88.401 is amended by adding a new paragraph to read:

*E* (d) The commission or its executive director may issue a stop order to any person or firm who is or appears to be about to pay a commission or fee for acts specified in Section 161 of this chapter to a person who is not a licensed real estate broker in another state authorized to receive commissions under part (b) of this section.

*(E) a person who violates this sec. 161 of this chapter is guilty of a misdemeanor.*

A PERFORMANCE REVIEW OF THE  
REAL ESTATE COMMISSION

June 4, 1981

Audit Control Number  
08-101-1037-R

Commissioner, Department of  
Commerce and Economic Development

Charles R. Webber

Deputy Commissioner, Department of  
Commerce and Economic Development

Pete Jeans

Deputy Commissioner, Department of  
Commerce and Economic Development

Vacant

Members of the  
Real Estate Commission

Chairperson  
Member  
Member  
Member  
Member  
Member  
Member

Lance Youngquist  
Karen Morris  
Barbara Hill  
Frank Austin  
Gary Wilken  
Ken Calhoon  
Gail Glad

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W—ALASKA OFFICE BUILDING

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

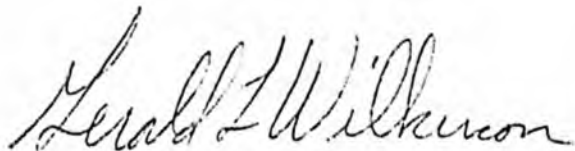
June 4, 1981

Members of the  
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the  
Alaska Statutes, the attached report is submitted for your  
review.

### A PERFORMANCE REVIEW OF THE REAL ESTATE COMMISSION

June 4, 1981



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

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## PURPOSE AND SCOPE OF THE REVIEW

### Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (Sunset legislation), an audit of the Real Estate Commission was conducted to review Commission activities and accomplishments to determine if the Commission has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Real Estate Commission should be reestablished. The law currently specifies that this Commission will terminate on June 30, 1982.

### Scope

The major areas reviewed were the Commission's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

1. Applicable statutes and Commission regulations.
2. Interviews with Commission members.
3. Tests of records and documents of the Commission and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development.
4. Interviews with OL employees.
5. Complaints filed with OL, the Ombudsman's Office and the Consumer Affairs Agency.

## ORGANIZATION AND FUNCTION

The Real Estate Commission (REC) was established and operates under Title 8, Chapter 88 of the Alaska Statutes. It is a regulatory commission composed of five real estate brokers or associate brokers, and two public members.

The Commission regulates licensed real estate agents (brokers, associate brokers, and salespersons) by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing or amending rules and regulations necessary to enforce State statutes.
3. Holding hearings to revoke or suspend the license of a person violating real estate statutes or regulations.
4. Prosecuting through the Department of Law, violators of real estate statutes and regulations.

REC is also authorized to conduct real estate clinics, meetings, or educational institutes for the purpose of raising the standards of the real estate business and the competency of licensees.

Real estate brokers and associate brokers must pass an examination, be a resident of the State, have had 24 months of experience as a real estate salesperson, and not have engaged in conduct demonstrating their unfitness to be a broker. A broker differs from an associate broker in that a broker must be an owner of a real estate business or employed as a broker by a corporation. An associate broker has met the statutory qualifications of a broker, but is employed by a real estate broker.

A real estate salesperson must pass an examination, be a resident of the State, be employed by the owner of a real estate brokerage and not have engaged in conduct demonstrating unfitness to be a salesperson.

Real estate agents must pay a bond fee when obtaining or renewing their licenses. These fees are deposited in the Real Estate Surety Fund and are to be used for making settlements to victims of fraud, misrepresentation, and deceit by real estate agents. Settlements to damaged parties are made by REC after a hearing is held. If the Surety Fund balance reaches above \$250,000, the excess may be appropriated for educational programs put on by REC.

Chapter 167 passed during the 1980 legislative session gave the Commission the power to appoint an executive director, employ assistants and approve the appointment of an investigator or auditor. However, these changes were not funded by the Legislature at that time. Prior to the enactment of this law, the Commission received staff support from the Division of Occupational Licensing (OL).

## REPORT CONCLUSION

### Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these issues the legislative oversight committees should consider the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

### Report Conclusion

In our opinion, the Real Estate Commission (REC) should continue to regulate and license real estate professionals. The regulation and licensing of the profession is necessary because of the potential for substantial economic loss resulting from the business practices of unqualified, incompetent, and dishonest real estate practitioners.

Chapter 167, SLA 1980 significantly changed the powers and responsibilities of the Real Estate Commission. The Commission is now an agency separate from the Division of Occupational Licensing and has the power to hire its own personnel. The Commission has, however, not received sufficient funding for its operations. As a result, it is difficult to draw overall conclusions about the performance of REC.

REC has operated in the public's best interest through its examination and education efforts. For instance, the Commission has taken positive actions to inform and educate licensees and the public by publishing a newsletter. In addition, the Commission has proposed various statutory changes designed to clarify the law and improve services by licensees. Other Board actions have been made which appear to meet public needs and demands reasonably.

Chapter 167 gave REC the power to conduct its own investigations. Due to the lack of funding, REC had to have the Division of Occupational Licensing handle real estate investigations. We suggest that the Commission formalize its investigative procedures to be properly prepared when its investigative function is returned (see Recommendation No. 1).

The statutes specifying procedures for the Real Estate Surety Fund conflict with the Administrative Procedures Act. This is causing payments from the Fund to be delayed. Also, claims in process may become greater than the Fund total (see Recommendation No. 2).

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

Investigative procedures for real estate complaints should be developed to assure an accurate and proper system for handling complaints.

The Real Estate Commission has temporarily delegated its investigative function to the Division of Occupational Licensing due to budgetary constraints. Because of this transfer, REC has not yet established a formal system of handling complaints. In order to be properly prepared when the investigative responsibility is returned to the Commission, REC needs to develop and approve a formal system. The following items should be included.

1. The final disposition of a case should be formally recorded in the Commission's minutes. The case file should reflect these actions.
2. A log should be developed which will track each case from original receipt, through the investigation to the Attorney General's Office and hearing (if applicable), and to the formal Commission action. All cases which have been dropped or have become inactive should be identified.
3. A cross-reference system needs to be developed which will provide a history of complaints against particular individuals or firms. Many investigations involve oral misrepresentation with only the complainant as a witness. Identifying patterns of allegations against a particular company, broker or salesperson will give more effective evidence in cases that are sent to hearings.
4. A manual needs to be developed which documents the procedures used for investigating complaints and documenting case files. REC should define specific procedures to prevent potential conflict of interest situations with Board members and REC employees. The manual will be useful to evaluate staff personnel and help orderly transition in cases of employee turnover.

### Recommendation No. 2

Legislation should be introduced to revise the Real Estate Surety Fund (RESF) statutes in order to allow payments to be made from the Fund in an equitable and timely manner.

Procedures for processing claims against RESF are controlled by the provisions of AS 08.88.450-.500 and the Administrative

Procedures Act (APA), AS 44.62.010-.650. APA allows a broker, associate broker or salesperson to file a written statement in opposition to a claim within 15 days after receiving notification of the claim. AS 08.88.465 allows the broker only 10 days to file a statement. Due to this conflict and others, the Attorney General's Office has notified REC not to pay any claims until the statutes have been changed.

RESF exists to protect the public against injuries resulting from malfeasance by licensed real estate agents. Chapter 167 of the 1980 Session Laws of Alaska gave REC the responsibility of making payments out of the RESF in order to get payments to claimants in a more timely manner. Until the statutes are changed to eliminate the conflict with APA, timely payments will not occur.

Time is of the essence in the passage of new legislation. REC has not completed a detailed financial analysis to determine the monetary liability against the Fund. However, we found that the number of claimants seeking reimbursement from RESF has increased in the last two years from five to twenty-four cases. Using the maximum reimbursement of \$10,000 per case allowable by law, the twenty-four cases could cost as much as \$240,000 or almost two-thirds of the Fund balance of \$374,800 as of June 30, 1980. There is a potential that outstanding claims may soon amount to more than the Fund balance.

The maximum reimbursement of \$10,000 allowable by law was enacted in 1976. The Surety Fund fees of \$125 and \$40 paid by brokers and real estate salespersons have also not been adjusted since 1976. "The Alaska Statistical Review 1980" prepared by the Alaska Department of Commerce and Economic Development shows that the Anchorage Consumer Price Index for urban consumers has increased since 1976 by more than 50%. We suggest that REC complete a financial analysis of the Fund and determine if the current fees and maximum reimbursement for claims are sufficient. Legislation should be introduced if changes need to be made.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses of Commission activities relate to the public need factors defined in the "Sunset" law. These analyses are not intended to be all-inclusive, but addresses those areas we were able to cover within the scope of our review.

#### I. The extent to which the board, commission or program has operated in the public interest.

1. The Real Estate Commission (REC) has legally implemented several regulations concerning:
  - a. Suspension, revocation, and issuance of licenses.
  - b. Prohibited conduct by real estate agents.
  - c. Accounting for trust accounts by real estate agents.
2. According to OL's files, REC met four times last year and advertised one public hearing on proposed regulations. Examinations were scheduled for each month except December and were held in eight locations around the State.
3. The Commission has sponsored seminars and publications on real estate matters.

#### II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

1. Chapter 167, Session Laws of 1980 gave the Board the power to hire its own personnel. Present staffing includes an Executive Director, a License Examiner and a Secretary. However, funding for REC was not substantially increased. As a result, the Commission has not hired an investigator or auditor, a key feature of this legislation. The Division of Occupational Licensing has continued to provide investigative support to REC. However, there is a severe backlog of cases totalling 145 as of January 22, 1981.

2. Chapter 167 also gave the Commission the power to make payments from the Real Estate Surety Fund. Because the procedures enumerated in Chapter 167 conflict with the Administrative Procedures Act, claims against the Fund are being delayed (see Recommendation No. 2).
- III. The extent to which the board, commission or agency has recommended statutory changes which are generally or benefit to the public interest.
1. The Commission proposed various changes to State statutes and many of these were enacted in Chapter 167, SLA 1980. REC is continuing its effort to improve the statutes. We believe these efforts are in the public's best interest.
- IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.
1. The Commission has held part of their meetings to specifically meet with interested persons.
  2. The Commission published and distributed the "Alaska Real Estate Commission News" which included a plea for public input.
- V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.
1. REC, through OL, advertised in newspapers to encourage public participation and also sends notices to interested associations. All meetings and examinations in the past year were publicized.
- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.
1. Recently the Ombudsman's Office received a complaint about a delay in authorizing payments from the Real Estate Surety Fund.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. As of March 19, 1981, there were 2,386 persons licensed by REC.
2. From July 1, 1977 to February 27, 1981, REC and the Division of Occupational Licensing received 414 real estate complaints. During this time, the Commission denied, revoked or suspended 21 licenses. As of February 27, 1981, 145 cases were still pending investigation.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. We found no evidence of problems in this area.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

1. Please refer to the previous section, Findings and Recommendations.



APPENDIXES

APPENDIX A

REAL ESTATE COMMISSION  
REVENUES COMPARED WITH EXPENDITURES  
Fiscal Year 1980  
(UNAUDITED)

Operating

Average Revenue (See Schedule 1 and Note 1)	\$188,600
Expenditures (See Note 2 )	<u>112,900</u>
Excess of Revenues Over Expenditures	<u>\$ 75,700</u>

Surety Fund

Revenue (Note 3 and Note 4)	\$118,600
Expenditures	<u>55,200</u>
Excess of Revenues Over Expenditures	<u>\$ 63,400</u>

CHANGES IN SURETY FUND EQUITY  
Fiscal Year 1980  
(UNAUDITED)

July 1979 Beginning Balance	\$311,400
Fiscal Year 1980 Revenues	118,600
Fiscal Year 1980 Expenditures	<u>55,200</u>
June 30, 1980 Ending Balance	<u>\$374,800</u>

Schedule 1  
Types of Revenues

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
<u>Brokers and Associate Brokers</u>		
Initial License Fee	\$100	With issuance of license
Biennial Renewal - Active License	100	Biennially
Biennial Renewal - Inactive License	25	Biennially
Examination Fee	50	With taking examination
Reciprocity Fee	50	With granting of license through reciprocity
Fee for Amending a License	5	With license filing to amend license
<u>Salespersons</u>		
Initial License Fee	50	With issuance of license
Biennial Renewal - Active License	50	Biennially
Biennial Renewal - Inactive License	25	Biennially
Examination	50	With taking examination
Reciprocity Fee	50	With granting of license through reciprocity
Fee for Amending a License	5	With licensee filing to amend license

Note 1

Most of the real estate revenues are composed of renewal registration fees. These fees are collected once every two years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in fiscal years 1979 and 1980 in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures include those made by Commission members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Commission and OL.

Note 3

The Surety Fund is supported by payments from real estate licenses and provides for financial recovery by the public when injured by malfeasance of a licensee. When the Fund is over \$250,000 the excess may be appropriated for real estate educational purposes. Fiscal Year 1979 revenue has reported as \$17,774.

Note 4

As of April 29, there were 24 claimants seeking reimbursement from the Real Estate Surety Fund. These cases could amount to as much as \$240,000. If the number of claims continues to increase, the amount of claims may become greater than the Fund total.

APPENDIX B

EXAMINATION AND ADMINISTRATIVE  
STATISTICS

Schedule 1  
Examination Statistics

	<u>Calendar 1980</u>	<u>Calendar 1979</u>
<u>Brokers and Associate Brokers</u>		
Number of Examinees	192	241
Number of Fails	<u>56</u>	<u>65</u>
Number of Passes	<u>136</u>	<u>176</u>
Percentage Pass Rate	<u>71%</u>	<u>73%</u>
<u>Salespersons</u>		
Number of Examinees	764	1,024
Number of Fails	<u>415</u>	<u>514</u>
Number of Passes	<u>349</u>	<u>510</u>
Percentage Pass Rate	<u>46%</u>	<u>50%</u>

Schedule 2  
Administrative Statistics

	<u>Calendar 1980</u>	<u>Calendar 1979</u>
<u>Licenses Issued Per Calendar Year</u>		
Brokers	27	55
Associate Brokers	80	90
Salespersons	<u>358</u>	<u>495</u>
<u>Total</u>	<u>465</u>	<u>640</u>

As of 03/19/81

Active Licenses

Brokers	487
Associate Brokers	412
Salespersons	<u>1,487</u>
<u>Total</u>	<u><u>2,386</u></u>

Inactive Licenses

Brokers	47
Associate Brokers	60
Salespersons	<u>711</u>
<u>Total</u>	<u><u>818</u></u>

195 South Franklin  
Juneau, AK 99801  
September 23, 1981

Mr. Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit  
Pouch W  
Alaska Office Building  
Juneau, AK 99811

RECEIVED

1981  
LEGISLATIVE  
AUDIT

Mr. Wilkerson,

In response to your request, I am addressing the recommendations made in the preliminary report, "A Performance Review of the Real Estate Commission," dated 4 June 1981.

Recommendation No. 1: Agree. As you know, AREC has had difficulty for many years with investigation and handling of cases. The underlying reasons are many and have been debated at length. Under AREC's original Sunset review, major statutory changes were implemented in 1980 which would enable AREC to become a separate entity and hire its own staff. Unfortunately, funding was not available in FY '81 to implement these changes.

The FY '82 budget has given AREC sufficient funds to begin implementation of the proposed changes. The hiring process for an investigative position should be completed within a short period. AREC is aware of the proposed changes and has commenced planning of the investigative procedures and record keeping that will be required. AREC's Executive Director has been preparing for this transition; many policy and procedure decisions have been approved by the Commission. It should be noted that at this time case closures are being done at a more rapid rate, and that any decisions on a case are entered into our minutes.

Recommendation No. 2: Agree. I agree with the problem as it existed at the time of the writing of the report. However, since the time of Legislative Audit's investigation, there have been many changes that should allow AREC to commence Surety Fund hearings in October. The interpretation, by the Attorney General's office, has been that any Surety Fund hearings would fall under APA procedures. For this reason AREC made an attempt to get legislation passed that would provide relief from the APA problems--that attempt was unsuccessful. Since that time new AG opinions have provided AREC with a method to handle the claims hearings and to make payments that do not require conformance with the APA. Numerous meetings were held on this matter with the AG and with legal counsel of pending claimants. As of this writing, we are preparing to hold Surety Fund hearings at AREC's October meeting and, if warranted, should be able to begin making payments. I agree with the importance of monitoring the Surety Fund balance due to the amount of pending claims and possible future claims. This is being done and possible new legislation will be introduced during the next legislative session to assure that the fund remains healthy.

Mr. Gerald L. Wilkerson, CPA

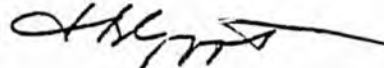
September 23, 1981

Page 2

In conclusion, the report does address two of the major problems that exist with the Commission. It is my opinion that the Commission is very aware of these problems and is actively seeking, or has found, the necessary solutions. The funding problems created by the FY '81 budget hindered our implementation of changes; however, it is my feeling that AREC has performed admirably and is making great strides toward becoming an efficient and effective governmental agency. These accomplishments will be addressed in Sunset hearings next year.

I appreciate the opportunity to address the report and am available at any time to assist you in your investigation or to answer any questions that you may have.

Sincerely,



Lance Youngquist, Chairman  
Alaska Real Estate Commission

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W—ALASKA OFFICE BUILDING

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

February 19, 1982

TO: Representative Terry Martin  
Chairman  
House Labor and Commerce  
Committee

FROM: *Mark K. Jones*  
Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

*R. E. Jiler*

SUBJECT: Discussion of Legislative  
Oversight Responsibilities  
as Related to Sunset Audits

*not in  
official file  
at this  
time*

As required by "sunset" legislation, your Committee has been assigned the oversight review of the Real Estate Commission and the Board of Electrical Examiners. In addition to the audit reports released earlier by this Division, the following information may be helpful.

According to AS 44.66.050, the standing committee of legislative jurisdiction as provided in Rule 20 of the Uniform Rules of the Legislature shall hold one or more hearings to receive testimony from the public and other parties that have associated responsibilities or interests. In addition, the Committee shall consider Legislative Audit's report, the agency's proposed budget, the agency's program performance report, and any other tools that might assist it in evaluating the conduct and activities of the agency being terminated.

\*It is important to note that the terminating agency shall have the burden of demonstrating a public need for its continued existence during the public hearings.

The determination of "public need" for continued existence shall take into consideration the following factors set out in AS 44.66.050(c):

1. The extent to which the board, commission or program has operated in the public interest.

2. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
3. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.
4. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.
5. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.
6. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.
7. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.
8. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.
9. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

The Legislative Audit reports have addressed these issues individually but only to the extent allowed by restricted audit scopes detailed within the reports.

The Law further states that the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of each

Representative Terry Martin  
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house. The report is to include a summary of findings as to compliance with the "public need" factors enumerated above together with recommendations as to each of the following:

1. An identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address.
2. A statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments.
3. An identification of any other programs having similar, conflicting or duplicate objectives.
4. An assessment of alternative methods of achieving the purposes of the program.
5. An assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level.
6. A justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts.
7. Any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

The committee of reference may introduce a bill providing for the reorganization or continuation of the agency being terminated as stipulated in AS 44.66.050(e).

If additional information is needed, please contact this office at 465-3830.

cc: Senator Arliss Sturgulewski  
Chairman  
Legislative Budget and Audit Committee

**\*\*PLEASE NOTE\*\***

THE ORIGINAL FILE CONTAINS AN OVERSIZED DOCUMENT THAT IS UNSUITABLE FOR FILMING. PLEASE REFER TO THE ALASKA STATE ARCHIVES TO VIEW THE ORIGINAL.

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